

# Trust Deed

Manly Junior Rugby Trust Fund

**David Ross, as Settlor**

**Manly Junior Rugby Union Fund Pty Ltd, as Trustee**

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**Dated 14 October 2011**

## **Parties**

**David Ross**  
**Address:** 1B/12 Howard Avenue, Dee Why, NSW 2099  
**(Settlor)**

**Manly Junior Rugby Union Fund Pty Ltd** A.C.N: 153 726 213  
**Address:** 52 Raglan Street Manly  
**(Trustee)**

## **Background**

- A. The Settlor wishes to make a gift of money to establish a trust:
- (i) to provide benefits for those who are named or are otherwise eligible to be or become Beneficiaries under this deed; and
  - (ii) under which the trustee is empowered to acquire and deal with investments in its absolute discretion.
- B. The Trustee has agreed to act as the trustee of the Trust.
- C. The terms on which the Trust is established are set out in this deed.

## **1. Definition and Interpretation**

### **1.1 Definitions**

In this deed, unless the contrary intention appears the following words have the following meanings:

<b>Term:</b>	<b>Definition:</b>
<b>Act</b>	<i>Income Tax Assessment Act (Cth) 1936.</i>
<b>Appointor</b>	Cameron Wall.
<b>Beneficiaries</b>	<i>Manly Rugby Football Club Inc.</i> <i>and</i> <i>Manly Junior Rugby Union Inc.</i>
<b>Capital</b>	that part of the Trust Fund as does not constitute Income.

<b>Category</b>	in relation to Income or Capital, that part or those parts of the Income or Capital which the Trustee has separately identified, characterised, and recorded in the books of account of the Trust as provided in clause 5.
<b>Financial Year</b>	a financial year for which income tax of a person other than a company, is levied under the Act.
<b>Income</b>	the net income of the Trust as defined in s 95(1) of the Act, notwithstanding that all or part of that income may under trust law constitute capital.
<b>Person</b>	includes a company, legal entity or body of persons.
<b>Tax</b>	any tax or imposition payable to any government or government instrumentality and, without limiting that generality, includes income tax, capital gains tax, fringe benefits tax, consumption tax, value added tax, provisional tax, additional tax, penalty tax, stamp duty, a fine or interest for late payment, tax on deposit or withdrawal of funds from any account.
<b>Termination Date</b>	the date the Trust is wound up in accordance with this deed.
<b>Trust</b>	the trust created by this deed.
<b>Trustee</b>	the first trustee or any subsequent trustee for the time being of the Trust.
<b>Trust Fund</b>	the money paid by the Settlor to the Trustee to establish the Trust and all other money and property which becomes subject to the rights and obligations of this deed, and includes a part of the trust fund.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to this deed and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to New South Wales time;
- (g) a reference to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) Headings are for ease of reference only and do not affect interpretation.

## **2. Establishment of Trust**

### **2.1 Name of Trust**

The Trust is to be known by the name referred to in item 1 of the Schedule.

### **2.2 Settlement Sum**

The Trustee acknowledges having received the amount of **\$50,000.00 FROM MANLY RUGBY UNION CLUB LIMITED** via the Settlor, which the Trustee agrees to hold on the trusts and subject to the terms of this deed.

### **2.3 Purpose of Trust**

The primary purposes of establishing the Trust are to:

- (a) to hold the Trust Fund as an investment in perpetuity for the benefit of the beneficiaries
- (b) to invest the Trust Fund to earn revenue so as to provide financial assistance and an income stream for the beneficiaries for the development of junior rugby union, including colt grades in the Manly area;
- (c) invest all or any part of the Trust Fund to achieve the purpose in clause 2.3(a) ;
- (d) assist or benefit a Beneficiary without regard to the taking of security; and
- (e) give to the Trustee the widest possible discretion in the exercise of its powers whether investment or otherwise.

## **3. Income**

### **3.1 Discretionary Distribution**

The Trustee holds the Income of a Financial Year which is available for distribution upon trust to pay, apply or set aside the Income, or any part of the Income, to or for the benefit of the Beneficiaries or others who are in existence at the time payment, application or

setting aside of such Income is made in such shares or proportions and from such Category of Income as the Trustee may in its discretion determine.

### **3.2 Accumulation**

- (a) The Trustee will before the end of the Financial Year resolve to distribute the net surplus earnings from the investment of the Trust Fund to the beneficiaries in equal portions; and
- (b) The Trustee may before the end of a Financial Year resolve to accumulate any part of the Income of that Financial Year required to meet the trusts expenses and taxes, .
- (c) The Trustee may pay Tax in respect of an accumulation out of the accumulation or out of Capital.

### **3.3 Default**

If the Trustee fails to effectively pay, apply or set aside the whole of the Income of a Financial Year as provided in clause 3.1 or effectively to resolve to accumulate the Income as provided in clause 3.2, the Trustee must hold the Income which has not been so paid, applied or set aside on trust absolutely for the Beneficiaries presently entitled to share equally as tenants in common as if the last day of the Financial Year were the termination date.

### **3.4 Manner of Distribution**

The payment, application or setting aside of Income of a Financial Year may be effectively made as follows:

- (a) by paying the Income to the Beneficiary or to such person on behalf of the Beneficiary as the Beneficiary may authorise or direct; or
- (b) by setting the Income aside to a separate account in the books of the Trust in the name of the Beneficiary, in which case such moneys will constitute a loan at call and will not bear interest unless the Trustee and the Beneficiary otherwise agree.

