

THIS DEED is made the day of October 2009 **Nov**

PARTIES

BETWEEN **WAIREWA RUNANGA INCORPORATED SOCIETY** (“**the Runanga**”) an incorporated society having its registered office at Christchurch (“**the Settlor**”)

AND **TE KAIO TRUSTEE COMPANY LIMITED**, a duly incorporated company having its Registered Office at Christchurch (“**the Trustee**”)

BACKGROUND

- A.** **James Winstone Wright**, formerly of Banks Peninsula, Farmer, now Deceased (“**the Deceased**”) bequeathed to the Settlor all his freehold farm properties situated at Te Oka, Banks Peninsula (“**the Farm Property**”).
- B.** The Deceased died at Christchurch on 29 August 2006. Probate for the aforementioned Will was obtained on 22 September 2006.
- C.** In the Deceased’s Will he declared his wish that the Farm Property be retained intact and operated as a going concern and not sold by the Settlor.
- D.** The Settlor’s Constitution includes as part of its General Powers that the Runanga may accept any gifts of property, whether to any special trust or not, for any one or more of the Objects of the Settlor and may sell, lease, exchange, mortgage or otherwise deal with its assets in furtherance of those Objects.
- E.** The Settlor wishes to respect the wish of the Deceased, that the Farm Property be retained intact and not sold by the Settlor and, accordingly, has established this Trust with the declared purpose of the Trust holding the Farm Property on the terms and conditions hereafter set out in this deed.
- F.** The Settlor wishes to establish a Charitable Trust in New Zealand (“**the Trust**”) for the purposes described in clause 5 of this deed.
- G.** The Settlor intends on the execution of this deed to transfer to the Trust the Farm Property to be held by the Trustee upon the trusts set out in this deed.
- H.** The Trustee has consented to become the Trustee of the Trust created by this deed with and subject to the powers and provisions contained in this deed.
- I.** It is anticipated that further money, property or other assets may from time to time be paid, transferred to or otherwise acquired by the Trustee to be held upon the trusts hereof together with the Farm Property (“**the Trust Fund**”).

THIS DEED WITNESSES as follows:

1. Name

The name of the Trust shall be the “**JAMES WRIGHT TE KAIO MEMORIAL TRUST**” or any other name that the Trustee may adopt by resolution from time to time.

2. Declaration of Trust

- 2.1. The Settlor directs and the Trustee acknowledges that it holds the Trust Fund upon the trusts and with the powers set out in this deed;
- 2.2. The Settlor directs and the Trustee acknowledges that the Farm Property, described in the Schedule, be retained by the Trust in perpetuity with the declared purpose of the Trust holding the Farm Property on the terms and conditions hereinafter set out in this deed.

3. Registration

The Board shall apply to register the Trust under the Charities Act 2005 with effect from the date of this deed. The Board shall comply with the requirements of the Charities Act 2005.

4. Activities limited to New Zealand

The activities of the Trust and the Trust Fund will be limited to New Zealand and carried out exclusively for charitable purposes.

5. Purposes

- 5.1. The Board shall hold the Trust Fund, and exercise all such powers and privileges and apply all income of the Trust, exclusively for the charitable purposes in New Zealand listed below for the benefit of the Wairewa Papatipu Runanga and communities associated with and connected to the Takiwa of Wairewa ("**the Purposes**"):
 - (a) To provide for and assist in providing for the needy, poor, aged or infirm by way of financial assistance, provision of health care, provision of housing, provision of food and meals or by any other means whatsoever;
 - (b) To advance and assist the needy, poor, aged or infirm with a view to the future by providing workshops, skills-based courses, wananga, training programmes and employment opportunities;
 - (c) To provide emergency relief in the form of shelter, clothing, food or otherwise to persons in need of such relief;
 - (d) To advance and assist Rangitahi and their whanau especially in the cases of disadvantaged, physically or mentally disabled or at risk young persons by any means whatsoever;
 - (e) To establish, maintain and support institutions and facilities for the relief of the needy, poor or infirm including but not limited to health clinics, hospitals, family planning centres, counselling and guidance services, work centres, rest homes, convalescent homes and childcare facilities, some or all of which may be marae based;
 - (f) To provide, promote and encourage education and teaching about Tikanga Maori and Taha Maori by way of workshops and wananga on aspects of Maori language and culture, Maori medicine and health, and other issues relevant to Maori Hou Ora;

