

APP (2)

COPY

Deed of Trust Establishing the Valley FM Charitable Trust

Settlor **S9(2)(a)**

Trustees **S9(2)(a)**

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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RELEASED UNDER THE
OFFICIAL INFORMATION ACT

COPY

THIS DEED dated the 28th day of October

2015

BETWEEN S9(2)(a) of Lower Hutt, Writer and Publisher ("Settlor")

AND S9(2)(a) of Lower Hutt, Writer and Publisher, S9(2)(a) of Lower Hutt, Accountant, S9(2)(a) of Featherston, Broadcasting Engineer, and S9(2)(a) of Lower Hutt, Solicitor ("Trustees")

BACKGROUND

- A. The Settlor has recognised the need for community radio through broadcasting and the dissemination of information, music and the like over the radio.
B. The Settlor considers it desirable to establish a trust in the Hutt Valley for the purposes set out in detail in this deed including the continued development, management and operation of an independent, not-for-profit radio broadcasting service and radio museum.
C. The Trustees are prepared to act as trustees of the Trust Fund.
D. By way of initial gift to the Trustees to establish the Trust, the Settlor has paid the sum of \$10.00 to the Trustees on the date of execution of this deed.

TRUST TERMS

1. INTERPRETATION

In this deed unless the context indicates otherwise:

1.1 Definitions:

"Balance Date" means 31 March or any other date adopted from time to time by the Trustees as the end of the Trust's Financial Year;

"Chairperson" means the Trustee appointed in accordance with clause 6.4;

"Concessionary Provisions" means sections CW 41 (Charities: non-business income), CW 42 (Charities: business income), CX 25 (Benefits provided by charitable organisations), DB 41 (Charitable or other public benefit gifts by company) and DV 12 (Maori authorities: donations) and subpart LD (Tax credits for charitable or other public benefit gifts) of the Income Tax Act 2007; and, if the Trustees are registered under the Goods and Services Tax Act 1985, the provisions of that Act relating to non-profit bodies, as defined in section 2(1) of that Act;

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

"Property" means real or personal property of any kind and includes any right or interest in such property and anything in action;

S9(2)(a)

"Secretary" means the person appointed in accordance with clause 6.5;

"Trust" means the trust created by this deed;

"Trust Fund" means any Property, which may be paid to or held under the control of or vested in or acquired by the Trustees for the Trust from any source on or after the date of this deed and whether by way of gift, bequest, devise, purchase, exchange or otherwise; and

"Trustees" means the trustee or trustees for the time being of the Trust and, where the trustees of the Trust have incorporated as a board under the Charitable Trusts Act 1957, either the trustees acting as a board or the trustee or trustees for the time being constituting the board, as the context requires;

- 1.2 **Clauses:** references to clauses are references to this deed's clauses;
- 1.3 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
- 1.4 **Gender:** references to one gender include the other gender;
- 1.5 **Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect this deed's interpretation;
- 1.6 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.7 **No Limitation:** references to anything of a particular nature either before or after a general statement do not limit the general statement unless the context requires;
- 1.8 **Parties:** references to parties are references to parties to this deed;
- 1.9 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.10 **Plural and Singular:** singular words include the plural and vice versa; and
- 1.11 **Statutes and Regulations:** references to any statutory provision include any statutory provision, which amends or replaces it, and any subordinate legislation made under it.

2. NAME OF TRUST

- 2.1 **Name of the Trust:** The name of the Trust is **VALLEY FM CHARITABLE TRUST**.
- 2.2 **Change of Name:** The Trustees may change the name of the Trust by deed to any other name which they may determine from time to time, provided that:

2.2.1 **Incorporation:** the Trustees will be incorporated as a trust board under the Charitable Trusts Act 1957 under the new name; or

2.2.2 **Not Offensive or Misleading:** if the Trustees will not be incorporated as a trust board, the new name is not offensive or liable to mislead any member of the public.

3. PURPOSES OF TRUST

3.1 **Exclusively Charitable Purposes:** The Trustees hold the Trust Fund on trust to pay or apply so much of the capital and income of the Trust Fund as the Trustees think fit exclusively for or towards the continued development, management, operation and preservation of an independent, not-for-profit radio broadcasting service including radio studio, recording and transmitting equipment; and ownership and responsibility for all statutory and regulatory licensing compliance; and radio museum and audio recordings library, including but not limited to audio analogue records and tapes, analogue and digital recordings and amplifying equipment, transmitters and preserving collections of radio documentation and other broadcasting memorabilia which activities will be exclusively for the advancement any one or more of the following exclusively charitable purposes, which are declared to be the purposes of the Trust, namely:

3.1.1 **First Object:** To create radio content for the local community;

3.1.2 **Second Object:** To aid in the distribution of such radio content on behalf of the community;

3.1.3 **Third Object:** To connect people in the community young and old with radio broadcasting opportunities in the community;

3.1.3 **Fourth Object:** To up skill volunteer radio broadcasters;

3.1.4 **Incidental Matters:** all things incidental to the charitable purposes described in this clause 3.1.

