

DATE: 22 September 2023

DEED OF TRUST

WESTERN BAY OF PLENTY HEALTH FOUNDATION

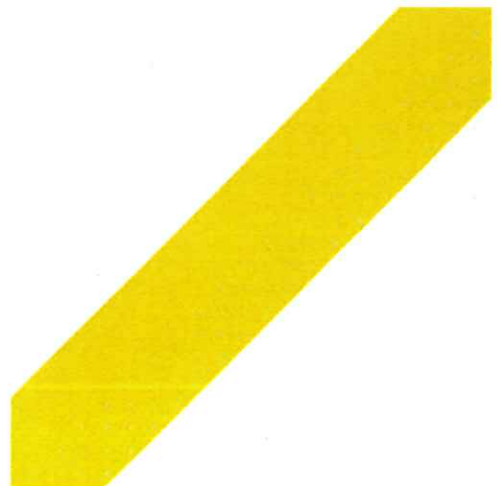


Table of Contents

	PAGE
1. DEFINITIONS AND CONSTRUCTION	2
2. NAME	3
3. REGISTERED OFFICE	3
4. OBJECTS OF TRUST	3
5. TRUST FUND	4
6. PATRON	4
7. MEMBERSHIP OF THE BOARD	4
8. INVESTMENT ADVISORY COMMITTEE	5
9. DISTRIBUTIONS COMMITTEE	5
10. PROCEEDINGS OF THE BOARD	6
11. POWERS	7
12. INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO THE OBJECTS OF THE TRUST	8
13. ACCOUNTS/FILING OF DOCUMENTS	8
14. POWER TO DELEGATE AND TO TAKE ADVICE	9
15. ANNUAL GENERAL MEETING	9
16. ALTERATION OF DEED	10
17. TRUSTEES LIABILITY AND INDEMNITY	10
18. CHARGING BY TRUSTEES	10
19. DECLARATIONS OF INTEREST	11
20. EXECUTION OF DOCUMENTS/COMMON SEAL	11
21. WINDING UP THE TRUST	11
22. INTERPRETATION	11
23. COUNTERPARTS	12

DEED OF TRUST
Western Bay of Plenty Health Foundation

Date *22 September* 2023

Parties

PETER CHANDLER, SARAH LOUISE MITCHELL, MICHELLE ANNE CROOK and GARRY JOHN WEBBER

Whereas

- A. The parties to this Deed wish to establish a charitable trust ("the Trust") for the purposes described in clause 4 of this Deed.
- B. The parties have agreed to enter into this Deed specifying the purposes of the Fund and providing for its control and governance.
- C. The Trustees have decided to assist in the establishment of the Trust by the Trustees and to make a gift of \$100.00 for the charitable trust purposes following.

Agreement

1. DEFINITIONS AND CONSTRUCTION

In this deed, unless the context otherwise requires:

"Balance Date" means 30 June or any other date adopted from time to time by the Trustees as the end of its Financial Year;

"Board" means the Board of Trustees constituted by this Deed and is made up of the Trustees for the time being of the Trust;

"Chairperson" means the Trustee appointed as chairperson of the Trust pursuant to clause 10.2;

"Charitable Trusts Act" means the Charitable Trusts Act 1957; and/or any amendment, substitution or replacement of the same;

"Community Organisation" means any trust, society or institution established exclusively for Charitable Purposes within New Zealand and not carried on for private pecuniary profit of any individual and whose Income is exempt under sections CW41 and CW42 of the Income Tax Act 2007, or any subsequent enactment of similar effect for the time being in force;

"Deed" means this deed as amended from time to time;

"Deputy Chairperson" means the Trustee appointed as deputy chairperson of the Trust pursuant to clause 10.2;

"Distributions Committee" means the committee established by clause 9;

"Financial Year" means any year or other accounting period ending on a Balance Date;

"High Court" means the High Court of New Zealand;

"Income Tax Act" means the Income Tax Act 2007, and/or any amendment, substitution or replacement of the same;

"Initial Trustees" means the signatories to this Deed;

"Investment Advisory Committee" means the committee established pursuant to clause 8;

"Objects" means the objects of the Trust as set out in clause 4;

"Patron" means the person appointed as Patron of the Trust pursuant to clause 6;

"persons" includes any individual, corporation, entity, partnership, joint venture, association, trust, organisation, government department or local authorities;

"Secretary" means the person appointed pursuant to clause 10.3;

"Trustees" means the trustees for the time being of the Trust;

"Trusts Act" means the Trusts Act 2019; and/or any amendment, substitution or replacement of the same;

"Trust Fund" means the funds referred to in clause 5.

