

CHARITABLE TRUST DEED

THE GNOCCI CHARITABLE TRUST

MARTIN HUGH TUOHY
(Settlor)

and

GNOCCI HOLDINGS PTY LTD
(ACN 137 829 488)
(Trustee)

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THIS CHARITABLE TRUST DEED is made on the 2nd day of July 2009

PARTIES

MARTIN HUGH TUOHY, Solicitor of 7 Killaloe Place, Waterford, Western Australia (Settlor);

AND

GNOCCI HOLDINGS PTY LTD (ACN 137 829 488) of 52 Kishorn Road, Applecross, Western Australia (Trustee).

RECITALS

- A. The Settlor wishes to establish a public charitable trust to be known as **THE GNOCCI CHARITABLE TRUST** for certain charitable purposes listed or referred to in clause 2 of this Deed.
- B. For this object, the Settlor has, upon the execution of this Deed, paid or transferred the Settled Sum to the Trustee.
- C. The Trustee has consented to become the Trustee of the Trust with and subject to the powers and provisions set out in this Deed.

TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

Accounting Period means:

- (a) the period from the date of this Deed to the following 30 June; and thereafter;
- (b) each 12 month period ending on 30 June prior to the termination or winding up of the Trust in accordance with this Deed; and
- (c) the period from the last 30 June prior to the termination or winding up of the Trust in accordance with this Deed until the date of termination or winding up of the Trust;

Beneficiary means **W.A. BAPTIST HOSPITAL & HOMES TRUST (INC) (ABN 17 138 445 819)** of 52 Kishorn Road, Applecross, Western Australia including its successors and assigns;

Business Day means means a day on which banks are generally open for business in Western Australia;

Cash includes cheques, bank cheques, deposits at call and moneys standing to the credit of any account of the Trustee with any Australian bank (as that term is defined in section 9 of the Corporations Act);

Charitable Objects means:

- (a) the charitable objects of the Beneficiary from time to time while and for so long as the Beneficiary is and remains a charitable organisation which satisfies the requirements for endorsement under Subdivision 50-B of the Tax Act; or
- (b) if the charitable object referred to in paragraph (a) ceases to apply, alternative charitable objects which satisfy the requirements for endorsement of the Trust under

Subdivision 50-B of the Tax Act;

Charitable Purposes means the charitable purposes described or referred to in clause 2.1;

Contributor means the Settlor or any other persons, incorporated companies, charities, trustees of trusts, bodies, associations (whether incorporated or unincorporated) or firms that donate, pay or transfer any money or property to the Trust Fund as an accretion thereto;

Corporations Act means the *Corporations Act* 2001 (Cth);

Disqualified Person means a person who, under the law relating to mental health, is an incapable person or a protected person or a patient or who according to the written opinions of at least 3 registered medical practitioners is a person who through mental infirmity arising from disease or age, is incapable of managing his or her affairs;

Eligible Beneficiaries means the Beneficiary;

Government Agency means any government, governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Income means, in relation to a particular Accounting Period, any income derived by the Trustee in that Accounting Period under the terms of this Trust ascertained in accordance with ordinary principles applicable to the administration of trusts and or any amount which under the Tax Act would be included in the net income of the Trust for that Accounting Period;

Investment means any one of the assets forming for the time being part of the Trust Fund and **Investments** means all of the assets forming the Trust Fund from time to time;

Property means real or personal movable or immovable property of any description and wherever situated, including Cash, choses in action, policies of any type, and any beneficial interest in any of the foregoing;

Settled Sum means the sum of \$10.00;

Successor Trustee means a substitute or additional Trustee;

Tax Act means the *Income Tax Assessment Act* 1997 (Cth) or the *Income Tax Assessment Act* 1936 (Cth);

Taxes means all taxes, levies, imposts, deductions, charges, rates, duties or withholdings which are imposed by any Governmental Agency together with any interest, penalty, charge fee or other amount imposed or made in respect thereof;

Trust means the **THE GNOCCI CHARITABLE TRUST** established by this Deed;

Trustee means the person so named in this Deed as the Trustee and any other Trustee for the time being of the Trust, whether original, additional or substituted;

Trust Fund means:

- (a) the Settled Sum;
- (b) all moneys, securities, investments and property donated, paid or transferred by the Settlor or any Contributor to and accepted by the Trustee as additions to the Trust Fund;
- (c) the accumulations of Income by this Deed directed or empowered to be made;
- (d) all accretions and additions to the Trust Fund from whatever source; and

- (e) the investments and property from time to time representing the Settled Sum, moneys, securities, investments, property, accumulations, accretions and additions or any part or parts respectively.

