

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**SCHEDULE 2**

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**CULTURAL REDRESS – PROPERTIES**

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0<sup>60</sup> 33

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 1: DESCRIPTIONS OF SITES**

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**(Clause 10.1.1)**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 1: DESCRIPTIONS OF SITES**

**TABLE 1: CULTURAL REDRESS PROPERTIES TO BE VESTED IN  
FEE SIMPLE**

<b>Name of Site</b>	<b>Location</b>	<b>Legal Description (All South Auckland Land District – Rotorua District)</b>	<b>Encumbrances</b>
Site on Horohoro Bluff	As shown on SO 364706	75.2470 hectares, more or less, being Section 1 SO 60473. Part <i>Gazette</i> 1941 page 2713.	Subject to the conservation covenant referred to in clause 10.1.9.
Moerangi Site	As shown on SO 364662	58 hectares approximately, being Part Lot 6 DPS 54801. Part <i>Gazette</i> 1975 page 2327. Subject to survey.	Subject to the conservation covenant referred to in clause 10.1.18. Subject to the forestry right referred to in clause 10.8. Subject to the protective covenant certificate held in computer interest register SA60D/751, if it affects the Moerangi Site on the Settlement Date. Subject to a registered Water Catchment Protection Right in favour of the Rotorua District Council over the area shown BB on DPS 54081. Created by Transfer 6720066.4.
Lake Rotokawa Site	As shown on SO 364707	7.5 hectares, approximately, being Lake Rotokawa (Part Whakapoungakau 15A and Part Whakapoungakau 16 Sec 2A). Part	Subject to the conservation covenant referred to in clause 10.1.23.

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		<i>Gazette</i> 1902 page 1778. Subject to survey.	
Te Wairoa	As shown on SO 364664	1.0 hectare, approximately, being Part Lot 2 DP 11082. Part <i>Gazette</i> 1911 page 2043. Subject to survey.	Subject to the conservation covenant referred to in clause 10.1.27.
Pateko Island	As shown on SO 364709	2023 square metres, more or less, being Pateko Island. SO 21321/3.  Part <i>Gazette</i> 1921 page 887.	
Te Koutu Pa	As shown on SO 364666	3.0 hectares, approximately, being Part Okataina 3. Part <i>Gazette</i> 1931 page 1685. Subject to survey.	
Okataina Lodge Site	As shown on SO 364710	1.5260 hectares, more or less, being Section 7 Block XVI Rotoiti Survey District. SO 47823 (Formerly Section 5 Block XVI Rotoiti Survey District and Pt Okataina 4). Part Proclamation 8001 and Part Computer Freehold Register SA1D/857.	Subject to the Okataina Lodge Site Lease held in computer interest register SA23A/1000.  Subject to the water pipeline easement in gross in favour of Her Majesty The Queen held in computer interest register SA23A/1001.  Subject to the lease referred to in clause 10.1.35.
Okataina Outdoor Education Centre Site	As shown on SO 364667	10 hectares, approximately, being Part Waione C and Part Okataina 12. Part <i>Gazette</i> 1931 page 1685 and Part <i>Gazette</i> 1973 page 1425. Subject to	Subject to the Western Okataina Walkway held in <i>Gazette</i> 1980 page 311.

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**PART 1: DESCRIPTIONS OF SITES**

		survey.	
Beds of Lakes Rotongata (Mirror Lake) and Rotoatua	As shown on SO 364669	8.2 hectares, approximately, being Parts Waione C. Part <i>Gazette</i> 1931 page 1685. Subject to survey.	Subject to the conservation covenant referred to in clause 10.1.43.
Te Ariki Site	As shown on SO 364711	44.9432 hectares, more or less, being Sections 1, 2 and 3 Block XII Tarawera Survey District, and Sections 1 and 2 SO 354515. Part <i>Gazette</i> 1908 pages 612 and 2086.	Subject to management deed referred to in clause 10.1.47.  Subject to the walkway easement referred to in clause 10.1.47.  Subject to the unregistered deed of lease dated 13 October 1999 granting Waimangu Volcanic Valley Limited the right to cross the land.
Punaromia Site	As shown on SO 389397	10 hectares, approximately, being Part Section 2 Block VII Tarawera Survey District. Part <i>Gazette</i> 1906 page 2996. Subject to survey.	

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**PART 1: DESCRIPTIONS OF SITES**

<p>Site adjacent to Orakei-Korako</p>	<p>As shown on SO 364713</p>	<p>136.0000 hectares, more or less, being Section 6 SO 61109. Part <i>Gazette</i> 1896 page 1075. Subject to survey.</p>	<p>Subject to the operating easement in favour of Mighty River Power Limited.</p> <p>Subject to the operating easement held in computer interest register SA70B/659 in favour of Contact Energy Limited dated 21 February 2000.</p> <p>Subject to the conservation covenant referred to in clause 10.1.64.</p>
<p>Site adjacent to Lake Rotomahana</p>	<p>As shown on SO 364714</p>	<p>1.5210 hectares, more or less, being Section 3 SO 354515. Part <i>Gazette</i> 1896 page 1075.</p>	<p>Subject to the conservation covenant referred to in clause 10.1.67.</p>
<p>Kakapiko</p>	<p>As shown on SO 364704</p>	<p>2.75 hectares, approximately, being Part Lot 6 DPS 54801. Part <i>Gazette</i> 1975 page 2327. Subject to survey.</p>	<p>Subject to the conservation covenant referred to in clause 10.1.71.</p> <p>Subject to the protective covenant certificate held in computer interest register SA60D/751, if it affects Kakapiko on the Settlement Date.</p> <p>Subject to the forestry right referred to in clause 10.8.</p>

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PART 1: DESCRIPTIONS OF SITES

TABLE 2: CULTURAL REDRESS PROPERTIES VESTED AS A  
SCENIC RESERVE

Name of Site	Location	Legal Description	Encumbrances
Rangitoto Site	As shown on SO 364659	46 hectares, approximately, being Part Okataina 12. Part <i>Gazette</i> 1973 page 1425. Subject to survey.	To be administered as a scenic reserve subject to section 19(1)(a) of the Reserves Act.  Subject to the unregistered licence to Rotorua VHF Marine Radio Association (Incorporated) held in TEL 008 dated 24 August 1998.  Subject to the Western Okataina Walkway held in <i>Gazette</i> 1980 page 311.

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**PART 1: DESCRIPTIONS OF SITES**

<p>Sites on Paeroa Range</p>	<p>As shown on SO 364661</p>	<p>50 hectares, approximately, being Part Section 35 Block V Paeroa Survey District. Part Gazette 1989 page 3398. Subject to survey.</p> <p>44 hectares, approximately, being Part Section 2 Block VIII Ngongotaha Survey District. Part Gazette 1911 page 1577. Subject to survey.</p>	<p>To be administered as a scenic reserve subject to section 19(1)(a) of the Reserves Act.</p> <p>Subject to the right of Kordia Limited (formerly known as Broadcast Communications Limited) to construct, maintain and use a track, as described in an unregistered Deed dated 22 November 1993 (the Telecommunications Deed referred to in clause 10.4).</p> <p>Subject to the right of Kordia Limited (formerly known as Broadcast Communications Limited) to construct, maintain and use overhead and underground power cables.</p>
<p>Wai-o-Tapu Site</p>	<p>As shown on SO 364712</p>	<p>123.8259 hectares approximately, being Part Sections 5, 6, 8 and 15 and Sections 7, 9, 12 and 18 Block VII, Paeroa Survey District. Parts Gazette 1908 page 893, 1934 page 4289 and 1951 page 829. Subject to survey.</p>	<p>To be administered as a scenic reserve subject to section 19(1)(a) of the Reserves Act</p> <p>Subject to the unregistered lease to Waiotapu Thermal Tourist Park Limited dated 22 October 1969 and renewed on 25 September 2000.</p> <p>Subject to the right of way easement referred to in clause 10.1.60.</p>



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TABLE 3: CULTURAL REDRESS PROPERTIES VESTED AS A  
RECREATION RESERVE

Name of Site	Location	Legal Description	Encumbrances
Roto-a-Tamaheke Reserve	As shown on SO 364715	4.3040 hectares, approximately, being Parts Section 6B Block I Tarawera Survey District. Part <i>Gazette</i> 1904 page 2119. Subject to survey.	To be administered as a recreation reserve subject to section 17 of the Reserves Act.
Whakarewarewa Thermal Springs Reserve	As shown on SO 364716	45 hectares, approximately being Section 7 Block I Tarawera Survey District. Part <i>Gazette</i> 1904 page 2119. Subject to survey.	To be administered as a recreation reserve subject to section 17 of the Reserves Act Subject to the registered lease referred to in clause 10.1.86.

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**PART 1: DESCRIPTIONS OF SITES**

**TABLE 4: SCHOOLS**

Name of Site	Location	Legal Description South Auckland Land District – Rotorua District	Encumbrances	Commencement Rent
Rotokawa School	Cnr Te Ngae and Rotokawa Roads	2.4281 hectares, more or less, being Section 4 Block XIV Rotoiti Survey District. Part Proclamation S.544775.	Nil	\$18,120
Lynmore Primary School	Cnr Te Ngae and Iles Road	3.9940 hectares, more or less, being Lots 1-16, 56, and 76 DPS 8. All Proclamation S.31525 and Part Gazette Notice S.61376.	Nil	\$90,000
Mokoia Intermediate School/Owhata School	Brent Road	6.0703 hectares, more or less, being Section 1 SO 41638. All Proclamation S.241230.	Nil	\$81,000
Ngongotaha School	Cnr Hood and School Roads	2.8101 hectares, more or less, being Lots 46, 47, 48, 49, 50 and 51 DP18362, Section 1 SO 37126, Section 1 SO 37238, and Part Section 1 Block XVI Rotorua Survey District. All computer interest register 310488. All computer register SA279/276. All Proclamation S.94569 and All Proclamation S.89694.	Nil	\$32,400
Horohoro School	Apirana Road, Horohoro	2.5238 hectares, more or less, being Section 1 SO 406235. Balance Gazette Notice S.279834.	Nil	\$9,600

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**PART 2: FORMS OF CONSERVATION COVENANTS**

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**(Clauses 10.1-10.2)**

**HOROHORO BLUFF COVENANT**

**(Clause 10.1.9)**



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- “Fire Authority”** means a fire authority as defined in the Forest and Rural Fires Act 1977.
- “Land”** means the land described in Schedule 1.
- “Minerals”** means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “Minister”** means the Minister of Conservation.
- “Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.
- “Owner”** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
- “Reserve Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
- “Working Days”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

**1.2 For avoidance of doubt:**

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this Covenant;
- 1.2.3 references to parties are references to the Owner and the Minister;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity; and
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

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**PART 2: FORMS OF CONSERVATION COVENANTS – HOROHORO BLUFF COVENANT**

**2 OBJECTIVE OF THE COVENANT**

- 2.1 The Land must be managed so as to preserve the Reserve Values existing at the date of this covenant.

**3 IMPLEMENTATION OF OBJECTIVE**

- 3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the land;
- 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.4 the planting of any species of exotic tree, shrub or other plant;
- 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
- 3.1.7 any cultivation, earth works or other soil disturbances;
- 3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.9 liberate wild animals or animals that have the potential to become feral;
- 3.1.10 any other activity which might have an adverse effect on the Reserve Values;
- 3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; or
- 3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Land.

- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:

- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;

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- 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Land;
  - 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition; and
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977; and
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:
- 3.4.1 the repair or maintenance of Fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
  - 3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
    - (a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
    - (b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**4 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 4.1 The Minister must:
- 4.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant; and



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4.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

4.2 The Minister may:

4.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time; and

4.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**5 JOINT OBLIGATIONS**

5.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2.1 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**6 DURATION OF COVENANT**

6.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**7 CONSENTS**

7.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**8 MISCELLANEOUS MATTERS**

**Rights**

8.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

8.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

8.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

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**Reserves Act**

- 8.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**Title**

- 8.5 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.

**Acceptance of Covenant**

- 8.6 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 8.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.

- 8.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

8.8.1 requested to do so; or

8.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

- 8.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**9 DEFAULT**

- 9.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant, the other party:

9.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

9.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

- 9.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of, or observance of, its obligations under this Covenant, then that party (notifying party) may, by written notice:

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- 9.2.1 advise the defaulting party of the default;
- 9.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
- 9.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**10 DISPUTE RESOLUTION PROCESSES**

- 10.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

- 10.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
- 10.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**Failure of Mediation**

- 10.4 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
- 10.5 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated.
- 10.6 The parties further agree that the results of arbitration are to be binding upon the parties.

**11 NOTICES**

- 11.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 11.2 A notice given in accordance with clause 11.1 will be deemed to have been received:
- 11.2.1 in the case of personal delivery, on the date of delivery;
  - 11.2.2 in the case of pre-paid post, on the third working day after posting;
  - 11.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

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11.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**12 SPECIAL CONDITIONS**

12.1 Special conditions relating to this Covenant are set out in Schedule 3.

12.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

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**PART 2: FORMS OF CONSERVATION COVENANTS – HOROHORO BLUFF COVENANT**

**SCHEDULE 1: DESCRIPTION OF LAND**

**Description of Land:**

South Auckland Land District – Rotorua District

[75.2470 hectares, more or less, being Section 1 SO 60473. Part Gazette 1941 page 2713.]

**Reserve Values of Land to be Protected:**

1. The natural environment values that are represented by the forest habitat and the indigenous flora and fauna on the land. The forest is a tiny remnant of the original forest. It consists of rimu, matai, hall's totara and miro with tawa, kamahi, hinau, rewarewa and tawari present in the canopy. There is continuous native forest cover, with infrequent emergent rimu above the dominant tawa canopy. Kamahi is found on the forest edges, with more mixed species located internally. The understorey includes coprosma and fern species and very dense thickets of supplejack. The forest is linked to the Matahana Ecological Area. Fauna present includes populations of North Island kaka, North Island rifleman and North Island robin as well as the more common native bird species such as whitehead, tui, bellbird, grey warbler and kereru.
2. The natural landscape amenity of the area - the site is part of a larger significant natural landscape feature of the area, which is represented by the contiguous and attractive forest cover. This can be seen from State Highway 30 and is a continuum of the spectacular Horohoro Bluffs landform.

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SCHEDULE 2: ADDRESS FOR SERVICE<sup>1</sup>

The address for service of the Owner is:

[Te Pumautanga Trustees]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010

Phone 07 349 7400  
Fax 07 349 7401

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<sup>1</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.

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**SCHEDULE 3: SPECIAL CONDITIONS**

1. The Owner may undertake minor clearance of vegetation for the purposes of access for pest plant or animal control.

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**GRANT** of

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under Section 77 of the  
Reserves Act 1977

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to

**MINISTER OF CONSERVATION**

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Legal Services  
Department of Conservation



**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

**MOERANGI COVENANT**

**(Clause 10.1.18)**



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

<b>“Conservation Purposes”</b>	means the preservation and protection of natural and historic resources including conservation values on the Indigenous Vegetation Areas for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
<b>“Conservation Values”</b>	means the conservation values of the Indigenous Vegetation Areas to be protected as specified in Schedule 1.
<b>“Covenant”</b>	means this Deed of Covenant made under section 77 of the Reserves Act and section 27 of the Conservation Act 1987.
<b>“Director-General”</b>	means the Director-General of Conservation.
<b>“Fence”</b>	includes a gate.
<b>“Fire Authority”</b>	means a fire authority as defined in the Forest and Rural Fires Act 1977.
<b>“Forestry Right”</b>	means a forestry right registered under the Forestry Rights Registration Act 1983.
<b>“Indigenous Vegetation Areas”</b>	the three areas of indigenous forest on the Land described in Schedule 1.
<b>“Land”</b>	means the land described in Schedule 1 (which includes the Indigenous Vegetation Areas).
<b>“Minerals”</b>	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
<b>“Minister”</b>	means the Minister of Conservation.
<b>“Natural Water”</b>	includes water contained in streams the banks of which have, from time to time, been re-aligned.
<b>“Owner”</b>	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
<b>“Reserve Values”</b>	means the reserves values of the Indigenous Vegetation Areas to be protected as specified in Schedule 1.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

**“Working Days”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;

1.2.2 references to clauses are references to clauses in this Covenant;

1.2.3 references to parties are references to the Owner and the Minister;

1.2.4 words importing the singular number include the plural and vice versa;

1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;

1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;

1.2.7 words importing one gender include the other gender;

1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;

1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2 OBJECTIVE OF THE COVENANT**

2.1 The Indigenous Vegetation Areas must be managed by the Owner:

2.1.1 for Conservation Purposes;

2.1.2 so as to preserve the Reserve Values existing at the date of this Covenant;  
and

2.2 The Land must be managed, subject to this Covenant, to provide freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**3 IMPLEMENTATION OF OBJECTIVE**

3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Indigenous Vegetation Areas:

3.1.1 grazing by livestock;

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- 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the Indigenous Vegetation Areas;
  - 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
  - 3.1.4 the planting of any species of exotic tree, shrub or other plant;
  - 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
  - 3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
  - 3.1.7 any cultivation, earth works or other soil disturbances;
  - 3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Indigenous Vegetation Areas;
  - 3.1.9 liberate wild animals or animals that have the potential to become feral;
  - 3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;
  - 3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Indigenous Vegetation Areas;
  - 3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Indigenous Vegetation Areas.
- 3.2 The Owner must take all reasonable steps to maintain the Indigenous Vegetation Areas in a condition no worse than at the date of this Covenant, including:
- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Indigenous Vegetation Areas to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Indigenous Vegetation Areas;
  - 3.2.3 taking all reasonable steps to keep the Indigenous Vegetation Areas free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Indigenous Vegetation Areas free from rubbish or other unsightly or offensive material arising from the Owner's use of the Indigenous Vegetation Areas;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions

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imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Indigenous Vegetation Areas, or to carry out protection or maintenance on the Indigenous Vegetation Areas, or to ascertain whether the provisions of this Covenant are being observed;

3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Indigenous Vegetation Areas in good order and condition;

3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Indigenous Vegetation Areas.

3.3 The Owner acknowledges that:

3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;

3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.

3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:

3.4.1 the repair or maintenance of fences on the Indigenous Vegetation Areas if the work has first been approved by the Minister (which approval must not be withheld unreasonably);

3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species on the Indigenous Vegetation Areas if:

(a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and

(b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**4 PUBLIC ACCESS**

4.1 The Owner must, subject to this Covenant (including the special conditions set out in Schedule 3), permit the public to enter upon the Land.

**5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

5.1 The Minister must:

5.1.1 have regard to the objective specified in clause 2 when considering any requests for approval under this Covenant.

5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
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**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

5.2 The Minister may:

5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;

5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Indigenous Vegetation Areas to implement the objective specified in clause 2.1.

**6 JOINT OBLIGATIONS**

6.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2 including preparing, in consultation with the Owner, a joint plan for the management of the Indigenous Vegetation Areas to implement the objective specified in clause 2.1.

**7 DURATION OF COVENANT**

7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**8 CONSENTS**

8.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**9 MISCELLANEOUS MATTERS**

**Rights**

9.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

9.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;

9.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

**Reserves Act**

- 9.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Indigenous Vegetation Areas as if the Indigenous Vegetation Areas were a reserve.

**Title**

- 9.5 This Covenant must be signed by both parties and registered against the Computer Freehold Register to the Land.

**Acceptance of Covenant**

- 9.6 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 9.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.

- 9.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

9.8.1 requested to do so; or

9.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

- 9.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**10 DEFAULT**

- 10.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

- 10.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

- 10.3 Advise the defaulting party of the default.
- 10.3.1 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
- 10.3.2 state a reasonable period within which the defaulting party must take action to remedy the default.

**11 DISPUTE RESOLUTION PROCESSES**

- 11.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

- 11.2 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;
- 11.3 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**Failure of Mediation**

- 11.4 in the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;
- 11.5 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated;
- 11.6 the parties further agree that the results of arbitration are to be binding upon the parties.

**12 NOTICES**

- 12.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 12.2 A notice given in accordance with clause 12.1 will be deemed to have been received:
- 12.2.1 in the case of personal delivery, on the date of delivery;
- 12.2.2 in the case of pre-paid post, on the third working day after posting;
- 12.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

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SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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12.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**13 SPECIAL CONDITIONS**

13.1 Special conditions relating to this Covenant are set out in Schedule 3.

13.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

**SCHEDULE 1: DESCRIPTION OF LAND**

**Description of Land:**

South Auckland Land District – Rotorua District

[58 hectares, approximately, being Part Lot 6 DPS 54801. Part Gazette 1975 page 2327. Subject to the "Forestry Right" to be granted. Subject to survey.]

[Subject to a Water Catchment Protection Right in favour of the Rotorua District Council held in the Computer Interest Register 268965]

**Description of Indigenous Vegetation Areas:**

The three areas currently shown on the attached diagram. Subject to survey. *Note: Diagram will not be included in the final document.*

**Conservation Values of the Indigenous Vegetation Areas to be protected:**

1. The intrinsic value of the natural resources, represented by indigenous vegetation which is situated on land largely dominated by exotic plantation forest managed for timber production.
2. Within the exotic forest area there are three small separate indigenous forest remnants. These are all dominated by cutover tawa-rewarewa forest with occasional mangaeo and hinau also present in the canopy. Secondary shrubland is present around the margins consisting of predominantly mamaku, kohuhu, koromiko, tutu, rangiora, pate, wheki and mahoe. Other species present in the tawa-dominated forest include supplejack, mahoe, pate, kanono, hen and chicken fern and filmy ferns.

**Reserve Values of the Indigenous Vegetation Areas to be protected:**

1. The natural landscape amenity of the area. This area is located on one of the higher points in the Rotorua District.
2. The natural environment and wildlife values, represented by the indigenous flora and fauna on the land. Fauna present includes North Island fantail, grey warbler, whitehead, North Island robin, tui, bellbird and shining cuckoo.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

**SCHEDULE 2: ADDRESS FOR SERVICE<sup>2</sup>**

The address for service of the Owner is:  
[Te Pumautanga Trustees]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010  
Phone 07 349 7400  
Fax 07 349 7401

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<sup>2</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**SCHEDULE 3: SPECIAL CONDITIONS**

1. The Owner may allow harvesting, replanting and management over the Land (excluding Indigenous Vegetation Areas), in accordance with any Forestry Right over those areas.

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

**PART 2: FORMS OF CONSERVATION COVENANTS – MOERANGI COVENANT**

**GRANT** of

Certified correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under Section 27 of the Conservation Act 1987  
and Section 77 of the Reserves Act 1977

\_\_\_\_\_

to

**MINISTER OF CONSERVATION**

\_\_\_\_\_

**Legal Services**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

**LAKE ROTOKAWA COVENANT**

**(Clause 10.1.23)**





**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

	enjoyment by the public, and safeguarding the options of future generations.
<b>“Conservation Values”</b>	means the conservation values specified in Schedule 1.
<b>“Covenant”</b>	means this Deed of Covenant made under section 77 of the Reserves Act 1977 and section 27 of the Conservation Act 1987.
<b>“Director-General”</b>	means the Director-General of Conservation.
<b>“Fence”</b>	includes a gate.
<b>“Fire Authority”</b>	means a fire authority as defined in the Forest and Rural Fires Act 1977.
<b>“Land”</b>	means the land described in Schedule 1.
<b>“Minerals”</b>	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
<b>“Minister”</b>	means the Minister of Conservation.
<b>“Natural Water”</b>	includes water contained in streams the banks of which have, from time to time, been re-aligned.
<b>“Owner”</b>	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
<b>“Reserve Values”</b>	means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
<b>“Working Days”</b>	means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this Covenant;
- 1.2.3 references to parties are references to the Owner and the Minister;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2 OBJECTIVE OF THE COVENANT**

- 2.1 The Land must be managed:
  - 2.1.1 for Conservation Purposes;
  - 2.1.2 so as to preserve the Reserve Values existing at the date of this Covenant; and
  - 2.1.3 to provide, subject to this Covenant (including the special conditions in Schedule 3), freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**3 IMPLEMENTATION OF OBJECTIVE**

- 3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:
  - 3.1.1 grazing of the Land by livestock;
  - 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the land;
  - 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
  - 3.1.4 the planting of any species of exotic tree, shrub or other plant;
  - 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
  - 3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
  - 3.1.7 any cultivation, earth works or other soil disturbances;
  - 3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
  - 3.1.9 liberate wild animals or animals that have the potential to become feral;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

- 3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;
  - 3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
  - 3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Land;
  - 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Land, or to carry out protection or maintenance on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition;
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

- 3.4.1 the repair or maintenance of fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
- 3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
  - (a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
  - (b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**4 PUBLIC ACCESS**

- 4.1 The Owner must, subject to this Covenant (including the special conditions set out in Schedule 3), permit the public to enter upon the Land.

**5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 5.1 The Minister must:

- 5.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

- 5.2 The Minister may:

- 5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;
- 5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**6 JOINT OBLIGATIONS**

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2.1 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**7 DURATION OF COVENANT**

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

**8 CONSENTS**

- 8.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**9 MISCELLANEOUS MATTERS**

**Rights**

- 9.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

- 9.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;

- 9.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**Reserves Act**

- 9.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**Title**

- 9.5 This Covenant must be signed by both parties and registered against the Computer Freehold Register to the Land.

**Acceptance of Covenant**

- 9.6 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 9.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.

- 9.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

9.8.1 requested to do so; or

9.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

9.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**10 DEFAULT**

10.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

10.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

10.3 Advise the defaulting party of the default.

10.3.1 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

10.3.2 state a reasonable period within which the defaulting party must take action to remedy the default.

**11 DISPUTE RESOLUTION PROCESSES**

11.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

11.2 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;

11.3 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**Failure of Mediation**

11.4 in the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

11.5 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated;

11.6 the parties further agree that the results of arbitration are to be binding upon the parties.

**12 NOTICES**

12.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.

12.2 A notice given in accordance with clause 11.1 will be deemed to have been received:

12.2.1 in the case of personal delivery, on the date of delivery;

12.2.2 in the case of pre-paid post, on the third working day after posting;

12.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

12.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**13 SPECIAL CONDITIONS**

13.1 Special conditions relating to this Covenant are set out in Schedule 3.

13.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT

SCHEDULE 1: DESCRIPTION OF LAND

**Description of Land:**

South Auckland Land District – Rotorua District

[7.5 hectares, approximately, being Lake Rotokawa (Part Whakapoungakau 15A and Part Whakapoungakau 16 Sec 2A). Part Gazette 1902 page 1778. Subject to Survey.]

**Conservation Values to be protected:**

- 1 The intrinsic value of the natural resources on the land - the characteristic flora of Lake Rotokawa includes a mix of native and exotic species. Manuka scrub is present in a narrow fringe around the margins of the lake along with *Carex secta*, *Carex virgata*, toetoe and the herb *Centella uniflora*. The native rush *Juncus greigiflorus* is present on the margins along with a range of other exotic buttercups and grasses, amongst others. The majority of the bed of Lake Rotokawa is unvegetated bare mud.
- 2 The appreciation and recreational enjoyment that may be derived by the public from the opportunity to visit that area.

**Reserve Values to be protected:**

1. The natural landscape amenity of the area - surrounded by a landscape very modified, retaining little of its original character, Lake Rotokawa is a reminder of what much of the Rotorua district would have looked like. It is especially significant for the geothermal influence on its waters, and the vegetation that has adapted to hotter water.
2. The natural environment and wildlife values, represented by the flora and fauna on the land - indigenous fauna noted on the lake surface and margins include NZ dabchick, NZ scaup, grey duck, paradise shelduck, pied stilt, white faced heron, little shag, black shag, red-billed gull and pukeko, along with a range of exotic fauna including mallard and black swans.

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT

SCHEDULE 2: ADDRESS FOR SERVICE<sup>3</sup>

The address for service of the Owner is:  
[Te Pumautanga Trustees]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010

Phone 07 349 7400  
Fax 07 349 7401

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<sup>3</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

**SCHEDULE 3: SPECIAL CONDITIONS**

Nil

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOKAWA COVENANT**

**GRANT** of

Certified correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under Section 27 of the  
Conservation Act 1987  
and Section 77 of the  
Reserves Act 1977

\_\_\_\_\_

to

**MINISTER OF CONSERVATION**

\_\_\_\_\_

**Legal Services**

111  
SS

**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

**TE WAIROA COVENANT**

**(Clause 10.1.27)**



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

enjoyment by the public, and safeguarding the options of future generations.

- “Conservation Values”** means the conservation values specified in Schedule 1.
- “Covenant”** means this Deed of Covenant made under section 77 of the Reserves Act 1977 and section 27 of the Conservation Act 1987.
- “Director-General”** means the Director-General of Conservation.
- “Fence”** includes a gate.
- “Fire Authority”** means a fire authority as defined in the Forest and Rural Fires Act 1977.
- “Land”** means the land described in Schedule 1.
- “Minerals”** means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “Minister”** means the Minister of Conservation.
- “Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.
- “Owner”** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
- “Reserve Values”** means any or all of the Land's natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
- “Working Days”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this Covenant;
- 1.2.3 references to parties are references to the Owner and the Minister;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2 OBJECTIVE OF THE COVENANT**

2.1 The Land must be managed:

- 2.1.1 for Conservation Purposes;
- 2.1.2 so as to preserve the Reserve Values existing at the date of this Covenant; and
- 2.1.3 to provide, subject to this Covenant (including the special conditions in Schedule 3), freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**3 IMPLEMENTATION OF OBJECTIVE**

3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the land;
- 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.4 the planting of any species of exotic tree, shrub or other plant;
- 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
- 3.1.7 any cultivation, earth works or other soil disturbances;
- 3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.9 liberate wild animals or animals that have the potential to become feral;



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

- 3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;
  - 3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
  - 3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Land;
  - 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Land, or to carry out protection or maintenance on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition;
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

- 3.4.1 the repair or maintenance of fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
- 3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
  - (a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
  - (b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**4 PUBLIC ACCESS**

- 4.1 The Owner must, subject to this Covenant (including the special conditions set out in Schedule 3), permit the public to enter upon the Land.

**5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 5.1 The Minister must:

- 5.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

- 5.2 The Minister may:

- 5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;
- 5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**6 JOINT OBLIGATIONS**

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2.1 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**7 DURATION OF COVENANT**

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

**8 CONSENTS**

- 8.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**9 MISCELLANEOUS MATTERS**

**Rights**

- 9.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

- 9.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 9.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**Reserves Act**

- 9.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**Title**

- 9.5 This Covenant must be signed by both parties and registered against the Computer Freehold Register to the Land.

**Acceptance of Covenant**

- 9.6 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 9.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.
- 9.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:
- 9.8.1 requested to do so; or
- 9.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

---

**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

9.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**10 DEFAULT**

10.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

10.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

10.3 Advise the defaulting party of the default.

10.3.1 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

10.3.2 state a reasonable period within which the defaulting party must take action to remedy the default.

**11 DISPUTE RESOLUTION PROCESSES**

11.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

11.2 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;

11.3 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

**Failure of Mediation**

- 11.4 in the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;
- 11.5 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated;
- 11.6 the parties further agree that the results of arbitration are to be binding upon the parties.

**12 NOTICES**

- 12.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 12.2 A notice given in accordance with clause 11.1 will be deemed to have been received:
- 12.2.1 in the case of personal delivery, on the date of delivery;
- 12.2.2 in the case of pre-paid post, on the third working day after posting;
- 12.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 12.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**13 SPECIAL CONDITIONS**

- 13.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 13.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

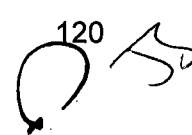
Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

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**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

*M*  
*BS*

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

**SCHEDULE 1: DESCRIPTION OF LAND**

**Description of Land:**

South Auckland Land District – Rotorua District

[1 hectare, approximately, being Part Lot 2 DP 11082. Part Gazette 1911 page 2043. Subject to survey.]

**Conservation Values to be protected:**

1. The intrinsic value of the natural resources on the land - the typical native flora consists of tawa dominated forest on the bluffs with mangaeo, rewarewa, tawari and kamahi common in the canopy. Occasional emergent rimu are present. Also in the canopy and subcanopy are mamaku, Hall's totara, miro, rimu, and supplejack with occasional kohekohe and pukatea. Kanono, pigeonwood, hangehange and mapou are common in the understorey. The bluff also supports vines of several climbing rata species and abundant filmy ferns.
2. The appreciation and recreational enjoyment that may be derived by the public from the opportunity to visit that area.

