

*In accordance with the Trustee Act 1958*

**DEED FOR DISCRETIONARY TRUST**

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**DEED OF SETTLEMENT**

**FOR**

**EASTERN KESTREL TRUST**

Certified to be a true copy of the  
original seen by me.

  
\_\_\_\_\_  
Andrew R. Harvey  
Chartered Accountant  
530 Little Collins Street, Melbourne VIC 3000

Dated: 21/03/2024  
CA ANZ Member: 80869

ESTABLISHED BY

CASTLE CORPORATE SERVICES PTY LTD  
26 Ellingworth Parade  
BOX HILL VIC 3128

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## DISCRETIONARY TRUST

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THIS DEED OF SETTLEMENT is made the day and year specified in the Schedule hereto.

**PARTIES :**

1. The person described as the Settlor in the Schedule (hereinafter called "the Settlor") and
2. The person or persons or corporations described as the Trustee in the Schedule (hereinafter called "the Trustee").

**WHEREAS:**

- A. The Settlor wishes to establish a Trust to be applied for the benefit of the Beneficiaries hereinafter described;
- B. The Settlor has at the time of execution of this Deed transferred or is about to transfer to the Trustee the sum specified in the Schedule (hereinafter called "the Settlement Sum");
- C. The Trustee has consented to accept the Settlement Sum and to become the Trustee of this Settlement upon the trusts and with and subject to the powers and provisions expressed in this Deed;
- D. The Trust constituted by this Deed shall be known by the name specified in the Schedule.

**THIS DEED WITNESSES:**

**1. DEFINITIONS**

In this Deed and in the Schedule hereto, the terms and words shall have the following meanings unless the context otherwise requires:-

"the Act" means the Income Tax Assessment Act 1936 (as amended from time to time).

"Appointor" means the person entitled under the provisions of this Deed to appoint or remove a Trustee.

"Beneficiary" means any person absolutely or contingently entitled to income or capital of the Trust Fund:

"Primary Beneficiaries" means the person or persons specified as such in the Schedule hereto:

"Secondary Beneficiaries" means the person or persons specified as such in the Schedule hereto:

"Tertiary Beneficiaries" means the person or persons specified as such in the Schedule hereto.

"Category" in relation to income or capital of the Trust Fund means 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 so that it may be separately distributed or dealt with as provided in clause 7.

"child" in relation to a Beneficiary includes an adopted child, an ex-nuptial child and (except when referred to in the Schedule) a child of a spouse, widow or widower of a Beneficiary and "children", "grandchildren", "issue" and "remoter issue" shall have a corresponding meaning.

"Deed" means this Deed and the attached Schedule which forms part of this Deed as amended, varied or supplemented from time to time.

|                                   |                                               |
|-----------------------------------|-----------------------------------------------|
| Castle Corporate Services Pty Ltd |                                               |
| This stamp is                     | ABN 36 065 276 655 AP 239                     |
| SRO                               | Victorian Duty \$..... 200.00                 |
| Property.                         | Consideration / Advance \$.....               |
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| TO BE                             | Transaction No:..... 3916 / 2005              |
| COPIED                            | Endorsing Date: 22 / 04 / 2005                |
|                                   | Signature:..... No 1                          |

"financial year" means each period of twelve (12) months ending on the 30th day of June. The period from the date of execution of this Deed until the next succeeding 30th day of June and the period from the first day of July immediately prior to the Termination Date and ending on the Termination Date shall for the purposes of this Deed each be deemed to be a financial year.

"Income" shall, unless the Trustee otherwise determines, mean all profits or gains taken into account in calculating the net income of the Trust as defined in Section 95 of the Act unless the Trustee shall prior to the end of each year of income determine that the provisions of this sub-clause shall not apply in relation thereto and in the event of any such determination being made, the "Income" means the income produced from the investment of the Trust Fund and/or from the property thereof.

"net capital gain" shall bear the same meaning as ascribed to it by the Act.

"parent" in relation to a Beneficiary includes the parent of a spouse, widow and widower of a Beneficiary and "grandparent" has a corresponding meaning.

"person" includes a company, legal entity or body of persons.

"the Schedule" means the Schedule attached to this Deed as separate and distinct from this Deed.

"a Section 160AQT Amount" shall mean an amount included in the income of the Trust pursuant to Part IIIAA of the Act.

"set aside" in relation to a Beneficiary includes placing sums to the credit of such Beneficiary in the books of the Trust Fund in accordance with the provisions to that effect contained in this Deed.

"Specified Appointor" means:

- (a) A Primary or Secondary Beneficiary who is also holding office as an Appointor; or
- (b) A person, company or other entity who, or a predecessor of whom, was appointed by an Appointor who was or would have been a Specified Appointor to act as Appointor in their place; or
- (c) The legal personal representative of any Specified Appointor where that Specified Appointor is deceased and prior to the appointment of a Primary or Secondary Beneficiary as Appointor, provided that the first named Specified Appointor's estate includes or included a Beneficiary who is both an acknowledged child or descendant of the person and is living at the relevant time; and

provided that a person or a legal personal representative shall not become or shall cease to be a Specified Appointor if a notice under subclause 6.1 has been lodged, or is deemed to have been lodged by virtue of sub-clause 8.6, by or on behalf of the person or the person's estate.

"spouse", "widow", "widower" and "social partner" in relation to a Beneficiary includes a former spouse and a person, although not legally married to the Beneficiary, who lives (or in the case of "widow" or "widower" lived with the Beneficiary prior to the Beneficiary's death) and shall also include persons who have been long term social partners of at least six (6) months standing with the Primary Beneficiary, whether or not such persons have formerly lived with the Beneficiary on a bona fide domestic basis as

the spouse or partner of the Beneficiary and a person does not cease to be a "spouse", "widow", "widower" or "social partner".

