

DATED

18 December

2023

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**SOUTHLAND FOUNDATION**

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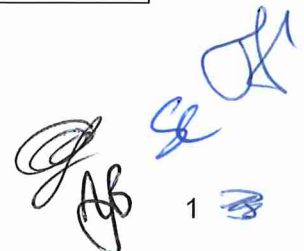
**DEED OF TRUST**

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*[Handwritten signatures and initials in blue ink]*

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Deed dated the 18 day of December 2023

**PARTIES:**

**KATHRYN JANE BALL, SARAH JANE BROWN, RACHEL JANE COCKBURN, SARAH LOUISE COLLIE, JEFFREY JAMES GRANT, and ALAN JOSEPH O'CONNELL** being the Trustees of the **SOUTHLAND FOUNDATION** as at the date of this Deed collectively referred to as "the Trustees."

**BACKGROUND**

- A. The Trustees wish to establish a Charitable Trust known as the **SOUTHLAND FOUNDATION** ("the Foundation").
- B. The Trustees will hold and continue to hold the assets of the Foundation to carry out the charitable purposes subject to the powers and discretions set out in this Trust Deed.
- C. The Trustees intend to incorporate as a Board under Part 2 of the Charitable Trusts Act 1957.

**OPERATIVE PART**

1. **Definitions**

In this Deed unless the context otherwise requires:

**Annual plan** means a financial, strategic, business plan for the Foundation encompassing all relevant aspects of the Foundation's activities;

**Balance Date** means 31 March or any other date adopted from time to time by the Trustees as the end of the Foundation's 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 Foundation;

**Chairperson** means the Trustee appointed as chairperson of the Foundation pursuant to clause 15.2;

**Charitable Purpose** has the meaning set out in clause 5(1) of the Charities Act;

**Charities Act** means the Charities Act 2005;

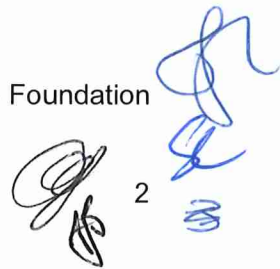
**Charitable Trusts Act** means the Charitable Trusts Act 1957;

**Community Foundation** means a community foundation that is qualified as, and is, a member of Community Foundations of New Zealand Incorporated.

**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 2007, or any subsequent enactment of similar effect for the time being in force;

**this Deed** means this Trust Deed as amended from time to time;

**Deputy Chairperson** means the Trustee appointed as deputy chairperson of the Foundation pursuant to clause 15.2;



**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;

**Legal Capacity** means that person:

- (a) Is not the subject of an order made pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (b) Is not the subject of an order pursuant to the Protection of Personal and Property Rights Act 1988; or
- (c) Has not received a written medical certificate from a registered medical practitioner, stating that in their opinion that person lacks the mental capacity to carry out the duties and powers given to them by this Trust Deed, and, if they have received the written medical certificate above, that person has not received a subsequent written medical certificate from a registered medical practitioner stating the person has regained the required mental capacity;

**Person** includes any individual, corporation, entity, partnership, joint venture, association, trust, organisation, government department or local authority;

**Region** means the area within the boundaries of the Southland Region, defined by the boundaries of the Territorial Authorities, Invercargill City Council, Southland District Council and Gore District Council;

**Secretary** means the person appointed pursuant to clause 15.3;

**Sub Fund** means the funds of a Sub-Trust, a wound up Sub-Trust or a donation which are held within the Trust Fund of the Foundation.

**Sub-Trust** means a trust for a specified Charitable Purpose established pursuant to clause 19;

**Trustees** means the trustees for the time being of the Foundation;

**Trusts Act** means the Trusts Act 2019;

**Trust Fund** means the fund referred to in clause 6.

## 2. Interpretation

2.1 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 or replaced by new legislation and includes substituted provisions that substantially correspond to those referred to.

3. **Name**

3.1 The name of the Foundation is the "**SOUTHLAND FOUNDATION.**" The Board may change the name of the Foundation at any time by resolution of no less than 75% of the Board.

4. **Office**

4.1 The registered office of the Foundation is at the offices of Cruickshank Pryde, Lawyers, Level 1, 20 Don Street, Invercargill. The Board may change the registered office at any time.