**Reserve Values to be protected:**

1. The natural landscape amenity of the area - Te Wairoa is part of the quite spectacular bluff system that extends from Lake Rotoiti to Lake Rotoehu. It is a very visible landform, unmodified, and representative of the districts volcanic history.
2. The natural environment and wildlife values, represented by the indigenous flora and fauna on the land - fauna present include tui, bellbird, whitehead, grey warbler, North Island rifleman, silvereye, kereru, shining cuckoo and long-tailed cuckoo.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

**SCHEDULE 2: ADDRESS FOR SERVICE<sup>4</sup>**

The address for service of the Owner is:  
[Te Pumautanga Trustees]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010

Phone 07 349 7400  
Fax 07 349 7401

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<sup>4</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.

*JS*



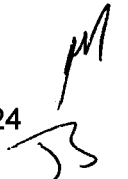
**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT**

**SCHEDULE 3: SPECIAL CONDITIONS**

Nil



THE AFFILIATE TE ARAWA IW/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 2: FORMS OF CONSERVATION COVENANTS – TE WAIROA COVENANT

GRANT of

Certified correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

CONSERVATION COVENANT

Under Section 27 of the  
Conservation Act 1987  
and Section 77 of the  
Reserves Act 1977

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to

MINISTER OF CONSERVATION

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Legal Services

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
LAKE) AND ROTOATUA COVENANT**

**LAKES ROTONGATA (MIRROR LAKE) AND  
ROTOATUA COVENANT**

**(Clause 10.1.43)**

*mu*  
*JS*



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR LAKE) AND ROTOATUA COVENANT**

- enjoyment by the public, and safeguarding the options of future generations.
- “Conservation Values”** means the conservation values specified in Schedule 1.
- “Covenant”** means this Deed of Covenant made under section 77 of the Reserves Act 1977 and section 27 of the Conservation Act 1987.
- “Director-General”** means the Director-General of Conservation.
- “Fence”** includes a gate.
- “Fire Authority”** means a fire authority as defined in the Forest and Rural Fires Act 1977.
- “Land”** means the land described in Schedule 1.
- “Minerals”** means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “Minister”** means the Minister of Conservation.
- “Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.
- “Owner”** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
- “Reserve Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
- “Working Days”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this Covenant;
- 1.2.3 references to parties are references to the Owner and the Minister;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
LAKE) AND ROTOATUA COVENANT**

- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity;
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2 OBJECTIVE OF THE COVENANT**

2.1 The Land must be managed:

- 2.1.1 for Conservation Purposes;
- 2.1.2 so as to preserve the Reserve Values existing at the date of this Covenant; and
- 2.1.3 to provide, subject to this Covenant (including the special conditions in Schedule 3), freedom of access to the public for the appreciation and recreational enjoyment of the Land.

**3 IMPLEMENTATION OF OBJECTIVE**

3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the land;
- 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.4 the planting of any species of exotic tree, shrub or other plant;
- 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
- 3.1.7 any cultivation, earth works or other soil disturbances;
- 3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.9 liberate wild animals or animals that have the potential to become feral;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR LAKE) AND ROTOATUA COVENANT**

- 3.1.10 any other activity which might have an adverse effect on the Conservation Values or Reserve Values;
  - 3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land;
  - 3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Land.
- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Land;
  - 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Land, or to carry out protection or maintenance on the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition;
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977;
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:

**THE AFFILIATE TE ARAWA IW/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR LAKE) AND ROTOATUA COVENANT**

- 3.4.1 the repair or maintenance of fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
- 3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
- (a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
  - (b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**4 PUBLIC ACCESS**

- 4.1 The Owner must, subject to this Covenant (including the special conditions set out in Schedule 3), permit the public to enter upon the Land.

**5 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 5.1 The Minister must:

- 5.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant.
- 5.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

- 5.2 The Minister may:

- 5.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time;
- 5.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**6 JOINT OBLIGATIONS**

- 6.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2.1 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**7 DURATION OF COVENANT**

- 7.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
LAKE) AND ROTOATUA COVENANT**

**8 CONSENTS**

- 8.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**9 MISCELLANEOUS MATTERS**

**Rights**

- 9.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

- 9.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise;
- 9.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**Reserves Act**

- 9.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**Title**

- 9.5 This Covenant must be signed by both parties and registered against the Computer Freehold Register to the Land.

**Acceptance of Covenant**

- 9.6 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 9.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.
- 9.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

9.8.1 requested to do so; or

9.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR LAKE) AND ROTOATUA COVENANT**

9.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**10 DEFAULT**

10.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant the other party:

10.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

10.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

10.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of or observance of its obligations under this Covenant then that party (notifying party) may, by written notice:

10.3 Advise the defaulting party of the default.

10.3.1 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

10.3.2 state a reasonable period within which the defaulting party must take action to remedy the default.

**11 DISPUTE RESOLUTION PROCESSES**

11.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

11.2 if the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties;

11.3 if the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR LAKE) AND ROTOATUA COVENANT**

**Failure of Mediation**

- 11.4 in the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply;
- 11.5 notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated;
- 11.6 the parties further agree that the results of arbitration are to be binding upon the parties.

**12 NOTICES**

- 12.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 12.2 A notice given in accordance with clause 11.1 will be deemed to have been received:
- 12.2.1 in the case of personal delivery, on the date of delivery;
- 12.2.2 in the case of pre-paid post, on the third working day after posting;
- 12.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.
- 12.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**13 SPECIAL CONDITIONS**

- 13.1 Special conditions relating to this Covenant are set out in Schedule 3.
- 13.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: \_\_\_\_\_ )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
LAKE) AND ROTOATUA COVENANT**

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
LAKE) AND ROTOATUA COVENANT

SCHEDULE 1: DESCRIPTION OF LAND

**Description of Land:**

South Auckland Land District – Rotorua District

[8.2 hectares, approximately, being Parts Waione C. Part Gazette 1931 page 1685. Subject to survey.]

**Conservation Values to be protected:**

1. The intrinsic value of the natural resources on the land - the typical native flora is dominated by reedlands and sedgelands with tall spike sedge (*Eleocharis sphacelata*) reedland in the deeper water with raupo, *Baumea rubiginosa* and *Baumea arthropphylla* in the shallower water. Sphagnum moss is abundant throughout. The regionally uncommon maru (*Sparganium subglobosum*) is present on the deeper margins. Further back is swamp coprosma shrubland and manuka shrubland towards the forest margin with occasional kahikatea trees and *Carex secta* and *Carex virgata*. Being a deep lake the majority of the bed is unvegetated. No exotic aquatic macrophytes are known from the bed of these lakes with the exception of swamp lily (*Ottelia ovalifolia*) in Lake Rotoatua.
2. The appreciation and recreational enjoyment that may be derived by the public from the opportunity to visit that area.

**Reserve Values to be protected:**

1. The natural landscape amenity of the area - as a natural landscape feature, these two lakes represent old explosion craters. They are both scenic features, in particular Lake Rotongata which can be easily viewed from lookout on the Ngahopua Track. They are of particular value in being surrounded by virgin forest and in a completely unmodified state, rare in the Rotorua District where many geothermal features have been destroyed or changed through development.
2. The natural environment and wildlife values, represented by the flora and fauna on the land - fauna present on the lakes includes NZ scaup, NZ dabchick, Australasian bittern, spotless crane, Australasian harrier, grey duck and mallard.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
LAKE) AND ROTOATUA COVENANT**

**SCHEDULE 2: ADDRESS FOR SERVICE<sup>5</sup>**

The address for service of the Owner is:  
[Te Pumautanga Trustees]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010  
Phone 07 349 7400  
Fax 07 349 7401

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<sup>5</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
LAKE) AND ROTOATUA COVENANT**

**SCHEDULE 3: SPECIAL CONDITIONS**

Nil



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKES ROTONGATA (MIRROR  
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**CONSERVATION COVENANT**

Under Section 27 of the  
Conservation Act 1987  
and Section 77 of the  
Reserves Act 1977

\_\_\_\_\_

to

**MINISTER OF CONSERVATION**

\_\_\_\_\_

**Legal Services**



**ORAKEI – KORAKO COVENANT**

**(Clause 10.1.64)**

*MA*  
*BS*



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

- “Fire Authority”** means a fire authority as defined in the Forest and Rural Fires Act 1977.
- “Land”** means the land described in Schedule 1.
- “Minerals”** means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “Minister”** means the Minister of Conservation.
- “Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.
- “Owner”** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
- “Reserve Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
- “Working Days”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

**1.2 For avoidance of doubt:**

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this Covenant;
- 1.2.3 references to parties are references to the Owner and the Minister;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity; and
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

**2 OBJECTIVE OF THE COVENANT**

- 2.1 The Land must be managed so as to preserve the Reserve Values existing at the date of this covenant.

**3 IMPLEMENTATION OF OBJECTIVE**

- 3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:

- 3.1.1 grazing of the Land by livestock;
- 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the land;
- 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
- 3.1.4 the planting of any species of exotic tree, shrub or other plant;
- 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
- 3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
- 3.1.7 any cultivation, earth works or other soil disturbances;
- 3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
- 3.1.9 liberate wild animals or animals that have the potential to become feral;
- 3.1.10 any other activity which might have an adverse effect on the Reserve Values;
- 3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; or
- 3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Land.

- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:

- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

- 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Land;
  - 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition; and
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977; and
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:
- 3.4.1 the repair or maintenance of Fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
  - 3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
    - (a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
    - (b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**4 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 4.1 The Minister must:
- 4.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant; and

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

4.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

4.2 The Minister may:

4.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time; and

4.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**5 JOINT OBLIGATIONS**

5.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2.1 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**6 DURATION OF COVENANT**

6.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**7 CONSENTS**

7.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**8 MISCELLANEOUS MATTERS**

**Rights**

8.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

8.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

8.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

**Reserves Act**

- 8.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**Title**

- 8.5 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.

**Acceptance of Covenant**

- 8.6 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 8.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.

- 8.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

8.8.1 requested to do so; or

8.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

- 8.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**9 DEFAULT**

- 9.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant, the other party:

9.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

9.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

- 9.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of, or observance of, its obligations under this Covenant, then that party (notifying party) may, by written notice:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

- 9.2.1 advise the defaulting party of the default;
- 9.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
- 9.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**10 DISPUTE RESOLUTION PROCESSES**

- 10.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

- 10.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
- 10.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**Failure of Mediation**

- 10.4 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
- 10.5 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated.
- 10.6 The parties further agree that the results of arbitration are to be binding upon the parties.

**11 NOTICES**

- 11.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 11.2 A notice given in accordance with clause 11.1 will be deemed to have been received:
  - 11.2.1 in the case of personal delivery, on the date of delivery;
  - 11.2.2 in the case of pre-paid post, on the third working day after posting;
  - 11.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

11.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**12 SPECIAL CONDITIONS**

12.1 Special conditions relating to this Covenant are set out in Schedule 3.

12.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

**SCHEDULE 1: DESCRIPTION OF LAND**

**Description of Land:**

South Auckland Land District – Rotorua District

[136 hectares, more or less, being Section 6 SP 61109. Part Gazette 1896 page 1075. Subject to Survey.]

[Subject to the operating easement held in computer interest register SA70B/659 in favour of Contact Energy Limited dated 21 February 2000.]

[Subject to the operating easement held in computer interest register [ ] in favour of Mighty River Power Limited dated [ ].]

**Reserve Values of Land to be Protected:**

1. The natural environment values that are represented by the geothermal habitat and the indigenous flora on the land. The flora on the land is characteristic of the thermal areas of the Central North Island. The vegetation is dominated by prostrate kanuka shrubland and manuka-mingimingi scrub, and there are at least three nationally threatened plant species. These are thermal ferns (*Dicranopteris linearis* and *Christella* "thermal"), and prostrate kanuka (*Kunzea ericoides* var. *microflora*). Other flora present includes wheki, water fern, and *Carex secta* and giant umbrella sedge.
  
2. The natural landscape amenity of the area - the geothermal landscape is of particular value in an area where much has been changed through development. The land complements the unique features of the neighbouring area Orakei Korako, by showing a gradation from cold ground to the east to warmer soils at Orakei Korako. The site also provides a scenic landscape feature seen from the Waikato River. This site is ranked of national significance and exceptional botanical value.

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT

SCHEDULE 2: ADDRESS FOR SERVICE<sup>6</sup>

The address for service of the Owner is:

[Te Pumautanga Trustees]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010

Phone 07 349 7400  
Fax 07 349 7401

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<sup>6</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

**SCHEDULE 3: SPECIAL CONDITIONS**

1. The Owner may undertake minor clearance of vegetation for the purposes of access for pest plant or animal control.
  
2. To avoid doubt, this Covenant is subject to the operating easement granted by the Owner in favour of Mighty River Power Limited, and this provision will apply whether or not the operating easement is registered at the date this Covenant is registered, or the operating easement is registered following registration of the Covenant.



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

**PART 2: FORMS OF CONSERVATION COVENANTS – ORAKEI – KORAKO COVENANT**

**GRANT** of

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under Section 77 of the  
Reserves Act 1977

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to

**MINISTER OF CONSERVATION**

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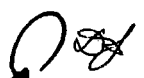
Legal Services  
Department of Conservation



PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT

**LAKE ROTOMAHANA COVENANT**

**(Clause 10.1.67)**





THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

- “Fire Authority”** means a fire authority as defined in the Forest and Rural Fires Act 1977.
- “Land”** means the land described in Schedule 1.
- “Minerals”** means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
- “Minister”** means the Minister of Conservation.
- “Natural Water”** includes water contained in streams the banks of which have, from time to time, been re-aligned.
- “Owner”** means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
- “Reserve Values”** means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat, or historic values as specified in Schedule 1.
- “Working Days”** means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this Covenant;
- 1.2.3 references to parties are references to the Owner and the Minister;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;
- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity; and
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

**2 OBJECTIVE OF THE COVENANT**

- 2.1 The Land must be managed so as to preserve the Reserve Values existing at the date of this covenant.

**3 IMPLEMENTATION OF OBJECTIVE**

- 3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:

3.1.1 grazing of the Land by livestock;

3.1.2 to the extent possible, any vehicle (including motorcycles) entering the land;

3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;

3.1.4 the planting of any species of exotic tree, shrub or other plant;

3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;

3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;

3.1.7 any cultivation, earth works or other soil disturbances;

3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;

3.1.9 liberate wild animals or animals that have the potential to become feral;

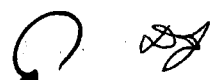
3.1.10 any other activity which might have an adverse effect on the Reserve Values;

3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; or

3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Land.

- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:

3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

- 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Land;
  - 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition; and
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977; and
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:
- 3.4.1 the repair or maintenance of Fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
  - 3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species if:
    - (a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
    - (b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**4 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

- 4.1 The Minister must:
- 4.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant; and



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

4.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

4.2 The Minister may:

4.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time; and

4.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**5 JOINT OBLIGATIONS**

5.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2.1 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**6 DURATION OF COVENANT**

6.1 This Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**7 CONSENTS**

7.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.

**8 MISCELLANEOUS MATTERS**

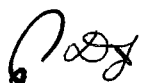
**Rights**

8.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

8.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

8.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

**Reserves Act**

- 8.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**Title**

- 8.5 This Covenant must be signed by both parties and registered against the Certificate of Title to the Land.

**Acceptance of Covenant**

- 8.6 The parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 8.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.
- 8.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

8.8.1 requested to do so; or

8.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

- 8.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**9 DEFAULT**

- 9.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant, the other party:

9.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

9.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

- 9.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of, or observance of, its obligations under this Covenant, then that party (notifying party) may, by written notice:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

- 9.2.1 advise the defaulting party of the default;
- 9.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and
- 9.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**10 DISPUTE RESOLUTION PROCESSES**

- 10.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

- 10.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.
- 10.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**Failure of Mediation**

- 10.4 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.
- 10.5 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated.
- 10.6 The parties further agree that the results of arbitration are to be binding upon the parties.

**11 NOTICES**

- 11.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.
- 11.2 A notice given in accordance with clause 11.1 will be deemed to have been received:
  - 11.2.1 in the case of personal delivery, on the date of delivery;
  - 11.2.2 in the case of pre-paid post, on the third working day after posting;
  - 11.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

11.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**12 SPECIAL CONDITIONS**

12.1 Special conditions relating to this Covenant are set out in Schedule 3.

12.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

**Executed as a Deed**

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

**SCHEDULE 1: DESCRIPTION OF LAND**

**Description of Land:**

South Auckland Land District – Rotorua District

[1.5210 hectares, more or less, being Section 3 SO 354515. Part Gazette 1896 page 1075.]

**Reserve Values of Land to be Protected:**

- 1 The natural values represented by the indigenous flora and fauna on the land - the vegetation of the site has developed since the 1886 Tarawera eruption, and is of considerable scientific interest (in regards to vegetation types, species distribution and natural succession to a localised native forest). The vegetation includes coprosma sp. wineberry, fuchsia, hangehange, koromiko, manuka and kanuka, mahoe, pohutukawa, five finger, matipo and kamahi. The fauna includes fantail, bellbird, silvereye, and riroriro. Falcon use the land for hunting, and there have been anecdotal reports of fern bird. The site adjoins the Lake Rotomahana Wildlife Refuge.
  
- 2 The natural landscape amenity of the area - this consists of contiguous and attractive forest cover, which surrounds one of the only lakes in the Rotorua District that does not contain exotic water weeds.

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

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PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT

SCHEDULE 2: ADDRESS FOR SERVICE<sup>7</sup>

The address for service of the Owner is:

[Te Pumautanga Trustees]

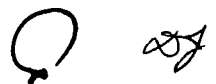
The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010

Phone 07 349 7400  
Fax 07 349 7401

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<sup>7</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.





**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

**SCHEDULE 3: SPECIAL CONDITIONS**

1. The Owner may undertake minor clearance of vegetation for the purposes of access for pest plant or animal control.

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

**PART 2: FORMS OF CONSERVATION COVENANTS – LAKE ROTOMAHANA  
COVENANT**

**GRANT** of

Certified correct for the purposes of  
the Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

**CONSERVATION COVENANT**

Under Section 77 of the  
Reserves Act 1977

\_\_\_\_\_

to

**MINISTER OF CONSERVATION**

\_\_\_\_\_

Legal Services  
Department of Conservation

**KAKAPIKO COVENANT**

**(Clause 10.1.71)**



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

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**PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT**

<b>“Existing Forestry Right”</b>	means the forestry right existing at the date of this Covenant and registered under the Forestry Rights Registration Act 1983.
<b>“Fence”</b>	includes a gate.
<b>“Fire Authority”</b>	means a fire authority as defined in the Forest and Rural Fires Act 1977.
<b>“Land”</b>	means the land described in Schedule 1.
<b>“Minerals”</b>	means any mineral that is not a Crown owned mineral under section 2 of the Crown Minerals Act 1991.
<b>“Minister”</b>	means the Minister of Conservation.
<b>“Natural Water”</b>	includes water contained in streams the banks of which have, from time to time, been re-aligned.
<b>“Owner”</b>	means the person or persons who, from time to time, is or are registered as the proprietor(s) of the Land.
<b>“Reserve Values”</b>	means any or all of the Land’s natural environment, landscape amenity, wildlife, freshwater life, marine life habitat or historical values as specified in Schedule 1.
<b>“Working Days”</b>	means the period between any one midnight and the next excluding Saturdays, Sundays, and statutory holidays in the place where the Land is located.

1.2 For avoidance of doubt:

- 1.2.1 the reference to any statute in this Covenant extends to and includes any amendment to or substitution of that statute;
- 1.2.2 references to clauses are references to clauses in this Covenant;
- 1.2.3 references to parties are references to the Owner and the Minister;
- 1.2.4 words importing the singular number include the plural and vice versa;
- 1.2.5 expressions defined in clause 1.1 bear the defined meaning in the whole of this Covenant including the Background. Where the parties disagree over the interpretation of anything contained in this Covenant and seek to determine the issue, the parties must have regard to the matters contained in the Background;
- 1.2.6 any obligation not to do anything must be treated to include an obligation not to suffer, permit or cause the thing to be done;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT**

- 1.2.7 words importing one gender include the other gender;
- 1.2.8 the agreements contained in this Covenant bind and benefit the parties and their administrators and executors, successors and assigns in perpetuity; and
- 1.2.9 where clauses in this Covenant require further agreement between the parties such agreement must not be unreasonably withheld.

**2 OBJECTIVE OF THE COVENANT**

- 2.1 The Land must be managed by the Owner so as to preserve the Reserve Values existing at the date of this covenant.

**3 IMPLEMENTATION OF OBJECTIVE**

- 3.1 Unless agreed in writing by the parties, with such agreement not to be unreasonably withheld, the Owner must not carry out or permit on or in relation to the Land:
  - 3.1.1 grazing by livestock;
  - 3.1.2 to the extent possible, any vehicle (including motorcycles) entering the Land;
  - 3.1.3 subject to clauses 3.2.1 and 3.2.3, felling, removal or damage of any tree, shrub or other plant;
  - 3.1.4 the planting of any species of exotic tree, shrub or other plant;
  - 3.1.5 subject to clause 3.2.6, the erection of any Fence, building, structure or other improvement for any purpose;
  - 3.1.6 any burning, top dressing, sowing of seed or use of chemicals (whether for spraying or otherwise) except where the use of chemicals is reasonably necessary to control weeds or pests;
  - 3.1.7 any cultivation, earth works or other soil disturbances;
  - 3.1.8 any action which will cause deterioration in the natural flow, supply, quantity, or quality of water of any stream, river, lake, pond, marsh, or any other water resource affecting the Land;
  - 3.1.9 liberate wild animals or animals that have the potential to become feral;
  - 3.1.10 any other activity which might have an adverse effect on the Reserve Values;
  - 3.1.11 subject to clause 3.2.7, any prospecting or mining for minerals, coal or other deposit or moving or removal of rock of any kind on or under the Land; or
  - 3.1.12 subject to clause 3.2.7, the erection of utility transmission lines across the Land.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT**

- 3.2 The Owner must take all reasonable steps to maintain the Land in a condition no worse than at the date of this Covenant, including:
- 3.2.1 taking all reasonable steps to eradicate or control all weeds and pests on the Land to the extent required by any statute; and in particular comply with the provisions of, and any notices given under, the Biosecurity Act 1993;
  - 3.2.2 entering into an agreement with the Fire Authority for the provision of Fire Fighters on Fire Suppression Operations when fire is upon or threatening the Land;
  - 3.2.3 taking all reasonable steps to keep the Land free from exotic tree species;
  - 3.2.4 taking all reasonable steps to keep the Land free from rubbish or other unsightly or offensive material arising from the Owner's use of the Land;
  - 3.2.5 subject to agreement (which shall not be unreasonably withheld) between the Owner and the Minister and observance of any reasonable conditions imposed by the Owner, grant to the Minister or authorised agent of the Minister or any employee of the Director-General, a right of access onto the Land, to examine and record the condition of the Land, or to ascertain whether the provisions of this Covenant are being observed;
  - 3.2.6 taking all reasonable steps to keep all Fences on the boundary of the Land in good order and condition; and
  - 3.2.7 complying with all requisite statutes, regulations and bylaws in relation to the Land.
- 3.3 The Owner acknowledges that:
- 3.3.1 this Covenant does not affect the Minister's exercise of the Minister's powers under the Wild Animal Control Act 1977; and
  - 3.3.2 the Minister has statutory powers, obligations and duties with which the Minister must comply.
- 3.4 Notwithstanding clauses 3.2.1, 3.2.3, and 3.2.6, the Minister will pay the Owner a proportionate share of:
- 3.4.1 the repair or maintenance of Fences on the Land if the work has first been approved by the Minister (which approval must not be withheld unreasonably);
  - 3.4.2 the eradication or control of all animal and plant pests, and the removal of exotic tree species on the Land if:
    - (a) they impose a substantial burden in excess of the legal obligations that would have applied in the absence of this Covenant; and
    - (b) the Minister has first approved the work (which approval is not to be withheld unreasonably).

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT**

**4 THE MINISTER'S OBLIGATIONS AND OTHER MATTERS**

**4.1 The Minister must:**

- 4.1.1 have regard to the objective specified in clause 2.1 when considering any requests for approval under this Covenant; and
- 4.1.2 repair and replace to its former condition any Fence or other improvement on the Land or on its boundary or otherwise take steps to rectify any other damage which may have resulted in the course of the Minister, the Director-General's employees or contractors or any person referred to in clause 3.2.5 exercising any of the rights conferred by this Covenant.

**4.2 The Minister may:**

- 4.2.1 provide to the Owner technical advice or assistance as may be necessary or desirable to assist in meeting the objective specified in clause 2.1 subject to any financial, statutory or other constraints which may apply to the Minister from time to time; and
- 4.2.2 prepare, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**5 JOINT OBLIGATIONS**

- 5.1 The Owner or the Minister may, by mutual agreement, carry out any work or activity or improvement or take any action either jointly or individually better to achieve the objective set out in clause 2.1 including preparing, in consultation with the Owner, a joint plan for the management of the Land to implement the objective specified in clause 2.1.

**6 COMMENCEMENT AND DURATION OF COVENANT**

- 6.1 This Covenant will not take effect and become operative until the Effective Date.
- 6.2 Notwithstanding clause 6.1 above, this Covenant binds the parties in perpetuity to the rights and obligations contained in it.

**7 CONSENTS**

- 7.1 The Owner must obtain the consent of any mortgagees of the Land to this Covenant.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT**

**8 MISCELLANEOUS MATTERS**

**Rights**

- 8.1 The rights granted by this Covenant are expressly declared to be in the nature of a covenant.

**Trespass Act**

- 8.2 Except as provided in this Covenant, the Covenant does not diminish or affect the rights of the Owner to exercise the Owner's rights under the Trespass Act 1980 or any other statute or generally at law or otherwise.

- 8.3 For avoidance of doubt these rights may be exercised by the Owner if the Owner reasonably considers that any person has breached the rights and/or restrictions of access conferred by this Covenant.

**Reserves Act**

- 8.4 In accordance with section 77(3) of the Reserves Act 1977 but subject to the terms and conditions set out in this Covenant, sections 93 to 105 of the Reserves Act 1977, as far as they are applicable and with the necessary modifications, apply to the Land as if the Land were a reserve.

**Title**

- 8.5 This Covenant must be signed by both parties and registered against the Computer Freehold Register to the Land.

**Acceptance of Covenant**

- 8.6 Subject to clause 6.1 of this Covenant, the parties agree to be bound by the provisions of this Covenant including during the period prior to the Covenant's registration.

**Fire**

- 8.7 The Owner must notify, as soon as practicable, the appropriate Fire Authority (as defined in the Forest and Rural Fires Act 1977) and the Minister in the event of wildfire upon or threatening the Land.

- 8.8 If the Minister is not the appropriate Fire Authority for the Land, the Minister will render assistance to the Fire Authority in suppressing the fire if:

8.8.1 requested to do so; or

8.8.2 if there is in place between the Minister and the Fire Authority a formalised fire agreement under section 14 of the Forest and Rural Fires Act 1977.

- 8.9 This assistance will be at no cost to the Owner unless the Owner is responsible for the wildfire through wilful action or negligence (which includes the case where the wildfire is caused by the escape of a permitted fire due to non-adherence to the conditions of the permit).

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT**

**9 DEFAULT**

9.1 Where either the Owner or the Minister breaches any of the terms and conditions contained in this Covenant, the other party:

9.1.1 may take such action as may be necessary to remedy the breach or prevent any further damage occurring as a result of the breach; and

9.1.2 will also be entitled to recover from the party responsible for the breach as a debt due all reasonable costs (including solicitor/client costs) incurred by the other party as a result of remedying the breach or preventing the damage.

9.2 Should either the Owner or the Minister become of the reasonable view that the other party (the defaulting party) has defaulted in performance of, or observance of, its obligations under this Covenant, then that party (notifying party) may, by written notice:

9.2.1 advise the defaulting party of the default;

9.2.2 state the action reasonably required of the defaulting party to perform or observe in accordance with this Covenant; and

9.2.3 state a reasonable period within which the defaulting party must take action to remedy the default.

**10 DISPUTE RESOLUTION PROCESSES**

10.1 If any dispute arises between the Owner and the Minister in connection with this Covenant, the parties must, without prejudice to any other rights they may have under this Covenant, attempt to resolve the dispute by negotiation or other informal dispute resolution technique agreed between the parties.

**Mediation**

10.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to mediation with a mediator agreed between the parties.

10.3 If the parties do not agree on a mediator, the President of the District Law Society in the region in which the Land is situated is to appoint the mediator.

**Failure of Mediation**

10.4 In the event that the matter is not resolved by mediation within 2 months of the date of referral to mediation the parties agree that the provisions in the Arbitration Act 1996 will apply.

10.5 Notwithstanding anything to the contrary in the Arbitration Act 1996, if the parties do not agree on the person to be appointed as arbitrator, the appointment is to be made by the President for the time being of the District Law Society in the region in which the Land is situated.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT**

10.6 The parties further agree that the results of arbitration are to be binding upon the parties.

**11 NOTICES**

11.1 A notice to be given under this Covenant by one party to the other is to be in writing and sent by personal delivery, by pre-paid post, or by facsimile addressed to the receiving party at the address or facsimile number set out in Schedule 2.

11.2 A notice given in accordance with clause 11.1 will be deemed to have been received:

11.2.1 in the case of personal delivery, on the date of delivery;

11.2.2 in the case of pre-paid post, on the third working day after posting;

11.2.3 in the case of facsimile, on the day on which it is dispatched or, if dispatched after 5.00pm, on the next day after the date of dispatch.

11.3 The Owner must notify the Minister of any change of ownership or control of all or part of the Land and must supply the Minister with the name and address of the new owner or person in control.

**12 SPECIAL CONDITIONS**

12.1 Special conditions relating to this Covenant are set out in Schedule 3.

12.2 The standard conditions contained in this Covenant must be read subject to any special conditions.

Executed as a Deed

Signed by \_\_\_\_\_ as )  
Owner in the presence of: )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

Signed by \_\_\_\_\_ exercising his/her )  
powers under section 117 of the Reserves Act 1977 )  
as designated Commissioner and acting for and on )  
behalf of the Minister of Conservation )  
in the presence of : )

Witness: \_\_\_\_\_

Address : \_\_\_\_\_

Occupation: \_\_\_\_\_

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT

SCHEDULE 1: DESCRIPTION OF LAND

**Description of Land:**

South Auckland Land District – Rotorua District

[2.75 hectares, approximately, being Part Lot 6 DPS 54801. Part Gazette 1975 page 2327. Subject to the "Forestry Right to be granted". Subject to survey.]

**Reserve Values to be protected:**

1. The natural environment and wildlife values, represented by the indigenous flora and fauna on the land. The typical native flora characteristic of Kakapiko is dominated mostly by regenerating young secondary scrub and fernland. The majority of the site is bracken and kiokio fernland with regenerating shrubs of predominantly mahoe along with pate, rangiora, tutu, toetoe, fivefinger, hangehange, kohuhu, ponga, wheki and mamaku scattered throughout. Near the summit the vegetation is taller and dominated by mahoe shrubland with mamaku scattered throughout in places amongst bracken fernland. Common forest birds present include grey warbler and North Island fantail.
2. The natural landscape amenity of the area. Kakapiko Mountain can be seen from State Highway five, where it is a prominent landmark highly visible from the main highway. In a landscape almost completely dominated by exotic forest, a very small vestige of indigenous scrub remains around the edge of the summit.



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
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PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT

SCHEDULE 2: ADDRESS FOR SERVICE<sup>8</sup>

The address for service of the Owner is:

[Te Pumautanga Trustees]

The address for service of the Minister is:

The Area Manager  
Department of Conservation  
99 Sala Street  
ROTORUA 3010

Phone 07 349 7400  
Fax 07 349 7401

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<sup>8</sup> Note: Insert street addresses rather than P O Boxes. Include facsimile numbers.

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

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PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT

SCHEDULE 3: SPECIAL CONDITIONS

Nii

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 2: FORMS OF CONSERVATION COVENANTS – KAKAPIKO COVENANT

GRANT of

Certified correct for the purposes of the  
Land Transfer Act 1952

Solicitor for the Minister of  
Conservation

CONSERVATION COVENANT

Under Section 77 of the  
Reserves Act 1977

---

to

MINISTER OF CONSERVATION

---

Legal Services  
Department of Conservation

**PART 3: MANAGEMENT DEED**

**PART 3: MANAGEMENT DEED**

**(Clauses 10.1.47(a) and 10.12)**



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

**Date:**

**PARTIES**

- 1 The trustees of the Te Ariki Trust (the *Trustees*);
- 2 The trustees of the Te Pumautanga o Te Arawa Trust (the *Te Pumautanga Trustees*).