3.2 The aims and values of the Trust are as follows:

3.2.1 To remain non-partisan, non-religiously affiliated and non-exclusive.

3.2.2 To respect the different values, religions and cultures within New Zealand, and to, whenever possible, recognise the views and expectations of Tangata Whenua.

3.3 The mission of the Trust is as follows:

To achieve its objectives Valley FM aims to promote the work of community radio in the Hutt Valley. In this context, community radio shall be taken to mean content by, for and about the people of the Hutt Valley. The station should also therefore endeavour to cover the needs, aspirations and values of minority groups in the Hutt Valley who do not have access on a regular basis to Broadcasting opportunities. This will include but is not limited to, wherever possible, the interests and activities of the senior community,

their health, leisure choices, cultural, educational, financial and legal needs; and managing, operating and continuing the development and preservation of the broadcasting service including the studio, recording and transmitting equipment, audio library and museum items collection; and identifying and accessing capital and operating funding to establish and manage any of the facilities as may be owned by the Trust from time to time and its associated activities. The activities of the Trust may involve community groups, businesses and professions supported by donations, fees, grants and subsidies.

3.4 Change in Law: If, because of any change in the law brought about by the enactment of new legislation and/or the amendment or repeal of existing legislation, or by any change in the official interpretation or official application of any such legislation, it is at any time necessary to amend the terms of this deed in order to achieve and/or preserve the availability of any concession in relation to the Trust under any of the Concessionary Provisions, which would otherwise be available were it not for the change in the law, then, despite clause 12, the terms of this deed will at that time be deemed to be amended to the extent necessary.

3.5 No Limitation: None of the purposes of the Trust will be:

3.5.1 Limited or Restricted: in any way limited or restricted by reference to or inference from the terms of any other clause or the name of the Trust, except where the context specifically or expressly requires it; and

3.5.2 Subsidiary or Ancillary: treated as subsidiary or ancillary to any other purpose of the Trust.

3.6 Purposes Independent: The Trustees are empowered to carry out any one or more of the purposes of the Trust independently of any other purpose of the Trust.

3.7 Wholly or Mainly New Zealand Purposes: The purposes of the Trust must be pursued wholly or mainly within New Zealand.

4. POWERS OF TRUSTEES

4.1 Promotion of Purposes: The Trustees, in connection with the Trust, will only promote the exclusively charitable purposes of the Trust described in clause 3.

4.2 Extent of Trustees' Powers: In particular and in addition to all other powers conferred by law, but subject to the restrictions contained in this deed:

4.2.1 Powers: the Trustees will have the same powers as if they were the beneficial owner of the Trust Fund; and

4.2.2 Powers Not Limited: the Trustees' powers will not be limited or restricted by any principle of construction or rule of law or statutory power or provision except to the extent that it is obligatory.

- 4.3 Status of Powers:** None of the powers or authorities conferred on the Trustees by this clause or otherwise will be deemed subsidiary or ancillary to any other power or authority. The Trustees may exercise any of those powers and authorities independently of any other power or authority. If there is any ambiguity, this provision will be construed so as to widen and not restrict the Trustees' powers provided that at no time shall this provision be construed so as to prevent the availability of any concession in relation to the Trust under any of the Concessionary Provisions, which would otherwise be available.

5. APPOINTMENT AND REMOVAL OF TRUSTEES

- 5.1 Number of Trustees:** The number of Trustees must be not less than three nor more than 10 provided that:

5.1.1 Increase to Minimum Number: if at any time there are less than three Trustees, the person having the power of appointment of Trustees must increase the number of Trustees to three as soon as is reasonably practicable; and

5.1.2 Actions Pending Increase: the remaining Trustees will be entitled to act until the number of Trustees is increased and no act or decision of the remaining Trustees will be called into question on account of the fact that there were less than three Trustees when that act or decision was carried out or made.

