

“Acorn Foundation”

(Updated: Board Approved 28.06.2008)

DEED OF TRUST



TAURANGA, NEW ZEALAND

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**ACORN FOUNDATION
DEED OF TRUST**

(Updated: Board Approved 28.06.2008)

DATED

2003

PARTIES Cheryl Maree Adams, Ngawa Hall, William Beau Holland, Vernon Claude Pain and Peter Owen Wyatt.

WHEREAS

- A. The parties to this deed wish to establish a charitable trust (“the Foundation”) 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 government.
- C. Whereas the Trustees have decided to assist in the establishment of the Foundation by the Trustees and to make a gift of \$100.00 for the charitable trust purposes following.

THIS DEED WITNESSES

1. DEFINITIONS AND CONSTRUCTION

1.1 In this deed, unless the context otherwise requires:

“**Annual plan**” means a financial, strategic, business plan for the Fund encompassing all relevant aspects of the Funds activities;

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

(Updated: Board Approved 16.02.2015)

“**Board**” means the Board of Trustees constituted by this Deed and is made up of the Trustees for the time being of the Foundation.

“**Deputy Chairperson**” means the Trustee appointed as deputy chairperson of the Foundation pursuant to clause 9.2;

(Updated: Board Approved 17.11.2009)

“**Chairperson**” means the Trustee appointed as chairperson of the Foundation pursuant to clause 9.1;

“**Charitable Purpose**” means every purpose which in accordance with the law of New Zealand is charitable;

“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 section CW41 and CW42 of the Income Tax Act 1994, or any subsequent enactment of similar effect for the time being in force;

(Updated: Board Approved 16.02.2015)

“Deed” means this deed as amended from time to time;

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

“High Court” means the High Court of New Zealand;

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

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

“Policy Manual” means and includes any policy manuals and guidelines, and operating guidelines to promote best practice for trust administration adopted or to be adopted by the Trustees in respect of the Foundation (as amended or replaced from time to time);

“ Distributions Committee” means the committee established pursuant to clause 7;

(Updated: Board Approved 17.11.2009)

“Secretary” means the person appointed pursuant to clause 9.2;

“Trustees” means the trustees for the time being of the Foundation;

“Trustee Act” means the Trustee Act 1956; and/or any amendment, substitution or replacement of same;

“Trust Fund” means the funds referred to in clause 5 comprising a “Capital and Income Fund” and an “Income Only Fund”.

(Updated: Board Approved 22.02.2017)

2. **NAME**

2.1 The name of the Foundation shall be **“Acorn Foundation”** or such other name as the Board may decide from time to time.

(Updated: Board Approved 28.06.2008)

3. **OFFICE**

3.1 The registered office of the Fund shall be at 78 First Ave, Tauranga, or at such other place as the Board may decide from time to time.

(Updated: Board Approved 16.02.2015)

4. **PURPOSES**

4.1 The purposes of the Foundation are as follows:

- (a) To provide support, both financial and otherwise, for Community Organisations and for any Charitable Purpose.
- (b) To promote and encourage generosity among the people of New Zealand towards Community Organisations and any Charitable Purpose.
- (c) To establish and administer separate named funds within the Trust Fund in order to fulfil the wishes of individual donors who wish to support Community Organisations and any Charitable Purpose.

4.2 All of the aforesaid purposes and activities are to be within New Zealand with a focus (but not as a restriction) for the Western Bay of Plenty Region.

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 Foundation.

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 Foundation may pay or apply capital as well as income for the charitable purposes of the Foundation. The Income Only Fund shall comprise those parts of the Trust Fund where only income may be applied for the charitable purposes of the Foundation.

(Updated: Board Approved 22.02.2017)

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 6.2 and shall set policies and resolve courses of action and the means and direction of implementation of same to achieve the charitable purposes of the Foundation.

(Updated: Board Approved 22.02.2017)

(Updated: Board Approved 16.02.2015)

6. **MEMBERSHIP OF THE BOARD**

6.1 **Number**

The Board shall consist of no fewer than five nor more than nine Trustees at any one time. At any time while the number of Trustees is below five, the only decision the Board can legally make is the appointment of further Trustees pursuant to clause 6.2 or 6.5.

