

THE SARJEANT GALLERY TRUST

(A Charitable Trust duly incorporated under The Charitable Trusts Act 1957)

THIS DEED made this 20th day of April 1993

BETWEEN

The WANGANUI DISTRICT COUNCIL

AND

BRYCE MATTHEW REID SMITH, Chartered Accountant,

JOHN WALTER SCOTT, Polytechnic Director,

SUSAN LYNN COOKE, Artist,

RICHARD STEWARD RUDD, Potter,

RAYMOND JOHN ANDERSON, Pharmacist,

WILLIAM HANDLEY MILBANK, Art Gallery Director,

LYSBETH NOBLE, District Councillor,

AUDREY BERYL WARNOCK, District Councillor,

GEORGE TIOTINGA WARETINI, Pensioner and

ALVIN RICKY PONGA, Social Worker

(hereinafter called "the Trustees")

WHEREAS

The Settlor wishes to establish a trust for charitable purposes within New Zealand to be known as

THE SARJEANT GALLERY TRUST (hereinafter called "The Trust")

1 PURPOSE OF TRUST

To uphold and maintain (so far as relevant to matters of art) the terms of the Trusts created by the Will and Codicils of the late Henry Sarjeant, the principal benefactor of the Sarjeant Gallery Te Whare o Rehua. "to establish and maintain in the Borough of Wanganui a Fine Art Gallery... as a means of inspiration for ourselves and those who come after us."

2 THE TRUSTEES

- (a) The number of Trustees shall be not less than three (3) and not more than nine (9).
- (b) Trustees shall be appointed by the Mayor for the time being of the Wanganui District Council, or such other local or territorial authority which shall supercede it, and FURTHER PROVIDED THAT such appointees shall include representatives of the following
 - (i) Two representatives of the Wanganui District Council,
 - (ii) Two representatives of the Whanganui Iwi.
- (c) Subject to clause 2 (d) a trustee shall resign or be removed from office as a Trustee by the Trustees in the event of that trustee:
 - (i) Becoming bankrupt, or
 - (ii) Being convicted of an offence punishable by imprisonment for a term of two years or more, or
 - (iii) Being convicted of an offence punishable by imprisonment for a term of less than two years and being imprisoned for that offence, or
 - (iv) Becoming the subject of a compulsory treatment order under the Mental Health (Compulsory Treatment and Assessment) Act 1992 (including amendments) or any re-enactment thereof, or
 - (v) Becoming subject to a personal order and or a property order under the Protection of Personal and Property Rights Act 1988 (including amendments) or any re-enactment thereof, or
 - (vi) Resigning his office by notice in writing to the Trustees, or
 - (vii) Being absent without leave for four consecutive meetings of the Trustees, or
 - (viii) Dying.
- (d) The appointment as a Trustee shall be for a term of three years PROVIDED THAT on the expiry of the term, such Trustee shall be eligible to be reappointed.

3 THE CHAIRPERSON

- (a) The Trustees shall appoint one of their members as Chairperson. In the event of the Trustees being unable to agree on a Chairperson, the matter shall be put to a vote. In the event of a tie, the Mayor shall appoint one of the candidates.
- (b) Unless the Chairperson sooner resigns or ceases to be a Trustee for any other reason, then the Chairperson shall hold office for a period of three years. The Chairperson shall be entitled to be re-appointed on the expiry of any such term.

4 PROCEDURE AND MEETINGS

- (a) Subject to the provisions of this Deed the Trustees shall prescribe their own procedure for calling and holding meetings and transacting business,
- (b) Every question before the Trustees shall be determined by a majority of valid votes of the Trustees present in person PROVIDED THAT a resolution signed or assented to by letter by a majority of the Trustees shall have the same effect as a resolution duly passed at a meeting of the Trustees,
- (c) At all meetings of the Trustees the quorum necessary for the transaction of business shall be not less than a majority of the Trustees holding office for the time being,
- (d) A special meeting of the Trustees may be called at any time by the Chairperson, and the Chairperson shall call a special meeting whenever the Chairperson is requested to do so in writing by two (2) or more Trustees PROVIDED THAT not less than seven (7) clear days' notice of every special meeting and of the business to be transacted thereat shall be given to each member for the time being in New Zealand and no business other than that specified in the notice shall be transacted at any such special meeting,
- (e) The Chairperson at any meeting shall have a deliberative vote, and, in the case of an equality of votes, a casting vote,
- (f) There shall be not less than one meeting of the Trustees in each financial year.

5 RULES OF TRUSTEES

- (a) The Trustees may, by resolution, make rules not inconsistent with this Deed for all or any of the following purposes, namely
 - (i) Regulating the proceedings of the Trustees and the conduct of meetings of the Trustees,
 - (ii) Providing for the custody of the property of the Trust,

- (iii) Providing for such matters as may be deemed necessary or expedient for carrying out the purposes of the Trust,
- (b) Notice of every resolution proposed to be submitted to any meeting for the voting, amendment, or revocation of any such rules shall be given to every Trustee for the time being in New Zealand not less than seven (7) clear days before the day fixed for the meeting.