### **3.5 Manner of Payment to a Beneficiary**

- (a) The payment, application or setting aside of Income to or for the benefit of a Beneficiary may be by a determination or resolution of the Trustee and upon such determination or resolution being made the Beneficiary will have an immediate vested indefeasible interest in and to that part of the Income so paid, applied or set aside for the Financial Year to which the determination or resolution relates.
- (b) Any such determination or resolution may specify a Category and the amount of Income from that Category to which a Beneficiary is entitled, and such determination or resolution may provide to pay, apply or set aside Income by reference to a specific sum or a percentage of the Income or any Category of Income of a Financial Year.
- (c) Determinations or resolutions of the Trustee allocating Income previously provided in this clause are irrevocable and the Income must be dealt with as required by such determination or resolution.

### **3.6 Trust re Applied Income not Affected by Amendment of Deed**

A trust declared or effective in respect of Income paid, applied or set aside for a Beneficiary is not affected by the subsequent exercise of any power of revocation or amendment of this deed.

### **3.7 Tax**

Where the Trustee is required by law to pay Tax:

- (a) in respect of Income of a Financial Year allocated or distributed to a Beneficiary or to any entitlement or benefit of a Beneficiary out of the Trust Fund or moneys held by the Trustee on trust for the Beneficiary pursuant to a provision of this deed, the Trustee may pay the Tax out of Income or Capital to which the Beneficiary is presently entitled or may deduct the Tax out of moneys which may then or later come into the hands of the Trustee or over which the Trustee has control and to which the Beneficiary is or becomes entitled; and
- (b) in respect of an accumulation of Income, the Trustee may pay the Tax out of such Income or from Capital as it may decide.

## **4. Capital**

### **4.1 Distribution of Capital**

This Trust does not provide for the distribution of the Trust Fund capital. Upon the winding up of the Trust, the Trustee will distribute the capital, Trust Fund and any remaining funds after the deduction of trust expenses and taxes equally between the beneficiaries.

### **4.2 Tax**

Where the Trustee becomes liable to pay Tax in respect of or arising out of a distribution of Capital, it may deduct and pay the Tax out of such distribution, and to the extent to which the distribution may be insufficient to fully discharge such liability, the Trustee may pay the Tax from other monies or property which may be in its possession or control as it may decide.

## **5. Categories of Income and Capital**

### **5.1 Categories of Income and Capital**

The Trustee may separately record the following Categories of Income or Capital in the accounts of the Trust which, under the Act:

- (a) are dividends:
  - (i) that are fully franked;
  - (ii) that are unfranked;
  - (iii) to which a foreign tax credit attaches; or
  - (iv) to which another separately identifiable taxation consequence or benefit may attach; and
- (b) is Income or Capital:

- (i) that has an Australian source;
- (ii) that has an ex-Australian source;
- (iii) to which a foreign Tax or other credit attaches;
- (iv) which is exempt from Tax or subject to differing rates of Tax or Tax treatment; or
- (v) that has or gives rise to any other separately identifiable taxation consequence or benefit.

## **5.2 Other Categories**

The Trustee may identify and separately record and maintain in the books of accounts of the Trust, Income or Capital having, or in respect of which there is attached, individual or unique characteristics other than as referred to in clause 5.1.

## **5.3 Allocation of Income or Capital of a Category**

A resolution or determination of the Trustee by which Income of a Financial Year or Capital is distributed or accumulated may at the direction of the Trustee separately deal with all or part of the Income or Capital of a Category, so that all or part of that Income or Capital may be specifically or separately allocated and identified in a distribution to a Beneficiary or in any accumulation.

## **5.4 Allocation of Expenses**

Expenses and outgoings of the Trust may at the discretion of the Trustee be allocated against and deducted from Income or Capital of any one or more Categories.

## **5.5 Effect of Allocation on Categories of Income**

If the Trustee does not exercise its discretion as provided in clause 5.4, outgoings and expenses of the Trust Fund for a Financial Year must be allocated firstly against and deducted from Income which is not Income of a Category. To the extent to which that Income is insufficient to absorb all expenses and outgoings, then the part not so absorbed must be allocated against any Income of a Category to which a Tax credit, rebate or exemption does not attach and then against the remaining Income.

## **5.6 Distributed Income Retains Categorisation**

Income or Capital to which a Beneficiary becomes entitled and which can be identified as being of a Category, retains its separate identity on passing to or being received by the Beneficiary or when the Beneficiary otherwise becomes entitled to it.

# **6. Appointment and Removal of Trustee**

## **6.1 Power of Appointment**

The power to appoint a new trustee in place of the Trustee or in addition to and jointly with the Trustee, and the power to remove the Trustee, is, subject to the following provisions of this clause 6, vested in the Appointor.



## **6.2 Relinquishment of Powers of Appointment**

The power and authority vested in the Appointor by this clause 6 may at any time be relinquished by notice in writing given to the Trustee in which event the Appointor, upon giving such notice, will cease to act as such and the following provisions will apply:

- (a) subject to clause 6.2(b), where there are joint Appointors, the survivor or survivors as the case may be will so act; or
- (b) the Appointor may relinquish such power and may, by written instrument on or prior to such relinquishment, appoint another in his or her place and such appointee will be the Appointor or a joint Appointor during the lifetime of the Appointor giving notice or until the appointee relinquishes such power of appointment, and an appointee upon being so appointed may exercise the power given to his or her appointor under this deed.