2. NAME

The name of the Trust shall be **"Western Bay of Plenty Health Foundation"** or such other name as the Board may decide from time to time.

3. REGISTERED OFFICE

The Trust will have a Registered Office which will be at such place as the Trust Board from time to time decides; and notice of such Registered Office is to be given to the Registrar of Charitable Trusts as and when required.

4. OBJECTS OF TRUST

4.1 The Objects of the Trust are as follows:

- (a) To provide, enhance or add to healthcare facilities and equipment.
- (b) To build professional development and health workforce capability by contributing to and funding the education and training of health personnel by way of scholarships, fellowships and educational programmes.
- (c) To develop funding and/or contributing to patient care and support service initiatives.
- (d) To fund, partner or collaborate with other organisations with objects which align with the Trust's objectives and are successfully improving health and wellbeing outcomes in the community.
- (e) To facilitate additional services or critical projects that align with the Trust's objectives.

- 4.2 All of the objects and activities of the Trust are to be within the geographical areas governed by the Tauranga City Council and Western Bay of Plenty District Council from time to time.

5. TRUST FUND

- 5.1 The Trust Fund shall comprise the initial gift of \$100 and all other capital, income and other property acquired and held by the Board from time to time for the Trust.
- 5.2 The Board may for administration purposes divide the Trust Fund into a Capital and Income Fund and an Income Only Fund. The Capital and Income Fund shall comprise those parts of the Trust Fund in respect of which the Trust may pay or apply capital as well as income for the charitable purposes of the Trust. The Income Only Fund shall comprise those parts of the Trust Fund where only income may be applied for the charitable purposes of the Trust.
- 5.3 Each of the Capital and Income Fund and the Income Only Fund shall be administered by the Board who shall be appointed in accordance with the procedure in clause 7 and shall set policies and resolve courses of action and the means and direction of implementation of same to attain the Objects of the Trust.

6. PATRON

The Board may from time to time appoint a person of significant community standing to be the Patron of the Trust.

7. MEMBERSHIP OF THE BOARD

Number

- 7.1 The Board shall consist of no fewer than four (4) nor more than seven (7) Trustees at any one time. At any time while the number of Trustees is below four (4), the only decision the Board can legally make is the appointment of further Trustees pursuant to clause 7.3.

Appointment of Trustees

- 7.2 The Initial Trustees shall be deemed to have been appointed on the date of this Deed.
- 7.3 The power of appointment of all other new Trustees shall vest in the Trustees for the time being.
- 7.4 The Board shall have regard for the following when exercising its power to appoint Trustees:

Skills and knowledge of candidate and other Board members

- (a) Governance experience;
- (b) Community involvement in the social and health sectors;
- (c) Skills for managing investment portfolios including financial and investment management skills, and knowledge of compliance with financial and legal requirements;
- (d) Skills for managing distribution of funds in a manner which is fair and aligns with the Trust's Objects and donor's wishes;
- (e) Strategic thinking skills;
- (f) Commercial skills and experience;
- (g) Knowledge of Te Ao Māori including Tikanga Māori and Te Reo Māori; and

Diversity

- (h) Diversity among Trustees to offer a variety of cultural and personal perspectives (age, ethnicity, background and gender).
- 7.5 Subject to sequential retirement of the Initial Trustees in accordance with clause 7.8, each Trustee shall be appointed for a term of three (3) years.

- 7.6 A Trustee whose term has expired shall be eligible to be reappointed for two (2) further terms of up to three (3) years each.