6.2 **Appointment**

- (a) One Trustee shall be appointed by the Mayor of the Tauranga District Council (or its successor), and the first such appointee shall be Cheryl Maree Adams.

- (b) One Trustee shall be appointed by the Mayor of the Western Bay of Plenty District Council (or its successor), and the first such appointee shall be Vernon Claude Pain.
- (c) Up to two Trustees shall be appointed by the Waikato Bay of Plenty District Law Society.
(Updated: Board Approved 20.06.2006)
- (d) One Trustee shall be appointed by Chamber of Commerce Tauranga Region Incorporated.
(Updated: Board Approved 20.06.2006)
- (e) Up to four Trustees shall be appointed by the Board, and the first of such appointees shall be Ngawa Hall.
- (f) Each Trustee shall be appointed for such term and on such conditions as the appointer stipulates but subject always to the provisions of this Deed.

6.3 **Term**

Notwithstanding the term stipulated by the appointer at the time of appointment, no term of appointment shall be for more than four years. At the end of that time a Trustee may be appointed for a further term of two years. At the end of that time a Trustee may be appointed for a further term of two years. No person shall be a Trustee for more than eight consecutive years, without a gap of not less than one year after any eight year period.

(Updated: Board Approved 15.06.2015)

6.4 **Retirement of Trustees**

- (a) Whoever appoints a Trustee (or in the event of a Mayor being the appointer, that Mayor's successor in office for the time being) may at any time remove that Trustee at the sole discretion of the appointer.
- (b) Any Trustee may be removed by the unanimous resolution of all of the other members of the Board if they consider this to be in the best interests of the Foundation.
- (c) A Trustee may retire at any time by giving written notice to the Chairperson or Secretary.

6.5 **Vacancies**

The Board shall have the power to appoint a Trustee (or Trustees) to fill any casual vacancy until a formal appointment is made in accordance with 6.2.

7. **DISTRIBUTIONS COMMITTEE**

(Updated: Board Approved 17.11.2009)

- 7.1 The Board has the power to establish a Distributions Committee and to vest in that committee all or any of the Board's power to consider and make distributions from the Trust Fund.
- 7.2 The Board has full power to determine the membership and powers of the Distributions Committee.
- 7.3 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 Distributions Committee.

7.4 The provisions of clause 13 shall apply to the Distributions Committee

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 13 shall apply to the Investment Advisory Committee

9. PROCEEDINGS OF THE BOARD

9.1 **Meetings.** The Board shall meet at such times and places as it determines, and shall generally regulate and set its own protocol but shall meet not less than annually.

9.2 **Chairperson.** 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.

(Updated: Board Approved 16.02.2015)

9.3 **Secretary.** 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.

9.4 **Quorum.** 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 20 minutes of the scheduled commencement time for the meeting, a subsequent meeting shall be called within seven days.

9.5 **Voting.** All questions before the Board shall be decided by a majority of votes. If the voting is tied, the motion shall be lost. The Chairperson shall have a deliberative but not a casting vote.

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

9.7 **Notice of meetings.** The Trustees shall be given five days' notice by the Secretary of the Foundation prior to any meeting of the Board.

9.8 Notices

(a) Any notice required to be given to any Trustee may be sent by *post, email or electronically*, and it shall be deemed to have been received three days after posting.

(Updated: Board Approved 16.02.2015)

- (b) It shall be the responsibility of each Trustee to notify the Secretary of his or her address and of any change of address, and any notice shall be deemed to have been properly given, if it is posted to the latest address in New Zealand of which the Secretary has been so notified, notwithstanding that it may not be actually received by the Trustee.

9.9 **Telephone/Video Conference.** Any meeting of the Board may be held by telephone or video conference.

9.10 **Resolution in lieu of meeting.** 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.

