

**DEED OF TRUST OF
THE RANFURLY TRUST**

Between

ANTHONY PIERCE HAY
Settlor

And

**GRAEME MacKENZIE McKAY
WAYNE ROBERT MILLER
JOHN PATRICK O'BRIEN
ANN OUGH
NEVILLE ALAN WALLACE**
Trustees



SEP RUL

**WALLACE & CO
SOLICITORS
PAPATOETOE**

THIS DEED is made the 16th day of July 1999

BETWEEN ANTHONY PIERCE HAY of Auckland, Medical Practitioner,
(referred to as "the Settlor")

AND GRAEME MACKENZIE MCKAY of Auckland, Company Director, WAYNE ROBERT MILLER of Auckland, Professional Engineer, JOHN PATRICK O'BRIEN of Auckland, Geologist, ANN OUGH of Auckland, Registered Nurse and NEVILLE ALAN WALLACE of Auckland, Solicitor (referred to as "the Trustees")

BACKGROUND

- A. Ranfurly War Veterans Home and Hospital is one of four such homes and hospitals maintained under the centralised control of The Patriotic and Canteen Funds Board which came in to being on 12th February 1987 with the amendment of the Patriotic and Canteen Funds Act 1947.
- B. Diminishing financial resources, changing social circumstances, changing attitudes towards the implementation of health policy have made it imperative that a degree of responsibility and control be delegated to local committees.
- C. In effect, this means that Ranfurly War Veterans Home and Hospital will have to ensure its own financial security.
- D. The Settlor considers it desirable that a Trust be established to achieve the continued existence of Ranfurly War Veterans Home and Hospital, the continual provision of existing services, and the enhancement of these services, and the ancillary objects hereinafter set out in detail.
- E. The Trustees are prepared to act as initial trustees of the Trust Fund.
- F. By way of initial gift to the Trustees to establish the Trust the Settlor has at the date of execution of this deed paid to the Trustees the sum of **ONE HUNDRED DOLLARS (\$100.00)**.

WITNESSES AS FOLLOWS:

1. **INTERPRETATION**

In this deed unless the context indicates otherwise:

1.1 **Definitions:**

"Balance Date" means any date adopted from time to time by the Trustees as the end of the Trust's Financial Year;

“Chairperson” means the Trustee appointed in accordance with subclause 7.4;

“Financial Year” means any year or other accounting period ending on the Balance Date;

“Secretary” means the person appointed in accordance with subclause 7.5;

“Trust” means the trust constituted by this deed;

“Trust Fund” means the initial amount of **ONE HUNDRED DOLLARS (\$100.00)** transferred by the Settlor to the Trustees, and all moneys, property and investments of whatever nature and kind hereafter transferred to the Trustees and directed to be held on the trusts of this deed any further moneys, property and investments of whatever nature and kind which may hereafter be otherwise paid to or held under the control of or vested in or acquired by the Trustees from any source whatsoever and whether by way of gift, bequest, devise, purchase, exchange or otherwise howsoever for the purposes of the said trusts and the moneys, property and investments of whatever nature and kind from time to time representing the same and the income therefrom:

“Trustees” means the trustee or trustees of the Trust for the time being whether original, additional or substituted;

- 1.2 **Headings:** section, clause and other headings are for ease of reference only and will not affect this deed’s interpretation.
- 1.3 **Parties:** references to parties are referenees to parties to this deed;
- 1.4 **Persons:** references to persons includes references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality.
- 1.5 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background.
- 1.6 **Sections, Clauses aud Schedules:** references to sections, clauses and schedules are references to this deed’s sections, clauses and schedules; and
- 1.7 **Plural and Siugular:** words importing the singular number will include the plural and vice versa;
- 1.8 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.9 **Gender:** references to one gender include the other gender;

1.10 **Statutes and Regulations:** references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. NAME

The name of the Trust constituted by this deed is The Ranfurly Trust provided that the Trustees may by deed change the name of the Trust to such other name as they may determine from time to time.