Term

- 7.7 A Trustee shall hold office until the occurrence of any one or more of the following events:

- (a) Expiration of the Trustee's term of office.
- (b) Notice of the Trustee's resignation in writing is given to the Chairperson, the Deputy Chairperson or the Secretary in the manner referred to in clause 10.8, as if this were a notice to a Trustee.
- (c) The Trustee becomes mentally incapable.
- (d) The Trustee becomes bankrupt.
- (e) The death of the Trustee.
- (f) All of the other Trustees unanimously (and on reasonable grounds) agree that the removal of the Trustee is considered to be in the best interests of the Trust.

- 7.8 The Initial Trustees shall by unanimous decision, determine the order of Trustee retirement. Up to two (2) Trustees shall retire at the fourth Annual General Meeting and at each Annual General Meeting thereafter. A retiring Trustee shall be eligible for re-appointment, but no Trustee may serve for longer than nine (9) years.

Recording

- 7.9 On every appointment, reappointment, removal or cessation of office of any Trustee, the Trustees must cause an entry to that effect, to be recorded in the Trust's minute book.

8. INVESTMENT ADVISORY COMMITTEE

- 8.1 The Board has the power to establish an Investment Advisory Committee and to vest in that committee all or any of the Board's powers in respect of the investment of all or any part of the Trust Fund.
- 8.2 The Board has full power to determine the membership and powers of the Investment Advisory Committee.
- 8.3 The Board shall appoint members of the Investment Advisory Committee on such terms as the Board considers appropriate from time to time; and may at any time remove any member of the Investment Advisory Committee.
- 8.4 The provisions of clause 14 shall apply to the Investment Advisory Committee.

9. DISTRIBUTIONS COMMITTEE

- 9.1 The Board has the power to establish a Distributions Committee and to vest in that committee all or any of the Board's powers to consider and make distributions from the Trust Fund.
- 9.2 The Board has full power to determine the membership and powers of the Distributions Committee.
- 9.3 The Board shall appoint members of the Distributions Committee on such terms as the Board considers appropriate from time to time; and may at any time remove any member of the Investment Advisory Committee.
- 9.4 The provisions of clause 14 shall apply to the Investment Advisory Committee.

10. PROCEEDINGS OF THE BOARD

Meetings

- 10.1 The Board shall meet at such times and places as it determines.

Chairperson/Deputy Chairperson

- 10.2 The Board shall elect a Chairperson and Deputy Chairperson from amongst its members at the Board meeting prior to the Annual General meeting. The Chairperson shall preside if present at all meetings of the Board. In the absence of the Chairperson from any meeting, the Deputy Chairperson shall preside at that meeting. If neither the Chairperson nor the Deputy Chairperson is present, the Trustees present shall elect one of their number to preside at that meeting.

Secretary

- 10.3 The Board shall appoint a Secretary for such term, on such conditions, and at such remuneration (if any) as the Board may think fit. The Secretary so appointed may be dismissed by the Board. The Secretary need not be a Trustee.

Quorum

- 10.4 At any meeting of the Board a majority of the Trustees shall form a quorum, and no business shall be transacted unless a quorum is present. If a quorum is not present within 15 minutes of the scheduled commencement time for the meeting, a subsequent meeting shall be called within seven days.

Voting

- 10.5 Any decisions to buy, sell or lease any property requires the unanimous resolution of the Board. All other questions before the Board shall be decided by a majority of votes and section 38 of the Trusts Act (and any similar provision contained in any amendment or substitution for that Act) is not binding on the Board. If the voting is tied, the motion shall be lost. The Chairperson shall have a deliberative but not a casting vote.

Minutes

- 10.6 The Secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members at all reasonable times.

Notice of meetings

- 10.7 The Trustees shall be given five days' notice by the Secretary prior to any meeting of the Board.

10.8 Notices:

- (a) Any notice required to be given to any Trustee may be given by one of the following means:
 - (i) By personal delivery; or
 - (ii) By posting by ordinary mail; or
 - (iii) By facsimile; or
 - (iv) By email.
- (b) A notice is deemed to have been given:
 - (i) In the case of personal delivery, when received by the Trustee;
 - (ii) In the case of posting, by ordinary mail, on the fourth day following the date of posting to the postal address last given by the Trustee to the Secretary;

- (iii) In the case of facsimile transmission, when sent to the facsimile number last given by the Trustee to the Secretary;
- (iv) In the case of email, when sent to the email address last given by the Trustee to the Secretary.
- (c) It shall be the responsibility of each Trustee to notify the Secretary of his or her address and other contact details, and of any change to that address or details.