"tax" means any income tax, capital gains tax, fringe benefits tax, consumption tax, value added tax, provisional tax, additional tax, penalty tax, stamp duty, fine for late payment, tax on deposit or withdrawal of funds from any account or other tax or imposition payable to any government or government instrumentality.

"Termination Date" means the date upon which the Trust is wound up in accordance with this Deed.

"Trust" means the Trust constituted by and comprised in this Deed and the Schedule.

"the Trustee" means the person or persons named as such in the Schedule hereto or any subsequent Trustee for the time being of the Trust and whether this same be a natural person or persons, companies, corporations or otherwise or one or more classes of them severally.

"the Trust Fund" means:-

- (a) the Settlement Sum;
- (b) all moneys, investments and property of every description paid donated assigned or transferred to and accepted by the Trustee as additions to the Settlement Sum;
- (c) the accumulations of income hereinafter directed or empowered to be made;
- (d) all additions and accretions to the foregoing.

Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.

A reference to a statutory enactment shall be a reference to such enactment as amended from time to time.

Headings shall not be taken into account in the construction of this Deed.

## **2. ESTABLISHMENT OF TRUST**

The Settlor hereby declares that the Trustee shall and the Trustee hereby declares that it will henceforth stand possessed of the Trust Fund upon the trusts and with and subject to the powers and provisions expressed in this Deed concerning the same.

## **3. BENEFICIARIES**

- 3.1 The expressions "the Primary Beneficiaries", "the Secondary Beneficiaries", "the Tertiary Beneficiaries" and "the Beneficiaries" shall include persons, corporations and other entities and the Trustee or Trustees of Trusts who or which from time to time until the Termination Date come within the definitions herein contained or within any description in the Schedule hereto notwithstanding that such persons, corporations or other entities, Trustee or Trustees may not

be in existence or have come into the defined categories at the date of this Deed and, in the case of such Trustee or Trustees notwithstanding that the Trust or settlement of which he is Trustee or they are Trustees have not been formed or come into existence or do not fall within the defined category at the date of this Deed.

### 3.2 **Additional Beneficiaries**

The Appointor may at any time and from time to time before the Termination Date by notice in writing to the Trustee appoint any person, corporation, trust, charity, body or association incorporated or unincorporated who or which is alive or in existence at the date of such appointment to be a Beneficiary for the purpose of this Deed and the appointee shall as and from the date of such appointment become a Primary Beneficiary, a Secondary Beneficiary or a Tertiary Beneficiary hereunder according to the specification of the Appointor. If such appointment does not specify the class of Beneficiary to which the appointee shall belong, the appointee shall as and from the date of such appointment become a Tertiary Beneficiary.

### 3.3 **Deletion of Beneficiaries**

- (a) Any person being a Beneficiary hereunder shall cease to be a Beneficiary:-
- (i) any person or entity who has ceased to be a Specified Appointor by virtue of lodging, or having been deemed to have lodged, a notice pursuant to sub-clause 6.1. provided that nothing in this Deed shall prevent or exclude the payment by the Trustee of capital and net income of the trust fund in compliance with a notice pursuant to sub-clause 6.1;
  - (ii) where the Trustee with the consent in writing of the Appointor by resolution or deed declares that a person or a class of persons is either permanently or temporarily excluded as a Beneficiary; or
  - (iii) the Beneficiary not being a minor unconditionally declares a determination to be permanently or temporarily excluded as a Beneficiary of the Trust and serves a properly executed copy of such deed on the Trustee

and no further sums whether of income or of capital shall be allocated or set aside or paid to or otherwise applied to or for the benefit of such person for the duration of their exclusion.

- (b) Nothing in this sub-clause contained shall affect the rights of a person who has ceased to be a Beneficiary to income or capital of the Trust to which such person became entitled prior to such cessation.
- (c) A person who ceased to be a Beneficiary shall not thereby be excluded from subsequently being reappointed or becoming a Beneficiary.

### 3.4 **Exclusion from Benefits**

It is hereby declared that the Settlor and his estate and any corporation or trust in which the Settlor or his estate has any actual or contingent beneficial interest are specifically and permanently excluded from all or any benefits whatsoever under this Trust.

## **4. INCOME OF THE TRUST FUND**

### **4.1 Discretionary Distribution**

The Trustee may in each financial year pay, apply or set aside the whole or such part (if any) of the income of the Trust Fund of that financial year to or for the benefit of the beneficiaries or any one or more of them exclusive of the other or others who shall be living or which shall be in existence at the time payment, application or setting aside of such income is made in such shares or proportions and from such category or categories of income as the Trustee in its discretion may determine.

### **4.2 Accumulation**

- (a) The Trustee may in its discretion before the end of a financial year resolve to accumulate the whole or any part of the income of that financial year whereupon such accumulation shall subject to paragraph (c) of this sub-clause form part of the capital of the Trust Fund.
- (b) A resolution to accumulate may be in respect of the whole or any part of one or more categories of income of the Trust Fund.
- (c) The Trustee shall pay tax in respect of an accumulation out of the same or out of the capital of the Trust Fund.
- (d) Any determination to accumulate income shall be conditional upon the law in force in relation to this Deed giving effect to such determination at the end of the financial year.

### **4.3 No Determination**

If the Trustee shall fail by the 30th day of June to have exercised its discretion to pay, apply, set aside or accumulate the whole or any part of such income in the manner aforesaid then the Trustee shall hold the income not so paid, set aside or accumulated for that year in trust for such of the Primary Beneficiaries as are then living or in existence and if more than one absolutely as tenants in common in equal shares and if there be no Primary Beneficiaries then living or in existence for such of the Secondary Beneficiaries as are then living or in existence and if more than one absolutely as tenants in common in equal shares and if there be no Secondary Beneficiaries then living or in existence for such of the Tertiary Beneficiaries as are then living or in existence and if more than one absolutely as tenants in common in equal shares.