3. TRUSTEES TO STAND POSSESSED OF THE TRUST FUND

3.1 **Exclusively Charitable Objects and Purposes:** The Trustees shall stand possessed of the Trust Fund **UPON TRUST** to pay or apply so much of the capital and the income thereof as the Trustees think fit for or towards any one or more of the following exclusively charitable objects and purposes which are hereby declared to be the objects and purposes of the Trust, namely:

- 3.1.1 the benefit of discharged servicemen and servicewomen (as defined in the Patriotic and Canteen Funds Act 1947) presently resident or at any time in the past resident in Ranfurly, and their dependants;
- 3.1.2 the benefit of other persons in the community lawfully and properly admitted to Ranfurly;
- 3.1.3 the work of any public charity or any organisation dispensing charity or relieving or caring for discharged servicemen and servicewomen or persons eligible for entry to Ranfurly;
- 3.1.4 the promotion or support of and participation in medical research of benefit to those eligible for entry to Ranfurly as may be approved by the Trustees;
- 3.1.5 the furtherance by any means and in any manner as may be approved by the Trustees, of works for charitable purposes, which in accordance with the law in New Zealand for the time being, are charitable whether such purposes relate to the relief of poverty, the advancement of education or any other matter beneficial to discharged servicemen and servicewomen their dependants and those persons eligible for entry to Ranfurly.

3.2 **No Limitation:** The objects and purposes of the Trust shall not, except where the context specifically or expressly requires it, be in any way limited or restricted by reference to or inference from the terms of any other clause or subclause or from the name of the Trust and none of the objects or purposes of the Trust shall be deemed subsidiary or ancillary to any other object or purpose of the Trust;

- 3.3 **Objects and Purposes Independent:** The Trustees shall be empowered to carry out any one or more of the objects or purposes of the Trust independently of any other object or purpose of the Trust;
- 3.4 **Carried Out Within New Zealand:** All the objects and purposes of the Trust are to be carried out exclusively within New Zealand.

4. TRUSTEES' GENERAL POWERS

- 4.1 **Promotion of Objects and Purposes:** The Trustees shall promote the exclusively charitable objects and purposes of the Trust described in clause 3 and shall act on the Trust's behalf and in particular and in addition to all other powers conferred by law the Trustees shall have the same powers as a natural person acting as beneficial owner of the Trust Fund and such powers shall not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that such is obligatory.
- 4.2 **Specific Powers:** Without limiting the generality of subclause 4.1 and merely by way of example the Trustees shall have the power, which may be exercised either alone or jointly with any other person or persons:
- 4.2.1 **Advertise and Inform:** to make known and further the objects and purposes of the Trust and to advertise the manner in which the Trust Fund or any part thereof has been or is being or will be applied both by working with representatives of the established media and by advertising in any medium and to disseminate whether by written publication or otherwise information and material of any nature whatsoever relating to the Trust and its activities, needs, objects and purposes;
- 4.2.2 **Collect Funds:** to collect funds and raise money by all lawful means and to receive, accept, encourage and enlist financial and other contributions, subscriptions, donations, legacies, endowments or bequests from any source and to conduct fund raising campaigns in order to further the exclusively charitable objects and purposes of the Trust;
- 4.2.3 **Receive Grants and Subsidies:** to receive from the New Zealand Government or any council, board or body under the jurisdiction thereof or any other government, state or national body or any international organisation, any grant, subsidy or payment whatsoever in order to further the objects and purposes of the Trust;
- 4.2.4 **Specified Trust:** to carry out any specified trust attaching or relating to any contribution, subscription, donation, legacy, endowment, bequest, grant, subsidy, or payment received to the extent such specified trust conforms with the objects and purposes of the Trust;

