

Date _____ 2003

CAPITAL REGION COMMUNITY FOUNDATION OPEN FUND

DECLARATION OF TRUST

(Consolidated Gift Fund Deed at 9 July 2018 including all previous amendments)

**ACT Government Solicitor
1st Floor, GIO House
250 City Walk
CANBERRA CITY ACT 2601
PO Box 260 Civic Square ACT 2608
Ph: 6207 0666
Fax: 6207 0650**

Ref: PJFG/LK: 02-3-490397

CONTENTS

1.	Definitions.....	1
2.	Matters Affecting Interpretation.....	3
3.	Establishment of the Trust	3
4.	Trust Funds	3
5.	Existing Trusts	4
6.	The Capital Region Community Foundation Open Fund Board.....	4
7.	Casual Vacancies.....	5
8.	Remuneration of Members of the Board	5
9.	Disqualification of Members of the Board.....	5
10.	Duties of the Board.....	6
11.	Proceedings of the Board	6
12.	Appointment of Chairperson.....	6
13.	Board may act notwithstanding vacancies etc.....	6
14.	Minutes	7
15.	Management.....	7
16.	Determination of Yearly Distribution Recommendations	7
17.	Distribution of Income and Capital	8
18.	Investment.....	9
19.	Winding Up.....	9
20.	Books of Account.....	9
21.	Audit	9
22.	Trustee's Fees.....	9
23.	Amendment of Trust Deed.....	9
24.	Trustee's Powers	10
25.	Proper Law	11
26.	Severance	11

THIS DEED is made on

2003

BY: **THE PUBLIC TRUSTEE FOR THE AUSTRALIAN CAPITAL TERRITORY**, a corporation sole under the *Public Trustee Act 1985* (ACT) (“Public Trustee”)

AND: **NAME AND ADDRESS WITHHELD FOR PRIVACY REASONS**, Australian Capital Territory (“Settlor”).

BACKGROUND:

- A.** The CAPITAL REGION COMMUNITY FOUNDATION OPEN FUND is a public fund established under this Deed for the purpose of receiving money and property to be appropriated to Designated Charities.
- B.** Lady Helen Deane has agreed to be patron of the Foundation.
- C.** The Settlor wishes to gift money to the Open Fund.
- D.** The Public Trustee and Guardian has consented to become trustee of the Open Fund subject to the terms and conditions of this Deed.
- E.** Persons wishing to support the Foundation may make contributions to the Open Fund and it is contemplated that the Foundation will accept contributions (whether testamentary or inter vivos) from any person or organisation.

1. Definitions

In this Deed unless the context otherwise indicates:

“**Board**” means the Capital Region Community Foundation Open Fund Board established under clause 6 of this Deed;

“**Capital Region Community Foundation Open Fund**” means the fund established under clause 4(1) of this Deed;

“**Capital**” means that part of the Trust Fund as does not constitute income;

“**Chairperson**” means the member of the Board appointed as chairperson under clause 12 of this Deed;

“**Corporation**” includes a body politic or corporate;

“**Deed**” means this Trust Deed as originally executed and as it may from time to time be

lawfully amended, varied or added to (except as otherwise provided in any instrument effecting an amendment, variation or addition);

“**Deputy Chairperson**” means the member of the Board appointed as deputy chairperson under Clause 12 of this Deed;

“**Designated Charity**” means a fund, authority or institution which is:

- (1) charitable at law; or
- (2) is endorsed as a charitable institution under subdivision 50-B of the ITAA 1997, or is an exempt entity under Division 50-A of the ITAA 1997;

“**Existing Trust**” means any trust formed after the creation of the Trust;

“**Foundation**” means the Capital Region Community Foundation;

“**Open Fund**” means the Capital Region Community Foundation Open Fund;

“**Income**” means the net income of the Trust as defined in subsection 95(1) of the *Income Tax Assessment Act 1936*, notwithstanding that all or part of that income may at law constitute capital;

“**ITAA 1997**” means the *Income Tax Assessment Act 1997* (Cth);

“**Person**” includes an individual or a corporation;

“**Property**” means real or personal property of any kind or tenure, any debt, any chose in action and any estate rights or interest, at law or in equity in or over property;

