

COPY

## PURCELL BACH TRUST DEED

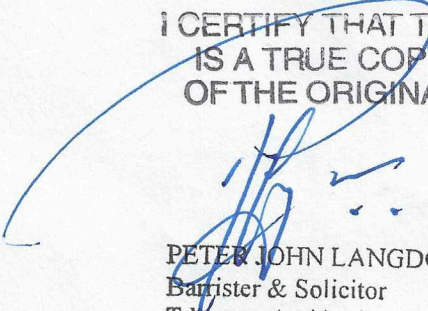
between

**Ross Bedingfield Purcell**

and

**Ross Bedingfield Purcell, Julie Ann  
Mulcahy & Gregory McKeon Purcell**

I CERTIFY THAT THIS  
IS A TRUE COPY  
OF THE ORIGINAL

  
PETER JOHN LANGDON  
Barrister & Solicitor  
Takapuna, Auckland  
New Zealand

8.10.2017.



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## **Purcell Bach Trust Deed**

Date:

29th August

2017

### **Parties**

1. **Ross Bedingfield Purcell** of Te Puke, Retiree (the "Settlor")
2. **Ross Bedingfield Purcell, Julie Ann Mulcahy & Gregory McKeon Purcell**, c/- 14 Williams Drive, Te Puke 3071 (the "Trustees")

### **Background**

- A. The Settlor is the builder of Purcell Bach on leasehold land at Clifton Road, Tongaporutu, North Taranaki and now wishes to establish a trust, to be known as the Trust, to hold the lease of the land on which Purcell Bach is located in trust for future generations of the family.
- B. The Settlor and the Trustees acknowledge and agree that:
  - i. the interests of the lessee under the Lease; and
  - ii. all of the Settlor's right, title and interest in Purcell Bach,are held upon the trusts and with and subject to the powers and discretions set out or implied in this Deed.

### **It is agreed**

#### **1. Definitions and interpretation**

##### **Definitions**

- 1.1 In this Agreement, unless the context requires otherwise, the following terms shall bear the following meanings:

"**Purcell Bach**" means the buildings and improvements situated or to be situated on the land which is the subject of the Lease and includes all structures (including erosion protection structures), buildings and improvements which are now, or may during the term of the Lease, be constructed on the land which is the subject of the Lease.

"**Commencement Date**" means the date of this Deed.

"**Deed**" means this deed and includes any modification or amendment to it for the time being in force and any schedules thereto.

"**Lease**" means the lease of the land from the New Plymouth District Council on which Purcell Bach is located (being described as Holiday Cottage site No. 9 located on part of the Tongaporutu Reserve).

"**Family Member**" means the Settlor (the first person):

- a. any parent, child, grandchild or great-grandchild of that first person (the second person).

"**Rules**" means the terms and conditions relating to the use and enjoyment of Bach 9 as amended from time to time.

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G.P.



**"Purcell Bach Trust"** means the trust created by this Deed.

**"Trust Fund"** means all of the Settlor's right, title and interest in Purcell Bach referred to in the introduction to this Deed, the interests of the lessee under the Lease and all property which may in the future be received or acquired by the Trustees from any source whatever for the purposes of the Trust and the money and investments from time to time representing such property and, unless inconsistent with the context, the income from such property.

**"Trust Period"** means the period from the date of this deed until the Vesting Day.

**"Trustees"** means the Trustee or Trustees for the time being of the Trust, whether original, additional or substituted.

**"Vesting Day"** means:

- a. the day upon which the period of seventy (70) years from the date of this Deed expires; or
- b. such earlier day as the Trustees pursuant to clause 5.1 by deed appoint.

### **Interpretation**

1.2 The following provisions shall apply in the construction and interpretation of this Deed except to the extent that the context requires modification:

- a. words importing the singular number include the plural and vice versa and the masculine gender includes the feminine and neuter genders and vice versa;
- b. the word **"person"** includes any individual, company, corporation, corporation sole, trust, firm, partnership, joint venture, syndicate, the Crown, any central or local government department, authority, association or group, and any other entity, or any other association of persons either corporate or un-incorporate;
- c. references to any statute or regulation shall, with all necessary modifications, apply to any modification or re-enactment or substitution or replacement of or for that statute or regulation;
- d. references to **"written"** and **"in writing"** includes any means of visible representation;
- e. reference to any document includes all modifications and replacement documents from time to time; and
- f. references to a party to this Deed (including any new party) shall include references to all successors in title, executors and permitted assigns.