**BACKGROUND**

- A In accordance with the Deed of Settlement, an undivided one half share of the fee simple estate in the Land has vested in the Te Pumautanga Trustees as tenant in common with the Trustees.
- B Also in accordance with the Deed of Settlement, an undivided one half share of the fee simple estate in the Land has vested in the Trustees as tenant in common with the Te Pumautanga Trustees.
- C The Crown recognises that Ngati Rangitahi, being a Te Arawa group not represented by the Te Pumautanga Trustees, also has an interest in the Land and the Crown has acknowledged and agreed in the Deed of Settlement that the Trustees will hold their undivided one half share in the Land in trust for the Crown for future potential Treaty of Waitangi settlements.
- D Under the terms of the Deed of Settlement, the Te Pumautanga Trustees and the Trustees agree to own and manage the Land in a way that recognises the parties' common ownership of the Land, on the terms and conditions set out in this Deed.

**OPERATIVE PART**

**1. DEFINITIONS AND CONSTRUCTION**

**1.1 Defined terms**

In this Deed, unless inconsistent with the context the following words have the following meanings:

*Affiliate Te Arawa Iwi/Hapu* has the meaning set out in the Deed of Settlement;

*Authority* means any authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land;

*Business Day* means the period 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day;





**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

and, subject to clause 8, the successors in title and assigns of the Te Pumautanga Trustees;

*Third Party Rights* means:

- (a) the right to cross the Land granted to Waimangu Volcanic Valley Limited under the unregistered deed of lease dated 13 October 1999;
- (b) walkway easement over the Land granted in accordance with the provisions of the Deed of Settlement; and
- (c) all other rights, easements, licences, or interests granted to third parties over all or any part of the Land from time to time by the Te Pumautanga Trustees and the Trustees under the provisions of this Deed;

*Trustees* includes the trustees from time to time of the Te Ariki Trust, appointed by the Crown in accordance with the Deed of Trust, and, subject to clause 8, includes the successors in title and assigns of the Trustees.

**1.2 Construction**

In this Deed:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes a reference to all other genders;
- (c) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- (d) headings are inserted for convenience only and do not affect the interpretation of this Deed;
- (e) where any act is required by this Deed to be done on a given day and that day is not a Business Day then the act is required to be done on the next following Business Day; and
- (f) references to schedules are references to schedules in this Deed and references to clauses are references to clauses in this Deed and references to parties are references to the parties to this Deed and their respective successors, successors in title and assigns unless expressly stated otherwise.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

**2. COMMENCEMENT AND TERM**

2.1 The provisions of this Deed shall take effect and be binding on the parties from the Commencement Date.

2.2 The parties agree that the terms of this Deed shall run with the Land and shall be binding on the parties in perpetuity, or until:

- (a) one party owns both half shares in the Land;
- (b) subject to clause 9, either the Te Pumautanga Trustees or the Trustees apply for and are granted an order for partition or sale of the Land under the Property Law Act 2007; or
- (c) the Te Pumautanga Trustees and the Trustees agree to jointly sell both of their interests in the Land to a third party.

**3. PURPOSE OF DEED**

The parties agree that the purpose of this Deed is to set out guidelines, restrictions and obligations on both parties regarding the ownership and management of the Land that:

- (a) achieve the objectives set out in clause 4; and
- (b) recognise the special common ownership the parties have in the Land under the terms of the Deed of Settlement.

**4. OBJECTIVES**

4.1 The parties agree to maintain a working relationship which recognises and accepts the following objectives with regard to management issues concerning the Land:

- (a) to establish the Management Committee comprising representatives of the parties, on terms set out in this Deed;
- (b) to accept and recognise that the Land shall continue to be maintained to a high standard, in order to protect and not diminish the overall integrity and natural features of the Land that exist on the Commencement Date;
- (c) to carry out a programme of ongoing maintenance of the Land which will achieve the expectation of the parties that the Land will be maintained to the standard set out in (b) above;
- (d) to maintain a relationship with the walkway controlling authority;
- (e) to review and consider any changes to the management arrangements from time to time;



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

- (f) subject to clause 11, to consider, in good faith, and in accordance with the provisions of this Deed, each other's plans for any proposed construction on or development of the Land; and
- (g) to each endeavour to observe and perform the duties and obligations established under the management arrangement set out in this Deed.

**5. MANAGEMENT COMMITTEE**

- 5.1 The Management Committee shall comprise 6 members, 3 to be appointed by each party, unless the parties agree otherwise. The parties agree that they will establish the Management Committee by no later than 30 Business Days after the Commencement Date. Either party shall be entitled to withdraw any of its members and replace that member at any time during the term of this Deed, upon giving 15 Business Days written notice to the other party.
- 5.2 At any meeting of the Management Committee where a vote is called for, each party shall have one vote, irrespective of the number of members who represent it.
- 5.3 Meetings of the Management Committee shall be held on at least a quarterly basis each year. In addition, either party may call for an extraordinary meeting, for any matter that the party considers on reasonable grounds must be addressed before the next scheduled quarterly meeting, to be held by giving to the other party 20 Business Days written notice. The parties will bear their own costs of attending all meetings of the Management Committee.
- 5.4 An agenda, with supporting papers if necessary, shall be circulated by the chairperson to all members of the Management Committee at least 10 Business Days prior to each meeting.
- 5.5 The quorum for any meeting of the Management Committee shall be 4 members, 2 representing each party. If there is not a member representing a party at any meeting, then the party represented shall have the right to request the meeting be reconvened at the expiration of not less than five Business Days written notice, such notice to state the time and place of the reconvened meeting. If the defaulting party fails to attend without reasonable cause, of which written notice shall be given to the non-defaulting party prior to the reconvened meeting, the non-defaulting party shall be entitled to continue the meeting as if one member from each party was present and shall be entitled to make decisions of the Management Committee as if a quorum were present.
- 5.6 All decisions made by the Management Committee shall be recorded in writing. The minutes of every Management Committee meeting shall be circulated to the parties and ratified within a month of each meeting.
- 5.7 In the event that a member of the Management Committee is unable to attend a Management Committee meeting, then the party entitled to appoint such member shall be entitled to appoint an alternate.

*B/A*



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

- 5.8 One member of the Management Committee shall act as chairperson. The first chairperson shall be chosen by lot. Thereafter, the position of chairperson shall alternate annually between the parties, with the members of the chairing party deciding which of their members will be the chairperson. The function of the chairperson shall be to arrange and control the Management Committee meetings.
- 5.9 If, on any vote of the Management Committee, the votes cast are equal, the chairperson shall not have a casting vote, and either party may refer the issue being decided by vote to dispute resolution in accordance with clause 15.
- 5.10 The Management Committee may appoint a Secretary to prepare agendas, to keep minutes of the meetings, maintain financial and other records of the Management Committee, and attend to the administrative requirements of the Management Committee.
- 5.11 Each party may nominate advisers, consultants or such other representatives as each party may decide to attend Management Committee meetings. Those persons may participate in discussions at the meetings, but may not vote.
- 5.12 The Management Committee's functions shall include, by way of example only but not limitation, the following:
- (a) co-ordinating ongoing maintenance and/or development of the Land;
  - (b) co-ordinating and arranging insurance cover;
  - (c) co-ordinating apportionment and arranging payment of outgoings in respect of the Land;
  - (d) ensuring compliance with all laws and the lawful requirements of any Authority which has jurisdiction over or in respect of the Land;
  - (e) arranging collection of, review of (where relevant), apportionment of and payment to the parties, of any income generated on the Land from Third Party Rights or from any other source; and
  - (f) managing the day to day relationships with those persons granted with Third Party Rights.
- 5.13 Should members of the Management Committee be unable to resolve any dispute or difference between them, then the dispute or difference shall be referred to dispute resolution in accordance with clause 15.

**6. COMPLIANCE WITH LAWS**

Each party will:

BAA

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**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

- (a) comply with all statutes, Regional and District Plans, by-laws and regulations, resource consents and building consents (including conditions) which relate to the Land or to that party's use of the Land; and
- (b) comply with all conditions or requirements which may be given or required by any person having any lawful authority compliance with the provisions of all licences, requisitions and notices (including abatement notices under the Resource Management Act 1991) issued by any Authority,

and disclose to the other party their existence if that party is likely to also be affected.

**7. THIRD PARTY RIGHTS**

Both parties agree to jointly observe and abide by the terms of all Third Party Rights and each party agrees that it will not grant any Third Party Right or otherwise encumber (including, without limitation, granting any mortgage) the Land, or that party's interest in the Land, without the prior written consent of the other party, such consent to be given or withheld at the absolute discretion of that other party.

**8. RIGHT OF FIRST REFUSAL**

- 8.1 If at any time either party decides to sell or otherwise dispose of its interest in the Land, the party wishing to dispose of their interest (*the disposing party*) shall first give written notice (*the Notice*) to the other party of its desire to sell or dispose of its interest.
- 8.2 The Notice shall specify the offer price and settlement terms required.
- 8.3 The other party shall have five Business Days from the date of receiving the Notice to respond to the disposing party that it is interested in considering such offer.
- 8.4 The other party shall have a further 15 Business Days from expiry of the Notice to accept or decline the offer.
- 8.5 Should the offer be declined then the disposing party shall be free to deal with the disposal of its interest but the price and settlement terms that the disposing party may offer to any third party shall not be more favourable than those offered to the other party. Should the disposing party propose more favourable terms to any third party, it must first offer the same to the other party, in which event the other party shall have 15 Business Days within which to accept or decline.
- 8.6 Each party accepts and acknowledges that any offer price to any third party may be better than that which is offered to the other party, provided that the overall terms are not more favourable.
- 8.7 Despite all other provisions in this clause 8, the disposing party must include in any agreement with a third party to sell or dispose of its interest in the Land, a requirement that the third party enters into a deed of covenant with the other party to comply with the terms and conditions of this Deed (including this clause 8) as if that third party had been an original party to this Deed.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

8.8 Any change in the Trustees in the Te Ariki Trust from time to time, whether by resignation of Trustees and/or appointment of new Trustees or otherwise, in accordance with the provisions of the Trust Deed, will not be a sale or disposal of the Trustees' interest in the Land for the purposes of this clause 8.

8.9 Should the Trustees vest or otherwise transfer its interest in the Land to either:

(a) Ngati Rangitahi under a Treaty of Waitangi settlement; or

(b) the trustees of the Ngati Rangitahi Trust,

this will be deemed not to be a sale or disposal of that interest in the Land for the purposes of clauses 8.1 to 8.6, but the Trustees shall be required to comply with clause 8.7.

8.10 Any change in the Te Pumautanga Trustees from time to time, whether by resignation of trustees and/or appointment of new trustees or otherwise, in accordance with the provisions of the Pumautanga Trust Deed governing the Te Pumautanga Trustees, will not be a sale or disposal of the Pumautanga Trustees' interest in the Land for the purposes of this clause 8.

8.11 Should the Te Pumautanga Trustees transfer their interest in the Land to an iwi or hapu of the Affiliate Te Arawa Iwi/Hapu, this will be deemed not to be a sale or disposal of that interest in the Land for the purposes of clauses 8.1 to 8.6, but the Te Pumautanga Trustees shall be required to comply with clause 8.7.

**9. PARTIES NOT TO PARTITION**

The Te Pumautanga Trustees and the Trustees agree that neither party will be entitled to apply to the court under the Property Law Act 2007 for partition of or sale of the Land until the earlier of:

(a) the Crown concluding an unconditional Treaty of Waitangi settlement with Ngati Rangitahi, the terms of which includes the vesting of the Trustees' interest in the Land in Ngati Rangitahi; and

(b) 15 years after the Commencement Date.

**10. INCOME AND OUTGOINGS**

10.1 The Te Pumautanga Trustees and the Trustees will each be entitled to a half share of any income derived from ownership or use of the Land, from Third Party Rights, or from any other source relating to the Land, unless the parties agree in writing to share any income other than in equal shares.

10.2 The Te Pumautanga Trustees and the Trustees will be liable to pay half of all outgoings, costs and expenses incurred under this Deed or which are in any way related to the Land, unless:



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

- (a) the parties agree in writing that one party should pay more than half of any particular outgoing, cost or expense; or
- (b) any other clause in this Deed provides for other than equal sharing of particular outgoings, costs or expenses.

10.3 Neither party may agree to incur or incur any cost, outgoing or expense in relation to the Land without the prior consent of the other party.

10.4 The parties acknowledge and agree that, except as otherwise provided in this Deed, the Management Committee will be responsible for managing collection of income and the payment of outgoings, costs and expenses in relation to the Land.

**11. CONSTRUCTION AND DEVELOPMENT**

11.1 Neither party may construct, or allow to be constructed on the Land, or alter, improve or add to, or allow to be altered, improved or added to, any building or any other structure on the Land, without the prior written consent of the other party, such consent to be given or withheld at that other party's absolute discretion.

11.2 Neither party may develop, alter the surface of, dig, excavate or otherwise disturb the Land, or allow the Land to be developed, altered, dug, excavated or disturbed, without the prior written consent of the other party, such consent to be given or withheld at that other party's absolute discretion.

11.3 If the party being requested to give consent under clause 11.1 or 11.2 gives consent, such consent may be given subject to conditions or agreement as to certain matters that the consenting party considers necessary, including without limitation:

- (a) who will be responsible for complying with legislation, and for obtaining and complying with all consents of Authorities (including, without limitation and resource consents or building consents) in relation to any work to be undertaken under clause 11.1 and/or 11.2 (the *Work*);
- (b) who will bear the costs in relation to the *Work*, and if by more than one of the parties, in what shares;
- (c) if any income will be derived from the Land because of the *Work*, how that income will be apportioned between the parties;
- (d) who will be responsible for undertaking, managing and overseeing the *Work* and what contractors (if any) will be used for the *Work*;
- (e) if money will be borrowed in order to undertake the *Work*, who will be responsible for repaying the money borrowed, and in what shares;
- (f) timeframes to complete the *Work*; and

BAA  
D

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

- (g) to the extent that the Work will increase the value of the Land, how that increase in value will be apportioned between the parties' interests in the Land.

**12. MAINTENANCE**

- 12.1 The Te Pumautanga Trustees and the Trustees acknowledge and agree that each party is committed to keeping the Land in good order and condition and that a programme for ongoing maintenance and upkeep of the Land will be agreed between the parties within six months of the Commencement Date.
- 12.2 The parties agree that the Management Committee will manage and review the programme for ongoing maintenance on a regular basis.

**13. ACCESS RIGHTS**

- 13.1 Subject to any Third Party Rights, each party will be entitled to have access to and the right to remain on the Land **PROVIDED HOWEVER**, in recognition of the interests both parties have in the Land, neither party shall be entitled to take any action or occupy the Land in a way that attempts to create a right of occupation or possession that excludes the other party without the prior written consent of that other party, such consent to be given or withheld at that other party's absolute discretion.

**14. INDEMNITY**

- 14.1 The Te Pumautanga Trustees indemnify and hold harmless the Trustees from any costs, liabilities or damage incurred or sustained by the Trustees arising out of or connected with the Land resulting from the Te Pumautanga Trustees breaching this Deed.
- 14.2 The Trustees indemnify and hold harmless the Te Pumautanga Trustees from any costs, liabilities or damage incurred or sustained by the Te Pumautanga Trustees arising out of or connected with the Land resulting from the Trustees breaching this Deed.

**15. DISPUTE RESOLUTION**

**15.1 Consultation**

In the event that the parties are in dispute regarding any matter arising out of and from this Deed then appointed representatives of each party will consult expeditiously with one another in good faith and use their best endeavours to resolve such dispute to the mutual satisfaction of the parties without the resort to alternative dispute resolution.

**15.2 Mediation**

- (a) In the event that there is a dispute between the parties and they cannot resolve that dispute within 10 Business Days of referral then either party may

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
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by notice in writing to the other party refer the dispute to compulsory mediation supervised by a member of LEADR (Leading Edge Alternative Dispute Resolvers); and

- (b) Should the parties be unable to agree on a mediator within 10 Business Days of the date of such notice of disputation either party may request the President or his or her nominee for the time being of the New Zealand Law Society to nominate an appropriate person or persons (having regard to the matters the subject of the dispute) to mediate the dispute and the parties agree to accept as mediator the person nominated by the President or his or her nominee of the New Zealand Law Society.

**15.3 Arbitration**

In the absence of agreement under clause 15.2 then either party may refer any unresolved dispute to arbitration under the Arbitration Act 1996 by a sole arbitrator agreed on by the parties or, failing agreement, appointed by the New Zealand President of the Arbitrators' and Mediators' Institute.

**15.4 Injunctive Relief**

Either party may make application to the courts for injunctive relief where that party in its reasonable opinion believes such relief is necessary to preserve or protect that party's interest in the Land.

**16. PUBLIC ANNOUNCEMENTS**

Except as may be required by law, no press release or other announcements relating to this Deed or the parties' common ownership of the Land will be made without the prior written approval of both parties which approval will not be unreasonably withheld or delayed. The parties will co-operate as to the timing and contents of any such announcement.

**17. NOTICES**

**17.1 Contact Details**

Unless and until the party provides a different address or facsimile number by notice in writing to the other party to this Deed its address for notices will be:

- (a) the Te Pumautanga Trustees:

[To be completed.]

- (b) the Trustees:

[To be completed]

**17.2 Deemed Receipt**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

Any notice given as provided by this clause will be deemed received by the party to whom it is addressed when:

- (a) in the case of any notice delivered by hand, when so delivered;
- (b) in the case of any notice sent by facsimile such notice, upon the issue to the sender of a transmission control or other like report from the despatching facsimile machine which shows the relevant number of pages comprised in the notice to have been sent and the result of the transmission is "OK".

**18. MISCELLANEOUS**

**18.1 Unavoidable Events**

No failure or omission to carry out or observe any term of this Deed will give rise to a claim by either party against the other or result in a breach of this Deed if such failure or omission arises by reason of delay or inability to perform caused by government or statutory restriction or from other similar causes which are unavoidable or beyond the reasonable control of the defaulting party. For the avoidance of doubt, the Trustees acknowledge and agree that the Trustees will not, whether under the Trust Deed or otherwise, actively seek Crown intervention or restriction in respect of this Deed in order to cause or create an unavoidable delay or inability to perform under this Deed.

**18.2 Further Acts**

Each of the parties will without consideration sign, execute and deliver any document and will perform any other act which may be necessary or desirable to give full effect to this Deed.

**18.3 Entire Agreement**

This Deed supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of this Deed and sets forth the entire and exclusive agreement and understanding between the parties relating to the subject matter of this Deed.

**18.4 No Waiver or Variation**

The parties agree that no provision of or right created under this Deed may be waived or varied if that waiver or variation were to materially alter the original purpose of this Deed.

**18.5 Partial Exercise of Rights**

No single or partial exercise by any party of any right, power or remedy under this Deed will preclude any other or further exercise of that or any other right, power or remedy.

**18.6 Severance**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 3: MANAGEMENT DEED**

If any provision of this Deed is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Deed to the intent that the invalid or unenforceable provision will be treated as severed from this Deed.

**18.7 Counterparts**

This Deed may consist of a number of counterparts, each of which when executed will be an original and all the counterparts together will constitute one and the same instrument.

**18.8 Indemnity**

Each indemnity under this Deed is a continuing indemnity and will constitute a separate and independent obligation of the party giving the indemnity from its other obligations under this Deed and will survive the execution, delivery, completion and termination of this Deed.

**18.9 Governing Law**

This Deed will be construed in accordance with and will be governed by the laws for the time being in force in New Zealand. Each of the parties irrevocably submits to the non-exclusive jurisdiction of any of the courts of New Zealand.

**18.10 Full Authority**

Each party warrants to the other party that, prior to the entering into this Deed, that it has obtained all authorities necessary to become bound to the terms and conditions of the Deed, and there are no restrictions or other obligations known to it which would or might impede it in giving full effect to this Deed.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 3: MANAGEMENT DEED**

**EXECUTED** by the parties as an agreement on the date set out above.

**EXECUTION**

**Signed by the Trustees of the Te Arika  
Trust by:**

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

**Signed by the Trustees of the Te  
Pumautanga o Te Arawa Trust by:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART 4: FORM OF TE ARIKI WALKWAY EASEMENT**

**PART 4: FORM OF TE ARIKI WALKWAY EASEMENT**

**(Clauses 10.1.47(b) and 10.12)**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 4: FORM OF TE ARIKI WALKWAY EASEMENT**

**ANNEXURE SCHEDULE 1**

Easement Instrument	Dated:	Page 4 of 6 pages
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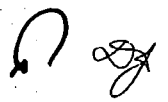
**SCHEDULE B**

**RIGHTS AND POWERS**

**Rights of way**

- (1) The right of way includes the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights, at all times, to go over and along the Easement Area.
- (2) The right of way includes the right for the public to go over and along the Easement Area on foot and where the Grantee wishes to carry out work to develop, improve or maintain the Easement Area its employees or contractors may proceed along the Easement Area by foot and with hand-held tools, or with the consent of the Grantor, which will not be unreasonably withheld, by vehicle or any other means of transport and with all necessary tools, vehicles and equipment to carry out the work.
- (3) The right of way includes—
  - (a) the right to establish a walkway on the Easement area, to repair and maintain an existing walkway on the Easement Area, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and
  - (b) the right to have the Easement Area kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of the walkway; and
  - (c) the right for the Grantee to improve the Easement Area in any way it considers expedient, including track markers, stiles, but without at any time causing damage to the Land or interfering with the Grantor's management of the Land and
  - (d) the right for the Grantee to erect and display such notices on the Easement Area or on the property of the Grantor.
- (4) The right of way does not confer on the public the right to camp on or adjacent to the walkway on the Easement Area without the consent of the Grantor which must be first obtained.
- (5) No horse or any other animal (including any dogs or other pets of any description whether on a leash or not) may be taken on the walkway on the Easement Area without the consent of the Grantor.
- (6) Any firearm carried on the walkway must be done so in accordance with the Arms Act 1983.
- (7) The public may not use any vehicle, including motorcycles or bicycles or any means of locomotion, mechanical electrical or otherwise on the walkway on the Easement Area without the consent of the Grantor.
- (8) The public may not light any fires or deposit any rubbish on the Easement Area.

All signing parties and either their witnesses or solicitors must sign or initial in this box.





**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 4: FORM OF TE ARIKI WALKWAY EASEMENT**

**General rights**

- (1) The Grantor must not do and must not allow to be done on the servient land anything that may interfere with or restrict the rights under this easement or of any other party or interfere with the efficient operation of the Easement Area.
- (2) Except as provided in this easement the Grantee must not do and must not allow to be done on the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement Area.

**Repair, maintenance, and costs**

- (1) The Grantee is responsible for arranging the repair and maintenance of the walkway on the Easement Area and for the associated costs, so as to keep the area in good order and to prevent it from becoming a danger or nuisance.
- (2) The Grantee must meet any associated requirements of the relevant local authority.
- (3) The Grantee will repair all damage that may be caused by the negligent or improper exercise of any right or power conferred by this easement.

**Rights of entry**

- (1) For the purpose of performing any duty or in the exercise of any rights conferred or implied in the easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld —
  - (a) enter upon the servient land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - (b) remain on the servient land for a reasonable time for the sole purpose of completing the necessary work; and
  - (c) leave any vehicles or equipment on the servient land for a reasonable time if work is proceeding.
- (2) The Grantee must ensure that as little damage or disturbance as possible is caused to the servient land or to the Grantor.
- (3) The Grantee must ensure that all work is performed in a proper and workmanlike manner.
- (4) The Grantee must ensure that all work is completed promptly.
- (5) The Grantee must immediately make good any damage done to the servient land by restoring the surface of the land as nearly as possible to its former condition.
- (6) The Grantee must compensate the Grantor for all damages caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the servient land.

**All signing parties and either their witnesses or solicitors must sign or initial in this box.**



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 4: FORM OF TE ARIKI WALKWAY EASEMENT**

**Default**

If the Grantor or the Grantee does not meet the obligations implied or specified in any easement—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation; and
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
  - (i) meet the obligation; and
  - (ii) for that purpose, enter the servient land;
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation; and
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

**Disputes**

If a dispute in relation to an easement arises between parties who have a registered interest under the easement—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties)—
  - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
  - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the District Law Society (being the District Law Society that has its headquarters closest to the land).

**Controlling Authority**

If the Minister of Conservation is considering appointing a controlling authority for the walkway under section 11 of the New Zealand Walkways Act 1990, the Grantee will invite the Minister to consult with the Grantor and suggest that as a condition of any such appointment, the Minister should consider imposing the requirement that the controlling authority should apply any surplus money received from any charges it imposes for the use of facilities and amenities on the walkway to improving the walkway or the facilities and amenities on the walkway.

All signing parties and either their witnesses or solicitors must sign or initial in this box.



**PART 5: FORM OF WAI-O-TAPU SITE EASEMENT**

**PART 5: FORM OF WAI-O-TAPU SITE EASEMENT**

**(Clause 10.1.60)**

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 5: FORM OF WAI-O-TAPU SITE EASEMENT

[Form to be redrafted as an easement instrument]

Date

**PARTIES**

3 THE TRUSTEES OF THE TE PUMAUTANGA O TE ARAWA TRUST (the "Grantor")

4 [OWNER OF GRANTEE'S LAND] (the "Grantee")

**BACKGROUND**

- A. The Grantee wishes to enter upon and cross the Grantor's Land for the purpose of gaining access to and egress from the Grantee's Land (as herein defined).
- B. The Grantor has agreed to allow the Grantee to enter upon and cross the Grantor's Land, for the purposes of enabling the Grantee to gain access to and egress from the Grantee's Land on the terms and conditions set out in this Deed.

**BY THIS DEED IT IS AGREED AND DECLARED** as follows:

1 **DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions:**

In this Deed, unless the context otherwise requires:

"**Commencement Date**" means the date first written above;

"**Deed**" means this deed, the Background and the Schedule annexed hereto;

"**Grantee**" also includes the registered proprietors of the Grantee's Land and the licensees, lessees, employees, agents, contractors, successors and assigns of the Grantee;

"**Grantor**" also includes the other registered proprietors from time to time of the Grantor's Land;

"**Grantee's Land**" means the land described in paragraph 3 of the First Schedule;

"**Grantor's Land**" means the land described in paragraph 1 of the First Schedule and includes any part thereof;

*[The following definitions will be omitted if there is no Crown Forestry Licence at the time the easement is granted]*

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 5: FORM OF WAI-O-TAPU SITE EASEMENT**

["**Crown Forestry Licence**" means a Crown Forestry Licence granted under section 14 of the Crown Forest Assets Act 1989;

"**Crown Forestry Licensee**" means the Licensee under a Crown Forestry Licence over the Grantee's Land and includes the employees, agents, contractors and successors and assigns of the Crown Forestry Licensee;]

**1.2 Construction**

In the construction of this Deed unless the context otherwise requires:

- 1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Deed;
- 1.2.2 references to Clauses and the Schedule are to the clauses and the schedule of this Deed;
- 1.2.3 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to; and
- 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

**2 GRANT OF ACCESS RIGHTS**

- 2.1 Pursuant to section [*enter appropriate section and title of settlement legislation*] the Grantor hereby grants to the Grantee a right of way over that part of the Grantor's Land shown marked A on SO 395143 together with the rights and powers set out in Schedule Four of the Land Transfer Regulations 2002 except to the extent that they are modified, varied or negated by the terms and conditions set out in this Deed to the intent that the easement shall be forever appurtenant to the Grantee's Land as set out in the First Schedule.
- 2.2 In consideration of the Grantor agreeing to enter into this Deed the Grantee shall duly observe the obligations imposed on it under this Deed.

**3 OBLIGATIONS OF THE GRANTEE**

The rights and powers conferred under Clause 2 of this Deed are granted subject to the following conditions and obligations:

- 3.1 The Grantee shall when passing or repassing over the Grantor's Land:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 5: FORM OF WAI-O-TAPU SITE EASEMENT**

3.1.1 wherever possible, remain on the roads and tracks constructed on the Grantor's Land and when on those roads or tracks comply with all traffic laws and regulations as are applicable to public roads;

3.1.2 not use or cause to be used either any tracked vehicle or any other class of vehicle which has been reasonably prohibited by the Grantor provided that

the Grantee shall be permitted, without limitation to use any class of vehicle which is ordinarily used in a production forest (including, but not limited to, haulers and heavy logging trucks);

3.1.3 take all due care when taking any welding equipment over the Grantor's Land and shall not use or operate or cause to be used or operated any welding equipment on the Grantor's Land without the prior written permission of the Grantor;

3.1.4 immediately after passing through any gates on the Grantor's Land, close such of them as were closed and lock such of them as were locked immediately before such passing through;

3.1.5 take all reasonable and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage, disease or the spread of noxious weeds and pests) either on the Grantor's Land, on any surrounding or adjoining land, forest or water, or to any vegetation on the Grantor's Land, and in particular shall (but without limiting the general obligation to take reasonable and proper precautions pursuant to this Clause 3.1.5):

(a) comply strictly with all reasonable conditions that may be imposed from time to time by the Grantor or other lawful authority; and

(b) not use or operate any vehicle or machinery unless it is provided with safe and sufficient means of preventing the escape of sparks or flames;

3.2 Subject to Clauses 3.7 and 3.8, the Grantee shall, at its cost, repair to the satisfaction of the Grantor, any of the Grantor's roads, tracks, fences, gates, drains, buildings or other structures which are damaged by the Grantee;

3.3 The Grantee shall annually pay to the Grantor a proportion of the cost of maintenance of any of the roads or tracks on the Grantor's Land commensurate with the use made by the Grantee of such roads or tracks **PROVIDED THAT** the Grantee shall not be liable to contribute towards the cost of repairing any damage to a road or track which was the sole result of the Grantor's negligent use of that track or road;

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 5: FORM OF WAI-O-TAPU SITE EASEMENT**

- 3.4 The Grantee shall not exhibit any notice or sign on the Grantor's Land without the prior written consent of the Grantor as to the style, content, wording, size and location of the notice or sign (which consent shall not be unreasonably or arbitrarily withheld) provided that this clause 3.4 shall not prevent the Grantee from displaying temporary operational signs necessary for the health and safety of road users. Such temporary operational signs shall not purport to close the road or restrict public access to the Grantor's Land, are to be consistent with the standards set by the Land Transport Safety Authority and must be removed when the operation has been completed;
- 3.5 The Grantee will ensure, at all times, in the exercise of the rights set out in this Deed that its agents, employees or contractors will not obstruct or hamper the Grantor or its agents, employees and contractors, in its or their normal or reasonable use of the Grantor's Land;
- 3.6 Subject to Clauses 3.7 and 3.8, in the event that the Grantor's roads, tracks and structures are not of sufficient standard for the use to be made of them by the Grantee, then any necessary improvements and maintenance shall be at the sole cost of the Grantee;
- 3.7 When carrying out any repairs, maintenance or improvements to a road under clauses 3.2 and 3.6, the Grantee shall not:
- 3.7.1 widen the road; or
  - 3.7.2 alter the location of the road; or
  - 3.7.3 alter the way in which the run-off from the road is disposed of; or
  - 3.7.4 change the nature of the road surface; or
  - 3.7.5 park or store equipment or material on the Grantor's Land
- without the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;
- 3.8 The Grantee shall not erect any structures on the Grantor's Land or make any additions or alterations to existing structures or replace such structures unless the Grantee has obtained the Grantor's prior written consent, such consent not to be unreasonably withheld or delayed;
- 3.9 The Grantee shall not at any time, except with the prior written approval of the Grantor, carry out any earthworks or cut down, pull out, dig up, use, burn, remove, or otherwise dispose of any vegetation on the Grantor's Land nor shall the Grantee authorise such cutting down, pulling out, digging up, use, burning, removal or other disposal of any vegetation without the prior written approval of the Grantor;

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

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PART 5: FORM OF WAI-O-TAPU SITE EASEMENT

- 3.10 The Grantee shall not, without the prior written approval of the Grantor, carry or discharge any firearm, missile or other offensive weapon, or kill or trap any animals or birds, over or on the Grantor's Land, nor shall the Grantee authorise such carrying, discharging, killing, or trapping without the prior written approval of the Grantor;
- 3.11 The Grantee shall comply at all times with all statutes and regulations, in particular the [Reserves Act 1977], and obtain all approvals, consents and authorisations as are necessary for the Grantee to conduct the activities permitted by this Deed. This easement, granted in accordance with [*enter appropriate section and title of settlement legislation*], will be enforceable in accordance with its terms, despite the provisions of the Reserves Act 1977.