1.2 Interpretation

In this Deed, headings are for convenience and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) words denoting the singular number include the plural and vice versa and words denoting any gender include all genders;
- (b) references to persons include corporations;
- (c) references to clauses, sub-clauses and paragraphs are references to clauses, sub-clauses and paragraphs of this Deed;
- (d) references to this Deed, any instrument, deed or agreement will be deemed to include references to this Deed, or to that instrument, deed or agreement as amended novated supplemented varied or replaced from time to time;
- (e) references to any party to this Deed includes its successors or permitted assigns including any person taking by way of novation, and in the case of a trustee, includes any substituted or additional trustee;
- (f) the word **includes** in any form is not a word of limitation;
- (g) references to any statute, or any subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them and a reference to a statute includes all subordinate legislation and instruments made under that statute; and
- (h) references to \$ or dollars are to the lawful currency for the time being in Australia.

2 PURPOSE OF THE TRUST

2.1 Charitable Purposes

This Trust is established for the sole purpose of furthering the Charitable Objects.

2.2 Saving of charitable trust status

If at any time any purpose constituting one of the Charitable Purposes is found not to be a charitable purpose within the meaning of the Tax Act, then the definition of Charitable Purposes will be construed as if the non charitable purposes were not included within the definition and this Deed will be construed and given effect to in the same manner in all respects as if no application of the Trust Fund or any part to or for the non charitable purposes had been or could be deemed to have been so directed or allowed.

3 THE TRUST AND THE TRUST FUND

3.1 Declaration of the Trust

- (a) The:
 - (i) Settlor declares and directs that the Trustee must; and
 - (ii) Trustee declares that it will,

hold the Trust Fund and the Income and capital thereof on trust exclusively for the Charitable Purpose with and subject to the powers and provisions contained in this Deed for the purpose of providing money, property or benefits to or for all or one or more exclusively of the others or other of the Eligible Beneficiaries and in shares or proportions and in classes or manner generally as the Trustee will revocably or irrevocably at any time and from time to time appoint. Any appointment pursuant to this clause 3 may relate to the whole or any part of the Trust Fund and or the Income or of any class thereof.

- (b) The Trust Fund must be maintained for the Charitable Purpose in accordance with section 30-15 and 50-5 of the Tax Act.

3.2 Name of the Trust

The Trust will be known as **THE GNOCCHI CHARITABLE TRUST**.

3.3 Purpose of Trust Fund

- (a) The Trustee must hold the Trust Fund on trust absolutely and solely for the purposes in clause 3.1, to be applied in accordance with this Deed.
- (b) Despite anything express or implied in this Deed to the contrary, the Capital and income of the Trust must be applied solely in furtherance of its Charitable Purpose and no portion must be distributed directly or indirectly to the Trustee or any of its officers except as bona fide compensation for services rendered or expenses incurred on behalf of the Trust.

3.4 Maintenance of Trust Fund

- (a) For the purpose of establishing and maintaining the Trust Fund, the Trustee must establish a separate bank account in the name of the Trust.
- (b) The Trustee must ensure that:
 - (i) profit of the Trustee arising from or in connection with any commercial activity carried on by or on behalf of the Trustee is credited to the Trust Fund;
 - (ii) money (including for example interest and rents) received by the Trustee because of the activities referred to in paragraph (a) is to be credited to the Trust Fund; and
 - (iii) the Trust Fund does not receive any money or property other than that referred to in paragraphs (b)(i) and (ii).
- (c) If money or property is incorrectly made or credited to the Trust Fund, that money or property must be removed from the Trust Fund as soon as practicable.

3.5 Use and records

- (a) Subject to paragraph (c), the Trustee must only use the Capital and income of, arising from and in connection with the Trust Fund and the activities carried on by the Trustee for and on behalf of the Trust for the Charitable Purposes.
- (b) Details of the Trust Fund (including all matters referred to in paragraph (c)) must be properly recorded in records maintained by the Trustee.
- (c) The Trustee may use the Trust Fund to pay for reasonable costs and expenses expressly relating to the administration of the Trust Fund.

