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DEED OF TRUST OF THE MARLBOROUGH STADIUM TRUST

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Mathew John Brian Kerr, Paul Francis Mckendry, Samantha Jade Forrest,  
Anna Elizabeth Houkamau, Ben Jason Glover, Kelly James Thompson  
and Martin Forbes Fletcher  
The Trustees

dated this 22<sup>nd</sup> day of October 2024

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THIS DEED dated the 22 day of October 2024

BETWEEN Mathew John Brian Kerr, Paul Francis McKendry, Samantha Jade Forrest, Anna Elizabeth Houkamau, Ben Jason Glover, Kelly James Thompson and Martin Forbes Fletcher  
(“*Trustees*”)

BACKGROUND

- A. THE MARLBOROUGH STADIUM TRUST (“*Trust*”) was created by Deed of Trust dated 17 August 1998.
- B. The intention for the Trust was that the Trustees appointed from time to time would determine the means of financing and developing a sports and events centre for Marlborough.
- C. The Trustees were in agreement that they would receive donations, gifts, grants or other monies as at the date of settlement of the Trust or in the future and to apply income and capital as required from time to time for the purposes of the Trust set out in the Deed of Trust.
- D. The Trustees over time have pursuant to the powers contained within the Deed of Trust amended and varied provisions of the Trust Deed. All amendments or variations to the Trust Deed must be made in the manner provided in clause 12.1 of the Deed as follows:
- E. The current Trustees are desirous of varying the Trust Deed to the format of this Deed subject to meeting the requirements of the Trust Deed and obtaining the written consent of Marlborough District Council to enable the Trust Deed to be modernised and all in accordance with the current Trusts Act 2019 and Charitable Trusts Act 1957.

TRUST TERMS

1. INTERPRETATION

In this deed unless the context indicates otherwise:

1.1 Definitions:

“**Balance Date**” means 30 June or any other date adopted from time to time by the Trustees as the end of the Trust’s Financial Year;

“**Chairperson**” means the Trustee appointed in accordance with clause 6.4;

“**Concessionary Provisions**” means sections CW 41 (Charities: non-business income), CW 42 (Charities: business income), CX 25 (Benefits provided by charitable organisations), DB 41 (Charitable or other public benefit gifts by company) and DV 12 (Māori authorities: donations) and subpart LD (Tax credits for gifts and donations) of the Income Tax Act

2007; and, if the Trustees are registered under the Goods and Services Tax Act 1985, the provisions of that Act relating to non-profit bodies, as defined in section 2(1) of that Act;

**“Co-opted Board Member”** means any person or persons engaged by the Trustees with a particular skill set for particular projects.

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

**“Live Media”** means an audio visual link such as *Zoom* or *Microsoft Teams*.

**“Property”** means real or personal property of any kind and includes any right or interest in such property and anything in action;

**“Secretary”** means the person appointed in accordance with clause 6.5;

**“Trust”** means the trust created by deed dated 17 August 1998 as modified in this deed;

**“Trust Fund”** means any Property, which may be paid to or held under the control of or vested in or acquired by the Trustees for the Trust from any source on or after the date of this deed and whether by way of gift, bequest, devise, purchase, exchange or otherwise; and

**“Trustees”** means the trustee or trustees for the time being of the Trust and, where the trustees of the Trust have incorporated as a board under the Charitable Trusts Act 1957, either the trustees acting as a board or the trustee or trustees for the time being constituting the board, as the context requires;

- 1.2 **Clauses:** references to clauses are references to this deed’s clauses;
- 1.3 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
- 1.4 **Gender:** references to one gender include the other gender;
- 1.5 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this deed’s interpretation;
- 1.6 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **No Limitation:** references to anything of a particular nature either before or after a general statement do not limit the general statement unless the context requires;
- 1.8 **Parties:** references to parties are references to parties to this deed;

- 1.9 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.10 **Plural and Singular:** singular words include the plural and vice versa; and
- 1.11 **Statutes and Regulations:** references to any statutory provision include any statutory provision, which amends or replaces it, and any subordinate legislation made under it.

## 2. NAME OF TRUST

- 2.1 **Name of the Trust:** The name of the Trust is **MARLBOROUGH STADIUM TRUST**.
- 2.2 **Change of Name:** The Trustees may change the name of the Trust by deed to any other name which they may determine from time to time, provided that:
  - 2.2.1 **Incorporation:** the Trustees will be incorporated as a trust board under the Charitable Trusts Act 1957 under the new name; or
  - 2.2.2 **Not Offensive or Misleading:** if the Trustees will not be incorporated as a trust board, the new name is not offensive or liable to mislead any member of the public.

## 3. PURPOSES OF TRUST

- 3.1 **Exclusively Charitable Purposes:** The Trustees hold the Trust Fund on trust to pay or apply so much of the capital and income of the Trust Fund as the Trustees think fit exclusively for or towards any one or more of the following exclusively charitable purposes, which are declared to be the purposes of the Trust, namely:
  - 3.1.1 **First Object:** to determine the means of developing a sports and events centre for Marlborough;
  - 3.1.2 **Second Object:** to determine a fundraising plan to finance the centre;
  - 3.1.3 **Third Object:** to develop an appropriate ownership and management structure for the operation of the centre; and
  - 3.1.4 **Incidental Matters:** all such other things as are necessary or desirable in relation to the development and operation of the centre.
- 3.2 Without derogating from the generality of the object in clause 3.1 hereof, the objects of the Trust include specifically to establish, fund,

operate, maintain and improve a sports and event centre for the public benefit of the population of Marlborough.

