



Trust Deed

Date:

Parties:

Ken Arthur James Murray

Australian Jockey Club Limited

ACN 130 406 852

Alan Osburg

Sharon Skeggs

Lynell Peck

Shane Brady

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DATE:	
PARTIES:	Ken Arthur James Murray
	("Settlor")
AND:	Australian Jockey Club Limited ACN 130 406 852
	("Appointer")
AND:	Alan Osburg
AND:	Sharon Skeggs
AND:	Lynell Peck
AND:	Shane Brady
	("the Trustees")

RECITALS

- (A) The Settlor wishes to provide for the care and rehabilitation of thoroughbred horses which have ceased to be competitive or have ceased to race and have been mistreated or are without owners and are at risk of being killed or mistreated.

- (B) For the purpose of achieving the charitable purposes in Recital (A) the Settlor intends by this Deed to:
- (a) establish a trust to be called the "Thoroughbred Horse Rehabilitation Trust" ("Trust").
 - (b) have the Trust maintain a fund called the "Thoroughbred Horse Rehabilitation Trust Fund" ("Fund") to receive gifts from the public and other sources for the charitable purpose in (A).
 - (c) apply the Fund in providing facilities and services for the charitable purpose in (A).
- (C) The Settlor has agreed to pay to the Settled Sum to be held by the Trustees on the Trust declared in this Deed.
- (D) The Trustees have each agreed to act as trustees of the Trust and will hold the Settled Sum together with such further money and property the Trust may acquire or have given to it on terms contained in this Deed.

OPERATIVE PART

1. INTERPRETATION

- 1.1 The following words have these meanings in this Deed unless the contrary intention appears.

Act means the Income Tax Assessment Act 1997 (Cth).

Appointer means the Australian Jockey Club Limited ACN 130 406 852 or if the Australian Jockey Club Limited no longer is a registered race club registered with Racing New South Wales as a result of a merger with the Sydney Turf Club in accordance with the enactment of the Australian Jockey and Sydney Turf Clubs Merger Bill 2010, then the corporation that is formed or created for the purpose of that merger or amalgamation in substitution for, or as successor to, the Australian Jockey Club Limited and Sydney Turf Club.

Approved Institution means a fund, authority or institution which at the time of a gift falls within the description of an item in any of the tables in Subdivision 30-B of the Act, which has been established for charitable purposes.

Corporations Act means the Corporations Act 2001 (Cth).

Deductible Gift Recipient has the meaning given by the Act.

Deed means this Deed including all amendments, additions, deletions or replacements lawfully made to this Deed.

Fund means the Thoroughbred Horse Rehabilitation Trust Fund established pursuant to this Deed.

Object means the object described in clause 3.1 of this Deed.

Qualified Person means a natural person who holds or has held an office or position in the community or who has skills which would be of use to the Trust in attaining the Object and for those purposes being a person who is at least one of the following:

- (a) a member or former member of the Commonwealth or a State parliament;
- (b) a judge or former judge of a superior court in Australia;
- (c) a person of good character who is or has been active in the sport of horse racing or the care and use of horses;
- (d) a person who has qualifications and/or extensive experience in the training and care of horses;
- (e) a current or former senior academic of an Australian University;
- (f) a person who has a record of achievement in relation to horse racing as a trainer owner or jockey;
- (g) a person involved in animal welfare;
- (h) a barrister or solicitor of the Supreme Court of an Australian State or Territory;
- (i) a current or former veterinary surgeon;

Settled Sum means a sum of one hundred dollars in Australian currency (\$A100).

Settlor means Ken Arthur James Murray.

Trust means the Thoroughbred Horse Rehabilitation Trust established pursuant to this Deed.

Trustee means a Trustee of the Trust appointed pursuant to this Deed.

Trust Property means the property of the Trust being the Settled Sum and all moneys, investments and property for the time being subject to the trusts of this Deed.

1.2 In this Deed unless the contrary intention appears:

- (a) a reference to a clause or schedule is a reference to a clause of or schedule to this Deed and references to this Deed include any recital or schedule;
- (b) 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;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns; and
- (f) "includes", "including" and similar expressions are not terms of limitation.