### **4.4. Excess Determination**

If at the end of any financial year the aggregate amount in respect of which determinations have been made pursuant to sub-clauses 4.1 and 4.2 hereof exceeds the income of the Trust Fund for the financial year the amount of the excess shall firstly be deducted from the amount or amounts (if any) which the Trustee has determined to accumulate and only the balance of such amount or amounts (if any) shall then be accumulated and if after such deduction the aggregate amount in respect of which determinations have been made pursuant to sub-clauses 4.1 and 4.2 still exceeds the income of the Trust Fund for the financial year then the

Trustee shall be deemed to that extent to have applied the capital of the Trust Fund pursuant to clause 5 hereof.

#### 4.5 **Method of Allocation**

- (a) The payment application or setting aside of income of the Trust 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 shall have an immediate vested indefeasible interest in and to that part or parts of the income of the Trust Fund so paid, applied or set aside for the financial year to which the termination 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 of the Trust Fund by reference to a specific sum or a percentage of the income or any category of income of a financial year.
- (c) A determination by the Trustee to pay, apply or set aside any amount for any Beneficiary may be made by placing such amount to the credit of such Beneficiary in the books of the Trust Fund, by drawing any cheque in respect of such amount made payable to or for the credit or benefit of such Beneficiary or by paying the same to such one or more of the parent, guardian or spouse of that Beneficiary as the Trustee in its absolute discretion shall think fit for the maintenance, benefit, support and advancement in life of that Beneficiary and in making any such payment the Trustee shall not be bound to see to the application of any amount or thing so paid and the receipt of the said parent, guardian, spouse, banker or Beneficiary shall be a good and sufficient discharge and receipt to the Trustee in that behalf.
- (d) If the income of the Trust Fund in any financial year includes any amounts which are net capital gains or net income from primary production then in making any determination to pay apply or set aside any portion of the net capital gain or primary production income shall be paid, applied or set aside such amount between the Beneficiaries in such proportions and in such manner as the Trustee in its absolute discretion shall think fit.
- (e) If the Trustee receives a franked dividend in any financial year and a Section 160AQT Amount is included in the net income of the Trust or a flow-on franking amount is included in the income of the Trust in any financial year in relation to another trust amount or a partnership amount then, in making any determination to pay or set aside any portion of the income, the Trustee may determine that the whole or some portion of the franked dividend and Section 160AQT Amount or the flow-on franking amount(s) in relation to another trust amount or a partnership amount shall be paid, applied or set aside for the benefit of such Beneficiary or Beneficiaries as it in its absolute discretion shall think fit to the exclusion of some or all of the other Beneficiaries.

#### 4.6 **Tax**

Where the Trustee is required by law to pay tax in respect of income of the trust 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 the provisions of this Deed, the Trustee may pay the same out of income or capital to which the Beneficiary is presently entitled or may deduct the same out of moneys which may then or thereafter come into the hands of the Trustee or over which the Trustee has control and to which the Beneficiary is or becomes entitled.

## **5. CAPITAL OF THE TRUST FUND**

### **5.1 Meaning of Capital**

In this clause, "capital" means so much of the Trust Fund as does not constitute income of the Trust.

### **5.2 Distribution of Capital**

At any time on or prior to the Termination Date the whole or any part of the capital or of any category thereof shall be held for such one or more of the Beneficiaries to the exclusion of the others as are then living or in existence and if more than one in such shares or proportions as the Trustee in its discretion shall at any time or times determine in the manner provided in this clause.

### **5.3 Determination of the Trustee**

A determination of the Trustee pursuant to sub-clause 5.2 above shall be evidenced by a written declaration, instrument or resolution of the Trustee made prior to the Termination Date and may be expressed to be revocable during a period which expires prior to the Termination Date. Such determination shall become effective upon the expiration of the relevant period and the Trustee failing to revoke the same. The period expressed in such revocable determination may be expressed as a fixed period by reference to the occurrence of an event or by reference to the life of a person or the last survivor of the joint lives of two or more persons.

### **5.4 Method of Allocation**

Capital to be distributed by way of a determination pursuant to the provisions of this clause may be effected:-

- (a) in any manner in which income of the fund is able to be paid, applied or set aside in accordance with the provisions of this Deed; or
- (b) by the transfer in specie of any asset comprised in the Trust Fund at a valuation determined by or acceptable to the Trustee.

### **5.5 Effect of Determination**

Once a determination of the Trustee in favour of a Beneficiary becomes irrevocable, the Beneficiary shall have an immediate vested indefeasible interest in the capital the subject of such determination and where the same continues to be held by the Trustee it shall be held on a separate trust for the Beneficiary.

**5.6 Tax**

Where the Trustee is required by law to pay tax in respect of or arising out of a distribution of capital it may deduct and pay the same out of such distribution and to the extent to which the same may be insufficient to fully discharge such liability, the Trustee may pay the same from other moneys or property which may be in or come to its possession or control as it may decide.