4 **GRANTOR'S RIGHTS**

The Grantor reserves the right at any time or times hereafter to erect, renew, and maintain gates together with all necessary fittings and fixtures across any road or track on the Grantor's Land, but so that such gates when opened shall leave a clear space of a width not less than five (5) metres for passage **PROVIDED THAT** the Grantor shall furnish at the expense of the Grantee, keys to any locks fitted to any of the said gates.

5 **COSTS**

The Grantee shall be liable to the Grantor for any reasonable costs or expenses, including reasonable legal costs, incurred by the Grantor arising from or incidental to the enforcement of any provision in this Deed.

6 **LICENCE**

*[This clause will be omitted if there is no Crown Forestry Licence at the time this easement is granted]*

The Grantor and the Grantee record that at the time that the easement is granted there is a Crown Forestry Licence in respect of the Grantee's Land, under which the Crown Forestry Licensee has rights in respect of the Grantor's Land, and this Deed is entered into subject to, and the rights under it must not be exercised in a manner inconsistent with those rights of the Crown Forestry Licensee.

7 **REGISTRATION**

The parties shall take and do all such acts and things necessary to ensure that this Deed (or easement instrument granting a right of way easement on substantially the same terms) is registered in the South Auckland Land Registry Office as soon as the Registrar-General of Land confirms that this Deed, or such easement instrument, can be registered against the Grantor's Land.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 5: FORM OF WAI-O-TAPU SITE EASEMENT**

**8 DELEGATION**

All rights, benefits, and obligations of a party to this Deed arising under this Deed may be exercised by a person duly appointed by that party **PROVIDED THAT** the exercise of any such rights, benefits, or obligations by that duly appointed person shall not limit the liability of either party in the performance or observance of the provisions of this Deed.

**9 NOTICES**

9.1 Any notice to be given by one party under this Deed to the other shall be in writing and shall be forwarded by either delivering or posting it to the addressee at the appropriate address set out below or to such address notified by the addressee in writing to the other party:

9.1.1 the Grantor's address as set out in paragraph 2 of the First Schedule;

9.1.2 the Grantee's address as set out in paragraph 4 of the First Schedule.

9.2 Any notice posted shall be deemed to be served three (3) working days after the date of posting.

**10 SEVERABILITY**

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

**11 DISPUTES RESOLUTION**

Should any dispute arise between the parties touching any matter relating to this Deed then:

11.1 any dispute will be defined by written notice by the party raising it to the other and will forthwith be discussed (on a "without prejudice" basis) by the parties in an attempt to resolve their differences amicably, including, with the agreement of both parties, the discussion extending to a mediation discussion in the presence of an experienced mediator (who will be agreed between the parties or, failing agreement, a mediator appointed by the President for the time being of the Auckland District Law Society);

11.2 if such discussion or mediation between the parties fails to produce any agreement, within 14 days of receipt by the other party of the written notice, the matter in dispute will be referred to arbitration in accordance with the Arbitration Act 1996;



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 5: FORM OF WAI-O-TAPU SITE EASEMENT**

- 11.3 the arbitration will be commenced by either party giving to the other notice in writing stating the subject matter and details of the difference and that party's desire to have the matter referred to arbitration;
- 11.4 the arbitration will be by one arbitrator to be agreed by the parties and, failing agreement, as appointed by the then President of the New Zealand Law Society or its successor. The award in the arbitration will be final and binding on the parties.

**IN WITNESS WHEREOF** this Deed has been duly executed on the date first written above.

*Signed* for and on behalf of **THE TRUSTEES OF THE TE PUMAUTANGA O TE ARAWA TRUST** as Grantor by

*Signed* for and on behalf of **[OWNER OF GRANTEE'S LAND]** as Grantee by:

\_\_\_\_\_

*in the presence of:*

\_\_\_\_\_

*Name:*

*Occupation:*

*Address:*

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

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PART 5: FORM OF WAI-O-TAPU SITE EASEMENT

FIRST SCHEDULE

**1 GRANTOR'S LAND:**

[enter details]

**2 GRANTOR'S ADDRESS:**

[Te Pumautanga Trustees]

[Enter address]

**3 GRANTEE'S LAND:**

[enter details]

**4 GRANTEE'S ADDRESS:**

[Owner of Grantee's Land]

[Enter address]

**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

**PART 6: FORM OF EXISTING LEASE VARIATION  
(ARIKIKAPAKAPA LEASE)**

**(Clause 10.1.87(b))**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

**1 PARTIES**

- 1.1 **THE SOVEREIGN** in right of the Government of New Zealand acting by and through [ ], Chief Executive, Ministry of Economic Development ("the Lessor").
- 1.2 **THE NEW ZEALAND MAORI ARTS AND CRAFTS INSTITUTE** a body corporate duly constituted under the provisions of Section 4 of the New Zealand Maori Arts and Crafts Institute Act 1963 ("the Lessee").

**2 PRELIMINARY**

- 2.1 The Minister in Charge of Tourism acting on behalf of **THE SOVEREIGN** entered a lease with the Lessee who was then known as the **ROTORUA MAORI ARTS AND CRAFTS INSTITUTE** dated 9 November 1965 in respect of the Land and the Whakarewarewa Reserve Land, which lease was registered under Vol 2021 Folio 47 (South Auckland Registry). This lease, including renewal and variation of lease registered under number B457107.1, is held in computer interest register SA2021/47 (called "the Existing Lease").
- 2.2 The Minister of Tourism acting on behalf of **THE SOVEREIGN** has continued responsibility for the Lessor's administration of the Existing Lease subsequent to the dissolution of the New Zealand Tourist and Publicity Department.
- 2.3 In accordance with the provisions of the Deed of Settlement of the Historical Claims of The Affiliate Te Arawa Iwi/Hapu, the Lessor and the Lessee agreed to partially surrender the Existing Lease by deed of surrender dated [ ] in relation to the Whakarewarewa Reserve Land, in consideration for entering into this variation of the Existing Lease of the Land (hereafter called "this Lease") and a lease of the Arikikapakapa Section 101 Land of even date with this Lease (hereafter called "the Arikikapakapa Section 101 Lease") and in consideration for the Whakarewarewa Lease Lessor and the Lessee entering into a new lease of the Whakarewarewa Reserve Land of even date with this Lease (hereafter called "the Whakarewarewa Lease").
- 2.4 The Lessor and the Lessee have agreed to vary the Existing Lease upon the terms and conditions set out in clauses 1-28 which are attached and shall form part of this Lease with effect from [Settlement Date under Deed of Settlement] ("the Effective Date").
- 2.5 The Lessor and the Lessee are entering into this Lease and the Arikikapakapa Section 101 Lease, and the Whakarewarewa Lease Lessor and the Lessee are entering into the Whakarewarewa Lease with the intention that the Leases will be dealt with, to the extent provided for in the Leases, on the basis that they are and will remain connected with each other, as if the Land, the Arikikapakapa Section 101 Land and the Whakarewarewa Reserve Land were leased to the Lessee under one lease.

**Schedule of Land**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

<b>Area</b>	<b>Legal Description</b>
0.5978 hectares more or less	Part Lot 1 DP 23567;
10.0012 hectares more or less	Part Lot 3 DP 23567; and
3.2931 hectares more or less	Section 8 Block XLIX Town of Rotorua.
<b>Encumbrances, Liens &amp; Interests</b>	
[1. <i>Need to be completed.</i>	
2. ]	

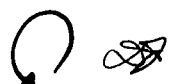
**DATED** 20

**EXECUTION**

**THE SOVEREIGN)**

acting by and through [ )  
the Chief Executive of the Ministry of )  
Economic Development acting under )  
delegated authority from the Minister )  
of Tourism in the presence of: )

**NEW ZEALAND MAORI ARTS )  
AND CRAFTS INSTITUTE** a body )  
corporate duly incorporated under the )  
provisions of Section 4 of the )  
New Zealand Maori Arts and Crafts )  
Institute Act 1963 in the presence of: )



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

**FIRST SCHEDULE**

1. The Existing Lease is varied as follows:
  - 1.1 Delete Schedules B, C and D inclusive and replace them with clauses 1-28 in Schedule 2 following as from the Effective Date.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

**SECOND SCHEDULE**

Insert the following clauses in the Existing Lease in substitution for Schedules B, C and D deleted by clause 1.1 of the First Schedule of this Lease.

**1 INTERPRETATION AND DEFINITIONS**

1.1 For the purpose of the interpretation or construction of this Lease, unless the context provides otherwise:

1.1.1 Words importing any gender shall include all other genders.

1.1.2 Words importing the singular shall include the plural and vice versa.

1.1.3 Payments shall be made in the lawful currency of New Zealand.

1.1.4 Headings shall be ignored.

1.1.5 References to schedules are references to schedules in this Lease and references to clauses are references to clauses in this Lease and references to parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under clause 14) unless expressly stated otherwise.

1.1.6 A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004, or State enterprise, in each case whether or not having separate legal personality.

1.1.7 "Writing" shall include words visibly represented or reproduced.

1.1.8 No consent or waiver, express or implied by the Lessor, to or of any breach of any covenant, condition or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.

1.1.9 Nothing contained in this Lease shall be deemed or construed or constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.

1.1.10 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.

1.1.11 The parties acknowledge and agree that certain covenants set out in this Lease (in particular, provisions relating to the treatment of Lessee's Improvements on termination or sooner determination of this Lease in clause



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

20) shall continue beyond the expiry or sooner determination of this Lease for the benefit of the parties notwithstanding the prior expiry or sooner determination of this Lease.

1.1.12 This Lease shall be construed and take effect in accordance with the laws of New Zealand.

1.1.13 Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.

1.1.14 "Annual Rent" is a reference to all annual rental payable under this Lease and the Arikikapakapa Section 101 Lease as calculated in clause 3.1, plus GST.

1.1.15 "Admission Income" means all income received from admission charges to the Land, the Arikikapakapa Section 101 Land and the Whakarewarewa Reserve Land levied by the Lessee excluding:

(a) GST; and

(b) any lawful commissions paid to tourist operators in relation to that admission income.

1.1.16 "Admission Income Percentage" is a percentage that is multiplied by the Admission Income to calculate the Annual Rent. From the Effective Date the Admission Income Percentage shall be 6.75 per cent. Any review of the Admission Income Percentage shall include a consideration of the capital sum invested by the Lessee for the purposes of enhancing the enjoyment by sightseers of natural features on the Land and the Whakarewarewa Reserve Land. For the avoidance of doubt, capital expenditure expended on Lessee's Improvements on the Land, including any future capital expenditure on alterations or additions to those improvements or on new Lessee's Improvements on the Land, shall be assumed not to exist when reviewing the Admission Income Percentage.

1.1.17 "Arikikapakapa Section 101 Land" means the land comprising 0.9143 hectares, more or less, being Section 101 Block I Tarawera Survey District.

1.1.18 "Authority" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and any Lessor's Improvements or Lessee's Improvements but shall exclude the Lessor acting in its capacity as Lessor under this Lease.

1.1.19 "The Act" means the New Zealand Maori Arts and Crafts Institute Act 1963.

1.1.20 "Crown" means The Sovereign in right of the Government of New Zealand acting by and through [ ], Chief Executive, Ministry of Economic Development, being the Lessor under this Lease and the Arikikapakapa Section 101 Lease.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

- 1.1.21 "Land" and "the Land" is a reference to all the land described in the First Schedule.
- 1.1.22 "Leases" means this Lease, the Arikikapakapa Section 101 Lease and the Whakarewarewa Lease.
- 1.1.23 The expression "the Lessee" shall include and bind:
- (a) the persons executing this Lease as Lessee;
  - (b) any Lessee for the time being under it; and
  - (c) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally.
- 1.1.24 "Lessee's Improvements" shall mean all improvements on the Land of any kind whatsoever including buildings, tunnels, sealed or unsealed yards, paths, tracks, roads, bridges, lawns, gardens, fences and other property of any kind whatsoever constructed or placed on the Land by the Lessee or any person or body authorised by the Lessee but shall exclude "Lessor's Improvements".
- 1.1.25 The expression "the Lessor" shall include and bind:
- (a) the person executing this Lease as Lessor and the person executing the Arikikapakapa Section 101 Lease as lessor;
  - (b) all the Lessors for the time being under this Lease and the Arikikapakapa Section 101 Lease; and
  - (c) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.
- 1.1.26 "Lessor's Improvements" means those improvements attached to the Land as at 31 January 1965, as listed in the Third Schedule, and all improvements on the Land of any kind whatsoever including buildings, tunnels, sealed or unsealed yards, paths, tracks, roads, bridges, lawns, gardens, fences and other property of any kind whatsoever constructed or placed on the Land by the Lessor after 1 February 1998 under the Existing Lease with the consent of the Lessee and which is or is subsequently listed in clause 6 (as that clause may be varied from time to time). All improvements on the Land as at 1 February 1998 under the Existing Lease, except those improvements listed in the Third Schedule, were Lessee's Improvements.
- 1.1.27 "Permitted Use" shall have the meaning given to those words in clause 11.
- 1.1.28 "Renewal Date" means 1 February 2028 and each subsequent first day of the term of any renewal of this Lease.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

- 1.1.29 "Review Date" means 1 February 2013, and each succeeding fifth anniversary of that date during the continuance of this Lease or any renewal of this Lease including any Renewal Date.
- 1.1.30 "Regional and District Plans" shall have the meanings set out in section 2 of the Resource Management Act 1991 and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- 1.1.31 "Whakarewarewa Reserve Land" means the land comprising 43.4200 hectares, more or less, being Section 1 SO 390094. .
- 1.1.32 "Whakarewarewa Lease Lessor" means the lessor from time to time of the Whakarewarewa Lease.
- 1.1.33 "Working Day" means:
- (a) any day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday and Waitangi Day; and
  - (b) a day in the period commencing with the 25<sup>th</sup> day of December in any year and ending with the seventh day of January in the following year.

**2 TERM**

- 2.1 The initial term of this Lease was for a period of thirty three years from 1 February 1965 to 31 January 1998 inclusive.
- 2.2 The first renewal of this Lease shall be for a period of thirty (30) years from 1 February 1998 to 31 January 2028 inclusive.
- 2.3 Second and subsequent renewals (if exercised) shall be for thirty (30) year terms commencing on 1 February in each year following the expiry of the previous term. These rights of renewal are exercisable in perpetuity.

**3 RENT**

- 3.1 The Annual Rent shall be calculated by:
- 3.1.1 multiplying the Admission Income by the Admission Income Percentage; and
  - 3.1.2 dividing the amount in 3.1.1 by two.
- 3.2 The Annual Rent is calculated on the basis in clause 3.1 with the intention that, for the term (including all renewal terms) of this Lease, the Arikikapakapa Section 101 Lease and the Whakarewarewa Lease, the annual rent amount derived from the calculation in clause 3.1.1 will be shared equally between the Lessor and the Whakarewarewa Lease Lessor.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

- 3.3 The Lessor will not enter into any arrangement, or agreement with the Lessee, whether under this Lease, or independently of this Lease, or allow the Lessee to take any action or make any decisions that would, or is likely to, reduce the amount of Admission Income derived from the Land, the Arikikapakapa Section 101 Land and from the Whakarewarewa Reserve Land, without the prior written consent of the Whakarewarewa Lease Lessor.
- 3.4 The Lessee shall pay the Annual Rent in twelve instalments two monthly in arrears on the first days of each month during the continuance of this Lease, commencing with a first payment on 1 April 1998 which shall be for the month of February, (which payment dates are hereafter collectively called "the Rent Payment Dates").
- 3.5 Annual Rent shall be reviewed and otherwise varied in accordance with this Lease.

**4 RECONCILIATION OF ANNUAL RENT**

- 4.1 The Lessee shall on each Rent Payment Date provide to the Lessor written confirmation of Annual Rent for the monthly period to which that payment relates, including a calculation as to how the quantum of that payment was arrived at.
- 4.2 No later than two months after the end of the Lessee's financial year the Lessee shall supply to the Lessor:
- 4.2.1 an audited reconciliation of Admission Income received to Annual Rent paid to the Lessor for the Lessee's previous financial year; and
- 4.2.2 if requested, the Lessee's audited accounts for the previous financial year.
- 4.3 Should:
- 4.3.1 the information supplied pursuant to clause 4.2.1 above be found to be incorrect; or
- 4.3.2 it be ascertained that for any other reason Annual Rent for the previous financial year has been underpaid or overpaid,

then the Lessor shall notify the Lessee in writing of the amount of the overpayment or underpayment and any financial adjustment between the parties shall be dealt with as follows:

- (a) where the Annual Rent has been overpaid, the Lessor shall credit the surplus amount to the Lessee's account; and
- (b) where the Annual Rent has been underpaid, the Lessee shall pay the difference to the Lessor at the same time as the instalment of Annual Rent next following notification of the underpayment.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

Should the amount of underpayment or overpayment not be credited or paid in accordance with paragraphs (a) and (b) above, overdue money shall bear interest at the default rate specified in clause 10 until they are paid.

- 4.4 Any disputes over the quantum of any payment due under clause 4.3 shall be resolved in the manner provided in clause 4.8 following.
- 4.5 The Lessee shall maintain such records and calculations as are necessary to enable it to clearly identify all revenues from which all Annual Rent is derived.
- 4.6 The Lessee shall, no later than ten (10) working days after request from the Lessor make such records and calculations available to the Lessor for audit purposes.
- 4.7 The Lessee shall assist the Lessor or the Lessor's nominee in the audit of the records and calculations referred to in clause 4.5 above to the fullest extent possible to the end and intent that the parties may agree upon Annual Rent for any period audited by the Lessor.
- 4.8 Should the parties be unable to agree upon any annual or monthly Annual Rent, this figure shall be initially determined by the Lessee's auditor but if the Lessor disagrees with this initial determination, then a Chartered Accountant (hereafter called "the Nominee") may be appointed by the President of the Institute of Chartered Accountants of New Zealand upon the application of either party. The determination by the Nominee of any annual or monthly Annual Rent shall be final and binding on the parties who shall contribute equally to the Nominee's costs. The parties shall cooperate with the Nominee to the fullest extent possible in the Nominee's determination of any Annual Rent in dispute.

**5 REVIEW OF ANNUAL RENT**

- 5.1 Annual Rent shall be reviewable on each Review Date and may be initiated by either party up to six (6) calendar months prior to any Review Date giving written notice to the other party (hereafter referred to as the "Clause 5.1 Notice") proposing a variation to the Annual Rent.
- 5.2 The party issued with the Clause 5.1 Notice may within sixty (60) working days of receipt of such notice serve a counter notice which sets out any counter proposals made to those contained in any Clause 5.1 Notice. Any counter notice served under this clause is hereafter referred to as a "Clause 5.2 Counter Notice".
- 5.3 Any notice served under clause 5.1 or 5.2 above may be accompanied by a report from a registered valuer as to the matters relevant to the rent review.
- 5.4 In the event that no Clause 5.2 Counter Notice is given within the sixty (60) working days prescribed in clause 5.2, the party served with the Clause 5.1 Notice shall be deemed to have accepted that notice.
- 5.5 Where a party has given a Clause 5.2 Counter Notice within the sixty (60) working day timeframe therein specified, the parties shall endeavour to agree upon the reviewed

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

Annual Rent or any part of that Annual Rent which is disputed but if agreement is not reached within thirty (30) days, then the matter may be determined either:

- 5.5.1 By one party giving written notice to the other requiring the matters in dispute be determined by arbitration under the provisions of clauses 24.3 and 24.4; or
- 5.5.2 If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
- (a) each party shall appoint a valuer and give written notice of the appointment to the other party within twenty eight (28) days of the parties agreeing to implement the provisions of this clause;
  - (b) if a party fails to appoint a valuer within the twenty eight (28) day period specified in clause 5.5.2(a), then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
  - (c) the valuers appointed before commencing their determination shall appoint an arbitrator under the provisions of the Arbitration Act 1996 who need not be a registered valuer;
  - (d) the valuers shall endeavour to determine the matters in dispute and if they fail to agree then the outstanding issue(s) shall thereafter be determined by the arbitrator; and
  - (e) each party, through their valuers, shall be given the opportunity to make written or verbal representations to the arbitrator subject to such reasonable time and other limits as the arbitrator may prescribe and the arbitrator shall have regard to any such representations but not be bound to accept or act upon them.
- 5.6 When the matters in dispute have been determined, the arbitrator or the valuers, as the case may be, shall give written notice thereof to the parties.
- 5.7 Any notice given by an arbitrator pursuant to clause 5.6 above may also direct how the costs of any determination shall be borne and such notice shall be binding on the parties.
- 5.8 Any monetary adjustment between the parties resulting from any agreement or determination under this clause shall be made within fourteen (14) days of any such determination. Overdue money shall bear interest at the rate prescribed in clause 10 until paid.
- 5.9 The Lessor and the Lessee acknowledge and agree that the rent review on the Review Date on 1 February 2013, and all subsequent rent reviews under this Lease, will be undertaken on the basis that the Lessor will undertake and participate in the entire rent review process jointly, and in co-operation with, the Whakarewarewa Lease Lessor, with the intention that the rent review under this Lease will be undertaken as a joint rent review with the rent review under the Whakarewarewa Lease.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

5.10 Without limiting clause 5.9:

5.10.1 the Lessor must ensure that the valuer appointed by it for the purposes of this clause 5 is also appointed by the Whakarewarewa Lease Lessor for the purposes of the corresponding review under the Whakarewarewa Lease;

5.10.2 a notice given under clause 5.5.1 must require matters in dispute in the corresponding review under the Whakarewarewa Lease to be determined by the same arbitration, and any such notice will have effect accordingly;

5.10.3 each party must ensure that the arbitrator appointed under clause 5.5.2(c) is the same arbitrator appointed for the purposes of the corresponding review under the Whakarewarewa Lease and that the two reviews are determined at the same arbitration.

5.11 Despite the other provisions of clause 5, the reviewed Annual Rent agreed or determined at each rent review, will always be calculated so that the Annual Rent and the annual rent under the Whakarewarewa Lease are equal amounts.

5.12 To avoid doubt, the parties agree that all rent reviews of the Annual Rent undertaken under this Lease are also rent reviews of the Annual Rent under the Arikikapakapa Section 101 Lease.

**6 LESSOR'S IMPROVEMENTS**

6.1 There are no Lessor's Improvements on the Land as at the Effective Date, except those attached to the Land as at 31 January 1965 as listed in the Third Schedule. Should the Lessor with the consent of the Lessee subsequently construct Lessor's Improvements on the Land, then the parties agree that the provisions of this clause shall be varied to record particulars of such additional Lessor's Improvements.

**7 PAYMENT OF RATES AND IMPOSITIONS**

7.1 The Lessee will pay all rates, taxes (including without limitation land or improvements tax), charges, assessments, impositions and outgoings whatsoever which now are or which during the term of this Lease shall be taxed, rated, charged, assessed or imposed on the Land, any Lessor's Improvements and Lessee's Improvements thereon or on the Lessor or Lessee in respect thereof by any Authority, excepting only Lessor's income tax.

**8 PAYMENT OF OTHER OUTGOINGS ON THE LAND**

8.1 The Lessee shall pay all other outgoings on the Land which shall include any:

8.1.1 additional rates, taxes and outgoings imposed on or payable in respect of the Land which are levied as a consequence of the Lessee's use or occupancy of the Land;

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- 8.1.2 charges for water, gas, electricity, telephone and other utilities or services consumed on the Land;
- 8.1.3 NZ Fire Service charges and maintenance charges in respect of all fire detection and fire fighting equipment used on the Land;
- 8.1.4 the cost of ground maintenance, yard and carparking area maintenance and repair charges on the Land;
- 8.1.5 costs incurred and payable in supplying to any Authority a building warrant of fitness and obtaining reports as required by Section 108 of the Building Act 2004 in respect of buildings on the Land;
- 8.1.6 premiums on insurance effected on any Lessor's Improvements and Lessee's Improvements on the Land;
- 8.1.7 security services provided in respect of the Land;
- 8.1.8 other costs or expenses incurred in the operation and management of the Permitted Uses on the Land whether related to the foregoing or not; and
- 8.1.9 maintenance obligations imposed on the Lessee by clause 19 of this Lease.

**9 GOODS AND SERVICES TAX**

- 9.1 The Lessee shall pay to the Lessor, upon demand, any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefore or in addition thereto or otherwise in respect of any payments made by the Lessee under this Lease or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

**10 INTEREST ON OVERDUE ANNUAL RENT OR OTHER MONEY**

- 10.1 Without prejudice to other rights, powers and remedies of the Lessor, if any goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for 20 working days after the due day for payment thereof (whether any formal or legal demand therefore shall have been made or not) such unpaid money shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such money at a rate which is 2% per annum above the rate at the time the default occurred for prime 90 day commercial bills at the Bank of New Zealand and that such interest shall be recoverable in the same manner as rent in arrears.

**11 USE OF THE LAND AND THE CONSTRUCTION OF LESSEE'S IMPROVEMENTS ON THE LAND**

- 11.1 The Lessee shall use the Land and any Lessee's Improvements and Lessor's Improvements for the following uses only (the "Permitted Uses"):



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- 11.1.1 those uses specifically allowed as permitted or controlled activities in any applicable District and/or Regional Plan; or
- 11.1.2 those uses specifically allowed by any resource consent granted under the Resource Management Act 1991 and/or any other statutory or regulatory provision.
- 11.2 The Lessee will, at all times during this Lease, otherwise use the Land in a manner consistent with the provisions of Section 15 of the Act.
- 11.3 Where the Lessee intends to erect or demolish buildings or otherwise disturb the surface of the Land then:
- 11.3.1 where the proposed activity does not require a resource consent, the Lessee may proceed with that activity provided that the Lessee gives prior written notice to the Lessor of its intention to undertake this activity; and
- 11.3.2 where the Lessee intends to erect or demolish buildings or otherwise disturb the surface of the Land and the activity requires a resource consent, the Lessee must obtain the prior written consent of the Lessor.
- 11.4 Where the prior written consent of the Lessor is sought under 11.3.2, this consent shall not be unreasonably or arbitrarily withheld, provided that such consent may be given subject to conditions prescribed by the Lessor.
- 11.5 Where plans and specifications of any proposed work requiring Lessor consent under clause 11.3 herein are available to the Lessee, these and any subsequent variations to them shall be supplied to the Lessor when approval is sought under clause 11.3 herein.
- 11.6 Should any of the Permitted Uses of the Land or the use of any Lessee's Improvement or Lessor's Improvement thereon or the construction of any Lessee's Improvement thereon be permissible only with the consent or licence of any lawful Authority under or in pursuance of statute or any Regional and District Plans or regulations or other enactments or any order of Court the Lessee shall obtain such consent, licence or order at the sole cost and expense of the Lessee and the Lessee shall at all times comply with any conditions of any such consent, licence or order.
- 11.7 The Lessor does not warrant that the Land is or will remain suitable or adequate for any of the Permitted Uses.
- 11.8 The Lessee accepts the Land as being satisfactory in all respects and with full knowledge of and subject to any prohibitions or restrictions on the use of the Land imposed by or arising out of any statute, regulation, bylaw, code, District Plan or which may otherwise either be indicated on title to the Land or arise in any other way.
- 11.9 Despite the other provisions in clause 11, the Lessor will not consent to any change in the Permitted Uses, or consent to the Lessee erecting or demolishing buildings or disturbing the surface of the Land under clause 11.3.2 if such a change in Permitted Uses or such work would, or is likely to, reduce the amount of Admission Income

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derived from the Land, the Arikikapakapa Section 101 Land and the Whakarewarewa Reserve Land, without the prior written consent of the Whakarewarewa Lease Lessor.

**12 NO FENCING**

12.1 The Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land and any adjoining land owned or occupied by the Lessor or Lessee.

**13 STATUTORY REQUIREMENTS**

13.1 The Lessee will comply with all statutes, Regional and District Plans, bylaws, codes and regulations which relate to the Land and the Lessor's Improvements and Lessee's Improvements or which relate to the Lessee's occupation and use of the Land and Lessor's Improvements and Lessee's Improvements and with all conditions or requirements which may be issued by any lawful Authority and will in particular but without limitation:

13.1.1 where appropriate ensure that a warrant of fitness is obtained each year in respect of any Lessor's Improvements and Lessee's Improvements on the Land as required under the Building Act 2004;

13.1.2 comply with and observe at all times the terms and conditions of all resource and other consents and permits held in respect of the Land;

13.1.3 ensure that proper and adequate health and safety procedures and any codes of practice are adopted in accordance with the Health and Safety in Employment Act 1992; and

13.1.4 otherwise comply with all statutes, regulations and codes as they relate to the Land,

and will keep the Lessor indemnified in respect of any non-compliance by the Lessee with any such statutory regulatory requirements as provided in clause 16.

**14 ASSIGNMENT, SUBLETTING, MORTGAGING AND CHARGING**

**14.1 Lessor's Written Consent Required**

The Lessee will hold and use the Land bona fide for its own use and benefit and will not transfer, assign, sublet, mortgage, charge or part with possession of the Land or any part thereof without the written consent of the Lessor, provided that approval to the granting of any charge will not be necessary in the case of a mortgage to the Crown or a Department of State.

**14.2 Assignment or Transfer**

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14.2.1 Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor must be satisfied that the obligations of the Lessee under this Lease have not been breached. Further, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor in a form acceptable to the Lessor, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such deed of covenant shall not release the Lessee or any assignor from the Lessee's or that assignor's obligations under this Lease.

14.2.2 Despite clauses 14.1 and 14.2.1, this Lease may not be transferred or assigned except in conjunction with a transfer or an assignment of the Arikikapakapa Section 101 Lease and the Whakarewarewa Lease to the same assignee or transferee, such assignee or transferor to be consented to jointly by the Lessor and the Whakarewarewa Lease Lessor, in accordance with the provisions of the Leases.

**14.3 Mortgage or Charge**

14.3.1 Any Lessor consent given to the Lessee to mortgage or otherwise charge this Lease under clause 14.1 herein shall not relieve the Lessee of the obligation to obtain a like consent from the Minister of Finance under the provisions of Section 23 of the Act.

14.3.2 The Lessee acknowledges that should the Lessor consent to the creation of any mortgage or other charge over the Lessee's interest in this Lease, then that mortgage or charge shall include covenants which, inter alia:

- (a) require the mortgagee or chargeholder to give the Lessor not less than 30 clear working days written notice of its intention to variously enter the Land and formally take possession thereof or, alternatively, to sell the Lessee's interest in the Lease for non-payment of any money owing to the mortgagee or chargeholder;
- (b) confer upon the Lessor or the Lessor's nominee a pre-emptive option to buy the mortgage or charge concerned for the value of the debt owed under it at any time within 20 working days prior to entering the Land or exercising any power of sale as a mortgagee;
- (c) gives a mortgagee or chargeholder acknowledgement that for the purpose of the mortgage or charge:
  - (i) the Lessor is a "person" within the contemplation of Section 4 Contracts (Privity) Act 1982 to the mortgage or charge;
  - (ii) any entry into possession or purported exercise of the power of sale contrary to the provisions of clause 14.3.2(a) and (b) above shall be enforceable by the Lessor through injunctive or other action in a Court of appropriate jurisdiction; and

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- (iii) the valuable consideration for the within covenants was the Lessor's consent to the creation of the mortgage or charge concerned.

14.3.3 The exact wording of the covenants referred to in clause 14.3.2 shall be advised by the Lessor when it consents to the granting of the mortgage or charge to which it relates.

14.3.4 Despite clauses 14.1 and 14.3.1-14.3.3, the Lessee may not mortgage or charge its interest in this Lease without also mortgaging or charging the Lessee's interest in the Arikikapakapa Section 101 Lease and the Whakarewarewa Lease.

**14.4 Sublease**

14.4.1 Subject to the provisions of clause 14.4 herein, the Lessee shall not sublet or grant a licence to occupy over the Land or any part thereof without first obtaining the written consent of the Lessor which the Lessor shall give if the following conditions are fulfilled:

- (a) the Lessee proves to the satisfaction of the Lessor that the proposed sublessee is (or in the case of a company the shareholders of the proposed subtenant are) respectable, responsible and have the financial resources to meet the commitments under any sublease; and
- (b) all rent and other money payable hereunder have been paid and there is not any subsisting breach of any of the Lessee's covenants;

14.4.2 The Lessor shall have the absolute discretion to decline to consent to any sublease where the term of that sublease, including any renewals thereof, exceeds twenty (20) years.

