

**THE SOVEREIGN IN RIGHT OF NEW ZEALAND**

**AND**

**THE NGĀTI PŌNEKE MĀORI ASSOCIATION INCORPORATED**

**AND**

**THE TRUSTEES OF THE PORT NICHOLSON  
BLOCK SETTLEMENT TRUST**

**DEED OF AGREEMENT  
IN RELATION TO PIPITEA MARAE**

**THIS DEED** is made between

**THE SOVEREIGN** in right of New Zealand acting by the Minister for Treaty of Waitangi Negotiations (**Crown**)

**AND**

**THE NGĀTI PŌNEKE MĀORI ASSOCIATION INCORPORATED** (**Association**)

**AND**

**THE TRUSTEES OF THE PORT NICHOLSON BLOCK SETTLEMENT TRUST** (**Trustees**)

each a **Party** and together the **Parties**.

### **BACKGROUND**

- A. The fee simple estate in that part of the Pipitea Marae Site described as Section 1 SO 406978 is vested in the Crown and held under the Public Works Act 1981 for the purposes of buildings of general government and public buildings of the general government.
- B. The fee simple estate in that part of the Pipitea Marae Site contained in computer freehold register WN16A/350 is vested in the Māori Trustee and is subject to section 15 of the Maori Purposes Act 1969 or section 9 of the Maori Purposes Act 1974.
- C. Pursuant to the Original Lease, the Māori Trustee leased to the Association that part of the Pipitea Marae Site contained in computer freehold register WN16A/350 for a perpetual term of 30 years, commencing on 1 October 1971.
- D. The Crown's position is that the Original Lease was renewed with effect from 1 October 2001. The Association's position is that the Original Lease was renewed with effect from 1 October 2001. The Trustees' position is that the Original Lease expired on 30 September 2001 and was not renewed pursuant to clause 12 of the Original Lease.
- E. Under the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Legislation:
  - the part of the Pipitea Marae Site referred to in recital A will cease to be held under the Public Works Act 1981 for the purposes of buildings of general government and public buildings of the general government;
  - the part of the Pipitea Marae Site referred to in recital B will cease to be subject to section 15 of the Maori Purposes Act 1969 or section 9 of the Maori Purposes Act 1974;
  - the fee simple estate in the part of the Pipitea Marae Site referred to in recital B will vest in the Crown;
  - the fee simple estate in all of the Pipitea Marae Site will then vest in the Trustees, subject to the Original Lease;

- despite the vesting of the Pipitea Marae Site in the Trustees, the Improvements will not vest in the Trustees;
- the fee simple estate in the Pipitea Marae Site and the Improvements will then vest in the Pipitea Marae Charitable Trust;
- the Original Lease will be deemed to be terminated.

F. The Crown and the Association entered into discussions in 2008 regarding whether a payment should be made to the Association to compensate it for any loss that may occur as a result of the transfer of the Pipitea Marae Site to the Trustees. Those discussions culminated in the Crown offering (subject to certain conditions) to make the Ex Gratia Payment to the Association to compensate it for any such loss. The Association accepted the Crown's proposal.

G. The Association has subsequently requested that the Ex Gratia Payment be settled by the Crown on the Pipitea Marae Charitable Trust on the Vesting Date.

H. The Parties wish to record certain arrangements between them, including (subject to the provisions of this Deed):

- the Association and the Trustees agree to establish the Pipitea Marae Charitable Trust to own and administer the Pipitea Marae Site;
- the Association and the Trustees agree that the Ex-Gratia Payment should be settled on the Trustees of the Pipitea Marae Charitable Trust on the Vesting Date; and
- the Crown will therefore settle the Ex-Gratia Payment on the Trustees of the Pipitea Marae Charitable Trust on the Vesting Date.

## TERMS OF THIS DEED

### 1. PIPITEA MARAE CHARITABLE TRUST

- 1.1 The Association and the Trustees agree to establish the Pipitea Marae Charitable Trust to own and administer the Pipitea Marae Site, in the form of the Pipitea Marae Charitable Trust Deed annexed as Schedule 1 to this Deed.

### 2. EX-GRATIA PAYMENT

- 2.1 The Crown had offered to make the Ex-Gratia Payment to the Association to compensate it for any loss that may occur as a result of the transfer of the Pipitea Marae Site to the Trustees. The Association has subsequently requested that the Ex-Gratia Payment be settled by the Crown on the Pipitea Marae Charitable Trust.
- 2.2 The Association and the Trustees agree that the Ex-Gratia Payment should be settled on Trustees of the Pipitea Marae Charitable Trust on the Vesting Date.
- 2.3 Consequently, on the Vesting Date, the Crown will settle the Ex-Gratia Payment on the Trustees of the Pipitea Marae Charitable Trust to be held on the terms of that trust.