- 3.3 It is the fundamental objective of the Trust that the sports and event centre shall at all reasonable times be available for community use on reasonable terms. All of the other provisions of this Deed and all obligations of the Trustees shall be considered having regard to this fundamental objective and purpose.
- 3.4 **Change in Law:** If, because of any change in the law brought about by the enactment of new legislation and/or the amendment or repeal of existing legislation, or by any change in the official interpretation or official application of any such legislation, it is at any time necessary to amend the terms of this deed in order to achieve and/or preserve the availability of any concession in relation to the Trust under any of the Concessionary Provisions, which would otherwise be available were it not for the change in the law, then, despite clause 12, the terms of this deed will at that time be deemed to be amended to the extent necessary.
- 3.5 **No Limitation:** None of the purposes of the Trust will be:
  - 3.5.1 **Limited or Restricted:** in any way limited or restricted by reference to or inference from the terms of any other clause or the name of the Trust, except where the context specifically or expressly requires it; and
  - 3.5.2 **Subsidiary or Ancillary:** treated as subsidiary or ancillary to any other purpose of the Trust.
- 3.6 **Purposes Independent:** The Trustees are empowered to carry out any one or more of the purposes of the Trust independently of any other purpose of the Trust.
- 3.7 **New Zealand Purposes Only:** All of the purposes of the Trust must be pursued exclusively within New Zealand and more particularly in the Marlborough Region.

#### 4. POWERS OF TRUSTEES

- 4.1 **Promotion of Purposes:** The Trustees, in connection with the Trust, will only promote the exclusively charitable purposes of the Trust described in clause 3.
- 4.2 **Extent of Trustees' Powers:** In particular and in addition to all other powers conferred by law, but subject to the restrictions contained in this deed:
  - 4.2.1 **Powers:** the Trustees will have the same powers as if they were the beneficial owner of the Trust Fund; and

4.2.2 **Powers Not Limited:** the Trustees' powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.

4.3 **Status of Powers:** None of the powers or authorities conferred on the Trustees by this clause or otherwise will be deemed subsidiary or ancillary to any other power or authority. The Trustees may exercise any of those powers and authorities independently of any other power or authority. If there is any ambiguity, this provision will be construed so as to widen and not restrict the Trustees' powers provided that at no time shall this provision be construed so as to prevent the availability of any concession in relation to the Trust under any of the Concessionary Provisions, which would otherwise be available.

4.4 In the exercise of the Trustees powers and duties, the Trustees shall:

- (a) act in good faith and in what the Trustees believe to be the best interest of the Trust;
- (b) exercise all powers and duties for a proper purpose;
- (c) not act or agree to the Trust acting in a manner that contravenes the Trusts Act 2019 or these Rules;
- (d) exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstance
- (e) not agree to the activities of the Trust being carried out in a manner that is likely to carry a substantial risk of serious loss to the Trust.

4.5 The Trustees in addition to all other powers conferred by law, have the following specific powers which must be exercised in good faith for the objects and purposes of the Trust:

- (a) to invest money on such terms as the Trustees think fit and to vary instruments from time to time;
- (b) to make advances to any person or organisation;
- (c) to accept any donations, gifts or grants of money or property;
- (d) to pay all of any of the expenses incurred in or in connection with the establishment, incorporation, running and objects of the Trust;
- (e) to engage such staff or other contractors whether directly or indirectly on such terms as the Trustees see fit;
- (f) to purchase, sell, lease, hire, exchange, mortgage or otherwise acquire or dispose of any property;

- (g) to carry on any business to enter into any contract, joint venture or partnership or any other arrangements with any other person or body related to all of the objects;
- (h) to borrow or otherwise raise money on provision of security or otherwise required for the purpose of meeting any debt or other liability of the Trust;
- (i) to alter in any way all or any of the rules set forth herein in the manner provided in clause 12 of the Deed provided that no such alteration or addition shall be made in any way to detract from the charitable purposes of the Trust;
- (j) generally to contract with any person or to carry out any operation in the nature of a business or otherwise including power of sale and purchase of any assets for these purposes as the Trustees may decide in their absolute discretion and to do such other lawful acts and things as necessary or desirable to carry out the objects and purposes of the Trust.

4.6 The objects of the Trust extend to carrying out such commercial activities as the Trustees from time to time think fit so as to generate net income and benefits to apply for purposes relating directly or indirectly to the Trust.

#### **Funds and Property**

4.7 All funds received must be paid to the credit of the Trust at the Trust nominated registered bank account as appointed from time to time by the Trustees and any withdrawals from the bank account and other negotiable instruments must be approved by such persons as are appointed from time to time by the Trustees for that purpose.

4.8 The Trustees have the general power to receive and give receipts for all gifts, donations, grants, legacies or other monies bequeathed, made or given to the Trust and every such receipt is an effective discharge for the money or other property stated in that receipt to have been received.

4.9 The Trustees have the power to expend the whole or any part of the Trust Fund for the objects of the Trust.

4.10 The property must be applied to solely towards the promotion of the charitable objects of the Trust and no part of the property may be paid or transferred directly or indirectly by way of profit to any Trustees.