5. **Purposes**

5.1 The purposes of the Foundation are:

- (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; and
- (c) To establish and administer separate named funds within the Trust Fund including Sub-Trusts in order to fulfil the wishes of donors who wish to support Community Organisations and any Charitable Purpose.

5.2 All of the purposes and activities are to be carried out principally within the Region but only in New Zealand.

6. **Trust Fund**

6.1 The Trust Fund comprises an initial gift of \$100.00 and all other capital, income and other property acquired and held by the Board from time to time for the Foundation.

6.2 The Trust Fund is administered by the Board which sets policies and resolves courses of action in order to achieve the Charitable Purposes.

7. **Membership of the Board**

7.1 The Board consists of at least five (5) and no more than ten (10) Trustees at any one time. If the number of Trustees reduces below five (5), the only decision the Board can legally make is the appointment of further Trustees pursuant to this clause 7.

7.2 The Board has the power to appoint new Trustees, The Board shall have a trustee appointment policy which will be publicly available and will set out the criteria for appointment of new Trustees and the process to be followed by the Board for new appointments. As a minimum, 75% of the Trustees must be primarily resident in the Region. Trustees must have the special knowledge, experience, qualifications and interests as the Board from time to time sets out in the trustee appointment policy. The Board may change its trustee appointment policy by resolution of no less than 75% of the Board.

7.3 Trusteeship may be reviewed by the Board at the meeting prior to the annual general meeting in any year on the basis of the criteria for appointment set out in the Board's trustee appointment policy from time to time and on the basis of each Trustee's commitment and contribution to the Foundation's Charitable Purposes. In addition, at each annual general meeting two (2) Trustees or one-third of the total number of Trustees (whichever is the lesser number) must

retire from office. Those to retire will be those who have held office for the longest time since appointment (or re-appointment). Where more than the required number of Trustees have been in office for the same length of time, Trustees may either put themselves forward for re-election voluntarily, or a ballot will be held.

- 7.4 Any retiring Trustee is eligible for re-appointment by the Board. The maximum tenure of any Trustee shall be nine years unless the Board unanimously agrees otherwise.
- 7.5 Any change in trustees will not require a deed, but will be completed by entry into the Foundation's minute book and updating of all registration records including Charities Services and the Societies and Trusts Online Website operated by the Companies Office (or any other applicable registration office).

## 8. **Retirement of Trustees**

- 8.1 A Trustee may retire at any time by giving 30 days' written notice to the Chairperson or Secretary.

## 9. **Removal of Trustees**

- 9.1 A Trustee will immediately cease to be a Trustee if:
- (a) That Trustee becomes bankrupt (or any equivalent financial status);
  - (b) That Trustee lacks Legal Capacity;
  - (c) That Trustee dies;
  - (d) That Trustee is absent from three (3) consecutive meetings of the Board within one (1) year without good reason or apology;
  - (e) The Board, after consideration of the membership criteria at clause 7.2 determines by a majority of no less than 75% of the Board that it is in the best interests of the Foundation that the Trustee retire; or
  - (f) In the opinion of a majority of the Board that Trustee is found to be guilty of serious misconduct of a nature likely to detrimentally affect the reputation of the Foundation.

## 10. **Powers**

- 10.1 In addition to the powers implied by the general law of New Zealand or contained in the Trusts Act or the Charities Act or the Charitable Trusts Act or otherwise, and subject to the terms of this Deed, the Board has 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.
- 10.2 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 donations, subsidies, grants, endowments, gifts, legacies and bequests either in money or in kind for all or any of the purposes of the Foundation, but subject to any donor conditions; and
  - (b) to pay the reasonable costs and expenses of the Foundation such costs and expenses being no greater than market rates; and
  - (c) to purchase, take on lease or hire or otherwise acquire any land or personal property and

any rights which the Board thinks necessary or expedient for the purpose of achieving the purposes of the Foundation, and to sell or lease, or in any manner dispose of any such property or rights; 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 including (without limitation) engaging in social investment for a lower, or nil, rate of return; 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 with 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 and to maintain such incorporation.

10.3 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 2007 shall, by virtue of that capacity and within the ambit and scope of section CW 42, 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
- (b) The circumstances in which that benefit or advantage is or is to be so received, gained, achieved, afforded or derived.

