MacDonnells Law

BRISBANE | CAIRNS | TOWNSVILLE

Proudly advising Queensland for 130 years

Deed of Variation

KENMORE ROTARY CHARITABLE TRUST

K R Directorate Limited ACN 163 938 252

("Trustee")

MERITAS
LAW FIRMS WORLDWIDE

Level 9 120 Edward Street Brisbane QLD 4000 | GPO Box 79 Brisbane QLD 4001 | DX 121 Brisbane
P +61 7 3031 9700 | F +61 7 3031 9799 | E email@macdonnells.com.au | www.macdonnells.com.au
Liability limited by a scheme approved under professional standards legislation.
ABN 13 315 585 268

Contents

Page No.

1. DEFINITIONS **1**

2. INTERPRETATION **1**

3. VARIATION OF TRUST DEED **2**

4. GENERAL PROVISIONS **2**

4.1 BINDING ON SUCCESSORS 2
4.2 GOVERNING LAW 3
4.3 WAIVER 3
4.4 SEVERANCE 3
4.5 CUMULATIVE RIGHTS 3
4.6 EFFECTIVE DATE OF DEED 3

SCHEDULE TO THE DEED OF VARIATION BY K R DIRECTORATE LIMITED ACN 163 938 252 .. 5

© All rights reserved. The copyright of this Deed is the property of MacDonnells Law. Neither this document nor any part of it may be used or reproduced by any method whatsoever or incorporated by reference in any manner whatsoever in any other document without the prior written consent of MacDonnells Law.

Deed of Variation

KENMORE ROTARY CHARITABLE TRUST

Dated: 8 July 2014

K R Directorate Limited ACN 163 938 252 as trustee of Rotary Club of Kenmore of PO Box 94 , Kenmore in the State of Queensland ("Trustee")

Background:

A. By Deed of Trust made 19 June 2013 between Rotary Club of Kenmore Inc. as Settlor and K R Directorate Limited ACN 163 938 252 as Trustee (**Trust Deed**), a charitable trust was established known as Rotary Kenmore Charitable Trust.

B. Clause 14 of the Trust Deed permits the Trustee to amend the Trust Deed.

C. The Trustee is seeking endorsement from the Australian Taxation Office as a deductible gift recipient and wishes to adopt the Australian Taxation Office Public ancillary fund model trust deed terms so far as is required in place of certain terms of the Trust Deed to facilitate obtaining such endorsement.

The Trustee declares and confirms:

1. DEFINITIONS

In this Deed unless inconsistent with the context or subject matter:

(a) ***Deed*** means this Deed of Variation;

(b) ***Trust Deed*** means the Trust Deed dated 19 June 2013.

(c) ***Trustee*** means K R Directorate Limited ACN 163 938 252 as trustee of the Kenmore Rotary Charitable Trust.

2. INTERPRETATION

In this Deed unless inconsistent with the context or subject matter:

(a) A reference to a person includes any other legal entity;

(b) A reference to a legal entity includes a person;

(c) Words importing the singular number include the plural number;

(d) Words importing the plural number include the singular number;

(e) The masculine gender must be read as also importing the feminine and the neuter gender, and vice versa;

(f) A reference to a party includes the party's heirs, executors, successors and permitted assigns;

(g) A reference to Background, a clause, schedule or annexure is a reference to the Background, clause, schedule, or annexure to this Deed.

(h) Clause headings are for reference purposes only and must not be used in interpretation;

(i) A reference to another document is to that document as amended or supplemented;

(j) Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;

(k) A reference to a statute or other legislative provision includes all regulations and subordinate legislation and amendments or re-enactments;

(l) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes email and fax;

(m) A reference to a monetary amount is a reference to an Australian currency amount;

(n) An obligation of two or more parties binds them jointly and each of them severally;

(o) An obligation incurred in favour of two or more parties is enforceable by them severally;

(p) References to time are to local time in Queensland;

(q) Where time is to be reckoned from a day or event, the day or the day of the event must be excluded;

(r) A reference to a business day means any day on which trading banks are open for business in Queensland;

(s) If any time period specified in this Deed expires on a day which is not a business day, the period expires at the end of the next business day;

(t) A reference to a month means a calendar month.