## **6.3 Residual Power of Appointment**

If at any time no person has the power to appoint a new trustee or an additional trustee, the power is vested in the Trustee for the time being of the Trust.

## **6.4 Trust Fund Vests in New Trustee**

Where a trustee or an additional trustee is appointed pursuant to the power of appointment contained in this clause, the Trust Fund at that time vests in the person, or jointly in the persons, who then becomes the Trustee without the necessity for any vesting, declaration, transfer, conveyance or other assurance.

## **6.5 Restrictions of Power of Appointment**

The power to appoint a new Trustee contained in this clause must not be exercised in favour of:

- (a) the Settlor;
- (b) a person who is solely entitled to exercise the power of appointment for the time being; or
- (c) a person who settles property or moneys on the Trust by making a gift of moneys or property to the Trustee to be held as an accretion to the Trust Fund.

Where the new Trustee is a corporation having a sole director, sole shareholder or both who is a person described in clause 6.5(c), this clause 6.5 does not operate to restrict the appointment of such company as the new Trustee.

## **6.6 Manner of Exercise of Power of Appointment**

- (a) The power to appoint or remove a Trustee may be exercised by memorandum under hand or by deed, and where the Trustee is a corporation must be approved by resolution of its directors.
- (b) Nothing in this deed is to be taken as limiting the right to appoint a corporation or a resident of a place outside New South Wales as Trustee.

## **6.7 Appointment of One or More Trustees**

The place of the Trustee who retires, resigns or is removed may be filled by a sole appointment or the appointment of more than one new Trustee.

## **6.8 Transfer of Records and Property**

Upon the resignation, retirement or removal of the Trustee, the Trustee (if a company, by its responsible officer) must promptly, at the expense of the Trust (where such expense is necessary and properly incurred):

- (a) hand to the new Trustee all books, records, documents and other property of or pertaining to the Trust;
- (b) do all things necessary to transfer the legal title in the assets of the Trust Fund to the new Trustee;
- (c) sign such authorities and give such direction as the new Trustee sees necessary or desirable to give possession or control of such Trust property as may be in the hands of third parties; and
- (d) give such assistance as the new Trustee may reasonably require to put the new Trustee into full knowledge of the affairs of the Trust.

## **7. Provisions Relating to Trustee**

### **7.1 No Distribution to the Settlor or the Trustee**

- (a) Notwithstanding anything to the contrary in this deed, Income or Capital, other than remuneration permitted under clause 7.2, may not be paid or transferred beneficially to or applied for the benefit of:
  - (i) the Settlor; or
  - (ii) the Trustee (other than the first Trustee executing this deed at the time of creation of the Trust).
- (b) No discretion or power conferred by this deed may be exercised and no provision of this deed operates so as to confer any direct or indirect benefit in the Trust Fund to any person referred to in clause 7.1(a) other than remuneration properly payable to the Trustee under this deed.
- (c) Where the Trustee is a company having a sole shareholder who is a Beneficiary, the Trustee is not taken to be in breach of clause 7.1(a) by paying or transferring Income or Capital to, or by applying Income or Capital for the benefit of, that sole shareholder.

### **7.2 Remuneration**

- (a) The Trustee may be paid out of the Income or Capital remuneration for the Trustee's services by way of periodical fee, salary, commission or otherwise at the rate to be agreed upon from time to time by the Trustee and the Appointor.
- (b) The Trustee may pay all costs, charges and expenses of administering the Trust Fund out of the Trust Fund whether from the Capital or Income as the Trustee may determine. If the Trustee is an accountant, solicitor or other person engaged in a profession, in addition to any entitlement under clause 7.2(a), the Trustee may charge and be paid all usual professional charges for business transacted, or time expended or actions of the Trustee or any employee or partner of the Trustee in connection with the trusts of this deed, including any action which the Trustee not being in a profession could have done personally.

### **7.3 Limitation of Liability**

The Trustee is not liable or answerable or accountable under this deed or in respect of the Trust for any loss other than a loss attributable to:

- (a) dishonesty of the Trustee; or
- (b) the wilful commission of an act known by the Trustee to be a breach of trust.

### **7.4 Indemnity**

Provided the Trustee acts in good faith:

- (a) it is entitled to be indemnified out of the Trust Fund for all debts, damages, obligations or other liabilities incurred, arising or awarded by or against the Trustee in the execution of any power, duty, discretion or authority under this deed and in respect of all actions, claims, demands and costs relating to or concerning the Trust Fund;
- (b) is entitled to reimbursement from the Trust Fund for all moneys expended and debts incurred in or about the administration of the Trust; and
- (c) it may apply the Trust Fund or any moneys or property comprised in the Trust Fund as it may decide to satisfy the rights of reimbursement or indemnity to which it is under this deed, or otherwise by law, entitled.

