THIS DEED is made the 8th day of DECEMBER 2000

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# NEW ZEALAND HISTORIC PLACES TRUST COVENANT

Matthew O'Byrne Law Office
PO Box 2079
RAUMATI BEACH

THIS DEED is made the 8th day of DECEMBER 2000

BETWEEN NEW ZEALAND HISTORIC PLACES TRUST a body corporate under the provisions of the Historic Places Act 1993 (hereinafter called 'the Trust')

of the one part

AND **MURRAY JAMES SEARLE** of Raumati, Self Employed

of the other part

WHEREAS

(i) The Owner is registered as proprietor of the land described in the First Schedule hereto (hereinafter called 'the land') upon which the archaeological site, being a midden site (hereinafter called 'the site') is situated as shown on the plan annexed as the Second Schedule hereto.

(ii) The site is numbered R26/291 in the New Zealand Archaeological Association site record.

(iii) The Trust considers and is satisfied that the site should be protected, conserved and maintained as a historic place.

(iv) The Trust and the Owner have agreed to enter into a heritage covenant in respect of the site pursuant to the Historic Places Act 1993.

NOW THEREFORE THIS DEED WITNESSETH AND THE PARTIES HERETO AGREE WITH EACH OTHER AS FOLLOWS:

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1 THE Owner agrees not to damage, modify or destroy nor to give permission for the damage, modification or destruction of the site nor to undertake or give permission for any undertaking that in the opinion of the Trust will be detrimental to the site or the preservation thereof.

2 CONSISTENT with clause 1 hereof, the Owner agrees to manage the site on the following basis:

(a) that the site is an archaeological site in terms of section 2 of the Historic Places Act 1993 and consequently that the provisions of the Act and particularly section 10 of that Act apply, that is:

> *"10. **Archaeological sites not to be destroyed, damaged, or modified** -*
>
> *(1) Except pursuant to an authority granted under section 14 of this Act, it shall not be lawful for any person to destroy, damage, or modify, or cause to be destroyed, damaged, or modified, the whole or any part of any archaeological site, knowing or having reasonable cause to suspect that it is an archaeological site.*
>
> *(2) Except as provided in section 15 or in section 18 of this Act, it shall not be lawful for any person to carry out any archaeological investigation that may destroy, damage, or modify any archaeological site*"; and

(b) that none of the following activities may be undertaken within the area of the site without the prior written consent of the Trust:

(i) the erection of any building or structure; or

(ii) the planting of any shelter belts, trees or hedges; or

(iii) the erection of any fencing; or

(iv) the construction or laying of any ditches, drains, pipes or cables below the surface of the ground; or

(v) any activity that may result in the recontouring of any part of the site; or

(vi) any digging or excavation in any way below the surface of the ground on any part of the site; or

(vii) any filling in of any trench, pit or other depression in the surface of the ground.

3 THE Owner will not allow any electricity or gas company, telecommunications company, mining company or other body or person to undertake any of the following activities on the site or its immediate environs unless the Trust has first given its written consent to the proposed works:

(a) the erection of any utility transmission line or facility or any variation in the alignment of the route of any such existing line or facility; or

(b) the laying of any cable or pipeline in the ground; or

(c) the carrying out of any prospecting, mining or quarrying for minerals, coal or other deposit on or under the land and involving activities to the same or greater extent as those defined as

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minimum impact activities under section 2 of the Crown Owned Minerals Act 1991.

4 THE Owner will not effect any subdivision within the meaning of the Resource Management Act 1991 of the land within the site and its immediate environs without the prior written consent of the Trust, irrespective of whether or not such subdivision fully complies with relevant provisions of that Act. The Trust shall have full discretion as to whether or not to grant the consent and may impose conditions when giving its consent which shall be adhered to by the Owner. The Trust may take into account any of the following factors when considering whether to grant its consent and on what conditions:

(a) the probable effect of the particular subdivision proposal and associated works on the site; or

(b) the desirability or otherwise of the particular subdivision proposal as a means of assisting in the long-term conservation of the site; or

(c) the extent to which the particular subdivision proposal is likely to facilitate the pastoral farming of the land in accordance with this Deed; or

(d) any other factor that may appear relevant to the Trust in the circumstances.