3. VARIATION OF TRUST DEED

The Trust Deed is amended by updating the Contents page (i), deleting the current clauses 1 titled "Definitions" and clause 2 titled "Interpretation" and clauses 4 titled "Objects" to clause 22 titled "Governing Law" and replacing them with the new Contents pages referred to as Contents 1 and Contents 2, clauses 1 and 2 and clauses 4 to 17 in the attached schedule marked "Schedule to the Deed of Variation by KR Directorate Pty Ltd ACN 163 938 252".

4. GENERAL PROVISIONS

4.1 Binding on successors

This Deed is for the benefit of, and binding upon, the party's heirs, executors, successors and permitted assigns.

4.2 Governing law

(a) This Deed is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland.

(b) The party submits to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

4.3 Waiver

No waiver by a party of a provision of this Deed is binding unless made in writing.

4.4 Severance

If a provision of this Deed is void or unenforceable, it must be severed from this Deed. The provisions that are not void or unenforceable are unaffected by the severance.

4.5 Cumulative rights

The rights and remedies of the party to this Deed are in addition to the rights and remedies conferred on the party at law or in equity.

4.6 Effective date of deed

The Trust Deed is varied and this Deed becomes effective on the day that this Deed is executed being the date of this Deed. In all other respects the Terms of the Trust Deed remain unaltered.

Executed as a Deed

EXECUTED by **K R DIRECTORATE LIMITED ACN 163 938 252** in accordance with section 127 of the *Corporations Act 2001*.

)
)
)
)
)

Signature of Director

Signature of Director/~~Secretary~~

Schedule to the Deed of Variation by K R Directorate Limited ACN 163 938 252

MacDonnells Law

BRISBANE CAIRNS TOWNSVILLE

Charitable Trust Deed

Kenmore Rotary Charitable Trust

Rotary Club of Kenmore Inc.

KR Directorate Limited
ACN 163 938 252

Contents

Table of contents

1	**Name**	**1**
2	**Definitions and interpretation**	**1**
2.1	Definitions	1
2.2	Interpretation	3
2.3	Headings	4
3	**Declaration of trust**	**4**
4	**Trust Purpose**	**4**
4.1	Payment and application of the Trust Fund	4
4.2	Factors Trustee may consider	4
4.3	Policies and rules	5
4.4	Not-for-profit entity	5
4.5	In Australia	5
4.6	Invited to contribute	5
4.7	Sub-funds	5
4.8	Portability	6
5	**Transaction that is uncommercial and benefits**	**6**
5.1	Transaction that is uncommercial	6
5.2	Benefits	7
6	**Qualifications of Trustee**	**7**
6.1	Corporation	7
6.2	Other Trustees	7
6.3	Qualifications not met	7
7	**Trustee's powers**	**8**
7.1	Powers	8
7.2	Powers are supplementary	9
8	**Compliance**	**9**
9	**Liability for breaches of trust**	**10**
9.1	Indemnity	10
9.2	Limitations	10
10	**Establishment and operation of Gift Account**	**10**
10.1	Maintaining a Gift Account	10
10.2	Limits on use of Gift Account	11
10.3	Winding up, ceasing to be a Public ancillary fund or revocation of endorsement	11
10.4	Gift Account forms part of the Trust Fund	11
11	**Returns, and giving material to the Commissioner in compliance with Australian law and the relevant law**	**11**
11.1	Returns	11
11.2	Requirements about giving material to the Commissioner	11
11.3	Valuation	12
11.4	Trustee to keep accounts	12
11.5	Financial statements	12

11.6 Audit 12
11.7 Receipts 12
11.8 Investment strategy 12

12 Advisory Committees 13

13 Patrons 13

14 Amending this deed 13

14.1 General 13

15 Trustee's remuneration and expenses 14

16 General 14

16.1 Receipts by others 14
16.2 Trustee's discretions and powers 14
16.3 Personal interest of Trustee 14
16.4 Delegation of powers 14
16.5 Trustee's decisions 15

17 Winding up 15

1 Name

The Trust is to be known as the Kenmore Rotary Charitable Trust.