4.11 It is specifically recorded for the purposes of this Deed that the provisions of this Deed shall not prevent the Trust from employing on an arm's length commercial basis any individual Trustee or co-opted Board Member by way of contract for services or employment contract or consultancy agreement, for duties or services other than which would

be reasonably expected to be undertaken as a Trustee, provided that no surplus of income after meeting all the expenses of the Trust (such expenses including such contractual or consultancy expenses) shall be paid to any Trustee.

- 4.12** The Trustees and co-opted Board Members shall be entitled to payment of reasonable travelling expenses and reimbursement of other out of pocket expenses as determined by the Trust from time to time.
- 4.13** Any Trustee may act as a director, officer or employee of or consultant to any company or other entity that shares securities or other rights of which form part of the Trust Fund or as a director, officer or employee of or consultant to any subsidiary or associated company of any such company or other entity may retain for himself, herself or themselves any remuneration which he, she or they may receive as any such director, officer or employee or consultant notwithstanding any rule of law or equity to the contrary and also notwithstanding that the votes or other rights attached to any such shares secured as other rights may have been instrumental, whether a loan or in conjunction with other votes or rights in securing such appointment as director, officer, employee or consultant.
- 4.14** Notwithstanding clauses 4.7 to 4.13 no Trustee shall in any way materially influence or determine any income, benefit or advantage that he, she or they may receive from the Trust, whether from any business operation of the Trustee or otherwise.
- 4.15** In the performance of all duties and powers in respect of any decisions of the Trust under these rules, the Trust shall:
  - (a)** maintain an up to date register of interests of Trustees, co-opted Board Members and any members of the committees;
  - (b)** require any Trustee, co-opted Board Member or member of the committee who has an interest in respect of any matter being considered by the Trust, disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) to the Trust in the interests register held by the Trust;
  - (c)** require disclosure to be made as soon as practicable or after they become aware they have an interest in the matter.
- 4.16** Any Trustee, co-opted Board Member or member of a committee for whom that immediately preceding clause 4.15 applies:
  - (a)** must not vote or take part in the decision of the Trust and or committee relating to the matter less all Trustees who are not interested in the matter concerned and;

- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter unless all Trustees who are not interested in the matter consent; but
- (c) may take part in any discussion of the Trust and/or committee relating to the matter and be present at the time of the decision of the Trust and/or committee unless the Trust or committee decides otherwise.

4.17 Trustees prevented on voting on a matter may still be counted for the purposes of determining whether there is a quorum at any meeting at which the matter is discussed.

## 5. APPOINTMENT AND REMOVAL OF TRUSTEES

### Number of Trustees:

5.1 The number of Trustees must be not less than five (5) nor more than nine (9) in total. The Trustee appointment process is as follows:

- (a) two (2) Trustees are to be appointed by written notice signed by or on behalf of the Marlborough District Council;
- (b) between three (3) and seven (7) Trustees are to be nominated by resolution of the Trust, such appointments to be made from nominations received from any member of the public residing in Marlborough.
- (c) written notice of nominations made under clause 5.1(b) must be received at the office of the Trust at least twenty eight (28) days before the date of the relevant AGM (or such later date as is accepted by the Trustees).

### Appointment of Trustees

5.2 Any person or persons appointing Trustees must where possible have regard to the desirability of Trustees fairly representing gender, ethnicity and distinct community spheres of interest and geography of an area the desirability of Trustees having the necessary governance skills for sound decision making and guidance including (without limitation) finance, management, legal and marketing skills.

5.3 The appointment of Trustees shall be made at a meeting of the Trust prior to the AGM each year and shall take effect following that years AGM unless a vacancy arises under clause 5.12 in which case the appointment takes effect from the date approved by the Trustees.

5.4 The Trustees may co-opt Board Members as they think fit to assist with the administration of the Trust. Co-opted Board Members will be appointed by the Trust at any meeting of the Trust to fulfil specific needs of the Trust administration. The termination of co-opted Board Members can be made at any Trust meeting by the Trustees. Co-opted

Board Members are able to attend meetings of the Trust as required for the performance of their duties and shall have the same duties and powers as Trustees but shall have no voting rights.

#### **Term of Trustees**

5.5 Each Trustee is appointed for a term of three (3) years or such other term as necessary to ensure that a reasonable level of continuity is preserved among the Trustees from time to time. In that regard the parties acknowledge it is not desirable to have any more than four (4) new Trustees at any one time.

#### **Delegation of Duties**

5.6 Trustees may constitute such management and other committees as they think fit to carry out the operations of the Trust. Any such management and committees are to be accountable to the Trustees on such basis as is determined by the Trustees from time to time. Such committees shall be made up of Trustees and/or co-opted Board Members or any other person and may be terminated by the Trustees at any meeting of the Trust.

5.7 The Trustees may appoint a Chief Executive Officer, General Manager or such other delegated employee to administer the day to day operations of the Trust and delegate such authority as is necessary to carry out the duties as set out in their Employment Agreement. Such appointment and delegated authority of a Chief Executive Officer, General Manager or such other delegated employee shall be approved by a majority of the Trustees.

#### **Power of Appointment**

5.8 The power of appointment of replacement Trustees is vested in the remaining Trustees at any meeting of the Trustees.

5.8.1 **Additional Trustees:** to appoint at any time or times an additional Trustee or additional Trustees (provided however the number shall not increase the number to more than nine (9) in total);

5.8.2 **Reappoint:** to reappoint any retiring or retired Trustee as Trustee; or

5.8.3 **Self-Appoint:** to appoint that person, or any of them, to be a Trustee.