3.6 Receipts

The Trustee must issue a receipt to each and every donor of gifts. Each receipt must state the:

- (a) name of the Trust Fund;
- (b) Australian Business Number applicable; and
- (c) fact that the receipt is for a gift.

3.7 Application of Trust Fund

Despite clauses 5 and 6, the Trustee must not apply the Trust Fund or any Income of the Trust Fund in a manner as will prejudice the status of the Trust as a fund to which tax deductible donations may be made pursuant to section 30-15 of the Tax Act or a tax-exempt fund pursuant to section 50-1 of the Tax Act.

4 CONTRIBUTIONS

If the Settlor or any Contributor donates, pays or transfers any money, securities, investments or property to the Trustee as a gift to hold on the Trust established under this Deed the:

- (a) Trustee will accept money, securities, investments or property upon the Trust established by this Deed the same will form part of the Trust Fund; and
- (b) Trust powers and discretions in this Deed will apply to the money securities investments or property as if the same had been donated paid or transferred to the Trustee at the time of the execution of this Deed.

5 INCOME OF THE TRUST FUND

5.1 Discretionary distribution of Income

- (a) The Trustee will have, and may exercise in its absolute discretion in any Accounting Period the power to pay, apply or set aside the whole or part of the Income of the Trust Fund for that period as the Trustee thinks fit.
- (b) Any use of the power given to the Trustee under clause 5.1(a) must be to or for all or any of the Eligible Beneficiaries, and in shares or proportions and in classes or manner generally as the Trustee in its absolute discretion from time to time thinks fit, provided that any payment, application or setting aside must be for the benefit of Eligible Beneficiaries.

5.2 Accumulation

The Trustee will have and may exercise in its absolute discretion in any Accounting Period the power to deal with the whole or share, proportion, class or part of the Income of the Trust Fund for that period (or so much thereof as will not have been paid, applied or set aside under clause 5.1) by accumulating the same as the Trustee thinks fit. The accumulation will be treated as an accretion to the Trust Fund.

5.3 Exercise of Power

The Trustee's power to pay, apply, set aside or accumulate the whole or any part of the Income of the Trust Fund under clauses 5.1 and 5.2 may be exercised by a determination or resolution of the Trustee that the relevant amount of the Income of the Trust Fund will be so paid, applied, set aside or accumulated by that determination or resolution, provided that any exercise of a power under clauses 5.1(b) or 5.2 may only be made with the unanimous consent of all Trustees.

6 CAPITAL DISTRIBUTIONS

6.1 Distribution of capital

Subject to clause 6.2, the Trustee will have and may exercise in its absolute discretion from time to time, the power to pay or apply the whole or any part or parts or any class or classes of the Trust Fund to or for all or one or more exclusively of the others or other of the Eligible Beneficiaries and in proportions, classes or manner as the Trustee in its absolute discretion from time to time thinks fit, provided that any payment or application must be for the benefit of Eligible Beneficiaries.

6.2 Exercise of power

- (a) The Trustee's power to pay or apply the whole or any part or parts or any class or classes of the Trust Fund referred to in clause 6.1 may be exercised by a determination or resolution of the Trustee that the relevant part or parts or class or classes of the Trust Fund will be so paid or applied.
- (b) The Trust Fund will be dealt with as required by any determination or resolution of the Trustee as described in clause 6.2(a).

7 POWERS

Solely for the purpose of furthering the Charitable Purposes, the Trustee must exercise all powers, authorities and discretions as are vested in the Trustee by any other provision of this Deed or by law or statute. Without limiting the generality of the foregoing, the Trustee will have and may exercise from time to time the following powers:

- (a) to do, cease to do or omit to do anything which the Trustee considers prudent with respect to any commercial business activity including buy, sell or otherwise deal with or dispose of any assets comprising the whole or any part of the Trust Fund;
- (b) to use, provide or otherwise procure assets for the Trust Fund for the purposes referred to in paragraph (a);
- (c) to promote and make known the Charitable Purposes of the Trust by any means thought desirable;
- (d) to raise funds by all lawful means and to solicit, receive and enlist gifts, donations and other financial or other aid from individuals, trusts, companies, corporations, associations, societies, institutions and other organisations or authorities, and from governments, departments of state and public bodies and to conduct fund raising campaigns;
- (e) to retain any real and personal property belonging to or forming part of the Trust Fund in the actual state or condition in which the same was received by the Trustee for so long as the Trustee thinks proper and at any time or times to sell, call in or convert into money the aforesaid real and personal property or any part thereof but with power (without limiting the generality hereof) to delay selling, calling in or converting that real and personal property into money for so long as the Trustee in its absolute discretion thinks fit without being liable for loss or depreciation;
- (f) to sell alienate or otherwise dispose of all or any real and personal property at any time forming part of the Trust Fund in any manner by auction or public or private treaty and for a price in money or other consideration and on terms and conditions as the Trustee may think proper and to receive the consideration and grant discharges thereof;

