

**DEED OF AGREEMENT**

**between**

**THE MINISTER IN CHARGE OF TREATY  
OF WAITANGI NEGOTIATIONS**

**ON BEHALF OF THE CROWN**

**and**

**RALPH HEBERLEY NGATATA LOVE  
ON BEHALF OF HIMSELF AND ON BEHALF OF  
THE BENEFICIARIES OF THE WELLINGTON TENTHS TRUST**

**IN RELATION TO CLAIM WAI 145**

THIS FINAL AGREEMENT is made on the 28<sup>th</sup> day of May 1997

**BETWEEN**

**HER MAJESTY THE QUEEN** in right of New Zealand acting by the Minister in Charge of Treaty of Waitangi Negotiations ("the Crown")

**AND**

**RALPH HEBERLEY NGATATA LOVE FOR AND ON BEHALF OF THE TRUSTEES AND THE BENEFICIARIES OF THE WELLINGTON TENTHS TRUST** ("the Claimants")

**BACKGROUND**

- A On 23 December 1987, a claim was lodged with the Waitangi Tribunal by Makere Rangiatea Ralph Love and Ralph Heberley Ngatata Love which included a claim on behalf of beneficiaries of the Wellington Tenths Trust ("the Trust"). The claim was registered with the Waitangi Tribunal as WAI 145. Urgency was granted to parts of the claim, and was finally limited to that part which related *inter alia* to the Trust's reserved lands leased to the Crown under leases in perpetuity ("the leasehold interests") over numbers 9, 13 and 15 Pipitea Street Wellington ("the properties"). The legal description of these properties is set out in **Schedule A** to this Deed of Agreement.
- B By Memorandum to the Waitangi Tribunal dated 19 April 1991 the Crown acknowledged that the provisions of the Maori Reserved Land Act 1955 disadvantage Maori owners in that their ability to receive a fair return on assets is constrained.
- C The leasehold interests in the properties were formerly owned by the Crown pursuant to the Maori Reserved Land Act 1955. On 6 June 1990 the leasehold interests in the properties were acquired by Government Property Services, Pipitea East Limited under s 25(1) of the State-Owned Enterprises Act 1986. The leasehold interests in the

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properties were subject to memorials under s 27A of the State-Owned Enterprises Act 1986. On the 27th of January 1994 the leasehold interests of the properties were transferred to Government Property Services Limited ("GPS").

D In November 1994 the Minister in Charge of Treaty of Waitangi Negotiations was authorised by the Cabinet to enter into discussions with the Trust and the Chief Executive of GPS, the lessee of the properties, about the Crown purchasing the leasehold interest of GPS in the properties for transfer to the Trust by way of a settlement associated with the wider Wellington Tenths Trust (Wai 145) claim. On the authority of the Minister in Charge of Treaty of Waitangi Negotiations, discussions have taken place between the Department of Survey and Land Information (DOSLI, now Land Information New Zealand), as the Crown's agent, and GPS, concerning the purchase of the leasehold interests by the Crown. Discussions have also occurred between The Office of Treaty Settlements and the Trust concerning:

- (i) the proposed surrender of the leasehold interests from the Crown to the Trust;
- (ii) the carrying out by the Crown of certain structural repair and maintenance work to the buildings on the properties; and
- (iii) the payment by the Crown of the sum of \$70,000 to the Wellington Tenths Trust towards the cost of interior refurbishment of the properties (subject to clause 9 which provides for the parties' intentions as to Goods and Services tax ("GST"))

E On the authority of the Minister in Charge of Treaty of Waitangi Negotiations DOSLI and GPS agreed that the Crown would purchase the leasehold interests in the properties for the sum of \$340,000 plus GST (if any) and an agreement for sale and purchase for that sum has been executed.

F It is Crown policy that the condition precedent for surrendering the Crown's interests in the properties to the Trust shall be that the memorials to which the leasehold interests in

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the properties are subject under s 27A of the State-Owned Enterprises Act 1986 shall be discharged or cancelled pursuant to the provisions of ss 8D and 8E of the Treaty of Waitangi Act 1975 ("the Act").

- G The Crown, in accordance with that policy, applied to the Waitangi Tribunal under s 8D of the Act for a recommendation that the properties be no longer subject to resumption under s 27B of the State-Owned Enterprises Act 1986. The Tribunal being satisfied that all the necessary steps had been taken under the Act and in accordance with its Directions, has issued a recommendation on 18 September 1996 that the leasehold interests in the properties be no longer subject to resumption under s 27B of the Act.
- H Pursuant to s 8E of the Act, the District Land Registrar on 23 October 1996 discharged the memorials on the titles to the leasehold interests in the properties.
- I In this Deed of Agreement, references to a settlement in relation to the leasehold interests in the properties shall mean a settlement the value of which shall be charged against any future settlement of the wider Wellington Tenth Trust (Wai 145) claim (and any other claim present or future of the Claimants in respect of the same lands, properties, interests or assets, howsoever arising, whether pursuant to the Treaty of Waitangi or otherwise).