1.3 Headings are inserted for convenience and do not affect the interpretation of this Deed.

2. ESTABLISHMENT OF THE TRUST

2.1 The Settlor has upon the execution of this Deed paid to the Trustees the Settled Sum,

and the Trustees hereby declare that they hereby:

- (a) act as Trustees of the Trust; and
- (b) hold the Settled Sum on trust for the purpose of attaining the Object.

- 2.2 To achieve the Object, it is intended that money will be raised from members of the public and from other sources, which, together with any additional property given to or acquired by the Trust, and all investments and property representing the Settled Sum and that further money and property and any accretions or additions to it from time to time, shall be held by the Trustee, and applied in all accordance with the terms of this Deed.
- 2.3 In managing and conducting the affairs of the Trust, the Trustees shall direct their efforts towards furthering the Object.

3. OBJECT

- 3.1 The Trust established is to be maintained exclusively for a public charitable purpose in Australia, being the provision of money, property and services for the care and rehabilitation of thoroughbred horses which have ceased to be competitive or have ceased to race and have been mistreated or are without owners or are at risk of being killed or mistreated.
- 3.2 The Trustees may apply capital as well as income of the Trust for the Object.

4. CONTROL OF THE TRUST

- 4.1 A Trustee who is a natural person (and not a corporation) must be a Qualified Person at the time of appointment and at all times while holding office as a Trustee.
- 4.2 The Appointer has the power to appoint and remove the Trustees or any one or more of them from time to time and this power of appointment and removal and all other functions of the Appointer pursuant to this Deed shall be exercised by the Board of Directors of the Appointer as constituted from time to time in accordance with the rules of the Appointer set out in its Constitution.
- 4.3 The Appointer hereby approves the appointment of each of the said Alan Osburg,

Sharon Skeggs, Lynell Peck and Shane Brady as the first Trustees of the Trust.

- 4.4 A Trustee will only continue to be a Trustee while that person remains approved as a Trustee by the Board of Directors of the Appointor.

5. TRUSTEES

- 5.1 At all times there must be at least three (3) Trustees.
- 5.2 A Trustee may retire on not less than one month's written notice to the Appointor and the other Trustees.
- 5.3 If a Trustee in the opinion of the Appointor has defaulted in the observance or performance of any of the obligations or duties of a Trustee under this Deed, the Appointor may by a written notice to the Trustee remove that Trustee from office.
- 5.4 The Appointor must use its reasonable endeavours to ensure that if a Trustee retires or is removed, a successor Trustee agrees to become a Trustee with effect from such retirement or removal becoming effective.
- 5.5 Any successor Trustee must execute a deed by which that person covenants to be bound by this Deed as if that person had been originally a party to it.
- 5.6 When a Trustee retires or is removed, the Trustee:
- (a) is released from all obligations in relation to the Trust arising after the time he or she retires or is removed;
 - (b) must execute and deliver any documents and do all other things which are necessary or desirable to effect the appointment of a successor Trustee.
- 5.7 The Appointor and the Trustees must act honestly and exercise the reasonable degree of care and diligence applicable to their respective positions and functions under this Deed.

6. INVESTMENTS

- 6.1 The Trust Property may be invested solely in or on any investments or securities authorised by the law for the time being of the Commonwealth of Australia or any

Australian State or Territory for the investment of trust money with power to vary or transpose those investments or securities from time to time and at any time.

- 6.2 Except for any investment or security in accordance with clause 6.1 no part of the capital or income of the Trust may be lent to or deposited with any person.

7. POWERS OF THE TRUSTEES

- 7.1 In addition to the powers conferred on the Trustees by law or which are otherwise conferred on it by this Deed, the Trustees have, subject always to clause 6 and 8, the following powers and discretions:

- (a) to locate and take delivery of thoroughbred horses that are or have been racehorses and have been mistreated, or at risk of being mistreated or killed or are without owners;
- (b) to stable, feed, care and obtain access to veterinary services for the horses referred to in (a);
- (c) to retrain the horses referred to in (a) so they are suitable for recreational and/or competitive activities;
- (d) to find owners for the horses referred to in (a) who will take proper care for them and will not mistreat or harm them and for this purpose to do all things reasonably necessary to give the new owners good title to the horses and thereafter sell or donate the horses to the new owners;
- (e) to employ and/or engage as contractors and/or as volunteers suitably qualified and skilled persons to carry out the matters in paragraphs (a), (b), (c) and (d);
- (f) to solicit donations, gifts, bequests and other forms of financial assistance to, or for the benefit of, the Object, including by conducting all charitable fundraising activities permitted by law;
- (g) to accumulate any unpaid or unapplied income of the Trust by investing it and the resulting income and by holding the accumulations in augmentation of and on the same trusts and conditions as are applicable to capital;