- 5.2 Power of Appointment:** The power of appointment of replacement Trustees is vested in the Trustees, who also has the following powers:

5.2.1 Additional Trustees: to appoint at any time or times an additional Trustee or additional Trustees by a motion decided by a two thirds majority of the Trustees;

5.2.2 Reappoint: to reappoint any retiring or retired Trustee as Trustee;

5.2.3 Self-Appoint: to appoint that person, or any of them, to be a Trustee;

5.2.4 When appointing Trustees in any circumstances, the Trustees must have regard to the need to appoint persons interested in the Trust purposes and capable of assisting the Trust to carry out the Trust purposes by their skill, expertise, profession, standing in the community or other qualification.

- 5.3 Power of Removal:** The entity having the powers of appointment under clause 5.2 also has the power to remove any Trustee by a motion decided by a two thirds majority of Trustees.

- 5.4 Eligibility of Trustees:** The following persons may not hold office as a Trustee:

5.4.1 Youth: an individual who is under the age of 16 years;

5.4.2 Bankruptcy: an individual who is an undischarged bankrupt or who is a discharged bankrupt but is prohibited by the Court from engaging in any form of business activity;

5.4.3 Liquidation, Receivership or Statutory Management: a company, incorporated society or any other body corporate:

- (a) **Winding Up or Liquidation:** which is being wound up or has gone into liquidation;
- (b) **Resolution to Appoint Liquidator:** in respect of which a resolution has been passed appointing a liquidator;
- (c) **Order to Appoint Liquidator:** in respect of which an order has been applied for or made by the court appointing a liquidator;
- (d) **Meeting to Appoint Liquidator:** in respect of which a meeting of shareholders or members has been called at which the appointment of a liquidator will be considered;
- (e) **Receiver or Statutory Manager Appointed:** for which a receiver or statutory manager has been appointed in respect of all or any part of its assets; or
- (f) **Arrangement in Respect of Creditors:** which has made or entered into, or attempted to make or enter into, any compromise, assignment or other arrangement with or for the benefit of all or any class of its creditors;

5.4.4 Criminal Conviction or Sentence: a person who has been:

- (a) **Crime Involving Dishonesty:** convicted of any crime involving dishonesty, within the meaning of section 2(1) of the Crimes Act 1961, and sentenced for that crime within the last seven years; or
- (b) **Other Offences:** convicted of any offence punishable by a term of imprisonment of two or more years, or sentenced to imprisonment for any offence, unless that person has:
 - (i) **Pardon:** obtained a pardon; or
 - (ii) **Service of Sentence:** served, or otherwise suffered, the sentence imposed on that person;

provided that that person will not be disqualified from appointment as a Trustee, or may continue to hold office as a Trustee, but will be deemed to have taken leave of absence, until the expiry of the time for appealing against the conviction or sentence of imprisonment, and if there is an appeal against conviction or sentence, until the appeal has been determined;

5.4.5 Disqualification from Company Positions: a person who is prohibited from being a director or promoter of, or being

concerned or taking part in the management of, a company under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988 or the Takeovers Act 1993;

5.4.6 Incapacity: a person who is subject to a property order made under the Protection of Personal and Property Rights Act 1988 or whose Property is managed by a trustee corporation under section 32 of the Protection of Personal and Property Rights Act 1988; or

5.4.7 Charities Act Order: a person who is subject to an order made under section 31 of the Charities Act 2005 disqualifying the person from being an officer of a charitable entity.

5.5 Ineligibility of Person Having Powers of Appointment: If any person having the powers of appointment under clause 5.2 and removal under clause 5.3:

5.5.1 Death or Dissolution: dies or, in the case of a body corporate, is liquidated or otherwise dissolved; or

5.5.2 Eligibility to be a Trustee: is precluded from holding office as a Trustee under clause 5.4;

then the Trustees, but excluding that person if that person is also a Trustee, will have the power to:

5.5.3 Remove Power: remove those powers of appointment and removal from that person; and

5.5.4 Revest Power: revest those powers of appointment and removal in another person who may or may not be a Trustee.

From the date of any such revesting, this clause 5.5 will apply to the person in whom the powers of appointment and removal are revested as if that person were originally named in clause 5.2.

5.6 Term of Office: A Trustee will cease to hold office if that Trustee:

5.6.1 Resignation: resigns by giving 30 days' written notice to the Secretary, who must circulate that written notice to the remaining Trustees within 10 days of receipt;

5.6.2 Ineligibility: is precluded from holding office as a Trustee under clause 5.4;

5.6.3 Failure to Attend: fails to attend three consecutive meetings of the Trustees without reasonable cause or leave of absence granted by the Trustees;

5.6.4 Death: dies while holding office as a Trustee; or

5.6.5 Removal: is removed by the person having the power of removal of Trustees.

5.7 **Recording:** 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.