#### **Power of Removal**

5.9 The person having the powers of appointment under clause 5.8 also has the power to remove any Trustee.

## **Eligibility of Trustees**

**5.10** The following persons may not hold office as a Trustee:

- 5.10.1** **Youth:** an individual who is under the age of 16 years;
- 5.10.2** **Bankruptcy:** an individual who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by the Court from engaging in any form of business activity;
- 5.10.3** **Liquidation, Receivership or Statutory Management:** a company, incorporated society or any other body corporate:
  - (a)** **Winding Up or Liquidation:** which is being wound up or has gone into liquidation;
  - (b)** **Resolution to Appoint Liquidator:** in respect of which a resolution has been passed appointing a liquidator;
  - (c)** **Order to Appoint Liquidator:** in respect of which an order has been applied for or made by the court appointing a liquidator;
  - (d)** **Meeting to Appoint Liquidator:** in respect of which a meeting of shareholders or members has been called at which the appointment of a liquidator will be considered;
  - (e)** **Receiver or Statutory Manager Appointed:** for which a receiver or statutory manager has been appointed in respect of all or any part of its assets; or
  - (f)** **Arrangement in Respect of Creditors:** which has made or entered into, or attempted to make or enter into, any compromise, assignment or other arrangement with or for the benefit of all or any class of its creditors;
- 5.10.4** **Criminal Conviction or Sentence:** a person who has been:
  - (a)** **Crime Involving Dishonesty:** convicted of any crime involving dishonesty, within the meaning of section 2(1) of the Crimes Act 1961, and sentenced for that crime within the last seven years; or
  - (b)** **Other Offences:** convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence, unless that person has:
    - (i)** **Pardon:** obtained a pardon; or
    - (ii)** **Service of Sentence:** served, or otherwise suffered, the sentence imposed on that person;

provided that that person will not be disqualified from appointment as a Trustee, or may continue to hold office as a

Trustee, but will be deemed to have taken leave of absence, until the expiry of the time for appealing against the conviction or sentence of imprisonment, and if there is an appeal against conviction or sentence, until the appeal has been determined;

- 5.10.5 **Disqualification from Company Positions:** a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under the Companies Act 1993, the Financial Markets Conduct Act 2013 or the Takeovers Act 1993;
- 5.10.6 **Incapacity:** a person who is subject to a property order made under the Protection of Personal and Property Rights Act 1988 or whose Property is managed by a trustee corporation under section 32 of that Act; or
- 5.10.7 **Charities Act Order:** a person who is subject to an order made under section 36C of the Charities Act 2005 disqualifying the person from being an officer of a charitable entity.

#### **Ineligibility of Person Having Powers of Appointment**

- 5.11 If any person having the powers of appointment under clause 5.8 and removal under clause 5.9:
  - 5.11.1 **Death or Dissolution:** dies or, in the case of a body corporate, is liquidated or otherwise dissolved; or
  - 5.11.2 **Eligibility to be a Trustee:** is precluded from holding office as a Trustee under clause 5.10;

then the Trustees, but excluding that person if that person is also a Trustee, will have the power to:

- 5.11.3 **Remove Power:** remove those powers of appointment and removal from that person; and
- 5.11.4 **Revest Power:** vest those powers of appointment and removal in another person who may or may not be a Trustee.

From the date of any such vesting, this clause 5.11 will apply to the person in whom the powers of appointment and removal are vested as if that person were originally named in clause 5.8 and clause 5.9.

#### **Term of Office**

- 5.12 A Trustee will cease to hold office if that Trustee:
  - 5.12.1 **Resignation:** resigns office by giving 30 days' written notice to the Secretary, who must circulate that written notice to the remaining Trustees within 10 days of receipt;
  - 5.12.2 **Ineligibility:** is precluded from holding office as a Trustee under clause 5.10;

- 5.12.3 **Failure to Attend:** fails to attend a meeting of the Trustees for a period of 12 months without leave of the remaining Trustees;
- 5.12.4 **Death:** dies while holding office as a Trustee; or
- 5.12.5 **Removal:** is removed by the person having the power of removal of Trustees.
- 5.12.6 **Mental Disorder:** becomes a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment Treatment) Act 1992.
- 5.12.7 **Failure of Duty:** is deemed to have failed to fulfil the duties of trusteeship by written resolution carried by 75% majority of all remaining Trustees.
- 5.12.8 **Expiry of Term:** appointment of Trustee expires without re-election.

#### **Recording**

- 5.13 On every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees must cause an entry to that effect to be recorded in the Trust's minute book.