### 3. CONDITIONS

- 3.1 This Deed is conditional on the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Legislation:
- 3.1.1 providing that:
- (a) the fee simple estate in the Pipitea Marae Site and the Improvements vest in the Pipitea Marae Charitable Trust; and
  - (b) the Original Lease is deemed to be terminated; and
- 3.1.2 coming into force.
- 3.2 This Deed is further conditional on the completion of the matters specified in clause 3.1.1.
- 3.3 Until it becomes unconditional, this Deed:
- 3.3.1 is entered into on a "without prejudice" basis; and
- 3.3.2 in particular, may not be used as evidence in any proceedings before, or presented to, any court, the Waitangi Tribunal, or any other judicial body or tribunal (except for proceedings concerning the interpretation and/or enforcement of this Deed).
- 3.4 In the event that this Deed does not become unconditional on or before the day that is 24 months after the Settlement Date, then this Deed (including for the avoidance of doubt clause 4.1) is terminated and no Party has any claim or cause of action or right of any kind whatsoever under the provisions of this Deed, either alone or together with any other person, against any other Party or Parties to this Deed.
- 3.5 This Deed is:
- 3.5.1 a binding contract; and
- 3.5.2 to be interpreted and enforced accordingly.

#### 4. FULL AND FINAL SETTLEMENT

- 4.1 For the avoidance of doubt, the Association and the Trustees agree that they have no claim or cause of action or right of any kind whatsoever, either alone or together with any other person, against the Crown in connection with the Pipitea Marae Site, the Improvements and the Original Lease (including, without limitation, clause 13).

#### 5. GENERAL TERMS

##### Amendment

- 5.1 This Deed may not be amended unless the amendment is in writing signed by the Crown, the Association, and the Trustees.

##### No Assignment

- 5.2 Rights or obligations under this Deed may not be transferred.

##### Notice

- 5.3 A notice under this Deed must be:

5.3.1 signed by or on behalf of the person sending it; and

5.3.2 until any other address or facsimile number is given by notice, given in writing to the addresses or facsimile numbers of the other persons as set out below:

##### Crown

The Solicitor-General  
Crown Law Office  
Level 10  
Unisys House  
56 The Terrace  
Wellington

PO Box 2858, Wellington  
Facsimile No: (04) 473 3482

##### Trustees

Port Nicholson Block Settlement Trust  
Level 1  
TSB Arena (South Park)  
3 Queens Wharf  
Wellington

PO Box 12164  
Wellington  
Facsimile No (04) 472 3874

##### Association

The Ngāti Pōneke Māori Association  
Incorporated  
Level 1  
326 Lambton Quay  
Wellington

- 5.4 Delivery of a notice may be made:

5.4.1 by hand (which will be treated as having been received at the time of delivery);

5.4.2 by post with prepaid postage (which will be treated as having been received on the second business day after posting); or

5.4.3 by facsimile (which will be treated as having been received on the day of transmission).

5.5 If a notice is treated as having been received on a day that is not a Business Day, or after 5:00pm on a Business Day, that notice will be treated as having been received on the next Business Day.

#### **Further Assurances**

5.6 The Parties agree to cooperate and do all things reasonably necessary to give effect to the terms of this Deed.

#### **Definitions and Interpretation**

5.7 In this Deed, unless the context requires otherwise:

**Association** means the Ngāti Pōneke Māori Association Incorporated, a society incorporated on 11 December 1969 and whose registered office is at Level 1, 326 Lambton Quay, Wellington;

**Business Day** means the period of 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;
- (b) 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
- (c) Wellington anniversary day;

**Crown** has the meaning given to that term by section 2(1) of the Public Finance Act 1989;

**Date of this Deed** means the date this Deed is signed by all of the Parties to this Deed;

**Ex-Gratia Payment** means the sum of \$1,738,000 (inclusive of GST);

**Improvements** means all buildings, structures, equipment, plant and other improvements that are in or on the Pipitea Marae Site as at Vesting Date;

**Māori Trustee** means the person holding that office from time to time under the Maori Trustee Act 1953;

**Notice** means a notice in writing given under clause 5.4 and notify has a corresponding meaning;

**Original Lease** means Memorandum of Lease L146830.3 over that part of the Pipitea Marae Site contained in computer freehold register WN16A/350, and the unregistered first renewal of that lease (in accordance with the position of the Crown and the Association set out in recital D);

**Pipitea Marae Charitable Trust** means the trust established in accordance with clause 1.1 and, if the Trustees of that Trust incorporate as a board under the Charitable Trust Act 1957, includes the Pipitea Marae Charitable Trust Incorporated;

**Pipitea Marae Site** means that area of land containing approximately 0.3564 hectares, being Section 1 SO 406983 and contained in computer freehold register WN16A/350, part document K25892, and balance computer freehold register WN401/66;

**Port Nicholson Block Settlement Trust Deed** means the deed of trust dated 11 August 2008 under which the Trustees established the Port Nicholson Block Settlement Trust;

**Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Legislation** means the bill to give effect to the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Deed of Settlement, and where the bill has become law, means, if the context requires, the Act resulting from the passing of that bill;

**Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Deed of Settlement** means the Deed of Settlement of the Historical Claims of Taranaki Whānui ki Te Upoko o Te Ika dated 19 August 2008, entered into between the Crown, Taranaki Whānui ki Te Upoko o Te Ika, and the Trustees;

**Settlement Date** means the date that is 20 Business Days after the date on which the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Legislation comes into force; and

**Trustees** means the trustees of the Port Nicholson Block Settlement Trust and includes the trustees appointed from time to time under the Port Nicholson Block Settlement Trust Deed in their capacity as trustees.

**Vesting Date** means the date upon which the fee simple estate in the Pipitea Marae Site and the Improvements vest in the Pipitea Marae Charitable Trust pursuant to the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Legislation.