2 Definitions and interpretation

2.1 Definitions

In this deed:

Term	Meaning
Advisory Committee	a committee established under clause 12.
Associate	as outlined in section 318 of the ITAA 36.
Charitable	Charitable within: • the Governing Law; • the laws of the Commonwealth; and • the common law.
Commissioner	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97.
Deductible Contribution	a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the purpose of the Trust.
Donor	the donor of a Gift or a Deductible Contribution to the Trust.
Eligible Entity	a fund, authority or institution: 1 which is Charitable; and 2 gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97. If after the establishment of this Trust, a declaration is made under Part 9 of the *Trusts Act 1973* (Qld), Eligible Entity does not include a fund, authority or institution other than one which: 1 is Charitable or would be a charity within the meaning of the

	Charities Act 2013 (Cth) if it were not a 'government entity' as defined in that Act; and 2 gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97.
Financial Year	the period from the date of this deed to the following 30 June and then each period of 12 months beginning on 1 July and ending on 30 June in each year or such other period as agreed to by the Commissioner.
Gift	a gift as described in item 2 of the table in section 30-15 of the ITAA 97 to the Trust.
Governing Law	the laws of the jurisdiction named in clause 18.
ITAA 36	the *Income Tax Assessment Act 1936*.
ITAA 97	the *Income Tax Assessment Act 1997*.
Officer	Officer of the Trustee includes a director, a member of a committee of management or any other controlling body of the Trustee.
Public ancillary fund	a Trust of which each Trustee of the Trust is a constitutional corporation; and each trustee has agreed, in the approved form given to the Commissioner, to comply with the rules in the Public Ancillary Fund Guidelines, as in force from time to time; and none of the Trustees has revoked that agreement in the approved form given to the Commissioner.
Public ancillary fund guidelines	the Public ancillary fund guidelines, as in force from time to time, made under section 426-103 of Schedule 1 to the TAA 53.
Relevant Law	1 the Public ancillary fund guidelines; 2 an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the part); 3 regulations under such an Act (including such a part of an Act); and 4 any other statute, regulation or law applicable to Public ancillary funds.
Responsible Person	an individual who: 1 performs a significant public function; 2 is a member of a professional body having a code of ethics or rules of conduct;

	3 is officially charged with spiritual functions by a religious institution; 4 is a director of a company whose shares are listed on the Australian Securities Exchange; 5 has received formal recognition from government for services to the community; 6 is an individual before whom a statutory declaration may be made; or 7 is approved as a Responsible Person by the Commissioner; 8 is a member of Kenmore Rotary Inc.
Settled Sum	$10.
Settlor	means Founder
TAA 53	the *Taxation Administration Act 1953*.
Trust	the Trust established under this deed.
Trustee	the person named in this deed as the Trustee and any other Trustee for the time being of the Trust.
Trust Fund	1 the Settled Sum; 2 all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund including all Gifts and Deductible Contributions; 3 all income of the Trust Fund including income earned or to which it is entitled; 4 all accretions to the Trust Fund; 5 all accumulations of income; 6 all money, investments and property from time to time representing the above or into which they are converted; and includes any part of the Trust Fund.
Trust Purpose	the purpose outlined in clause 0.

2.2 Interpretation

In this deed unless the context requires otherwise:

(a) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;

(b) a reference to this deed means this deed as originally executed and as from time to time lawfully amended;

(c) a reference to any legislation or legislative instrument or a provision of any legislation or legislative instrument, includes any amendment to that legislation or legislative instrument or provision, any consolidation or replacement of that legislation or legislative instrument or provision, and any subordinate legislation or legislative instrument made under that legislation or legislative instrument; and

(d) a reference to a donation includes a Gift.

2.3 Headings

Headings are used for convenience only and do not affect the interpretation of this deed.