10. **POWERS**

10.1 **General and specific powers.** In addition to the powers implied by the general law of New Zealand or contained in the Trustee Act or the Charitable Trusts Act 1957 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 carry out the Foundation's purposes 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 purposes of the Foundation; and
- (b) to use as much of the Trust Fund as the Board thinks appropriate in payment of the costs and expenses of the Foundation such costs and expenses being no greater than market rates **PROVIDED** that in the case of the Income Only Fund such payments shall be made from income only; and

(Updated: Board Approved 22.02.2017)

- (c) to purchase, take on lease or in exchange or hire or otherwise acquire any land or personal property and any rights or privileges which the Board thinks necessary or expedient for the purpose of achieving the purposes of the Foundation, and to sell, exchange, bail or lease, with or without option of purchase, or in any manner dispose of any such property, rights or privileges as aforesaid; 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 purposes of the Foundation; and
- (i) to employ and appoint such staff and professional advisers as the Board thinks appropriate to manage the affairs of the Foundation and the Trust Fund the cost of this to be no greater than at market rates; and
- (j) to appoint any company or body corporate whether constituted in New Zealand or overseas to be Custodian Trustee of the trusts hereby created and the provisions of sub-section (2), (3) and (4) of section 50 of the Trustee Act 1956 shall apply to any Custodian Trustee so appointed provided however that in so appointing a Custodian Trustee the Board shall act unanimously; and
- (k) to incorporate itself into a Trust Board under Part II of the Charitable Trusts Act 1957.

10.2 **No determination of income:** 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 Foundation no person defined in Section CW 42(5)(b) of the Income Tax Act 1994 shall, by virtue of that capacity and within the ambit and scope of Section CW 42 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 CW 42(8))* able to be received, gained, achieved, afforded or derived by that person from that business; or
(Updated: Board Approved 16.02.2015)
- (b) The circumstances in which that benefit or advantage of income is or is to be so received, gained, achieved, afforded or derived.

10.3 **No non-exempt derivation.** Nothing in this Deed shall authorise the derivation of income to which section CW 42 of the Income Tax Act 1994 applies and which is excluded from exemption from income tax by the said section CW 42.
(Updated: Board Approved 16.02.2015)

11. **INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO CHARITABLE PURPOSES**

11.1 **Application.** Any income, benefit or advantage shall be applied to the charitable purposes of the Foundation.

11.2 **No private pecuniary profit.** 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.

11.3 Influence.

- (a) No Trustee or person associated with a Trustee shall derive any income, benefit or advantage from the Foundation 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 Foundation 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.
- (b) 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.

12. ACCOUNTS

12.1 **True and fair accounts.** The Board shall keep true and fair accounts of all money received and expended disclosing all financial transactions and assets and liabilities and without limitation this shall include:

- (a) **Audit.** The Board shall as soon as practicable after the end of every Financial Year of the Foundation, cause the accounts of the Foundation for that Financial Year to be audited by an auditor appointed by the Board for that purpose and the Board shall present the audited accounts to the annual general meeting of the Board.
- (b) The auditor:
 - (i) must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Trustees may seek the advice of the Auditor-General; and
 - (ii) must not be a Trustee, or an employee of the Trustees, nor any relative or partner of any of the Trustees or of any employee of the Trustees; and
 - (iii) must not be otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.

- 12.2 (a) If no auditor is appointed or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring, the Auditor-General must be the auditor of the Fund by default.
- (b) The Trustees shall, within five working days of clause 12.2(a) becoming applicable, give written notice to the Auditor-General of this fact.
- (c) If this clause 12.2 applies, the sections and Parts of the Public Audit Act 2001 listed in section 19 of that Act apply to the Fund, until an auditor is appointed at a special meeting of the Board, as if references in those sections to a public entity were references to the Foundation and with any other necessary modifications.

13. POWER TO DELEGATE AND TO TAKE ADVICE

13.1 **Power to delegate.** 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 any of the charitable purposes of the Foundation 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.

- 13.2 **Delegate bound.** 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.
- 13.3 **Delegation revocable.** 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.
- 13.4 **Delegate need not be board member.** 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.
- 13.5 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 Foundation or otherwise, without being liable in respect of any act done by them in accordance with such opinion.
- 13.6 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 Foundation.