## **2. Establishment of Purcell Bach Trust**

### **Settlor establishes Purcell Bach Trust**

2.1 The Settlor hereby establishes the **Purcell Bach Trust** under which the Trust Fund will be held by the Trustees on behalf of and for the benefit of Family Members (or such other persons as determined in accordance with this Deed) on the terms and conditions specified in this Deed.

### **Trustees**

2.2 The Trustees shall be the original trustees under this Deed.

## **3. Creation and constitution of Trust Fund**

### **Trustee acknowledgement**

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- 3.1 The Trustees acknowledge that from the date of this Deed they have been appointed as the Trustees of the Purcell Bach Trust to hold the Trust Fund for the benefit of, and to act in the interests of, the Family Members on the terms and conditions set out in this Deed.

#### **Trust Fund**

- 3.2 The Trust Fund will consist of all right, title and interest in the Purcell Bach, the interest of the lessee under the Lease and all cash, investments, assets, rights and other property for the time being held by the Trustees upon the trusts of this Deed including (without limitation):
- a. all additions or accretions; and
  - b. all income or receipts held pending reinvestment or application for the purposes of the Purcell Bach Trust in accordance with this Deed.

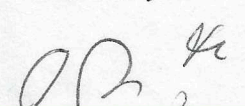
#### **Dealing with the Trust Fund**

- 3.3 The principal purpose of the trusts created by this Deed will be the holding, upkeep and operation of the Purcell Bach (and the interests of the lessee under the Lease) for the benefit of Family Members but this expression of the principal purpose will not restrict or prevent the application of the Trust Fund in a manner that the Trustees reasonably determine is, or is likely to be, in keeping with the best interests of Family Members and their future use and enjoyment of Bach 9.

#### **No distributions**

- 3.4 For the avoidance of doubt, whilst the Trustees may make such provisions as they shall reasonably determine are necessary to generate receipts or income or some other means including (without limitation) the establishment of a sinking fund for the holding, upkeep and operation of the Purcell Bach it is not intended that the surplus (if any) after payment of all expenses and other charges to be met from such receipts, and after making or retaining out of, or charging against, the receipts or income of the Trust Fund any payments, reserves or other provisions for any of the purposes of the Purcell Bach Trust:
- a. will be paid or applied to or for such one or more of the Family Members who are then living or in existence; and/or
  - b. appropriated for such one or more of the Family Members who are then living or in existence, contingently upon the reaching of a specified age, or the happening of a specified event.

#### **Restricted powers**

- 3.5 Except as provided in clauses 3.6 and 3.7, the Trustees may not assign, mortgage, charge, sublet or part with possession of the Purcell Bach and/or the lessee's interest in the Lease without first obtaining the approval of all of the Family Members then living who have attained the age of majority.
- 3.6 The Trustees may only borrow moneys and give security in respect of any such borrowing over all or any part or parts of the Trust Fund where the following conditions are met:
- a. all such borrowings and the associated granting of security must be the subject of a certificate from the Trustees that the relevant transactions are necessary in order to achieve the principal purpose of the trusts created by this Deed;
  - b. the lender in respect of any such borrowings (and the grantee of any such security interest) is restricted to persons who are Family Members; and
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- c. any such security interest shall be limited to enabling the grantee to recoup the borrowings from the income or receipts generated by the Trustees and, in particular but without limiting the generality of the foregoing, shall not entitle the lender to require the Trustees to transfer the lessee's interest in the Lease to or for the benefit of the lender.
- 3.7 If the Trustees, acting reasonably, are not able to borrow moneys in order to meet any shortfall in the payments that they determine are reasonably required for the holding, upkeep and operation of the Purcell Bach (or meeting the lessee's obligations under the Lease) for the benefit of Family Members then they shall be limited in their ability to dealing with the Trust Fund to either:
  - a. transferring the lessee's interest in the Lease (together with the Trustees' rights and interests in the Purcell Bach); or
  - b. surrendering the lessee's interest in the Lease (and relinquishing the Trustees' rights and interest in the Purcell Bach

in accordance with the terms of the Lease.