### **6. ADMINISTRATION OF THE TRUST**

#### **Meetings**

- 6.1 The Trustees must regulate and conduct meetings as follows:

- 6.1.1 **Annual General Meeting:** by 31 October in any year, the Trustees must hold an annual general meeting;
- 6.1.2 **Notice:** the Secretary must give no less than thirty (30) days' written notice of the annual general meeting to the Trustees;
- 6.1.3 **Business:** the business to be transacted at the annual general meeting will be the:
  - (a) receipt of the financial statements;
  - (b) appointment of the auditor (if any); and
  - (c) setting of the Trustees' remuneration;

and any other business will be treated as special business and will be dealt with in accordance with clause 6.1.4;

- 6.1.4 **Special Business:** written notice of any special business must be given to the Secretary no less than twenty-one (21) days before the annual general meeting and the Secretary must circulate a written agenda including all special business to the Trustees no later than fourteen (14) days before the annual general meeting;

**6.1.5 Other Meetings:** the Trustees must meet at least every two (2) months and may otherwise meet at any times, provided that any three or more Trustees may at any time requisition a meeting of Trustees by giving written notice to the Secretary detailing the purpose of the meeting the Secretary must, within two (2) days of receipt of that notice, convene a special general meeting by giving, subject to clause 13.1, not less than forty-eight (48) hours' notice of the meeting to the Trustees; **PROVIDED HOWEVER** despite the notice period in this clause 6.1.5 above the Chairperson may request a meeting on less than forty-eight (48) hours' notice if the meeting is deemed to be urgent.

**6.1.6 Particulars of Notice:** every notice of meeting given by the Secretary to the Trustees must:

- (a) be in writing; and
- (b) state the date, time and place of the meeting;

and every notice of a meeting requisitioned under clause 6.1.5 must state the matters to be discussed at that meeting, but notice of any meeting may be abridged or waived if all the Trustees consent in writing to that abridgment or waiver.

### **Quorum**

**6.2.1** At meetings of the Trustees quorum will comprise of 50% of the Trustees and Trustees may be present in person via live media or by proxy. When calculating the number of Trustees required for a quorum, where there is an uneven number of Trustees, percentages are rounded up, for example if there are seven (7) Trustees, four (4) is required for a quorum.

**6.2.2** If a quorum is not present within thirty (30) minutes after the time appointed for the holding of a meeting of the Trustees, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day or such other time and place as the Trustees present may determine and if at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting the Trustees present in person, via live media or by proxy shall form a quorum provided that such a meeting has been called by requisition set out in clause 6.1.5 then the quorum shall in no event be less than three (3) Trustees and if a quorum of three (3) Trustees cannot be raised the meeting in respect of that requisition shall be abandoned.

### **Proxy Votes**

**6.3** A Trustee may exercise the right to vote either by being present in person, via live media or by proxy any such proxy to be another Trustee.

A proxy must be appointed by notice in writing, signed by the Trustee and the notice must state whether the appointment is for a particular meeting for a specified or general term. An email from the Trustee may be accepted if it is from the Trustee's registered email address and does not require the Trustee's signature. No proxy is effective in relation to any meeting unless a copy of the notice of appointment is produced before the start of the meeting.

#### **Appointment of Chairperson**

6.4 The Trustees at the Annual General Meeting in every year shall determine among them who is to be the Chairperson for any term. If the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of a meeting whether that be an Annual General Meeting or other meeting, the Trustees present shall choose one of their number to be Chairperson for that meeting.

#### **Secretary**

6.5 The Trustees must from time to time appoint either one of their number or some other person to be Secretary who shall hold office at the Trustees' pleasure.

#### **Validity of Proceedings**

6.6 All acts done by any meeting of Trustees or by any person acting as Trustee will be as valid and effectual as if that Trustee or those Trustees:

6.6.1 **Duly Appointed:** had been duly appointed;

6.6.2 **Qualified:** were qualified to hold office as Trustee; and

6.6.3 **Complied With Rules:** had complied with clause 6.1;

even if it is later discovered that:

6.6.4 **Defect in Appointment:** there was some defect in the appointment of any of the Trustees;

6.6.5 **Trustee Disqualified:** any of the Trustees were for any reason disqualified from holding office as Trustee; or

6.6.6 **Failure to Comply:** there was accidental failure to comply with clause 6.1.

#### **Majority Decisions**

6.7 As otherwise provided, and subject to clause 6.2, all resolutions passed at a meeting of the Trustees may be by a majority of Trustees present at that meeting and any such resolution will be binding on all Trustees whether in person via live media or by proxy. The Chairperson will have a casting as well as a deliberative vote if there is a tie and equality of votes.

## **Written Resolutions in Lieu of Meeting**

**6.8** In lieu of a meeting, a resolution in writing signed by a majority of Trustees indicating agreement to the subject of the resolution shall be as valid and effectual as a resolution duly passed at a properly constituted meeting of the Trustees. As resolution in writing shall include an email reply from each Trustee and does not require the Trustees signature if it is received from the Trustee's registered email address. Such a resolution, when so signed, or received by email, shall be embodied in the minutes of the meetings of the Trustees and such resolution may be contained on one or more sheets to be combined as one resolution.

## **Special Resolutions**

**6.9** Matters which require 75% majority of the Trustees for decisions are contained in clause 5.12.7 (Trustee failure in duties), clause 12.1 (variation of Trust Deed), clause 13.1 (dissolution and disposal of funds) subject to the Trustees not being disqualified from voting by reason of a declared interest, pursuant to clauses 4.14 and 4.15.

## **Rescission of Resolutions**

**6.10** The Trustees may from time to time rescind or vary any resolution of the Trustees by the same majority as was necessary to pass the resolution being rescinded or varied.

## **Minutes**

**6.11** The Trustees must provide and keep a minute book. The Secretary (or the Trustee, if there is only one Trustee) must prepare and enter a record of all resolutions of the Trustees in the minute book. If confirmed by the Trustees, the Chairperson (or the Trustee, if there is only one Trustee) must sign those minutes as a true and correct record. Every minute purporting to be so signed will be *prima facie* evidence of the facts stated in those minutes. The written record of decisions and business transacted at every meeting of the Trustees may include a web-based recording of any decisions and business.