“**Settled Sum**” means the amount of \$10.00 gifted to the Open Fund by the Settlor and that will initially constitute the Trust Fund on the signing of this Deed;

“**Settlor**” means the person named and described in this Deed as the Settlor;

“**Trust**” means the trust created by this Deed;

“**Trustee**” means the person named and described in this Deed as the Trustee or as otherwise added or substituted from time to time;

“**Trust Fund**” means the Settled Sum, all moneys, investments and property from time to time paid or transferred to and accepted by the Trustee as additions to the Trust Fund, all accretions to the Trust Fund, all accumulations of income empowered under this Deed and includes a part of the Trust Fund; and

“**Year**” means any financial year ending on 30 June, or ending on such other day in any year as the Trustee may determine, provided that the period commencing on the date of this Deed and ending on the 30 June next will be a year for the purposes of this Deed.

2. Matters Affecting Interpretation

In this Deed, unless the context otherwise requires:

- (1) headings are for convenience only and have no effect on the interpretation of the provisions to which they refer;
- (2) words in the singular number include the plural and vice versa and words importing a gender include the others; and
- (3) references to legislation or to provisions of legislation include references to amendments or re-enactments of them and to all regulations and statutory instruments issued under the legislation.

3. Establishment of the Trust

3.1 Appointment of Trustee

The Public Trustee and Guardian is appointed as Trustee of the Trust with effect from the constitution of the Trust and the Public Trustee and Guardian by execution of this Deed accepts appointment as Trustee. The Public Trustee and Guardian may at any time increase the number of trustees and in its sole discretion appoint additional trustees to the Trust.

3.2 Initial Settlement

The Trustee acknowledges receipt of the Settled Sum which the Trustee will hold on trust and subject to the terms and conditions of this Deed.

3.3 Declaration of Trust

The Trustee declares it will hold the Trust Fund and the income of the Trust Fund on trust solely for the purpose of appropriating moneys to Designated Charities on the trusts and subject to the terms of this Deed.

3.4 Further Settlements

The Trustee may from time to time accept further sums of money and property as an addition to the Trust Fund.

4. Trust Funds

- (1) The Trustee will establish and maintain the Open Fund to receive the moneys and property from persons or their legal personal representative, including any income from that money or property, and to distribute those moneys to Designated Charities.

- (2) Subject to clause 4(3) of this Deed and Division 6.3 of the *Public Trustee and Guardian Act 1985*, any amount contributed to the Open Fund under this Deed by any person and the income earned on those contributions will be held in the Open Fund.
- (3) If a contributor makes a contribution to the Open Fund on condition that it is applied to a specified Designated Charity, then the Trustee may establish and maintain a special account to hold and apply that contribution as part of the Open Fund.
- (4) In maintaining the Open Fund under this Deed the Trustee will comply with all requirements of applicable provisions of the ITAA 1997 and any other applicable pronouncements, rulings or guidelines issued by the Commissioner of Taxation.

5. Existing Trusts

- (1) The Trustee may, at any time by deed:
 - (a) accept responsibility for the administration of any Existing Trust for the benefit of a Designated Charity as if the assets of the Existing Trust had been part of the Open Fund and which can conveniently be administered as part of the Trust; or
 - (b) merge the assets of the Existing Trust into the Trust Fund.
- (2) The Trustee may at its discretion apply the assets of the Existing Trust *cy-près* without a court order so as to give effect to the general intent of the settlor of the Existing Trust. That intent must be in accordance with the purpose expressed in clause 3.3.
- (3) The Trustee may at any time return to the administration of the Public Trustee and Guardian any accounts previously transferred to the Trust under this paragraph or otherwise from testamentary trusts established under will through the Public Trustee.

6. The Capital Region Community Foundation Open Fund Board

- (1) For the purposes of recommending the allocation of income and capital of the Trust Fund the Trustee will act on the advice of a Board to be called the Capital Region Community Foundation Open Fund Board.
- (2) The Board will comprise no less than four members with an upper limit at the Trustee's discretion. A member holds office for a term of no more than three years. The Trustee may elect to appoint additional members in his absolute discretion.