6 POWERS OF TRUSTEES

The Trustees shall, subject to the general law relating to trusts and trustees including the Trustee Act 1956 (including amendments) or any re-enactment thereof, have all such powers, rights and authorities as may be necessary or expedient to enable it to carry out its purposes.

7 USE OF TRUST FUNDS

The Trustees shall possess the trust funds and any income there from UPON TRUST to apply the same as the Trustees in their absolute discretion for any or all of the purposes mentioned above PROVIDED THAT the Trustees may so far as the law permits maintain and increase the capital of the Trust PROVIDED FURTHER that in so doing the Trustees do not break the rule against accumulations as set out in the Perpetuities Act 1964.

8 MONEY TO BE BANKED

- (a) All money belonging to the Trust shall, as soon as practicable after it has come into the hands of the Trust, be paid into such Bank as the Trustees from time to time appoint to an account to be called the Sarjeant Gallery Trust Fund Account.
- (b) No money shall be withdrawn from the bank account except by resolution of the Trustees.
- (c) The Trustees may from time to time by resolution fix the maximum amount that may be held at any time in the imprest account.
- (d) A statement of all payments made from the imprest account shall be submitted to the Trustees for approval at its first ordinary meeting thereafter.

9 ACCOUNTS

- (a) The Trust shall keep full and correct accounts of all money received and extended by it, and the accounts shall be audited by a Chartered Accountant or an officer of the Auditor General's Office appointed by the Trustees for such purpose.
- (b) The Trustees shall, as soon as possible after the end of every financial year ending with the 30th day of June, cause the accounts of the Trust for that financial year to be balanced and

prepare a statement of assets and liabilities of the Trust as at the end of that financial year, together with an account of income and expenditure showing the financial transactions for that year.

10 APPOINTMENT OF OFFICERS

- (a) The Trustees may from time to time appoint a Secretary and such other officers and employees as are considered necessary for the exercise and performance of the purposes and powers of the Trustees,
- (b) The Trustees may pay to its officers and employees from the Trust funds such salaries and allowances as it thinks fit.

11 LIABILITY OF TRUSTEES

Any Trustee who shall be held personally liable for any act or default done or made by the Trustees or any one Trustee in good faith in the course of operations of the Trust shall be indemnified from the assets of the Trust.

12 ENTERING INTO AGREEMENTS

The Trustees by resolution may from time to time enter into agreements with any local authority, corporation, society, firm or person for the management and maintenance of any land building or thing held by or on behalf of the Trust.

13 MINUTES

Minutes for the proceedings of all meetings of the Trustees shall be recorded in a book to be kept for the purpose by the Secretary and shall be signed by the Chairperson of the meeting or the meeting at which the minutes are read and confirmed and every such minute purporting to be so signed shall be prima facie evidence of the facts therein stated.

14 VARIATION OF DEED

It shall be lawful for the Trustees by unanimous resolution to revoke or vary or add to any of the provisions of these presents so long as such revocation, variation, or addition is not inconsistent with the general scope of these presents and PROVIDED FURTHER THAT any such revocation, variation or addition shall not alter the charitable nature of the trusts hereby created or result in the application of trust funds to other than charitable purposes.

15 INCORPORATION

- (a) The Trustees shall apply to become incorporated pursuant to the Charitable Trusts Act 1957 ("the Act") as soon as practicable after the execution of this Deed and if and when such incorporation occurs the Trustees shall provide a common seal for the Trust which shall be kept in safe custody by the Trustees.
- (b) The seal shall be affixed by the authority of the Trustees previously given at a meeting of the Trustees to any document requiring execution by the Trustees and every such affixing shall be performed in the presence of and accompanied by the signatures of two Trustees and shall be sufficient evidence of the authority to affix such seal and no person dealing with the Trustees shall be bound or concerned to see or enquire as to the authority under which any document is sealed and in whose presence.

16 REMUNERATION OF TRUSTEES

- (a) Any Trustee shall be entitled to make all usual and proper charges for his or her time in executing the Trust and administering trust funds or providing any services to the trust which he or she would have been entitled to make if not a Trustee or so employed.
- (b) The Trustees may be paid all travelling, accommodation and other expenses properly incurred by them in attending and returning from meetings of the Trustees or in connection with any of the activities of the Trust.

17 MEDIATION AND ARBITRATION

- (a) Any dispute arising out of or relating to this Deed may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties. Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' institute of New Zealand Inc.
- (b) The mediation shall be terminated by:
 - (i) The signing of a settlement agreement by the parties; or
 - (ii) Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or

- (iii) Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or
 - (iv) The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.
- (c) If the mediation should be terminated as provided in (b)(ii), (b)(iii) or (b)(iv) above any dispute or difference arising out of or in connection with this Deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

18 WINDING UP

In the event of the purposes, for which the Trust has been created, failing or terminating for any reason or in the event of the Trust hereby created or any Board which may be registered under the Act being wound up, then all surplus assets, if any, after the payment of all costs, debts and liabilities shall be disposed of to the Wanganui District Council or any successors thereto to apply solely towards the purposes of the Trust, in such manner as such body in its absolute discretion shall determine or otherwise as the High Court may direct under section 27 of the Act notwithstanding that the Trust may not have been incorporated under the Act.

