

## Rotorua Montessori Primary Trust

**THIS DEED** is made the 21<sup>st</sup> day of June 1999

### **WHEREAS:**

- A. The parties to this Deed wish to establish a charitable trust (in this Deed referred to as "the Trust") for the purposes described in Clause 3 of this Deed, and
- B. The property held by the parties for Incorporation is a credit account of approximately \$10.00 (ten dollars) with the WestpacTrust Bank, Haupapa Street, Rotorua.
- C. The parties have agreed to enter into this Deed specifying the purposes of the Trust and providing for its control and government.

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**NOW THIS DEED WITNESSES** that the Constitution and Rules of the Trust are as follows:

#### **1. NAME:**

The name of the Trust will be the Rotorua Montessori Primary Trust, in this deed called 'the Trust'.

#### **2. PURPOSE:**

The Charitable purpose of the Trust is education.

The Principle Objectives of the Trust are:

- 1. To promote the establishment of Montessori primary classes in schools to meet the demand.
- 2. To assist schools establish and maintain the character of Montessori primary classes.
- 3. To advise schools on the selection processes for Montessori classes.
- 4. To donate, loan or otherwise supply Montessori equipment to schools with Montessori classes.
- 5. To support Montessori training of New Zealand registered Teachers for Rotorua Montessori primary classes and to provide other support and assistance consistent with this charitable purpose.

The Statement of Purpose of the Trust is to provide and promote an education, inspired by the Montessori philosophy which nurtures in the child a life long love of learning through self discovery.

### **3. ACTIVITIES LIMITED TO NEW ZEALAND**

The activities of the Trust will be limited to New Zealand.

### **4. OFFICE**

The office of the Trust will be in such place in New Zealand as the Board of Trustees may from time to time determine.

### **5. THE BOARD OF TRUSTEES**

5.1 The Board will comprise of no less than three (3) Trustees and no more than eight (8) Trustees.

5.2 The signatories to this Deed will be the first Board. The first Board of Trustees to this Deed will be appointed for a period of five (5) years. The Trustees will elect from among themselves a Chairperson. A Secretary and Treasurer will also be appointed from among themselves or from non-trust members. An election of office-

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bearers will be held at the first meeting of the Board following the execution of this Deed and whenever a vacancy occurs. The positions of Secretary and Treasurer may be combined.

5.3 A person will immediately cease to be Trustee when she or he resigns in writing, dies, is declared bankrupt or is found to be a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or subsequent enactment.

5.4 The Board will have the power to fill any vacancy that arises in the Board or of Chairperson, Secretary and Treasurer's positions or to appoint any additional trustees subject to clause 6.1.

5.5 The Board may continue to act notwithstanding any vacancy, but if the number is reduced below minimum number of trustees as stated in this deed, the continuing trustee/s may act for the purpose of increasing the number of trustees to that minimum but for no other purpose.

5.6 The Board may, by a motion decided by a two-thirds (2/3<sup>rd</sup>) majority of votes, terminate a person's position as a Trustee and member of the Board, if it believes that such action is in the best interests of the Trust.

- 5.7 The name of the Board will be the Rotorua Montessori Primary Board of Trustees.

## **6. MEETINGS OF THE BOARD**

- 6.1. The procedure for Board meetings will be as follows:

6.1.1 A quorum will be at least three (3) of its members.

6.1.2 If a Trustee, including an office-bearer, does not attend three (3) consecutive meetings of the Board without leave of absence that member may, at the discretion and on decision of the Board, be removed as a Trustee, and/or from any office of the Trust which she or he holds.

6.1.3 All questions will if possible be decided by consensus. In the event that a consensus cannot be reached then a decision will be made by a majority vote by show of hands, unless otherwise determined by the Board.

6.1.4 If the voting is tied, the Chairperson will have a casting vote.

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6.1.5 Each meeting will be chaired by the Chairperson of the Trust. In the absence of the Chairperson, the Board will elect a person to chair the meeting from among the Trustees present.

6.2 The Board will meet at least twelve (12) times every year. Meetings may be held in person or by any other means of communicating as decided on by the Board from time to time. The Secretary will ensure that all members of the Board are notified of the meeting, either verbally or in writing.

6.3 The Secretary will ensure that a minute book is maintained which is available to any member of the Trust and which, for each meeting of the Board, records

6.3.1 the names of those present;

6.3.2 all decisions which are required by this Deed or by law to be made by the Board of Trustees; and

6.3.3 any other matters discussed at the meeting.

