

# **THE NEW ZEALAND-SOUTH PACIFIC DISTRICT KIWANIS FOUNDATION TRUST**

## **CONSTITUTION**

### **DEFINITIONS**

- 1 In this Constitution (including the First Schedule) unless the context otherwise requires -

**“Annual Convention”** means the annual meeting of the District held in accordance with the District bylaws.

**“Board of Trustees”** means the Board of the Foundation Trustees from time to time of the District.

**“Delegates”** means the persons having official voting status at the Annual Convention of the District.

**“District”** means the New Zealand-South Pacific District of Kiwanis International as defined from time to time in the bylaws of that organisation.

**“District Governor”** means the District Governor from time to time of the District.

**“District Governor-Elect”** means the District Governor-Elect from time to time of the District.

**“District Treasurer”** means the District Treasurer from time to time of the District.

**“Foundation Board”** means the Board of the Foundation Trustees.

**“Foundation Trustees”** means the members from time to time of the Foundation Board the composition of which is set out in the First Schedule.

**“Income”** means the monies earned by the Trust Fund whether by way of interest, dividends of other form which is normally taken as income and shall also include all monies received by way of gifts, bequests, legacies or other acquisitions which the donor has specified shall be distributed.

**“Trust Fund”** means all contributions whether in the form of money or other property as may be given or transferred to the Trust and any additions or accretions thereto.

In this Constitution the plural number includes the singular number and vice versa.

The section headings appear as a matter of convenience and shall not affect the construction of this Constitution.

#### **OBJECTS OF THE TRUST**

- 2 The Trust Fund shall be applied towards the advancement or assistance in New Zealand and the Pacific Islands of any or more of such bodies or purposes which are charitable according to the law of New Zealand in such proportions and in such manner as the Foundation Trustees shall from time to time fit. Without limiting the generality hereof the Foundation Trustees may apply the Trust Fund towards the following aim:-

The advancement of education – including the establishment and support of educational institutions of all kinds; gifts to learned societies; gifts for the education of special classes of persons; and instruction in special subjects **PROVIDED ALWAYS** that the public at large will benefit and that the applications of the Trust Fund is of a public nature.

#### **NAME OF THE TRUST**

- 3 The name of the Trust Fund shall be THE NEW ZEALAND-SOUTH PACIFIC DISTRICT KIWANIS FOUNDATION TRUST (“the Trust”).

#### **POWER AND AUTHORITIES IN RELATIONS TO THE TRUST FUND**

- 4 (a) For the purposes of the Trust the Foundation Trustees shall have absolute power and uncontrolled discretion to accept gifts, bequests, legacies or other acquisitions of whatever nature and whether conditional or otherwise for the carrying out of any of the purposes of the Trust, and all such gifts, bequests, legacies or acquisitions shall unless otherwise specified by the donor become and form part of the Trust Fund;
- (b) The Foundation Trustees shall have absolute power and uncontrolled discretion from time to time to apply or expend the whole or any part of the Income of the Trust Fund for or towards any of the objects of the Trust;
- (c) The Foundation Trustees shall from the Trust Fund pay or otherwise discharge all costs and expenses and all other fees incurred in connection with or incidental to:
- (i) The preparation, completion and all related work and incidental to the acquisition by the Foundation Trustees or the transfer to the Trust of any property intended to form part of the Trust Fund.

- (ii) Generally all other debts liabilities costs and expenses which the Foundation Trustees or the District may from time to time be called upon to pay or defray and all monies which may at any time be payable for any reason whatsoever in respect of the trusts hereby declared or in any way arising hereunder.

**PROVIDED ALWAYS** that if the Trust Fund shall be insufficient to pay or otherwise discharge in full the abovementioned debts liabilities and other monies, no personal liability shall attach to any member of the Foundation Trustees in respect of any such insufficiency and no claim in respect thereof shall be enforced personally against any member of the Foundation Trustees.