**ACCORDINGLY**, in the spirit of co-operation and good faith and in consideration of the respective obligations and agreements contained in this Deed of Agreement, and with the intention to create binding legal relations, the Crown and the Claimants agree as follows:

**(a) Agreements made by the Crown**

1. On the day after this Deed has been signed by the Crown and by the Claimants ("the Surrender Date"), the Crown will surrender the leasehold interests in the properties to the Trust by way of a settlement that will be charged against any future final settlement of the wider Wellington Tenth Trust (Wai 145) claim. The Crown shall also pay to the Trust



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on the Surrender Date the sum of \$70,000.00 ("the Cash Payment") (subject to clause 9 as to GST).

2. The value of the settlement that will be charged against any future settlement of the Wai 145 claim will be \$412,300.00, comprising the surrender price for the leasehold interests in the properties of \$340,000.00 and the Cash Payment (both subject to clause 9 as to GST), together with the sum of \$2,300.00, being the Crown's net holding costs on the properties prior to 25 October 1995 ("Holding Costs"), but not including any GST paid by the Crown in relation to those holding costs.
3. The Crown has, after consultation with the Trust, undertaken certain structural repairs and maintenance work on the buildings situated on the properties ("the Crown's Works"), and the Crown has completed those works to a reasonable standard and in accordance with local body requirements and the Building Act 1991.
4. Until the Surrender Date, the Crown shall have possession of the properties and shall until that date:
  - (i) pay the local authority rate on the leasehold interests at 13 and 15 Pipitea Street; and
  - (ii) pay to the Trust the ground rental payable under the Leases of the properties at 13 and 15 Pipitea Street.
5. The cost of the Crown's works shall be treated as compliance by the Crown with its obligations as lessee under the Leases and shall not form part of or be charged against any future settlement in relation to the wider Wellington Tenth Trust (Wai 145) claim or any future claim or entitlement of the Wellington Tenth Trust.



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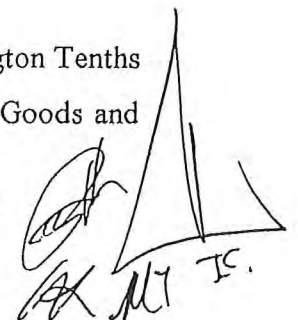
(b) **Agreements made by the Claimants**

6. The Claimants accept the surrender of the Crown's leasehold interests in the properties to the Trust by way of a settlement that is charged against the wider Wellington Tenth's Trust (Wai 145) claim.
7. The Trust acknowledges that the sum of \$412,300.00, comprising the surrender price for the leasehold interests in the properties of \$340,000.00 and the Cash Payment (both subject to clause 9 as to GST), together with the Holding Costs (but not including any GST paid by the Crown in relation to those Holding Costs) will be charged against any future settlement of the wider Wellington Tenth's Trust (Wai 145) claim.
8. The Trust acknowledges that the Crown has, after consultation with the Trust, undertaken the Crown's Works referred to in clause 3 herein and has completed those works to a reasonable standard and in accordance with local body requirements and the Building Act 1991; and the Trust also acknowledges that number 9 Pipitea Street is currently occupied by certain persons with no formal agreement or understanding with the Crown, and accepts that possession will be granted to it subject to that occupancy.

(c) **Goods and Services Tax**

9. The parties intend that the two transactions as set out in clause 1 of this Deed, pursuant to which the properties are transferred to the Wellington Tenth's Trust and a Cash Payment is made to the Wellington Tenth's Trust, shall be without any obligation for the Wellington Tenth's Trust to account to the Inland Revenue Department for any GST. If a GST liability exists or arises, it is intended by the parties that no net detriment or benefit should result to the Wellington Tenth's Trust or to the Crown. Accordingly, the parties agree:

- (i) If the transactions set out in clause 1 of this Deed result in the Wellington Tenth's Trust being required to account for output tax as provided by the Goods and



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Services Tax Act 1985, the Crown will indemnify the Wellington Tenth Trust against that GST liability and, on the day on which the Wellington Tenth Trust accounts to the Inland Revenue Department for such output tax, the Crown must (subject to subclause (ii) below) pay to the Wellington Tenth Trust an amount equal to the amount paid by the Wellington Tenth Trust to the Inland Revenue Department in respect of that GST liability and any GST paid on that payment;

- (ii) if, for whatever reason, the Wellington Tenth Trust obtains a refund or credit in respect of any output tax for which an indemnity payment is made by the Crown under clause 9, then on the day following the day on which the refund or credit arises, the Wellington Tenth Trust must pay to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on or in respect of that refund or credit.