5.8 In the interpretation of this Deed, unless the context otherwise requires:

5.8.1 headings do not affect its interpretation;

5.8.2 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

5.8.3 the singular includes the plural and vice versa;

5.8.4 words indicating one gender include the other genders;

5.8.5 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporated;

5.8.6 a reference to a date on or by which something must be done includes any other date which may be agreed in writing between the Crown, the Association, and the Trustees;

5.8.7 where something is required to be done on a day which is not a business day, that thing must be done on the next business day after that day;

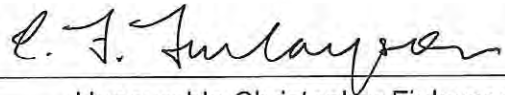
5.8.8 a reference to a clause is to a clause of this Deed;

5.8.9 a reference to legislation includes a reference to that legislation as amended, consolidated or substituted; and

5.8.10 a reference to a document or agreement, including this Deed, includes a reference to that document or agreement as amended or replaced.

SIGNED as a deed on

SIGNED for and on behalf of  
THE SOVEREIGN IN RIGHT OF  
NEW ZEALAND BY THE MINISTER FOR  
TREATY OF WAITANGI NEGOTIATIONS:



Honourable Christopher Finlayson

WITNESS



Name: John Harbord

Occupation: Advisor

Address: 13/33 Hobson St  
Wellington

SIGNED for THE NGĀTI PŌNEKE MĀORI ASSOCIATION INCORPORATED by:

~~John~~ (Secretary)   
Chairman

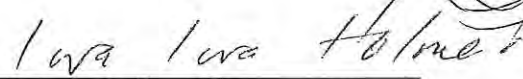


WITNESS

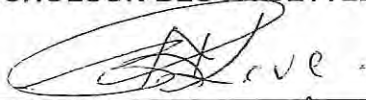
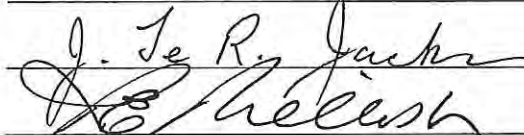
Name:

Occupation:

Address:

  
Iwa Iwa Holmes  
Artist  
59 Piko Street  
Titahi Bay

SIGNED for THE TRUSTEES OF THE PORT NICHOLSON BLOCK SETTLEMENT TRUST by:

  
J. Te R. Jackson  


WITNESS

Name:

Occupation: CONTRACTOR

Address: WELLINGTON

  
J. TE CONAGHAN

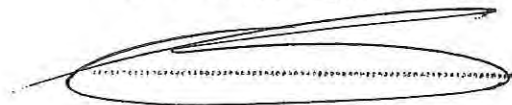


**SCHEDULE 1 – PIPITEA MARAE CHARITABLE TRUST DEED**

# PIPITEA MARAE CHARITABLE TRUST

## Deed of Trust

Certified copy of original document

A handwritten signature in black ink, appearing to read 'Bruce Farquhar', is written over a horizontal line. The signature is enclosed within a hand-drawn oval shape.

Solicitor of the High Court of New Zealand

Bruce Farquhar  
Solicitor  
Wellington

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Deed dated

14<sup>th</sup> May

2009

## Parties

- 1 **Port Nicholson Block Settlement Trust** a trust created by deed dated 11 August 2008 for the benefit of Taranaki Whanui to hold assets and rights derived from the Port Nicholson Block Claims under the Treaty of Waitangi Act 1975 ("**PNBST**")
- 2 **Ngati Poneke Māori Association** an incorporated society formed pursuant to the Incorporated Societies Act 1908 ("**Ngati Poneke**")
- 3 **Mahara Okeroa** of Wellington, former Member of Parliament  
**Neville McClutchie Baker** of Wellington, Consultant  
**Aroha Jane Thorpe** of Wellington, Contractor  
**John Paki** of Wellington, Maori Trustee  
**Iwa Holmes** of Wellington, Consultant  
**Wayne Mulligan** of Wellington, Consultant  
(together called the "**Trustees**")

## Background

- A The PNBST and Ngati Poneke (together called the "**Settlers**") wish to establish and register under the Charitable Trusts Act 1957 a trust, to be known as the Pipitea Marāe Charitable Trust, to be responsible for the promotion and encouragement of the preservation of New Zealand maoritanga, history, tradition, mythology, language, whenua, whanau, waiata, poi, haka, whakairo, tukutuku. The Trust as owner shall operate Pipitea Marae in a manner that enhances the Marae for the benefit of the Maori community in and around the Wellington area.
- B The Trustees have agreed to act as Trustees of the Trust.
- C This Deed is being completed by the Settlers and the Trustees to establish the terms of the Trust.

## Deed

The Settlers settle the sum of \$10.00 on the Trustees as an initial settlement on the Trust.

The Trustees agree to act as Trustees of the Trust on the terms set out in this Deed.

## Part 1 – Establishment, Objects and Powers of the Trust

### 1 Definitions and Interpretations

#### 1.1 Defined Terms: In this Trust Deed, unless the context otherwise requires:

**"Alienate"** means the disposition of the Marae and/or any part thereof by way of sale or gift. The making or grant of any lease exceeding a period of 7 years (including all rights of renewal), mortgage or charge over or in respect of the Marae.