6. ADMINISTRATION OF THE TRUST

6.1 **Meetings:** The Trustees must regulate and conduct meetings as follows:

6.1.1 **Annual General Meeting:** within four months of the end of each Financial Year, the Trustees must hold an annual general meeting;

6.1.2 **Notice:** the Secretary must give no less than 30 days' written notice of the annual general meeting to the Trustees;

6.1.3 **Business:** the business to be transacted at the annual general meeting will be the:

- (a) Presentation of an Annual report;
- (b) receipt of the financial statements;
- (c) appointment of the auditor (if any); and
- (d) setting of the Trustees' remuneration (if any);

and any other business will be treated as special business and will be dealt with in accordance with clause 6.1.4;

6.1.4 **Special Business:** written notice of any special business must be given to the Secretary no less than 21 days before the annual general meeting and the Secretary must circulate a written agenda including all special business to the Trustees no later than 14 days before the annual general meeting;

6.1.5 **Other Meetings:** the Trustees may otherwise meet at any times and places, which they may agree, with a minimum of four meetings to be held in one calendar year, provided that any two or more Trustees may at any time requisition a meeting of Trustees by giving written notice to the Secretary and the Secretary must, within 10 days of receipt of that notice, convene a special general meeting by giving, subject to clause 13.1, not less than 10 days' notice of the meeting to the Trustees; and

6.1.6 **Particulars of Notice:** every notice of meeting given by the Secretary to the Trustees must:

- (a) be in writing; and
- (b) state the date, time and place of the meeting;

and every notice of a meeting requisitioned under clause 6.1.5 must state the matters to be discussed at that meeting, but notice of any meeting may be abridged or waived if all the Trustees consent in writing to that abridgment or waiver.

6.2 **Quorum:** A quorum at meetings of the Trustees will be comprised of 50% of the Trustees.

6.3 **Validity of Proceedings:** All acts done by any meeting of Trustees or by any person acting as Trustee will be as valid and effectual as if that Trustee or those Trustees:

6.3.1 **Duly Appointed:** had been duly appointed;

6.3.2 **Qualified:** were qualified to hold office as Trustee; and

6.3.3 **Complied With Rules:** had complied with the rules and regulations made in accordance with clause 6.1;

even if it is later discovered that:

6.3.4 **Defect in Appointment:** there was some defect in the appointment of any of the Trustees;

6.3.5 **Trustee Disqualified:** any of the Trustees were for any reason disqualified from holding office as Trustee; or

6.3.6 **Failure to Comply:** there was accidental failure to comply with the rules and regulations made in accordance with clause 6.1.

6.4 **Chairperson:** The Trustees must appoint a Chairperson of the Trustees from among their number who will hold office at the Trustees' pleasure.

6.5 **Secretary:** The Trustees must from time to time appoint either one of their number or some other person to be Secretary who shall hold office at the Trustees' pleasure.

6.6 **Majority Decisions:** Except as otherwise provided, and subject to clause 6.2, all resolutions passed at a meeting of the Trustees may be by a majority of Trustees present at that meeting and any such resolution will be binding on all Trustees. The Chairperson will have a casting as well as a deliberative vote if there is a tie and equality of votes.

6.7 **Written Resolution:** A written resolution, signed by all the Trustees, will be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustees.

6.8 **Rescission of Resolutions:** The Trustees may from time to time rescind or vary any resolution of the Trustees by the same majority as was necessary to pass the resolution being rescinded or varied.

6.9 **Minutes:** The Trustees must provide and keep a minute book. The Secretary must prepare and enter a record of all resolutions of the Trustees in the minute book. If confirmed by the Trustees, the Chairperson must sign those minutes as a true and correct record. Every minute purporting to be so signed will be prima facie evidence of the facts stated in those minutes.

6.10 Bank Accounts: The Trustees must keep an account at a bank, which they may determine from time to time. Cheques must be drawn, signed and endorsed by any person whom the Trustees from time to time authorise in writing.

6.11 Accounts and Audits: The Trustees must ensure that:

6.11.1 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; and

6.11.2 Financial Statements: financial statements are prepared as soon as practicable after the end of each Financial Year, those statements must include:

- (a) **Financial Position:** a statement of financial position;
- (b) **Financial Performance:** a statement of financial performance; and
- (c) **Notes:** notes to those statements;

giving a true and fair view of the financial position of the Trust Fund for that Financial Year and, if the Trustees so resolve, a chartered accountant appointed for the purpose by the Trustees will audit those financial statements; and

6.11.3 Change of Balance Date: any change to the Balance Date for the Trust has been approved, if required, pursuant to section 41 of the Charities Act 2005 or otherwise.