**Limited accumulation of capital**

- 3.8 In view of the restrictive nature of the Lease and the likelihood that neither the Lease nor the Purcell Bach will generate any significant or lasting capital gain, it is not anticipated that the Trustees will seek to generate any income or receipts or make any capital expenditure of an amount that is more than reasonably necessary in order to maintain the Purcell Bach in accordance with the lessee's obligations under the Lease. As a result, it is not intended that there will be an accumulation of capital available for distribution to Family Members at the expiry or earlier termination of the Lease.

**4. Trustees to develop Rules**

- 4.1 The Trustees shall provide Family Members with the opportunity to use and enjoy the Purcell Bach in such manner, with such special rights or restrictions and subject to such special terms and conditions as the Trustees may from time to time in their absolute discretion determine and as set out in the Rules. In particular, but without limitation, the Trustees may differentiate between Family Members as to their eligibility to use the Purcell Bach, the extent to which they may benefit from the use of the Purcell Bach under the Rules and the terms and conditions (including the costs) upon which they may use the Purcell Bach.

**5. Distribution on the Vesting Day**

- 5.1 The Trustees shall hold the Trust Fund on the Vesting Day upon trust:

- a. for such of the Family Members then living as the Trustees may by deed appoint on or before the Vesting Day,

and in respect of any portion of the Trust Fund not so validly appointed then:

- b. for such of the original Trustees then living (in their capacity as Family Members) and, if more than one, as tenants in common in equal shares, the interest in the Trust Fund of any original Trustee who has died before the Vesting Day passing to any children of that original Trustee living on the Vesting Day per stirpes, and, if more than one, as tenants in common in equal shares.

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*P.P.*



## **6. Winding Up**

### **Winding up events**

- 6.1 The trusts and provisions of this Deed shall continue in effect until the occurrence of one of the following events whereupon they shall be wound up:
- a. on the date that the Lease expires or is terminated, in either case in accordance with the terms of the Lease and the Trustees are not provided with the opportunity to continue to occupy the land that is the subject of the Lease whether by the grant of a new lease, holding over or otherwise; or
  - b. if the Trustees shall at any time resolve that the trusts of this Deed be wound up; or
  - c. on the date that is 70 years from the Commencement Date if they shall not have previously been wound up pursuant to the foregoing provisions of this clause 9.

## **7. Appointment, removal and powers of Trustee**

### **Number and identity of Trustees**

- 7.1 There shall be a minimum of two Trustees of the trusts created by this Deed, who must be Family Members.

### **Appointment and removal**

- 7.2 The Trustees from time to time shall have the power from time to time by resolution to:
- a. appoint any new or additional Trustee;
  - b. remove any person from office as Trustee and to appoint a replacement Trustee, for the purpose of the trusts created by this Deed and to appoint a replacement trustee.

### **Resolutions in writing**

- 7.3 A resolution in writing signed by the Trustees shall be as valid and effective as if passed at a validly held meeting of the Trustees.

### **Accounting records**

- 7.4 The Trustees shall keep all such books, accounts and records and other information as they consider necessary to enable them to properly discharge its duties and obligations under this Deed.

### **Nominee**

- 7.5 The Trustees shall be entitled to appoint any company or other person to hold the Lease or any other assets of the trusts created by this Deed as nominee of the Trustees for the purposes of this Deed.

### **Investments**

- 7.6 The Trustees may invest any moneys held by them for the time being on the trusts created by this Deed in:
- a. an on deposit or current account or otherwise on loan with or without security with or to any bank in New Zealand or elsewhere; or
  - b. any investments for the time being authorised for the investment of trust funds by the laws of New Zealand,
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and any moneys not so invested shall be kept in a current account at a bank in New Zealand.