**"Annual Report"** means the annual report of the Trust prepared in accordance with clause 12.4;

**"Balance Date"** means 31 March or any other date that the Trustees by resolution adopt as the date up to which the Trust's financial statements are to be prepared in each year;

**"Board"** means the Board of Trustees;

**"Business Day"** means any day in which registered banks are open for business in Wellington;

**"Chairperson"** means the chairperson from time to time of the Trust being one of the Trustees and elected as such by the Trustees in accordance with clause 20;

**"Charitable Purpose"** means and includes that term as defined by the Charitable Trusts Act 1957 and the Charities Act 2005, and also means and includes every charitable purpose (whether religious, educational or otherwise) within New Zealand which is regarded as charitable by the law for the time being in New Zealand provided however firstly that any such charitable purpose is also regarded as charitable under every statute, regulation or ordinance of New Zealand relating to income tax, estate duty, gift duty, or any other revenue statute for the time being in force in New Zealand and secondly that such charitable purpose is consistent with the Objects;

**"Financial Year"** means the financial year of the Trust referred to in clause 12.1;

**"Marae"** means the buildings and all improvements including the basement carpark that constitute Pipitea Marae situated at 55-59 Thorndon Quay, Wellington.

**"Related Party"** means a person specified in section CW 42(5) of the Income Tax Act 2007, the persons currently specified being:

- a A settlor or trustee of the trust by which the business is carried on.
- b A shareholder or director of the company by which the business is carried on.
- c A settlor or trustee of a trust that is a shareholder of the company by which the business is carried on.
- d A person where that person is associated with any person in (a) to (c) above, where associated means associated in terms of Subpart YB of the Income Tax Act 2007 as it applies to s CW 42.

**"Special Resolution"** means a resolution of the Trustees passed in the manner provided in clause 21.6;

**"Trust"** means the trust created by this Trust Deed;

**"Trust Deed"** means this deed of trust and includes the recitals and any schedules to this deed;

**"Trust Fund"** means all money, investments, property and assets, and leases of property and assets, from time to time owned or beneficially held by the Trust;

**"Trust Objects"** means the objects and purposes set out in clause 4.1;

**"Trustees"** means the trustees appointed from time to time in accordance with this Trust Deed and to act as the trustees for the time being of the Trust and "Trustee" shall mean any one of those persons;

1.2 **Interpretation:** In this Trust Deed, unless the context otherwise requires:

- a words importing the singular include the plural and vice versa;
- b words importing one gender include the other gender;
- c references to persons include corporations and unincorporated bodies of persons, governments or other public bodies or agencies whether or not having a separate legal personality;
- d references to a statute shall be deemed to be references to that statute as amended, re-enacted or substituted from time to time;
- e references to a clause, recital or a schedule shall be to a clause, recital or a schedule to this Trust Deed;
- f any schedules to this Trust Deed shall form part of this Trust Deed;
- g headings appear as a matter of convenience only and shall not affect the interpretation of this Trust Deed.

## 2 **Establishment of the Trust**

2.1 **Trust Established:** The Trustees declare and acknowledge that they hold the Trust Fund upon the trusts and with the powers set out in this Trust Deed.

2.2 The Trust Fund shall comprise all assets from time to time held by or within the control of the Trustees under this Deed including the income arising from the Trust Fund and any accumulation of such income.

2.3 The Trust shall commence on the date of this Deed and shall continue until terminated under clause 16.

## 3 **Name of the Trust**

3.1 The name of the Trust is "Pipitea Marae Charitable Trust".

3.2 Upon the Trust being incorporated under the Charitable Trusts Act 1957 the Trust shall be named "Pipitea Marae Charitable Trust Incorporated".

## 4 **Objects of the Trust**

4.1 The objects and Charitable Purposes for which the Trust is established are:

- a to be responsible for the control, administration, operation and maintenance of the Marae as a permanent expression of Maori art, culture and heritage, for the benefit of the people of New Zealand;
- b to encourage and facilitate kapahaka, displays and other activities that support or are ancillary to the operation of the Marae;
- c to achieve these objects through public and private support and patronage;
- d generally to do all acts, matters and things that the Trustees consider necessary or conducive to further or attain the objects of the Trust set out above; and

4.2 Notwithstanding anything else to the contrary expressed in or implied by this Deed, the objects for which the Trust is established and the activities for which the Trust Fund may be applied are limited to Charitable Purposes within New Zealand.

## 5 Powers of the Trustees

5.1 In addition to the powers conferred on the Trustees by law the Trustees shall have the widest possible powers and discretions to achieve the Trust Objects and shall be empowered to exercise all the rights, powers and privileges and may incur all the liabilities and obligations of a natural person of full age and capacity provided that the Trustees shall have no power to enter, or cause the Trust to enter into a guarantee of an obligation of any person or organisation nor shall the Trustees have the power to Alienate the whole or any part of the Marae without the prior written consent of the Settlers

5.2 The operation of the Trust shall have as its fundamental cornerstone the partnering concept. This will be the overarching principle which shall govern and guide the contractual and working relationship between the Settlers and the Trustees and which recognises and nurtures the following objectives and principles:

- a The establishment of a relationship based on mutual trust;
- b Openness, promptness, consistency and fairness in all dealings and communications between the Settlers and the Trustees and those persons under their respective control and direction;
- c Non-adversarial dealings between the Settlers and the Trustees and constructive empathetic mutual interaction, both to avoid differences and to identify solutions when differences arise;
- d Open, prompt and fair notification and resolution between the Settlers and the Trustees of any differences or disputes which may arise in their dealings;
- e Striving for the heightened use and "thriving" nature of a living taonga for not just the Settlers but all Maori and other communities in the greater Wellington area; and
- f The promotion of the Pipitea Marae facilities as a place of respect, learning and development of all people.