## **7. POWERS**

In addition to the powers provided by the general law of New Zealand or contained in the Trustee Act 1956, the powers that the Board may exercise in order to carry out its charitable purposes are as follows:

- 7.1 to use the funds of the Trust as the Board thinks necessary or expedient in payment of the costs and expenses of the Trust, including the employment and dismissal of professional advisors, agents, officers and staff, according to principles of good employment and the Employment Contracts Act 1991 or any subsequent enactment;
  - 7.2 to purchase, take on, lease or in exchange or hire or otherwise, acquire any real or personal property and any rights or privileges which the Board thinks necessary or expedient in order to attain the purpose of the Trust and to sell, exchange, let, bail or lease, with or without option of purchase or, in any other manner, dispose of such property, rights or privileges;
  - 7.3 to carry on any business;
  - 7.4 to invest surplus funds in any way permitted by law for the investment of Charitable Trust funds and upon such terms as the Board thinks fit;
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- 7.5 to borrow or raise money from time to time with or without security and upon such terms as to priority or otherwise as the Board thinks fit; and
  - 7.6 to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the Trust.

## **8. BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES**

- 8.1 Any income, benefit or advantage will be applied to the charitable purposes of the Trust.
- 8.2 No trustee or members of the trust or any person associated with a trustee or member shall participate in or materially influence any decision made by the trustees in respect of any payment to or on behalf of that trustee or member or associated person of any income, benefit or advantage whatsoever.
- 8.3 Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).
- 8.4 The provision and effect of this clause shall not be removed from this deed and shall be implied into any document replacing this deed of trust.

## **9. POWER TO DELEGATE**

- 9.1 The Board may from time to time appoint any committee and may delegate any of its powers and duties to any such committee or to any person. The committee or person may without confirmation by the Board exercise or perform the delegated powers or duties in the same way and with the same effect as the Board could itself have done.
- 9.2 Any committee or person to whom the Board has delegated powers or duties will be bound by the charitable terms of the Trust and any terms or conditions of the delegation set by the Board.
- 9.3 The Board will be able to revoke such delegation at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.
- 9.4 It will not be necessary for any person who is appointed to be a member of any such committee, or to whom such delegation is made, to be a Trustee.

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## **10. FINANCIAL ARRANGEMENTS**

- 10.1 The financial year of the Trust will be from 1 January to 31 December in the same year.
- 10.2 At the first meeting of the Board in each financial year, the Board will decide by resolution the following:
  - 10.2.1 how money will be received by the Trust;
  - 10.2.2 who will be entitled to produce receipts;
  - 10.2.3 what bank accounts will operate for the ensuing year, including the purposes of and access to accounts;
  - 10.2.4 who will be allowed to authorise the production of cheques and the names of cheque signatories; and
  - 10.2.5 the policy concerning the investment of money by the Trust, including what type of investment will be permitted.
- 10.3 The Treasurer will ensure that true and fair accounts are kept of all money received and expended by the Trust.
- 10.4 The Board will, as soon as practicable after the end of the financial year of the Trust, arrange for the accounts of the Trust for that financial year to be audited by an accountant appointed for that purpose. The audited accounts will be made available to the public.

## **11. COMMON SEAL**

- 11.1 The Common Seal of the Trust will be kept in the custody and control of the Secretary, or such other officer appointed by the Board.
- 11.2 When required, the Common Seal will be affixed to any document following a resolution of the Board and will be signed by the Chairperson (or a trustee acting as the Chair) and one other person appointed by the Board.

## **12. ALTERATION OF RULES**

- 12.1 The Trustees may, by consensus or pursuant to a motion decided by a two-thirds (2/3<sup>rd</sup>) majority of votes, by supplemental Deed at an Annual General Meeting or an extraordinary meeting, make alterations or additions to the terms and provisions of this Deed provided that no such alteration or addition will:

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- 12.1.1 detract from the exclusively charitable nature of the Trust or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable; or
- 12.1.2 be made to the Purpose Clause (2), the Activities Limited to New Zealand Clause ( 3 ), the Pecuniary Interests and/or Private Benefits Clause ( 8 ), or the Disposition of Surplus Assets Clause ( 14 ) unless it is first approved in writing by the Department of Inland Revenue.

### 13. MEDIATION AND ARBITRATION

- 13.1 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.
- 13.2 The mediation shall be terminated by-
- 13.2.1 The signing of a settlement agreement by the parties; or
  - 13.2.2 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
  - 13.2.3 Notice by one or more of the parties to the mediation to the effect that further efforts at mediation are no longer justified; or
  - 13.2.4 The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.
- 13.3 If the mediation should be terminated as provided in 13.2.2, 13.2.3 or 13.2.4 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.

#### **14. DISPOSITION OF SURPLUS ASSETS**

- 14.1 The Board may be wound up if at a general meeting of Board members, it passes a resolution to wind up the trust and that resolution is confirmed at a subsequent general meeting called for that purpose and held not sooner than the 28<sup>th</sup> day and not later than the 42<sup>nd</sup> day after the date on which the resolution to be confirmed was passed.
- 14.2 On the winding up of the Trust or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities will be donated to the Montessori Association of New Zealand, Wellington for the purchase of materials to loan/lease to member schools or as the members of the Trust in a General Meeting will decide. If the Trust is unable to make such a decision, the remaining assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.

**IN WITNESS OF WHICH** this Deed has been executed the day and year first written in this Deed.