## **Sub-Committees**

**6.12.1** The Trustees may refer by resolution any matters to a sub-committee consisting of such Trustees or co-opted Board Members as they think fit (and any such committee may confer with such others that the committee thinks fit) and may give to that committee such powers as the Trustees think fit including the power to bind the Trust by any decision made by the sub-committee.

**6.12.2** A committee may elect a Chairperson of its meetings and fix its own procedure, provided that voting at such meetings shall be determined by a majority of votes and a Chairperson of a committee shall not have a

second or casting vote with any matter or issue unable to be resolved by a majority vote being referred back to the Trustees for a decision.

#### **Bank Accounts**

**6.13** The Trustees must keep an account at a bank, which they may determine from time to time. Withdrawals must be approved and endorsed by any person whom the Trustees from time to time authorise in writing.

#### **Accounts and Audits**

**6.14** The Trustees must ensure that:

**6.14.1 Keep Records and Accounts:** full and correct records and accounts are kept of all their receipts, credits, payments, assets, liabilities, transactions and all other matters necessary for showing the true state and condition of the Trust Fund. The records must be kept at the Trust's office or such other place or places as the Trustees from time to time think fit; and

**6.14.2 Financial Statements:** financial statements are prepared as soon as practicable after the end of each Financial Year, those statements must include:

- (a) Financial Position:** a statement of financial position;
- (b) Financial Performance:** a statement of financial performance; and
- (c) Notes:** notes to those statements;

giving a true and fair view of the financial position of the Trust Fund for that Financial Year.

**6.14.3 Change of Balance Date:** any change to the Balance Date of 1 July to 30 June in any year for the Trust has been approved, if required, pursuant to section 41 of the Charities Act 2005 or otherwise.

**6.14.4 Audit of Accounts:** the accounts of the Trust are to be audited annually by a chartered accountant.

**6.14.5 Inspection of Accounts:** all records of the Trust including financial records must be open for inspection at all times by any Trustee.

**6.14.6 Duty of Treasurer:** the Treasurer shall be responsible for keeping the accounts for the Trustees and shall supervise the finances of the Trust and shall at each meeting present to the Trustees an overview of the financial performance of the Trust.

**6.14.7 Accounts for AGM:** as soon as possible after 30 June in any year, the Trustees must prepare an annual report, such report to be tabled at the Annual General Meeting of the Trust, such

AGM to be a public meeting to be held no later than 31 October in any year. The Trustees must also make the annual report available for public inspection at the Trust's office and the Trustees may make the report available to such other persons or organisations as the Trustees think fit.

### **Execution of Documents**

**6.15** Subject to clause 6.12, all documents required to be executed by the Trustees will be deemed to be validly executed and binding if those documents have been signed by at least two (2) Trustees whom the Trustees from time to time authorise in writing.

### **Common Seal**

**6.16** As a board under the Charitable Trusts Act 1957, then:

**6.16.1 Provision and Use of Seal:** the Trustees hold a common seal for the board, which will be:

- (a) **Deposited with Secretary:** deposited with the Secretary; and
- (b) **Use of Seal:** affixed to any document requiring execution by the board under common seal on authority of the Trust; and

**6.16.2 Affixation of Seal:** every affixing of the common seal must be:

- (a) **Authorisation:** performed in the presence of and accompanied by the signatures two (2) Trustees, which will be sufficient evidence of authority to affix the seal; and
- (b) **Seal Register:** recorded in a seal register retained for such purpose.

### **Preparation and Filing of Documents and Other Information**

**6.17** The Trustees must cause to be prepared, and retained and/or filed with any relevant authority all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations, applications, forms and other information required to be prepared or filed, pursuant to any revenue legislation, the Charities Act 2005 or otherwise, so as to achieve or preserve the availability of any concession in relation to the Trust under any of the Concessionary Provisions.

### **Notices**

**6.18** Any notice to be given to the Secretary under this deed must be in writing signed by the person giving the notice and served at the office of the Trust. Any notice or document so served will be deemed to be duly given:

- 6.18.1 **By Hand:** if delivered by hand, when so delivered;
- 6.18.2 **By Post:** if delivered by post, on the third working day after posting; or
- 6.18.3 **By E-mail:** if sent by e-mail, notice is deemed to be given if the email has been sent to the last registered email address of the intended recipient appearing in the records of the Trust.

## 7. LIABILITY OF TRUSTEES

- 7.1 The Trustees shall invest the Trust Fund in such investments as the Trustees in their absolute discretion think fit. Section 29 and Section 30 of the Trustee Act 2019 do not apply to any Trustee of the Trust.
- 7.2 The Trustees as Trustees for the Trust shall be entitled to retain any assets of whatever kind or nature gifted or transferred by any person to the Trust and the retention of such assets by the Trustees shall not breach any duty of the Trustees under the Trustee Act 2019 or otherwise.
- 7.3 **Liability for Loss:** No Trustee or former Trustee of the Trust Fund acting or purporting to act in the execution of the Trust shall be under any personal liability for any loss however arising whether directly or indirectly (and whether in equity or in negligence or otherwise at law) from the execution of or otherwise in connection with the Trust, unless such loss is attributable to the dishonesty of the Trustee or the wilful commission or omission by the Trustee of an act known by the Trustee to be a breach of trust.
  - 7.3.1 The Trustees, co-optable members and officers, if any, are indemnified by the Trust from and against all claims, losses and expenses properly incurred by them in or about the discharge of their respective duties.
- 7.4 **Trusts Act 2019:** Subject to clause 7.3, despite:
  - 7.4.1 **Section 30:** the provisions of section 30 of the Trusts Act 2019; and
  - 7.4.2 **Professional Trustees:** the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others; the care, diligence and skill to be exercised by those persons will not be that required by section 30 of the Trusts Act 2019 but will at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 7.4.3 For the purposes of Section 59 of the Trusts Act 2019 no Trustee is under any duty take any advice in relation to exercising any

power of investment. Further no Trustee is under any duty to diversify or consider diversifying any or all of the Trust Fund.