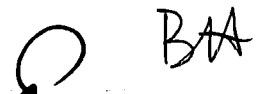
14.4.3 Where the Lessor consents to a subletting, the consent shall extend only to the subletting and, notwithstanding anything contained or implied in the sublease, the consent shall not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.

14.4.4 Where the Lessee subleases any part of the Land to which this Lease relates, the proposed sublease form must previously be approved in writing by the Lessor.

14.4.5 The Lessor shall, subject always to any contrary provisions contained in this Lease, not withhold any consent to vary the sublease which improves the financial return thereunder to the Lessee as sublessor.

**14.5 Lessor's Costs and Disbursements**

The Lessee shall pay the Lessor's proper costs and disbursements in respect of expenses incurred in reasonable enquiries made by the Lessor in respect of any

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assignment, subletting or licence to which this clause 14 relates and the preparation and stamping of any deed of covenant or guarantee or attendances on any other documentation to which this clause 14 relates.

- 14.6 In this clause 14, a reference to the Lessor will be deemed to be a reference to the Lessor and the Whakarewarewa Lease Lessor.

**15 LESSEE'S ACKNOWLEDGEMENT OF RISK**

- 15.1 The Lessee agrees to occupy and use the Land and any Lessee's Improvements or Lessor's Improvements on the Land at the Lessee's risk and release to the full extent permitted by law the Lessor and the Lessor's employees and agents from all claims and demands of any kind and from all liability which, in the absence of any negligence on the Lessor's part may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land and any Lessor's Improvements except where the Lessor or any person under the control of the Lessor is at fault or negligent through its or their own acts or omissions.

**16 INDEMNITY BY LESSEE**

- 16.1 The Lessee will indemnify and hold harmless the Lessor in its capacity as Lessor from and against all actions, claims, demands, losses, damages, costs and expenses sustained by the Lessor as a result of the Lessee's use of the Land.
- 16.2 Without limiting its generality, the indemnity in Clause 16.1 herein shall extend to and apply where any action, claim, demand, loss, damage, cost or expense is caused or contributed to by any act, omission, neglect, breach or default on the part of the Lessee or any person under the Lessee's control.
- 16.3 The liability of the Lessee under Clause 16.1 herein shall further extend to cover full recompense, without deduction or set off, to the Lessor for any fine, penalty or expense imposed on the Lessor as a result of any failure by the Lessee or persons under its control to observe or perform the requirements of any statute, law, regulation or Code of Practice applicable to the Lessee's use and occupation of the Land.

**17 QUIET ENJOYMENT**

- 17.1 Provided the Lessee performs and observes the covenants, provisos, conditions and agreements contained in this Lease, the Lessee shall peaceably hold and enjoy the Land and any Lessor's Improvements thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.

**18 AVOIDANCE OF DANGER AND PROHIBITION ON REMOVAL OF VARIOUS ELEMENTS FROM THE LAND**

- 18.1 The Lessee shall:

18.1.1 take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous

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nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard; and

18.1.2 promptly remedy any danger or hazard that may arise on the Land.

18.2 The Lessee shall not damage, sell or remove or permit to be damaged, sold or removed from the Land any mineral waters, medicinal mud, sulphur, silica, petrified specimens or other naturally occurring material without the prior consent in writing of the Lessor.

**19 MAINTENANCE**

19.1 The Lessee shall at the Lessee's own expense in all things keep all Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

19.2 The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for either the Land or any improvements thereon whether Lessee's Improvements or otherwise.

19.3 That should the Lessor's Improvements include a building or buildings then in addition to the Lessee's covenants in this clause or elsewhere in this Lease the Lessee shall during the continuance of this Lease:

19.3.1 keep such buildings watertight;

19.3.2 be responsible for all repairs reasonably required by the Lessor thereon including structural repairs;

19.3.3 repaint the exterior of any such building when reasonably required to do so by the Lessor;

19.3.4 be responsible for all matters and costs arising out of the need to comply with the Building Act 2004 and the National Building Code whether in relation to any inspection certification or work required howsoever;

19.3.5 wash down and revarnish or repaint varnished or painted surfaces on the interior of any such building when reasonably necessary; and

19.3.6 replace any worn or damaged fixtures or fittings within such a building when reasonably required by the Lessor to do so,

all such work to be carried out in accordance with the Lessor's requirements and otherwise to good trade standards.

**20 IMPROVEMENTS ON TERMINATION OF LEASE**



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- 20.1 The Lessor may, at any time prior to or within two calendar months from the end of this Lease, whether by effluxion of time or otherwise, serve notice (hereafter called the "Lessor's First Notice") on the Lessee. This notice shall require the Lessee to specify, in writing, within two calendar months from receipt of such notice, which Lessee's Improvements it proposes to remove from the Land or to demolish upon or subsequent to the expiry of this Lease.
- 20.2 The Lessee may, within two calendar months from receipt of the Lessor's First Notice, serve a notice of reply (hereafter called the "Lessee's Notice") on the Lessor specifying which of the Lessee's Improvements it intends to remove and/or demolish.
- 20.3 Should the Lessee fail to serve the Lessee's Notice within two calendar months, it shall be deemed to have irrevocably advised the Lessor that it intends to demolish all Lessee's Improvements on the Land.
- 20.4 The Lessor may, within two calendar months from receipt of the Lessee's Notice, serve a further notice on the Lessee (hereafter called the "Lessor's Second Notice") which requires the Lessee to remove or demolish additional specified Lessee's Improvements to those listed in the Lessee's Notice and the Lessee shall be obliged to remove or demolish, as it chooses, both those Lessee's Improvements so specified and those Lessee's Improvements to which the Lessee's Notice relates or is deemed to have related to under the provisions of clause 20.3 herein.
- 20.5 Should the Lessee at its own expense in all things fail to:
- 20.5.1 remove or demolish all Lessee's Improvements it is obliged to remove or demolish; and
- 20.5.2 reinstate the surface of the Land affected by any removal or demolition as aforesaid to a safe and tidy condition and otherwise to the reasonable satisfaction of the Lessor,
- within two years from the expiry of the Lease, whether by effluxion of time or otherwise, then the Lessor may thereafter order the demolition of all such Lessee's Improvements and the reinstatement of affected lands upon such terms and conditions as it thinks appropriate and the cost of such work shall be recoverable from the Lessee as a debt then due and owing.
- 20.6 Notwithstanding any rule of law or equity to the contrary, the provisions of this clause 20 shall not merge and extinguish upon the expiration of this Lease but shall enure for the benefit of the parties until performed in full.
- 20.7 For the avoidance of doubt, it is acknowledged by the Lessee that nothing herein shall:
- 20.7.1 oblige the Lessor to pay compensation to the Lessee for any Lessee's Improvement(s) left on the Land by the Lessee; or
- 20.7.2 oblige the Lessor to demolish or remove any Lessee's Improvement(s).

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20.8 Time where prescribed in this clause 20 shall be deemed to be of the essence.

**21 DEFAULT**

21.1 The Lessor may re-enter the Land:

21.1.1 if the Annual Rent shall be in arrears for more than two months after any Rent Payment Date; or

21.1.2 in the case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied; or

21.1.3 if the Lessee shall:

- (a) make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors; or
- (b) become insolvent or go into liquidation; or
- (c) suffer distress or execution to issue against the Lessee's property under any judgment in any Court for a sum in excess of \$10,000.

21.2 Upon re-entry, the term of the Lease shall terminate without prejudice to the rights of either party against the other.

21.3 Despite the other provisions in clause 21, any breach of any one of the Leases shall be a breach of all of the Leases and if re-entry is effected under the Whakarewarewa Lease, following consultation and agreement between the Lessor and the Whakarewarewa Lease Lessor, the Lessor shall also re-enter the Land and the Arikikapakapa Section 101 Land and the term of this Lease shall terminate in accordance with clause 21.2 and the term of the Arikikapakapa Section 101 Lease shall terminate in accordance with the provisions of the Arikikapakapa Section 101 Lease.

21.4 In addition to clause 21.3, if re-entry is effected under the Arikikapakapa Section 101 Lease, the Lessor shall re-enter the Land and the term of this Lease shall terminate in accordance with clause 21.2.

**22 RENEWAL**

22.1 If the Lessee shall during the term hereby granted pay the rent hereby reserved and observe and perform the covenants and conditions on the part of the Lessee herein contained and implied up to the expiration of the said term, then the Lessee shall have a right to obtain a renewal of the Lease of the Land for a further term of thirty (30) years, subject in all respects to the same conditions and provisions as this renewal, including the within right of renewal (which the Lessor acknowledges is perpetual). The Annual Rent shall be reviewed and agreed upon at renewal or failing agreement settled by arbitration as provided in clause 24.



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- 22.2 Neither this Lease nor any renewal of it shall confer any right of acquiring the fee simple of the Land.
- 22.3 These presents are intended to take effect as a perpetually renewable lease despite Section 122 of the Reserves Act 1977 provided however the provisions of the Reserves Act 1977 and any regulations made thereunder applicable to such Lease shall otherwise be binding in all respects upon the parties hereto in the same manner as if such provisions had been fully set out herein.
- 22.4 Despite clauses 22.1 to 22.3, the Lessee will not be entitled to renew this Lease without also obtaining a renewal of the Whakarewarewa Lease under the provisions of the Whakarewarewa Lease and a renewal of the Arikikapakapa Section 101 Lease under the provisions of the Arikikapakapa Section 101 Lease.

**23 STATUTORY PROVISIONS**

- 23.1 All covenants implied in leases by Parts 2 and 3 of Schedule 3 of the Property Law Act 2007 or any other legislation excluding only:

23.1.1 the Act; and

23.1.2 the enactments referred to in clause 22.3,

are hereby negated to the fullest extent permitted by law.

**24 DISPUTE RESOLUTION**

- 24.1 Except as otherwise provided in this Lease, any dispute which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.
- 24.2 If the parties cannot resolve a dispute within fifteen (15) working days of any dispute arising, then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique, if adopted, will be agreed between the parties or as selected by the organisation known as "LEADR" (Leading Edge Alternative Dispute Resolvers) or any satisfactory substitute therefore then agreed between the parties.
- 24.3 If the parties cannot agree on any dispute resolution technique within a further fifteen (15) working days of any dispute being considered for referral by both parties to any informal dispute resolution technique under clause 24.2, then the dispute shall be finally resolved by arbitration under the Arbitration Act 1996 by a sole arbitrator who shall decide the dispute according to the substantive law of New Zealand.
- 24.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other

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for settling terms of reference, interlocutory matters and, generally, all steps preliminary and incidental to the hearing and determination of the proceedings.

- 24.5 Despite the other provisions of clause 24, the Lessor will keep the Whakarewarewa Lease Lessor fully advised of any dispute with the Lessee that would, or is likely to, affect the Annual Rent or otherwise negatively affect the connected nature of this Lease, the Arikikapakapa Section 101 Lease and the Whakarewarewa Lease and, if deemed necessary by the Whakarewarewa Lease Lessor and the Lessor, the Whakarewarewa Lease Lessor will join the Lessor in any dispute resolution process under this clause.

**25 COSTS**

- 25.1 The parties shall each pay their own solicitor's costs of preparing and finalising this Lease or any renewal or variation of this Lease.
- 25.2 The Lessee shall pay for all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.
- 25.3 The Lessee shall pay for the costs of stamping and registering this Lease and any subsequent variation and renewal or variation or renewal of this Lease.

**26 NOTICES**

- 26.1 All notices and other communications to either party shall be in writing and either faxed, delivered personally or sent by registered mail. Notices delivered personally or faxed shall be deemed given at the time of such delivery or transmission.
- 26.2 Notices mailed as provided above shall be deemed given three days after the date of mailing.
- 26.3 Until notice of a change of address is communicated, all notices shall be delivered to or addressed to the appropriate addresses for service specified in clauses 26.3.1 and 26.3.2 following:

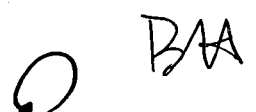
26.3.1 the Lessor's address for service is:

[

]

**[Details to be provided at time of signing]**

26.3.2 the Lessee's address for service is:



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[The Chief Executive  
New Zealand Maori Arts and Crafts Institute  
P O Box 334  
Rotorua

Facsimile (07) 348 9045]

- 26.2 Any failure to advise a change of address shall not invalidate any notice, request, demand or other communication if given to the last address advised.

**27 RELATIONSHIP WITH WHAKAREWAREWA LEASE**

- 27.1 The Lessor and the Lessee acknowledge and agree that, despite the fact that the Lessee and the Lessor have entered into this Lease in respect of the Land and into the Arikikapakapa Section 101 Lease in respect of the Arikikapakapa Section 101 Land, and the Lessee and the Whakarewarewa Lease Lessor have entered into the Whakarewarewa Lease in respect of the Whakarewarewa Reserve Land:

27.1.1 the Lessee operates one business on the Land, the Arikikapakapa Section 101 Land and the Whakarewarewa Reserve Land;

27.1.2 the amount of Admission Income derived from that business on the Land, the Arikikapakapa Section 101 Land and the Whakarewarewa Reserve Land is equally important to the Lessor and the Whakarewarewa Lease Lessor;

27.1.3 the Lessor and the Lessee will not, together or separately, take any action, make any arrangement or agreement or seek to vary this Lease in any way that would reduce the amount of Admission Income derived from the Land, the Arikikapakapa Section 101 Land and the Whakarewarewa Reserve Land or that would otherwise negatively affect the Whakarewarewa Lease Lessor's position under the Whakarewarewa Lease or under this Lease, without the prior written consent of the Whakarewarewa Lease Lessor; and

27.1.4 without limiting clauses 27.1.1 to 27.1.3, the Lessor will not accept, or agree to accept, and the Lessee will not pay, or agree to pay, any amount of money in respect of the Lessee's use of, or business on, the Land and the Arikikapakapa Section 101 Land, in addition to or separate from the Annual Rent, without the prior written consent of the Whakarewarewa Lease Lessor, which consent, if given will be strictly on the basis that any amounts paid by the Lessee under this clause will be shared equally between the Lessor and the Whakarewarewa Lease Lessor.

- 27.2 Despite that there may be no privity of contract existing between the parties to this Lease and the Whakarewarewa Lease Lessor, nevertheless the Whakarewarewa Lease Lessor shall have the right to enforce any provisions in this Lease which are of benefit to it with such right to enforce being acknowledged and intended in accordance with the requirements of Section 4 of the Contracts (Privity) Act 1982.

**28 RELATIONSHIP WITH ARIKIKAPAKAPA SECTION 101 LEASE**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)**

- 28.1 Despite any other provision in this Lease, the Lessor covenants with the Lessee [and with the Whakarewarewa Lease Lessor] that the Lessor will not sell, transfer, mortgage, charge or otherwise dispose of the Land or its interest in the Land without also selling, transferring, mortgaging, charging or otherwise disposing of the Arikikapakapa Section 101 Land.

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

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PART 6: FORM OF EXISTING LEASE VARIATION (ARIKIKAPAKAPA LEASE)

THIRD SCHEDULE

LIST OF LESSOR'S IMPROVEMENTS

(as at 31 January 1965)

Hatu Patu (small meeting house)

Pataka (food storage hut)

Waharoa (gateway)

Waharoa (gateway to model village)

**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

**PART 7: FORM OF WHAKAREWAREWA THERMAL  
SPRINGS LEASE**

**(Clause 10.1.86)**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

**MEMORANDUM OF**

**LEASE**

**(SOUTH AUCKLAND REGISTRY)**

**1 PARTIES**

- 1.1 [ ] being the TRUSTEES OF THE TE PUMAUTAUNGA O TE ARAWA TRUST ("the Lessor").
- 1.2 THE NEW ZEALAND MAORI ARTS AND CRAFTS INSTITUTE a body corporate duly constituted under the provisions of Section 4 of the New Zealand Maori Arts and Crafts Institute Act 1963 ("the Lessee").

**2 PRELIMINARY**

- 2.1 The Minister in Charge of Tourism acting on behalf of THE SOVEREIGN entered a lease with the Lessee who was then known as the ROTORUA MAORI ARTS AND CRAFTS INSTITUTE dated 9 November 1965 in respect of the Land and the Arikikapakapa and Other Reserve Land which lease was registered under Vol 2021 Folio 47 (South Auckland Registry). This lease, including renewal and variation of Lease registered under number B457107.1 is held in computer interest register SA2021/47 (hereafter called "the Existing Lease").
- 2.2 The Minister of Tourism acting on behalf of THE SOVEREIGN has continued responsibility for the administration of the Existing Lease subsequent to the dissolution of the New Zealand Tourist and Publicity Department.
- 2.3 In accordance with the provisions of the Deed of Settlement of the Historical Claims of The Affiliate Te Arawa Iwi/Hapu, the Arikikapakapa Lessor and the Lessee agreed to partially surrender the Existing Lease by deed of surrender dated [ ] in relation to the Land, in consideration for the Lessor and the Lessee entering into this new lease of the Land, (hereafter called "the Lease"), and in consideration for the Arikikapakapa Lessor and the Lessee entering into a lease of the Arikikapakapa Section 101 Land of even date with this Lease (hereafter called "the Arikikapakapa Section 101 Lease") and entering into a variation of the Existing Lease of the Arikikapakapa and Other Reserve Land of even date with this Lease (hereafter called "the Arikikapakapa Lease").
- 2.4 The Lessor and the Lessee are entering into this Lease, and the Arikikapakapa Lessor and the Lessee are entering into the Arikikapakapa Section 101 Lease and the Arikikapakapa Lease with the intention that the Leases will be dealt with, to the extent provided for in the Leases, on the basis that they are and will remain connected with each other, as if the Land, the Arikikapakapa and Other Reserve Land and the Arikikapakapa Section 101 Land were leased to the Lessee under one lease.

**THE LESSOR DOES HEREBY LEASE TO THE LESSEE and THE LESSEE DOES HEREBY TAKE ON LEASE** the Land described in the First Schedule for the term and at the annual rent set out in the Second Schedule and otherwise subject to the covenants,

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

conditions, agreements and restrictions set out in the First Schedule and the Second Schedule in this Lease.

**DATED** 20

**EXECUTION**

**[NOTE: TO BE SIGNED BY ALL TRUSTEES OF THE TE PUMAUTAUNGA O TE ARAWA TRUST]**

**NEW ZEALAND MAORI ARTS )  
AND CRAFTS INSTITUTE a body )  
corporate duly incorporated under the )  
provisions of Section 4 of the )  
New Zealand Maori Arts and Crafts )  
Institute Act 1963 in the presence of: )**

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THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE

FIRST SCHEDULE

Schedule of Land

Area	Legal Description
43.4200 hectares more or less	Section 1 SO390094
<b>Encumbrances, Liens &amp; Interests</b>  [1. <i>Need to be completed.</i>  2.]	

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

**SECOND SCHEDULE**

**THE LESSOR AND THE LESSEE COVENANT AND AGREE AS FOLLOWS:**

**1 INTERPRETATION AND DEFINITIONS**

1.1 For the purpose of the interpretation or construction of this Lease, unless the context provides otherwise:

1.1.1 Words importing any gender shall include all other genders.

1.1.2 Words importing the singular shall include the plural and vice versa.

1.1.3 Payments shall be made in the lawful currency of New Zealand.

1.1.4 Headings shall be ignored.

1.1.5 References to schedules are references to schedules in this Lease and references to clauses are references to clauses in this Lease and references to parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under clause 14.1) unless expressly stated otherwise.

1.1.6 A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004, or State enterprise, in each case whether or not having separate legal personality.

1.1.7 "Writing" shall include words visibly represented or reproduced.

1.1.8 No consent or waiver, express or implied by the Lessor, to or of any breach of any covenant, condition or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.

1.1.9 Nothing contained in this Lease shall be deemed or construed or constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.

1.1.10 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.

1.1.11 The parties acknowledge and agree that certain covenants set out in this Lease (in particular, provisions relating to the treatment of Lessee's Improvements on termination or sooner determination of this Lease in clause

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

20) shall continue beyond the expiry or sooner determination of this Lease for the benefit of the parties notwithstanding the prior expiry or sooner determination of this Lease.

1.1.12 This Lease shall be construed and take effect in accordance with the laws of New Zealand.

1.1.13 Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.

1.1.14 "Annual Rent" is a reference to all annual rental payable under this Lease as calculated in clause 3.1, plus GST.

1.1.15 "Admission Income" means all income received from admission charges to the Land, the Arikikapakapa and Other Reserve Land and the Arikikapakapa Section 101 Land levied by the Lessee excluding:

(a) GST; and

(b) any lawful commissions paid to tourist operators in relation to that admission income.

1.1.16 "Admission Income Percentage" is a percentage that is multiplied by the Admission Income to calculate the Annual Rent. For the period from the Commencement Date the Admission Income Percentage shall be 6.75 per cent. Any review of the Admission Income Percentage shall include a consideration of the capital sum invested by the Lessee for the purposes of enhancing the enjoyment by sightseers of natural features on the Land, and the Arikikapakapa and Other Reserve Land. For the avoidance of doubt, capital expenditure expended on lessee's improvements on the Arikikapakapa and Other Reserve Land, including any future capital expenditure on alterations or additions to those improvements or on new lessee's improvements on the Arikikapakapa and Other Reserve Land, shall be assumed not to exist when reviewing the Admission Income Percentage.

1.1.17 "Arikikapakapa and Other Reserve Land" means that land comprising:

(a) 0.5978 hectares, more or less, being Part Lot 1 DP 23567;

(b) 10.0012 hectares, more or less, being Part Lot 3 DP 23567; and

(c) 3.2931 hectares more or less being Section 8 Block XLIX Town of Rotorua.

1.1.18 "Arikikapakapa Lessor" means the lessor from time to time of the Arikikapakapa Lease and the Arikikapakapa Section 101 Lease.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

1.1.29 "Lessor's Improvements" means all improvements on the Land of any kind whatsoever including buildings, tunnels, sealed or unsealed yards, paths, tracks, roads, bridges, lawns, gardens, fences and other property of any kind whatsoever constructed or placed on the Land by the Lessor after 1 February 1998 under the Existing Lease with the consent of the Lessee and which is or is subsequently listed in clause 6 of this Lease (as that clause may be varied from time to time). All improvements on the Land as at 1 February 1998 under the Existing Lease were Lessee's Improvements.

1.1.30 "Permitted Use" shall have the meaning given to those words in clause 11.

1.1.31 "Renewal Date" means 1 February 2028 and each subsequent first day of the term of any renewal of this Lease.

1.1.32 "Review Date" means 1 February 2013, and each succeeding fifth anniversary of that date during the continuance of this Lease or any renewal of this Lease including any Renewal Date.

1.1.33 "Regional and District Plans" shall have the meanings set out in section 2 of the Resource Management Act 1991 and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.

1.1.34 "Working Day" means:

- (a) any day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday and Waitangi Day; and
- (b) a day in the period commencing with the 25th day of December in any year and ending with the seventh day of January in the following year.

**2 TERM**

2.1 The initial term of this Lease will be for a period of [ ] years [ ] months and [ ] days from the Commencement Date to 31 January 2028 inclusive.

2.2 The first renewal of this Lease shall be for a period of thirty (30) years from 1 February 2028 to 31 January 2058 inclusive.

2.3 Second and subsequent renewals (if exercised) shall be for thirty (30) year terms commencing on 1 February in each year following the expiry of the previous term. These rights of renewal are exercisable in perpetuity.

**3 RENT**

3.1 The Annual Rent shall be calculated by:

3.1.1 multiplying the Admission Income by the Admission Income Percentage; and

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

3.1.2 dividing the amount in 3.1.1 by two.

3.2 The Annual Rent is calculated on the basis in clause 3.1 with the intention that, for the term (including all renewal terms) of this Lease, the Arikikapakapa Lease and the Arikikapakapa Section 101 Lease, the annual rent amount derived from the calculation in clause 3.1.1 will be shared equally between the Lessor and the Arikikapakapa Lessor.

3.3 The Lessor will not enter into any arrangement, or agreement with the Lessee, whether under this Lease, or independently of this Lease, or allow the Lessee to take any action or make any decisions that would, or is likely to, reduce the amount of Admission Income derived from the Land, the Arikikapakapa Section 101 Land and from the Arikikapakapa and Other Reserve Land, without the prior written consent of the Arikikapakapa Lessor.

3.4 The Lessee shall pay the Annual Rent in twelve instalments two monthly in arrears on the first days of each month during the continuance of this Lease, commencing with a first payment on the date that is the next rent payment date under the Arikikapakapa Lease following the Commencement Date, which shall be for the month of [*To be completed*], (which payment dates are hereafter collectively called "the Rent Payment Dates").

3.5 Annual Rent shall be reviewed and otherwise varied in accordance with this Lease.

**4 RECONCILIATION OF ANNUAL RENT**

4.1 The Lessee shall on each Rent Payment Date provide to the Lessor written confirmation of Annual Rent for the monthly period to which that payment relates, including a calculation as to how the quantum of that payment was arrived at.

4.2 No later than two months after the end of the Lessee's financial year the Lessee shall supply to the Lessor:

4.2.1 an audited reconciliation of Admission Income received to Annual Rent paid to the Lessor for the Lessee's previous financial year; and

4.2.2 if requested, the Lessee's audited accounts for the previous financial year.

4.3 Should:

4.3.1 The information supplied pursuant to clause 4.2.1 above be found to be incorrect; or

4.3.2 It be ascertained that for any other reason Annual Rent for the previous financial year has been underpaid or overpaid,

then the Lessor shall notify the Lessee in writing of the amount of the overpayment or underpayment and any financial adjustment between the parties shall be dealt with as follows:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

- (a) where the Annual Rent has been overpaid, the Lessor shall credit the surplus amount to the Lessee's account; and
- (b) where the Annual Rent has been underpaid, the Lessee shall pay the difference to the Lessor at the same time as the instalment of Annual Rent next following notification of the underpayment.

Should the amount of underpayment or overpayment not be credited or paid in accordance with paragraphs (a) and (b) above, overdue money shall bear interest at the default rate specified in clause 10 until they are paid.

- 4.4 Any disputes over the quantum of any payment due under clause 4.3 shall be resolved in the manner provided in clause 4.8 following.
- 4.5 The Lessee shall maintain such records and calculations as are necessary to enable it to clearly identify all revenues from which all Annual Rent is derived.
- 4.6 The Lessee shall, no later than ten (10) working days after request from the Lessor make such records and calculations available to the Lessor for audit purposes.
- 4.7 The Lessee shall assist the Lessor or the Lessor's nominee in the audit of the records and calculations referred to in clause 4.5 above to the fullest extent possible to the end and intent that the parties may agree upon Annual Rent for any period audited by the Lessor.
- 4.8 Should the parties be unable to agree upon any annual or monthly Annual Rent, this figure shall be initially determined by the Lessee's auditor but if the Lessor disagrees with this initial determination, then a Chartered Accountant (hereafter called the "Nominee") may be appointed by the President of the Institute of Chartered Accountants of New Zealand upon the application of either party. The determination by the Nominee of any annual or monthly Annual Rent shall be final and binding on the parties who shall contribute equally to the Nominee's costs. The parties shall cooperate with the Nominee to the fullest extent possible in the Nominee's determination of any Annual Rent in dispute.

**5 REVIEW OF ANNUAL RENT**

- 5.1 Annual Rent shall be reviewable on each Review Date and may be initiated by either party up to six (6) calendar months prior to any Review Date giving written notice to the other party (hereafter referred to as the "Clause 5.1 Notice") proposing a variation to the Annual Rent.
- 5.2 The party issued with the Clause 5.1 Notice may within sixty (60) working days of receipt of such notice serve a counter notice which sets out any counter proposals made to those contained in any Clause 5.1 Notice. Any counter notice served under this clause is hereafter referred to as a "Clause 5.2 Counter Notice".
- 5.3 Any notice served under clause 5.1 or 5.2 above may be accompanied by a report from a registered valuer as to the matters relevant to the rent review.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

- 5.4 In the event that no Clause 5.2 Counter Notice is given within the sixty (60) working days prescribed in clause 5.2, the party served with the Clause 5.1 Notice shall be deemed to have accepted that notice.
- 5.5 Where a party has given a Clause 5.2 Counter Notice within the sixty (60) working day timeframe therein specified, the parties shall endeavour to agree upon the reviewed Annual Rent or any part of that Annual Rent which is disputed but if agreement is not reached within thirty (30) days, then the matter may be determined either:
- 5.5.1 by one party giving written notice to the other requiring the matters in dispute be determined by arbitration under the provisions of clauses 24.3 and 24.4; or
- 5.5.2 if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
- (a) each party shall appoint a valuer and give written notice of the appointment to the other party within twenty eight (28) days of the parties agreeing to implement the provisions of this clause;
  - (b) if a party fails to appoint a valuer within the twenty eight (28) day period specified in clause 5.5.2(a), then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
  - (c) the valuers appointed before commencing their determination shall appoint an arbitrator under the provisions of the Arbitration Act 1996 who need not be a registered valuer;
  - (d) the valuers shall endeavour to determine the matters in dispute and if they fail to agree then the outstanding issue(s) shall thereafter be determined by the arbitrator; and
  - (e) each party, through their valuers, shall be given the opportunity to make written or verbal representations to the arbitrator subject to such reasonable time and other limits as the arbitrator may prescribe and the arbitrator shall have regard to any such representations but not be bound to accept or act upon them.
- 5.6 When the matters in dispute have been determined, the arbitrator or the valuers, as the case may be, shall give written notice thereof to the parties.
- 5.7 Any notice given by an arbitrator pursuant to clause 5.6 above may also direct how the costs of any determination shall be borne and such notice shall be binding on the parties.
- 5.8 Any monetary adjustment between the parties resulting from any agreement or determination under this clause shall be made within fourteen (14) days of any such determination. Overdue money shall bear interest at the rate prescribed in clause 10 until paid.



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SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

- 5.9 The Lessor and the Lessee acknowledge and agree that the rent review on the Review Date on 1 February 2013, and all subsequent rent reviews under this Lease, will be undertaken on the basis that the Lessor will undertake and participate in the entire rent review process jointly, and in co-operation with, the Arikikapakapa Lessor, with the intention that the rent review under this Lease will be undertaken as a joint rent review with the rent review under the Arikikapakapa Lease.
- 5.10 Without limiting clause 5.9:
- 5.10.1 the Lessor must ensure that the valuer appointed by it for the purposes of this clause 5 is also appointed by the Arikikapakapa Lessor for the purposes of the corresponding review under the Arikikapakapa Lease;
- 5.10.2 a notice given under clause 5.5.1 must require matters in dispute in the corresponding review under the Arikikapakapa Lease to be determined by the same arbitration, and any such notice will have effect accordingly;
- 5.10.3 each party must ensure that the arbitrator appointed under clause 5.5.2(c) is the same arbitrator appointed for the purposes of the corresponding review under the Arikikapakapa Lease and that the two reviews are determined at the same arbitration.
- 5.11 Despite the other provisions of clause 5, the reviewed Annual Rent agreed or determined at each rent review, will always be calculated so that the Annual Rent and the annual rent under the Arikikapakapa Lease and the Arikikapakapa Section 101 Lease are equal amounts.

**6 LESSOR'S IMPROVEMENTS**

- 6.1 There are no Lessor's Improvements on the Land as at [*Settlement Date under Deed of Settlement*]. Should the Lessor with the consent of the Lessee subsequently construct Lessor's Improvements on the Land, then the parties agree that the provisions of this clause shall be varied to record particulars of such Lessor's Improvements.

**7 PAYMENT OF RATES AND IMPOSITIONS**

- 7.1 The Lessee will pay all rates, taxes (including without limitation land or improvements tax), charges, assessments, impositions and outgoings whatsoever which now are or which during the term of this Lease shall be taxed, rated, charged, assessed or imposed on the Land, any Lessor's Improvements and Lessee's Improvements thereon or on the Lessor or Lessee in respect thereof by any Authority, excepting only Lessor's income tax.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

**8 PAYMENT OF OTHER OUTGOINGS ON THE LAND**

- 8.1 The Lessee shall pay all other outgoings on the Land which shall include any:
- 8.1.1 additional rates, taxes and outgoings imposed on or payable in respect of the Land which are levied as a consequence of the Lessee's use or occupancy of the Land;
  - 8.1.2 charges for water, gas, electricity, telephone and other utilities or services consumed on the Land;
  - 8.1.3 NZ Fire Service charges and maintenance charges in respect of all fire detection and fire fighting equipment used on the Land;
  - 8.1.4 the cost of ground maintenance, yard and carparking area maintenance and repair charges on the Land;
  - 8.1.5 costs incurred and payable in supplying to any Authority a building warrant of fitness and obtaining reports as required by Section 108 of the Building Act 2004 in respect of buildings on the Land;
  - 8.1.6 premiums on insurance effected on any Lessor's Improvements and Lessee's Improvements on the Land;
  - 8.1.7 security services provided in respect of the Land;
  - 8.1.8 other costs or expenses incurred in the operation and management of the Permitted Uses on the Land whether related to the foregoing or not; and
  - 8.1.9 maintenance obligations imposed on the Lessee by clause 19 of this Lease.