- (g) to exercise or concur in exercising all the voting powers attaching to any shares, stocks, debentures or other securities at any time forming part of the Trust Fund;
- (h) to exchange real and personal property for other real and personal property of a like or different nature and for consideration and on conditions as the Trustee may consider advisable;
- (i) to compromise and settle for consideration and upon terms and conditions as the Trustee may consider advisable all matters arising in relation to the Trust or the Trust Fund and all compromises and settlements will be binding on all the Eligible Beneficiaries;
- (j) to surrender and deliver up any shares, stocks, debentures or other securities forming part of the Trust Fund for consideration and upon terms and conditions as the Trustee may approve to any corporation reducing its capital and the Trustee may receive consideration in the form of cash securities or other assets as may be agreed by the Trustee and the corporation;
- (k) to consent to any reorganisation or reconstruction of any corporation the shares stocks debentures or other securities of which form part of the Trust Fund and to consent to any reduction of capital or other dealing with shares, stocks, debentures or other securities as the Trustee may consider advantageous or desirable;
- (l) to invest the Trust Fund including any moneys forming part thereof and requiring investment hereunder in investments which are authorised or required under the provisions of the *Trustees Act 1962 (WA)* relating to the investment of trust funds and the Trustee will have the same full and unrestricted power of investing and transposing investments as if the Trustee was entitled in all respects beneficially to the Trust Fund;
- (m) to determine whether any amounts received or disbursed, or any amounts of Income, profit or gain or loss, or any amounts derived accrued or incurred, are on capital or Income account or partly on capital and partly on Income account and in what proportions and the decision of the Trustee whether made in writing or implied from the acts of the Trustee will be conclusive and binding;
- (n) to employ and pay for professional or other assistance as the Trustee may deem requisite in the discharge of the duties of the Trustee including assistance from a partner of a Trustee or from an employee of a Trustee;
- (o) to act on the opinion or advice of or information obtained from any financial adviser, lawyer, valuer, surveyor, broker, auctioneer or other expert or professional and so that the Trustee will not be responsible for any loss depreciation or damage occasioned by acting or not acting in accordance therewith;
- (p) to determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund and in the course of the construction and interpretation of this Deed and the decision of the Trustee whether made in writing or implied from the acts of the Trustee will be conclusive and binding;
- (q) generally to perform all acts of alienation and hypothecation and other acts of ownership to the same extent and with the same effect as might have been done if the Trust Fund was owned beneficially by the Trustee and the decision and action of the Trustee whether actually made or taken in writing or implied from the acts of the Trustee will be conclusive and binding on all the Eligible Beneficiaries;
- (r) if at any time the Trust Fund comprises real property or any interest in real property, to manage use and let it or any part of it, to erect, pull down, rebuild and repair

buildings and erections, to carry out improvements of any nature, to make allowances to and to make arrangements with tenants, to grant or acquire easements or other rights, to partition or subdivide or join in the partition or subdivision of it, and generally to deal with that property or interest or to join in dealing with it as if beneficially entitled to it without being responsible for loss;