Virtual Meetings

- 10.9 Any meeting of the Board may be held by the contemporaneous linking together of the Trustees by telephone, video conferencing, the internet or other electronic means of communication.

Resolution in lieu of meeting

- 10.10 A resolution in writing signed by, or confirmed in writing by, all of the Trustees is as valid as if it had been passed at a meeting of the Board. Such written confirmation may be by letter (whether hand-delivered, posted or faxed) or email.

11. POWERS

General and specific powers

- 11.1 In addition to the powers implied by the general law of New Zealand or contained in the Trusts Act or the Charitable Trusts Act or otherwise, and subject to express terms of this Deed the Board shall have in relation to the Trust Fund all the powers of natural persons acting as beneficial owners and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory and the powers which the Board may exercise (without limitation and by way of examples) in order to achieve the Objects are as follows:

- (a) To seek, accept and receive koha, donations, subsidies, grants, endowments, gifts, legacies and bequests either in money or in kind or partly in money and partly in kind for all or any of the Objects; and
- (b) To use as much of the Trust Fund as the Board thinks appropriate in payment of the costs and expenses of the Trust such costs and expenses being no greater than market rates; and
- (c) When incurring any costs for any goods or services, the Board is to make a serious effort to find the best value for the best quality available; and
- (d) To carry on any business either directly or indirectly and whether via companies, partnerships, trading trusts or other structures; and
- (e) To invest all or any part of the Trust Fund in any way permitted by law and in such manner and upon such terms as the Board thinks fit; and
- (f) To borrow or raise money from time to time with or without security and upon such terms as to priority and otherwise as the Board thinks fit; and
- (g) To give guarantees and indemnities, alone or with third parties; and
- (h) To do all things as may from time to time appear necessary or desirable to enable the Board to give effect to and to achieve the Objects; and
- (i) To employ and appoint such staff and professional advisers as the Board thinks appropriate to manage the affairs of the Trust and the Trust Fund, the cost of this to be no greater than at market rates; and
- (j) To incorporate itself into a Trust Board under the Charitable Trusts Act 1957.

No determination of income

11.2 Notwithstanding anything contained or implied in this Deed where the Board carries on or engages in any business by or on behalf of or for the benefit of the Trust no person defined in Section CW42(5)(b) of the Income Tax Act 2007 shall, by virtue of that capacity and within the ambit and scope of Section CW42 and with the exceptions therein contained, in any way whether directly or indirectly determine or materially influence in any way the determination of:

- (a) The nature or the amount of any benefit or advantage (as defined in section CW42(8)) able to be received, gained, achieved, afforded or derived by that person from that business; or
- (b) The circumstances in which that benefit or advantage of income is or is to be so received, gained, achieved, afforded or derived.

No non-exempt derivation

11.3 Nothing in this Deed shall authorise the derivation of income to which section CW42 of the Income Tax Act 2007 applies and which is excluded from exemption from income tax by the said section CW42.

12. INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO THE OBJECTS OF THE TRUST**Application**

12.1 Any income, benefit or advantage shall be applied to the Objects.

No private pecuniary profit

12.2 Nothing expressed or implied in this Deed shall ever permit the activities of the Board or any business carried on by or on behalf of or for the benefit of the Board (whether directly or indirectly) to be carried on for the private pecuniary profit of any person at any time.

Influence:

12.3 No Trustee or person associated with a Trustee shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:

- (i) Professional services to the Trust rendered in the course of business charged at no greater rate than market rates; or
- (ii) Interest on money lent at no greater rate than market rates.

12.4 No Trustee receiving any remuneration from the Fund shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid. Sections 36 and 37 of the Trusts Act (and any similar provision contained in any amendment or substitution for that Act) are not binding on the Board

13. ACCOUNTS/FILING OF DOCUMENTS

13.1 The Trustees shall ensure that:

- (a) **Keep Records and Accounts** - Full and correct records and accounts are kept of all their receipts, credits, payments, assets, liabilities, transactions and all other matters necessary for showing the true state and condition of the Trust Fund.
- (b) **Financial Statements** - Financial statements are prepared as soon as practicable after the end of each Financial Years.