- 4.2.5 **Apply Funds:** to apply any money forming part of the Trust Fund to the promotion and advancement and development of the objects and purposes of the Trust;
- 4.2.6 **Invest Funds:** to invest any money forming part of the Trust Fund in any ways authorised by law for the investment of trust funds and also if the Trustees think fit on mortgage of land either by the Trustees alone or together with any person or persons as a contributory mortgagee to acquire shares in any body corporate and any interest in any partnership or joint venture;
- 4.2.7 **Acquire Property:** to acquire any real or personal property or interest therein (whether in New Zealand or elsewhere) whether by purchase, lease, exchange or otherwise howsoever and upon and subject to such terms and conditions as the Trustees shall think fit;
- 4.2.8 **Sell and Reinvest:** to sell, join in selling, call in or convert all or part of any real or personal property forming part of the Trust Fund in such manner (including the granting of options to purchase or repurchase) and subject to such terms and conditions as the Trustees shall think fit (including the granting of time for payment of the purchase price with or without security) and to re-invest the proceeds of such sale, calling in or conversion in such manner as the Trustees shall think fit;
- 4.2.9 **Postpone Sale:** to postpone the sale of any real or personal property forming part of the Trust Fund for so long as the Trustees shall think fit notwithstanding that such property may be wasting, speculative or reversionary in nature;
- 4.2.10 **Lease:** to let or lease or bail to any person or persons any freehold or leasehold property or any plant and chattels or interest therein forming part of the Trust Fund either from year to year or for any term of years or otherwise at such rent and subject to such covenants and conditions as the Trustees shall think fit (including if the Trustees shall think fit an optional or compulsory purchasing clause) and also to accept surrenders of leases and tenancies and generally to manage them as the Trustees shall think fit;
- 4.2.11 **Lend:** to lend any moneys forming part of the Trust Fund to any person or persons with or without security on such terms and either free of interest or at such rate of interest as the Trustees shall think fit;
- 4.2.12 **Pay Debts:** to apply any income or capital of the Trust Fund in, for or towards payment of any fees, costs, disbursements, debts or other liabilities or any part thereof, owing by or in respect of the Trust Fund or incurred in connection with the trusts of this deed, whether or not the fees, costs, disbursements, debts or other liabilities are charged upon the Trust Fund or on any part thereof and whether or not the Trustees are contractually liable for payment of the fees, costs, disbursements, debts or other liabilities;

4.2.13 **Acquire or Carry on Business:** to acquire any business or venture of any nature whatsoever (including without limitation any forestry or farming or similar business) or interest therein from any person, or to commence, enter into, carry on or be engaged or concerned in any business or venture of any nature whatsoever (including without limitation any forestry or farming or similar business), whether or not carried on at the time of execution of this deed for such time or times and in such a manner as the Trustees shall think fit, either alone or in partnership or otherwise with any other person or persons, with power to do or join in doing all things which the Trustees shall consider necessary, expedient or desirable in connection with such business or venture including without limitation:

- (a) employing such managers, agents, servants, workmen and others as the Trustees shall think fit;
- (b) using and employing in any such business or venture the whole or any part of the capital or income or both of the Trust Fund and from time to time advancing to or employing in any such business or venture (with or without taking security therefor) any additional capital or income of the Trust Fund which the Trustees may deem advisable for the effectual carrying on of the business;
- (c) managing or joining in the management of any such business or venture;
- (d) withdrawing money from any such business or venture;

and the Trustees shall not be liable for any loss caused to the Trust Fund or the income thereof through carrying on any such business or venture and the Trustees shall be absolutely indemnified by and out of either or both of the capital and income of the Trust Fund for and in respect of any loss or liability which the Trustees may sustain or incur by reason of the Trustees so commencing, entering into, carrying on, or being engaged or concerned in any such business or venture;

4.2.14 **Build:** to erect, construct and maintain any buildings and or works of every kind and description on any land forming part of the Trust Fund or upon any other land or property and to pull down, rebuild, enlarge, alter or improve existing buildings and or works thereon and to expend any sums out of the capital or income of the Trust Fund the Trustees shall think desirable or expedient in so doing;

4.2.15 **Subdivide or Develop** to subdivide or develop the whole or any part of the land forming part of the Trust Fund whenever and however in their discretion the Trustees shall think fit and to dedicate any roads required in respect thereof and to employ surveyors, builders, land agents, architects and contractors to prepare plans, carry out roading, lay drains and do all other acts which the Trustees shall think necessary or desirable for the proper carrying out of the subdivision or

development and to expend any sums out of the capital or income of the Trust Fund the Trustees shall think desirable or expedient to enable such subdivision or development to be carried out;