### **7.5 Exercise of Powers and Discretions**

- (a) The Trustee, if a company, may exercise or concur in exercising any discretion or power conferred by this deed:
  - (i) by a resolution of its board or governing body; or
  - (ii) by delegating the right and power to exercise or concur in exercising any such discretion or power to one or more of its directors or members of its governing body appointed unanimously by the board or governing body for that purpose and may by majority resolution of its directors terminate any such delegated authority.
- (b) All powers and discretions conferred upon a Trustee by this deed or by law, may be exercised notwithstanding that the Trustee, or any person being a director or shareholder of a corporate trustee, has or may have a direct, indirect or personal interest, whether as shareholder, director, member or partner of any company or partnership, or otherwise, in the manner or result of exercising such power or discretion, or may benefit directly or indirectly as a result of the exercise of any such power or discretion, and notwithstanding that the Trustee for the time being is the sole trustee of the Trust.
- (c) Unless a power or discretion which may be exercised by the Trustee is, by the terms of this deed, required to be irrevocable, the Trustee may release or revoke any power conferred upon it by this deed. Any other person upon whom any power is conferred by this deed may release or revoke any power so conferred. Upon the exercise of any release or revocation pursuant to this clause 7.5(c) the power released or revoked will be absolutely and irrevocably determined.

## **7.6 Professional Advice**

- (a) The Trustee may take and act upon the opinion of a solicitor or barrister of not less than six years standing who has verified to the Trustee that he or she has during that time practised in the jurisdiction where interpretation of the provisions of this deed or any document or statute or any matter concerning the administration of the Trust is to be determined.
- (b) Where the Trustee acts in reliance upon such advice, it will not be liable to any person beneficially interested in respect of any act done or omitted to be done by the Trustee.
- (c) Nothing in this clause prohibits or impedes the Trustee from applying to a court having appropriate jurisdiction.

## **7.7 Vacation of Office**

The office of Trustee will be determined and vacated:

- (a) if the Trustee, being an individual, is found to be of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or if the Trustee becomes bankrupt or makes any arrangement or composition with creditors generally; or
- (b) if the Trustee, being a company, enters into liquidation, whether compulsory or voluntarily (not being a voluntary liquidation for the purposes of amalgamation or reconstruction) or has a receiver, receiver and manager or administrator appointed or makes or enters into any composition or scheme of arrangement with its creditors.

## **7.8 Board of Directors of the Trustee**

The Board of directors of the Trustee shall comprise of 3, one to be appointed by the Settlor (who can be non-independent), one to be appointed by Manly Junior Rugby Union Inc. and one to be appointed by the Manly Rugby Football Club. The appointments of such directors are to be made by the relevant nominated appointing organisation in its absolute and unfettered discretion and at such times as such appointing organisation may in its absolute and unfettered discretion determine taking into account, however, the business being conducted under the terms of this Deed by the Trustee at that time. The Chairman shall be appointed by the Board, annually, and the Chairman shall not have a casting vote. The Constitution of the Trustee shall be the standard created by the *Corporations Act 2001* but will be amended to make allowance for the matters contained in this clause 7.8.

# **8. Custodian Trustee**

## **8.1 Nominee**

The Trustee need not register property, including a security, being part of the Trust Fund in the name of the Trustee but may register such property in the name of a nominee without the necessity of disclosing that the nominee holds the property as nominee for and on behalf of the Trustee.

## **8.2 Deposit of Documents of Title**

The Trustee may deposit the documents of title to property or securities for the time being subject to the Trust with a solicitor, accountant, bank, trust company, investment or stock broker or like institution in Australia in which any of the Trust Fund is invested or situated,

and the Trustee will not be liable or responsible for any loss not caused by its own fault which may in any manner occur in relation to or by reason of such loss.

## **9. Variation of Trust**

### **9.1 Variation of Trust Deed**

Subject to clause 9.2, at any time prior to the termination date the Trustee may with the written consent of the Appointor (if any) by deed alter, vary or revoke any trust or provision of this deed other than this clause, clause 6 and clause 7.1.

### **9.2 Restriction on Variation**

An alteration, variation or revocation pursuant to clause 9.1 must not:

- (a) divert or modify a vested interest of a Beneficiary in Income or Capital or the investments representing the same or Income derived from any such investment to which such Beneficiary has become absolutely entitled pursuant to this deed; or
- (b) infringe any applicable law or rule against perpetuities or relating to remoteness of vesting or the period during which Income may be accumulated, or otherwise extend the termination date or result in any provision of the Trust becoming void.

## **10. Accounts**

### **10.1 Preparation of Financial Accounts**

In each Financial Year the Trustee must cause financial statements, including a profit and loss account and balance sheet as at the end of each Financial Year, to be prepared by a qualified chartered or public accountant authorised to practise in New South Wales, certified by such accountant to be a true and proper statement of the affairs of the Trust Fund setting out all:

- (a) Income;
- (b) Capital;
- (c) costs and disbursements and other outgoings paid or payable out of the Trust Fund and chargeable against Income;
- (d) Capital expenditure and liabilities chargeable to Capital;
- (e) investments and money comprised in the Trust Fund;
- (f) amounts distributed by the Trustee to each Beneficiary; and
- (g) to the extent to which the Trustee may require, the separate recording of any Category of Income or Capital.

### **10.2 Financial Records**

The Trustee must:

- (a) establish and maintain proper accounts in book or computer form which must accurately record all receipts and outgoings in relation to the Trust Fund; and

- (b) separately record Income and Capital of different Categories as are provided by this deed as the Trustee may decide.