5 THE Trust may provide to the Owner from time to time, and at any time upon request by the Owner, such technical advice or assistance as may be necessary or desirable to assist in the long-term conservation of the site.

M.J.S.

6 THE Owner will allow access to the Trust, its servants and agents to inspect the site at reasonable times and upon reasonable notice for the purpose of ensuring compliance with the provisions of this agreement.

7 THE Owner when giving any third party the right of occupancy or possession of the land shall first ensure that the provisions of this heritage covenant will be complied with during the occupancy or possession by the third party.

8 THE Owner will notify the Trust of any change of ownership or control of all or any part of the land, and will supply the Trust with the name and address of the new owner or lessee.

9 IF at any time prior to registration hereof by the District Land Registrar the Owner desires to sell or otherwise dispose of all or any part of the land, such sale or disposition shall be made expressly subject to the restrictions, stipulations and agreements contained in this Deed.

10 IN THE EVENT of the site or any part of the site being damaged or destroyed from any cause whatever the Owner will notify the Trust immediately. Should the Trust in its own discretion determine that it is not practicable or desirable to restore or reinstate the same, upon the Trust advising the Owner of its decision in that regard then all obligations of the Trust and the Owner under this Deed in respect of the site or part of the site so damaged or destroyed shall cease.

11 FOR the avoidance of doubt:

(a) the covenants contained in this Deed will bind the Owner and the Owner's heirs, executors, successors and assigns in perpetuity; and

(b) the Owner will not be personally liable for damages for any breach of covenant committed after he/she has parted with all interest in the land in respect of which such a breach occurs; and

(c) where there is more than one owner of the fee-simple title to the land, the covenants contained in this Deed will bind each owner jointly and severally; and

(d) where the owner is a company the covenants contained in this Deed will bind a receiver, liquidator, statutory manager or statutory receiver. Where the owner is a natural person this Deed will bind the Official Assignee. In either case this Deed binds a mortgagee in possession; and

(e) the reference to any Act in this Deed extends to and includes any amendment to, or re-enactment of that Act; and

(f) any dispute which may arise between the Owner and the Trust relating to the legal interpretation of this Deed may be resolved by referring the dispute to an arbitrator acceptable to both parties and appointed in accordance with the provisions of the Arbitration Act 1996, whose decision shall be final.

IT is acknowledged that these presents are entered into pursuant to the provisions of section 6 of the Historic Places Act 1993.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

SIGNED BY THE SAID )
**MURRAY JAMES SEARLE** ) M. J. Searle
)
in the presence of: )

(M. O'Byrne)
Solicitor
Rawnata

Name of Witness: _____

Address: _____

_____

Solicitor

THE COMMON SEAL OF )
NEW ZEALAND HISTORIC )
PLACES TRUST was hereunto )
affixed pursuant to a resolution )
of the Trust Board by and in the )
presence of: )




Board Member

Board Member

Correct for the purposes of the Land Transfer Act 1952

_____

Solicitor for Registered Proprietor

## SCHEDULES

1 The land.

2 The site.

## FIRST SCHEDULE

An estate in fee-simple in all that parcel of land containing 1270m$^2$ more or being Lot 4 on Deposited Plan 90203 and being more particularly comprised and described in Certificate of Title Vol. 57D, folio 246 (Wellington Land Registry).

## SECOND SCHEDULE

The area marked "P" on Deposited Plan 90203.

REGISTERED IN DUPLICATE

LINZ COPY

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PARTICULARS ENTERED IN REGISTER
LAND REGISTRY WELLINGTON
FOR REGISTRAR-GENERAL OF LAND

57D/246

NEW ZEALAND LAND