**(d) Declaration of Authorisations to Conclude Deed of Agreement**

10. The Crown declares that the Minister in Charge of Treaty of Waitangi Negotiations is authorised to sign this Deed on behalf of the Crown.
11. The Trustees of the Wellington Tenth Trust confirm by their execution of this Deed that they are the legitimate representatives of the beneficiaries of the Wellington Tenth Trust acting on behalf of the beneficiaries; and that they are satisfied that after notifying the beneficiaries of the Wellington Tenth Trust by Annual Report of the Wellington Tenth Trust 1993/94 and 1994/95, and after advising the beneficiaries of this settlement which will be charged against any future settlement of the wider Wellington Tenth Trust (Wai 145) claim at a principal meeting of the beneficiaries held at the Pipitea Marae on 11 May 1996, that they are authorised by the beneficiaries of the Wellington Tenth Trust to agree to this settlement by the surrender of the leasehold interests in the properties to the Wellington Tenth Trust; and that the Wellington Tenth Trust enters into this Deed with the full authority and knowledge of the beneficiaries of the Wellington Tenth Trust.

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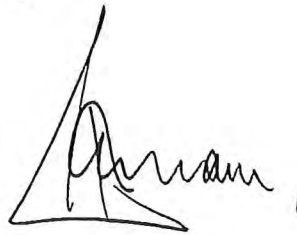
(e) **Implementation of this Deed of Agreement**

12. The Crown and the Claimants agree that the leasehold interests in the properties shall be surrendered to the Trust on the Surrender Date by way of a settlement that is charged against the wider Wellington Tenths Trust (Wai 145) claim.

13. Within two months of the Surrender Date the Crown and the Claimants will file with the Waitangi Tribunal a joint memorandum, together with a copy of this Deed, informing the Waitangi Tribunal that a settlement has been reached in relation to the properties at 9, 13 and 15 Pipitea Street Wellington which are associated with the wider Wellington Tenths Trust (Wai 145) claim, and the nature of that settlement.

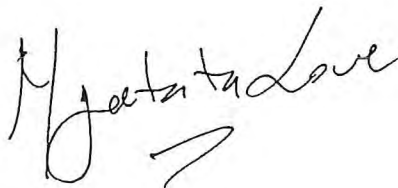
DATED this 28<sup>th</sup> day of May, 1997

SIGNED for and on behalf of )  
HER MAJESTY THE QUEEN )  
in right of New Zealand of )  
DOUGLAS ARTHUR )  
MONTROSE GRAHAM )  
Minister in Charge of Treaty of )  
Waitangi Negotiations )  
in the presence of: )

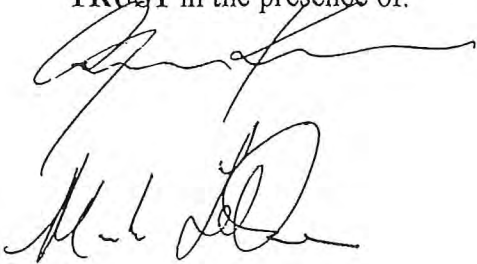


Julie Craig  
Acting Group Manager  
Office of Treaty Settlements

SIGNED by )  
RALPH HEBERLEY )  
NGATATA LOVE )  
for and on behalf of )  
the Trustees and the )  
Beneficiaries of )  
THE WELLINGTON TENTHS )  
TRUST in the presence of: )



Graham Kennedy  
33 Tuiwaka Road  
Bell Block Taranaki



Mark E. Oke  
32 Wellington Rd  
Paikakaiki



**SCHEDULE A****1. Description of Leasehold Interests**

**FIRSTLY**, part sections 542 and 543 Town of Wellington containing 713 m<sup>2</sup> more or less being all the land in Leasehold Certificate of Title 37C/574 (Wellington Land Registry) **LIMITED AS TO PARCELS SUBJECT TO** Memorandum of Lease no 478038 and Memorandum of Extension 905012.1; and

**SECONDLY**, part section 543 Town of Wellington containing 169 m<sup>2</sup> more or less being all the land in Leasehold Certificate of Title 37C/575 (Wellington Land Registry) **LIMITED AS TO PARCELS SUBJECT TO** Memorandum of Lease no 445167 and Memorandum of Extension no 482206.1; and

**THIRDLY**, part section 543 Town of Wellington containing 202 m<sup>2</sup> more or less being all the land in Leasehold Certificate of Title 37C/576 (Wellington Land Registry) **LIMITED AS TO PARCELS SUBJECT TO** Memorandum of Lease no 445166 and Memorandum of Extension no 482206.2.