- (g) To advance, encourage and provide education and learning and the dissemination of such acquired knowledge and learning by way of funding and scholarships, whether for primary, secondary or tertiary schooling levels and to advance, encourage and provide education and learning at a practical level and the dissemination of such acquired knowledge and learning by way of funding for and provision of work, business and planning programmes and other skill-based programmes;
- (h) To encourage, promote and advance awareness and knowledge of Maori spirituality Tikanga Maori, Taha Maori, Maori spiritual teachings and the observance and respect of such spirituality and teachings;
- (i) To provide assistance for the care of the sick and infirm by way of provision of traditional and contemporary health care and medicines or funding for such provision and to provide educational funding for education about general health and welfare issues affecting Maori men and Maori women and including, but not limited to, heart disease, diabetes, drug and alcohol rehabilitation and awareness programmes, family planning, diet and nutritional awareness with a view to promoting and advancing the medical, physical and psychological wellbeing of Maori Hou Ora;
- (j) To promote farming and commerce by way of funding and facilitating farming and commercial projects and ventures in a manner that is of particular relevance to and for the advancement and benefit of Maori, Te Waipounamu, including but not limited to, projects and ventures traditional to Maori such as mahinga kai, farming, fishing, marine farming, market gardening, cultivation of forestry, arts and crafts;
- (k) To assist Maori to prepare for the future by encouraging, promoting and funding initiatives for integration and awareness of Tikanga Maori and Taha Maori in the local and international arenas through the promotion of social and cultural programmes, tourism ventures and any other means;
- (l) To keep and maintain existing facilities, buildings, urupa, wahi tapu, wahi taonga, nohoanga, mahinga kai, mataitai, rahui, taiapure and cultural sites for the benefit of the community, and to provide funding for the construction or development of new community facilities;
- (m) To promote and manage environmental and ecological resources to enable their uses in respect by the community and the sustainability of environmental and ecological resources for use and respect by future generations; and
- (n) To carry on other charitable purposes which may seem to be capable of being conveniently carried on in connection with the above charitable purposes or calculated directly or indirectly to advance the charitable purposes of the Trust;

provided that none of the Purposes will be deemed subsidiary or ancillary to any other of the Purposes and the Trustee may pursue any one or more of the Purposes independently and to the exclusion of the other Purposes.

- 5.2. Without limiting the general powers of the Board, in furtherance of the Purposes, or any one or more of the Purposes, the Board shall be permitted:

- (a) To source and allocate funds for projects which support, promote or otherwise contribute to these charitable purposes.
 - (b) To seek the support and involvement of appropriate persons, organisations and agencies and work alongside or collaboratively with such persons, organisations and agencies to carry out the charitable purposes of the Trust.
 - (c) To hold seminars, tutorials and lectures throughout New Zealand to demonstrate research, encourage the public to become involved with or generally promote the aims and purposes of the Trust to the community.
 - (d) To raise money and to seek, accept and receive gifts, donations, grants, endowments, legacies and bequests of money or in kind for the foregoing purposes of the Trust.
 - (e) To do all such other acts and things that are incidental or conducive to the attainment of the charitable purposes of the Trust.
- 5.3. Notwithstanding anything herein contained or implied no power or reservation expressed or implied herein shall authorise the Trustee to do or suffer any act to be done which does not further the charitable purposes hereof and the declaration of charitable purposes herein shall at all times be paramount so as to exclude any act or omission which is or may be deemed to be not in accordance with such purposes.