- (3) At all times, the majority of members of the Board will have the requisite degree of responsibility to the general community as determined in any applicable pronouncement, ruling or guideline issued by the Commissioner of Taxation.
- (4) The Trustee will appoint the members of the Board.
- (5) Members of the Board may be reappointed by the Trustee for a further term or terms.
- (6) All appointments whether original or in substitution of retiring members or reappointments to the Board will be made by the Trustee in its absolute discretion.
- (7) The Trustee may remove any member of the Board without reason.
- (8) The Board will meet at least twice in each year.
- (9) Members of the Board must make all reasonable attempts to attend all scheduled meetings of the Board.

7. Casual Vacancies

Any vacancy among the members of the Board will be filled by appointment by the Trustee as soon as possible after the vacancy as provided in Item 6(2).

8. Remuneration of Members of the Board

- (1) No member of the Board will be paid any remuneration for his or her services as a member.
- (2) Every member of the Board will be entitled to be paid out of the Trust Fund all reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or while engaged on the activities of the Board.

9. Disqualification of Members of the Board

- (1) Any member of the Board will immediately cease to be a member of the Board:
 - (a) if the member becomes bankrupt;
 - (b) if by notice in writing to the Trustee, the member resigns his or her office; or
 - (c) if the member dies.
- (2) The following may constitute grounds for disqualification at the discretion of the Trustee:

- (a) if the member is incapable of performing his or her duties for any reason;
- (b) if the member has an undisclosed conflict of interest:
- (c) if the member is absent from 30% of the meetings of the Board during a period of one year; or
- (d) if, the member having failed to show cause why the Board should not do so, the Board passes a resolution that the member is guilty of any grave misconduct.

10. Duties of the Board

The duties of the Board will be:

- (1) to consider the needs of Designated Charities;
- (2) to consider all applications made to the Trustee for a grant or allocation of income from the Trust Fund for the purposes set out in clause 3.3; and
- (3) to recommend to the Trustee as to the payment, allocation and distribution of the income of the Trust Fund to Designated Charities.

11. Proceedings of the Board

The Board may from time to time make any rules as to its meetings (including the time, place and notice of the meetings) and as to its proceedings as it thinks fit. Unless otherwise determined, three members of the Board is a quorum for a meeting.

12. Appointment of Chairperson and Deputy Chairperson

- (1) At the first meeting in each year the Trustee will appoint a Chairperson and a Deputy Chairperson from the membership of the Board, who will hold office for that year; if at any meeting the Chairperson is not present within fifteen minutes after the time appointed for holding the meeting, the Deputy Chairperson will chair the meeting. In the event that both the Chairperson and Deputy Chairperson are absent from a meeting, the Board will appoint a Chair for that meeting.
- (2) Questions arising at any meeting of the Board will be decided by a majority of votes. Each member will have one vote and the determination by a majority of the members will for all purposes be deemed a determination of the Board. In case of an equality of votes the Chairperson will have a second or casting vote.

13. Board may act notwithstanding vacancies etc

The Board may act for all purposes notwithstanding any vacancy in their number and all proceedings at any meeting of the Board will be valid and effectual notwithstanding that

it may afterwards be discovered that any member of the Board is not properly qualified.

14. Minutes

The Board will cause a record of the proceedings of the Board meetings to be kept and record all resolutions. The record signed by the Chair at the meeting will be conclusive evidence of the due passing of any resolution and the extent of the majority voting in favour of the resolution.

15. Management

- (1) The Trustee will be responsible for the day-to-day administration of the Trust Fund.