5.3 The Trustees acknowledge that Pipitea Marae is for the benefit of the Settlers and persons and groups associated with the Settlers and their respective entities. In considering and making decisions for the operation of Pipitea Marae the Trustees shall recognise and continue the kaupapa of the Settlers' respective entities and shall seek to achieve the cultural values intrinsic to each entity in making and reaching decisions.



- 5.4 The Trustees shall recognise and continue the existing user protocols of:
- a Ngati Poneke Young Māori Club which uses the Marāe on Monday evenings from 6pm to 10pm and has a right of use at a discounted rate of hire. Ngati Poneke Young Māori Club also has a right to store on Pipitea Marāe its property which it uses to carry out its purposes, including costumes, uniforms, accoutrements, artefacts, trophies, souvenirs, photographs and paintings, and other historical memorabilia together with office supplies;
  - b Te Rohe o Poneke (the Wellington Māori section of the Anglican Church) which conducts a monthly service every Sunday of the month and conducts a Christmas church service each Christmas Eve. Te Rohe o Poneke also has a right of storage at Pipitea Marāe for the elements it uses in its services – portable alter, prayer and hymn books, and the like without payment; and
  - c The Art Committee in so far as it relates to the Matariki Week celebration at a nominal cost
- 5.5 It is acknowledged and agreed that the current kawa and tikanga on Pipitea Marae shall be maintained. It is, however, acknowledged and agreed that the kawa and tikanga of Pipitea Marae shall evolve over time following further dialogue between the Settlers. The Settlers shall resolve the appropriate kawa and tikanga within twelve (12) months of the establishment of the Trust and shall inform the trustees accordingly.

## 6 Prohibition of benefit or advantage by Related Parties

- 6.1 Notwithstanding clause 14.1 in the exercise of any power authorising the remuneration of trustees, no benefit or advantage will be gained by any person who has some control over the operations of the Trust. Where a person is a Related Party that person will be treated as having some control over the operations of the Trust where that Related Party, in his or her or its capacity as a Related Party, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:
- a the nature or amount of that benefit or advantage
  - b the circumstances in which that benefit or advantage is, or is to be, so gained.
- 6.2 For the purposes of clause 6.1:
- a a person is not treated as having control over the business merely because the person provides professional services to the Trust or the business and the ability to influence arises because the person is a trustee company, a Public Trust or a Maori Trustee or the person provides those services in the course of and as part of carrying on, as a business, a professional public practice
  - b **benefit or advantage** includes
    - i any advantage whether in money or convertible into money
    - ii any income (including from business or trade-like activities, employment, dividends, royalties, benefits, pensions, compensation, government grant, property obtained by theft, income from financial instruments, bad debt repayment, foreign company income and foreign investment income)
    - iii if the person has disposed of an asset to the Trust, the retaining of an interest in that asset, or the asset will revert to that person
    - iv but does not include the earning of interest where the interest payable is at no more than the current commercial rate, given the nature and term of the loan

- c **gained** includes anything afforded, received, gained, achieved or derived.

## **7 Interested Trustees**

- 7.1 It shall be the duty of a Trustee who is in any way directly or indirectly interested in any contract or arrangement or proposed contract or arrangement with the Trust to declare the nature of his or her interest at a meeting of the Trustees, but failure to do so shall not disqualify the Trustee or invalidate the contract, proposed contract or any other matter in which the interest lies. A Trustee who is interested shall, following declaration of that interest, be entitled to vote on any issue relating to the contract, proposed contract or other matter in which the interest lies.

## **8 Trustees' Responsibilities**

- 8.1 The Trustees shall take overall control of and responsibility for the governance of the Trust. The Trustees will perform all of their responsibilities under this Deed in a prudent manner and shall exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 8.2 The Trustees shall devote adequate and sufficient time, attention and resources to carry out their obligations under this Deed to ensure that the Trust achieves its objectives.

## **9 Incorporation**

- 9.1 The Trustees shall immediately after the execution of this Deed apply for incorporation under the Charitable Trusts Act 1957 and registration as a charitable entity under the Charities Act 2005 and the Trustees are authorised to make such applications on behalf of the Trust.

## **10 Delegation by Trustees**

- 10.1 To the extent permitted by law, the Trustees shall have full power to appoint officers, employees, managers and agents and to delegate to any officers, employees, managers, agents or to any attorney or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this Deed but without releasing the Trustees from their obligations under this Deed. Without affecting the generality of the power of delegation the Trustees may in exercising it:
- a appoint, by power of attorney, any person to be the attorney or agent of the Trustees for such purposes and with such powers, authorities or discretions as the Trustees think fit with power for the attorney or agent to subdelegate any such powers, authorities or discretions; or
  - b appoint, by writing or otherwise, any person to be an officer, employee, manager, agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such officer, employee, manager, agent or sub-agent for any reason as the Trustees think sufficient.