- (d) In respect of any allocation of funds to any charitable body or institution the Foundation Trustees of the Trust may pay same to the secretary, treasurer or other proper officer or any person recognised by the Foundation Trustees as having responsibility thereof whose full receipt shall be a full discharge to the Foundation Trustees for that allocation of monies nor shall the Foundation Trustees be bound to see to the application thereof.
- (e) The Foundation Trustees shall have (without in any way limiting the generality of their powers) the following further powers and authorities:-
  - (i) Power to invest the Trust Fund and all accumulations of income not otherwise disposed of and which are not immediately required to be expended for the purposes of the Trust in investments authorised by law in New Zealand for the investment of trust funds or in the purchase acquisition or development of real property in New Zealand or upon demand with any company the stock or shares of which are authorised trustee investments or in the purchase or acquisition of bills of exchange issued by any such company unless investment in any such manner shall be expressly prohibited by any instrument under which the Foundation Trustees acquired such funds provided that the investment of specified funds in any manner which is not authorised by law in New Zealand for investment of trust funds shall be permissible if the instrument of conveyance or gifts to the Trust of such funds so authorised. All investments may be varied or transposed from time to time into or for other investments authorised according to the provisions of this paragraph with respect to the original investment or the proceeds thereof.
  - (ii) Power to borrow and raise money upon such terms and conditions as the Foundation Trustees consider fit including the power to borrow money by way of overdraft or otherwise for any of the purposes of the Trust and to secure the repayment thereof

by mortgage with or without power of sale or charge on all or any part of the property of the Trust.

- (iii) Power to allow all investments at any time forming part of the Trust Fund to remain in the actual state of investment thereof so long as the Foundation Trustees may think fit and at any time or times to sell or call in or convert into money the aforesaid investments or any part thereof.
- (iv) (aa) Power to sell call in convert into money all or any part of the Trust Fund whenever however and on whatever terms and Conditions the Foundation Trustees consider fit WITH POWER to receive payment wholly or partly in cash or in company shares debentures or debenture stock and to give time for payment of the purchase money with or without security.  
  
(bb) Without being liable for the loss to allow whatever portion of the purchase money the Foundation Trustees consider fit to remain owing on mortgage although the margin of security may not be sufficient for the purposes of the Trustee Act 1956 and with power also to buy in any property offered for sale and to rescind any contract of sale and to resell without being responsible for any diminution in price.
- (v) Power to postpone such sale calling in and conversion for so long as the Foundation Trustees consider fit notwithstanding that the property may be of a wasting speculative or reversionary nature.
- (vi) Power to enter into any exchange of real and personal property with or without payment or receipt of money for equality of exchange upon whatever terms and at whatever values the Foundation Trustees consider fit.
- (vii) Power to apply any money for the time being forming part of the Trust Fund in improving or developing any land which or the proceeds of sale of which may for the time being be subject to the trusts hereof or erecting enlarging or improving or rebuilding any buildings upon such land.
- (viii) (aa) Power to let lease or bail any property whatever upon such terms and at such rent as the Foundation Trustees consider fit without being responsible for any inadequacy of rental including at its discretion an optional or

compulsory purchasing clause and also to accept surrenders of leases tenancies and bailments and generally to manage them as the Foundation Trustees consider fit.

