

**SUPPLEMENTARY DEED OF AGREEMENT**

**MARCELLIN COLLEGE, AUCKLAND**

THIS DEED OF AGREEMENT is made on the <sup>22nd</sup> day of <sup>May</sup> ~~1994~~<sup>1995</sup>.  
One thousand nine hundred and ninety <sup>five</sup> ~~four~~ (1994) between THE NZ MARIST BROTHERS TRUST BOARD a body Corporate registered under the Religious Charitable and Education Trusts Act 1957 (hereinafter with its successors referred to as 'the Proprietor') of the first part and HER MAJESTY THE QUEEN acting by and through the Minister of Education (hereinafter referred to as 'The Minister') of the second part.

**WHEREAS**

**A** By Deed of Agreement bearing date the 30 March 1983 as varied by any subsequent supplementary agreements (hereinafter referred to as 'the Deed of Agreement'), the Minister and the Proprietor pursuant to section 7(2) of the Private Schools Conditional Integration Act 1975 established Marcellin College, Auckland, as an integrated school (hereinafter referred to as 'the School').

**B** The Proprietor and the Minister wish to vary the Deed of Agreement:

- (1) To take account of the changes introduced to the education system consequent on the passing of the Education Act 1989 and its subsequent amendments, and
- (2) To replace the first, second, third and fifth schedules of the Deed of Agreement with new schedules and a new plan.

*MS  
AS  
et.*

NOW THIS DEED OF AGREEMENT WITNESSETH THAT IT IS HEREBY COVENANTED AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **THAT** any reference to the Board of Governors shall be deemed to be a reference to the Board of Trustees.

2. **THAT** any reference to the Director General or the Regional Superintendent of Education shall be deemed to be a reference to the Secretary of Education.

3. **THAT** the Integration Agreement be amended as follows:

3.1 By amending Clause 3(d) by adding after the word 'hereto' the second time it occurs, the words 'or such other dates as may be agreed from time to time between the Secretary of Education and the Proprietor'.

3.2 By deleting the existing Clause 7 and replacing it with the following:

"7. (a) **THE** Board of Trustees shall be the Controlling Authority of the School and shall be constituted pursuant to Part IX of the Education Act 1989.

(b) **THE** control and management of the School shall be exercised subject to the provisions of Section 25(6) of the Private Schools Conditional Integration Act 1975."

3.3 By deleting subclauses (b) and (c) of Clause 10 and substituting the following therefor:

" (b) In accordance with Section 7(6)(h) of the Private Schools Conditional Integration Act 1975, unless the Proprietor and the Secretary of Education otherwise agree, and subject to places being available, the number of pupils whose parents do not have preference of enrolment at the School in accordance with the provisions of Section 29(1) of the

Private Schools Integration Act 1975 shall be limited at all times to five (5) per cent of the maximum roll as determined by Clause 8 hereof and the Board of Trustees shall not enrol more than that number PROVIDED THAT to maintain and preserve the Special Character of the School and the Controlling Authority in classifying such pupils so enrolled shall endeavour to reasonably distribute them through the range of classes offered by the School.

- 3.4 By deleting from **Clause 15** the words 'as established by Regulations made under the Education Act 1964' and substituting the words 'as established pursuant to the Education Act 1989' therefor.
- 3.5 By adding after the words 'Deputy Principal' in the first line of **Clause 19** the words 'however described'.
- 3.6 By deleting from **Clause 28** the words 'and G'.
- 3.7 By deleting the first, second, third and fifth schedules of the Deed of Agreement and substituting the new schedules and plan attached hereto.
4. **THAT** the covenants conditions and restrictions contained and implied in the Deed of Agreement shall be read and construed subject to the modifications herein contained but in all other respects the Deed of Agreement is confirmed.

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

**THE COMMON SEAL OF THE**  
**NZ MARIST BROTHERS TRUST BOARD**

was hereunto affixed by and in  
the presence of:

*H. Spinks* Trustee  
*J. Manaway* Trustee

**SIGNED** by **KATHY PHILLIPS**

Senior Manager, National Operations  
Ministry of Education pursuant to  
authority delegated by the Minister  
of Education acting on behalf of  
**HER MAJESTY THE QUEEN** in the  
presence of:

*Kathy Phillips.*

*Judith Manchester*  
*53 Creswick Terrace*  
*Wellington 5*

## FIRST SCHEDULE

Description of total land, buildings and other improvements comprising the Proprietor's land of which the School premises form part

### The Proprietor's Land

All that land, buildings and other improvements owned by the N.Z. Marist Brothers Trust Board situated in Mt Albert Road, Mt Roskill, Auckland, being known as Marcellin College, Auckland, and being more particularly described as follows and edged in green on the plan forming part of the Second Schedule hereto.