- 13.2 The Trustees shall cause to be prepared, and retained and/or filed with any relevant authority all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations, applications, forms and other information required to be prepared or filed, pursuant to any revenue legislation, the Charities Act 2005 or otherwise.

14. POWER TO DELEGATE AND TO TAKE ADVICE

Power to delegate

- 14.1 The Board may from time to time in writing appoint any committee or similar entity whether advisory or not and responsible for particular functions or purposes and may delegate in writing any of its powers and duties to any such committee or to any person, and the committee or person as the case may be, may without confirmation by the Board exercise or perform the delegated powers or duties in like manner and with the same effect as the Board could itself have exercised or performed them. The Board may devise procedures, policy manuals, requirements, guidelines for any management or other structures which it considers necessary or desirable from time to time for the attainment of the Objects and may review any of same at any time. Any person, committee, delegate or other entity of any description shall be required to perform to all reasonable requirements of the Board at all times and to report to the Board upon request.

Delegate bound

- 14.2 Any committee or person to whom the Board has delegated powers or duties shall be bound by the terms of this Deed and shall be deemed to totally accept such responsibility.

Delegation revocable

- 14.3 Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power or the performance of any duty by the Board.

Delegate need not be board member

- 14.4 It shall not be necessary that any person who is appointed to be a member of any such committee or entity, or to whom any such delegation is made, be a member of the Board.

- 14.5 The Board may take and act upon the opinion of any barrister, solicitor, or other suitably qualified legal adviser practising in New Zealand whether in relation to the interpretation of this Deed of any other document or statute or to the administration of the Trust or otherwise, without being liable in respect of any act done by them in accordance with such opinion.

- 14.6 Nothing in this clause prohibits the Board from applying to the High Court for directions on the resolution of any matter or otherwise. If the Board does apply to the High Court, all expenses of the application are chargeable to the Trust.

15. ANNUAL GENERAL MEETING

Time and place of meeting

- 15.1 The annual general meeting of the Board shall be held each year at such place, date and time as the Board shall determine.

Business of meeting

- 15.2 The annual general meeting shall carry out the following business:

- (a) Receive the minutes of the previous annual general meeting and of any other special general meeting held since the last annual general meeting; and
- (b) Receive the Trust's statement of accounts for the preceding year and an estimate of income and expenditure for the current year; and
- (c) Receive a report from the Chairperson; and

- (d) Consider and decide any other matter which may properly be brought before the meeting.

15.3 The Board Chairperson and Deputy Board Chairperson will be elected at the Board meeting prior to the Annual General Meeting.

16. ALTERATION OF DEED

This Deed may be altered, added to, rescinded or otherwise amended by the unanimous resolution of the Board, provided that no such amendment shall detract from the exclusively charitable nature of the Trust and its Objects or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.

17. TRUSTEES LIABILITY AND INDEMNITY

17.1 For the purpose of this clause 17 only, each member of any committee established under clauses 8, 9 and 14 shall be referred to as a "Trustee", and shall have the benefit of the indemnities provided in this clause, whether or not they have been appointed as a trustee of the Trust.

17.2 None of the Trustees will be liable for:

- (a) A loss incurred by the Trust Fund other than as a result of that Trustee's own dishonesty, wilful misconduct or gross negligence.
- (b) The acts or omissions of anyone employed by including in contract or in consultancy to the Board.
- (c) Claims against the Board that cannot be satisfied because:
 - (i) all or part of the Trust Fund has been distributed, unless the distribution was a deliberate breach of trust by the then Board;
 - (ii) any other circumstance not the fault of that Trustee.

17.3 No Trustee is obliged to take proceedings against a co-Trustee, or any former Trustee.

17.4 Each of the Trustees will be indemnified out of the Trust Fund if the Trustees incur any liability as the result of any act or omission by any of them as a Trustee, unless the liability is incurred as the result of that trustee's own dishonesty, wilful misconduct or gross negligence and the Board shall be entitled to pay Trustee indemnity insurance premiums n policies for same if available or the like.