- (bb) Power to take on lease or under bailment any property whatever or an undivided interest therein from any person either from year to year or for any term of years or otherwise at whatever rent and subject to whatever terms and conditions the Foundation Trustees consider fit including at the discretion of the Foundation Trustees an optional or compulsory purchasing clause.
- (cc) Power to surrender leases tenancies and bailments.
- (dd) Power to generally deal with leases tenancies and bailments as the Foundation Trustees consider fit.
- (ix) Power to lend money to any person including any beneficiary on any terms and subject to whatever conditions (if any) as to security or interest or time for replacement as the Foundation Trustees consider fit.
- (x) Power to effect any policy of insurance upon the life of any person including any beneficiary (and whether term endowment or whole life assured) and to apply any part or parts of the Income of the Trust Fund in or towards the payment of any premium for the effecting or the maintaining of any such policy.
- (xi) Power to make known by printed publication or otherwise any information or advice concerning any matter relating to the purpose of this Trust and with a view thereto to acquire, set up, maintain, print, publish and circulate journals, magazines, pamphlets and other literary or scientific works as the Foundation Trustees may deem beneficial in any way to the public or any section thereof.
- (xii) Power to distribute the Trust Fund PROVIDED ALWAYS that the said Trust Fund is not reduced below ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in value AND PROVIDED FURTHER that the amount to be so distributed pursuant to this subclause shall not exceed in any one year ten per centum (10%) of the Trust Fund as disclosed in the last audited balance sheet of the Trust Fund.

AND PROVIDED FURTHER that in the exercise of each of the above powers of (vii), (viii), (ix) and (x) of this clause any transaction entered into must be bona fide and at a normal commercial rate TO THE INTENT

that no person shall obtain any private pecuniary profit therefrom nor shall the Fund be applied to non-charitable purposes.

#### **MANAGEMENT AND INVESTMENT OF THE TRUST FUND**

- 5 In the management and investment of the Trust Fund the Foundation Trustees shall be under none of the duties prescribed by sections 13B and 13C of the Trustee Act 1956 or preserved by section 13F of the Act and shall not be under any duty to diversify investments.

#### **POWER TO DELEGATE**

- 6 In the carrying out of its responsibilities the Foundation Trustees may delegate any of its powers authorities and discretion's to any person or persons committee or committees appointed by it for such purpose or purposes and for such period or periods as it may determine, and may at any time rescind extend or vary such delegation or powers. Any such committee of the Foundation Board shall have power to co-opt persons who are not members of the Foundation Board to be members of such committee. The Chairperson of the Foundation Board shall be ex officio a member of every committee set up by the Foundation Board.

#### **PROCEEDINGS OF TRUSTEES**

- 7 The Chairperson shall preside at every meeting of the Foundation Board at which the Chairperson is present. In the absence of the Chairperson from any meeting of the Foundation Board the members present shall appoint one of their number to act as Chairperson at that meeting and the member while so acting shall have all the powers of the Chairperson.
- 8 The quorum for the meeting of the Foundation Board shall be three (3) members present and entitled to vote. Questions arising at any meeting shall be determined by a majority of votes. The parliamentary authority for all matters of procedure not specifically covered herein shall be "*Robert's Rules Of Order*".
- 9 Apart from and in addition to the other provisions herein contained relating to the powers duties and functions of the Foundation Board, the following further provisions shall apply:-
  - (i) The Foundation Board shall hold meetings at such times and in such places as the Foundation Board shall from time to time appoint or decide. The Chairperson shall have the right to call a meeting at any time, and a meeting shall be called or cause to be called with all reasonable speed if at any time any three (3) members of the Foundation Board so require; and each Foundation Board member shall be entitled to receive not less

than twenty-one (21) days prior notice in writing of every Foundation Board meeting.