Firstly all those freehold parcels of land containing 3.7709 hectares more or less being Lot 1 and Part Lot 2 Deposited Plan 28497 and Lot 2 Deposited Plan 104160 and being part of allotments 3 and 5 section 13 Suburbs of Auckland being all the land in Certificate of Title Volume 57C Folio 656 (North Auckland Registry)

Subject to:

1. Section 308 (4) and (5) and (6) Local Government Act 1974.
2. Fencing Covenant in Transfer 613246.
3. Subject to a Sanitary Drainage easement over the part Lot 2 DP 104160 marked 'A' on Plan 104160. See easement Certificate B.501029.4 the said easement being subject to Section 309(1)(a) Local Government Act, 1974.
4. B.161020.2 Mortgage to the Housing Corporation of New Zealand as varied.
5. B.501029.7 Mortgage to the Housing Corporation of New Zealand.
6. B.519493.1 Variation of terms of Mortgage  
B.161020.2 - 25.3.1986
7. B.635672.1 Variation of the terms of Mortgage B.161020.2 - 3.3.1987
8. B.695851.1 Variation of terms of mortgage  
B.161020.2 - 10.7.1987
9. B.787540.1 Variation of terms of Mortgage  
B.161020.2 - 25.2.1988
10. B.979274.1 Variation of terms of Mortgage  
B.501029.7 - 14.4.1989
11. C.250607.1 Mortgage to Her Majesty The Queen - 27.3.1991
12. C.332770.1 Mortgage to Her Majesty The Queen - 13.12.1991
13. C.338503.1 Mortgage to Her Majesty The Queen - 14.1.1992
14. C.448402.1 Mortgage to Her Majesty The Queen - 26.1.1993

Secondly all that freehold parcel of land containing 5.8480 hectares more or less being Part Lot 1 Deposited Plan 62683 and Part Lot 1 Deposited Plan 45713 and Lot 19 Deposited Plan 45955 and being part allotments 2, 3, 4 and 5 section 13 Suburbs of Auckland and being all the land in Certificate of Title 77D Folio 59 (North Auckland Registry)

Subject to:

1. Section 351D (3) Municipal Corporations Act 1954.
2. Fencing Agreement contained in Transfers 618003 (affects Lot 19) and 613246 (affects part).

3. Building line restriction contained in K66820 (affects Lot 19)
4. Appurtenant to Lot 1 Plan 45713 and Lot 1 Plan 62683 is a water drainage easement over:
  - a) Lot 1 Plan 18710 (C.T. 600/168), Lot 2 Plan 18710 (C.T. 463/252), Lot 1 Plan 32143 (C.T. 831/29), Lot 1 Plan 40352 (C.T. 1114/228), Lot 4 Plan 18710 and part Lot 9 Plan 1722 (C.T. 1118/157), Lot 3 Plan 18710 (C.T. 1113/103) created by Transfer 26361.
  - b) Part Lot 14 Plan 1722 (C.T. 74D/666) created by Transfer 26720.
  - c) Part Plan 3000 (C.T. 117/290) created by Transfer 31994.
5. Appurtenant to Lot 1 Plan 45713 and Lot 1 Plan 62683 is a right of way over part Lot 3 Plan 42105 (C.T. 1129/145) shown coloured blue on Plan 45713 created by Transfer 552758.
6. Land covenant on Transfer B.994116.5.

Thirdly all that freehold parcel of land containing 1.2065 hectares more or less being part Lot 3 Deposited Plan 30874 and being part allotment 5 section 13.

Suburbs of Auckland and being all the land in Certificate of Title Volume 54D Folio 649 (North Auckland Registry).

Having appurtenant rights of way created by Transfer B.253169.4 some of such rights of way being subject to Section 309 (1) (A) Local Government Act 1974.

Subject to:

1. Fencing Covenant in Transfer 54692.
2. Appurtenant hereto is a right of way over:-
  - 1) Part Lot 1 Marked 'A' and 'F' on Plan 98350 (CT 53C/577)
  - 2) Part Lot 2 Marked 'B', 'C', 'D' and 'E' on Plan 98350 (CT 53C/578)
 Created by Transfer B.253169.4
3. Some of the above easements are subject to Section 309(1)(a) Local Government Act 1974.