**6. DISTRIBUTION TO SPECIFIED APPOINTOR**

- 6.1 At any time prior to the Termination Date, but after the death of all of the Primary Beneficiaries, any Specified Appointor may give to the Trustee notice in writing requiring the Trustee to distribute to the Specified Appointor that proportion of the trust fund as is represented by the capital and unallocated net income of the Trust Fund at the date of receipt of the notice by the Trustee divided by the number of Specified Appointors at the date of the notice;
- 6.2 At the time any Specified Appointor calls, or is deemed to have called, upon his or her interest in the Trust Fund in accordance with the preceding sub-clause, the Trust Fund is to be valued by the trust's accountants. Such valuations are to take into account contingent tax liabilities that may exist for the remaining Beneficiaries of the Trust Fund;
- 6.3 The Trustee is empowered to reasonably delay payment of a distribution under sub-clause 6.1 until such time as financial arrangements beneficial to both the Trust and the Specified Appointor can be put in place.
- 6.4 At any time when a Specified Appointor is:
- (a) by reason of age or intellectual incapacity under a legal disability, a distribution of income or capital may only be made or allocated so that the benefit to the Specified Appointor under the legal disability and that Specified Appointor's dependants who are also Beneficiaries is at least equal to  $1/X$  where "X" equals the number of Specified Appointors;
  - (b) unable to personally benefit from a distribution, whether by reason of bankruptcy or otherwise, the Trustee shall either accumulate the trust income or distribute the income to such other beneficiaries as the Trustee considers to be in the best interests of the Specified Appointor given the circumstances of the Specified Appointor, and in determining the best interests of the Specified Appointor, the Trustee shall consider the needs of both the Specified Appointor and the Beneficiaries who are dependants of the Specified Appointor.

**7. CATEGORIES**

- 7.1 The Trustee may in the books of account and records of the Trust separately record each of the following categories of income received into the trust Fund:-
- (a) dividends which under the Act:-

- (i) are fully franked;
    - (ii) are unfranked;
    - (iii) to which a foreign tax credit attaches; or
    - (iv) any other separately identifiable taxation consequence or benefit is attached or arises.
  - (b) income, including net capital gains, which under the Act:-
    - (i) has an Australian source;
    - (ii) has an ex-Australian source;
    - (iii) has a foreign tax or other credit attached;
    - (iv) is exempt or otherwise liable not to be taxed;
    - (v) net income from primary production pursuant to Section 156 of the Act;
    - (vi) interest;
    - (vii) royalties;
    - (viii) exempt income;
    - (ix) has or gives rise to any other separately identifiable taxation consequence or benefit.
- 7.2 The Trustee may identify and separately record and maintain in the books of account and records 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 the preceding sub-clause as the Trustee by resolution shall determine.
- 7.3 (a) A resolution or determination of the Trustee by which income of the Trust Fund is distributed or accumulated pursuant to the provisions of clause 4, may separately deal with the whole or part of the income of a category so that the same or any part thereof may be specifically paid applied or set aside for the benefit of any one or more of the Beneficiaries exclusive of the other or others or accumulated to the extent to which income of the Trust is permitted to be accumulated by this Deed and become part of the capital of the Trust Fund; and
- (b) The whole or any part of the capital of a category may at the discretion of the Trustee be distributed in accordance with the provisions of clause 5.
- 7.4 Expenses and outgoings of the Trust Fund may at the discretion of the Trustee be allocated against and deducted from income or capital of any one or more categories in such manner as the Trustee may see fit.

- 7.5 In the event that the Trustee shall not exercise its discretion as provided on the preceding sub-clause in respect of a financial year, outgoings and expenses of the Trust Fund for that year shall be allocated in such manner as the Trustee may decide against income of a category or categories to which a tax credit or rebate does not attach, and thereafter against the remaining income of the Trust Fund.

## **8. APPOINTMENT AND REMOVAL OF TRUSTEE**

- 8.1 The Appointor may at any time and from time to time by deed or by notice in writing delivered to the Trustee appoint a new trustee in place of an existing trustee or in addition to and jointly with an existing trustee in his absolute and unfettered discretion provided that the Settlor shall not be eligible to be appointed Trustee. Such removal or appointment shall take effect from the date of such notice.

The power of appointment and removal vested in the Appointor shall pass to the Appointor's successor in accordance with the schedule as if the Appointor had resigned or is deceased, and if such successor refuses or is unable to be the Appointor, the power of appointment and removal vested in the Appointor shall vest in the Trustee.

The expression "the Appointor" shall include:-

- (a) any Specified Appointor;
  - (b) any other person or company to whom the powers hereby given may be delegated in writing by the Appointor or his legal personal representatives; or
  - (c) in the event of the resignation of the Appointor for the time being (which shall be ineffectual unless given in writing to the Trustee) the person or company nominated by notice in writing to the Trustee by the Appointor to be the Appointor's successor in that role; or
  - (d) if the position is otherwise vacant, the Trustee.
- 8.2 In the event that the Appointor shall become subject to a mental or legal disability including being declared bankrupt or an order being made for the sequestration of the estate of the Appointor, then from the time of such disability, and during the continuance thereof, the power of appointment and removal vested in the Appointor shall vest in:
- (a) the person or persons named in a general or enduring power of attorney for the Appointor; or
  - (b) if there is no such person named, the person nominated as Executor in the most recently executed Will of the Appointor; or
  - (c) if there is no such person nominated in the two preceding subclauses, in the Trustee;

and any person exercising the Appointor's powers under the preceding subclauses must only do so in the best interests of the Appointor and any Beneficiaries who are the Appointor's dependants. Upon the Appointor ceasing to be subject to a disability including the

sequestration order ceasing to have effect, then the power of appointment and removal previously referred to shall thereafter cease and revert in the Appointor.

8.3 The Trustee may at any time resign the Trusteeship on giving not less than thirty (30) days' written notice to the Appointor or after his death to his legal personal representatives and shall thereupon be discharged from the trusts herein.

8.4 The office of Trustee shall ipso facto be determined and vacated if:-

- (a) the Trustee being an individual shall be 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;
- (b) if the Trustee shall become bankrupt, or make any arrangement or composition with creditors generally; or
- (c) if the Trustee being a company shall enter into liquidation whether compulsory or voluntarily (not being a voluntary liquidation for the purposes of amalgamation or reconstruction) or have a Receiver or Manager appointed: or make or enter into any composition or scheme of arrangement with its creditors.