3 Declaration of trust

The Settlor has upon the execution of this Deed transferred to the Trustee the Settlement Sum and directs that the Trustee is to, and the Trustee hereby declares that it will:

(a) act as Trustee of the Trust; and

(b) hold the Settlement Sum on trust for the purpose of attaining the objects set out in this Deed.

To achieve the objects, the Trustee must establish, manage and support the Trust.

The Trust will be known as the Kenmore Rotary Charitable Trust.

In managing and conducting the affairs of the Trust, the Trustee must direct its efforts towards furthering the objects.

4 Trust Purpose

4.1 Payment and application of the Trust Fund

(a) The Trustee must pay or apply the Trust Fund solely for the purpose of providing money, property or benefits to or for Eligible Entities or the establishment of Eligible Entities as the Trustee decides, in accordance with the Public ancillary fund guidelines.

(b) Where gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of ITAA 97 are satisfied, a payment or application of the Trust Fund must be made in accordance with those conditions.

4.2 Factors Trustee may consider

In exercising its discretions under clause 4.1, the Trustee may have regard to:

(a) any recommendations of an Advisory Committee; and

(b) the provisions and objects, so far as they are consistent with the trust purpose, of any other trust (including a Trust established by a testamentary instrument) where:

(1) the capital of the other trust has been transferred to or otherwise vested in the Trustee to hold on the Trusts of this deed; and

(2) the Trustee of the other trust has requested the Trustee to recognise the provisions or objects of the other Trust in exercising the Trustee's discretions and powers under this deed.

4.3 Policies and rules

For the purpose of paying or applying the Trust Fund, the Trustee may:

(a) formulate policies;

(b) make rules in connection with a policy; and

(c) revoke or amend a policy or rule and formulate others.

4.4 Not-for-profit entity

The Trust is established as and must operate as a not-for-profit entity.

4.5 In Australia

The Trust is established in and must operate only in Australia.

4.6 Invited to contribute

The public must be invited to contribute to the fund.

4.7 Sub-funds

(a) The Trustee may maintain a management account in respect of Gifts and Deductible Contributions from a particular donor or group of donors.

(b) The management account may be used to record receipts from a donor or group of donors, money received because of those Gifts and Deductible Contributions and payments or applications from the management account.

(c) The donor or group of donors (or persons nominated by the donor or group of donors) may make requests or indicate preferences, as to the name of the management account, and as to the payments or applications from the account.

(d) The Trustee is under no obligation to comply, and the Trustee may not agree or give an assurance that it will comply, with any request or preference.

(e) The management account forms part of the Trust Fund and is not a separate fund.

(f) The management account may not be separately invested or be separately accounted for in the statutory financial statements of the Trust.

(g) The Trustee may at any time cease to maintain the management account and account for the money and investments in the general accounts for the Trust Fund.

(h) The Trustee may provide reports of the investments and application of the management account to the donor or group of donors but is not under an obligation to do so.

(i) The Trustee may formulate rules and policies relating to the maintenance of the management account provided they are not contrary to this Trust Deed or any requirements of the Commissioner.

4.8 Portability

Notwithstanding clause 4.1 but:

(a) only if permitted by the relevant law; and

(b) with the agreement of the Commissioner,

the Trustee may pay or apply the Trust Fund or any part of it to or for a Private ancillary fund as described in section 426-105 in Schedule 1 to the TAA 53, or to or for another Public ancillary fund, provided the trusts of the Private ancillary fund or other Public ancillary fund are limited to trusts for the provision of money, property or benefits to or for Eligible Entities, or the establishment of Eligible Entities.

5 Transaction that is uncommercial and benefits

5.1 Transaction that is uncommercial

(a) The Trustee may not enter into any transaction that is uncommercial when entered into, unless the transaction is:

(1) with a deductible gift recipient covered by item 1 in the table in section 30-15 of the ITAA 97; and

(2) is in course of furtherance of the Trust's purpose;

unless the transaction is on terms more favourable to the Trust than would otherwise be expected under an arm's length transaction.