### **Liability and indemnity**

- 7.7 No Trustee or former Trustee shall be liable for any loss suffered by the Trust Fund or by any Family Member not attributable to that Trustee's own dishonesty, or to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust. No Trustee shall be bound to take any proceedings against a co-Trustees or former Trustee for any breach or alleged breach of trust committed by a co-Trustee or former Trustee.
- 7.8 Without prejudice to the right of indemnity by law given to trustees, each Trustee or former Trustee shall be entitled to a full and complete indemnity from the Trust Fund in administering this Deed and in exercising their powers, authorities and discretions under this Deed and in respect of any matter or thing done or omitted to be done in any way in relation to the Deed except for any liability arising in respect of any dishonesty or default or breach of trust.

### **Powers**

- 7.9 Subject to this Deed, the Trustees shall have all powers and authorities vested in trustees by law or statute and shall also have power and authority to do or omit to do any lawful thing requested by the Settlor.

### **Discretions**

- 7.10 Except as otherwise expressly provided by this Deed, the Trustees may exercise all the powers and discretions vested in the Trustees by this Deed in the absolute and uncontrolled discretion of the Trustees at such time or times, upon such terms and conditions, and in such manner as the Trustees may decide.

## **8. Future Trustee or Trustees**

### **Trustees below minimum**

- 8.1 Notwithstanding anything contained or implied in this Deed, if at any time there is only one Trustee of the Trust, no power or discretion conferred on the Trustees by law or by this Deed, other than that of appointing a new Trustee, shall be exercised by the surviving Trustees until such time as an additional Trustee has been duly appointed.

### **Disqualification:**

- 8.2 When any Trustees:
- by any appointment or order made by a competent authority or by the operation of law property beneficially owned by that Trustee is removed from the personal effective control of that Trustee; or
  - by any appointment or order made by a competent authority or by the operation of law any aspect of the day-to-day care and well-being of that Trustee comes under the control or the responsibility of another person,

from that time that Trustee shall cease to be a Trustee and that Trustee shall not be capable of exercising any power or discretion whatever under this Deed.

### **Re-instatement**

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- 8.3 Any change in any order or circumstances which has disqualified any Trustee under this clause 8 whereby such disqualification is removed shall from the date of such change remove such disqualification and the power or discretion of the Trustee shall be re-instated.

### **Resignation**

- 8.4 At any time any Trustee may resign as a Trustee by the execution by that Trustee (the "**Retiring Trustee**") of a notice in writing addressed to the remaining Trustees recording such resignation. Such resignation shall:
- a. take effect immediately upon the delivery of that letter to the remaining Trustees;
  - b. not require any consent from or approval by any other person;
  - c. take effect notwithstanding its effect on the administration of the trust created by his Deed by the other Trustees, either under the provisions of this Deed or by law;
  - d. vest the Trust Fund in the other Trustees; and
  - e. completely discharge the Retiring Trustee from the trusts created by this Deed;
- 8.5 Such letter of resignation shall be sent by the Retiring Trustee to the other Trustees as soon as may be practicable after it has been completed, accompanied by all documentation (if any) duly executed by the Retiring Trustee required to give full effect to the retirement of the Retiring Trustee.
- 8.6 The reasonable costs and expenses incurred by the Retiring Trustee in connection with the preparation and execution of any ancillary documentation and other matters that are necessarily required to give effect to , or as a consequence of their resignation shall be payable from the Trust Fund.

## **9. Trustees' conflict of interest**

### **Negation of Conflict**

- 9.1 The Trustees shall each be entitled to act as such and to exercise all of that Trustees' powers and discretions notwithstanding that:
- a. the interest or duty of the Trustee in any particular matter may conflict with the Trustee's duty to the Trust Fund or any Family Member; or
  - b. the Trustee is personally benefitting from the use or enjoyment of the Lease or any other property forming part of the Trust Fund, or personally selling any property to become part of the Trust Fund, or is otherwise dealing with the Trust Fund in a personal capacity as well as that of a Trustee.
- 9.2 Notwithstanding anything contained or implied in this Deed:
- a. no Trustee who is also a Family Member shall exercise any power or discretion vested in the Trustees in favour of himself except on the basis that he or she is treated no more favourably than any other Family Member; and
  - b. any power or discretion vested in the Trustees may be exercised in favour of a Trustee who is also a Family Member by the other Trustee or Trustees.