- 4.2.16 **Establish Reserve Fund:** to start and subscribe to any depreciation or reserve fund for any purpose the Trustees may deem advisable and to determine in their discretion whether that fund is income or capital;
- 4.2.17 **Join in Partition:** to consent to and join in the partition of any assets in which the Trust Fund is interested and to take a transfer of a divided or undivided share or interest in any such assets;
- 4.2.18 **Maintain Property:** generally to maintain, manage, repair, improve or develop any real or personal property which or an interest in which forms part of the Trust Fund in such manner as the Trustees shall think fit;
- 4.2.19 **Companies:** in respect of any company or companies in which the Trustees hold or are entitled to or propose to hold shares or debentures:
- (a) to pay calls on shares;
 - (b) to act as an officer or officers, employee or employees of the company either alone or in conjunction with others;
 - (c) to appoint any person to act as a director of any company and if necessary to transfer to such person a sufficient number of shares to be held by him in trust for the Trustees to qualify him to act as a director;
 - (d) to provide out of the Trust Fund capital or further capital for the company whether by advances or loans (with or without security), by deposit on current account or otherwise, by guarantees (with or without security) or by taking up shares or further shares or in such other manner and on such terms as the Trustees shall think fit; and
 - (e) to concur on such terms as the Trustees shall think fit in the liquidation, reconstruction or amalgamation of the company or in the alteration or modification of the regulations thereof and to concur in the modification of or to surrender any of the rights attaching to all or any shares and to exercise in such manner as the Trustees shall think fit any powers which by the regulations of the company are vested in the Trustees as directors or members thereof or otherwise and on any liquidation, reconstruction or amalgamation to accept fully paid or partly paid up shares or debentures or other interest in or securities of any company as the consideration or part of the consideration for such liquidation, reconstruction or amalgamation and

generally to act in relation to the company in such manner as the Trustees shall think fit;

- 4.2.20 **Borrow:** to borrow or raise any moneys on mortgage or overdraft or otherwise with or without security from any person or persons at such rate of interest for such terms and generally on such conditions as the Trustees shall think fit and to sign any mortgage, deed, agreement or other document in connection therewith and no person lending money to the Trustees shall be concerned to enquire as to the application of the money or as to the purpose for which the money may be borrowed.
- 4.2.21 **Gnaranantee:** to enter into or join in entering into any guarantee by the Trustees alone or together with any other person or persons the giving of which the Trustees shall consider to be in the interest (direct or indirect) of the Trust Fund or of the promotion of the exclusively charitable objects and purposes of the Trust and to authorise any company in which the Trustees shall hold shares to enter into such a guarantee or to enter into any other arrangement which the Trustees shall deem to be in the interest of the Trust Fund or of the promotion of the exclusively charitable objects and purposes of the Trust;
- 4.2.22 **Give Security:** to give security alone or together with any other person or persons the giving of which the Trustees shall consider to be in the interest (direct or indirect) of the Trust Fund or of the promotion of the exclusively charitable objects and purposes of the Trust and to authorise any company in which the Trustees shall hold shares to give such security;
- 4.2.23 **Settle Accounts:** to agree and settle accounts with all persons liable to account to the Trustees and to compromise all questions relating to the Trust Fund and to grant effectual receipts, discharges and releases;
- 4.2.24 **Appoint Attorney:** at any time and for any period to appoint any person to act as an attorney for all or any of the Trustees anywhere in the world for all or any of the exclusively charitable objects and purposes of the Trust;
- 4.2.25 **Appoint Agents:** instead of acting personally to instruct and pay any person whatsoever to transact all or any business or do any act required to be transacted or done in the execution of the trusts of this deed including the receipt and payment of money and the Trustees shall not be responsible for the default of any such person appointed in good faith or for any loss occasioned by such person's instruction;
- 4.2.26 **Bank Accounts:** to open or maintain such current or other accounts at such banks or other accounts at such banks or other institutions and in such manner as the Trustees may from time to time think fit;
- 4.2.27 **Incorporation:** to apply for incorporation as a Board under the Charitable Trusts Act 1957;

- 4.2.28 **Amalgamate or Merge:** to amalgamate or merge the Trust with any other exclusively charitable trust or organisation and to transfer all or part of the Trust Fund to such amalgamated or merged trust;
- 4.2.29 **Insure:** to insure against loss or damage by any cause whatsoever any insurable property forming part of the Trust Fund, and to insure against any risk or liability against which it would be prudent for a person to insure if he were acting for himself, for such amounts and on such terms as the Trustees may from time to time think fit;
- 4.2.30 **Contributions:** to contribute to any charitable trust having substantially similar objects and purposes as the objects and purposes of the Trust;
- 4.2.31 **Statutory Authorisation:** to do all or any of the things which the Trustees are authorised to do by the Trustees Act 1956 or the Charitable Trusts Act 1957 and to do all or any of the things that natural persons are able to do; and
- 4.2.32 **General:** to do all such things as in the opinion of the Trustees are incidental or conducive to the attainment of the exclusively charitable objects and purposes of the Trust.