- (h) to exercise all rights and privileges and perform all duties pertaining to any bonds, shares, stock or debentures for the time being forming part of the Trust with liberty to assent to any arrangements modifying those rights, privileges or duties;
- (i) to agree to any scheme or arrangement for the reconstruction of or the increase or reduction of the capital of any trust and for any such purpose to deposit, surrender and exchange any such shares or stock or the title to them and to pay any calls or contributions or other necessary expenses in connection with any shares, stock or the title to them;
- (j) if at any time the Trust Property comprises real property or any interest in real property:
- (i) to manage, use and let it or any part of it;
 - (ii) to erect, pull down, rebuild and repair buildings and erections;
 - (iii) to carry out improvements of any nature;
 - (iv) to make allowances to and arrangement with tenants;
 - (v) to grant or acquire easements or other rights, to partition or subdivide or join in the partition or subdivision of it; or
 - (vi) generally to deal with that property or interest or to join in dealing with it as if beneficially entitled to it without being responsible for loss;
- (k) to retain any property donated to the Trust without considering the question of sale, calling in or conversion for as long as the Trustees thinks fit;
- (l) to commence and carry out legal proceedings of any kind and in any court to enforce a contract entered into by the Trustees and to recover damages for breach of such a contract;
- (m) to cancel, terminate or accept surrenders of leases, to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of a property, to sue for and recover rent and damages

for breach of a lease, to sue and prosecute trespassers or other persons for damage to any part of the property and to settle, abandon, compromise and release any such actions or suits when expedient;

- (n) to repair, renovate, decorate and maintain chattels personal or land including fittings, fixtures, furnishings, furniture and equipment and grounds;
- (o) to employ, engage or appoint any manager, solicitor, accountant or agent or any other person, to transact any business required to be done under the Trust, including the receipt for or payment of money and the acquisition of property of any kind on behalf of the Trustees;
- (p) to decide the amount of the remuneration and expenses to be paid to any person employed, engaged or appointed pursuant to the power in clause 7.1(o) and pay the remuneration and expenses from the Trust Property;
- (q) to acquire any investment on terms as the Trustee thinks fit;
- (r) to raise money which the Trustees think expedient for any purpose in relation to the execution of the trusts and powers conferred on the Trustees by this Deed with or without security or by mortgaging or charging with or without power of sale any part of the Trust;
- (s) to pay out of the capital or income of the Trust the costs of and incidental to the establishment of the Trust and all expenses and outgoings that may be incurred in relation to the trusts of this Deed including all administration expenses;
- (t) to invite persons to make gifts to the Trust and to refuse any gift of property where the Trustees reasonably consider that any expenses associated with or likely to arise in relation to the gift of property would cause the gift of property to be onerous or uneconomic to maintain;
- (u) to make a gift to an Approved Institution for a specific purpose as identified in the relevant provisions of Subdivision 30-B of the Act, and to provide the money, property or benefit to or for the Approved Institution only for the specified purpose;

- (v) to conduct activities for the raising of funds from the public, pay reasonable expenses relating to the conducting of those activities, and to apply the net proceeds pursuant to the Object;
- (w) to take and act on the opinion of any lawyer who has been in practice for not less than ten (10) years since admission practising in the Supreme Court of any Australian State or Territory whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts of this Deed without being liable to any one in respect of any act done or not done by them in accordance with that opinion, but this clause does not oblige the Trustees to act in accordance with any such opinion nor prohibit the Trustees from applying to any court as it thinks fit;
- (x) to do any act or thing which in the opinion of the Trustees is necessary for the proper and efficient management and development of the Trust Property;
- (y) to carry out any of the foregoing powers by or through an agent and to appoint and authorise the agent to carry out all or any of the foregoing powers; and
- (z) to establish and maintain commercial contracts, fund raising schemes, appropriate sponsorships and other arrangements for the purpose of the above objects.