6. Structure of the Trust

- 6.1. The Trust shall be administered by the Directors of the Trustee ("**the Board**").
- 6.2. The Board shall consist of not less than five (5) nor more than seven (7) Directors. The provisions of clause 6 in respect of the appointment and removal of Directors of the Trustee shall mirror the provisions contained within the Constitution of the Settlor. The Trustee agrees that it shall only amend its Constitution in respect to the appointment and removal of Directors where there be a similar amendment in respect of the terms of this deed such that at all times the provisions of the Constitution of the Settlor are incorporated within the provisions of this deed.
- 6.3. The Directors of the Trustee on its incorporation shall be the first Board.
- 6.4. Unless otherwise specified in this deed and/or within the Constitution of the Trustee each Director of the Board shall hold office for an initial term of five (5) years or the remainder of a Director's term if they are replacing a Director who vacated their position. Such term can be renewed for a further period of five (5) years provided that person be reappointed in accordance with the procedures contained in clause 6.9. A retiring Director of the Trustee shall be eligible for reappointment.
- 6.5. The first Directors of the Trustee shall, notwithstanding the provisions of the previous clause, be appointed for a term of seven (7) years however, after the first three (3) years one Director of the Trustee will resign by agreement or, if there is no agreement, the Directors shall draw straws as to which Director will resign. A further Director will resign in the fourth and every year following using the same process. All new Directors will be appointed by the Trustee

for a five (5) year term with the Director positions becoming available on a rolling basis.

- 6.6. The office of any Director shall be automatically vacated if that Director:
- (i) dies, or
 - (ii) is declared bankrupt or enters into composition or assignment for the benefit of his or her creditors, or
 - (iii) becomes of unsound mind or a protected person under the Protection of Personal and Property Rights Act 1988, or
 - (iv) is convicted of a criminal offence, or
 - (v) does not attend three (3) consecutive meetings without leave of absence from the Board, or
 - (vi) resigns his or her office by notice in writing to the Board; or
 - (vii) is not qualified to be an officer of a charitable entity under section 16 of the Charities Act 2005.
- 6.7. New Directors shall be appointed by the Settlor to replace Directors whose term of appointment has ended or if that Director's position has been vacated for the reasons set out in clause 6.7 and 6.8.
- 6.8. The Board may by a resolution approved by at least two-thirds of its Directors terminate the directorship of a Director if that person has an ongoing conflict with the other Directors of the Board and at least two-thirds of the Directors on the Board believe that such action is in the best interests of the Trust.
- 6.9. The Settlor, in appointing the Directors of the Trustee, shall follow the procedures described in the Settlor's Constitution registered on 3 August 2001:
- (a) The Board shall inform the Settlor of the need for appointment of a new Director for whatever reason and how many appointments are required as soon as the need for such appointment arises;
 - (b) The Settlor's Executive shall notify the Settlor's Members of the need for appointment at the next Settlor's General Meeting and call for nominations to be made in writing or otherwise.
 - (c) The nominees shall meet the following criteria (except for any independent nominees who may be required to conform to any other criteria as deemed appropriate by the Settlor):
 - (i) Nominees must be registered full Members of the Settlor;
 - (ii) Nominees must have demonstrated active participation in the Settlor for a minimum of one year;
 - (iii) Nominees must be 18 years of age and over and must have attended at least 75% of the General Meetings in the 12 months prior to the meeting where the need for the

appointments was tabled. The Settlor may make other exceptions;

- (iv) Nominees must fulfil any other criteria as the Settlor deems appropriate.
- (d) A Directors Election Meeting shall be called by the Settlor's Executive for the purpose of appointing a new Director at least one month from when nominations were called for;
- (e) The meeting shall be advertised in accordance with the notice provisions of the Settlor's Constitution;
- (f) At this meeting the valid nominations will be tabled and business will be limited to the election of Director(s);
- (g) All registered Members of the Settlor will have the right to speak at the Directors Election Meetings;
- (h) Voting rights will be bestowed only on registered full Members of the Settlor in accordance with the Settlor's Constitution;
- (i) In order to be able to vote at any Directors Election Meeting, Members must be 18 years of age and over and must have attended 75% of the meetings in the 12 months prior to the meeting they wish to vote at;
- (j) No Member shall be entitled to more than one vote;
- (k) The method of voting at a Directors Election Meeting shall be by ballot papers with the names of the candidates listed and the number of candidates that need to be elected, or by any other process that has integrity and is deemed to be appropriate by attendees at the meeting;
- (l) An independent scrutineer (non-Member) with no association with the Settlor, shall be appointed by the Settlor's Executive to be present at Director's Election Meeting to count the votes;
- (m) Ballot papers shall be presented to the Members at the meeting and collected when completed for the votes to be counted;
- (n) An entry in the Settlor's Minute Book at this meeting showing that this vote has occurred will provide conclusive evidence of the fact without proof.