4.3 **Exercise Powers Independently:** None of the powers or authorities conferred on the Trustees by this clause or otherwise shall be deemed subsidiary or ancillary to any other power or authority and the Trustees shall be entitled to exercise all or any of the said powers and authorities independently of any other of others of them. In the event of any ambiguity this provision shall be construed so as to widen and not restrict the powers of the Trustees provided however that at no time can any provision be construed so as to detract from the exclusively charitable objects and purposes of the Trust.

5. APPOINTMENT AND REMOVAL OF TRUSTEES

- 5.1 **Power of Appointment:** The power of appointment of new Trustees shall be vested in the persons in whom such power is vested by the Trustee Act 1956 who shall also have the following powers:
- 5.1.1 **Additional Trustees:** to appoint at any time or times an additional Trustee or additional Trustees;
- 5.1.2 **Reappoint:** to reappoint any retiring or retired Trustee as Trustee;

5.1.3 **Advisory Trustees:** to appoint any person at any time or times as advisory Trustee provided that any such advisory Trustee shall not take part in any resolution of the Trustees or in the management or administration of the Trust Fund.

5.1.4 **Overseas Trustee:** to appoint a new Trustee or Trustees outside the jurisdiction of the New Zealand Courts; and

5.1.5 **Appoint Themselves:** to appoint himself, herself or any of them to be a Trustee.

5.2 **Number of Trustees:** The number of Trustees (excluding advisory Trustees) shall be not less than 4 provided that if at any time there are less than 4 Trustees (excluding advisory Trustees) the person or persons having the power of appointment of Trustees shall increase the number of Trustees (excluding advisory Trustees) to 4 as soon as is reasonably practicable and the remaining Trustees shall be entitled to act until the number of Trustees (excluding advisory Trustees) is so increased and no act or decision of the Trustees shall be called into question on such account.

5.3 **Power of Removal:** The person or persons having the power of appointment of new Trustees shall also have the power to remove Trustees.

5.4 **Eligibility of Trustees:** The following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:

5.4.1 **Bankrupt:** a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;

5.4.2 **Conviction:** a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person, provided that such a person shall not be disqualified from appointment as a Trustee, or may continue to hold office as a Trustee and shall be deemed to have taken leave of absence, until the expiration of the time for appealing against the conviction, until the appeal has been determined;

5.4.3 **Imprisonment:** a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person, provided that such a person shall not be disqualified from appointment as a Trustee, or may continue to hold office as a Trustee and shall be deemed to have taken leave of absence, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined.

- 5.4.4 **Disqualified Director:** any person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 199K or section 199L or section 199N of the Companies Act 1955 or under section 382 or section 383 or section 385 of the Companies Act 1993;
- 5.4.5 **Property Order:** a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988.
- 5.5 **Ineligibility of Person Having Power of Appointment:** If any person having the power of appointment of new Trustees is ineligible for appointment as a Trustee or is precluded from holding office as a Trustee pursuant to subclause 5.4 then the Trustees, but excluding that person if he or she is also a Trustee, shall have the power to remove the power of appointment and removal of Trustees from that person and to revest it in another person who may or may not be a Trustee. From the date of such appointment this clause shall apply to the person named as if he or she was originally named in subclause 5.1.
- 5.6 **Term of Office:** A Trustee shall cease to hold office if:
- 5.6.1 **Resignation:** the Trustee resigns by giving thirty (30) days written notice to the Secretary, who shall be obliged to circulate such written notice to the Trustees within ten (10) days of receipt;
- 5.6.2 **Ineligibility:** the Trustee is precluded from holding office as a Trustee pursuant to subclause 5.4;
- 5.6.3 **Failure to Attend:** the Trustee fails to attend a meeting of the Trustees for a period of twelve (12) months;
- 5.6.4 **Death:** the Trustee dies whilst holding office as a Trustee;
- 5.6.5 **Dissolution:** the Trustee, being a corporation, ceases to carry on business or is in liquidation or is dissolved;
- 5.6.6 **Removal:** the Trustee is removed by the person or persons having the power to remove Trustees;
- 5.7 **Recording:** Upon every appointment, reappointment, removal or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.
- 5.8 **Conflict of interest:** Any Trustee who is or may be in any capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the trust is or may be in any way concerned or involved, shall disclose the nature and extent of that interest to the other Trustees. Nor shall they take part whatever in any deliberations concerning any matter in which that Trustee is or may be interested other than as a Trustee of the Trust.