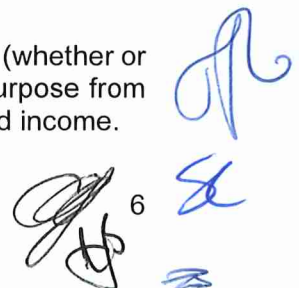
10.4 Nothing in this Deed shall authorise the derivation of income to which section CW 42 of the Income Tax Act 2007 applies and which is excluded from exemption from income tax by the said section CW 42.

## 11. **Application of Income and Capital**

11.1 The Board has absolute discretion to pay or apply (subject to any agreed donor conditions) the whole of any part of the Foundation's income and capital each financial year to such Community Organisations and towards such Charitable Purposes in such amounts, at such time or times, for such period or periods, and subject to such terms and conditions as the Board may from time to time determine, and for any Sub-Trust subject to the terms and conditions of that Sub-Trust.

## 12. **Power to Pay or Appropriate Income Before Determination**

12.1 The Board may at any time pay or apply any anticipated income of the Trust Fund (whether or not accounted for in the Foundation's Financial Statements) for any charitable purpose from the capital of the Trust Fund and recoup that capital upon receipt of the anticipated income.



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13. **Income, Benefit or Advantage to be Applied to Charitable Purposes**

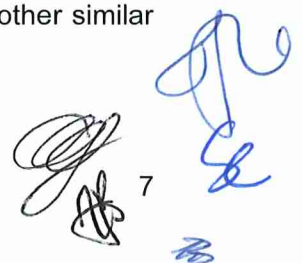
- 13.1 Any income, benefit or advantage shall be applied to the Charitable Purposes of the Foundation.
- 13.2 Nothing expressed or implied in this Deed shall ever permit the activities of the Board or any business carried on by or on behalf of or for the benefit of the Board (whether directly or indirectly) to be carried on for the private pecuniary profit of any person at any time.

14. **Financial statements**

- 14.1 The Board shall keep accurate records of all money received and expended disclosing all financial transactions and assets and liabilities and without limitation:
- (a) Within five (5) months after the end of every Financial Year of the Foundation, shall cause the financial statements of the Foundation, prepared for that Financial Year in accordance with generally accepted accounting practice and in accordance with the Charities Act 2005 (together with any non-financial information required to be audited or reviewed by law) to be audited or reviewed, if required by law, and the Board shall present the financial statements (and non-financial information) to the annual general meeting of the Board.

15. **Proceedings of the Board**

- 15.1 The Board shall meet at such times and places as it determines and shall generally regulate and set its own protocol and procedure but shall meet not less than twice annually.
- 15.2 The Board shall elect a Chairperson and Deputy Chairperson from amongst its members at the first Board meeting following 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.
- 15.3 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.
- 15.4 At any meeting of the Board 50% 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.
- 15.5 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 vote but will not have an additional casting vote.
- 15.6 The Secretary shall keep minutes of all Board meetings which shall be available for inspection by Board members at all reasonable times.
- 15.7 The Trustees shall be given five (5) days' notice by the Secretary of the Foundation prior to any meeting of the Board.
- 15.8 Any meeting of the Board may be held by telephone, video conference, or any other similar form of communication.



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15.9 A resolution in writing may be signed in two or more counterparts, all of which will together be deemed to constitute one document.

16. **Notices**

16.1 Any notice required to be given to any Trustee may be given by one of the following means:

- (a) By personal delivery; or
- (b) By email or other widely accepted electronic means.

16.2 A notice is deemed to have been given:

- (a) In the case of personal delivery when received by the Trustee;
- (b) In the case of email or other widely accepted electronic means, when acknowledged by the Trustee orally or by return email or response or otherwise in writing, except that return emails or responses generated automatically shall not constitute an acknowledgement.

16.3 It shall be the responsibility of each Trustee to notify the Secretary of his or her contact details, and of any change to those details.

17. **Power to delegate and appoint advisory committees**

17.1 The Board has the power to establish any committee to assist the Board in an advisory capacity.

17.2 The Board may delegate in writing any of its powers and duties to any such committee and the committee 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.

17.3 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.

17.4 The Board shall appoint members of any advisory committee on such terms as the Board considers appropriate from time to time and may at any time remove any member of any advisory committee.

17.5 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.