(b) In clause 4.6(a), a transaction that is uncommercial is the provision of a financial or other benefit on terms which:

(1) would not be reasonable in the circumstances if the benefit were provided on an arm's length basis; or

(2) are more favourable to the recipient than the terms referred to in clause 4.6(b)(1);

and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

5.2 Benefits

Apart from a payment or application authorised under clauses 4.1, 5.1 or 15, or a payment or application allowed by the Commissioner, no part of the Trust Fund may be paid or applied, directly or indirectly, to or for:

(a) a Trustee;

(b) a member, director, employee, agent or Officer of a Trustee;

(c) a Donor;

(d) a Founder; or

(e) an Associate of any of these entities.

6 Qualifications of Trustee

6.1 Corporation

Subject to clause 6.2, each Trustee must be a corporation to which paragraph 51(xx) of the Commonwealth of Australia Constitution Act applies or a body corporate that is incorporated in a Territory, whose board of directors and any other controlling body includes three or more persons the majority of which must be Responsible Persons. The Responsible Persons must be active directors of the Trustee if the Trustee is a company, or if the Trustee is another type of corporation, the Responsible Persons must be active members of the board of directors or any other controlling body of that corporation.

6.2 Other Trustees

Despite clause 6.1, where in accordance with the relevant law each Trustee need not be a corporation to which paragraph 51(xx) of the Commonwealth of Australia Constitution Act applies or a body corporate that is incorporated in a Territory, each Trustee must be:

(a) a corporation as described in clause 6.1;

(b) three or more persons the majority of which must be Responsible Persons;

(c) a Public Trustee of a state or territory; or

(d) prescribed under section 426-102(1)(a)(ii) of Schedule 1 of the TAA 1953.

6.3 Qualifications not met

(a) If the requirements in clauses 6.1 or 6.2 are at any time not met the Trustee must not exercise any discretion or power until the requirements are met except:

(1) for the purpose of exercising a statutory power to appoint a new or additional Trustee;

(2) to protect the Trust Fund; or

(3) in the case of urgency.

(b) If the requirements in clauses 6.1 or 6.2 are at any time not met and if the Trustee does not have or is unable to exercise a statutory power of appointing a new or additional Trustee as outlined in 6.3(a) the Trustee may by writing appoint a new or additional Trustee.

7 Trustee's powers

7.1 Powers

The Trustee must invest money of the Trust Fund only in a way in which Trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia and may, to the extent consistent with the Public ancillary fund guidelines and, where relevant, consistent with the Trust's investment strategy:

(a) change an investment for any others or vary the terms and conditions on which an investment is held;

(b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;

(c) borrow or raise or secure the payment of money and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;

(d) take and act on the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;

(e) take any action for the adequate protection or insurance of any part of the Trust Fund;

(f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;

(g) subject to the trusts of this deed, generally:

(1) perform any administrative act; and

(2) whether or not the Trustee is under any legal obligation to make the payment, pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses:

(A) of or incidental to the Trust Fund or its management, winding up, ceasing to be a Public ancillary fund, or revocation of endorsement as a deductible gift recipient under Subdivision 30BA of the ITAA 97; or

and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

5.2 Benefits

Apart from a payment or application authorised under clauses 4.1, 5.1 or 15, or a payment or application allowed by the Commissioner, no part of the Trust Fund may be paid or applied, directly or indirectly, to or for:

(a) a Trustee;

(b) a member, director, employee, agent or Officer of a Trustee;

(c) a Donor;

(d) a Founder; or

(e) an Associate of any of these entities.

6 Qualifications of Trustee

6.1 Corporation

Subject to clause 6.2, each Trustee must be a corporation to which paragraph 51(xx) of the Commonwealth of Australia Constitution Act applies or a body corporate that is incorporated in a Territory, whose board of directors and any other controlling body includes three or more persons the majority of which must be Responsible Persons. The Responsible Persons must be active directors of the Trustee if the Trustee is a company, or if the Trustee is another type of corporation, the Responsible Persons must be active members of the board of directors or any other controlling body of that corporation.