6. ADMINISTRATION

- 6.1 **Meetings:** The Trustees shall regulate and conduct meetings as follows:
- 6.1.1 **Annual General Meeting:** within four (4) months of the end of the each Financial Year the Trustees shall hold an annual general meeting;
 - 6.1.2 **Notice:** the Secretary shall give no less than thirty (30) days notice of the annual general meeting to the Trustees;
 - 6.1.3 **Business:** the business to be transacted at the annual general meeting shall be the receipt of the financial statements, appointment of the auditor (if any) and the setting of the remuneration of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with subclause 6.1.4;
 - 6.1.4 **Special Business:** notice in writing of any special business shall be given to the Secretary no less than twenty one (21) days prior to the annual general meeting. The Secretary shall circulate a written agenda including all special business to the Trustees no later than fourteen (14) days prior to the annual general meeting;
 - 6.1.5 **Other Meetings:** the Trustees shall otherwise meet at such times and places as they may agree, provided that any two (2) or more Trustees may at any time requisition a meeting of Trustees by giving notice to the Secretary. The Secretary shall, within ten (10) days of receipt of such notice, convene a special general meeting by giving, subject to subclause 13.1, not less than ten (10) days notice of the meeting to the Trustees;
 - 6.1.6 **Particulars of Notice:** every notice of meeting given by the Secretary to the Trustee shall be in writing and shall state the date, time and place of the meeting, and every notice of a meeting requisitioned pursuant to subclause 6.1.5 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees consent in writing to such abridgment or waiver.
- 6.2 **Quorum:** A quorum at meetings of the Trustees shall be comprised of four Trustees (excluding advisory Trustees).
- 6.3 **Validity of Proceedings:** All acts done by any meeting of Trustees or by any person acting as Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or Trustees or that any such Trustee or Trustees were for any reason disqualified from holding office as Trustee or that there was accidental failure to comply with subclause 6.1, be as valid as if such Trustee or Trustees had been duly appointed and were qualified to hold office as Trustee and had complied with subclause 6.1.
- 6.4 **Chairperson:** The Trustees shall appoint a Chairperson of the Trustees from among their number who shall hold office at the Trustees' pleasure.

- 6.5 **Secretary:** The Trustees shall from time to time appoint either one of their number or some other person to be Secretary to hold office at the Trustees' pleasure.
- 6.6 **Majority Decisions:** Except as otherwise provided, and subject to subclause 6.2, all resolutions passed at a meeting of the Trustees may be by a majority of Trustees (excluding advisory Trustees) present at that meeting and any such resolution shall be binding on all Trustees. The Chairperson shall have a casting as well as a deliberative vote in the event of a tie and equality of votes.
- 6.7 **Resolutions in Writing:** A resolution in writing, signed by all the Trustees (excluding advisory Trustees) shall be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustee.
- 6.8 **Rescission of Resolutions:** Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees (excluding advisory Trustees) by the same majority as was necessary to pass the resolution being rescinded or varied.
- 6.9 **Minutes** A minute book shall be provided and kept by the Trustees. Minutes of the proceedings of all meetings of the Trustees shall be prepared by the Secretary and entered in the minute book and if confirmed at a subsequent meeting of the Trustees shall be signed by the Chairperson as a true and correct record. Every such minute purporting to be so signed shall be prima facie evidence of the facts therein stated.
- 6.10 **Bank Accounts:** The Trustees shall keep an account or accounts at such bank or banks as they shall from time to time determine and cheques shall be drawn signed and endorsed by such person or persons as the Trustees shall from time to time authorise in writing.
- 6.11 **Accounts and Audits:** The Trustees shall cause full and correct records and accounts to be kept of all their receipts, credits, payments, assets, liabilities and transactions and all other matters necessary for showing the true state and condition of the Trust and as soon as practicable after the end of each Financial Year cause to be prepared financial statements including a balance sheet, income and expenditure account and notes to those statements, giving a true and fair view of the financial position of the Trust for that Financial Year. If the Trustees so resolve, such financial statements shall be audited by a chartered accountant appointed for that purpose by the Trustees.
- 6.12 **Execution of Documents:** Subject to subclause 6.13 all documents required to be executed by the Trustees shall be deemed to be validly executed and binding if those documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees (not being advisory Trustees) or any other person appointed by the Trustees for the purpose.
- 6.13 **Affixing Seal:** Should the Trustees become incorporated as a Board under the Charitable Trusts Act 1957 they shall provide a common seal for the Board which shall be deposited with the secretary for the time being and which shall be affixed by the authority of the

Trustees previously given to any document requiring execution by the Board. Every such affixing shall be performed in the presence of and accompanied by the signatures of two (2) Trustees (not being advisory Trustees) and shall be sufficient evidence of the authority to affix such seal and no person dealing with the Trustees shall be bound or concerned to see or inquire as to the authority under which any document is sealed or in whose presence.