**7.4.4** Subject to clause 7.3 no Trustee shall have any liability to any person in respect of the investment of the Trust Fund, including in respect of any loss of income or capital suffered by the Trust Fund.

**7.5** **Proceedings:** No Trustee will be bound to take, or be liable for failure to take, any proceedings against any other Trustee or former Trustee for any breach or alleged breach of trust committed by that other Trustee or former Trustee.

**7.6** **Receipt of Money:** Subject to clauses 7.1 and 7.2, a Trustee will be chargeable only for any money, which that Trustee has received. For the purposes of this clause, a Trustee is deemed to have received money even if not actually paid to that Trustee if that money has been credited in account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

## **8. INDEMNIFICATION OF TRUSTEES**

Each Trustee or former Trustee is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called "liabilities") suffered or incurred by that Trustee or former Trustee in connection with the Trust, except to the extent that those liabilities are due to:

- 8.1** **Dishonesty:** that Trustee's or former Trustee's own dishonesty or lack of good faith; or
- 8.2** **Wilful Breach of Trust:** that Trustee's or former Trustee's wilful commission or omission of an act known by that Trustee or former Trustee to be a breach of trust.

## **9. TRUSTEE REMUNERATION AND EXPENSES**

**9.1** **Professional Remuneration:** Subject to clause 9.3, any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade is entitled to be paid all usual professional, business and trade charges for services provided by that person or that person's employee or partner in connection with the Trust including acts, which a Trustee, not being in any profession, business or trade, could have done personally.

**9.2** **General Remuneration:** Subject to clause 9.3, each Trustee is entitled to such remuneration for services provided as may be reasonable having regard to that Trustee's duties and responsibilities and to any

remuneration paid to that Trustee in accordance with clause 9.1 for those services.

**9.3 Proviso:** Any payment to a Trustee referred to in clauses 9.1 and 9.2 must not exceed fair market value for services provided and, where any such payment is a benefit or advantage to which clauses 11.2 to 11.4 apply, no Trustee receiving such payment and no person associated with such Trustee may:

**9.3.1 Take Part:** take part in any deliberations or proceedings relating to that payment; or

**9.3.2 Determine or Influence:** in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid.

**9.4 Expenses:** Each Trustee is entitled to be indemnified against, and reimbursed for, all travelling, hotel and other expenses properly incurred in connection with the Trust.

## **10. NO PRIVATE PROFIT**

Nothing expressed or implied in this deed will permit:

**10.1 Trustees' Activities:** the Trustees' activities; or

**10.2 Business:** any business carried on by or on behalf of or for the benefit of the Trustees;

in connection with the Trust, to be carried on for the private profit of any individual.

## **11. RESTRICTIONS RELATING TO BUSINESS INCOME**

**11.1 General Restrictions:** In any tax year, for the purposes of the Income Tax Act 2007, where any business, within the ambit and scope of that Act and in particular section CW 42 of that Act, is carried on by or for the benefit of the Trust:

**11.1.1 Tax Exempt Business Income:** the Trustees must not derive directly or indirectly from any such business any amount of income that is not exempt from income tax under section CW 42 of the Income Tax Act 2007; and

**11.1.2 Benefits/Advantages to Certain Persons:** within the ambit and scope of clauses 11.2 to 11.4, no person with some control over the business may direct or divert, to their own benefit or advantage, any amount derived from that business.

**11.2 Persons who may have Control:** For the purposes of clause 11.1.2, a person who may have some control over the business is a person who is, within the ambit and scope of section CW 42(5)–(7) of the Income Tax Act 2007:

- 11.2.1 Settlor or Trustee:** a settlor or trustee of a trust carrying on the business or of a trust that is a shareholder in a company carrying on the business; or
  - 11.2.2 Director or Shareholder:** a director or shareholder of a company carrying on the business; or
  - 11.2.3 Associated Person:** a person associated with any person described in clauses 11.2.1 and 11.2.2.
- 11.3 Relevant Benefits/Advantages:** For the purpose of clause 11.1.2, an amount is directed or diverted to the benefit or advantage of a person described in clause 11.2 if that person is given or receives from the business any benefit or advantage, whether or not convertible into money, within the ambit and scope of section CW 42(6)–(8) of the Income Tax Act 2007, or any income of a kind specified in and not excluded by those sub-sections.
- 11.4 Control over the Business and Ability to Direct or Divert Amounts:** For the purpose of clause 11.1.2, a person described in clause 11.2 has some control over the business and is able to direct or divert amounts from the business to their own benefit or advantage if, by virtue of their position described in clause 11.2 and within the ambit and scope of section CW 42(5)–(8) of the Income Tax Act 2007, that person is, in any way, whether directly or indirectly, able to determine or materially influence in any way the determination of:
  - 11.4.1 Nature/Extent of Benefit/Advantage:** the nature or extent of any benefit, advantage or income described in clause 11.3; or
  - 11.4.2 Circumstances of Receipt:** the circumstances in which any benefit, advantage or income described in clause 11.3 is, or is to be, given or received.