### **10.3 Provision Of Financial Statements**

The Trustee must at the request of the Appointor supply to the Appointor:

- (a) a copy, or in the case of computer recording a hard copy, of such financial statements certified as provided in clause 10.1; and
- (b) such information and explanations as the Appointor may require.

### **10.4 Trustee may Audit Accounts**

The Appointor may by notice in writing to the Trustee given at any time, require the financial statements of the Trust to be audited by an auditor nominated by the Trustee and approved by the Appointor. The costs of such auditor are to be paid out of the Trust Fund. If the Trustee fails to nominate an auditor within 14 days of the giving of a notice, or fails within 28 days of the giving of such notice to nominate an auditor who is approved by the Appointor, the Appointor may at any later time appoint an auditor who will continue to hold such office until removed by the Trustee with the consent of the Appointor.

## **11. Investment of Trust Fund**

### **11.1 Power to Invest and Vary Investments**

The Trustee may invest the Trust Fund in any form of investment and vary an investment at any time.

### **11.2 Diminishing the Duty of Care**

If the Trustee is not a public company or a subsidiary of a public company, there is no obligation on the Trustee in exercising a power of investment to exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

### **11.3 Review of Investment Performance**

The Trustee may, but is not required to, review at any time or at fixed intervals the performance (individually or as a whole) of the Trust investments.

### **11.4 Broadening of Investment Power**

The Trustee may exercise the power to invest the Trust Fund or vary an investment without the need to comply with any rule and principle of law or equity including:

- (a) a duty to exercise the powers of a trustee in the best interests of all present and future Beneficiaries;
- (b) a duty to invest the Trust Fund in investments which are not speculative, hazardous or involving waste; and
- (c) a duty to act impartially towards Beneficiaries and between different classes of Beneficiaries.

For the purposes of this clause 11.4 and clause 11.5, the expressions "vary an investment" and "varying an investment" includes realising an investment or a change to a term or condition of an investment.

### 11.5 Investment Advice

In exercising the power of investment, the Trustee may, but is not required to, having regard to the size and nature of the Trust Fund, do either or both of the following:

- (a) obtain and consider independent and impartial advice for the investment of the Trust Fund, varying an investment or the management of the investment from a person whom the Trustee reasonably believes to be competent to give the advice; and
- (b) pay out of the Trust Fund the reasonable costs of obtaining the advice.

### 11.6 Section 14C of the Trustee Act 1925 (NSW)

The Trustee is expressly forbidden to comply with any one or more paragraphs of sub-s (1) of s 14C of the *Trustee Act 1925 (NSW)* where in the reasonable opinion of the Trustee compliance would not advance the purposes of the Trust as expressed in clause 2.3.

### 11.7 Exclusion of Trustee Act Provisions

Sections 43 and 44 of the *Trustee Act 1925 (NSW)* will not apply to the Trust.

## 12. Powers

### 12.1 General Powers

In the administration of the Trust and in the exercise of the powers, authorities and discretions conferred by this deed or by law, the Trustee has the following powers which are in addition to the powers, authorities and discretions vested in it by any other provision of this deed or by law and which do not limit the powers, authorities and discretions otherwise vested in the Trustee by this deed or by law:

- (a) *Generally deal with Trust Fund:* to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with, dispose of or transfer any item or asset comprising the whole part of the Trust Fund or otherwise held by the Trustee under the terms of the Trust for such consideration and on such terms as in its discretion it may think fit as if it were the absolute and beneficial owner of the Trust Fund;
- (b) *Real property:* to acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, let, grant, release or vary any right or easement or otherwise deal with real property or any estate or interest in real property;
- (c) *Personal property:* to acquire, dispose of, exchange, hire, lease, let, mortgage or otherwise deal with personal property of any kind;
- (d) *Lease:* to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature in and to any realty or estate or interest in land or in and to motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and personalty of any other description;
- (e) *To let:* to lease and let property forming part of the Trust Fund for such period, at a rental and to persons and upon such terms as the Trustee may decide and to accept surrenders from, make allowances to and arrangements with, a tenant with or without consideration as the Trustee may think fit;