8.5 If at any time there are two or more Specified Appointors:

- (a) The written consent of each of the Specified Appointors is required before a Trustee may be appointed or removed pursuant to sub-clause 8.1;
- (b) Where the Deed requires the written consent of the Appointor, that consent shall only be effective upon the giving of the written consent by each Specified Appointor.

8.6 Where the Trustee is of the opinion that a deadlock existing in relation to the administration of the Trust would be resolved if a Specified Appointor was no longer a Beneficiary of the Trust, the Trustee may deem that the Specified Beneficiary has lodged an application pursuant to sub-clause 6.1 and pay the Specified Beneficiary the amount to which the Specified Beneficiary would be entitled had the Specified Beneficiary lodged a notice pursuant to sub-clause 6.1.

## **9. POWERS AND DUTIES OF TRUSTEE**

The Trustee shall have the legal capacity and powers and privileges of both a company and a natural person and in the exercise of its powers conferred by this Deed, the Trustee will not be restricted or obligated by provisions relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories or anywhere in the world. Without limiting the generality of the foregoing, the Trustee shall specifically have the following powers which shall be in addition to and not in derogation of any other powers the Trustee has by law or which are conferred on it by other provisions of this Deed and which the Trustee may exercise solely or jointly with any other person, trustee, company or other entity (including the Trustee in its own or separate capacity):-

9.1 to carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time to time.

- 9.2 to sell transpose exchange or vary any or all of the investments and assets comprised from time to time in the Trust Fund and to reinvest the moneys arising from such sale;
- 9.3 either alone or jointly with any other person to hold, use, purchase, acquire, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, invest, transfer, convey, surrender, let, lease, dispose of, exchange, manage, take and grant options over or rights in alienate mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal corporeal or incorporeal property and to exercise any rights in connection therewith;
- 9.4 to permit any asset of the Trust Fund to be held or registered in the name of any nominee of the Trustee and to deposit securities deeds and other documents belonging or related to any asset of the Trust Fund with any bank or other depository;
- 9.5 to become a director of any corporation in which moneys forming part of the Trust Fund are invested or to appoint any person to act as director of any such corporation and to receive and retain beneficially the remuneration attached to such office without accounting therefor as a trustee provided that the Trustee shall account as trustee for all dividends and bonuses paid or payable in respect of such shares, securities or other interests;
- 9.6 to appropriate any part of the Trust Fund in the actual condition or state of investment thereof in or towards the satisfaction of any sum which the Trustee may determine to pay or apply to or for the benefit of any Beneficiary pursuant to the powers conferred on the Trustee under the provisions of this Deed and in making such appropriation to estimate the value of the component parts of the Trust Fund or to employ such persons to make such valuation as in the circumstances the Trustee deems proper and so that every appropriation so made shall bind all persons interested in the Trust Fund notwithstanding that they may not yet be in existence or may be under a legal disability;
- 9.7 to establish promote or acquire any corporation, trust, association or joint venture or join in the promotion, establishment or acquisition of any corporation, trust, association or joint venture;
- 9.8 to advance and lend moneys to and to borrow raise moneys from and to secure by mortgage, bill of sale, lien or charge fixed or floating legal or equitable or otherwise howsoever the payment or repayment of any money or advances to themselves or to any persons (including themselves) and whether severally or jointly and severally with any person and upon such terms with or without security or interest as the Trustee shall deem fit and the Trustee is hereby expressly empowered to join with any other person in executing any mortgage or other document for the purpose of securing the payment of money to or the assumption of any liability (whether actual or contingent) to pay money to any other person and if the Trustee is a corporation to give and to execute a registrable floating charge over the assets of the corporation and/or the assets of the Trust Fund held by it as Trustee and to give and execute any other charge or security registrable under any Act for the time being in force and the Trustee may borrow or raise moneys to be used in deriving income or gain in augmentation of the Trust Fund notwithstanding that the Trust Fund may already be wholly invested or applied or that the moneys to be borrowed or raised may exceed the sum or value of the Trust Fund and no Lender shall be concerned to enquire into the necessity for any such borrowing or as to the purpose for which it is required or as to the application of money borrowed;

- 9.9. to permit any Beneficiary to reside in any dwelling house which or the proceeds of sale of which may for the time being be the subject of this Deed upon such conditions as to payment of rent, rates, taxes or other expenses and outgoings and as to repair and decoration and for such period and generally upon such terms as the Trustee shall decide;
- 9.10 to permit any Beneficiary to have the use of any chattels which may for the time being form part of the Trust Fund and upon such conditions as to payment of hire taxes expenses outgoings insurance repair and maintenance thereof and for such period and generally upon such terms as the Trustee shall decide;
- 9.11 to lend the whole or any part of the Trust Fund to any person who may from time to time be a Beneficiary upon such terms as to repayment and interest or interest free but so that no loan shall be made on terms that repayment shall be postponed to a date beyond the Termination Date;
- 9.12 to give any guarantee or indemnity for the payment of money or the performance of any contractual obligation or undertaking and become surety or security for any persons, trustees, companies or entities, and without exception either alone or in association or jointly and severally or jointly and severally with any persons, trustees, companies or entities and for the purpose of securing the payment of any money or the performance of any contractual obligation or undertaking for which the Trustee has become or may become liable under and by virtue of any guarantee, indemnity or other contract pursuant to this paragraph, to mortgage or provide a lien or fixed or floating charge or to otherwise charge the whole or any part of the Trust Fund (in the present or the future) and the rights of the Mortgagee or Chargee shall take priority in all respects over the rights of the Beneficiaries and all other persons whatsoever and no Lender shall be concerned to enquire into the necessity for any such borrowing or as to the purpose for which it is required or as to the application of money borrowed;
- 9.13 to deal in any manner whatsoever with the Trustee in its personal capacity or as trustee of other trust funds or otherwise or to any company or partnership in all respects as if there were two separate parties to the dealings notwithstanding that the Trustee is a shareholder, director or member or partner of such company or partnership or related to any spouse, child or children of the Trustee;
- 9.14 generally to exercise or concur in exercising all the powers and discretions conferred on it by this Deed or by law notwithstanding that the Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other trust fund or in his personal capacity or as a shareholder, director, member or partner of any company or partnership or otherwise) 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;
- 9.15 to take such action as it shall think fit for the adequate protection of any part of the Trust Fund;
- 9.16 from time to time to remove or cause to be removed out of the state territory or country in which the same is for the time being situated the Trust Fund or any asset forming part thereof and to remove or cause to be removed out of the country, state or territory of residence or incorporation of the Trustee the Trust Fund or any asset forming part thereof;