7. Vacation of Office of Trustee

- 7.1. The office of a Trustee, being a company, shall be only terminated or vacated if that company shall go into liquidation whether compulsorily or voluntarily (other than voluntary liquidation for the purpose of amalgamation or reconstruction).
- 7.2. In the event of the Trustee going into liquidation or otherwise being unable to fulfil its position as Trustee of this Trust then the Settlor shall have the power to appoint a new Trustee company and on the same terms and conditions as the present Trustee appoint its Directors to its Board.

8. Proceedings of the Board

- 8.1. The first meeting of the Board shall be held as soon as possible after the execution of this deed. Subsequent meetings of the Board shall be held at such times and places determined by the Board.
- 8.2. The Board shall elect a chairperson from amongst its Directors at its first meeting and at every subsequent annual general meeting of the Board who shall preside at all meetings of the Board. In the absence of the chairperson from any meeting, the Directors present shall appoint one of their number to preside at that meeting. The chairperson shall not have a casting vote.
- 8.3. The quorum for a meeting of the Board shall be a majority of its Directors, and no business shall be transacted unless a quorum is present. Where no quorum is present the business that was to be transacted at that meeting shall be adjourned to the next meeting of the Board.
- 8.4. All questions before the Board shall in the first instance be decided by unanimous agreement. Where unanimity cannot be reached on a question, then any Trustee can give written notice to the Board to resubmit that question for further consideration to be voted on at the next meeting of the Board. Such meeting shall be at least one month from the date of the meeting where the question failed to be decided. At that subsequent meeting the question shall be resubmitted and may be approved by a two-thirds majority of the Board.
- 8.5. A resolution signed by all of the Directors shall be as valid and binding as if it had been passed at a meeting of the Board. Any such resolution may consist of several documents in like form each signed by one or more Director.
- 8.6. A Director shall not vote on any matter in which he or she is interested (defined in Clause 13) and shall not be counted in the quorum for the meeting in which the matter in which the Trustee/s is/are so interested is to be discussed.
- 8.7. The Board shall appoint a secretary and a treasurer who need not be a Director of the Board. The positions of secretary and treasurer may be combined.
- 8.8. The Board shall meet at least four (4) times every year and at least once in every three (3) month period. The secretary will ensure that all Directors of the Board are notified of a meeting, either verbally or in writing, at least one calendar month before the date set down for the meeting. It shall be sufficient for this clause for one or more Directors to attend the meeting by way of video or audio connection (or similar). The costs of such attendance shall be borne by the Trust.
- 8.9. If a majority of the Directors agree, a special meeting of the Board may be called at anytime, provided that all Directors are notified by the secretary either verbally or in writing at least one (1) calendar week prior to the date set down for that special meeting. It shall be sufficient for this clause for one or more Directors to attend the meeting by way of video or audio connection (or similar). The costs of such attendance shall be borne by the Trust.

- 8.10. The secretary shall keep minutes of all meetings of the Board which shall be available for inspection by Directors at all reasonable times and which shall record for each meeting:
- (a) The names of those present, and
 - (b) All decisions made by the Board, and
 - (c) Any other matters discussed at the meeting.

9. Annual General Meeting

- 9.1. The Annual General Meeting of the Trust shall be held within four (4) months of the end of each financial year and shall carry out the following business:
- (a) Receive the minutes of the previous annual general meeting, and
 - (b) Receive an annual report prepared by the Board to be presented to the Settlor advising of the activities of the Trust in the previous year; and
 - (c) Receive the audited accounts of the Trust for the preceding financial year, and
 - (d) Elect a chairperson for the current financial year, and
 - (e) Appoint new Directors of the Board to replace, if necessary, those Directors whose term of office has expired and appoint additional Directors but subject to clause 6 hereof, and
 - (f) Appoint an auditor, and
 - (g) Consider any general business.
- 9.2. As soon as practicable after the Annual General Meeting of the Board the Settlor shall receive the annual report prepared by the Board advising the activities of the Trust in the previous year, enclosing the financial records of the Trust for the previous year and detailing the intended activities of the Trust in the coming year ("**the Report**"). The Settlor may approve the Report in whole or in part, question the Directors in relation to the Report in whole or in part or generally make comments or suggestions in relation to the Report.