- (f) *Employment*: to engage or employ persons, including a person having an interest in or who is the holder of an office in the Trustee, or obtain such other assistance as the Trustee may deem requisite, to provide staff, amenities and to vary and terminate any contract of employment;
- (g) *Engage experts*: to employ or engage agents or professionals in the execution of these trusts and powers and instead of acting personally from time to time, to employ or engage and pay out of the Trust Fund such managers, agents, advisers, solicitors, barristers, auditors, accountants, brokers, surveyors, valuers or other persons to transact any business or to do any act required to be done in connection with the administration of the trusts and to act upon the opinion or advice of any such person without being responsible for loss or damage occasioned in so acting;
- (h) *Power to lend*: to lend moneys forming part of the Trust Fund, or give credit to any person or company on such terms as the Trustee may decide, in particular without limiting the generality of the foregoing, to a Beneficiary and any such lending or giving of credit may be made at call or for a period of time and may be made at a rate of interest or at no interest, and may involve taking of security in any form or without security;
- (i) *Power to borrow*: to raise or borrow moneys either alone or jointly with another or others, from any person including a firm or company, either bearing or free of interest and on terms and conditions and for purposes as the Trustee may decide, and to secure the repayment of any moneys or other indebtedness by mortgage, charge or other security or encumbrance over the whole or part of the Trust Fund as the Trustee may decide or to have the repayment secured over property of a third party which may include property of the Trustee or a Beneficiary, whether such third party collateral security is given alone or jointly with property of the Trust Fund and no lender is required to inquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required, or as to the application of moneys borrowed;
- (j) *Commercial bills*: to draw, endorse, accept, guarantee or be a party in any way to a commercial bill or other bill of exchange, promissory note, letter of credit, hypothecation or other facility involving the raising, borrowing or lending of moneys by or to the Trustee;
- (k) *Credit*: to enter into alone or with others any agreement or arrangement for obtaining credit upon such terms as the Trustee may see fit including but not limited to obtaining, upon deferred terms as to payment, goods, trading stock or other property or services of any nature;
- (l) *Attorney*: to appointment any person as the representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this deed or by law and to revoke any such appointment;
- (m) *Service entity*: to act as a service entity in providing office supplies and services, including professional or other employees, office furniture and equipment of all types, stationery, telephone and electricity services, management, administration and consultancy services and anything incidental to them;
- (n) *Bank accounts*: to open in the name of the Trustee or in the name of a person or corporation as nominee of the Trustee or in the joint names of the Trustee and another, any cheque, savings deposit or other account with any bank or financial institution wherever situated with full power to operate on any such account



including, without limitation, power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account;

- (o) *Management expenses*: to pay out of Income or Capital all costs, charges and expenses incidental to the management of the Trust Fund or to the exercise of any permitted power, authority or discretion or in carrying out or performing the trusts of this deed;
- (p) *Pay general expenses*: to pay insurance premiums, rates, taxes, rents and outgoings in connection with real or personal property of the Trust Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable and where the Trustee is unable to charge such expenditure against Income it is at liberty to resort to Capital;
- (q) *Corporate securities*: with respect to any company in which the Trustee holds shares, debentures, options, convertible notes or other security (securities) to exercise the following powers in addition to powers conferred by law:
  - (i) to pay calls on securities or permit securities to be forfeited and sold;
  - (ii) to purchase securities and take up securities of a new issue;
  - (iii) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
  - (iv) to sell securities at a price and upon terms as the trustee may decide;
  - (v) to assent to or join in any arrangement relating to the sale, transfer or exchange of any securities or modifying any rights, privileges or interests in relation to securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any securities or of the capital of any company in which any securities form part of the Trust Fund or by which any securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and to pay out of Capital or Income any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
  - (vi) to agree in respect of a winding up with the liquidator of the company or any member or creditor of the company, or in a voluntary administration, as the trustee thinks fit;
- (r) *Unit trust interests*: to acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust as income or capital and as unit holder the Trustee may in its absolute discretion consent to a breach of trust by the trustee of the unit trust or give its consent to, or waive its rights with respect to, any action taken or to be taken by the trustee of the unit trust and the Trustee may so act even if the Trustee's actions may not be in the interests of the Trust or the unit trust;

- (s) *Franchises*: to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature relating to subject matters of all kinds;
- (t) *Subdivision of property*: to partition or subdivide property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;
- (u) *Development of property*: to enter into any agreement with any person with respect to the development and turning to account of any real or personal property or any interest in property and any other right, privilege or interest for the time being subject to these trusts or with respect to the construction of any buildings, laying out or preparing land for building purposes or in developing or turning to account real or personal property or any rights, privileges or interests;
- (v) *Promotion of companies*: to establish, promote or acquire any company or join in the promotion or establishment of any company and to do anything which a person, not being a trustee, is authorised or empowered to do under any law relating to or governing any such company;
- (w) *Maintain property*: to maintain and preserve in good and substantial order and condition real or personal property of the Trust Fund or otherwise held by the Trustee under the terms of this deed and to pay or defray those costs;
- (x) *Guarantees and indemnities*: power, whether with or without security and whether alone or jointly or severally or both jointly and severally with any other person, to guarantee, indemnify, secure by way of mortgage, charge or otherwise over the whole or part of the Trust Fund or undertake in any way the payment or repayment of money or debts (including any interest whether existing or to accrue) previously or then lent or to be advanced or any existing or future duties, undertakings, liabilities or obligations incurred or which may at any future time be incurred by any person whether a Beneficiary or not and to guarantee, indemnify or secure, with or without security, the due performance of any contract, agreement, covenant or obligation of any person whether a Beneficiary or not;
- (y) *Power to set aside*: to set aside out of Income or Capital from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- (z) *Futures contracts and options*: to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in Australia to buy, sell, open, close-out or otherwise deal in futures contracts of all kinds and to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss orders to tender and take delivery of commodities and currencies which are the subject of any futures contract or option and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange;
- (aa) *To mix funds*: to mix the Trust Fund including its Income and any other moneys held from time to time by the Trustee pursuant to these trusts with other moneys held by the Trustee pursuant to any provision of this deed or under any other trust and;
  - (i) to invest the moneys so mixed in any investment, property, interest, arrangement or business or in any other mode or manner in which the

Trustee may by law or by this deed be empowered to invest the Trust Fund;