17.5 The Trustees have a general duty of care as set out in section 29 of the Trusts Act to exercise the care and skill that is reasonable in the circumstances when administering the Trust. This duty is subject to the provisions of this deed.

17.6 The Trustees have no obligation to diversify the investments of the Trust Fund; they are not under any duty to formulate an investment strategy; and sections 29 and 30 of the Trusts Act (and any similar provision contained in any amendment or substitution for that Act) are not binding on the Trustees.

18. CHARGING BY TRUSTEES

Notwithstanding the provisions of clause 9 and sections 36 and 37 of the Trusts Act, any Trustee who is engaged in a profession or business shall be entitled to be paid at reasonable market rates for services provided by that trustee or that trustee's firm on the same basis as if that Trustee were not a trustee, but no Trustee is to be paid anything for acting as a Trustee and thereby taking on the responsibilities of a trustee.

19. DECLARATIONS OF INTEREST

- 19.1 No Trustee shall vote on any matter in which that Trustee has any personal or pecuniary interest or in which any company or entity or associated person or persons with or in which the Trustee has a personal or financial interest, has any pecuniary interest.
- 19.2 Any Trustee shall declare any such interest as soon as the Trustee concerned becomes aware of the existence of the interest, the declaration to include all relevant detail needed to result in a full and fair disclosure. All Trustees shall act in the utmost good faith in all such matters to ensure transparency and fairness.
- 19.3 Subject to compliance with the above disclosure requirements any Trustee shall be entitled in any personal capacity (or otherwise) to have an interest in any entity or business having any dealings with the Board.

20. EXECUTION OF DOCUMENTS/COMMON SEAL

- 20.1 Subject to clause 20.2, all documents required to be executed by the Trustees will be deemed to be validly executed and binding if those documents have been signed by at least two Trustees whom the Trustees from time to time authorise in writing.
- 20.2 If the Trustees become incorporated as a Board under the Charitable Trusts Act 1957, then:
- (a) **Provision and Use of Seal** - The Trustees will provide a common seal for the Board which will be deposited with the Secretary and affixed to any document requiring execution by the Board under common seal; and
 - (b) **Affixation of Seal** - Every affixing of the common seal must be performed in the presence of two Trustees whom the Trustees from time to time authorise in writing.

21. WINDING UP THE TRUST

Resolution

- 21.1 The Trustees may wind up the Trust by a unanimous resolution of the Board, provided that:
- (a) **Resolution of Meeting**. The resolution must be passed at a Trustees' meeting called for that purpose; and
 - (b) **Notice of Meeting**. The Secretary must give not less than 30 days' notice of that meeting to the Trustees.

Surplus Property

- 21.2 If 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 shall be given to charitable organisations concerned with improving health and wellbeing outcomes in the geographical areas governed by the Tauranga City Council and Western Bay of Plenty District Council.

22. INTERPRETATION

In this Deed, unless the context otherwise requires:

- (a) references to one gender include other genders;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;

- (d) references to clauses are references to clauses of this Deed; and
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to.

23. COUNTERPARTS

This Deed may be executed in any number of counterparts (including e-mail and 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.

Execution

SIGNED by PETER CHANDLER as Trustee in the presence of:

)
)



P Chandler

Witness
Signature



Name

Maria Moller

Occupation

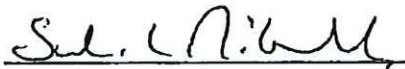
Legal Executive

Address

Tauranga.

SIGNED by SARAH LOUISE MITCHELL as Trustee in the presence of:

)
)



S L Mitchell

Witness
Signature



Name

Maria Moller

Occupation

Legal Executive

Address

Tauranga

SIGNED by MICHELLE ANNE CROOK as Trustee in the presence of:

)
)



M A Crook

Witness
Signature



Name

Maria Moller

Occupation

Legal Executive

Address

Tauranga.

SIGNED by GARRY JOHN WEBBER as Trustee in the
presence of:

Witness
Signature

[Signature]

Name

Mana Moller

Occupation

Legal Executive

Address

Tauranga

[Signature]
G J Webber