10. Advisory Trustees

The Board may appoint such persons as it sees fit to be advisory Trustees to the Board to advise on such matters as required by the Board. Advisory Trustees may, if requested by the Board, attend and participate in meetings of the Board but shall not be entitled to vote on any matter, subject to the provisions of clause 22.

11. Office

The registered office of the Trust shall be at such place as the Directors of the Board shall from time to time determine.

12. Application of the Trust Fund

- 12.1 The Board shall, subject to the provisions of clause 2.2, 12.4 and 12.5 herein, have full power to deal with the Trust Fund in any way that they think fit to further the purposes of the Trust, as if they were the absolute owners of the

Trust Fund. Any powers given to the Directors in this deed shall be in support of this general power.

- 12.2 Subject to the provisions of clause 2.2 12.4 and 12.5 herein, the Board may in its absolute discretion apply the whole or any part of the income or the capital of the Trust Fund towards all or any of the charitable purposes of the Trust upon and subject to such terms and conditions as the Directors of the Board shall think fit.
- 12.3 The Board may in its absolute discretion make loans out of the income and/or capital of the Trust Fund in furtherance of the charitable purposes of the Trust upon and subject to such terms and conditions as the Directors of the Board shall think fit.
- 12.4 Notwithstanding the foregoing provisions of clause 12 and to further the direction contained in clause 2.2, the Board shall as a first priority endeavour at all times to retain ownership of the Farm Property. The parties to this deed recognise that, in the best interests of carrying out the wider objectives of the Trust, it may be necessary to mortgage or otherwise encumber the Farm Property. To that end, and notwithstanding the foregoing, the Board, with the unanimous approval of all its Directors, and with the written consent of the Settlor first obtained in the manner set out in clause 12.5, shall be entitled to mortgage or otherwise encumber the Farm Property subject to the following qualifications:
- (a) The moneys secured by such mortgage or other encumbrance shall be no more than ten percent (**10%**) of the then registered value of the Farm Property;
 - (b) The moneys secured in the manner aforesaid shall only be applied towards carrying out Capital Works on the Farm Property as that term is defined in clause 22.
- 12.5 The Settlor in approving the decision of the Board to mortgage or otherwise encumber the Farm Property shall follow the procedures set out below:
- (a) The Board shall inform the Settlor of the proposal to mortgage and/or to encumber and the reasons why the Board considers the proposal to be necessary in order to act in the best interests of carrying out the wider objectives of the Trust;
 - (b) The Settlor's Executive shall notify the Settlor's Members of the need for a decision to be made by the Settlor and call a Special General Meeting for the purpose of determining whether or not to approve the Board's request;
 - (c) The Special General Meeting shall be advertised in accordance with the notice provisions of the Settlor's Constitution. At this meeting resolution of the Board in which the request be made will be tabled and business will be limited to whether or not to approve the same;
 - (d) All registered Members of the Settlor will have the right to speak at the Special General Meeting;
 - (e) Voting rights will be bestowed only on registered full Members of the Settlor in accordance with the Settlor's Constitution;

- (f) In order to be able to vote at the Special General Meeting Members must be 18 years of age and over and must have attended 75% of the meetings in the 12 months prior to the meeting they wish to vote at;
- (g) No Member shall be entitled to more than one vote;
- (h) The method of voting at a Special General Meeting shall be by valid papers with particulars of the Board's resolution set out therein such that a Member can either vote to approve the Board resolution or decline it;
- (i) An independent scrutineer (non-Member) with no association with the Settlor, shall be appointed by the Settlor Executive to be present at the Special General Meeting to count the votes;
- (j) Ballot papers shall be presented to the Members of the meeting and collected when completed for the votes to be counted;
- (k) Approval of the vote shall require a majority of 90% or more of the valid votes cast;
- (l) An entry in the Settlor's Minute Book at this meeting showing that this vote has occurred will provide conclusive evidence of the fact without proof.