- 6.14 **Tax Returns:** The Trustees shall cause to be prepared or filed with the Inland Revenue Department all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations and other information required to be prepared or filed so as to allow the Trust to retain its charitable status for taxation purposes.
- 6.15 **Notices:** Any notice to be given to the Secretary pursuant to this deed shall be in writing signed by the person or persons giving the notice and served at the office of the Trust. Any notice or document so served shall be deemed to be duly given:
- 6.15.1 **By Hand:** if delivered by hand, when so delivered;
- 6.15.2 **By Facsimile:** if delivered by facsimile, when receipt is confirmed;
- 6.15.3 **By Post:** if delivered by post, on the third working day after posting.

7. MODIFICATION OF TERMS OF THIS DEED

The Trustees may from time to time by resolution carried by a majority of two-thirds of their number at that time modify or amend any or all of the terms of this deed provided however that no such modification shall at any time be made which detracts from the exclusively charitable objects and purposes of the Trust.

8. TRUSTEES' LIABILITY

- 8.1 **Liability for Loss:** In the professed executed of the trusts of this deed no Trustee shall be liable for any loss to the Trust Fund arising:
- 8.1.1 **Investment:** by reason of any improper or imprudent investment made by any Trustee in good faith;
- 8.1.2 **Agent:** from the negligence or fraud or delay of any agent instructed by any Trustee in good faith (notwithstanding that the instruction of such agent was not necessary or expedient and notwithstanding any statutory provision or rule of law to the contrary);
- 8.1.3 **Mistake:** by reason of any mistake or omission made by any Trustee in good faith;
- 8.1.4 **Delay:** by reason of any delay caused by any Trustee;

- 8.1.5 **Deposit of Funds:** by reason of all or part of the Trust Fund being lawfully deposited in the hands of any banker or solicitor;
- 8.1.6 **Secnrity:** by reason of the insufficiency or deficiency of any security upon which all or part of the Trust Fund may be invested;
- 8.1.7 **General:** any other act of any Trustee;

unless attributable to that Trustee's own dishonesty or to the wilful commission or omission of any act known by that Trustee to be a breach of trust.

- 8.2 **Trnstee Act 1956:** Subject to subclause 8.1, notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care, diligence and skill to be exercised by such persons shall not be that required by the said section 13C but shall at all times be the care, diligence and skill that a prudent person of business would excrcise in managing the affairs of others.
- 8.3 **Proceedings:** No Trustee shall be bound to take, or be liable for failure to take, any proceedings against another Trustee or other Trustees for any breach or alleged breach of trust committed by such other Trustee or Trustees.
- 8.4 **Receipt of Monies:** Subject to subclauses 8.1 and 8.2, a Trustee shall be chargeable only for such monies as shall have actually been received by that Trustee. For the purposes of this subclause a Trustee shall be deemed to have received monies even if not actually paid to that Trustee if those monies have been credited in account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

9. RESTRICTIONS ON BENEFIT FROM THE TRUST

- 9.1 **No Determination of Income:** Notwithstanding anything contained or implied in this deed, where the Trustees carry on or engage in any business by or on behalf of or for the benefit of the Trustees upon the trusts of this deed, no person defined in section CB 4(1)(e)(I) to (iv) of the Income Tax Act 1994 shall, by virtue of that capacity and within the ambit and scope of the said section CB 4(1)(e)(v) to (viii), and with the exceptions therein contained, in any way (whether directly or indirectly) determine, or materially influence in any way the determination of, the nature or the amount of any benefit or advantage (whether or not convertible into money) of any income of any of the kinds referred to in section CC 1, subpart CD, sections CE 1, CE 3, CF 1, CG 1, and CH 3 of the Income Tax Act 1994 able to be received, gained, achieved, afforded or derived by that person from that business, or the circumstances in which that benefit or advantage or income is or is to be so received, gained, achieved, afforded or derived.
- 9.2 **No Non-Exempt Derivation:** Nothing in this deed shall authorise the derivation of income to which section CB 4(1)(e) of the Income Tax Act 1994 applies and which is excluded from exemption from income tax by the said section CB 4(1)(e).