- 9.17 to open accounts with any bank or other recognised financial institution anywhere in the world and to draw, make, accept, endorse, discount, issue, transact or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument and to apply for and to operate any credit card facility or revolving credit facility, whether attached to any pre-existing account or operated in isolation from any other account;
- 9.18 to pay out of the Trust Fund all costs, charges and expenses incidental to the management of the Trust Fund or to the exercise of any power, authority or discretion herein contained or in carrying out or performing the trusts hereof which the Trustee may at any time incur including all income tax or other taxes payable in respect of the Trust Fund costs in any way connected with the preparation and execution of this Deed and all moneys which the Trustee may be required to pay as costs or settlement gift stamp or revenue duties (including, without limitation, financial institutions duty, bank accounts debits tax and like duties and imposts) in respect of the Trust Fund or on this Deed or in respect of or as a consequence of the exercise of any of the discretions and powers conferred upon it by this Deed or by law;
- 9.19 in the event of any probate, succession, estate or other duties, fees or taxes becoming payable in any part of the world in respect of the Trust Fund or any part thereof on the death of the Settlor or of any Beneficiary or of any other person at its absolute discretion to pay all or any of such duties, fees and taxes out of the Trust Fund notwithstanding that such duties, fees or taxes or some part thereof are not or may not be recoverable from the Trustee or from the Trust Fund by legal process in the place where the same became payable;
- 9.20 to employ and pay for such professional or other assistance as the Trustee may deem requisite in the discharge of its duties including from a person who is in any way connected or associated with the Trustee;
- 9.21 to act on the opinion or advice or information obtained from any financial adviser, solicitor, barrister, accountant or other expert or professional so that the Trustee shall not be responsible for any loss depreciation or damage occasioned by acting or not acting in accordance therewith;
- 9.22 in respect of each financial year to determine in its absolute discretion whether any receipt, profit or gain or payment, loss or outgoing or any sum of money or investment is or is not to be treated as being on income or capital account and further whether the income of the Trust Fund is to be calculated as including any actual or deemed net capital gain arising during that period under the provisions of the Act. Without limitation of the foregoing, where the income of the Trust Fund determined in accordance with this clause includes an amount in respect of a deemed net capital gain arising by reason of an appointment or distribution of part of the Trust Fund in favour of a Beneficiary, the Trustee may determine the amount of income which is in its opinion referable to such appointment or distribution to have been already distributed to that Beneficiary by virtue of the making of the appointment or distribution. The Trustee's decision on any of the matters arising under this clause shall be conclusive and binding on all persons having any interest in the Trust Fund;
- 9.23 to institute and defend proceedings at law and to proceed to the final end and determination thereof or compromise and/or settle the same as the Trustee shall consider advisable;
- 9.24 to give effectual receipts and discharges for any moneys received by or on behalf of the Trustee or otherwise relating to any of the acts, matters and things provided for in this Deed;

- 9.25 to delegate the exercise of all or any of the powers or discretions hereby conferred on the Trustee and to execute any Power of Attorney or other instrument necessary to effect such purpose;
- 9.26 to exercise or concur in the exercising of all powers authorities and discretions hereby or by law given, notwithstanding that it or any person:-
- (a) being a Trustee;
  - (b) being a director or shareholder or an associate of a director or shareholder of a trustee; or
  - (c) having a direct or indirect beneficial interest in the Trust Fund;
- has or may have an immediate or future direct or personal interest in the mode or result of exercising such power, authority or discretion or may benefit either directly or indirectly as a result of the exercise of any such power, authority or discretion and notwithstanding that the Trustee for the time being is the sole Trustee;
- 9.27 to permit any asset forming part of the Trust Fund to be held or registered in the name of a nominee and to deposit with the nominee the deeds and other documents belonging or related to the Trust Fund.
- 9.28 to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed and to exercise any of the above powers both jointly with any other person and in conjunction with any other powers, authorities or discretions.

## **10. GENERAL PROVISIONS RELATING TO THE TRUSTEE**

- 10.1 Subject always to any express provision to the contrary herein contained every discretion vested in the Trustee shall be absolute and uncontrolled and every power vested in it shall be exercisable at its absolute and uncontrolled discretion and the Trustee shall have the like discretion in deciding whether or not to exercise any such power.
- 10.2 Where two or more of the Appointors of the Trust are Specified Appointors the Trustee shall obtain the written consent of each of the Specified Appointors before:
- (a) a Beneficiary can be deleted pursuant to sub-clause 3.3;
  - (b) net income (including a net capital gain) is distributed other than equally between the Specified Appointors;
  - (c) capital is applied or distributed other than equally between the Specified Appointors pursuant to sub-clauses 6.1 and 6.3;
  - (d) loans are made to Beneficiaries other than on commercial terms;
  - (e) the use of Trust property is permitted other than on commercial terms;

- (f) the Trust Deed may be amended.

**10.3 Corporate Trustee**

Every Trustee being a company may exercise any discretion or power conferred by this Deed by a resolution of its members in general meeting or by a resolution of its board of directors or governing body or may delegate the right and power to exercise any such discretion or power to one or more of its board of directors or governing body appointed unanimously from time to time by the board of directors or governing body for that purpose and may by majority resolution of its directors terminate any such delegated authority.