13. Interested Directors

13.1. Disclosure of interests

- (a) A Director of the Trustee will be interested in a transaction to which the Trust is a party if the Director of the Trustee:
 - (i) provided that a Director of the Trustee will not be interested in a transaction under this clause 13 solely on account of the Director of the Trustee is a party to, or will derive a material financial benefit from that transaction;
 - (ii) has material financial interest in another party to the transaction;
 - (iii) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
 - (iv) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
 - (v) is otherwise directly or indirectly interested in the transaction,

provided that a Director will not be interested in a transaction under this clause 13 solely on account of the Director:

 - (vii) being a Member of the Settlor or acting as an officer of the Settlor;

- (viii) acting in the capacity as a Director, officer or trustee of another party to the transaction for the purposes of representing the Trust.
- (b) As soon as reasonably practicable after a Director of the Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, he or she must disclose to his/her co-Directors:
 - (i) the nature and monetary value of that interest (if the monetary value of the Director's interest is able to be quantified); or
 - (ii) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- (c) A disclosure of interest by the Trustee or Director must be recorded in the minute book of the Trust.

13.2 Dealing with interested Director

Subject to clauses 6.6 and 13.1, the Director may act as a Director of the Trustee and still contract or otherwise deal with the Trustee in his or her personal capacity or in any other capacity as if he or she had not been appointed as Director.

14. Powers

- 14.1. In addition to all other powers conferred by law, but subject to the restrictions set out in this deed, the Board shall have:
 - (a) full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
 - (b) for the purposes of paragraph (a), full rights, powers, and privileges;

and the Board's powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.
- 14.2. For the avoidance of doubt, without limiting the general powers of the Board but subject to the restrictions set out in this deed:
 - (a) the Board shall be permitted to invest all or any part the Trust Fund from time to time as the Board thinks fit;
 - (b) in relation to the investment of the Trust Fund the Board shall not be subject to the duties set out in sections 13B and 13C of the Trustee Act 1956.

15. No pecuniary benefit

- 15.1. Notwithstanding anything else in this Deed, the Trustee shall not pay, apply, appropriate or transfer any part of the income or capital of the Trust Fund, either directly or indirectly, for the private pecuniary profit of any person.

15.2. To ensure that any income derived from a business carried on by or for the benefit of the Trust is exempt from income tax under section CW 42 of the Income Tax Act 2007:

- (a) no person with some control over the business will be permitted to direct or divert, to their own benefit or advantage, any amount derived from the business, as determined in accordance with the terms of that section; and
- (b) in order to meet the requirement set out in paragraph (a), no person holding any of the following positions will be permitted to have, as a result of holding that position, the ability, either directly or indirectly, to determine or to materially influence the determination of the nature or extent of any benefit or advantage from the business or the circumstances in which such benefit or advantage is or is to be given or received:
 - (i) if the business is carried on by a trust (including the Trust), a settlor or Trustee of the trust or Director of the Trustee;
 - (ii) if the business is carried on by a company, a shareholder or director of the company or a settlor or trustee of a trust (including the Trust) that is a shareholder of the company;
 - (iii) a person who is associated with any of the persons specified in paragraphs (i) and (ii), as determined under the Income Tax Act 2007 for the purposes of section CW 42 of that Act.

15.3. For the avoidance of doubt, clauses 15.1 and 15.2 shall not prevent:

- (a) The payment in good faith of reasonable remuneration, not exceeding fair market value, to any Director of the Board, manager, agent, employee or any other person for services rendered to the Trust;
- (b) The payment of interest to any person at a rate not exceeding a reasonable commercial rate of interest for the time being;
- (c) The reimbursement of reasonable expenses actually incurred in furtherance of the objects of the Trust;
- (d) The payment in good faith of consideration for the supply of any goods or services acquired in the course of pursuing the objects of the Trust, not exceeding fair market value for the supply;

PROVIDED HOWEVER that nothing in this clause shall permit or authorise any breach of clause 15.2 or any payment or provision that will result in the Trust losing its exemption from income tax under section CW 41 and/or section CW 42 of the Income Tax Act 2007.

16. Power to delegate

16.1. The Board may, from time to time, appoint any committee and may delegate, in writing, any of its powers and duties to any such committee or to any person, and the committee or person, as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties

in like manner and with the same effect as the Board could itself have exercised or performed them.

- 16.2. Any committee or person to whom the Board has delegated powers or duties shall be bound by the charitable terms of the Trust.
- 16.3. Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.
- 16.4. It shall not be necessary that any person who is appointed to any such committee, or to whom any such delegation is made, be a Director of the Trustee.
- 16.5. The Trustee or Directors of the Board are not responsible for the default of any agent appointed in good faith who acts outside their authority.