6.2 Other Trustees

Despite clause 6.1, where in accordance with the relevant law each Trustee need not be a corporation to which paragraph 51(xx) of the Commonwealth of Australia Constitution Act applies or a body corporate that is incorporated in a Territory, each Trustee must be:

(a) a corporation as described in clause 6.1;

(b) three or more persons the majority of which must be Responsible Persons;

(c) a Public Trustee of a state or territory; or

(d) prescribed under section 426-102(1)(a)(ii) of Schedule 1 of the TAA 1953.

6.3 Qualifications not met

(a) If the requirements in clauses 6.1 or 6.2 are at any time not met the Trustee must not exercise any discretion or power until the requirements are met except:

(1) for the purpose of exercising a statutory power to appoint a new or additional Trustee;

(2) to protect the Trust Fund; or

(3) in the case of urgency.

(b) If the requirements in clauses 6.1 or 6.2 are at any time not met and if the Trustee does not have or is unable to exercise a statutory power of appointing a new or additional Trustee as outlined in 6.3(a) the Trustee may by writing appoint a new or additional Trustee.

7 Trustee's powers

7.1 Powers

The Trustee must invest money of the Trust Fund only in a way in which Trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia and may, to the extent consistent with the Public ancillary fund guidelines and, where relevant, consistent with the Trust's investment strategy:

(a) change an investment for any others or vary the terms and conditions on which an investment is held;

(b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;

(c) borrow or raise or secure the payment of money and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;

(d) take and act on the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;

(e) take any action for the adequate protection or insurance of any part of the Trust Fund;

(f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;

(g) subject to the trusts of this deed, generally:

(1) perform any administrative act; and

(2) whether or not the Trustee is under any legal obligation to make the payment, pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses:

(A) of or incidental to the Trust Fund or its management, winding up, ceasing to be a Public ancillary fund, or revocation of endorsement as a deductible gift recipient under Subdivision 30BA of the ITAA 97; or

(B) in connection with the preparation, execution, stamping and amending of this deed;

other than a payment of, or reimbursement for, any penalties under section 426-120 of Schedule 1 to the TAA 53;

(h) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;

(i) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;

(j) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;

(k) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;

(l) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Entity to occupy the property on the terms and conditions the Trustee thinks fit; and

(m) do all other things incidental to the exercise of the Trustee's powers under this deed.

7.2 Powers are supplementary

The powers and discretions in clause 7.1 are to be treated as supplementary or additional to the powers vested in Trustees by law.

8 Compliance

(a) Before exercising a discretion or power vested in the Trustee under any provision of this deed or by law, the Trustee must ensure that the proposed exercise is in accordance with the Public ancillary fund guidelines.

(b) The Trustee must comply with all relevant Australian laws, all legally binding directions given to the Trustee by the Commissioner and all requirements contained in the Public Ancillary Fund Guidelines.

9 Liability for breaches of trust

9.1 Indemnity

Subject to clause 9.2, the Trustee and any Officer, agent or employee of the Trustee, where purporting to act in the exercise of the trusts of this deed or in the exercise of powers or discretions under this deed is:

(a) not liable for any loss or liability; and

(b) entitled to be indemnified from the Trust Fund in respect of any loss, liability, costs and expenses relating to:

(1) entering into this deed or any deed amending this deed;

(2) establishing, operating, administering, amending, terminating and winding up the Trust; or

(3) all matters incidental to the Trust; and

all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 4.6(b) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this deed.

9.2 Limitations

Notwithstanding clause 9.1, the Trustee and an Officer, agent or employee of the Trustee is prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:

(a) the dishonesty of that Trustee, Officer, agent or employee of the Trustee;

(b) gross negligence or recklessness of that Trustee, Officer, agent or employee of the Trustee;

(c) a deliberate act or omission known by that Trustee, Officer, agent or employee of the Trustee to be a breach of trust; or

(d) penalties under section 426-120 of Schedule 1 to the TAA 53.