6.12 Execution of Documents: Subject to clause 6.13, 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 persons either being a Trustee or any other person whom the Trustees from time to time authorise in writing.

6.13 Common Seal: If the Trustees become incorporated as a board under the Charitable Trusts Act 1957, then:

6.13.1 Provision and Use of Seal: the Trustees will provide a common seal for the board, which will be:

- (a) **Deposited with Secretary:** deposited with the Secretary; and
- (b) **Use of Seal:** affixed to any document requiring execution by the board under common seal; and

6.13.2 Affixation of Seal: every affixing of the common seal must be:

- (a) **Authorisation:** performed in the presence of and accompanied by the signatures of two Trustees, which will be sufficient evidence of authority to affix the seal; and

- (b) **Seal Register:** recorded in a seal register retained for such purpose.

6.14 **Preparation and Filing of Documents and Other Information:** The Trustees must 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, so as to achieve or preserve the availability of any concession in relation to the Trust under any of the Concessionary Provisions.

6.15 **Notices:** Any notice to be given to the Secretary under this deed must be in writing signed by the person giving the notice and served at the office of the Trust. Any notice or document so served will be deemed to be duly given:

6.15.1 **By Hand:** if delivered by hand, when so delivered;

6.15.2 **By Facsimile:** if delivered by facsimile, when receipt is confirmed;

6.15.3 **By Post:** if delivered by post, on the third working day after posting; or

6.15.4 **By E-mail:** if sent by e-mail, on the sender's receipt of an e-mail message indicating that the e-mail has been opened at the recipient's terminal.

7. LIABILITY OF TRUSTEES

7.1 **Liability for Loss:** No Trustee will be liable for any loss to the Trust Fund arising from any act or omission of the Trustee unless it is attributable to that Trustee's own dishonesty or to the wilful commission or omission of any act known by that Trustee to be a breach of trust.

7.2 **Trustee Act 1956:** Subject to clause 7.1, despite:

7.2.1 **Section 13C:** the provisions of section 13C of the Trustee Act 1956; and

7.2.2 **Professional Trustees:** the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others;

the care, diligence and skill to be exercised by those persons will not be that required by section 13C of the Trustee Act 1956 but will at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

7.3 **Proceedings:** No Trustee will be bound to take, or be liable for failure to take, any proceedings against any other Trustee or former Trustee for any breach or alleged breach of trust committed by that other Trustee or former Trustee.

7.4 Receipt of Money: Subject to clauses 7.1 and 7.2, a Trustee will be chargeable only for any money, which that Trustee has received. For the purposes of this clause, a Trustee is deemed to have received money even if not actually paid to that Trustee if that money has been credited in account, reinvested, accumulated, capitalised, carried to any reserve, sinking or insurance fund, or otherwise dealt with on that Trustee's behalf.

8. INDEMNIFICATION OF TRUSTEES

Each Trustee or former Trustee is entitled to be indemnified out of the Trust Fund against all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses (together called "liabilities") suffered or incurred by that Trustee or former Trustee in connection with the Trust, except to the extent that those liabilities are due to:

- 8.1 Dishonesty:** that Trustee's or former Trustee's own dishonesty or lack of good faith; or
- 8.2 Wilful Breach of Trust:** that Trustee's or former Trustee's wilful commission or omission of an act known by that Trustee or former Trustee to be a breach of trust.

9. TRUSTEE REMUNERATION AND EXPENSES

- 9.1 Professional Remuneration:** Subject to clause 9.3, any Trustee being a lawyer, accountant or other person engaged in any profession, business or trade is entitled to be paid all usual professional, business and trade charges for services provided by that person or that person's employee or partner in connection with the Trust including acts, which a Trustee, not being in any profession, business or trade, could have done personally.
- 9.2 General Remuneration:** Subject to clause 9.3, each Trustee is entitled to such remuneration for services provided as may be reasonable having regard to that Trustee's duties and responsibilities and to any remuneration paid to that Trustee in accordance with clause 9.1 for those services.
- 9.3 Proviso:** Any payment to a Trustee referred to in clauses 9.1 and 9.2 must not exceed fair market value for services provided and, where any such payment is a benefit or advantage to which clauses 11.2 to 11.4 apply, no Trustee receiving such payment and no person associated with such Trustee may:
 - 9.3.1 Take Part:** take part in any deliberations or proceedings relating to that payment; or
 - 9.3.2 Determine or Influence:** 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.
- 9.4 Expenses:** Each Trustee is entitled to be indemnified against, and reimbursed for, all travelling, hotel and other expenses properly incurred in connection with the Trust.