8. FUND

- 8.1 All other provisions of this Deed are subject to this clause 8.
- 8.2 The Trustee must establish and maintain the Fund for the specific purpose of supporting the Object.
- 8.3 The Fund:
 - (a) is established to receive all gifts of money or property for this purpose and any money received pursuant to such gifts must be credited to the bank account established pursuant to clause 8.4(d).
 - (b) must not receive any other money or property into its account and it must comply with subdivision 30-B of the Act.

8.4 The Fund must operate in accordance with the following rules:

- (a) The purpose of the Fund is to support the Object;
- (b) Members of the public and other bodies are to be invited to make gifts of money or property to the Fund for the attainment of the Object;
- (c) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Fund;
- (d) A separate bank account is to be opened to deposit money donated to the Fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds and property of the Trust;
- (e) Receipts are to be issued in the name of the Fund and proper accounting records and procedures are to be kept and used for the Fund;
- (f) The Fund will be operated on a not-for-profit basis; and
- (g) The Trustees will administer the Fund.

8.5 The Trustees agree to comply with any rules or requirements of any relevant government authority may make to ensure that gifts made to the Fund are only used to achieve the object.

8.6 Notwithstanding any other provision in this Deed, in the case of the winding-up of the Fund, any surplus assets are to be transferred to another like fund with a similar object or objects.

8.7 For the avoidance of doubt, the Trustees must create a separate bank account or bank accounts for other monies, income and property of the Trust apart from the Fund which is separate from the bank account to be created pursuant to clause 8.4(d).

9. NON-PROFIT

9.1 The Trust Property and income of the Trust shall be used and applied solely in promotion of the Object and no portion shall be distributed, paid or transferred directly or indirectly to the Trustees except as bona fide compensation for services

rendered or expenses incurred on behalf of the Trust.

- 9.2 Any allocation of funds or property by the Trust to other persons or organisations will be made in accordance with the Object and will not be influenced by the preference of the donor of those funds or property.

10. EXPENSES

- 10.1 The Trustees are entitled to be reimbursed for all reasonable expenses incurred in connection with the administration of the Trust and those expenses may be charged against the income of the Trust. If the income of the Trust is insufficient for that purpose, then to the extent of such insufficiency such expenses will be charged against the capital of the Trust or so much of it as may be required to meet the shortfall.

11. INDEMNITY OF TRUSTEES

- 11.1 The Trustees are hereby (but subject to clause 11.2) indemnified against all liabilities incurred by them through any act or omission in the exercise or bona fide intended or purported exercise of the powers, duties and discretions under this Deed and have a lien on the Trust for that indemnity.

- 11.2 Except where due to the Trustee's own dishonesty or wilfully or reckless failure or knowingly being a party to a breach of trust, a Trustee is not liable for any:

- (a) act or default done or omitted to be done in the exercise or bona fide intended or purported exercise of those powers, duties and discretions; or
- (b) loss or expenses incurred by the Trust through the insufficiency of any security in or on which any of the money of the Trust is invested; or
- (c) loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom money or securities are deposited; or
- (d) other loss, damage or misfortune whatsoever.

12. PROCEEDINGS OF THE TRUSTEES

- 12.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise

regulate its meetings as they think fit.

- 12.2 A record of all Trustees present at each meeting of the Trustees and of all resolutions and proceedings of the Trustees at such meeting shall be entered in a minute book provided for that purpose.
- 12.3 A copy of the minutes of each meeting of Trustees shall be given to the Chairperson of the Board of Directors of the Appointor.
- 12.4 The Trustees shall elect one of their number to preside at and chair meetings of the Trustees.
- 12.5 The quorum for a meeting of Trustees shall be a majority of Trustees personally present.
- 12.6 Questions arising at any meeting of the Trustees shall be decided by a majority of votes and a determination by a majority of the Trustees shall for all purposes be deemed a determination of the Trustees and shall bind all Trustees and the acts of the majority and execution of the powers and trusts hereby conferred upon the Trustees shall be as valid as if they acted in a matter unanimously. The chairperson of the Trustees shall not have a casting vote in the case of an equality of votes of the Trustee.
- 12.7 The Trustees may make such other rules for their meetings and proceedings as the Trustees think desirable.