- 10.4 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.
- 10.5 The Trustee shall not be bound to act personally and may employ a manager or other person to transact all or any business to be done or performed by the Trustee including the receipt and payment of money and the Trustee may determine the remuneration to be paid to any such person.
- 10.6 Without imposing any liability on the Beneficiaries and providing the Trustee shall have acted in good faith, the Trustee shall be entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions conferred upon it by this Deed or by virtue of being the Trustee hereof.
- 10.7 Except in respect of any gross neglect wilful default or breach of duty committed, made or omitted fraudulently or in bad faith on the part of the Trustee or its servants, agents, employees or officers in no event shall the Trustee be liable to the Beneficiaries to any greater extent than the property comprised in the Trust Fund from time to time.
- 10.8 The Trustee shall not incur any liability to anyone in respect of any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or of any State or Territory thereof or any ordinary rule, regulation or by-law made pursuant thereto or of any decree, order or judgement of any competent Court the Trustee shall be hindered, prevented or forbidden from doing or performing.
- 10.9 The Trustee shall not be personally liable for the consequences of any error or forgetfulness whether of law or of fact on the part of the Trustee or its legal or other advisers or generally for any breach of duty or trust whatsoever (and shall be indemnified out of the assets of the Trust Fund in respect of any liability the Trustee may incur or suffer in its capacity as Trustee under the provisions of this Deed) unless it shall be proved to have been committed, made or omitted in personal conscious fraudulent bad faith by the Trustee charged to be so liable and, accordingly, all persons claiming any beneficial interest in over or upon the property subject to this Deed shall be deemed to take with notice of and subject to the protection hereby conferred on the Trustee.

## **11. REMUNERATION OF TRUSTEE**

- 11.1 The Trustee, other than a corporate body in which the Settlor may hold an interest, shall if the Trustee so requires be entitled by way of remuneration for the Trustee's services to such sum out of the income or capital of the Trust Fund, whether by way of periodical fee, salary, commission or otherwise in acting as Trustee of an inter vivos trust if it were to carry out or perform duties similar to those performed by the Trustee provided that in respect of any financial year the total remuneration paid to the Trustee shall not exceed the aggregate of ten (10) per centum of the gross income of the Trust Fund received during that year and five (5) per centum of the value of any portion of the Trust Fund that the Trustee may during that year have transferred or paid to or applied to or for the advancement or benefit of or vested in any of the Beneficiaries under the provisions of this Deed or in or towards satisfaction of a share in the Trust Fund.
- 11.2 The Trustee may pay all costs, charges and expenses of administering the Trust Fund out of the same whether from the capital or income as the Trustee may determine. Any Trustee being an accountant, solicitor or other person engaged in any profession but not being a company in which the Settlor holds an interest, shall in addition to any entitlement under sub-clause 11.1 be entitled to charge and be paid from time to time 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.

## **12. CUSTODIAN TRUSTEE**

It shall not be necessary for property including a security being part of the Trust Fund to be registered in the name of the Trustee but the same may at the discretion of the Trustee be registered in the name of a nominee without the necessity of disclosing that the nominee holds such property as nominee for and on behalf of the Trustee.

## **13. AMENDMENT OF DEED**

- 13.1 Subject to the provisions of this clause, at any time and from time to time prior to the Termination Date the Trustee with the written consent of the Appointor for the time being may by deed:-
- (a) alter, vary or revoke any trust or provision hereunder;
  - (b) appoint and resettle the Trust Fund or any part thereof and the income to arise therefrom in the manner and upon the trusts subject to the conditions and in the proportions and with such powers and to such ends, intents and purposes to or among such one or more of the Beneficiaries as the Trustee may from time to time think fit.
- 13.2 No alteration, variation or revocation shall have the effect of diverting or modifying a vested interest of a Beneficiary in the income or capital of the Trust 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.

- 13.3 No alteration, variation or revocation shall 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.
- 13.4 No alteration, variation or revocation shall result in the Settlor or his estate or any corporation or trust in which the Settlor or his estate has any actual or contingent beneficial interest acquiring a beneficial interest in the Trust Fund or any part thereof.

#### **14. ACCOUNTS**

- 14.1 In each financial year the Trustee shall have prepared by a qualified public accountant authorised to practice in the place where the financial affairs of the Trust are in the main conducted financial statements including a profit and loss account and balance sheet as at the end of each financial year certified by such accountant to be a true and proper statement of the affairs of the Trust Fund.
- 14.2 The Trustee shall:-
- (a) establish and maintain proper accounts in book or computer form which shall accurately record all receipts and outgoings in relation to the Trust Fund;
  - (b) separately record income and capital of different categories as are provided by this Deed as the Trustee may decide.
- 14.3 The Trustee will at the written request of the Appointor appoint an auditor nominated by the Appointor to examine and ascertain the correctness of the accounts of the Trust Fund and to report thereon to the Trustee and the Appointor. The costs of such auditor shall be paid out of the Trust Fund.