10 Establishment and operation of Gift Account

10.1 Maintaining a Gift Account

The Trustee must maintain a management account (**Gift Account**):

(a) to identify and record Gifts and Deductible Contributions;

(b) to identify and record any money received by the Trust because of those Gifts and Deductible Contributions; and

(B) in connection with the preparation, execution, stamping and amending of this deed;

other than a payment of, or reimbursement for, any penalties under section 426-120 of Schedule 1 to the TAA 53;

(h) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;

(i) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;

(j) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;

(k) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;

(l) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Entity to occupy the property on the terms and conditions the Trustee thinks fit; and

(m) do all other things incidental to the exercise of the Trustee's powers under this deed.

7.2 Powers are supplementary

The powers and discretions in clause 7.1 are to be treated as supplementary or additional to the powers vested in Trustees by law.

8 Compliance

(a) Before exercising a discretion or power vested in the Trustee under any provision of this deed or by law, the Trustee must ensure that the proposed exercise is in accordance with the Public ancillary fund guidelines.

(b) The Trustee must comply with all relevant Australian laws, all legally binding directions given to the Trustee by the Commissioner and all requirements contained in the Public Ancillary Fund Guidelines.

(c) that does not identify and record any other money or property.

10.2 Limits on use of Gift Account

The Trustee must use the Gift Account only for the purpose of the Trust.

10.3 Winding up, ceasing to be a Public ancillary fund or revocation of endorsement

(a) Upon:

(1) the winding up of the Trust;

(2) the Trust ceasing to be a Public ancillary fund; or

(3) the revocation of the Trust's endorsement as a deductible gift recipient under Subdivision 30-BA of the ITAA 97;

whichever is the earliest, any surplus Gifts and Deductible Contributions and money received by the Trust because of those Gifts and Deductible Contributions must be transferred to one or more Eligible Entities as the Trustee decides.

(b) When gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a transfer under this clause 10.3 must be made in accordance with those conditions.

10.4 Gift Account forms part of the Trust Fund

To avoid any doubt, it is declared that the Gift Account forms part of the Trust Fund.

11 Returns, and giving material to the Commissioner in compliance with Australian law and the relevant law

11.1 Returns

If required by law or by the Commissioner to do so, the Trustee must give to the Commissioner a return for each financial year within the period required by the Commissioner.

11.2 Requirements about giving material to the Commissioner

The Trustee must comply with the requirements about giving material to the Commissioner required by Subdivision 388 of Schedule 1 to the TAA 53 and the Public ancillary fund guidelines.

11.3 Valuation

The market value of the assets of the Trust Fund must be estimated as required by the Public ancillary fund guidelines.

11.4 Trustee to keep accounts

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund and must comply with the record keeping obligations of deductible gift recipients required by Subdivision 382-B of Schedule 1 to the TAA 53 and the Public ancillary fund guidelines.

11.5 Financial statements

As soon as practicable after the end of each financial year the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the end of that financial year in accordance with the accounting standards.

11.6 Audit

Each financial year, the Trustee must arrange for an audit of the financial statements and compliance with the Public ancillary fund guidelines by the Trust and the Trustee by a person registered as an auditor under Part 9.2 of the *Corporations Act 2001*. The audit must be finalised before the date on which the Trustee is required to give a return to the Commissioner for the relevant financial year.

11.7 Receipts

(a) The Trustee may receive capital and other money and give valid receipts for all purposes (even if the Trustee is a sole Trustee) including:

(1) those of any statute; and

(2) the receipt of any capital money which may or may not be deemed to be capital money for the purposes of any law relating to settled land;

(b) The Trustee must issue a receipt for each Deductible Contribution and for each Gift upon request.

(c) Receipts must state the information required by section 30-228 of the ITAA 97 and the Public ancillary fund guidelines.

11.8 Investment strategy

(a) The Trustee must prepare and maintain an investment strategy in a written form which enables the Trustee, an auditor or the Commissioner to determine whether the Trustee has complied with and is complying with the Public ancillary fund guidelines and other Australian laws.

(b) The Trustee must implement the investment strategy and make investment decisions in accordance with the investment strategy.

12 Advisory Committees

(a) The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.

(b) Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.

(c) The functions of each Advisory Committee will be decided by the Trustee and, subject to the Trustee's decision, will be to advise the Trustee on how payments or applications of income and capital should be made under clause 4.