## SECOND SCHEDULE

### The School Premises:

All that part of the Proprietor's land as described in the **First Schedule** hereto, delineated in red on the annexed plan of the Proprietor's land, which forms part of this Schedule, **TOGETHER WITH** all the School buildings and other improvements thereon. **SAVE AND EXCEPT** Block H and Block J more particularly delineated in blue on the annexed plan **RESERVING NEVERTHELESS** to those excepted portions full rights of access and of ingress and of egress over the access shaded yellow on the annexed plan from and to Mt Albert Road, Mt Roskill, Auckland.

### THIRD SCHEDULE

1. Site

Provide by 1 July 1997 suitable boundary fencing where agreed upon in consultation with the MOE. Relocate incinerator and provide vehicle access to maintenance workshop after removal (demolition) of Block F.

2. Building Requirements

Provide by 1 July 1997:

- Drama room 93m<sup>2</sup>
- Drama store 19m<sup>2</sup>
- Music room 70m<sup>2</sup>
- Music store/resource 23m<sup>2</sup>
- Music practice 1 x 11m<sup>2</sup> 1 x 7.5m<sup>2</sup>
- Common room 112m<sup>2</sup>
- Kiln shed 10m<sup>2</sup>
- Dangerous goods store 9m<sup>2</sup>

Remove or demolish Block F by 1 July 1997.

### FIFTH SCHEDULE

#### **Resumé of the historical and traditional connections between the Order and the School**

The New Zealand Marist Brothers' Trust Board, proprietors of Marcellin College, established the school in Mt Albert Road in 1958. It was a day school catering for boys from Form 1 to Form 7. In 1982, coinciding with the closing of St Benedict's secondary school for girls, Marcellin College became a co-educational school, with girls from Form 3 to Form 7. In 1993 the Intermediate department became co-educational.

Marcellin College, being founded and administered by the Marist Brothers' Order, has been influenced by the traditions and spirit of this international community of Brothers, who were founded in the nineteenth century in France to educate the less-favoured students in the post-Revolution period and then to extend their work into other needy areas of the world. Thus, in 1876, the first Marist Brothers arrived in the South Pacific to open schools in New Zealand, Fiji, the Samoas and Tonga. These countries today form one administrative unit called the Province, which is headed by a Brother Provincial Superior.

The Marist Brothers are proprietors of three Colleges in New Zealand:

ST PAUL'S COLLEGE, PONSONBY  
SACRED HEART COLLEGE, GLEN INNES  
MARCELLIN COLLEGE, EPSOM

In addition, they provide staff in the following schools:

HATO PETERA COLLEGE

JOHN PAUL II HIGH SCHOOL, GREYMOUTH  
VERDON COLLEGE, INVERCARGILL  
ST BERNARD'S COLLEGE, LOWER HUTT  
ST PATRICK'S SCHOOL, NAPIER  
ST PIUS X SCHOOL, GLEN INNES  
PANGURU AREA SCHOOL, PANGURU

In all the above-mentioned schools, the Brothers bring their own particular traditions and spirit of Christian Community, care for the less-favoured, willingness to go to new areas or needs indicated by the Bishops, and they maintain a strong link with the Pacific Islands, where New Zealand Brothers staff eleven schools. With the changing needs in all of these places, the Brothers are transferred within New Zealand and between New Zealand and the Pacific.

Against this background of national and international involvement, therefore, Marcellin College endeavours to develop within the families and staff who make up the College Community, 'a spirit of humility, and a love of awareness of the poor, and apostolic zeal, a sense of the Church and a love of the blessed Virgin'. (Constitution of the Marist Brothers)

The College organisation, courses, programme and the environment that they create contributes towards this development. Of particular significance in the life of the College are:

1. The Christian Living and Retreat Programme
2. Staff training with religious and pastoral emphasis
3. The emphasis placed on family and community spirit among students, parents, staff and past students
4. The development of prayer and worship.

This resumé shall not be construed as adding to or amending the Special Character of the School as defined in Clause 5 of this agreement.

Supplementary Agreements

1. dated 1 May 1984  
Delete in total, replaced by new Third Schedule
2. dated 5 February 1985  
OK as is
3. dated 11 February 1986  
OK as is
4. dated 22 September 1989  
Delete in total, replaced with new Second and Third Schedules as above
5. dated 21 September 1992  
OK as is