## **11 Common Seal**

- 11.1 Upon incorporation of this Trust in accordance with clause 9 the Trustees shall procure a common seal for the Trust and shall provide for its custody. Any documents required to be

signed under the common seal shall be attested by any three Trustees, provided that at least one of the three Trustees shall be from each group of Trustees.

## **12 Accounts, Audit and Annual General Meeting**

- 12.1 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and the Trust assets, liabilities and funds are kept. The Financial Year for the Trust shall commence on the 1<sup>st</sup> day of April in each year and end on the 31<sup>st</sup> day of March in the following year.
- 12.2 At the end of each Financial Year the Trustees shall prepare accounts for the Trust which comply with the requirements of the Financial Reporting Act 1993, or any other generally accepted accounting practices which may from time to time replace that Act.
- 12.3 The financial statements of the Trust shall (unless a unanimous resolution is passed by the Trustees to the contrary), be audited by a Chartered Accountant or firm of Chartered Accountants who shall not be a member of the Board and who shall be appointed annually by the Board or by a majority of members of the Board.
- 12.4 The Trustees shall ensure that within four months of the end of each Financial Year:
- a a copy of the financial statements together with the auditors report is sent to each of the Settlers; and
  - b an Annual Report is prepared on the activities of the Trust for the past Financial Year and sent to each of the Settlers, including a comparison of performance of the Trust with its objectives and such other information as any of the Settlers may reasonably require from time to time.
- 12.5 The Trustees shall ensure that the Annual General Meeting of the Trust shall be held within four (4) months of the end of the Trust's financial year, or such other date as the Trustees may from time to time determine.
- 12.6 The business of the Annual General Meeting shall be:
- a to receive and consider the annual report;
  - b to receive, consider and adopt the audited financial statements;
  - c to elect an auditor; and
  - d to consider any resolution, notice of which shall have been given in writing to the secretary of the Trust at least fourteen (14) days before the date of the Annual General Meeting
- 12.7 An Annual General Meeting shall be convened by Trustees placing a notice in appropriate major metropolitan and provincial newspapers at least twenty one (21) days before the date of the meeting stating the time and place of the meeting and the business proposed to be transacted at the meeting.
- 12.8 Any costs reasonably incurred by the Settlers in preparation for the Annual General Meeting and compliance with statutory requirements may be reimbursed to the Settlers following a joint resolution made by them both.

### **13 Trustees' Indemnity and Liability**

13.1 The Trustees shall not be liable for:

- a any losses or liabilities; or
- b any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in them by this Deed; or
- c any omission or omissions or non-exercise in respect of any trust, power or discretion of the Trustees under this Deed

except losses or liabilities arising from their own dishonesty, wilful default or wilful breach of trust or negligence in the carrying out of their legal responsibilities.

13.2 The Trustees, and every other person acting on behalf of the Trustees, shall be indemnified out of the Trust Fund against all proper liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees pursuant to this Deed and in respect of any matter or thing done or omitted to be done in any way relating to this Deed and the Trust. This indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled though it may be subsequently found that the person was not in fact so entitled. The Trustees shall have a lien or charge on the Trust Fund and may retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity.

13.3 The liability of the Trustees in connection with this Deed or at law shall at all times be limited to the Trust Fund.

### **14 Remuneration of Trustees**

14.1 The Trustees may resolve to pay themselves or any of them an annual remuneration for their services as trustees, provided that such remuneration shall not exceed reasonable reimbursement for services actually rendered, or out of pocket expenses incurred by the Trustees in relation to their obligations under this Deed, and the total annual sum to be paid is first approved by the Settlers.

### **15 Alteration to the Deed**

15.1 The Settlers may, by joint resolution made by both of them, from time to time by amending deed or instrument, alter, rescind or add to any of the provisions of this Deed provided that no alteration, rescission or addition may be made to this Deed which shall permit the Trust Fund to be applied for any purpose that is not a Charitable Purpose and no alteration to this clause 15.1 or clauses 4.2 and 16.3b shall be permitted.

15.2 Subject to clause 15.1 above, the Settlers shall by joint resolution made by both of them make such alterations and amendments to this Trust Deed as may be required to ensure the Trust becomes entered on the register of charitable entities.

### **16 Winding Up of the Trust**

16.1 The Trust shall terminate and be wound up and dissolved if:

- a the Trustees (after first obtaining the written consent of the Settlers) resolve by Special Resolution that the Trust shall be wound up; or

- b the Trust is wound up by law.
- 16.2 A resolution to wind up the Trust shall specify an effective termination date of the Trust and thereafter the Trustees shall realise or dispose of the Trust Fund as soon as reasonably practicable in accordance with clause 16.3.
- 16.3 The Trust Fund or the proceeds resulting therefrom shall be applied by the Trustees upon the winding up in the following order of priority and manner:
- a first in meeting all costs, expenses and liabilities of the Trust including the costs and expenses of winding up the Trust and setting aside any amount that the Trustees consider necessary or desirable (having regard to generally accepted accounting practices) in respect of any contingent liability of the Trust; and
  - b secondly, after obtaining the prior written approval of the Settlers, in the payment or distribution of the remaining assets of the Trust to any charitable organisation which has been established, or has the right and power, to operate Pipitea Marae by the Settlers with its objects and purposes being as similar as is practicable to those for which the Trust was established.