16. Determination of Yearly Distribution Recommendations

- (1) Each year, the Trustee will make a list of Designated Charities ("List") which, in the Trustee's discretion, are appropriate recipients to receive a distribution from the net income of the Trust Fund.
- (2) In the fourth quarter of each year, and on any other occasion as the Trustee may determine, the Trustee will give written notice to the Board of the amount of the net income standing to the credit of the Trust Fund and will give to the Board copies of the List and any other information held by the Trustee relating to the List.
- (3) As soon as possible after the receipt of the List the Board will give due consideration to it and will recommend to the Trustee in writing any Designated Charity (if any) as the Board determines should receive a distribution from the net income of the Trust Fund.
- (4) Notwithstanding any other provisions of this Deed, nothing in this Deed will require or compel the Board to recommend to the Trustee as to the payment, allocation or distribution of the whole or any part of the net income of the Trust Fund at any particular time during the year. On or before 30 June in each year, after due consideration as provided above, the Board will recommend to the Trustee the distribution or allocation of the whole of the net income then standing to the credit of the Trust Fund.
- (5) On receipt by the Trustee of the written recommendations of the Board as provided above, the Trustee will consider the recommendations. The Trustee will pay or apply the whole of the net income received by the Trust Fund in that year to any one or more Designated Charities as the Trustee in its absolute discretion thinks fit.

- (6) The receipt of the person purporting to be authorised for the time being on behalf of any Designated Charity receiving a payment or allocation of income from the Trust Fund under this Deed will be a sufficient discharge to the Trustee.

17. Distribution of Income and Capital

17.1 Objects of Trust

Despite anything to the contrary in this Deed or otherwise, the assets and income of the Trust must be applied solely for the purpose set out in clause 3.3 and no portion may be distributed directly or indirectly, to any other person or entity except as a *bona fide* compensation for services rendered or expenses incurred on behalf of the Trust.

17.2 Income

In each year the Trustee will hold the net income of the Trust Fund on trust to pay or apply in the manner and for the benefit of the Designated Charities as will be determined in accordance with the following provisions:

- (1) The Trustee will, at such time or times as it will in its absolute discretion determine but in any event on or before the 30 June in each year, pay to or apply for the benefit of each Designated Charity the amount of the net income of the Trust Fund as the Trustee has determined it will receive.
- (2) Subject to paragraph 17.2(3) and 17.3(3) the residue of the net income of the Trust Fund will be paid or applied to a Designated Charity or Charities at the discretion of the Trustee (for the purposes of this paragraph “net income of the Trust Fund” means such part of the net income of the Trust fund as has not been distributed pursuant to paragraph (1) above).
- (3) The Trustee may at its discretion realise capital gains and may distribute them as if they were income under this clause 17.2.

17.3 Capital

- (1) The capital of the Trust Fund must at all times be separately identified from the income or any other accretions to the capital of the Trust Fund.
- (2) The Trustee may in its absolute discretion apply the capital of the Trust Fund for the benefit of a specified Designated Charity in accordance with the request of a contributor provided that nothing in this Deed or otherwise will oblige the Trustee to do so.
- (3) The Trustee may capitalise any unallocated income of the Trust Fund, provided that the amount of unallocated income is within the limits approved by the Commissioner of Taxation.

18. Investment

The Trustee will invest all money contributed to the Trust Fund in accordance with the *Public Trustee and Guardian Act 1985 (ACT)* and the *Trustee Act 1925 (ACT)*.

19. Closing of account

In the event of the winding up of the Trust any surplus assets of the Trust, remaining after the payment of all its liabilities, will be transferred to a Designated Charity.

20. Books of Account

- (1) The Trustee will keep or cause to be kept proper accounts in respect to all transactions of the Trust Fund and to all dealings connected with it.
- (2) The Trustee will from time to time determine at what times and places and under what conditions or regulations the accounting and other records of the Trust will be open for inspection.

21. Audit

The accounts for the Trust shall be included in the Public Trustee and Guardian's Trust Account for the purposes of annual audit.

22. Trustee's Fees

The Trustee will be entitled to receive out of the Trust Fund fees by way of commission or otherwise not greater than the fees which may from time to time be chargeable by the Public Trustee and Guardian under the *Public Trustee and Guardian Act 1985*. Those fees will be in respect to trustee and fund management services.

23. Amendment of Trust Deed

- (1) Subject to clauses 23(2)-(4), the Trustee may at any time or times in its absolute discretion by deed or deeds revoke, add to or vary all or any of the terms and provisions of, without limitation, all or any of the Trustee's interests, powers and discretions under this Deed.
- (2) No part of the Trust Fund or the income from the Trust Fund will become subject to any trusts other than trusts for the benefit of Designated Charities.
- (3) No amendment will be contrary to the relevant requirements of the ITAA 1997.
- (4) The Trustee will notify the Commissioner of Taxation of any changes to this Deed.