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

18. **Existing Trusts**

18.1 The Board may at any time accept trusteeship of any existing trust and if so, the following shall apply:

- (a) Such trust must be for a Charitable Purpose;
- (b) The acceptance must be authorised by deed;
- (c) The existing trust will become a Sub-Trust;

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- (d) The Board may appoint an advisory committee to advise the Board on any matter relating to the Trust. Such advisory committee, including function, form and appointment (including appointment of persons who are not Board members) shall be at the sole discretion of the Board; and
- (e) The Board shall administer the trust in accordance with the terms of that trust and this Deed.

19. **Sub-Trusts**

19.1 The Board may by deed establish a Sub-Trust within the Foundation in respect to which the following will apply:

- (a) The Sub-Trust must be for a Charitable Purpose, but can specify a particular Charitable Purpose; and
- (b) The Foundation will be the trustee of any Sub-Trust; and
- (c) The Board may appoint an advisory committee to advise the Board on any matter relating to the Sub-Trust. Such advisory committee, including function, form and appointment (including appointment of persons whom are not Board members) shall be at the sole discretion of the Board; and
- (d) The Board shall administer the Sub-Trust in accordance with both the terms of that Sub-Trust and this Deed.

20. **Administration of Sub-Trusts**

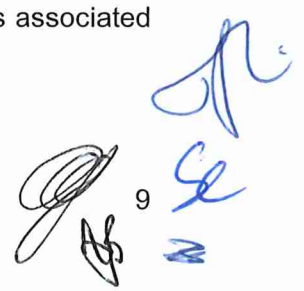
20.1 The following shall apply to the administration of Sub-Trusts:

- (a) The administration will fall within the administration of the Foundation;
- (b) The Board shall determine whether it is appropriate to administer the trust as a Sub Fund or as a Sub-Trust;
- (c) The Foundation may incorporate any Sub-Trust's funds within its own Trust Fund as a Sub Fund, but if it does so, must keep accurate and up to date records of the capital and income; and
- (d) Subject to the terms of the Sub-Trust, the distribution of income and capital of the Sub-Trust will be in accordance with the policies and procedures of the Foundation.

21. **Winding Up of Sub-Trusts**

21.1 If, at a specially convened meeting, the Board unanimously resolves in writing to wind up a Sub-Trust then the following shall apply:

- (a) The Board will prescribe how surplus funds are to be dealt with upon winding up;
- (b) Any accrued income which has not been paid, applied or allocated shall be distributed in accordance with the Foundation's distribution policy and in accordance with its purposes including those of the Sub-Trust;
- (c) The Foundation is entitled to resolve to retain funds for expenses and costs associated with the wind up; and



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- (d) The limitations of liability set out in clause 27 shall extend to the Foundation (and to each of the Trustees) in relation to the Sub-Trust, and the Foundation (and each of the Trustees) will be entitled to be indemnified from the Sub-Trust fund for any liability arising or loss incurred as a result of the actions set out in this clause 27 unless such liability or loss is incurred as the result of the Foundation's (or the Trustee's) own dishonesty, wilful misconduct or gross negligence.

22. **Annual General Meeting**

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

22.2 The annual general meeting shall carry out the following business:

- (a) to 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) to receive the Foundation's financial statements for the preceding year and an estimate of income and expenditure for the current year including consideration of a draft Annual Plan; and
- (c) to receive a report from the Chairperson;
- (d) to consider and decide on the appointment or re-appointment of Trustees; and
- (e) to consider and decide any other matter which may properly be brought before the meeting.

23. **Information**

23.1 The Trustees have no duty to provide information in relation to the Foundation to any person except as specified in this Deed or as required under any statute.

24. **Alteration of Trust Deed**

24.1 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.

25. **Charging by Trustees**

25.1 Subject clause 26, 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. Provided however Trustees shall not be remunerated for their position as Trustees.

26. **Declarations of Interest**

26.1 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.

26.2 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.

26.3 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.

27. **Trustees' Liability and Indemnity**

27.1 For the purpose of this clause 27 only, each member of any committee established under clause 17 shall have the benefit of the indemnities provided in this clause, whether or not they have been appointed as a trustee of the Foundation.

27.2 None of the Trustees will be liable for:

- (a) A loss incurred by the Foundation 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.
  - (iii) No Trustee is obliged to take proceedings against a co-Trustee, or any former Trustee.

27.3 Each of the Trustees will be indemnified out of the trust fund:

- (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, wilful misconduct or gross negligence.