10. NO PRIVATE PROFIT

Nothing expressed or implied in this deed will permit:

10.1 Trustees' Activities: the Trustees' activities; or

10.2 Business: any business carried on by or on behalf of or for the benefit of the Trustees;

in connection with the Trust, to be carried on for the private profit of any individual.

11. RESTRICTIONS RELATING TO BUSINESS INCOME

11.1 General Restrictions: In any tax year, for the purposes of the Income Tax Act 2007, where any business, within the ambit and scope of the Income Tax Act 2007 and in particular section CW 42 of that Act, is carried on by or for the benefit of the Trust:

11.1.1 Tax Exempt Business Income: the Trustees must not derive directly or indirectly from any such business any amount of income that is not exempt from income tax under section CW 42 of the Income Tax Act 2007; and

11.1.2 Benefits/Advantages to Certain Persons: within the ambit and scope of clauses 11.2 to 11.4, no person with some control over the business may direct or divert, to their own benefit or advantage, any amount derived from that business.

11.2 Persons who may have Control: For the purposes of clause 11.1.2, a person who may have some control over the business is a person who is, within the ambit and scope of sub-sections CW 42(5) to (7) of the Income Tax Act 2007:

11.2.1 Settlor or Trustee: a settlor or trustee of a trust carrying on the business or of a trust that is a shareholder in a company carrying on the business; or

11.2.2 Director or Shareholder: a director or shareholder of a company carrying on the business; or

11.2.3 Associated Person: a person associated with any person described in clauses 11.2.1 and 11.2.2.

11.3 Relevant Benefits/Advantages: For the purpose of clause 11.1.2, an amount is directed or diverted to the benefit or advantage of a person described in clause 11.2 if that person is given or receives from the business any benefit or advantage, whether or not convertible into money, within the ambit and scope of sub-sections CW 42(6) to (8) of the Income Tax Act 2007, or any income of a kind specified in and not excluded by those sub-sections.

11.4 Control over the Business and Ability to Direct or Divert Amounts: For the purpose of clause 11.1.2, a person described in clause 11.2 has some control over the business and is able to direct or divert amounts from the business to their own benefit or advantage if, by virtue of their position

described in clause 11.2 and within the ambit and scope of sub-sections CW 42(5) to (8) of the Income Tax Act 2007, that person is, in any way, whether directly or indirectly, able to determine or materially influence in any way the determination of:

11.4.1 Nature/Extent of Benefit/Advantage: the nature or extent of any benefit, advantage or income described in clause 11.3; or

11.4.2 Circumstances of Receipt: the circumstances in which any benefit, advantage or income described in clause 11.3 is, or is to be, given or received.

12. MODIFICATION OF TRUST TERMS

The Trustees may from time to time by resolution carried by a majority of two thirds of their number at that time modify or amend any term of this deed, but no modification may at any time be made that would:

12.1 Charitable Purposes: allow the Trust to operate other than for charitable purposes in New Zealand or to operate for private profit; or

12.2 Concessionary Provisions: affect the eligibility of the Trust for the benefit of any of the Concessionary Provisions, unless in relation to any such provision the Trustees have unanimously determined that eligibility for the benefit of that provision is not required in the best interests of pursuing the purposes of the Trust.

13. WINDING UP THE TRUST

13.1 Resolution: The Trustees may wind up the Trust by a unanimous resolution of the Trustees, provided that:

13.1.1 Resolution at Meeting: that resolution must be passed at a Trustees' meeting called for that purpose; and

13.1.2 Notice of Meeting: the Secretary must give not less than 30 days' notice of that meeting to the Trustees.

13.2 Surplus Property: If, on the winding up of the Trust, any portion of the Trust Fund remains after satisfaction of all the debts and liabilities of the Trustees in connection with the Trust, none of that portion may be paid out or distributed other than for charitable purposes carried out within New Zealand. Alternatively, any surplus Property remaining after the winding up or dissolution of the Trust may be disposed of at the direction of a Judge of the High Court of New Zealand.

14. GOVERNING LAW

This deed is governed by New Zealand law. The Trustees submit to the non-exclusive jurisdiction of all courts having jurisdiction in New Zealand.