**9 GOODS AND SERVICES TAX**

- 9.1 The Lessee shall pay to the Lessor, upon demand, any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefore or in addition thereto or otherwise in respect of any payments made by the Lessee under this Lease or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

**10 INTEREST ON OVERDUE ANNUAL RENT OR OTHER MONEY**

- 10.1 Without prejudice to other rights, powers and remedies of the Lessor, if any goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for 20 working days after the due day for payment thereof (whether any formal or legal demand therefore shall have been made or not) such unpaid money shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such money at a rate which is 2% per annum above the rate at the time the

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

default occurred for prime 90 day commercial bills at the Bank of New Zealand and that such interest shall be recoverable in the same manner as rent in arrears.

**11 USE OF THE LAND AND THE CONSTRUCTION OF LESSEE'S IMPROVEMENTS ON THE LAND**

11.1 The Lessee shall use the Land and any Lessee's Improvements and Lessor's Improvements for the following uses only (the "Permitted Uses"):

11.1.1 those uses specifically allowed as permitted or controlled activities in any applicable District and/or Regional Plan; or

11.1.2 those uses specifically allowed by any resource consent granted under the Resource Management Act 1991 and/or any other statutory or regulatory provision; and

11.1.3 in addition to the limitations set out in paragraphs 11.1.1 and 11.1.2 above, the use of the Land shall be further limited to Permitted Uses which in the reasonable opinion of the Lessor:

(a) have prime regard to the distinctive scenic, cultural, historic, archaeological, geothermal, geological, biological and natural vegetative features on the Land and the need to protect and preserve these features;

(b) relate principally to the conduct of sightseers around the natural features of the Land; and

(c) do not require the construction of any buildings or improvements of either a temporary or permanent nature unless these relate to the physical movement or conveyance of tourists around the Land or the construction of associated paths and/or viewing platforms or to the replacement of Lessee's Improvements presently on the Land with like improvements.

11.2 The Land shall not be used for:

11.2.1 any revenue creating activity which was not conducted on the Land at or prior to 1 February 1998 under the Existing Lease; or

11.2.2 any other activity or development which may cause physical deterioration to or otherwise adversely affect all or any of the features of the Land which are referred to in clause 11.1.3 above.

11.3 The Lessee will, at all times during this Lease, otherwise use the Land in a manner consistent with the provisions of Section 15 of the Act.

11.4 Where the Lessee intends to erect or demolish buildings or otherwise disturb the surface of the Land then:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
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- 11.4.1 where the proposed activity does not require a resource consent, the Lessee may proceed with that activity provided that the Lessee gives prior written notice to the Lessor of its intention to undertake this activity; and
- 11.4.2 where the Lessee intends to erect or demolish buildings or otherwise disturb the surface of the Land and the activity requires a resource consent, the Lessee must obtain the prior written consent of the Lessor.
- 11.5 Where the prior written consent of the Lessor is sought under 11.4.2, this consent shall not be unreasonably or arbitrarily withheld, provided that:
- 11.5.1 such consent may be given subject to conditions prescribed by the Lessor; and
- 11.5.2 the Lessor shall have regard to the matters set out in clauses 11.1.3 and 11.2 herein.
- 11.6 Where plans and specifications of any proposed work requiring Lessor consent under clause 11.4 herein are available to the Lessee, these and any subsequent variations to them shall be supplied to the Lessor when approval is sought under clause 11.4 herein.
- 11.7 Should any of the Permitted Uses of the Land or the use of any Lessee's Improvement or Lessor's Improvement thereon or the construction of any Lessee's Improvement thereon be permissible only with the consent or licence of any lawful Authority under or in pursuance of statute or any Regional and District Plans or regulations or other enactments or any order of Court the Lessee shall obtain such consent, licence or order at the sole cost and expense of the Lessee and the Lessee shall at all times comply with any conditions of any such consent, licence or order.
- 11.8 The Lessor does not warrant that the Land is or will remain suitable or adequate for any of the Permitted Uses.
- 11.9 The Lessee accepts the Land as being satisfactory in all respects and with full knowledge of and subject to any prohibitions or restrictions on the use of the Land imposed by or arising out of any statute, regulation, bylaw, code, District Plan or which may otherwise either be indicated on title to the Land or arise in any other way.
- 11.10 Despite the other provisions in clause 11, the Lessor will not consent to any change in the Permitted Uses, or consent to the Lessee erecting or demolishing buildings or disturbing the surface of the Land under clause 11.4.2 if such a change in Permitted Uses or such work would, or is likely to, reduce the amount of Admission Income derived from the Land, the Arikikapakapa Section 101 Land and the Arikikapakapa and Other Reserve Land, without the prior written consent of the Arikikapakapa Lessor.
- 12 NO FENCING**
- 12.1 The Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary

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SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

fences between the Land and any adjoining land owned or occupied by the Lessor or Lessee.

**13 STATUTORY REQUIREMENTS**

13.1 The Lessee will comply with all statutes, Regional and District Plans, bylaws, codes and regulations which relate to the Land and the Lessor's Improvements and Lessee's Improvements or which relate to the Lessee's occupation and use of the Land and Lessor's Improvements and Lessee's Improvements and with all conditions or requirements which may be issued by any lawful Authority and will in particular but without limitation:

13.1.1 where appropriate ensure that a warrant of fitness is obtained each year in respect of any Lessor's Improvements and Lessee's Improvements on the Land as required under the Building Act 2004;

13.1.2 comply with and observe at all times the terms and conditions of all resource and other consents and permits held in respect of the Land;

13.1.3 ensure that proper and adequate health and safety procedures and any codes of practice are adopted in accordance with the Health and Safety in Employment Act 1992; and

13.1.4 otherwise comply with all statutes, regulations and codes as they relate to the Land,

and will keep the Lessor indemnified in respect of any non-compliance by the Lessee with any such statutory regulatory requirements as provided in clause 16.

**14 ASSIGNMENT, SUBLETTING, MORTGAGING AND CHARGING**

**14.1 Lessor's Written Consent Required**

The Lessee will hold and use the Land bona fide for its own use and benefit and will not transfer, assign, mortgage, charge or part with possession of the Land or any part thereof without the written consent of the Lessor, provided that approval to the granting of any charge will not be necessary in the case of a mortgage to the Crown or a Department of State.

**14.2 Assignment or Transfer**

14.2.1 Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor must be satisfied that the obligations of the Lessee under this Lease have not been breached. Further, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor in a form acceptable to the Lessor, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such deed of covenant shall not release the Lessee or any assignor from the Lessee's or that assignor's obligations under this Lease.

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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

14.2.2 Despite clauses 14.1 and 14.2.1, this Lease may not be transferred or assigned except in conjunction with a transfer or an assignment of the Arikikapakapa Lease and the Arikikapakapa Section 101 Lease to the same assignee or transferee, such assignee or transferee to be consented to jointly by the Lessor, and the Arikikapakapa Lessor, in accordance with the provisions of the Leases.

**14.3 Mortgage or Charge**

14.3.1 Any Lessor consent given to the Lessee to mortgage or otherwise charge this Lease under clause 14.1 herein shall not relieve the Lessee of the obligation to obtain a like consent from the Minister of Finance under the provisions of Section 23 of the Act.

14.3.2 The Lessee acknowledges that should the Lessor consent to the creation of any mortgage or other charge over the Lessee's interest in this Lease, then that mortgage or charge shall include covenants which, inter alia:

- (a) require the mortgagee or chargeholder to give the Lessor not less than 30 clear working days written notice of its intention to variously enter the Land and formally take possession thereof or, alternatively, to sell the Lessee's interest in the Lease for non-payment of any money owing to the mortgagee or chargeholder;
- (b) confer upon the Lessor or the Lessor's nominee a pre-emptive option to buy the mortgage or charge concerned for the value of the debt owed under it at any time within 20 working days prior to entering the Land or exercising any power of sale as a mortgagee;
- (c) gives a mortgagee or chargeholder acknowledgement that for the purpose of the mortgage or charge:
  - (i) the Lessor is a "person" within the contemplation of Section 4 Contracts (Privity) Act 1982 to the mortgage or charge;
  - (ii) any entry into possession or purported exercise of the power of sale contrary to the provisions of clause 14.3.2(a) and (b) above shall be enforceable by the Lessor through injunctive or other action in a Court of appropriate jurisdiction; and
  - (iii) the valuable consideration for the within covenants was the Lessor's consent to the creation of the mortgage or charge concerned.

14.3.3 The exact wording of the covenants referred to in clause 14.3.2 shall be advised by the Lessor when it consents to the granting of the mortgage or charge to which it relates.

14.3.4 Despite clauses 14.1 and 14.3.1-14.3.3, the Lessee may not mortgage or charge its interest in this Lease without also mortgaging or charging the



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**PART 7: FORM OF WHAKAREWAREWA THERMAL SPRINGS LEASE**

Lessee's interest in the Arikikapakapa Section 101 Lease and the Arikikapakapa Lease.

**14.4 Sublease**

It is agreed that neither the whole or any part of the Land shall be sublet or licensed by the Lessee.

**14.5 Lessor's Costs and Disbursements**

The Lessee shall pay the Lessor's proper costs and disbursements in respect of expenses incurred in reasonable enquiries made by the Lessor in respect of any assignment to which this clause 14 relates and the preparation and stamping of any deed of covenant or guarantee or attendances on any other documentation to which this clause 14 relates.

14.6 In this clause 14, a reference to the Lessor will be deemed to be a reference to the Lessor and the Arikikapakapa Lessor.

**15 LESSEE'S ACKNOWLEDGEMENT OF RISK**

15.1 The Lessee agrees to occupy and use the Land and any Lessee's Improvements or Lessor's Improvements on the Land at the Lessee's risk and release to the full extent permitted by law the Lessor and the Lessor's employees and agents from all claims and demands of any kind and from all liability which, in the absence of any negligence on the Lessor's part may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land and any Lessor's Improvements except where the Lessor or any person under the control of the Lessor is at fault or negligent through its or their own acts or omissions.

**16 INDEMNITY BY LESSEE**

16.1 The Lessee will indemnify and hold harmless the Lessor in its capacity as Lessor from and against all actions, claims, demands, losses, damages, costs and expenses sustained by the Lessor as a result of the Lessee's use of the Land.

16.2 Without limiting its generality, the indemnity in Clause 16.1 herein shall extend to and apply where any action, claim, demand, loss, damage, cost or expense is caused or contributed to by any act, omission, neglect, breach or default on the part of the Lessee or any person under the Lessee's control.

16.3 The liability of the Lessee under Clause 16.1 herein shall further extend to cover full recompense, without deduction or set off, to the Lessor for any fine, penalty or expense imposed on the Lessor as a result of any failure by the Lessee or persons under its control to observe or perform the requirements of any statute, law, regulation or Code of Practice applicable to the Lessee's use and occupation of the Land.

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**17 QUIET ENJOYMENT**

- 17.1 Provided the Lessee performs and observes the covenants, provisos, conditions and agreements contained in this Lease, the Lessee shall peaceably hold and enjoy the Land and any Lessor's Improvements thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.

**18 AVOIDANCE OF DANGER AND PROHIBITION ON REMOVAL OF VARIOUS ELEMENTS FROM THE LAND**

- 18.1 The Lessee shall:

18.1.1 take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard; and

18.1.2 promptly remedy any danger or hazard that may arise on the Land.

- 18.2 The Lessee shall not damage, sell or remove or permit to be damaged, sold or removed from the Land any mineral waters, medicinal mud, sulphur, silica, petrified specimens or other naturally occurring material without the prior consent in writing of the Lessor.

**19 MAINTENANCE**

- 19.1 The Lessee shall at the Lessee's own expense in all things keep all Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

- 19.2 The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for either the Land or any improvements thereon whether Lessee's Improvements or otherwise.

- 19.3 That should the Lessor's Improvements include a building or buildings then in addition to the Lessee's covenants in this clause or elsewhere in this Lease the Lessee shall during the continuance of this Lease:

19.3.1 keep such buildings watertight;

19.3.2 be responsible for all repairs reasonably required by the Lessor thereon including structural repairs;

19.3.3 repaint the exterior of any such building when reasonably required to do so by the Lessor;



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19.3.4 be responsible for all matters and costs arising out of the need to comply with the Building Act 2004 and the National Building Code whether in relation to any inspection certification or work required howsoever;

19.3.5 wash down and revarnish or repaint varnished or painted surfaces on the interior of any such building when reasonably necessary; and

19.3.6 replace any worn or damaged fixtures or fittings within such a building when reasonably required by the Lessor to do so,

all such work to be carried out in accordance with the Lessor's requirements and otherwise to good trade standards.

**20 IMPROVEMENTS ON TERMINATION OF LEASE**

20.1 The Lessor may, at any time prior to or within two calendar months from the end of this Lease, whether by effluxion of time or otherwise, serve notice (hereafter called the "Lessor's First Notice") on the Lessee. This notice shall require the Lessee to specify, in writing, within two calendar months from receipt of such notice, which Lessee's Improvements it proposes to remove from the Land or to demolish upon or subsequent to the expiry of this Lease.

20.2 The Lessee may, within two calendar months from receipt of the Lessor's First Notice, serve a notice of reply (hereafter called the "Lessee's Notice") on the Lessor specifying which of the Lessee's Improvements it intends to remove and/or demolish.

20.3 Should the Lessee fail to serve the Lessee's Notice within two calendar months, it shall be deemed to have irrevocably advised the Lessor that it intends to demolish all Lessee's Improvements on the Land.

20.4 The Lessor may, within two calendar months from receipt of the Lessee's Notice, serve a further notice on the Lessee (hereafter called the "Lessor's Second Notice") which requires the Lessee to remove or demolish additional specified Lessee's Improvements to those listed in the Lessee's Notice and the Lessee shall be obliged to remove or demolish, as it chooses, both those Lessee's Improvements so specified and those Lessee's Improvements to which the Lessee's Notice relates or is deemed to have related to under the provisions of clause 20.3 herein.

20.5 Should the Lessee at its own expense in all things fail to:

20.5.1 remove or demolish all Lessee's Improvements it is obliged to remove or demolish; and

20.5.2 reinstate the surface of the Land affected by any removal or demolition as aforesaid to a safe and tidy condition and otherwise to the reasonable satisfaction of the Lessor,

within two years from the expiry of the Lease, whether by effluxion of time or otherwise, then the Lessor may thereafter order the demolition of all such Lessee's Improvements and the reinstatement of affected lands upon such terms and

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conditions as it thinks appropriate and the cost of such work shall be recoverable from the Lessee as a debt then due and owing.

- 20.6 Notwithstanding any rule of law or equity to the contrary, the provisions of this clause 20 shall not merge and extinguish upon the expiration of this Lease but shall enure for the benefit of the parties until performed in full.
- 20.7 For the avoidance of doubt, it is acknowledged by the Lessee that nothing herein shall:
- 20.7.1 oblige the Lessor to pay compensation to the Lessee for any Lessee's Improvement(s) left on the Land by the Lessee; or
- 20.7.2 oblige the Lessor to demolish or remove any Lessee's Improvement(s).
- 20.8 Time where prescribed in this clause 20 shall be deemed to be of the essence.

**21 DEFAULT**

21.1 The Lessor may re-enter the Land:

21.1.1 if the Annual Rent shall be in arrears for more than two months after any Rent Payment Date; or

21.1.2 in the case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied; or

21.1.3 if the Lessee shall:

- (a) make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors; or
- (b) become insolvent or go into liquidation; or
- (c) suffer distress or execution to issue against the Lessee's property under any judgment in any Court for a sum in excess of \$10,000.

21.2 Upon re-entry, the term of the Lease shall terminate without prejudice to the rights of either party against the other.

21.3 Despite the other provisions in clause 21, any breach of any one of the Leases shall be a breach of all of the Leases and if re-entry is effected under the Arikikapakapa Lease or the Arikikapakapa Section 101 Lease, following consultation and agreement between the Lessor and the Arikikapakapa Lessor, the Lessor shall also re-enter the Land and the term of this Lease shall terminate in accordance with clause 21.2.

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**22 RENEWAL**

- 22.1 If the Lessee shall during the term hereby granted pay the rent hereby reserved and observe and perform the covenants and conditions on the part of the Lessee herein contained and implied up to the expiration of the said term, then the Lessee shall have a right to obtain a renewal of the Lease of the Land for a further term of thirty (30) years, subject in all respects to the same conditions and provisions as this Lease, including the within right of renewal (which the Lessor acknowledges is perpetual). The Annual Rent shall be reviewed and agreed upon at renewal or failing agreement settled by arbitration as provided in clause 24.
- 22.2 Neither this Lease nor any renewal of it shall confer any right of acquiring the fee simple of the Land.
- 22.3 These presents are intended to take effect as a perpetually renewable lease despite Section 122 of the Reserves Act 1977 provided however the provisions of the Reserves Act 1977 and any regulations made thereunder applicable to such Lease shall otherwise be binding in all respects upon the parties hereto in the same manner as if such provisions had been fully set out herein.
- 22.4 Despite clauses 22.1 to 22.3 the Lessee will not be entitled to renew this Lease without also obtaining a renewal of the Arikikapakapa Lease under the provisions of the Arikikapakapa Lease and the Arikikapakapa Section 101 Lease under the provisions of the Arikikapakapa Section 101 Lease.

**23 STATUTORY PROVISIONS**

- 23.1 All covenants implied in leases by Parts 2 and 3 of Schedule 3 of the Property Law Act 2007 or any other legislation excluding only:
- 23.1.1 the Act; and
- 23.1.2 the enactments referred to in clause 22.3,
- are hereby negated to the fullest extent permitted by law.

**24 DISPUTE RESOLUTION**

- 24.1 Except as otherwise provided in this Lease, any dispute which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.
- 24.2 If the parties cannot resolve a dispute within fifteen (15) working days of any dispute arising, then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique, if adopted, will be agreed between the parties or as selected by the organisation known as "LEADR"

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(Leading Edge Alternative Dispute Resolvers) or any satisfactory substitute therefore then agreed between the parties.

- 24.3 If the parties cannot agree on any dispute resolution technique within a further fifteen (15) working days of any dispute being considered for referral by both parties to any informal dispute resolution technique under clause 24.2, then the dispute shall be finally resolved by arbitration under the Arbitration Act 1996 by a sole arbitrator who shall decide the dispute according to the substantive law of New Zealand.
- 24.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and, generally, all steps preliminary and incidental to the hearing and determination of the proceedings.
- 24.5 Despite the other provisions of clause 24, the Lessor will keep the Arikikapakapa Lessor fully advised of any dispute with the Lessee that would, or is likely to, affect the Annual Rent or otherwise negatively affect the connected nature of this Lease, the Arikikapakapa Section 101 Lease and the Arikikapakapa Lease and, if deemed necessary by the Arikikapakapa Lessor and the Lessor, the Arikikapakapa Lessor will join the Lessor in any dispute resolution process under this clause.

**25 COSTS**

- 25.1 The parties shall each pay their own solicitor's costs of preparing and finalising this Lease or any renewal or variation of this Lease.
- 25.2 The Lessee shall pay for all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.
- 25.3 The Lessee shall pay for the costs of stamping and registering this Lease and any subsequent variation and renewal or variation or renewal of this Lease.

**26 NOTICES**

- 26.1 All notices and other communications to either party shall be in writing and either faxed, delivered personally or sent by registered mail. Notices delivered personally or faxed shall be deemed given at the time of such delivery or transmission.
- 26.2 Notices mailed as provided above shall be deemed given three days after the date of mailing.
- 26.3 Until notice of a change of address is communicated, all notices shall be delivered to or addressed to the appropriate addresses for service specified in clauses 26.3.1 and 26.3.2 following:

26.3.1 the Lessor's address for service is:

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[

]

**[Details to be provided at time of signing]**

26.3.2 the Lessee's address for service is:

[The Chief Executive  
New Zealand Maori Arts and Crafts Institute  
P O Box 334  
Rotorua

Facsimile (07) 348 9045]

26.2 Any failure to advise a change of address shall not invalidate any notice, request, demand or other communication if given to the last address advised.

**27 RELATIONSHIP WITH ARIKIKAPAKAPA LEASE AND ARIKIKAPAKAPA SECTION 101 LEASE**

27.1 The Lessor and the Lessee acknowledge and agree that, despite the fact that the Lessee and the Lessor have entered into this Lease in respect of the Land and the Arikikapakapa Lessor and the Lessee have entered into the Arikikapakapa Lease in respect of the Arikikapakapa and Other Reserve Land and the Arikikapakapa Section 101 Lease in respect of the Arikikapakapa Section 101 Land:

27.1.1 the Lessee operates one business on the Land, the Arikikapakapa and Other Reserve Land and the Arikikapakapa Section 101 Land;

27.1.2 the amount of Admission Income derived from that business on the Land, the Arikikapakapa Section 101 Land and the Arikikapakapa and Other Reserve Land is equally important to the Lessor and the Arikikapakapa Lessor;

27.1.3 the Lessor and the Lessee will not, together or separately, take any action, make any arrangement or agreement or seek to vary this Lease in any way that would reduce the amount of Admission Income derived from the Land, the Arikikapakapa and Other Reserve Land and the Arikikapakapa Section 101 Land or that would otherwise negatively affect the Arikikapakapa Lessor's position under the Arikikapakapa Lease, the Arikikapakapa Section 101 Lease or under this Lease, without the prior written consent of the Arikikapakapa Lessor; and

27.1.4 without limiting clauses 27.1.1 to 27.1.3, the Lessor will not accept, or agree to accept, and the Lessee will not pay, or agree to pay, any amount of money in respect of the Lessee's use of, or business on, the Land, in addition to or separate from the Annual Rent, without the prior written consent of the Arikikapakapa Lessor, which consent, if given will be strictly on the basis that



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any amounts paid by the Lessee under this clause will be shared equally between the Lessor and the Arikikapakapa Lessor.

- 27.2 Despite that there may be no privity of contract existing between the parties to this Lease and the Arikikapakapa Lessor, nevertheless the Arikikapakapa Lessor shall have the right to enforce any provisions in this Lease which are of benefit to it with such right to enforce being acknowledged and intended in accordance with the requirements of Section 4 of the Contracts (Privity) Act 1982.

**PART 8: FORM OF ARIKIPAKAPA SECTION 101 LEASE**

**PART 8: FORM OF ARIKIPAKAPA SECTION 101  
LEASE**

**(Clause 10.1.87(c))**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

**PART 8: FORM OF ARIKIKAPAKAPA SECTION 101 LEASE**

**MEMORANDUM OF**

**LEASE**

**(SOUTH AUCKLAND REGISTRY)**

**1 PARTIES**

- 1.1 **THE SOVEREIGN** in right of the Government of New Zealand acting by and through [ ], Chief Executive, Ministry of Economic Development ("the Lessor").
- 1.2 **THE NEW ZEALAND MAORI ARTS AND CRAFTS INSTITUTE** a body corporate duly constituted under the provisions of Section 4 of the New Zealand Maori Arts and Crafts Institute Act 1963 ("the Lessee").

**2 PRELIMINARY**

- 2.1 The Minister in Charge of Tourism acting on behalf of **THE SOVEREIGN** entered a lease with the Lessee who was then known as the **ROTORUA MAORI ARTS AND CRAFTS INSTITUTE** dated 9 November 1965 in respect of the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land, which lease was registered under Vol 2021 Folio 47 (South Auckland Registry). This lease, including renewal and variation of lease registered under number B457107.1, is held in computer interest register SA2021/47 (hereafter, called "the Existing Lease").
- 2.2 The Minister of Tourism acting on behalf of **THE SOVEREIGN** has continued responsibility for the Lessor's administration of the Existing Lease subsequent to the dissolution of the New Zealand Tourist and Publicity Department.
- 2.3 In accordance with the provisions of the Deed of Settlement of the Historical Claims of The Affiliate Te Arawa Iwi/Hapu, the Lessor and the Lessee agreed to partially surrender the Existing Lease by deed of surrender dated [ ] in relation to the Whakarewarewa Land, in consideration for entering into this new lease of the Land (hereafter called "this Lease") and a variation of the Existing Lease of even date with this Lease in respect of the Arikikapakapa and Other Reserve Land (hereafter called "the Arikikapakapa Lease"), and in consideration of the Whakarewarewa Lease Lessor and the Lessee entering into a new lease of the Whakarewarewa Reserve Land of even date with this Lease (hereafter called "the Whakarewarewa Lease").
- 2.4 The Lessor and the Lessee are entering into this Lease and the Arikikapakapa Lease, and the Whakarewarewa Lease Lessor and the Lessee are entering into the Whakarewarewa Lease with the intention that the Leases will be dealt with, to the extent provided for in the leases, on the basis that they are and will remain connected with each other, as if the Land, the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land were leased to the Lessee under one lease.

**THE LESSOR DOES HEREBY LEASE TO THE LESSEE and THE LESSEE DOES HEREBY TAKE ON LEASE** the Land described in the First Schedule for the term and at the annual rent set out in the Second Schedule and otherwise subject to the covenants, conditions, agreements and restrictions set out in the First Schedule and the Second Schedule in this Lease.



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES

PART 8: FORM OF ARIKIKAPAKAPA SECTION 101 LEASE

DATED 20

EXECUTION

THE SOVEREIGN )  
acting by and through [ ] )  
the Chief Executive of the Ministry of )  
Economic Development acting under )  
delegated authority from the Minister )  
of Tourism in the presence of: )

NEW ZEALAND MAORI ARTS )  
AND CRAFTS INSTITUTE a body )  
corporate duly incorporated under the )  
provisions of Section 4 of the )  
New Zealand Maori Arts and Crafts )  
Institute Act 1963 in the presence of: )



THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES

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FIRST SCHEDULE

Schedule of Land

Area	Legal Description
0.9143 hectares more or less	Section 101 Block I Tarawera Survey District.
<b>Encumbrances, Liens &amp; Interests</b>	
[1. <i>Need to be completed</i>	
2. ]	



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 8: FORM OF ARIKIKAPAKAPA SECTION 101 LEASE**

**SECOND SCHEDULE**

**THE LESSOR AND THE LESSEE COVENANT AND AGREE** as follows:

**1 INTERPRETATION AND DEFINITIONS**

1.1 For the purpose of the interpretation or construction of this Lease, unless the context provides otherwise:

1.1.1 Words importing any gender shall include all other genders.

1.1.2 Words importing the singular shall include the plural and vice versa.

1.1.3 Payments shall be made in the lawful currency of New Zealand.

1.1.4 Headings shall be ignored.

1.1.5 References to schedules are references to schedules in this Lease and references to clauses are references to clauses in this Lease and references to parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under clause 14) unless expressly stated otherwise.

1.1.6 A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004, or State enterprise, in each case whether or not having separate legal personality.

1.1.7 "Writing" shall include words visibly represented or reproduced.

1.1.8 No consent or waiver, express or implied by the Lessor, to or of any breach of any covenant, condition or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.

1.1.9 Nothing contained in this Lease shall be deemed or construed or constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.

1.1.10 The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.

1.1.11 The parties acknowledge and agree that certain covenants set out in this Lease (in particular, provisions relating to the treatment of Lessee's Improvements on termination or sooner determination of this Lease in clause

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20) shall continue beyond the expiry or sooner determination of this Lease for the benefit of the parties notwithstanding the prior expiry or sooner determination of this Lease.

1.1.12 This Lease shall be construed and take effect in accordance with the laws of New Zealand.

1.1.13 Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.

1.1.14 "Annual Rent" is a reference to all annual rental payable under this Lease and the Arikikapakapa Lease as calculated in clause 3.1, plus GST.

1.1.15 "Admission Income" means all income received from admission charges to the Land, the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land levied by the Lessee excluding:

- (a) GST; and
- (b) any lawful commissions paid to tourist operators in relation to that admission income.

1.1.16 "Admission Income Percentage" is a percentage that is multiplied by the Admission Income to calculate the Annual Rent. For the period from the Commencement Date the Admission Income Percentage shall be 6.75 per cent. Any review of the Admission Income Percentage shall include a consideration of the capital sum invested by the Lessee for the purposes of enhancing the enjoyment by sightseers of natural features on the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land. For the avoidance of doubt, capital expenditure expended on Lessee's Improvements on the [Arikikapakapa and Other Reserve Land], including any future capital expenditure on alterations or additions to those improvements or on new Lessee's Improvements on the Arikikapakapa and Other Reserve Land, shall be assumed not to exist when reviewing the Admission Income Percentage.

1.1.17 "Arikikapakapa and Other Reserve Land" means that land comprising:

- (a) 0.5978 hectares, more or less, being Part Lot 1 DP 23567;
- (b) 10.0012 hectares, more or less, being Part Lot 3 DP 23567; and
- (c) 3.2931 hectares, more or less, being Section 8 Block XLIX Town of Rotorua.

1.1.18 "Authority" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and



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Commencement Date with the consent of the Lessee and which is or is subsequently listed in clause 6 (as that clause may be varied from time to time). All improvements on the Land as at the Commencement Date were Lessee's Improvements.

- 1.1.28 "Permitted Use" shall have the meaning given to those words in clause 11.
- 1.1.29 "Renewal Date" means 1 February 2028 and each subsequent first day of the term of any renewal of this Lease.
- 1.1.30 "Review Date" means 1 February 2013, and each succeeding fifth anniversary of that date during the continuance of this Lease or any renewal of this Lease including any Renewal Date.
- 1.1.31 "Regional and District Plans" shall have the meanings set out in section 2 of the Resource Management Act 1991 and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- 1.1.32 "Whakarewarewa Reserve Land" means the land comprising 43.4200 hectares, more or less, being Section 1 SO 390094.
- 1.1.33 "Whakarewarewa Lease Lessor" means the lessor from time to time of the Whakarewarewa Lease.
- 1.1.34 "Working Day" means:
- (a) any day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday and Waitangi Day; and
  - (b) a day in the period commencing with the 25<sup>th</sup> day of December in any year and ending with the seventh day of January in the following year.

**2 TERM**

- 2.1 The initial term of this Lease will be for a period of [            ] years [     ] months and [     ] days from the Commencement Date to 31 January 2028 inclusive.
- 2.2 The first renewal of this Lease shall be for a period of thirty (30) years from 1 February 2028 to 31 January 2058 inclusive.
- 2.3 Second and subsequent renewals (if exercised) shall be for thirty (30) year terms commencing on 1 February in each year following the expiry of the previous term. These rights of renewal are exercisable in perpetuity.

**3 RENT**

- 3.1 The Annual Rent shall be calculated by:



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- 3.1.1 multiplying the Admission Income by the Admission Income Percentage, and
- 3.1.2 dividing the amount in 3.1.1 by two.
- 3.2 The Annual Rent is calculated on the basis in clause 3.1 with the intention that, for the term (including all renewal terms) of this Lease, the Arikikapakapa Lease and the Whakarewarewa Lease, the annual rent amount derived from the calculation in clause 3.1.1 will be shared equally between the Lessor and the Whakarewarewa Lease Lessor.
- 3.3 The Lessor will not enter into any arrangement, or agreement with the Lessee, whether under this Lease, or independently of this Lease, or allow the Lessee to take any action or make any decisions that would, or is likely to, reduce the amount of Admission Income derived from the Land, the Arikikapakapa and Other Reserve Land and from the Whakarewarewa Reserve Land, without the prior written consent of the Whakarewarewa Lease Lessor.
- 3.4 The Lessee shall pay the Annual Rent in twelve instalments two monthly in arrears on the first days of each month during the continuance of this Lease, commencing with a first payment on the date that is the next rent payment date under the Arikikapakapa Lease following the Commencement Date, which shall be for the month of [*To be completed*], (which payment dates are hereafter collectively called "the Rent Payment Dates").