(d) The Trustee may specify:

(1) the manner in which proceedings of each Advisory Committee are to be conducted;

(2) the matters which the Advisory Committee must have regard to in carrying out its functions; and

(3) any other matters concerning the Advisory Committee or its functions that the Trustee decides.

13 Patrons

The Trustee may appoint one or more patrons of the Trust.

14 Amending this deed

14.1 General

The Trustee may by deed revoke, add to or vary any of the provisions of this deed, so long as:

(a) no part of the Trust Fund becomes subject to any trusts other than trusts for the provision of money, property or benefits to or for Eligible Entities; and

(b) unless the Commissioner consents to the revocation, addition or variation:

(1) no amendment is made to clause 1, or is made materially affecting clauses 0, 5, or 7.1 or the definition of Trust Fund in clause 2.1;

(2) no amendment is made that is contrary to the requirements of, or would result in the Trust not complying with, the Public ancillary fund guidelines; and

(3) no amendment is made to this clause 14 so as to permit this deed to be amended in a manner prohibited by clauses 4.6(b)(1) to 4.6(b)(2); and

(c) the Trustee notifies the Commissioner of the amendment within 21 days in the Approved Form.

15 Trustee's remuneration and expenses

The Trustee may apply the Trust Fund to:

(a) pay fair and reasonable remuneration for the services of the Trustee in administering the Trust at a rate not exceeding 1.056% annually (GST inclusive) of the gross value of the Trust Fund; and

(b) pay, or reimburse the Trustee for, reasonable expenses incurred as Trustee of the Trust;

but may not apply the Trust Fund for a payment of, or reimbursement for, any penalties under section 426-120 of Schedule 1 to the TAA 53.

16 General

16.1 Receipts by others

The receipt of the person purporting to be the treasurer, secretary or other proper Officer of any recipient of a payment or application of income or capital from the Trust Fund is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

16.2 Trustee's discretions and powers

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

16.3 Personal interest of Trustee

Subject to the requirements of clause 5 and the relevant law, the Trustee and any Officer of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law even though the Trustee or that person:

(a) has or may have a direct or personal interest or a conflict of fiduciary duty in the method or result of exercising the power or discretion; or

(b) may benefit either directly or indirectly from the exercise of any power or discretion;

and even though the Trustee is a sole Trustee.

16.4 Delegation of powers

Subject to the requirements of clause 6 and the relevant law, the Trustee may by power of attorney or otherwise delegate to any person any of the discretions or powers given to it under this deed. The exercise of any of the discretions or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested under this deed.

16.5 Trustee's decisions

The Trustee may decide:

(a) whether any money is to be considered as capital or income;

(b) whether any expense, outgoing or other payment ought to be paid out of capital or income; and

(c) all questions and matters of doubt arising in the execution of the trusts of this deed.

Every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binds all persons interested under this deed.

17 Winding up

(a) Upon whichever is the earliest of the winding up of the Trust, it ceasing to be a Public ancillary fund, or the revocation of the Trust's endorsement as a deductible gift recipient under Subdivision 30-BA of the ITAA 97 the Trustee must pay or apply any assets of the Trust Fund remaining after the satisfaction of all its debts and liabilities and compliance with any transfer obligations outstanding under clause 4.6(a) in respect of the Gift Account, to or for Eligible Entities, as the Trustee decides.

(b) Where gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a payment or application under this clause must be made in accordance with those conditions.

Executed as a Deed on the 19th day of June 2013

EXECUTED by the **ROTARY CLUB OF KENMORE INC.** by	)	AS PER ORIGINAL DEED
	)	Signature
.....	)	
a member of the Board of Directors and Officers of the Club and	)	Signature
.....	)	
another member of the Board of Directors and Officers of the Club	)	

EXECUTED by **K R DIRECTORATE LIMITED ACN 163 938 252** in accordance with section 127 of the *Corporations Act 2001*.	)	AS PER ORIGINAL DEED
	)	Signature of Director
	)	
	)	Signature of Director/Secretary