EXECUTED AS A DEED

S9(2)(a)

SIGNED by S9(2)(a)
as Settlor in the presence of:

Witness:

S9(2)(a)

Signature of witness

S9(2)(a)

Full name of witness
Legal Typist
Lower Hutt

Occupation of witness

Address of witness

S9(2)(a)

SIGNED by S9(2)(a)
as one of the Trustees in the presence of:

Witness:

S9(2)(a)

Signature of witness

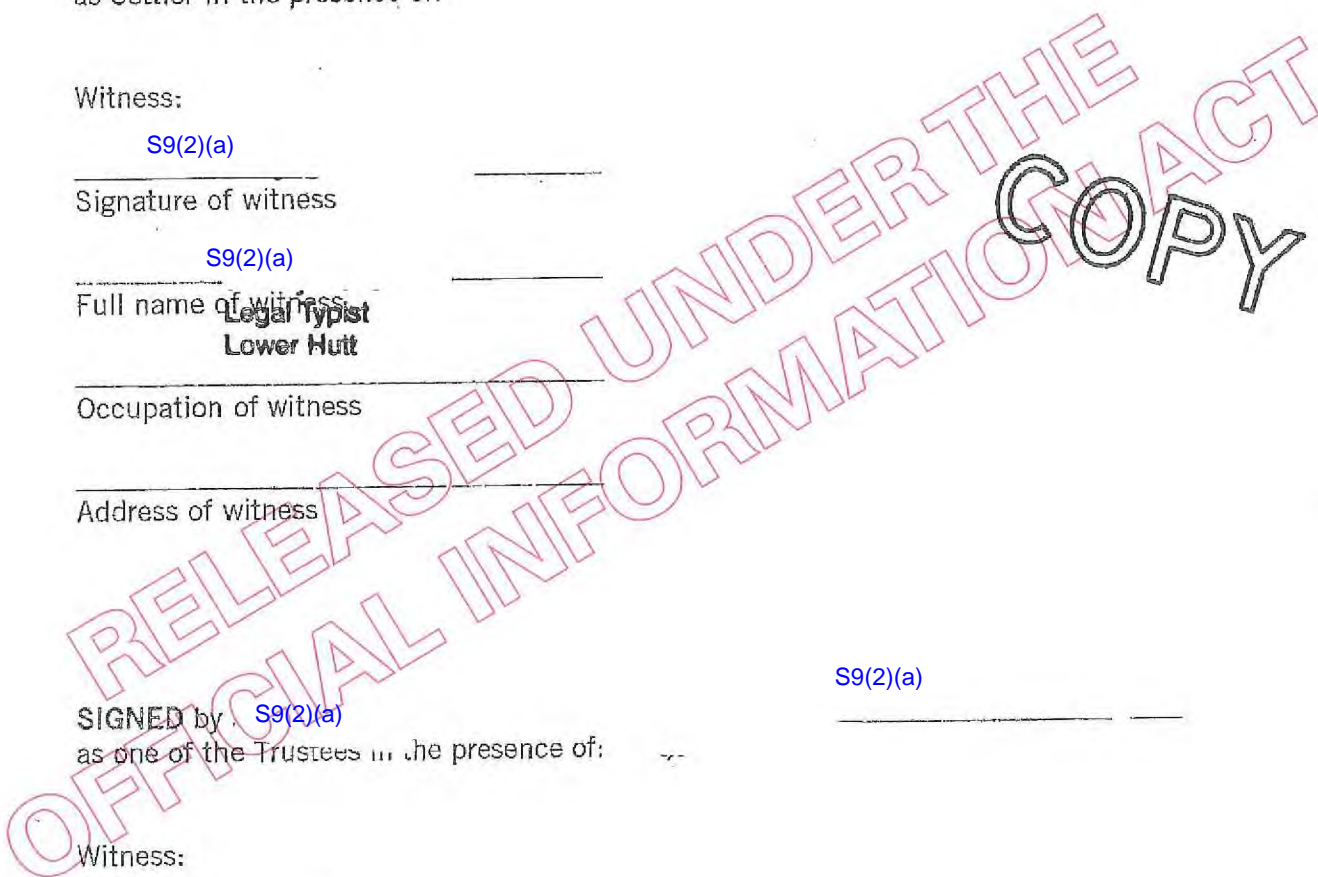
S9(2)(a)

Full name of witness
Legal Typist
Lower Hutt

Occupation of witness

Address of witness

S9(2)(a)



S9(2)(a)

SIGNED by
as one of the Trustees in the presence of:

Witness:

S9(2)(a)

Signature of witness

S9(2)(a)

Full name of witness

Secretary
Occupation of witness

S9(2)(a)