27.4 The Board shall be required to hold and maintain Trustees indemnity insurance.

28. **Execution of Documents**

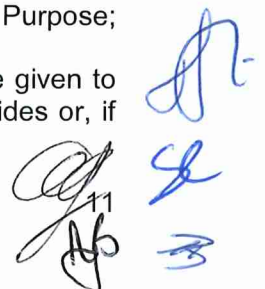
28.1 Documents shall be executed by the Foundation pursuant to a resolution of the Board by any two of the Trustees signing on behalf of the Foundation.

28.2 Any document to be executed by the Foundation may be signed in accordance with this Deed by a digital signature where that process complies with the Part 4 of the Contract and Commercial Law Act 2017.

29. **Wind up of the Foundation**

29.1 If, at a specially convened meeting, no less than 75% of the Board resolves in writing to wind up the Foundation) then the following shall apply:

- (a) Such wind up shall be by deed, including specifications as to the distribution or transfer of the Trust Fund and any accrued income not already granted for a Charitable Purpose;
- (b) The distribution of the Trust Fund will be for a Charitable Purpose and shall be given to such exclusively charitable organisations within the Region 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;

- (c) The Board shall be entitled to set aside a retention of funds for expenses to wind up the Foundation, including administrative expenses, accounting and auditing costs, any fees for applicable court orders as required by law, the payment of legal fees for transfer of capital and ancillary costs associated with the administration of the Foundation not yet realised at the date of wind up;

30. **Exclusion of Certain Default Duties under the Trusts Act 2019**

30.1 Pursuant to Section 5(4) of the Trusts Act 2019, the following default duties under the Trusts Act 2019 are expressly excluded:

- (a) Section 30 – duty to invest prudently;
- (b) Section 33 – duty not to bind or commit Trustees to future exercise of discretion.
- (c) Section 38 – duty to act unanimously.

**EXECUTION**

Signed by **KATHRYN JANE BALL** )  
as Trustee in the presence of: )



.....  
K.J. BALL

  
\_\_\_\_\_  
Signature of witness

Laura Purdie-Smith  
Full name of witness

Receptionist  
Occupation of witness

160 Spey Street, Invercargill  
Address of witness

Signed by **SARAH JANE BROWN** )  
as Trustee in the presence of: )



.....  
S.J. BROWN

  
\_\_\_\_\_  
Signature of witness

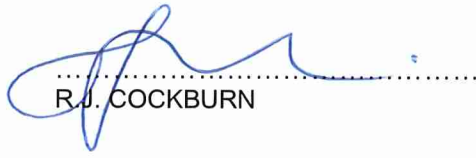
Sarah Hannon  
Full name of witness

Consultant  
Occupation of witness

115 Grey St Invercargill  
Address of witness



Signed by **RACHEL JANE COCKBURN** )  
as Trustee in the presence of: )

  
.....  
R.J. COCKBURN

  
Signature of witness

Sarah Hannan  
Full name of witness

Consultant  
Occupation of witness

115 Grey St, Invercargill  
Address of witness

Signed by **SARAH LOUISE COLLIE** )  
as Trustee in the presence of: )

  
.....  
S.L. COLLIE

  
Signature of witness

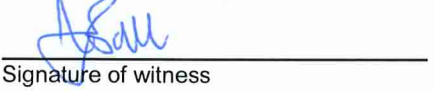
Emma Grace Hewitt  
Full name of witness

Chartered Accountant  
Occupation of witness

60B Waimea Street Gore  
Address of witness

Signed by **JEFFREY JAMES GRANT** )  
as Trustee in the presence of: )

  
.....  
J.J. GRANT

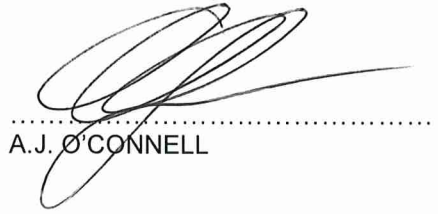
  
Signature of witness

KATHRYN JANE BALL  
Full name of witness

CHARTERED ACCOUNTANT  
Occupation of witness

124 MUIR ROAD INVERCARGILL  
Address of witness

Signed by **ALAN JOSEPH O'CONNELL** )  
as Trustee in the presence of: )

  
.....  
A.J. O'CONNELL

  
Signature of witness

Sarah Hannan  
Full name of witness

Consultant  
Occupation of witness

115 Grey St, Invercargill  
Address of witness