**4 RECONCILIATION OF ANNUAL RENT**

- 4.1 The Lessee shall on each Rent Payment Date provide to the Lessor written confirmation of Annual Rent for the monthly period to which that payment relates, including a calculation as to how the quantum of that payment was arrived at.
- 4.2 No later than two months after the end of the Lessee's financial year the Lessee shall supply to the Lessor:
- 4.2.1 an audited reconciliation of Admission Income received to Annual Rent paid to the Lessor for the Lessee's previous financial year; and
- 4.2.2 if requested, the Lessee's audited accounts for the previous financial year.
- 4.3 Should:
- 4.3.1 the information supplied pursuant to clause 4.2.1 above be found to be incorrect; or
- 4.3.2 it be ascertained that for any other reason Annual Rent for the previous financial year has been underpaid or overpaid,

then the Lessor shall notify the Lessee in writing of the amount of the overpayment or underpayment and any financial adjustment between the parties shall be dealt with as follows:

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- (a) where the Annual Rent has been overpaid, the Lessor shall credit the surplus amount to the Lessee's account; and
- (b) where the Annual Rent has been underpaid, the Lessee shall pay the difference to the Lessor at the same time as the instalment of Annual Rent next following notification of the underpayment.

Should the amount of underpayment or overpayment not be credited or paid in accordance with paragraphs (a) and (b) above, overdue money shall bear interest at the default rate specified in clause 10 until they are paid.

- 4.4 Any disputes over the quantum of any payment due under clause 4.3 shall be resolved in the manner provided in clause 4.8 following.
- 4.5 The Lessee shall maintain such records and calculations as are necessary to enable it to clearly identify all revenues from which all Annual Rent is derived.
- 4.6 The Lessee shall, no later than ten (10) working days after request from the Lessor make such records and calculations available to the Lessor for audit purposes.
- 4.7 The Lessee shall assist the Lessor or the Lessor's nominee in the audit of the records and calculations referred to in clause 4.5 above to the fullest extent possible to the end and intent that the parties may agree upon Annual Rent for any period audited by the Lessor.
- 4.8 Should the parties be unable to agree upon any annual or monthly Annual Rent, this figure shall be initially determined by the Lessee's auditor but if the Lessor disagrees with this initial determination, then a Chartered Accountant (hereafter called "the Nominee") may be appointed by the President of the Institute of Chartered Accountants of New Zealand upon the application of either party. The determination by the Nominee of any annual or monthly Annual Rent shall be final and binding on the parties who shall contribute equally to the Nominee's costs. The parties shall cooperate with the Nominee to the fullest extent possible in the Nominee's determination of any Annual Rent in dispute.

**5 REVIEW OF ANNUAL RENT**

- 5.1 The parties agree that all rent reviews of the Annual Rent shall be carried out in accordance with the provisions of the Arikikapakapa Lease to the intent that the Land shall be considered part of the Arikikapakapa and Other Reserve Land for the purposes of rent reviews.
- 5.2 The Lessee shall pay the Annual Rent following each rent review as agreed or determined in accordance with the provisions of the Arikikapakapa Lease.

**6 LESSOR'S IMPROVEMENTS**

- 6.1 There are no Lessor's Improvements on the Land as at the Commencement Date. Should the Lessor with the consent of the Lessee subsequently construct Lessor's



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Improvements on the Land, then the parties agree that the provisions of this clause shall be varied to record particulars of such Lessor's Improvements.

**7 PAYMENT OF RATES AND IMPOSITIONS**

7.1 The Lessee will pay all rates, taxes (including without limitation land or improvements tax), charges, assessments, impositions and outgoings whatsoever which now are or which during the term of this Lease shall be taxed, rated, charged, assessed or imposed on the Land, any Lessor's Improvements and Lessee's Improvements thereon or on the Lessor or Lessee in respect thereof by any Authority, excepting only Lessor's income tax.

**8 PAYMENT OF OTHER OUTGOINGS ON THE LAND**

8.1 The Lessee shall pay all other outgoings on the Land which shall include any:

8.1.1 additional rates, taxes and outgoings imposed on or payable in respect of the Land which are levied as a consequence of the Lessee's use or occupancy of the Land;

8.1.2 charges for water, gas, electricity, telephone and other utilities or services consumed on the Land;

8.1.3 NZ Fire Service charges and maintenance charges in respect of all fire detection and fire fighting equipment used on the Land;

8.1.4 the cost of ground maintenance, yard and carparking area maintenance and repair charges on the Land;

8.1.5 costs incurred and payable in supplying to any Authority a building warrant of fitness and obtaining reports as required by Section 108 of the Building Act 2004 in respect of buildings on the Land;

8.1.6 premiums on insurance effected on any Lessor's Improvements and Lessee's Improvements on the Land;

8.1.7 security services provided in respect of the Land;

8.1.8 other costs or expenses incurred in the operation and management of the Permitted Uses on the Land whether related to the foregoing or not; and

8.1.9 maintenance obligations imposed on the Lessee by clause 19 of this Lease.

**9 GOODS AND SERVICES TAX**

9.1 The Lessee shall pay to the Lessor, upon demand, any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefore or in addition thereto or otherwise in respect of any payments made by the Lessee under this Lease

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or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

**10 INTEREST ON OVERDUE ANNUAL RENT OR OTHER MONEY**

10.1 Without prejudice to other rights, powers and remedies of the Lessor, if any goods and services tax or other payment or amount owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for 20 working days after the due day for payment thereof (whether any formal or legal demand therefore shall have been made or not) such unpaid money shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such money at a rate which is 2% per annum above the rate at the time the default occurred for prime 90 day commercial bills at the Bank of New Zealand and that such interest shall be recoverable in the same manner as rent in arrears.

**11 USE OF THE LAND AND THE CONSTRUCTION OF LESSEE'S IMPROVEMENTS ON THE LAND**

11.1 The Lessee shall use the Land and any Lessee's Improvements and Lessor's Improvements for the following uses only (the "Permitted Uses"):

11.1.1 those uses specifically allowed as permitted or controlled activities in any applicable District and/or Regional Plan; or

11.1.2 those uses specifically allowed by any resource consent granted under the Resource Management Act 1991 and/or any other statutory or regulatory provision.

11.2 The Lessee will, at all times during this Lease, otherwise use the Land in a manner consistent with the provisions of Section 15 of the Act.

11.3 Where the Lessee intends to erect or demolish buildings or otherwise disturb the surface of the Land then:

11.3.1 where the proposed activity does not require a resource consent, the Lessee may proceed with that activity provided that the Lessee gives prior written notice to the Lessor of its intention to undertake this activity; and

11.3.2 where the Lessee intends to erect or demolish buildings or otherwise disturb the surface of the Land and the activity requires a resource consent, the Lessee must obtain the prior written consent of the Lessor.

11.4 Where the prior written consent of the Lessor is sought under 11.3.2, this consent shall not be unreasonably or arbitrarily withheld, provided that such consent may be given subject to conditions prescribed by the Lessor.

11.5 Where plans and specifications of any proposed work requiring Lessor consent under clause 11.3 herein are available to the Lessee, these and any subsequent variations to them shall be supplied to the Lessor when approval is sought under clause 11.3 herein.

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- 11.6 Should any of the Permitted Uses of the Land or the use of any Lessee's Improvement or Lessor's Improvement thereon or the construction of any Lessee's Improvement thereon be permissible only with the consent or licence of any lawful Authority under or in pursuance of statute or any Regional and District Plans or regulations or other enactments or any order of Court the Lessee shall obtain such consent, licence or order at the sole cost and expense of the Lessee and the Lessee shall at all times comply with any conditions of any such consent, licence or order.
- 11.7 The Lessor does not warrant that the Land is or will remain suitable or adequate for any of the Permitted Uses.
- 11.8 The Lessee accepts the Land as being satisfactory in all respects and with full knowledge of and subject to any prohibitions or restrictions on the use of the Land imposed by or arising out of any statute, regulation, bylaw, code, District Plan or which may otherwise either be indicated on title to the Land or arise in any other way.
- 11.9 Despite the other provisions in clause 11, the Lessor will not consent to any change in the Permitted Uses, or consent to the Lessee erecting or demolishing buildings or disturbing the surface of the Land under clause 11.3.2 if such a change in Permitted Uses or such work would, or is likely to, reduce the amount of Admission Income derived from the Land, the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land, without the prior written consent of the Whakarewarewa Lease Lessor.

**12 NO FENCING**

- 12.1 The Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land and any adjoining land owned or occupied by the Lessor or Lessee.

**13 STATUTORY REQUIREMENTS**

- 13.1 The Lessee will comply with all statutes, Regional and District Plans, bylaws, codes and regulations which relate to the Land and the Lessor's Improvements and Lessee's Improvements or which relate to the Lessee's occupation and use of the Land and Lessor's Improvements and Lessee's Improvements and with all conditions or requirements which may be issued by any lawful Authority and will in particular but without limitation:

13.1.1 where appropriate ensure that a warrant of fitness is obtained each year in respect of any Lessor's Improvements and Lessee's Improvements on the Land as required under the Building Act 2004;

13.1.2 comply with and observe at all times the terms and conditions of all resource and other consents and permits held in respect of the Land;

13.1.3 ensure that proper and adequate health and safety procedures and any codes of practice are adopted in accordance with the Health and Safety in Employment Act 1992; and

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13.1.4 otherwise comply with all statutes, regulations and codes as they relate to the Land,

and will keep the Lessor indemnified in respect of any non-compliance by the Lessee with any such statutory regulatory requirements as provided in clause 16.

**14 ASSIGNMENT, SUBLETTING, MORTGAGING AND CHARGING**

**14.1 Lessor's Written Consent Required**

The Lessee will hold and use the Land bona fide for its own use and benefit and will not transfer, assign, mortgage, charge or part with possession of the Land or any part thereof without the written consent of the Lessor, provided that approval to the granting of any charge will not be necessary in the case of a mortgage to the Crown or a Department of State.

**14.2 Assignment or Transfer**

14.2.1 Where any assignment or transfer of this Lease is consented to by the Lessor, the Lessor must be satisfied that the obligations of the Lessee under this Lease have not been breached. Further, the Lessor may require the execution by the assignee or transferee of a deed of covenant with the Lessor in a form acceptable to the Lessor, that the assignee or transferee will be bound by and perform the covenants in this Lease to be observed and performed by the Lessee but the execution of such deed of covenant shall not release the Lessee or any assignor from the Lessee's or that assignor's obligations under this Lease.

14.2.2 Despite clauses 14.1 and 14.2.1, this Lease may not be transferred or assigned except in conjunction with a transfer or an assignment of the Arikikapakapa Lease and the Whakarewarewa Lease to the same assignee or transferee, such assignee or transferee to be consented to jointly by the Lessor and the Whakarewarewa Lease Lessor, in accordance with the provisions of the Leases.

**14.3 Mortgage or Charge**

14.3.1 Any Lessor consent given to the Lessee to mortgage or otherwise charge this Lease under clause 14.1 herein shall not relieve the Lessee of the obligation to obtain a like consent from the Minister of Finance under the provisions of Section 23 of the Act.

14.3.2 The Lessee acknowledges that should the Lessor consent to the creation of any mortgage or other charge over the Lessee's interest in this Lease, then that mortgage or charge shall include covenants which, inter alia:

- (a) require the mortgagee or chargeholder to give the Lessor not less than 30 clear working days written notice of its intention to variously enter the Land and formally take possession thereof or, alternatively, to sell the

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Lessee's interest in the Lease for non-payment of any money owing to the mortgagee or chargeholder;

- (b) confer upon the Lessor or the Lessor's nominee a pre-emptive option to buy the mortgage or charge concerned for the value of the debt owed under it at any time within 20 working days prior to entering the Land or exercising any power of sale as a mortgagee;
- (c) gives a mortgagee or chargeholder acknowledgement that for the purpose of the mortgage or charge:
  - (i) the Lessor is a "person" within the contemplation of Section 4 Contracts (Privity) Act 1982 to the mortgage or charge;
  - (ii) any entry into possession or purported exercise of the power of sale contrary to the provisions of clause 14.3.2(a) and (b) above shall be enforceable by the Lessor through injunctive or other action in a Court of appropriate jurisdiction; and
  - (iii) the valuable consideration for the within covenants was the Lessor's consent to the creation of the mortgage or charge concerned.

14.3.3 The exact wording of the covenants referred to in clause 14.3.2 shall be advised by the Lessor when it consents to the granting of the mortgage or charge to which it relates.

14.3.4 Despite clauses 14.1 and 14.3.1-14.3.3, the Lessee may not mortgage or charge its interest in this Lease without also mortgaging or charging the Lessee's interest in the Arikikapakapa Lease and the Whakarewarewa Lease.

**14.4 Sublease**

It is agreed that neither the whole nor any part of the Land shall be sublet or licensed by the Lessee.

**14.5 Lessor's Costs and Disbursements**

The Lessee shall pay the Lessor's proper costs and disbursements in respect of expenses incurred in reasonable enquiries made by the Lessor in respect of any assignment to which this clause 14 relates and the preparation and stamping of any deed of covenant or guarantee or attendances on any other documentation to which this clause 14 relates.

14.6 In this clause 14, a reference to the Lessor will be deemed to be a reference to the Lessor and the Whakarewarewa Lease Lessor.

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**15 LESSEE'S ACKNOWLEDGEMENT OF RISK**

15.1 The Lessee agrees to occupy and use the Land and any Lessee's Improvements or Lessor's Improvements on the Land at the Lessee's risk and release to the full extent permitted by law the Lessor and the Lessor's employees and agents from all claims and demands of any kind and from all liability which, in the absence of any negligence on the Lessor's part may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land and any Lessor's Improvements except where the Lessor or any person under the control of the Lessor is at fault or negligent through its or their own acts or omissions.

**16 INDEMNITY BY LESSEE**

16.1 The Lessee will indemnify and hold harmless the Lessor in its capacity as Lessor from and against all actions, claims, demands, losses, damages, costs and expenses sustained by the Lessor as a result of the Lessee's use of the Land.

16.2 Without limiting its generality, the indemnity in Clause 16.1 herein shall extend to and apply where any action, claim, demand, loss, damage, cost or expense is caused or contributed to by any act, omission, neglect, breach or default on the part of the Lessee or any person under the Lessee's control.

16.3 The liability of the Lessee under Clause 16.1 herein shall further extend to cover full recompense, without deduction or set off, to the Lessor for any fine, penalty or expense imposed on the Lessor as a result of any failure by the Lessee or persons under its control to observe or perform the requirements of any statute, law, regulation or Code of Practice applicable to the Lessee's use and occupation of the Land.

**17 QUIET ENJOYMENT**

17.1 Provided the Lessee performs and observes the covenants, provisos, conditions and agreements contained in this Lease, the Lessee shall peaceably hold and enjoy the Land and any Lessor's Improvements thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.

**18 AVOIDANCE OF DANGER AND PROHIBITION ON REMOVAL OF VARIOUS ELEMENTS FROM THE LAND**

18.1 The Lessee shall:

18.1.1 take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard; and

18.1.2 promptly remedy any danger or hazard that may arise on the Land.

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18.2 The Lessee shall not damage, sell or remove or permit to be damaged, sold or removed from the Land any mineral waters, medicinal mud, sulphur, silica, petrified specimens or other naturally occurring material without the prior consent in writing of the Lessor.

**19 MAINTENANCE**

19.1 The Lessee shall at the Lessee's own expense in all things keep all Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

19.2 The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for either the Land or any improvements thereon whether Lessee's Improvements or otherwise.

19.3 That should the Lessor's Improvements include a building or buildings then in addition to the Lessee's covenants in this clause or elsewhere in this Lease the Lessee shall during the continuance of this Lease:

19.3.1 keep such buildings watertight;

19.3.2 be responsible for all repairs reasonably required by the Lessor thereon including structural repairs;

19.3.3 repaint the exterior of any such building when reasonably required to do so by the Lessor;

19.3.4 be responsible for all matters and costs arising out of the need to comply with the Building Act 2004 and the National Building Code whether in relation to any inspection certification or work required howsoever;

19.3.5 wash down and revarnish or repaint varnished or painted surfaces on the interior of any such building when reasonably necessary; and

19.3.6 replace any worn or damaged fixtures or fittings within such a building when reasonably required by the Lessor to do so,

all such work to be carried out in accordance with the Lessor's requirements and otherwise to good trade standards.

**20 IMPROVEMENTS ON TERMINATION OF LEASE**

20.1 The Lessor may, at any time prior to or within two calendar months from the end of this Lease, whether by effluxion of time or otherwise, serve notice (hereafter called the "Lessor's First Notice") on the Lessee. This notice shall require the Lessee to specify, in writing, within two calendar months from receipt of such notice, which Lessee's Improvements it proposes to remove from the Land or to demolish upon or subsequent to the expiry of this Lease.

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- 20.2 The Lessee may, within two calendar months from receipt of the Lessor's First Notice, serve a notice of reply (hereafter called the "Lessee's Notice") on the Lessor specifying which of the Lessee's Improvements it intends to remove and/or demolish.
- 20.3 Should the Lessee fail to serve the Lessee's Notice within two calendar months, it shall be deemed to have irrevocably advised the Lessor that it intends to demolish all Lessee's Improvements on the Land.
- 20.4 The Lessor may, within two calendar months from receipt of the Lessee's Notice, serve a further notice on the Lessee (hereafter called the "Lessor's Second Notice") which requires the Lessee to remove or demolish additional specified Lessee's Improvements to those listed in the Lessee's Notice and the Lessee shall be obliged to remove or demolish, as it chooses, both those Lessee's Improvements so specified and those Lessee's Improvements to which the Lessee's Notice relates or is deemed to have related to under the provisions of clause 20.3 herein.
- 20.5 Should the Lessee at its own expense in all things fail to:
- 20.5.1 remove or demolish all Lessee's Improvements it is obliged to remove or demolish; and
- 20.5.2 reinstate the surface of the Land affected by any removal or demolition as aforesaid to a safe and tidy condition and otherwise to the reasonable satisfaction of the Lessor,
- within two years from the expiry of the Lease, whether by effluxion of time or otherwise, then the Lessor may thereafter order the demolition of all such Lessee's Improvements and the reinstatement of affected lands upon such terms and conditions as it thinks appropriate and the cost of such work shall be recoverable from the Lessee as a debt then due and owing.
- 20.6 Notwithstanding any rule of law or equity to the contrary, the provisions of this clause 20 shall not merge and extinguish upon the expiration of this Lease but shall enure for the benefit of the parties until performed in full.
- 20.7 For the avoidance of doubt, it is acknowledged by the Lessee that nothing herein shall:
- 20.7.1 oblige the Lessor to pay compensation to the Lessee for any Lessee's Improvement(s) left on the Land by the Lessee; or
- 20.7.2 oblige the Lessor to demolish or remove any Lessee's Improvement(s).
- 20.8 Time where prescribed in this clause 20 shall be deemed to be of the essence.

**21 DEFAULT**

- 21.1 The Lessor may re-enter the Land:



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- 21.1.1 if the Annual Rent shall be in arrears for more than two months after any Rent Payment Date; or
- 21.1.2 in the case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied; or
- 21.1.3 if the Lessee shall:
- (a) make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors; or
  - (b) become insolvent or go into liquidation; or
  - (c) suffer distress or execution to issue against the Lessee's property under any judgment in any Court for a sum in excess of \$10,000.
- 21.2 Upon re-entry, the term of the Lease shall terminate without prejudice to the rights of either party against the other.
- 21.3 Despite the other provisions in clause 21, any breach of any one of the Leases shall be a breach of all of the Leases and if re-entry is effected under the Whakarewarewa Lease, following consultation and agreement between the Lessor and the Whakarewarewa Lease Lessor, the Lessor shall also re-enter the Land and the Arikikapakapa and Other Reserve Land and the term of this Lease shall terminate in accordance with clause 21.2 and the term of the Arikikapakapa Lease shall terminate in accordance with the provisions of the Arikikapakapa Lease.
- 21.4 In addition to clause 21.3, if re-entry is effected under the Arikikapakapa Lease, the Lessor shall re-enter the Land and the term of this Lease shall terminate in accordance with clause 21.2.

**22 RENEWAL**

- 22.1 If the Lessee shall during the term hereby granted pay the rent hereby reserved and observe and perform the covenants and conditions on the part of the Lessee herein contained and implied up to the expiration of the said term, then the Lessee shall have a right to obtain a renewal of the Lease of the Land for a further term of thirty (30) years, subject in all respects to the same conditions and provisions as this renewal, including the within right of renewal (which the Lessor acknowledges is perpetual). The Annual Rent shall be reviewed and agreed upon at renewal or failing agreement settled by arbitration as provided in clause 24.
- 22.2 Neither this Lease nor any renewal of it shall confer any right of acquiring the fee simple of the Land.
- 22.3 These presents are intended to take effect as a perpetually renewable lease despite Section 122 of the Reserves Act 1977 provided however the provisions of the Reserves Act 1977 and any regulations made thereunder applicable to such Lease

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**THE AFFILIATE TE ARAWA IW/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 8: FORM OF ARIKIKAPAKAPA SECTION 101 LEASE**

shall otherwise be binding in all respects upon the parties hereto in the same manner as if such provisions had been fully set out herein.

- 22.4 Despite clauses 22.1 to 22.3, the Lessee will not be entitled to renew this Lease without also obtaining a renewal of the Whakarewarewa Lease under the provisions of the Whakarewarewa Lease and a renewal of the Arikikapakapa Lease under the provisions of the Arikikapakapa Lease.

**23 STATUTORY PROVISIONS**

- 23.1 All covenants implied in leases by Parts 2 and 3 of Schedule 3 of the Property Law Act 2007 or any other legislation excluding only:

23.1.1 the Act; and

23.1.2 the enactments referred to in clause 22.3,

are hereby negated to the fullest extent permitted by law.

**24 DISPUTE RESOLUTION**

- 24.1 Except as otherwise provided in this Lease, any dispute which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.

- 24.2 If the parties cannot resolve a dispute within fifteen (15) working days of any dispute arising, then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique, if adopted, will be agreed between the parties or as selected by the organisation known as "LEADR" (Leading Edge Alternative Dispute Resolvers) or any satisfactory substitute therefore then agreed between the parties.

- 24.3 If the parties cannot agree on any dispute resolution technique within a further fifteen (15) working days of any dispute being considered for referral by both parties to any informal dispute resolution technique under clause 24.2, then the dispute shall be finally resolved by arbitration under the Arbitration Act 1996 by a sole arbitrator who shall decide the dispute according to the substantive law of New Zealand.

- 24.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and, generally, all steps preliminary and incidental to the hearing and determination of the proceedings.

- 24.5 Despite the other provisions of clause 24, the Lessor will keep the Whakarewarewa Lease Lessor fully advised of any dispute with the Lessee that would, or is likely to, affect the Annual Rent or otherwise negatively affect the connected nature of this Lease, the Arikikapakapa Lease and the Whakarewarewa Lease and, if deemed

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 8: FORM OF ARIKIPAKAPA SECTION 101 LEASE**

necessary by the Whakarewarewa Lease Lessor and the Lessor, the Whakarewarewa Lease Lessor will join the Lessor in any dispute resolution process under this clause.

**25 COSTS**

- 25.1 The parties shall each pay their own solicitor's costs of preparing and finalising this Lease or any renewal or variation of this Lease.
- 25.2 The Lessee shall pay for all costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.
- 25.3 The Lessee shall pay for the costs of stamping and registering this Lease and any subsequent variation and renewal or variation or renewal of this Lease.

**26 NOTICES**

- 26.1 All notices and other communications to either party shall be in writing and either faxed, delivered personally or sent by registered mail. Notices delivered personally or faxed shall be deemed given at the time of such delivery or transmission.
- 26.2 Notices mailed as provided above shall be deemed given three days after the date of mailing.
- 26.3 Until notice of a change of address is communicated, all notices shall be delivered to or addressed to the appropriate addresses for service specified in clauses 26.3.1 and 26.3.2 following:

26.3.1 the Lessor's address for service is:

[

]

**[Details to be provided at time of signing]**

26.3.2 the Lessee's address for service is:

[The Chief Executive  
New Zealand Maori Arts and Crafts Institute  
P O Box 334  
Rotorua

Facsimile (07) 348 9045]

- 26.2 Any failure to advise a change of address shall not invalidate any notice, request, demand or other communication if given to the last address advised.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 8: FORM OF ARIKIKAPAKAPA SECTION 101 LEASE**

**27 RELATIONSHIP WITH WHAKAREWAREWA LEASE**

27.1 The Lessor and the Lessee acknowledge and agree that, despite the fact that the Lessee and the Lessor have entered into this Lease in respect of the Land and into the Arikikapakapa Lease in respect of the Arikikapakapa and Other Reserve Land, and the Lessee and the Whakarewarewa Lease Lessor have entered into the Whakarewarewa Lease in respect of the Whakarewarewa Reserve Land:

27.1.1 the Lessee operates one business on the Land, the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land;

27.1.2 the amount of Admission Income derived from that business on the Land, the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land is equally important to the Lessor and the Whakarewarewa Lease Lessor;

27.1.3 the Lessor and the Lessee will not, together or separately, take any action, make any arrangement or agreement or seek to vary this Lease in any way that would reduce the amount of Admission Income derived from the Land, the Arikikapakapa and Other Reserve Land and the Whakarewarewa Reserve Land or that would otherwise negatively affect the Whakarewarewa Lease Lessor's position under the Whakarewarewa Lease or under this Lease and the Arikikapakapa Lease, without the prior written consent of the Whakarewarewa Lease Lessor; and

27.1.4 without limiting clauses 27.1.1 to 27.1.3, the Lessor will not accept, or agree to accept, and the Lessee will not pay, or agree to pay, any amount of money in respect of the Lessee's use of, or business on, the Land and the Arikikapakapa and Other Reserve Land, in addition to or separate from the Annual Rent, without the prior written consent of the Whakarewarewa Lease Lessor, which consent, if given will be strictly on the basis that any amounts paid by the Lessee under this clause will be shared equally between the Lessor and the Whakarewarewa Lease Lessor.

27.2 Despite that there may be no privity of contract existing between the parties to this Lease and the Whakarewarewa Lease Lessor nevertheless the Whakarewarewa Lease Lessor shall have the right to enforce any provisions in this Lease which are of benefit to it with such right to enforce being acknowledged and intended in accordance with the requirements of Section 4 of the Contracts (Privity) Act 1982.

**28 RELATIONSHIP WITH ARIKIKAPAKAPA LEASE**

28.1 Despite any other provision in this Lease, the Lessor covenants with the Lessee [and with the Whakarewarewa Lease Lessor] that the Lessor will not sell, transfer, mortgage, charge or otherwise dispose of the Land or its interest in the Land without also selling, transferring, mortgaging, charging or otherwise disposing of the Arikikapakapa and Other Reserve Land.

**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

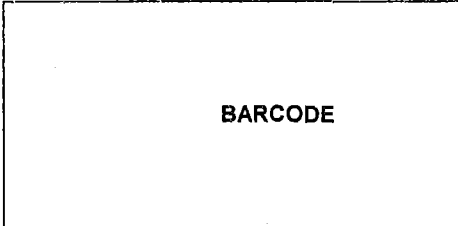
**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

**(Clauses 10.1.35 and 10.10)**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

Approved by the Registrar-General of Land under number 2003/3058



**LEASE INSTRUMENT**

Section 115, Land Transfer Act 1952

Land registration district

South Auckland

BARCODE

Unique Identifier(s) or C/T(s)

All/part

Area/description of part or stratum

**Lessor**

*Surname must be underlined*

[Te Pumautanga Trustees]

**Lessee**

*Surname must be underlined*

The Sovereign [acting by and through the Minister of Conservation]

**Estate or Interest\***

*Insert "fee simple", "leasehold in lease number", etc.*

Fee simple

**Term**

[ ] from and including [the Settlement Date]

**Rent**

\$1.00 plus Goods and Services Tax (if demanded)

**Operative clause**

*Set out the terms of lease in Annexure Schedule(s)*

The Lessor leases to the Lessee and the Lessee accepts the lease of the above estate or interest in the land in the above certificate(s) of title or computer register(s) for the above term and at the above rent and on the terms of lease set out in the Annexure Schedule(s).

Dated this

day of

20

**Attestation**

[Signatures of Te Pumautanga Trustees]

**Signed in my presence by the Lessor**

*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name:

Occupation:

Address:

Signature [common seal] of Lessor

[Insert attestation for Crown]

**Signed in my presence by the Lessee**

*Signature of witness*

*Witness to complete in BLOCK letters (unless legibly printed)*

Witness name:

Occupation:

Address:

Signature [common seal] of Lessee

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Lessee

\* The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

**Continuation of “Operative clause”**

**1 INTERPRETATION AND DEFINITIONS**

- 1.1 For the purpose of the interpretation or construction of this lease unless the context requires otherwise:
- (a) Words importing any gender shall include all other genders;
  - (b) Words importing the singular shall include the plural and vice versa;
  - (c) Payments shall be made in the lawful currency of New Zealand;
  - (d) Headings shall be ignored;
  - (e) References to clauses are references to clauses in this lease and references to parties are references to the parties to this lease unless expressly stated otherwise;
  - (f) Any reference in this lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute;
  - (g) A “person” shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust, State or agency of a State in each case whether or not having separate legal personality;
  - (h) References to “writing” shall include words visibly represented or reproduced;
  - (i) Where approvals or consents are required in this lease they shall not be unreasonably or arbitrarily withheld or delayed and such approvals or consents may be given with conditions which are both reasonable and relevant to the circumstances giving rise to the request to seek approval or consent and shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion;
  - (j) Notwithstanding that there may be no privity of contract existing between the parties to this lease and certain named third parties in this lease nevertheless such third parties shall have the right to enforce any provisions in this lease which are of benefit to them with such right to enforce being acknowledged and intended in accordance with the requirements of section 4 of the Contracts (Privity) Act 1982;
  - (k) “Business Day” means the period 9am to 5pm on any day other than:

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

- (i) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day;
  - (ii) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and
  - (iii) the days observed as the anniversaries of the provinces of Wellington and Auckland;
- (l) "Land" means 1.5260 hectares, more or less, being Section 7 Block XVI Rotoiti Survey District SO47823 (formerly Section 5 Block XVI Rotoiti Survey District and Pt Okataina 4). Part Proclamation 8001 and Part Computer Freehold Register SA1D/857;
- (m) References to the "Lessor" and the "Lessee" include their respective successors and assigns and where the context permits the Lessor's or the Lessee's respective tenants and other lawful occupiers of the Land and their respective contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessor or the Lessee, as the case may be); and
- (n) "Prior Lease" means the lease of the Land dated 23 December 1975 and held in computer interest register SA23A/1000.

**2 TERM AND RENT**

- 2.1 In consideration of the rent reserved under this lease and of the covenants, conditions and agreements on the part of the Lessee expressed or implied in this lease, the Lessor leases to the Lessee and the Lessee agrees to lease all the Land for a term of [ ] from and including [the Settlement Date] so that, subject to clause 4, the lease will expire on the later of 31 January 2025, or the expiry of the current term of the Prior Lease.
- 2.2 The Lessee shall pay to the Lessor an annual rent of \$1.00 plus goods and services tax, payable if demanded in writing by the Lessor.
- 2.3 For the avoidance of doubt, this lease shall not contain any rights of renewal or extension.

**3 CONCURRENT LEASE**

- 3.1 This lease is subject to and concurrent with the Prior Lease.
- 3.2 The Lessor assigns to the Lessee all the Lessor's interest under the Prior Lease as from the commencement date of this lease.



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS - PROPERTIES**

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**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

**4 EXPIRY OF TERM OF PRIOR LEASE**

If the term of the Prior Lease expires prior to 31 January 2025, the term of this lease will automatically expire on the same date as the expiry date of the Prior Lease.

**5 RENT UNDER PRIOR LEASE**

The Lessor and the Lessee acknowledge and agree that the Lessee shall be entitled to receive the rent under Prior Lease from the lessee under that lease, but the Lessee will have no liability to pay to the Lessor the rent payable by the lessee under the Prior Lease.

**6 LESSEE'S COVENANT**

The Lessee covenants with the Lessor that from the commencement date of this lease, and until this lease expires, the Lessee shall comply with the obligations imposed on the Lessor under the Prior Lease, as if the Lessee were named as the lessor in the Prior Lease.

**7 LESSOR'S COVENANT**

The Lessor covenants with the Lessee that should the term of the Prior Lease be renewed beyond the expiry of this lease, the Lessor will assume all obligations of the lessor under the Prior Lease, and the Lessee shall have no further obligation or liability as lessor under the Prior Lease.

**8 REGISTRATION**

8.1 The Lessee shall register this lease under the provisions of the Land Transfer Act 1952.

8.2 The Lessee will be responsible for survey costs (if any) and other costs incurred in obtaining registration of this lease.