## 17 **Authorised Representatives of Settlers**

- 17.1 The Trustees shall be entitled to rely on any notice signed by the Chairperson or Deputy Chairperson of PNBST, and any notice signed by the Chairperson of Ngati Poneke, as being a notice authorised by that Settlor. If those persons are unable to sign such a notice the notice shall be signed on their behalf by any person authorised in writing to sign on their behalf.

## 18 **Settlers' Liability**

- 18.1 The Settlers shall not in any circumstances be liable either in their joint capacity or in a several capacity for the debts, liabilities or commitments of the Trust.
- 18.2 Notwithstanding any requirement for the Settlers to give their consent to certain Trustee actions, the Settlers shall not in any circumstances be deemed to be acting as Trustees or held to be responsible as Trustees.

## Part 2: Proceedings of Trustees

### 19 Appointment and Removal of Trustees

- 19.1 There shall be six Trustees.
- 19.2 The initial Trustees shall be the Trustees who are parties to this Deed who are referred to in this clause 19 as the Initial Trustees.
- 19.3 The Trustees shall be appointed as follows:
- a three Trustee appointed by PNBST; and
  - b three Trustees appointed by Ngati Poneke.
- 19.4 The Initial Trustees have been nominated by the Settlers as follows:
- a PNBST – Neville McClutchie Baker, Mahara Okeroa and Aroha Jane Thorpe
  - b Ngati Poneke – John Paki, Iwa Holmes and Wayne Mulligan.
- 19.5 The Initial Trustees shall hold office for a period of three years from the date of this Deed at which point their appointment shall terminate and new appointments shall be made in accordance with clause 19.3. Initial Trustees shall be eligible for reappointment.
- 19.6 Each Settlor in exercising its power of appointment of Trustees, shall have regard to the need for the Trust to have Trustees with experience and expertise and the necessary skills to achieve the objects of the Trust, including their ability to be impartial in carrying out the Trust Objects.
- 19.7 A certificate signed by or on behalf of a Settlor to the effect that a person has been appointed a Trustee or removed from the office of Trustee shall be conclusive evidence of that fact.
- 19.8 A person appointed by a Settlor as a Trustee (with the exception of an Initial Trustee during their initial term) shall hold office for the term specified in the instrument of appointment which term shall not be more than three years, provided however that any Trustee appointed to fill a vacancy occurring prior to expiry of a Trustee's term of appointment shall initially hold office only for the residue of that term of office. A person appointed as a Trustee, who remains eligible to be appointed as a Trustee, may be reappointed as Trustee for a further period or period provided that each further term of appointment does not exceed three years.
- 19.9 The appointment of a Trustee shall be vacated if a Trustee:
- a resigns or the term of appointment of that Trustee expires;
  - b dies;
  - c is removed from office by the Settlor appointing that Trustee;
  - d is, under clause 19.10, not capable of holding office as a Trustee;
  - e refuses to act; or
  - f is absent without leave from three consecutive ordinary meetings of the Trustees.
- 19.10 The following persons shall not be capable of being appointed or reappointed, of holding office, as a Trustee:

- a a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
- b a person who has been convicted within the last three years of a criminal offence punishable by imprisonment;
- c a person who would be subject to an order under section 189 of the Companies Act 1955 but for the repeal of that section;
- d a person to whom an order made under section 199L of the Companies Act 1955 applies (or would apply but for the repeal of that Act) or to whom an order made under section 383 of the Companies Act 1993 applies;
- e a mentally disordered person within the meaning of the Mental Health Act 1969;
- f any person who is the subject of an order under the Protection of Personal and Property Rights Act 1988.

Trustees appointed to Pipitea Marae Charitable Trust shall comply with section 16 of the Charities Act 2005 or any enactment in substitution.

- 19.11 If the number of Trustees falls below six for any reason the Settlor or Settlers who have not made their appointments shall appoint one or more replacement Trustees. If the Settlers do not immediately appoint a replacement Trustee to maintain the minimum number, then the remaining Trustees appointed by the Settlor who then only has one or two current trustees appointed may appoint a temporary Trustee until the relevant Settlor does appoint a replacement Trustee or Trustees.

## 20 Appointment of Chairperson of the Trust

- 20.1 Each of the PNBST group of Trustees and Ngati Poneke group of Trustees shall appoint one of their number to be an alternating Chairperson of the Trust. Each of the PNBST and Ngati Poneke chairpersons shall be chairperson for an eighteen month term; with the first chairperson to be determined by the trustees.
- 20.2 If a chairperson is unable for any reason to perform the Chairperson's duties then the nominee of the other group of trustees shall act as chairperson during the relevant period of inability.
- 20.3 Notwithstanding the provisions of clause 20.1, the Trustees may, by Special Resolution replace the current chairperson with a new chairperson at any time within the current chairperson's 18 month period of office.