10. TRUSTEES' REMUNERATION AND EXPENSES

- 10.1 **Professional Remuneration:** Subject to subclause 10.4 any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade shall be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by him or her or any employee or partner of his or hers in connection with the trusts of this deed including acts which a Trustee not being in any profession, business or trade could have done personally.
- 10.2 **General Remuneration:** Subject to subclause 10.4 each Trustee (other than a Trustee remunerated pursuant to subclause 10.1 to the extent that such remuneration covers services to which this subclause 10.2 applies) shall be entitled to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees.
- 10.3 **Expenses:** Subject to subclause 10.4 each Trustee shall be entitled to be indemnified against, and reimbursed for, all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Trustees or in connection with the trusts of this deed.
- 10.4 **Proviso:** Provided that no Trustee receiving any remuneration referred to in subclauses 10.1 to 10.3 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid. Any such remuneration must be approved in writing by the Settlor or his administrators.

11. INDEMNITY

Each Trustee shall be indemnified out of the Trust Fund for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees under this deed unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission or omission by such Trustee of an act known by such Trustee to be a breach of trust.

12. NO PRIVATE PECUNIARY PROFIT

Nothing expressed or implied in this deed shall permit the activities of the Trustees, or any business carried on by or on behalf of or for the benefit of the Trustees, upon the trusts of this deed to be carried on for the private pecuniary profit of any individual.

13. WINDING UP

- 13.1 **Resolution:** The Trust may be wound up on a unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose. The Secretary shall give not less than

thirty (30) days notice of such a meeting to the Trustees.

13.2 **Surplus Property:** If upon the winding up or dissolution of the Trust there remains after a satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid out or distributed other than to some other exclusively charitable institution or institutions having objects or purposes carried out exclusively within New Zealand similar to the objects or purposes of the Trust. Alternatively, any surplus property remaining after the winding up or dissolution of the Trust may be disposed of upon the direction of a Judge of the High Court of New Zealand.

4. **GOVERNING LAW**

The Trust shall be governed by and construed in accordance with the laws of New Zealand.

In witness of which this deed has been executed.

SIGNED by **ANTHONY PIERCE HAY**
as **Settlor** in the presence of:

) 

Witness *Wheary J.P.*

Address _____

NEERU KESRY
LEGAL EXECUTIVE
JUSTICE OF THE PEACE
FOR NEW ZEALAND

Occupation _____

SIGNED by **GRAEME MacKENZIE McKAY**
as **Trustee** in the presence of:

) 

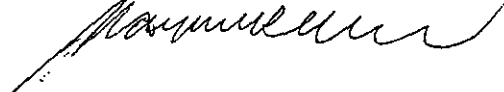
Witness *Wheary J.P.*

Address _____

NEERU KESRY
LEGAL EXECUTIVE
JUSTICE OF THE PEACE
FOR NEW ZEALAND

Occupation _____

SIGNED by WAYNE ROBERT MILLER
as Trustee in the presence of:

) 
)

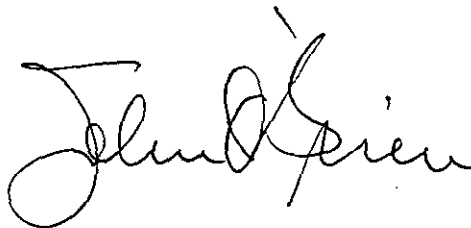
Witness 

Address _____

NEERU KESRY
LEGAL EXECUTIVE
JUSTICE OF THE PEACE
FOR NEW ZEALAND

Occupation _____

SIGNED by JOHN PATRICK O'BRIEN
as Trustee in the presence of:

) 
)


Witness 

Address _____

NEERU KESRY
LEGAL EXECUTIVE
JUSTICE OF THE PEACE
FOR NEW ZEALAND

Occupation _____

SIGNED by ANN OUGH as Trustee
in the presence of:

) 
)

Witness 

Address _____

NEERU KESRY
LEGAL EXECUTIVE
JUSTICE OF THE PEACE
FOR NEW ZEALAND

Occupation _____

SIGNED by NEVILLE ALAN WALLACE)
as Trustee in the presence of:)

N.A. Wallace

Witness *Neeru Kesry*

Address _____

NEERU KESRY
LEGAL EXECUTIVE
JUSTICE OF THE PEACE
FOR NEW ZEALAND

Occupation _____