17. Financial arrangements

- 17.1. The Board shall cause proper books of account to be kept which shall contain full, true and complete accounts of the affairs and transactions of the Trust. The books of account shall be kept at the office of the Board or at such other place determined by the Board.
- 17.2. The financial year of the Trust will be from 1 July to 30 June in the following year.
- 17.3. The Board shall as soon as possible after the end of each financial year arrange for a complete set of accounts of the Trust for that year to be completed.
- 17.4. All funds received by the Trust shall be paid into a bank account or accounts in the name of the Trust which shall be operated as directed by the Board and under the signatures of such persons appointed for that purpose by the Board, one of whom shall be a Director of the Board.

18. Audit

- 18.1. The Board shall, as soon as practicable after the end of every financial year, cause the accounts of the Trust for that financial year to be audited by an accountant appointed by the Board for that purpose and the Board shall present the audited accounts to the annual general meeting of the Trust.
- 18.2. The auditor may not be a Director of the Board.

19. Alteration of deed

- 19.1. This deed may be altered, added to, rescinded or otherwise amended by a resolution passed at a meeting of the Board unanimously by all Directors of the Board and then subsequently approved by the Settlor in the manner set out in clause 12.5, provided that no such alteration, addition, rescission or amendment shall:
 - (a) permit the Trust to operate, or to distribute its assets on winding up or dissolution, for any purpose that is not exclusively charitable or for private pecuniary profit; or

- (b) be effected if it would result in the Trust no longer qualifying for the benefit of any tax concession directly or indirectly benefiting charities (including, without limitation, exemption of the Trust's income from income tax and any tax concessions in respect of contributions to the Trust).
- (c) extend the basis on which the Trustee be entitled to mortgage or to allow the sale of the part or the whole of the Farm Property.

20. Liability of Trustee and Directors of the Board

20.1. It is declared that:

- (a) The Directors of the Board shall be chargeable only in respect of the money and securities they actually receive, or which, but for their own acts, omissions, neglect or default they would have received, notwithstanding their signing any receipt for the sake of conformity, and they shall each be answerable and responsible respectively only for their own acts, omissions, neglect and default and not for those of each other or of any banker or other person with whom any funds of the Trust have been properly deposited.
- (b) No Director of the Board (including any former Director) shall be liable for any loss to the Trust Fund arising from any cause whatsoever including a breach of the duties imposed by sections 13B and 13C of the Trustee Act 1956 (or any statutory replacement or equivalent) unless such loss is attributable:
 - (ii) To that Director's own dishonesty or lack of good faith, or
 - (iii) To the wilful commission by that Director of conduct known by him or her to be a breach of trust,

and pursuant to section 13D of the Trustee Act 1956, it is intended by this clause that the duties imposed by section 13B and 13C of the Trustee Act 1956 shall not apply to any Director of the Board.

- (c) No Director of the Board shall be bound to take any proceedings against another Director of the Board (including any former Director) for any breach or alleged breach of trust committed by that other Director.
- (d) Notwithstanding the procedure or otherwise of retaining assets by the Trust, no Trustee shall be liable for any loss suffered by the Trust by reason of the Board retaining any asset of the Trust.
- (e) A Director of the Board shall at all times be indemnified whether before or after variation of that person's office by and out of the assets of the Trust from and against all costs, charges, losses, damages and expenses sustained or incurred by them in or about the execution and discharge of their office or in or about any claim, demand, action, proceeding or defence at law or in equity in which they may be joined as a party in connection with the Trust, provided that a Director shall not be indemnified from any loss resulting from that Director's dishonesty or lack of good faith or any other conduct known by the Director to be a breach of the Trust.

- (f) The Directors have a charge on the trust fund for all monies payable to them under the above or otherwise howsoever arising out of and in connection with the trust fund once the Director's loss or liability can be reasonably determined.
- (g) The Directors may arrange and pay out of the Trust Fund the premiums on indemnity insurance for the Director in respect of their directorship of the Trustee.

21. Disposition of surplus

21.1. The Trust will be wound up if:

- (a) the Board resolves unanimously to do so; and
- (b) the Settlor approves the same in the manner set out in clause 12.5.