## 12. MODIFICATION OF TRUST TERMS

The Trustees may from time to time by resolution carried by 75% of the Trustees alter, add to, cancel or otherwise amend the Trust Deed subject to the following conditions:

- (a) not less than fourteen (14) days notice stating the general tenor of the proposed alteration, addition, cancellation or other amendment must be given to each Trustee;
- (b) the meeting may amend any such proposal;
- (c) no addition to or alteration or recission of the rules should be approved if it affects the charitable objects or the charitable limitations, the personal benefits restrictions, the alteration provision, the winding up provision, without first obtaining the written consent of the Marlborough District Council or its successor.

- 12.1 **Charitable Purposes:** allow the Trust to operate other than for exclusively charitable purposes in New Zealand and particularly Marlborough or to operate for private profit; or
- 12.2 **Concessionary Provisions:** affect the eligibility of the Trust for the benefit of any of the Concessionary Provisions, unless in relation to any such provision the Trustees have unanimously determined that eligibility for the benefit of that provision is not required in the best interests of pursuing the purposes of the Trust.

### 13. WINDING UP THE TRUST

- 13.1 The Trust may wind up voluntarily by the passing of a resolution by the Trustees to that effect. Such a resolution shall be passed by 75% of all Trustees. The resolution must be confirmed at a subsequent meeting of the Trust called for that purpose and held not sooner than the twenty-eighth (28<sup>th</sup>) day and not later than the forty-second (42<sup>nd</sup>) day after the date on which the resolution so confirmed as passed. Such confirming resolution shall also require a 75% majority of all Trustees.
- 13.2 On the winding up or dissolution of the Trust, all surplus assets of the Trust after payment of all costs and debts and discharge of all liabilities shall be given to the Marlborough District Council (or its successor) for the purpose and on the condition that such surplus assets be applied to some charitable objective in Marlborough. If necessary, directions may be sought and obtained from the High Court or any other Court exercising appropriate jurisdiction.

### 14. POWER TO RESETTLE

- 14.1 Without limiting any other power referred to in this Deed, the Trustees have the power to resettle all or any real and personal property held by the Trustees under this Trust (on such terms and conditions as the Trustees in their absolute discretion think fit) or any trust which is consistent both with the objects set out in clause 3 and with the fundamental objective set out in clause 3.3 above; provided that any such resettlement must be to a charitable trust.

### 15. GOVERNING LAW

This deed is governed by New Zealand law. The Trustees submit to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

Executed as a deed.

**SIGNED** by **MATHEW JOHN BRIAN KERR**  
as one of the Trustees in the presence of:



MATHEW JOHN BRIAN KERR

Witness:

Signature of witness



Full name of witness

Bridget Helen Taylor

Occupation of witness

General Manager.

Address of witness

25B Francis Street  
Blenheim 7201

**SIGNED** by **PAUL FRANCIS MCKENDRY**

as one of the Trustees in the presence of:



PAUL FRANCIS MCKENDRY

Witness:

Signature of witness



Full name of witness

Bridget Helen Taylor

Occupation of witness

General Manager.

Address of witness

25B Francis Street  
Blenheim 7201

SIGNED by SAMANTHA JADE FORREST

as one of the Trustees in the presence of:

Witness:

Signature of witness



Full name of witness

Bridget Helen Taylor.

Occupation of witness

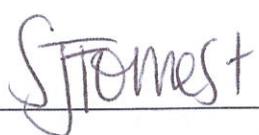
General Manager

Address of witness

25B Francis Street  
Blenheim 7201

SIGNED by ANNA ELIZABETH HOUKAMAU

as one of the Trustees in the presence of:



ANNA ELIZABETH HOUKAMAU

Witness:

Signature of witness



Full name of witness

Bridget Helen Taylor.

Occupation of witness

General Manager.

Address of witness

25B Francis Street  
Blenheim 7201

SIGNED by BEN JASON GLOVER  
as one of the Trustees in the presence of:



BEN JASON GLOVER

Witness:



Signature of witness

Full name of witness

Bridget Helen Taylor

Occupation of witness

General Manager

25B Francis Street  
Blenheim 7201.

SIGNED by KELLY JAMES THOMPSON

as one of the Trustees in the presence of:



Witness:

Signature of witness



Full name of witness

Bridget Helen Taylor

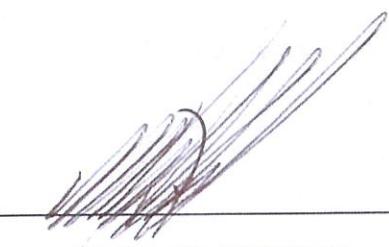
Occupation of witness

General Manager

25B Francis Street  
Blenheim 7201

SIGNED by MARTIN FORBES FLETCHER

as one of the Trustees in the presence of:

  
MARTIN FORBES FLETCHER

Witness:

Signature of witness



Full name of witness

Bridget Helen Taylor

Occupation of witness

General Manager

25B Francis Street

Blenheim 7201