Address of witness

SIGNED by S9(2)(a)
as one of the Trustees in the presence of:

Witness:

S9(2)(a)

Signature of witness

S9(2)(a)

Full name of witness

OFFICE MANAGER
Occupation of witness

S9(2)(a)

Address of witness

SIGNED by S9(2)(a)
as one of the Trustees in the presence of:

S9(2)(a)

Witness:

S9(2)(a)

Signature of witness

S9(2)(a)

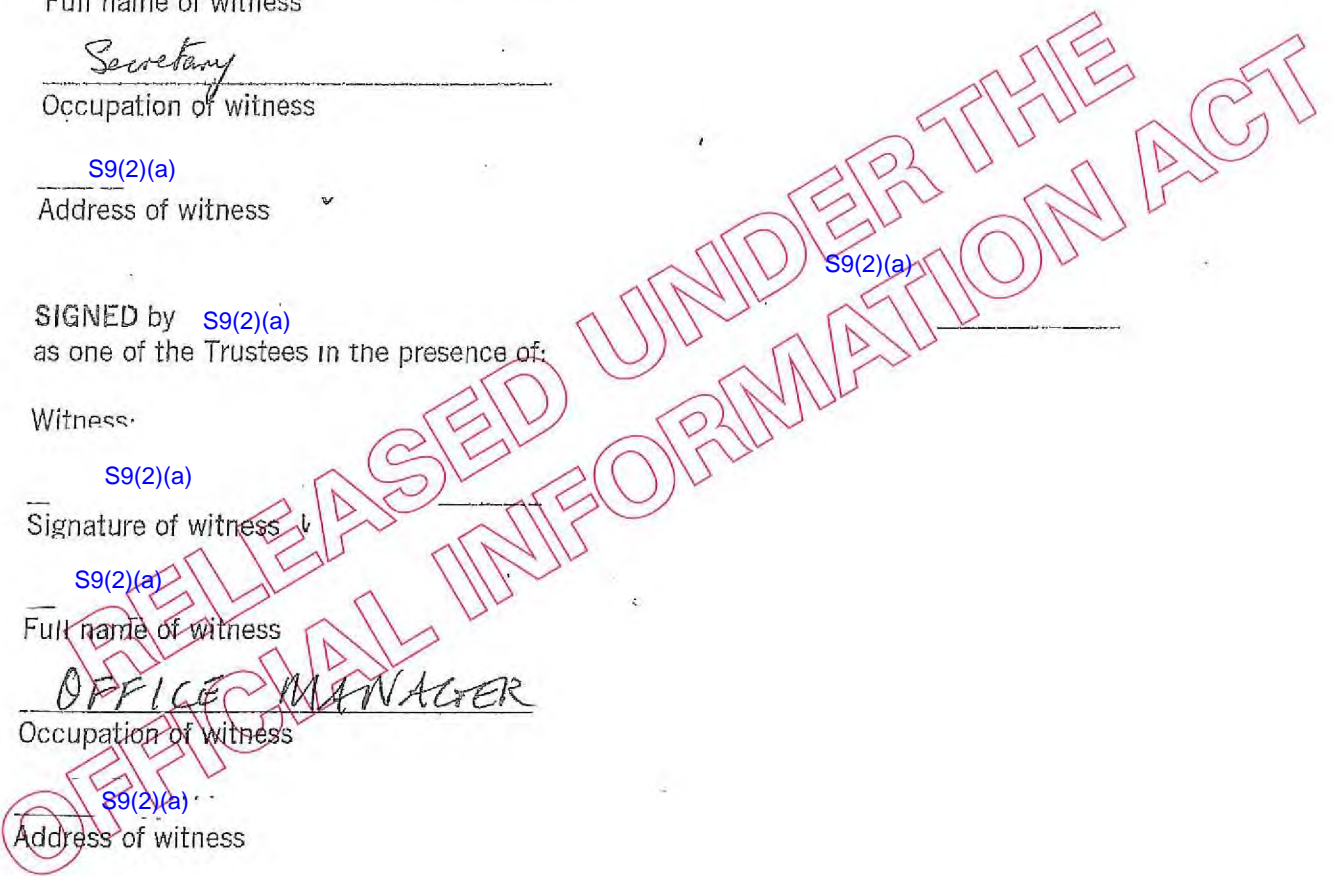
Full name of witness
**Legal Typist
Lower Hutt**

Occupation of witness

S9(2)(a)

Address of witness

S9(2)(a)



RELEASED UNDER THE
OFFICIAL INFORMATION ACT