**9 NOTICES**

**9.1 Contact Details**

Unless and until the party provides a different address or facsimile number by notice in writing to the other party to this Deed its address for notices will be:

(c) the Lessor:

[To be completed.]

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

(d) the Lessee:

[To be completed]

**9.2 Deemed Receipt**

Any notice given as provided by this clause will be deemed received by the party to whom it is addressed when:

- (c) in the case of any notice delivered by hand, when so delivered;
- (d) in the case of any notice sent by facsimile, upon the issue to the sender of a transmission control or other like report from the despatching facsimile machine which shows the relevant number of pages comprised in the notice to have been sent and the result of the transmission is "OK".

**10 DISPUTE RESOLUTION**

**10.1 Consultation**

In the event that the parties are in dispute regarding any matter arising out of and from this lease then appointed representatives of each party will consult expeditiously with one another in good faith and use their best endeavours to resolve such dispute to the mutual satisfaction of the parties without the resort to alternative dispute resolution.

**10.2 Mediation**

- (a) In the event that there is a dispute between the parties and they cannot resolve that dispute within 10 Business Days of referral then either party may by notice in writing to the other party refer the dispute to compulsory mediation supervised by a member of LEADR; and
- (b) Should the parties be unable to agree on a mediator within 10 Business Days of the date of such notice of disputation either party may request the President or his or her nominee for the time being of the New Zealand Law Society to nominate an appropriate person or persons (having regard to the matters the subject of the dispute) to mediate the dispute and the parties agree to accept as mediator the person nominated by the President or his or her nominee of the New Zealand Law Society.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES**

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**PART 9: FORM OF OKATAINA LODGE SITE CROWN LEASE**

**10.3 Arbitration**

In the absence of agreement under clause 10.2 then either party may refer any unresolved dispute to arbitration under the Arbitration Act 1996 by a sole arbitrator agreed on by the parties or, failing agreement, appointed by the New Zealand President of the Arbitrators' and Mediators' Institute.

**11 MISCELLANEOUS**

11.1 The validity of any part or provision of this lease shall not affect the enforceability of any other part or provision of this lease.

11.2 This lease shall be construed and take effect in accordance with the laws of New Zealand.

**PART 10: DESCRIPTIONS OF GEOTHERMAL ASSETS**

**PART 10: DESCRIPTIONS OF GEOTHERMAL ASSETS**

**(Clause 16.3)**

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS – PROPERTIES

PART 10: DESCRIPTIONS OF GEOTHERMAL ASSETS

Well Number	Field	Legal description of parcel on which well is located
NM1	Ngatamariki	Pt Tahorakuri A2
NM2	Ngatamariki	Pt Tahorakuri A2
NM3	Ngatamariki	Pt Tahorakuri A2
NM4	Ngatamariki	Pt Tahorakuri A2



**PART 11: TERMS OF TRANSFER OF GEOTHERMAL ASSETS**

**PART 11: TERMS OF TRANSFER OF GEOTHERMAL  
ASSETS**

**(Clause 10.38)**



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS PROPERTIES**

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**PART 11: TERMS OF TRANSFER OF GEOTHERMAL ASSETS**

**1 TRANSFER OF GEOTHERMAL ASSETS**

- 1.1 The Crown must transfer the Crown's interest in the Geothermal Assets to the Te Pumautanga Trustees on the terms set out in clauses 10.38–10.40 and in this Part 11 of Schedule 2, subject to and, where applicable, with the benefit of the Disclosed Encumbrances affecting or benefiting the Geothermal Assets (as those Disclosed Encumbrances may be varied under paragraph 1.2).
- 1.2 The Crown and the Te Pumautanga Trustees may agree in writing to vary or add to the Disclosed Encumbrances affecting any Geothermal Asset.
- 1.3 The Te Pumautanga Trustees must not unreasonably withhold or delay its consent to varying a Disclosed Encumbrance or granting a new Encumbrance affecting any Geothermal Asset.
- 1.4 The Crown will pay any costs required to transfer the Geothermal Assets to the Te Pumautanga Trustees.

**2 OBLIGATIONS PRIOR TO DEFERRED SETTLEMENT DATE**

- 2.1 The Crown must maintain the Geothermal Assets, or ensure their maintenance, until the Settlement Date in substantially the same condition as they were in at the Date of this Deed, fair wear and tear excepted.
- 2.2 Between the Date of this Deed and the Settlement Date the Crown must consult with, and obtain the prior written consent of, the Te Pumautanga Trustees (which will not be unreasonably withheld or delayed) before:
- 2.2.1 agreeing to any material variation in the terms of a Disclosed Encumbrance affecting or benefiting a Geothermal Asset; or
- 2.2.2 procuring any consent, or providing any waiver, under the Resource Management Act, or other legislation, that materially affects the Geothermal Assets.
- 2.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on the Geothermal Assets, between the Date of this Deed and the Settlement Date, for which the Crown must by law obtain a building consent or permit, comply with any obligations imposed on the Crown under the Building Act in respect of such works.
- 2.4 The Crown must pay all charges for electric power, gas, water, and other utilities that the Crown owes as owner of the Geothermal Assets until the Settlement Date.
- 2.5 Subject to the terms of any Disclosed Encumbrance affecting the Geothermal Assets, the Crown must use reasonable endeavours to obtain permission for the Te Pumautanga Trustees (or a person authorised by the Te Pumautanga Trustees), upon reasonable notice, to access the Geothermal Assets on one occasion before the Settlement Date to examine them.

**3 POSSESSION AND SETTLEMENT**

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS PROPERTIES**

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**PART 11: TERMS OF TRANSFER OF GEOTHERMAL ASSETS**

- 3.1 All outgoing and incoming (including rates, excluding insurance premiums) for the Geothermal Assets must be apportioned at the Settlement Date.
- 3.2 The Crown must supply a statement of apportionments to the Te Pumautanga Trustees before the Settlement Date. On the Settlement Date:
- 3.2.1 the Te Pumautanga Trustees must pay to the Crown the amount by which the outgoing (except for insurance premiums) for the Geothermal Assets pre-paid by the Crown in respect of a period after the Settlement Date exceed the incoming received by the Crown for that period; or
- 3.2.2 the Crown must pay to the Te Pumautanga Trustees the amount by which the incoming received by the Crown in respect of a period after the Settlement Date exceed the outgoing (except for insurance premiums) for the Geothermal Assets pre-paid by the Crown for that period.

**4 RISK AND INSURANCE**

- 4.1 The Geothermal Assets will remain at the sole risk of the Crown until the Settlement Date and, from the Settlement Date, they will remain at the sole risk of the Te Pumautanga Trustees.
- 4.2 The Te Pumautanga Trustees will not be required to take over from the Crown any insurance policies in relation to the Geothermal Assets.

**5 BOUNDARIES, TITLE, ETC**

- 5.1 The Crown will not be bound to point out the boundaries of the Geothermal Assets.
- 5.2 The Te Pumautanga Trustees:
- 5.2.1 will be treated as having accepted the Crown's title to the Geothermal Assets as at the Settlement Date; and
- 5.2.2 may not make any objections to, or requisitions on, it.
- 5.3 Except as otherwise expressly set out in this Part 11 no error, omission or misdescription of the Geothermal Assets or its title shall annul the transfer of the Geothermal Assets.

**6 OBLIGATIONS AFTER SETTLEMENT**

- 6.1 If the Crown receives any notice or demand in relation to the Geothermal Assets from the Crown or any territorial authority after the Settlement Date, the Crown will, if not paying or complying with such notice or demand, promptly deliver it to the Te Pumautanga Trustees or the Te Pumautanga Trustees' solicitor and, if the Crown fails to do so, the Crown will be liable for any penalty incurred.

**7 WARRANTY**

- 7.1 The Crown warrants to the Te Pumautanga Trustees that as at the Date of this Deed the Disclosure Information in relation to the Geothermal Assets is all the material information that relates to the Geothermal Assets of which the Land Holding Agency is aware and which is in the ownership or control of the Land Holding



**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS PROPERTIES**

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**PART 11: TERMS OF TRANSFER OF GEOTHERMAL ASSETS**

Agency, the Land Holding Agency having inspected its records but not having undertaken a physical inspection of the Geothermal Assets or made enquiries beyond its records.

7.2 Except as provided in paragraph 7.1, the Crown gives no representation or warranty (whether express or implied) nor accepts any responsibility with respect to:

7.2.1 the Geothermal Assets including as to their ownership, management, occupation, physical condition, use or compliance with:

- (a) any legislation including by-laws; or
- (b) any enforcement or other notice, requisition or proceedings issued by any authority; or

7.2.2 the completeness or accuracy of the Disclosure Information in relation to the Geothermal Assets.

7.3 The Te Pumautanga Trustees acknowledges that (although the Crown is not giving any representation or warranty in relation to the Geothermal Assets) the Te Pumautanga Trustees had the opportunity prior to the Settlement Date (in addition to being able to examine the Disclosure Information) to:

7.3.1 inspect the Geothermal Assets; and

7.3.2 determine their state and condition.

**8 SETTLEMENT PROVISIONS**

8.1 On and from the Settlement Date:

8.1.1 the Crown, subject to paragraph 8.2, transfers its right, title and interest in the Geothermal Assets to the Te Pumautanga Trustees; and

8.1.2 the Te Pumautanga Trustees assume all liabilities and obligations relating to the Geothermal Assets other than any that were only capable of being known if disclosed by the Crown and that the Crown failed to disclose.

**Intellectual Property**

8.2 On the Settlement Date the Crown will make available to the Te Pumautanga Trustees the Intellectual Property which will be transferred and made available in hard copy and, where the Crown holds the Intellectual Property electronically, it will also be made available electronically.

**Nature of Crown's title**

8.3 Despite any other provision in this Deed, the Crown will not be obliged to transfer to the Te Pumautanga Trustees any better title to any of the Geothermal Assets that the Crown has as at the Date of this Deed. The Te Pumautanga Trustees acknowledge that the Crown has no, and does not purport to transfer any, estate or interest in the land on which the Geothermal Assets are situated, nor does the Crown have, or purports to grant any, access rights to such of the Geothermal Assets that are situated in, on or under, or form part of, land.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS PROPERTIES**

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**PART 11: TERMS OF TRANSFER OF GEOTHERMAL ASSETS**

**9 RESTRICTION ON DISPOSAL**

- 9.1 The Te Pumautanga Trustees must not sell or gift the Geothermal Assets to any person during the period of 5 years commencing on the Settlement Date.
- 9.2 Despite paragraph 9.1, the Te Pumautanga Trustees may transfer the Geothermal Assets to another Representative Entity but only if the Representative Entity agrees to be bound by paragraph 9.1.

**10 MISCELLANEOUS**

**Further Assurances**

- 10.1 The Crown and the Te Pumautanga Trustees must, at the request of the other, sign and deliver any further documents or assurances and do all acts and things that the other may reasonably require to give full force and effect to clause 10.38 and this Part 11.

**Non merger**

- 10.2 On transfer of the Geothermal Assets to the Te Pumautanga Trustees, the provisions of this Part 11 will not merge and, to the extent any provision has not been fulfilled, will remain in force.



**PART 12: FORM OF LEASE FOR SCHOOLS**

**PART 12: FORM OF LEASE FOR SCHOOLS**

**(Clauses 10.1.92 and 10.2)**





**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS PROPERTIES**

---

**PART 12: FORM OF LEASE FOR SCHOOLS**

**SCHEDULE A**

**ITEM 1 THE LAND**

**ITEM 2 THE COMMENCEMENT DATE**

[Date].

**ITEM 3 ANNUAL RENT**

[\$[ ] plus GST per annum payable monthly in advance on the first day of each month with a first payment due on the [Date] day of [Month & Year].

**ITEM 4 TERM OF LEASE**

21 years.

**ITEM 5 LESSEE OUTGOINGS**

5.1 Rates or levies payable to any local or territorial authority, excluding only taxes levied against the Lessor in respect of its interest in the Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

5.3 Rubbish collection charges.

5.4 All charges relating to the repair and maintenance of any Lessee Improvements as hereafter described (whether of a structural nature or not).

5.5 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.

5.6 Carparking area maintenance and repair.

5.7 All costs associated with the repair, maintenance or replacement of any fencing on the Land.

**ITEM 6 PERMITTED USE**

The Permitted Uses referred to in clause 2.3.

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**ITEM 7      RIGHT OF RENEWAL**

Perpetual rights of renewal of 21 years each from the [Date], and each 21<sup>st</sup> yearly anniversary after that date.

**ITEM 8      RENT REVIEW DATES**

[Date] and 7 yearly thereafter.

**ITEM 9      LESSOR'S PROPERTY**

Nil

**ITEM 10     LESSEE'S IMPROVEMENTS**

[List all existing buildings and improvements on the Land together with all playing fields and sub soil works constructed or installed by the Lessee or any agent of the Lessee on the Land].

**ITEM 11     CLAUSE 3.4 b. NOTICE**

To:            [Te Pumautanga Trustees]

(hereafter called "the Lessor")

And to:        The Secretary  
                  Ministry of Education  
                  National Property Office  
                  Private Box 1666  
                  WELLINGTON

(hereafter called "the Lessee")

From:          [Mortgagee / Chargeholder]

(hereafter called "the Lender")

The Lender acknowledges that in consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("the Land") which the Lender acknowledges will be for its benefit, the Lender acknowledges that:

- (i) It has notice of the provisions of clause 3.4 b. and c. of the said Lease;
- (ii) It agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the lease, shall remain the property of the Lessee at all times during the continuance of the lease and for a reasonable period after the expiration or sooner

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determination of the Lease (hereafter collectively called "the relevant period");

- (iii) It will not claim any interest in any Lessee's Improvements under the security for its loan during the relevant period irrespective of how any Lessee's Improvement may be annexed to the Land and irrespective of any rule of law or equity to the contrary or any provisions of its security to the contrary;
- (iv) It agrees that this acknowledgment is irrevocable.

SCHEDULE

[ ]

.....

(LENDER EXECUTION)  
/ [Year]

ITEM 12 CLAUSE 3.4 c. NOTICE

To: [Te Pumautanga Trustees]

(hereafter called "the Lessor")

And to: The Secretary  
Ministry of Education  
National Property Office  
Private Box 1666  
WELLINGTON

(hereafter called "the Lessee")

From: [Mortgagee/Chargeholder]

(hereafter called "the Lender")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the Land described in the Schedule below ("the Land") it had notice of and agreed to be bound by the provisions of clause 3.4 c. of the lease of the Land and that in particular it agrees that notwithstanding any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (i) Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the Commencement Date of the Security;

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- (ii) Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a reasonable period after the expiration or sooner determination of the Lease.

SCHEDULE

[ ]

.....

(LENDER EXECUTION)

/ [Year]





**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 2: CULTURAL REDRESS PROPERTIES**

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**PART 12: FORM OF LEASE FOR SCHOOLS**

**SCHEDULE B**

**PART I - PRELIMINARY**

**1. Definitions**

**1.1**

- a. The expression "the Lessor" shall include and bind:
  - i. the persons executing this Lease as Lessor; and
  - ii. any Lessor for the time being under it; and
  - iii. all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.
  
- b. The expression "the Lessee" shall include and bind:
  - i. the person executing this Lease as Lessee;
  - ii. all the Lessees for the time being under it; and
  - iii. all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally.
  
- c. Words importing the singular or plural number shall include the plural or singular number respectively.

1.2 "Board" means a Board of Trustees constituted under Part 9 of the Education Act 1989.

1.3 "Crown Entity" has the meaning given to it in s7(1) of the Crown Entities Act 2004.

1.4 "Department" has the meaning given to it in s2 of the Public Finance Act 1989.

1.5 "Education Act 1989" means the Education Act 1989.

1.6 "Government Work" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.

1.7 "The Land", "The Commencement Date", "Annual Rental", "Term of the Lease", "Lessee's Outgoings" and "Permitted Use" have the meanings ascribed to them in Schedule A.

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- 1.8 "Lessee's Improvements" means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent or sublessee or licensee of the Lessee prior to or after the commencement of this Lease including those listed in Item 10 of Schedule A but excludes "Lessor's Property".
- 1.9 "Lessee's Outgoings" means all outgoings the Lessee is obliged to pay under the provisions of this Lease.
- 1.10 "Lessor's Property" means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are either on the Land at the commencement Date or placed on the Land by the Lessor after the Commencement Date.
- 1.11 A "property occupancy document" means a notice specifying the terms and conditions subject to which a Board occupies land and buildings, issued by the Secretary for Education pursuant to s 70 of the Education Act 1989 and includes a licence to occupy or other agreement granted under those provisions.
- 1.12 "State School" has the meaning given to it in the Education Act 1989.
- 1.13 References to a statute include references to regulations, orders, rules or notices made under that statute, and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute or regulation, consolidation, reenactment, substitution or otherwise.
- 1.14 The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof, and "subletting" and "sublease" shall be construed accordingly.

**PART II - LESSEE'S COVENANTS**

**2. Lessee's Covenants**

**2.1 Payment of Annual Rent**

The Lessee shall pay the annual rent in the manner and at the times provided in Item 3 of Schedule A.

**2.2 Payment of Lessee Outgoings**

- a. The Lessee shall pay the Lessee Outgoings in respect of the Land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- b. The Lessee's liability to pay Lessee Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.

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**2.3 Permitted Uses of Land**

**a. Primary Use**

The Land may be used for education purposes.

**b. Subsidiary Use**

If any part of the Land is not required for education purposes, then that part of the land may be used for any of the following purposes:

- (i) any other Government Work;
- (ii) any use undertaken, established, managed, operated or maintained by a Crown Entity for any public purpose;
- (iii) any use of the whole or any part of the Land consented to by the Lessee as sublessor under clause 4.2 of this Lease.

**2.4 Compliance with Law**

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land.

**2.5 Avoidance of Danger**

The Lessee shall:

- a. take all reasonable precautions to minimise any danger or hazard arising from the Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- b. promptly remedy any danger or hazard that may arise on the Land.

**2.6 Maintenance of Lessee's Improvements**

The Lessee shall at the Lessee's expense keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

**2.7 No Lessor Maintenance**

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The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

**2.8 Rubbish Removal**

The Lessee shall regularly cause all rubbish and garbage to be removed from the Land and will keep any rubbish bins or containers in a tidy condition. The Lessee will also at the Lessee's expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the territorial authority.

**2.9 Signage**

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name plate, sign board or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage.

**2.10 Insurance**

The Lessee shall (except where the Lessee is the Sovereign) insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease.

**2.11 Sundry Lessee Acknowledgments**

The Lessee acknowledges that:

- a. the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion thereof between the Land and any adjoining land which is the property of the Lessor;
- b. the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems it reasonably necessary for the purposes of the Permitted Use;
- c. it has entered into this Lease in reliance on its own judgment and not in reliance on any representation or warranty by the Lessor.

**2.12 Goods and Services Tax**

The Lessee shall pay to the Lessor or as the Lessor shall direct the goods and services tax (GST) payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable

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on each occasion when any rental payment falls due for payment and in respect of any other payments shall be payable on demand.

**PART III - LESSOR COVENANTS**

**3. Lessor's Covenants**

**3.1 Quiet Enjoyment**

If the Lessee pays the rent and observes and performs all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

**3.2 Construction of or Alterations To Lessee's Improvements**

- a. The Lessee may construct Lessee's Improvements and make any alterations or additions to Lessee's Improvements without the prior approval of the Lessor where it is necessary for or incidental to the Permitted Use. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary for or incidental to the Permitted Use, and consent shall not be withheld or delayed unreasonably or arbitrarily.
- b. The Lessee may negotiate and conclude such easements and all other like rights and interests over or for the benefit of the Land as are necessary for or incidental to either:
  - i. the Permitted Use; or
  - ii. any permitted alterations or additions to the Lessee's Improvements;

without the prior approval of the Lessor and the Lessor agrees that it will execute such documentation as is reasonably required to give legal effect to the rights so created.

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**3.3 Lessor's Property**

- a. The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in Schedule A Item 10 and that the Lessor shall not during the continuance of this Lease place any further Lessor's Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction or placement.
- b. The Lessor further acknowledges that the Lessee may at its absolute discretion decline consent to the construction or placement of any Lessor's Property on the Land and that all improvements on the Land at the Commencement Date which are not listed as Lessor's Property are Lessee's Improvements.

**3.4 Lessor's Acknowledgments as to Lessee's Improvements**

- a. The Lessor acknowledges in relation to Lessee's Improvements that:
  - i. notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how those improvements are annexed to the Land;
  - ii. Lessee's Improvements are to be insured by the Lessee in its own name; and
  - iii. when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee;
- b. Should the Land be subject to any mortgage or other charge at the Commencement Date, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgment of all existing mortgagees or chargeholders of the Land in the form prescribed in Schedule A Item 11 duly executed by the mortgagees or chargeholders. It is acknowledged by the Lessor that the Lessee shall not be required to execute this Lease until the provisions of this subclause have been fully satisfied;
- c. Should the Lessor, subsequent to the Commencement Date, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed mortgagee or chargeholder the written acknowledgment prescribed in Schedule A Item 12. It is acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and that it will deliver executed originals of those acknowledgments to the Lessee within 3 working days from the date of their receipt by the Lessor (time being of the essence);
- d. The Lessee may demolish or remove any Lessee's Improvements from the Land at any time during this Lease without the consent of the Lessor upon the

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condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.

**3.5 Designation**

The Lessor covenants that it will consent to the Lessee seeking and obtaining a designation of the Land for the purposes of the Permitted Use under the provisions of the Resource Management Act 1991, and that the Lessor shall further consent to the Lessee maintaining that designation for the duration of this Lease.

**3.6 Lessee Break Option**

The Lessee may at any time during the continuance of this Lease, or any renewal of it determine this Lease by giving not less than 6 months notice in writing. The Lease shall expire upon expiration of the notice and the Lessee shall, at that time, pay a further one year's rent to the Lessor, who agrees to accept that sum in full and final satisfaction of all claims, loss and damage accruing to the Lessor from the determination, but without prejudice to any antecedent breach of this Lease by the Lessee prior to its termination.

**3.7 Lessee's Acknowledgement**

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any personal property in or about the Land, except where that is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

**3.8 Benefits to Land Not to be Restricted or Cancelled**

The Lessor shall not cancel, surrender or modify any easements or other like rights or interests whether registered or not which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

**PART IV - MUTUAL COVENANTS**

**4. Mutual Covenants**

**4.1 Assignment**

- a. The Lessee shall be permitted as of right to assign its interest under this Lease to any Crown Entity, but shall not otherwise be able to assign its interest under this Lease;

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- b. It is acknowledged between the parties that a transfer of the interest of one Department to another Department shall be permitted as of right by the Lessor and shall not be deemed to be an assignment for the purposes of this clause 4.1 or a subletting for the purposes of clause 4.2.

**4.2 Subletting**

The Lessee shall be permitted as of right to sublet to:

- a. any Crown Entity; or  
b. any person or body where

the Land is used for the purposes of a school and the Land or a part of the Land is not needed or used for the purposes of the school occupying it; and

- i. the sublease is in the public interest; and  
ii. the sublease:  
(1) is for a purpose associated with educational outcomes and will bring educational benefit to the school or its community, or to any other school; or  
(2) is for a community purpose, and will bring no educational disadvantage to the school; or  
iii. the sublease is essential or conducive to the carrying out of the then existing Permitted Use;

but otherwise no subletting shall be permitted.

**4.3 Occupancy by School Board of Trustees**

- a. Where the Lessee the Sovereign acting by and through the Secretary for Education has issued either a licence to occupy or a property occupancy document to any Board then the occupancy so conferred shall not be an underletting or an assignment to which clause 4.1 or clause 4.2 relate and shall be permitted as of right. The Lessor agrees that the covenant for quiet enjoyment contained in clause 3.1 extends to and includes the occupancy of the Land by any such Board whether pursuant to a licence to occupy or a property occupancy document.
- b. Notwithstanding the restriction on subletting contained in clause 4.2, the Board shall be permitted as of right, after obtaining the prior written consent of the Secretary for Education, to:



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- i. sublet to any person or body on the same basis that the Lessee is permitted to sublet under clause 4.2(b), in accordance with s70B of the Education Act 1989; and
- ii enter into an agreement with any person or body, pursuant to s70C of the Education Act 1989.

**4.4 Further Provisions Relating to Subletting and Assignment**

Where the Lessor consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.

**4.5 Lessor May Remedy Lessee Default**

- a. If the Lessee defaults in the observance or performance of any of the Lessee's obligations and if the Lessor has first served not less than 21 clear days written notice of its intention to enter upon the Land and to do such things required to make good any Lessee default, then it shall be lawful for the Lessor (in addition to any of its remedies) to enter the Land and do all such things required to make good the default and to recover the costs of such action from the Lessee;
- b. Any notice served under the provisions of clause 4.5 a. shall specify sufficient particulars to adequately advise the Lessee of the breach of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any notice void.

**4.6 Lessee's Improvements**

- a. Upon the termination of this Lease, the Lessee shall have the right to remove any Lessee's Improvements from the Land without being obliged to pay the Lessor any compensation for their removal if they are removed within a reasonable period from the termination of the Lease, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee until that time and that no prior consent of the Lessor shall be required in respect of any removal. The Lessor further acknowledges that it will be deemed by the provisions of this clause to have granted to the Lessee licence to enter the Land and remove Lessee's Improvements and that this provision shall enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and shall also bind any successor in title to the Lessor subsequent to the expiry of the Lease;
- b. The Lessee covenants that it will have no claim of any kind against the Lessor in respect of any Lessee's improvement or other Lessee's property which is left on the Land following the reasonable period after the termination of this Lease and that any such Lessee's property shall thereafter be deemed to have become the property of the Lessor;

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- c. In the event the Lessee removes its Lessee's Improvements from the Land, it shall restore the Land to a neat, tidy and safe condition subsequent to any removal;
- d. The Lessor shall do nothing to obstruct or otherwise impede the removal of any Lessee's Improvements from the Land at any time prior to the termination of the Lease or within three months after that time;
- e. In any review of rent under the provisions of this Lease any Lessee's Improvements shall be entirely excluded from the assessment of any new rental.

**4.7 Renewal**

- a. If the Lessee has observed and performed its covenants under this Lease and given written notice to renew the Lease at least three calendar months prior to the end of the initial term of 21 years (time not being of the essence of such notice) then the Lessor will at the cost of the Lessee renew the Lease for the next further term from the renewal date as follows;
- b. The annual rent shall be agreed upon or failing agreement shall be determined in accordance with clause 4.8; and
- c. Otherwise the renewed lease shall be upon and subject to the covenants and agreements expressed or implied in this Lease, including this right of renewal.

**4.8 Rent Review**

- a. The annual rent shall be reviewed by the Lessor at intervals of 7 years to an annual rent of 6% of:
  - i. the value of the Land as vacant land in an unsubdivided state assessed in accordance with its underlying zoning or as a school site, whichever is the greater; and
  - ii. the value of any Lessor's property on the Land;

(hereafter referred to as "the Reviewed Annual Rent")

in the following manner:

- (1) The Lessor shall commence a review by not earlier than 3 months prior to any Rent Review Date or at any time up to one year after any Rent Review Date (time being of the essence) by giving written notice to the Lessee specifying the annual rent considered by the Lessor to be the Reviewed Annual Rent as at that Rent Review Date;

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- (2) If, by written notice to the Lessor within 28 days after receipt of the Lessor's notice, the Lessee disputes that the proposed new annual rent is the Reviewed Annual Rent, then the new rent shall be determined in accordance with the provisions of clause 4.8 b.;
  - (3) The annual rent so determined or accepted shall be the annual rent from the Rent Review Date or the date of the Lessor's notice if such notice is given later than 3 months after the Rent Review Date;
  - (4) Pending the determination of the new rent, the Lessee shall pay the rent specified in the Lessor's notice provided that the rent is substantiated by a registered valuer's report. Upon determination of the new rent, an appropriate adjustment shall be made;
  - (5) The rent review at the option of either party may be recorded in a variation of this lease, the cost of which shall be payable by the Lessee.
- b. Immediately following receipt by the Lessor of the Lessee's notice, the parties shall endeavour to agree upon the reviewed annual rent but if agreement is not reached within 28 days then the new rent may be determined either:
- i. by one party giving written notice to the other requiring the new rent to be determined by arbitration; or
  - ii. if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
    - (1) each party shall appoint a valuer and give written notice of the appointment to the other party within 28 days of the parties agreeing to so determine the new rent;
    - (2) the valuers appointed before commencing their determination shall appoint an umpire who shall be a registered valuer or solicitor of the High Court. In the event the valuers fail to agree upon an umpire, the appointment of an umpire shall be made by the president of the Arbitrator's Institute of New Zealand Incorporated on the joint application of the valuers;
    - (3) the valuers shall determine the Reviewed Annual Rent of the premises and if they fail to agree then the rent shall be determined by the umpire;
    - (4) each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the

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umpire may prescribe and they shall have regard to any such representations but not be bound thereby.

When the rent has been determined, the umpire or the valuers shall give written notice thereof to the parties. Any umpire notice shall provide how the costs of the determination shall be borne and such provisions shall be binding on the parties. Where the rent is determined by the parties' valuers and not the umpire, the parties shall pay their own costs.

**4.9 Re-Entry**

- a. The Lessor may re-enter the premises where:
- i. rent is in arrears for a period exceeding 30 days after any rent payment date; or
  - ii. the Lessee is in breach of any covenant on the Lessee's part; or
  - iii. the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors; or
  - iv. the Lessee becomes insolvent, bankrupt or goes into liquidation;

and the term of this Lease shall terminate on such re-entry but without prejudice to the rights of either party against the other;

- b. Whilst the Sovereign is the Lessee and should the Sovereign either default in the payment of any rent for a period exceeding thirty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall:
- i. serve a notice ("the Default Notice") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged;
  - ii. the Default Notice notwithstanding anything to the contrary contained in clause 4.9 a. above shall specify that:
    - (1) the Lessee must within 30 days of receipt of the notice remedy the default specified; and
    - (2) should the Lessee not remedy the default specified within that time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this clause;

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- c. The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 4.9 b. have been satisfied in full and that any re-entry contrary to the provisions of clause 4.9 b. shall be null and void ab initio.

**4.10 Insurance**

- a. The Lessor shall be responsible for insuring any Lessor's Property on the Land;
- b. The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land;
- c. Should any property referred to in subclauses a. and b. above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of theirs) whether to effect reinstatement or not and the other party shall abide by that decision whatever it may be.

**4.11 Rating Assessments**

The parties agree that the Lessee may at any time make application for a separate rating assessment of the Land in its name and thereafter account direct to the territorial authority for all rates payable on the Land.

**4.12 Entire Agreement**

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

**4.13 Differences and Disputes**

All differences or disputes that may arise between the parties concerning this Lease shall be the subject of negotiations in good faith with a view to achieving resolution and, if those negotiations are not successful, shall be referred to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before their entering upon the reference) in accordance with the Arbitration Act 1996.

**4.14 Service of Notices**

- a. Notices given under this Lease must be in writing and must be served by one of the following means:
- (i) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
  - (ii) in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:

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(1) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or

(2) by personal delivery, or by posting by registered post,

to the address set out in clause 4.14 b.

b. Notices given under this Lease should be addressed to:

**Lessor:**

[Address of Te Pumautanga Trustees to be inserted]

**Lessee:**

The Property Manager  
National Office  
Ministry of Education  
Private Bag 1666  
WELLINGTON.

c. Notices shall be deemed to be served at the time of delivery, or in the case of notices which are posted by registered mail, two days after the date of posting.

**4.15 Registration of Lease**

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the expense of the Lessee. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease prior to registration.

**4.16 Costs**

The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the negotiation, preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.

**4.17 Interest**

If the Lessee shall fail to pay any instalment of rent or other sum of the money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% accruing on a daily basis from the due date for payment or the due date

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of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

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LESSOR:

\_\_\_\_\_

Correct for the purposes of the  
Land Transfer Act 1952

.....  
SOLICITOR FOR THE LESSEE

LESSEE:

**THE SOVEREIGN**  
acting by and through the Secretary  
for Education

Particulars entered in the  
Register as shown herein  
on the date and at the time  
endorsed below

\_\_\_\_\_  
**MEMORANDUM OF LEASE**  
\_\_\_\_\_

\_\_\_\_\_  
**THE SECRETARY**  
**MINISTRY OF EDUCATION**  
**NATIONAL OFFICE**  
**WELLINGTON**