13. CORPORATE TRUSTEES

- 13.1 The Appointer may appoint a corporation or an incorporated association as a Trustee of the Trust.
- 13.2 If the Trustees determine that the Object of the Trust would be best served by the appointment of a corporation or incorporated association as the sole Trustee of the Trust, the Trustees shall make a recommendation to the Appointor to that effect and the Appointor must do all such things as are required to give effect to that recommendation.
- 13.3 A Trustee being a corporation or incorporated association is not required to be a Qualified Person.

14. ACCOUNTS AND AUDIT

14.1 The Trustee must:

- (a) cause proper accounts to be kept by a person appointed by the Trustees for that purpose with respect to all sums of money received and expended by the Trust, the matters in respect of which the receipt and expenditure takes place and the assets and liabilities of the Trust; and
- (b) cause a balance sheet and statement of income and expenditure to be drawn up as at 31 July each year and make available to the person appointed by the Trustees for that purpose such documents and information as that person requires to fulfil this task;
- (c) appoint an auditor who is a registered company auditor for the purposes of the Corporations Act to audit the accounts and books of the Trust each year and to prepare an audited financial statement for the Trust each year.

14.2 The accounts, books and records must be kept at a place determined by the Trustees and be open to inspection by any Trustee and by the auditor referred to in clause 14.1(c).

14.3 An audited financial statement for the Trust (separately showing details of the Fund):

- (a) will be prepared annually;
- (b) will provide information on the expenditure of monies from the Trust and the management of assets of the Trust, in all cases separately identifying these details for the Fund.
- (c) shall be provided to the Trustees within two (2) months of the end of the financial year of the Trust and shall at the same time also be provided to the Appointor.

15. POWER OF ALTERATION

15.1 The Trustees may by deed alter, amend, add to, delete or replace any of the trusts, powers and provisions of this Deed, including this clause, in any manner provided

that:

- (a) no part of the Trust becomes subject to any trusts other than trusts for public charitable purposes; and
- (b) a lawyer referred to in clause 7.1(w) certifies that in their opinion the alterations, amendments, additions, deletions or replacements are within this power;
- (c) the Appointor approves the alteration, amendment, addition, deletion or replacement.

16. WINDING UP OF TRUST

16.1 If on the winding up or dissolution of the Trust there remains after satisfaction of all its debts and liabilities any property, the property must be given or transferred to an Approved Institution which:

- (a) has an object or objects similar to the Object; and
- (b) prohibits the distribution of its income and property among its beneficiaries or members to an extent at least as great as is imposed on the Trust.

16.2 The Approved Institution is to be determined by the Trustees at or before the time of dissolution or, failing such a determination, by an application to the Supreme Court of New South Wales.

16.3 In addition to clauses 16.1 and 16.2, any assets of the Fund must be transferred to a similar fund which is a Deductible Gift Recipient.

17. FAILURE TO ACHIEVE OBJECT

17.1 If after 5 years from the date of this Deed, the object of the Trust has not been achieved, the Trust shall be wound up and the provisions of clause 16 of this Deed shall apply to the property of the Trust.

18. EMPLOYEES

18.1 The Trustees may engage employees, contractors, and other agents to help fulfil the

objects of the Trust.

- 18.2 The Trustees shall pay from the Trust Property any such employees, contractors and agents reasonable and proper remuneration for services rendered.

19. ENDORSEMENT OF THE TRUST AS A DEDUCTIBLE GIFT RECIPIENT

- 19.1 If the Trust is endorsed by the Commissioner of Taxation as a Deductible Gift Recipient:

- (a) the Trustees must not act or fail to act in such a way as to cause the Commissioner of Taxation to revoke the endorsement of the Trust as a Deductible Gift Recipient under Division 30BA of the Act;
- (b) the Trustees must advise the Commissioner of Taxation in writing before, or as soon as practicable after, the Trust ceases to be entitled to be endorsed as a Deductible Gift Recipient; and
- (c) in the event that the Commissioner of Taxation revokes that endorsement all moneys, properties and benefits held by the Trustees as Trustee of the Trust must be transferred to an Approved Institution.

20. ADVISORY COMMITTEES

- 20.1 The Trustees may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.

- 20.2 Each Advisory Committee may consist of a single individual or the number of individuals as the Trustees may decide.

- 20.3 The Trustees may specify:

- (a) the manner in which proceedings of each Advisory Committee are to be conducted;
- (b) the matters which the Advisory Committee must have regard to in carrying out its functions; and
- (c) any other matters concerning the Advisory Committee or its functions that the