#### **15. WINDING UP OF TRUST**

- 15.1 The Trustee may at any time in its absolute discretion appoint a date earlier than the Termination Date to be the substitute Termination Date for the purpose of this Deed in which case the Trust Fund and the Trust shall terminate and vest absolutely on that earlier date.
- 15.2 Subject to sub-clause 15.1, the trust shall be wound up and terminate on the Termination Date, which date is described in the Schedule hereto.
- 15.3 Subject to any provision of this Deed which limits or restricts distributions of capital of the Trust Fund, the Trustee shall at the Termination Date:-
- (a) pay out or otherwise discharge and satisfy all debts and liabilities in relation to the Trust;
  - (b) distribute or otherwise deal with the income of the Trust in any manner expressly provided by this Deed and any income not so dealt with shall form part of the capital of the Trust;

- (c) distribute or otherwise deal with the capital of the Trust in any manner expressly provided in clause 5;
  - (d) in the event that no beneficiary is chosen to receive the capital of the Trust, then that capital is to be distributed to the Primary Beneficiaries living at the time of winding up or failing that to the estate of the last to die of the Primary Beneficiaries.
- 15.4 On the winding up of the Trust the Trustee may distribute property comprised in the Trust Fund in specie in satisfaction of any part of the Trust Fund to which a Beneficiary may be entitled.
- 15.5 On the winding up of the Trust, the Trustee shall have prepared financial statements as at the Termination Date which shall comply with the provisions of clause 14.1 and a certified and signed copy of such financial statements shall be made available to each Beneficiary entitled to receipt of income or capital of the Trust on the winding up.

## **16. APPLICABLE LAW**

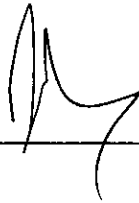
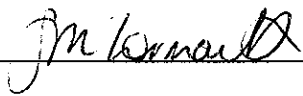
This Deed shall be governed by and construed in accordance with the laws of the locality specified in the Schedule hereto.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first hereinbefore written.

SETTLOR

SIGNED, SEALED and DELIVERED by  
ANDREW HARVEY in the presence of:

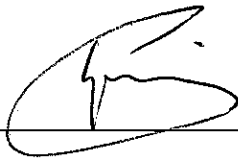
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\_\_\_\_\_  
\_\_\_\_\_

TRUSTEE

SIGNED, SEALED and DELIVERED by the  
said KEVIN ANTHONY BOWD in the  
presence of:

}

  
\_\_\_\_\_  
\_\_\_\_\_

## SCHEDULE

DATE OF ESTABLISHMENT  
OF TRUST:

1st April, 2005

SETTLOR:

Andrew Harvey of Martin Goodrich and Associates Pty Ltd, Suite 4, 431 Burke Road, Glen Iris in the State of Victoria

TRUSTEE:

Kevin Anthony Bowd of 5 Raynes Park Road, Hampton in the State of Victoria

SETTLEMENT SUM:

Ten dollars (\$10.00)

NAME OF TRUST:

Eastern Kestrel Trust

APPOINTOR:

- (a) Kevin Anthony Bowd of 5 Raynes Park Road, Hampton in the State of Victoria ("the First Appointor") during the lifetime of, or until the resignation of, the First Appointor and thereafter such person as shall by Deed or Will be appointed by the First Appointor and failing any such appointment, then
- (b) On the death or resignation of the First Appointor, the Appointor shall be Emma Jane Bowd of 5 Raynes Park Road, Hampton in the State of Victoria ("the Second Appointor") during the lifetime of, or until the resignation of, the Second Appointor and thereafter such person as shall by Deed or Will be appointed by the Second Appointor and failing any such appointment, then
- (c) On and from the death or resignation of the Second Appointor, the Appointor shall be such of the children of Kevin Anthony Bowd and Emma Jane Bowd who have attained the age of eighteen (18) years (the "eligible age") or if any of such children have not attained the eligible age, the legal personal representative(s) of Kevin Anthony Bowd and Emma Jane Bowd will exercise that child's powers until such child has attained the eligible age.

*Under the terms of this Deed, if an Appointor is also a Primary or Secondary Beneficiary, they will have the powers of a Specified Appointor under clauses 3 and 6 and the Trustee will be restrained by clauses 8 and 10.*

- (d) If there shall be no children of Kevin Anthony Bowd or Emma Jane Bowd, the Appointor shall be the parents of the First Appointor who are willing and able to act as Appointor, and where both parents are willing and able to act as Appointor those parents shall act jointly.

PRIMARY BENEFICIARIES: The following persons, their spouses and the following corporations or trusts:-

Kevin Anthony Bowd of 5 Raynes Park Road, Hampton in the State of Victoria

Emma Jane Bowd of 5 Raynes Park Road, Hampton in the State of Victoria

Darcey Adelaide Bowd of 5 Raynes Park Road, Hampton in the State of Victoria

Max Cooper Bowd of 5 Raynes Park Road, Hampton in the State of Victoria

SECONDARY BENEFICIARIES: Any person who is a grandparent, parent, brother, sister, child, stepchild, grandchild, stepgrandchild, uncle, aunt, relative, associate or dependant of a Primary Beneficiary and the spouses, children, grandchildren, relatives, dependants and associates of those grandparents, parents, brothers, sisters, children, stepchildren, grandchildren, stepgrandchildren, uncles, aunts, relatives, associates and dependants.

*Note that under the terms of this Deed, if a Secondary Beneficiary is an Appointor at a given point in time, they will have the powers of a Specified Appointor under clauses 3 and 6 and the Trustee will be restrained by clauses 8 and 10.*

TERTIARY BENEFICIARIES:

- (a) Any corporation in which any of the Beneficiaries is a director or is registered as the holder of at least one share or has a beneficial interest in at least one share;
- (b) The Trustee of any Trust or Superannuation Fund at least one Beneficiary of which (as the term beneficiary is described or defined in such Trust) is a beneficiary of this Trust;
- (c) A company, institution, association, trust or other entity whether incorporated or unincorporated established for charitable, religious, educational, environmental, conservation or scientific purposes.
- (d) Any employee of the trust or employee of a corporation in which any of the beneficiaries is a director or is registered as the holder of at least one share or has a beneficial interest in at least one share or employee of any trust at least one beneficiary of which is a beneficiary of this Trust.

TERMINATION DATE: The eightieth (80th) anniversary of the date of this Deed.

APPLICABLE LAW: State of Victoria.