14. **ANNUAL GENERAL MEETING**

- 14.1 **Time and place of meeting.** The annual general meeting of the Board shall be held each year at such place, date and time as the Board shall determine.
- 14.2 **Business of meeting.** 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 Foundation's statement of accounts for the preceding year and an estimate of income and expenditure for the current year including consideration of a draft annual plan; and
 - (c) receive reports from the Chairperson and the Chairs of the Distributions Committee and the Investment Advisory Committee; and
(Updated: Board Approved 17.11.2009)
(Updated: Board Approved 16.02.2015)
 - (d) consider and decide any other matter which may properly be brought before the meeting.

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

Updated: Board Approved 18.11.2013

15. **ALTERATION OF DEED**

This Deed may be altered, added to, rescinded or otherwise amended by a resolution passed by a 75% majority of the Board, provided that no such amendment shall detract from the exclusively charitable nature of

the Foundation and its purposes or result in the distribution of its assets on winding up or dissolution for any purpose that is not exclusively charitable.

(Updated: As per IRD letter of 15.05.2015)

16. DISPOSITION OF SURPLUS ASSETS

- 16.1 On the winding up of the Foundation or on its dissolution by the Registrar, all surplus assets after the payment of costs, debts and liabilities shall be given to such exclusively charitable organisations within New Zealand as the Board decides or, if the Board is unable to make such decision, shall be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957.

17. TRUSTEES LIABILITY AND INDEMNITY

- 17.1A For the purpose of this clause 17 only, each member of any committee established under clause 13.1 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 Foundation.

(Updated: Board Approved 18.06.2012)

- 17.1 None of the Trustees will be liable for:

- (a) A loss incurred by the Fund other than as a result of that Trustee's own dishonesty, or deliberate breach of trust.
- (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 Fund Assets 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.

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

- 17.3 Each of the Trustees will be indemnified out of the Fund Assets:

- (a) if the Trustees incur any liability as the result of any act or omission by any of them as a Trustee, unless
- (b) the liability is incurred as the result of that Trustee's own dishonesty or deliberate breach of trust;

and the Board shall be entitled to pay Trustee indemnity insurance premiums n policies for same if available or the like.

- 17.4 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 13B and 13C of the Trustee Act 1956 (and any similar provision contained in any amendment or substitution for that Act) are not binding on the Trustees.

18. CHARGING BY TRUSTEES

- 18.1 Subject to the provisions of clause 11, 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.

19. POWER TO PAY OR APPROPRIATE INCOME BEFORE DETERMINATION

- 19.1 Notwithstanding that the annual income of the Capital and Income Fund and/or the Income Only Fund shall not have been ascertained in any financial year the Board may at any time pay or apply any anticipated income of such Fund or any part thereof for any charitable purpose or purposes as aforesaid and without derogating from the objects or purposes of the Foundation and for that purpose make such payment from the capital of the relevant Fund to be recouped upon receipt of the anticipated income.

(Updated: Board Approved 22.02.2017)

20. DECLARATIONS OF INTEREST

- 20.1 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.
- 20.2 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.
- 20.3 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.

21. INTERPRETATION

- 21.1 In this Deed, unless the context otherwise requires:
- (a) references to one gender include the other gender;
 - (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.

22. **EXECUTION OF DOCUMENTS**

Documents shall be executed by the Foundation pursuant to a resolution of the Board by any two of the Trustees signing on behalf of the Foundation.

(Updated: Board Approved 17.11.2009)

SIGNED by CHERYL MAREE ADAMS)
in the presence of:)

Witness

C M Adams

Signature _____

Name (full) _____

Occupation _____

Address _____

SIGNED by NGAWA HALL in the)
presence of:)

Witness

N Hall

Signature _____

Name (full) _____

Occupation _____

Address _____

SIGNED by WILLIAM BEAU HOLLAND)
in the presence of:)

Witness

W B Holland

Signature _____

Name (full) _____

Occupation _____

Address _____

SIGNED by **VERNON CLAUDE PAIN** in)
the presence of:)

Witness

V C Pain

Signature _____

Name (full) _____

Occupation _____

Address _____

SIGNED by **PETER OWEN WYATT** in)
the presence of:)

Witness

P O Wyatt

Signature _____

Name (full) _____

Occupation _____

Address _____