- (ii) The Foundation Board shall cause minutes to be duly entered in the books provided for the purpose of all resolutions and proceedings of meetings and of all other matters as the Foundation Board may from time to time determine.
- (iii) Any minutes of any meeting of the Foundation Board or of any committee of the Foundation Board if purporting to be signed by the Chairperson of such meeting or by the Chairperson of the next succeeding meeting shall be receivable as prima facie evidence of the matter stated in such times.
- (iv) A resolution in writing signed by all members of the Foundation Board shall be as valid and effectual as if it had been passed at a meeting of the Foundation Board.
- (v) The Foundation Board shall keep or cause to be kept full and accurate accounts of all receipts payments assets liabilities and obligations of the Foundation Board and shall, as at a date in each year to be fixed from time to time by the Board of Trustees prepare or cause to be prepared a full and proper statement of accounts and balance sheet and shall cause the same to be audited annually by an auditor appointed by the Board of Trustees and such audited statement of accounts and balance sheet together with an annual report by the Chairperson which shall include full details of all bequests donations gifts grants and subsidies made in the year under review shall be submitted to the Board of Trustees and the Delegates at the Annual Convention not later than ninety (90) days from such balance date.
- (vi) The Foundation Board shall have a Common Seal which shall be kept at such place as the Foundation Board shall from time to time decide, and such Common Seal shall only be affixed to any document by resolution of the Foundation Board and in the presence of any two members of the Foundation Board or any one member of the Foundation Board and the secretary of the Foundation Board, and the Foundation Board shall have power to vary break or renew such Common Seal.
- (vii) Any notice to be served upon a member of the Foundation Board may be served either personally or by sending it through the post in a prepaid letter addressed to such member at his last known place of business or residence in New Zealand and any notice if served by post shall be deemed to be served at the time when the letter containing the same would have been delivered in the ordinary course of post.
- (viii) A member of the Foundation Board (or any committee thereof) shall not vote upon any matters before the Foundation Board (or committee) in which he has directly or indirectly any pecuniary interest other than an

interest in common with the public or with the members of the Foundation Board (or committee) generally and such member may only be present at the meeting or take part in the discussion of such matter to the extent (if any) permitted by the Foundation Board (or committee) meeting as the case may be.

- (ix) Any Foundation Board Member who under the preceding clause hereof is prohibited from participation in any matter before the Foundation Board (or committee as the case may be) by reason of pecuniary interest shall, when the matter is raised before the Foundation Board (or committee as the case may be) declare to the meeting the fact that he has such pecuniary interest; and the fact of such disclosure shall be duly recorded in the Foundation Board's (or committee's) minutes.
  - (x) The Foundation Board may adopt vary amend and revoke rules and regulations relating to any matter coming within its powers including regulations for the conduct of its business or of any of its committees; provided however that any such decision to adopt vary amend or revoke such rules and regulations may only be taken after twenty-one days (21) prior notice in writing of a Foundation Board meeting to consider such proposed adoption variation amendment or revocation shall have been given to every member of the Foundation Board.
  - (xi) The Foundation Board may adopt at any time and from time to time as it may think fit any rule or rules or any Administration Policies governing itself and all its members in respect of its relations with the public, any section of the public, press, radio, television, or other media.
- 10 Members of the Foundation Board and of any committee of the Foundation Board shall be entitled to be indemnified out of the Income of the Trust Fund in respect of all expenses properly incurred by them in their capacity as such Foundation Board or committee members.
- 11 In addition and without prejudice to the statutory provisions in relation to the indemnity of trustees, the members of the Foundation Board or of any committee of the Foundation Board shall not be answerable or accountable the one for the others of them, or for the acts deeds defaults receipts payments or disbursements of the others of them, or be charged or chargeable with or accountable for any further or any sum or sums of money or other trust property than what shall actually come to the hands of and be received by them respectively notwithstanding that they or any of them shall give or sign or join or concur in giving or signing any receipt for the sake of conformity and shall not be answerable or accountable for the insufficiency defects or failure of any banker broker auctioneer agent or other person firm company society association corporation or bank in whose hands the trust property shall or may at any time happen to be by them placed or lodged for any purpose or who may be allowed to receive the same in the course of the execution of this Trust or for any defect in the title or evidence of title to any property which the Foundation



Board shall or may purchase or on the security of which they may lend money in any case where the title shall have been accepted by the solicitors of the Foundation Board on their behalf or for any deficiency or depreciation in value of any property in or upon which any monies may have been invested or for the loss or damage which may happen to all or any of the Trust property and if and so often as any such Foundation Board or committee member shall pay over or cause or permit any other member to receive any sum of money to the intent that the same may be applied by such member for the purposes of this Trust it shall not be incumbent on the member making such payment to see or enquire in the application of the said money or to ascertain the truth or accuracy of any representation made by the other member concerning the same, but the foregoing exemptions from legal responsibility shall not effect the right of any member to call for accounts or to enquire into the transactions of any other member.