## **10. Trustees' remuneration**

- 10.1 Any Trustee being engaged in any profession, business or trade may act in that capacity in connection with the affairs of the Trust, and shall be entitled to charge and be paid all
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reasonable and proper charges for all services rendered, business transacted, responsibility involved, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust, including acts which a Trustee, not being in that particular profession, business or trade, could have done personally.

## 11. Amendment

11.1 The Trustees may from time to time alter, vary, add to or revoke all or any of the trusts, powers or provisions of this Deed by execution of a deed, such deed to be supplemental to or in replacement of this Deed and any later deed as the Trustees may decide.

11.2 Any such alteration, variation, addition or revocation shall:

- a. not vary the perpetuity period specified in this deed;
- b. take effect from the date of such alteration, variation, addition or revocation;
- c. not prejudicially affect any distribution or appropriation (contingent or otherwise) made to or for the benefit of any Family Member before the date of such alteration, variation, addition or revocation; and
- d. not vary the provisions of clause 8 specifying the composition of the Trustees.

## 12. Resettlement of Trust Fund

12.1 The Trustees may at any time settle by deed all or any part of the Trust Fund upon the trustees of any trust which includes for the time being among its beneficiaries (contingent or otherwise) an identical class of beneficiaries to those Family Members then living or in existence, the status of that Family Member under the Trust and under the resettlement being comparable.

## 13. Disputes Resolution

13.1 In the event of a dispute concerning the provisions of this Deed or the Rules arising between a Family Member and the Trustees or the Settlor, the person claiming that a dispute has arisen must give written notice to the other specifying the nature of the dispute.

13.2 Any party may require the dispute, if it has not been resolved within 20 days, to be referred to mediation. The mediator will be appointed by all parties, or where the parties cannot agree within 20 days, appointed by the Chairperson of the New Zealand Chapter of Lawyers engaged in Alternative Dispute Resolution. The mediator will conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree within 20 days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally.

13.3 In the event that the dispute is not resolved by mediated agreement or otherwise within 60 days of the written notice of the dispute, either party may by written notice served on the other party require the dispute to be determined by the arbitration of a single arbitrator. The arbitrator shall be appointed by the parties or failing agreement within 20 days of service of the written notice shall be appointed at the request of any party by the president or vice-president for the time being of the New Zealand Law Society. The arbitration shall be conducted as soon as possible in accordance with, and subject to the provisions of, the Arbitration Act 1996.

*Handwritten initials: RBR and a large '20'.*



**14. General Provisions****Further Assurances**

- 14.1 Each party agrees to promptly do everything that is reasonable and necessary to carry out the terms and other matters contemplated by this Deed including, where appropriate, by procuring any relevant Family Members to sign, execute and do all deeds, acts, documents and things as may be reasonably required to give effect to this Deed.

**Counterparts**

- 14.2 This Deed may be executed in any number of counterparts (including facsimile copies) all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

**Signed by**

Signed by **Ross Bedingfield Purcell** as Settlor in the presence of:

RB Purcell  
Ross Bedingfield Purcell

A. Snare

Signature of witness

ANGIE SNARE

Name of witness

CARE SUPPORT WORKER

Occupation

20 NORM FREEMAN DRIVE

Address

TEPUKE

Signed by **Ross Bedingfield Purcell** as Trustee in the presence of:

RB Purcell  
Ross Bedingfield Purcell

A. Snare

Signature of witness

ANGIE SNARE

Name of witness

CARE SUPPORT WORKER

Occupation

20 NORM FREEMAN DRIVE

Address

TEPUKE



Signed by **Julie Ann Mulcahy** as Trustee  
in the presence of:

Julie Ann Mulcahy  
Julie Ann Mulcahy

[Signature]  
Signature of witness

Linda Clouston  
Name of witness

Teacher  
Occupation

2/2 Karotaka Tc  
Address

Rothsay Bay, Auckland, 0630

Signed by **Gregory McKeon Purcell** as  
Trustee in the presence of:

[Signature]  
Gregory McKeon Purcell

[Signature]  
Signature of witness

Natalie Jenkin  
Name of witness

Finance Manager  
Occupation

10 Saratoga Ct, Paparua  
Address