- (ii) to exercise all powers, authorities and discretions with respect to the mixed fund which the Trustee is by this deed or by law authorised to exercise with respect to the Trust Fund; and
  - (iii) to make such arrangements with respect to the moneys and their investment with any other person as the Trustee would be authorised or empowered by law or by this deed to make or enter into;
- (bb) *Trustee's power to deal with itself:* notwithstanding any rule of law to the contrary, to acquire as property of the Trust Fund real or personal property the beneficial interest in which is at the date of such acquisition the absolute property of the Trustee provided that any property so acquired is acquired for a consideration being not greater than the current market value of the property and upon such acquisition the beneficial interest in and to the property will be held by the Trustee upon the trusts contained in this deed;
- (cc) *Policies:* to effect or acquire policies of life assurance of any kind on the life of any person or in respect of sickness, disability or accident to any person and to pay premiums, transfer, surrender, change the situs of and deal with such policies in any manner, whether or not such policies are individual policies on the life of one person or a group policy on the lives of two or more persons, and to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- (dd) *Determination between Capital and Income:* to determine whether real or personal property, or any increase or decrease in value of any property, or any receipts or payments from, for or in connection with real or personal property, is to be treated as and credited or debited to Capital or to Income of the Trust Fund and generally to determine all matters as to which any doubt may arise in relation to the execution of the Trust and powers of the Trust and every determination of the Trustee in relation to any of these matters whether upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund, binds all interested parties and may not be objected to on any ground;
- (ee) *Partnerships and joint ventures:* to enter into partnership or joint venture with any person on such terms as the Trustee thinks fit and to vary the terms of or terminate and be a party to the partition of assets of any such partnership or joint venture;
- (ff) *To permit Beneficiary to use trust property:* to permit a Beneficiary to reside in any house, flat, strata title lot or other residential unit or to use any personal property which, or the proceeds of sale of which, may for the time being be subject to the Trust with or without consideration and generally upon such terms as the Trustee in its discretion thinks fit;
- (gg) *Agency and licences:* to apply for, purchase or hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business or venture which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (hh) *Choses-in-action:* to acquire choses-in-action, including debts and obligations of all kinds, for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with such choses-in-action in any way on such terms and conditions as the Trustee may see fit;

- (ii) *Advertise*: to adopt such means of making known and advertising any business which the Trustee is empowered to carry on or in pursuing any power as may seem expedient or desirable;
- (jj) *Receive gifts*: to receive property by gift inter vivos or by will or under the provisions of any other trust or otherwise from any person as an addition to the Trust Fund and whether subject to liabilities or not and to hold the same upon these trusts and to administer such additions as part of the Trust Fund;
- (kk) *Legal proceedings*: to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination and to compromise and settle any such dispute or proceedings for such consideration and upon such terms and conditions as the Trustee may decide;
- (ll) *Intellectual property rights*: to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licences, concessions, know-how and the like conferring any exclusive or non-exclusive or limited right to use or any other intellectual property rights and to use, exercise, develop or grant licences in respect of or otherwise turn to account property rights or information so acquired;
- (mm) *Power to appropriate Trust Fund in specie*: to appropriate in specie any portion of the Trust Fund, or any investment to or towards the share or entitlement of a Beneficiary and to charge any such share or entitlement with such sum of money by way of equality as the Trustee may think fit and for these purposes the Trustee may fix the value of any real or personal property forming part of the Trust Fund and every such appropriation, charge and valuation is binding on all persons who may at any time be entitled to any interest in the Trust Fund;
- (nn) *Release of powers*: by irrevocable deed to renounce and release any power conferred on the Trustee under the Trust in respect of the whole or part of the Trust Fund or the Income and upon such renunciation and release coming into effect, such power is to be taken to be at an end and no longer exercisable by the Trustee to the extent of such renunciation and release;
- (oo) *Incidental powers* to do all other things as may be incidental to the exercise of the powers, rights, discretions and authorities conferred on the Trustee by this deed; and
- (pp) *Carry on business*: from time to time to carry on alone or jointly with another or others any business or an interest in any business and use the Trust Fund in carrying on such business as the Trustee may decide with power to charge against or pay or retain out of the Trust Fund all debts, costs, expenses and other outgoings incurred in carrying on such business or for the purpose of carrying it on or for the purpose of establishing a proposed business and without limitation the Trustee has the following powers:
  - (i) to investigate and determine the feasibility or desirability of establishing or carrying on or acquiring any business or an interest in any business which the Trustee proposes or considers establishing or carrying on or acquiring and the Trustee is entitled to incur expenses in or in connection with any investigation and determination and to pay or recoup such expenses out of Income or Capital whether or not pursuant to that investigation and determination the Trustee proceeds to establish or carry on that business;
  - (ii) to establish any business;