24. Trustee's Powers

- (1) The Trustee may exercise all or any of the powers and discretions given to the Trustee pursuant to law or an order of a court with appropriate jurisdiction.
- (2) The Trustee:
 - (a) will be indemnified out of the Trust Fund from and against any expense and liability that may be incurred in prosecuting, defending or intervening in any action or suit in respect of the provisions of this Deed, except where the action or suit arises out of any act of deceit, neglect or default or breach of trust by the Trustee;
 - (b) will not incur any liability to anyone in respect of doing or performing or failing to do or perform any act or thing which, by reason of any provision of any present or future law of any Australian State or Territory or of the Commonwealth of Australia or of any ordinance, rule, regulation or by-law made pursuant to any law or of any decree, order or judgement of any court of competent jurisdiction, either the Trustee is required to do or perform or is hindered, prevented or forbidden from doing or performing;
 - (c) will not incur any liability to anyone in consequence of the Trustee relying in good faith on information that proves to be incorrect;
 - (d) will not be liable to account for any payments made by the Trustee in good faith to any duly empowered fiscal authority for taxes, imposts or other charges made on or in respect of the Trust or with respect to any transaction involving the Trust, notwithstanding that any such payment ought or need not have been made except to the extent that such payments may be attributable to the Trustee's own act of deceit, neglect or default;
 - (e) may act on information obtained from any Designated Charity or beneficiary or the opinion, advice or information obtained from barristers or solicitors who are independent of the Trustee and instructed by the Trustee and on any statement of or information obtained from any bankers, accountants or other persons appointed by the Trustee who are independent of the Trustee and believed by the Trustee in good faith to be the expert in relation to the matters on which they are consulted and the Trustee is not liable for anything done or suffered by it in good faith in reliance upon any such opinion, advice, statement or information;
 - (f) will not be responsible for any misconduct, mistake, oversight, error of judgement, forgetfulness or want of prudence on the part of any auditor, actuary, approved valuer, attorney, banker, receiver, receiver and manager, barrister, solicitor, agent or other person acting as agent or adviser of the Trustee except to the extent that such loss is attributable to the Trustee's

own act of deceit, neglect or default; and

- (g) will not be liable for any action taken or thing suffered by the Trustee in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, holding out, certificate for stock, plan of reorganisation, application or other paper or document reasonably believed by the Trustee to be genuine and to have been possessed, produced, passed, signed or endorsed by the proper parties where liability but for this indemnity would attach by reason solely that such paper or document was not, in fact, genuine or so possessed, produced, passed, signed or endorsed.
- (3) If the Trustee purchases or otherwise acquires any authorised investment in regard to which there is any liability, the Trustee will have a right of indemnity out of the Trust Fund in respect of that liability except to the extent that such liability may be attributable to the Trustee's own act of deceit, neglect or default.
- (4) If the Trustee incurs a liability as Trustee and the Trustee is entitled under the terms of this Deed or as otherwise allowed by law to be indemnified in respect of that liability out of the Trust Fund the Trustee may claim that indemnity from the Trust Fund but the Trustee will not be entitled to be indemnified for that liability by any beneficiary unless by a separate agreement with that beneficiary.
- (5) If there is more than one Trustee neither will be bound to take proceedings against the other for any breach or alleged breach of trust.

25. Proper Law

This Deed and the trusts under this Deed will be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory.

26. Severance

- (1) Any provision of this Deed that is prohibited or unenforceable in a jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or enforceability.
- (2) Any prohibition or unenforceability of a provision of this Deed will not invalidate the remaining provisions nor affect the validity or enforceability of that provision in another jurisdiction.



EXECUTED AS A DEED on the date written on page 1.

SIGNED SEALED AND DELIVERED by)
the **PUBLIC TRUSTEE PUBLIC**)
TRUSTEE AND GUARDIAN under the)
Public Trustee's Seal in accordance with the) Signature of Public Trustee and Guardian
Public Trustee and Guardian Act 1985 (ACT))
in the presence of:

.....
Signature of Witness

.....
Name of Witness