21.2. If, on the liquidation, winding up, failure or dissolution of the Trust, there remains any property or assets after payment of the costs of liquidation, winding up or dissolution and payment of all of the debts and liabilities of the Trust the property or assets shall be applied, or paid or distributed to another entity or entities to be applied, for exclusively charitable purposes in New Zealand for the benefit of the Wairewa Papatipu Runanga as shall be decided by resolution of the Board and approved by the Settlor in the manner set out in clause 12.5, before the liquidation, winding up or dissolution of the Trust. If the Board and the Settlor are unable to make such a decision, the property or assets shall be disposed of in accordance with the directions of the High Court pursuant to Section 27 of the Charitable Trusts Act 1957 on the application of the Board.

22. The James Wright Subtrust Fund

22.1. The Deceased bequeathed to the James Wright Trust his residual estate with the purpose that the James Wright Trust hold the proceeds of the residuary estate to fund the purchase of further farm properties for the benefit of the Settlor.

22.2. The trustees of the James Wright Trust and the Settlor have agree that rather than hold the proceeds of the residuary estate they transfer the same to the Trust such that it then form part of the Trust Fund.

22.3. The trustees of the James Wright Trust further agreed that the purpose for which the proceeds be held be extended such that the proceeds be utilised solely for Capital Works on the Farm Property and to contribute towards the purchase of any further farm acquired by the Trust.

22.4. In consideration of the foregoing, the Settlor and the Trustee include within the terms of the Trust Deed the provisions set out below:

- (a) The proceeds of the James Wright Trust received by the Trust shall be separately accounted for within the Trust Fund ("**the Capital Works Trust Fund**");
- (b) The income and capital of the Capital Works Trust Fund shall be utilised solely for capital works on the Farm Property and/or to

contribute towards the purchase of any further farm acquired by the Trust;

(c) "**Capital works**" shall for the purpose of the preceding subclause be such expenditure that not be deductible for tax purposes other than by way of depreciation and be spent on the Farm Property or such other property as is purchased by the Trust.

22.5. The Trustee shall limit the application of the Capital Works Trust Fund for the payment of capital works in one (1) year such that it be no more than one third (**1/3 rd**) of the value of the Capital Works Trust Fund on the date on which the proceeds of the James Wright Trust were first transferred to the Trust.

22.6. The Settlor and the Trustee in further consideration of the foregoing appoint **Bradley Haig McDonald** of Christchurch, Solicitor, as an Advisory Trustee of the Trust to hold such office during such period as there remain separate proceeds within the Capital Works Trust Fund that remain undistributed for Capital Works and/or the purchase of any further farm acquired by the Trust. Once those funds are dispersed for those purposes, there then remain no obligation to retain the Capital Works Trust Fund as a separate part of the Trust Fund.

22.7. Notwithstanding that the said **Bradley Haig McDonald** being an Advisory Trustee he shall, for the purposes of the administration of the Capital Works Trust Fund be entitled to exercise the power of veto on any decision being made by the Trustee for the proceeds of the Capital Works Trust Fund being applied for any purpose other than for capital works and/or the purchase of a farm property or that the proceeds of distribution be greater than the limitation of one third (**1/3 rd**) previously referred to.

22.8. In all other respects the said **Bradley Haig McDonald** shall be entitled to attend meetings of the Board and participate in those proceedings except to the extent that he not be entitled to exercise any voting rights other than power of veto previously referred to.

IN WITNESS this deed is duly executed.

SIGNED for and on behalf of the
WAIREWA RUNANGA INCORPORATED SOCIETY
in the presence of:-

)
)
) _____
) Trustee
)
) _____
) Trustee

SIGNED for and on behalf of
TE KAIO TRUSTEE COMPANY LIMITED
in the presence of:-

)
)
) _____
) Director
)
) _____
) Director

SCHEDULE

Description of the Farm Property

The property is situated at Te Oka, Banks Peninsula legally described as an estate in Fee Simple as follows:

- 205.4715 ha more or less being Section 24 Kinloch Settlement on Certificate of Title CB772/17 (Canterbury Registry); and
- 237.9551 ha more or less being Section 25 Kinloch Settlement on Certificate of Title CB21B/1014 (Canterbury Registry).

DEED OF TRUST

of

JAMES WRIGHT TE KAIO MEMORIAL TRUST

mortlock mccormack | law

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