- 12 This Constitution may be altered added to rescinded or otherwise varied by a resolution passed by a three-fourths majority of the Delegates to the Annual Convention of the District provided that at least one calendar month's notice in writing convening the meeting and specifying the proposed alteration to the Constitution has been given to the Delegates and all members of the Foundation Board PROVIDED THAT no alteration shall be valid that has the effect of altering the general charitable purposes of this Trust.
- 13 If the whole of the purposes of the Trust hereby created shall fail the Trust Fund shall be realised and the net proceeds shall be applied in such manner as the Foundation Board shall in its absolute and uncontrolled discretion decide toward the furtherance of such charitable purposes in New Zealand and/or the Pacific Islands as such charitable purposes are set out in the aims and objects contained in Clause 2 hereof and which are of a nature similar or complementary to the purposes of this Trust as the Foundation Board shall select.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

Certified as the Constitution of THE NEW ZEALAND-SOUTH PACIFIC DISTRICT KIWANIS  
FOUNDATION TRUST

District Governor: \_\_\_\_\_

District Governor Elect: \_\_\_\_\_

District Treasurer: \_\_\_\_\_

31 August 2019

## **FIRST SCHEDULE**

### **FOUNDATION BOARD**

- 1        (a)        The Foundation Trustees as described and defined in the Constitution shall comprise the members of the Foundation Board.
- (b)        The Foundation Board shall from time to time consist of six (6) Kiwanis members in good standing who shall be the following persons –
- (i)        The District Governor
  - (ii)       The District Governor-Elect
  - (iii)       The District Treasurer
  - (iv)       One member appointed by the said District Governor
  - (v)        Two members elected in alternate years by the Delegates at the Annual
  - (vi)       Convention to each serve for a period of two years.

All such members shall assume office the 1<sup>st</sup> day of October in each year but no Trustee except the District Treasurer shall serve for a period exceeding four (4) consecutive years.

All nominations for the positions of Trustees shall be made in writing at least Sixty (60) days prior to the official opening of Annual Convention and the Foundation Board shall advise all Kiwanis Clubs of the District.

If no nomination for the position of Trustee has been received in accordance with the provisions of this clause, then nominations may be received at the annual convention and any nomination or nominations shall be voted on by the delegates in accordance with clause 1 (b) (v) of this First Schedule.

Furthermore, if no such nomination is received at the annual convention, then the remaining Trustees of the Foundation Board may appoint a person to fill the vacancy for the remainder of the term of this office.

- (c)        The Chairperson shall be such member of the Foundation Board as the District Governor shall appoint.
- (d)        Any Foundation Trustee may retire from office by giving at least one month's notice in writing to the Chairperson. The vacancy so occurring may be filled by appointment by the Foundation Board but the term of such appointment shall only be for the remainder of vacancy so occurring.
- (e)        The office of any member of the Foundation Board shall be vacated if or when they shall die or become bankrupt or of unsound mind or if they shall absent from two consecutive meetings of the Foundation Board without leave of absence or is not a Kiwanian in good standing in his Club or has leave of absence from the Club and has not sought leave from the Foundation Board.

- (f) The Chairperson shall in each and every year prepare an Annual report which shall incorporate a Financial Report and Balance Sheet providing details of all income and expenditure including donations bequests (each to be identified) and interest received by the Foundation such Report to be presented to the Governor of the New Zealand-South Pacific District of Kiwanis International at any time prior to the Annual Convention in each year.
- (g) The Foundation Board shall appoint a secretary to the Foundation Board and such person if a Foundation Trustee shall be entitled to vote on any matter where a vote is taken. In all other cases such secretary shall only have speaking rights.