## 21 Proceedings of Trustees

- 21.1 Subject to this Deed, the Trustees may meet together for the dispatch of business and may adjourn or otherwise regulate their meetings as they think fit.
- 21.2 At any meeting of the Trustees the Chairperson of the Trust shall preside or in the absence of the chairperson of the Trust the Trustees may elect one of their members to preside.
- 21.3 In the event of an equality of votes, the Chairperson shall not have a second or casting vote. The Trustees shall In the event of an equality of votes, refer the matter to the Settlers for settlement. The Settlers decision being final and binding. In the process of their deliberations, the Settlers shall have regard to the provisions of clause 5.2 of this Trust Deed

- 21.4 No business shall be transacted at any meeting unless the required quorum is present at the commencement of business.
- 21.5 The quorum for the transaction of any other business shall be a majority of the Trustees being a quorum containing an equal number of Trustees appointed by PNBST and an equal number appointed by Ngati Poneke.
- 21.6 A "Special Resolution" means a resolution passed at a meeting of Trustees at which not less than three quarters of the Trustees present and being no less than five Trustees vote in favour of the Resolution.
- 21.7 An act or decision of the Trustees shall not be invalid by reason only of:
- a a fault, default or irregularity in or in connection with the appointment of a Trustee; or
  - b a vacancy in the number of the Trustees including a vacancy arising because of the failure to appoint a Trustee.
- 21.8 The Trustees shall keep a minute book and shall cause minutes to be kept of all meetings, resolutions and decisions made by them. Minutes purporting to be signed by the Chairperson of the Trustees of a meeting shall be receivable as prima facie evidence of the matters contained in such minutes.
- 21.9 The Trustees may, by Special Resolution and subject to the provisions of this Deed, adopt, amend, alter or rescind any rules necessary for the proper and efficient management of Trustee meetings and the administration and management of the Trust Fund.

## **22 Convening of meetings**

- 22.1 The Trustees shall hold at least eight meetings in each Financial Year.
- 22.2 The Chairperson shall convene the meetings of the Trustees.
- 22.3 The Chairperson shall convene any additional meeting of the Trustees if the Chairperson receives a written request from at least four Trustees. At least two Business Days prior notice of meetings of Trustees shall be given to all Trustees.

## **23 Appointment of Committees**

- 23.1 The Trustees may delegate any of their powers and duties under this Deed to any committee or committees consisting of such Trustees as the Trustees may appoint for such purpose. The Trustees may appoint an audit committee to monitor the financial affairs of the Trust.
- 23.2 The Committee chairperson shall convene committee meetings as required.
- 23.3 Committee minutes and records shall be kept in accordance with clause 21.8.
- 23.4 Committee proceedings shall generally conform to the procedures adopted for meetings of the Trustees.

## **24 Resolution Assented to by Trustees**

- 24.1 A resolution in writing signed or assented to by letter, facsimile or other written manner, by all Trustees for the time being entitled to receive notice of meetings of the Trustees shall be as valid and effective as if it had been passed at a meeting of Trustees duly called and constituted. Any



such resolution may consist of several documents in like form either signed or purporting to have been dispatched by any one or more of the Trustees.

**25 Teleconference Meeting of Trustees**

25.1 The contemporaneous linking together by telephone or other means of communication of a number of Trustees not less than the quorum (whether or not any one or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this Deed in respect of such, meetings shall apply so long as the following conditions are met:

- a all Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting, and shall have first received two Business Days prior notice of such meeting;
- b each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Trustees taking part in the meeting; and
- c at the commencement of the meeting each Trustee must acknowledge the Trustee's presence for the purpose of the meeting to all other Trustees taking part.


**26 Service of Notices**


26.1 Notices shall be deemed served by one party upon another party:


- a if posted, two Business Days following posting;
- b if delivered personally, on the date of service; or
- c if sent by facsimile or other electronic device, on the date of transmission.

**Execution**

Signed for and on behalf of the  
PNBST:

  
\_\_\_\_\_  
Trustee

  
\_\_\_\_\_  
Trustee

  
\_\_\_\_\_  
Trustee

Signed on behalf of  
Ngati Poneke Māori Association

by: Iwa Iwa Holmes

*I. Holmes*

Elected Member

*[Signature]*  
Print name

Elected Member

*[Signature]*  
Print name

*[Signature] (Secretary)*

Signed by  
Mahara Okeroa  
as Trustee in the presence of:

Witness Signature

Full name

Occupation

Place of residence

Bruce Farquhar  
Solicitor  
Wellington

Signed by  
Neville McClutchie Baker  
as Trustee in the presence of:

Witness Signature

Full name

Occupation

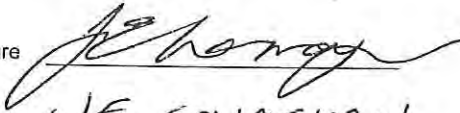
Place of residence

Bruce Farquhar  
Solicitor  
Wellington

Signed by


**Aroha Jane Thorpe**  
as Trustee in the presence of:

  
\_\_\_\_\_

Witness Signature   
Full name JE CONAGHAN  
Occupation CONTRACTOR  
Place of residence WELLINGTON

**Signed by**  
**John Paki**  
as Trustee in the presence of:

  
\_\_\_\_\_


Witness Signature   
Full name \_\_\_\_\_  
Occupation \_\_\_\_\_  
Place of residence Charlotte Aimee Elizabeth Carey  
Solicitor  
Wellington


**Signed by**  
**Iwa Holmes**  
as Trustee in the presence of:

  
\_\_\_\_\_

Witness Signature   
Full name JE CONAGHAN  
Occupation CONTRACTOR  
Place of residence WELLINGTON

**Signed by**  
**Wayne Mulligan**  
as Trustee in the presence of:

  
\_\_\_\_\_

Witness Signature   
Full name \_\_\_\_\_  
Occupation \_\_\_\_\_  
Place of residence Charlotte Aimee Elizabeth Carey  
Solicitor  
Wellington