- (iii) to acquire the whole or part of the goodwill of an existing business;
- (iv) to acquire the assets, or an interest in the assets, of or used in any business;
- (v) to undertake to meet liabilities or contingent liabilities incurred or to be incurred by any person in or about the establishment or carrying on or acquisition of the whole or part of an existing business the goodwill and assets of which or any of which are proposed to be acquired by the Trustee and to give indemnities for or enter into guarantees of such liabilities and contingent liabilities or any of them;
- (vi) to acquire, or join in acquiring, chattels and stock in trade for use in, or in connection with, any business carried on or proposed to be carried on by the Trustee or in which the Trustee may acquire an interest;
- (vii) to make payments or incur expenses or liabilities (including donations) which the Trustee considers to be for the benefit of any business carried on by or proposed to be carried on by the Trustee or in which the Trustee may have an interest or which the Trustee considers will promote or facilitate such business notwithstanding that the Trustee may be under no legal or enforceable obligation to make such payments or incur such expenses or liabilities and notwithstanding that such payments or the incurring of such expenses or liabilities do not produce any direct benefit to the Trust Fund;
- (viii) to sell the good will of any business;
- (ix) to enter into any covenant or agreement in restraint of trade;
- (x) to enter into contracts for importing or exporting goods and to enter into contracts for the shipping or other transportation of goods; and
- (xi) to carry on any business in the same manner and with the same powers and rights as the Trustee would have in relation to the business as if it were carrying it on in its own right and not as trustee and in carrying on such business:
  - (A) the Trustee may transfer title to any property which it holds as trustee, with or without consideration, notwithstanding any limitation on such power which might otherwise by operation of law or under any other provision of this deed prevent such title being effectually or validly transferred by reason of it being a trustee or the transferee having notice that it is a trustee;
  - (B) any person dealing with the Trustee may contract with and make payments to the Trustee without being required to inquire as to whether the Trustee has power to deal with them under this deed or whether the Trustee is properly exercising any power it may have in so dealing and such person is not obliged to inquire as to the proper application by the Trustee of any payment so made or is accountable for the non-application of such money notwithstanding that such person was on notice that the Trustee was carrying on such business as a trustee;

- (C) the title of any person to whom property is transferred by the Trustee, whether with or without consideration, is not affected by any notice that the Trustee held title to such property as a trustee and the receipt of the Trustee is an absolute discharge for any payment made to the Trustee.

## **12.2 Power to Act as a Director**

If the Trustee is a natural person, he or she may become a director of any company in which any moneys forming part of the Trust Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account.

## **12.3 Power to Act notwithstanding Personal Interest**

The Trustee may exercise or concur in exercising all powers and discretions given under this deed or by law notwithstanding that it, or any person being a director or shareholder of the Trustee, has or may have a direct or indirect interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee.

# **13. Winding Up of Trust**

## **13.1 Termination Date**

The Trust must wind up and terminate on the first to occur of:

- (a) the date which the Trustee with the written consent of the Appointor determines;
- (b) 80 years from the date of this deed; or
- (c) such earlier date prescribed by law as being the last day of the perpetuity period for the purposes of the rule against perpetuities.

# **14. Resettlement**

## **14.1 Resettlement**

- (a) Subject to clause 14.2, the Trustee may with the written consent of the Appointor (if any) pay, or transfer with or without consideration, the whole or part of the Trust Fund to a trustee (**new trustee**) for the time being of another trust (**new trust**) constituted under the laws of any state or territory of Australia and whether or not such new trust is in existence at the date of this deed, provided that:
  - (i) any one or more of the Beneficiaries of the Trust has an interest in the capital or income of the new trust or a right as a discretionary object similar to any right which a Beneficiary may have under this Trust; and
  - (ii) no Income or Capital, other than remuneration permitted under clause 7.1, is paid, transferred beneficially to, or applied for the benefit of, the Settlor or the Trustee.
- (b) Upon such payment or transfer to the new trust, the moneys or property so paid or transferred will be held by the new trustee freed and discharged from the trusts of this deed and on the terms of such new trust as an addition to the property comprised in the new trust and whether or not the proper law of such

new trust is the law of any other State or Territory of Australia and without the Trustee being bound to see to the application of such moneys.

- (c) Any such resettlement will bind all persons who are bound under this deed. Where the Trustee is also the new Trustee it may at any time declare that it holds the Trust Fund or a part of the Trust Fund as trustee of the new trust whereupon the Trust Fund or such part of the Trust Fund is to be taken to have been paid or transferred to it as new trustee and held on the terms of the new trust and will take effect accordingly.

#### **14.2 Restriction on Resettlement**

No resettlement pursuant to clause 14.1 may:

- (a) divert or modify a vested interest of a Beneficiary in Income or Capital or the investments representing the same or Income derived from any such investment to which such Beneficiary has become absolutely entitled pursuant to this deed; or
- (b) infringe any applicable law or rule against perpetuities or relating to remoteness of vesting or the period during which income may be accumulated or otherwise extend the termination date or result in any provision of the Trust becoming void.

**EXECUTED as a deed**

**David Ross,  
Settlor**

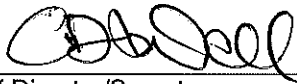


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Signature



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Witness

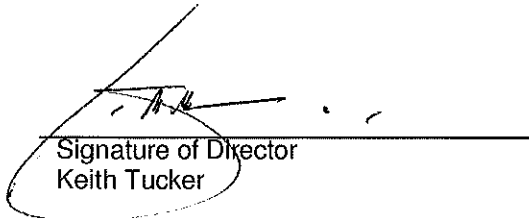
**EXECUTED** by **Manly Junior Rugby Union Fund Pty Ltd** )  
**Trustee** )  
in accordance with section 127 of the *Corporations Act 2001* )  
)



\_\_\_\_\_  
Signature of Director/Secretary  
Cameron Wall



\_\_\_\_\_  
Signature of Director  
Cameron Douglas



\_\_\_\_\_  
Signature of Director  
Keith Tucker