- (s) to institute and defend proceedings at law and to proceed to the final end and determination thereof or compromise the same as the Trustee will consider advisable;
- (t) to exercise or concur in exercising the voting and other rights attaching to any shares, stocks, debentures or other securities for the time being of the Trust Fund;
- (u) to draw, make, accept, endorse, discount, execute and issue negotiable or transferable instruments;
- (v) to issue receipts in the name of the Trust for all gifts;
- (w) to raise or borrow at any time or times any moneys required for the purposes hereof on terms as to repayment of principal and payment of interest (if any) as the Trustee in its absolute discretion thinks fit and the Trustee may for this purpose mortgage or charge in favour of the person lending or otherwise providing the moneys the whole or any part of the Trust Fund or any interest therein and it is expressly declared that all moneys and other real and personal property borrowed or raised by the Trustee will become part of the Trust Fund and the Trustee may invest the same and the resulting Income thereof in any of the real and personal property and investments hereby authorised and with powers authorities and discretions with respect to investments and real and personal property as are herein set out in relation to the Trust Fund;
- (x) to grant an option to purchase or lease all or any real and personal property forming at any time part of the Trust Fund for any sum in money or other consideration and on terms or conditions as the Trustee may think proper;
- (y) to pay out of the Trust Fund or the Income thereof 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 thrust of this Deed which the Trustee considers reasonable and appropriate;
- (z) to pay insurance premiums, rates, taxes, rents and outgoings in connection with the real and personal property of the Trust Fund, to manage real and personal property and effect repairs thereto as the Trustee may consider necessary or advisable;
- (aa) to open in the name of the Trust or in the name of the Trustee any cheque, savings deposit or other account with any bank or financial institution with full power to operate any accounts;
- (bb) to accumulate any unpaid or unapplied Income of the Trust Fund by investing it and the resulting Income and by holding the accumulations in augmentation of and on the same trusts and conditions as are applicable to capital;
- (cc) to cancel, terminate or accept surrenders of lease, to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of a property, to sue for and recover rent and damages for breach of a lease, to sue and prosecute trespassers or other persons for damage to any part of the property and to settle, abandon, compromise and release any actions or suits when expedient;
- (dd) to repair, renovate, decorate and maintain chattels personal or land including fittings, fixtures, furnishings, furniture and equipment and grounds and outhouses;

transferred to another charitable fund (including another charitable fund of the Trustee) to which deductible gifts can be made under item 2 of the table in section 30-15 of the Tax Act.

- (b) If and so far as effect cannot be given to clause 15.1, then for and to the benefit of any one or more funds, trusts, institutions, authorities, associations or societies entities or companies having like or similar charitable objects and purposes to those set forth herein and in proportions or shares as the Trustee may in its absolute discretion select and determine and to be held and applied by same for objects and purposes to the extent to which the same are valid charitable objects or for purposes beneficial to the community and is also approved under Subdivision 30-B of the Tax Act.

16 GENERAL

16.1 Notices

Every notice, direction, or other communication of any nature whatsoever required to be served, given or made under or arising from this Deed:

- (a) must be in writing in order to be valid;
- (b) will be deemed to have been duly served, given or made in relation to a party if it is:
- (i) delivered to the address of that party set out in sub-paragraph (e) (or at any other address as may be notified in writing by that party to the other party from time to time); or
 - (ii) posted by prepaid registered post to that address; or
 - (iii) sent by facsimile to the facsimile number set out in sub-paragraph (e) (or to any other facsimile number as may be notified in writing by that party to the other party from time to time);
- (c) will be sufficient if executed by the party giving, serving or making the same or on its behalf by any attorney, director, secretary or other duly authorised officer of that party;
- (d) will be deemed to be given, served or made:
- (i) (in the case of prepaid registered post) within 2 Business Days of posting;
 - (ii) (in the case of facsimile) on receipt of a transmission report confirming successful receipt at the conclusion of the transmission; and
- (e) the address and facsimile numbers for service of notices as referred to in sub-paragraph (b) of this clause are as follows:
- (i) where the Settlor is the recipient:
 - (A) for mail or hand delivery: the address set out on this Deed;
 - (B) by facsimile: (08) 9316 9471; or
 - (C) other details as the Settlor from time to time may notify the Trustee; or
 - (D) other details as are publicly available;
- and

- (ii) where the Trustee is the recipient:
 - (A) for mail or hand delivery: the address set out on this Deed;
 - (B) by facsimile: (08) 9316 9471; or
 - (C) other details as the Trustee from time to time may notify the Settlor; or
 - (D) other details as are publicly available.

16.2 Severability

If any provision contained in this Deed is ineffective, void, voidable, illegal or unenforceable, or if this Deed would, if a particular provision were not omitted, be ineffective, void, voidable, illegal or unenforceable, that provision will (without in any way affecting the effectiveness, validity, legality and enforceability of the remainder of this Deed) be severable from this Deed and this Deed will be read and construed and take effect for all purposes as if that provision were not contained in this Deed. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

16.3 Governing Law

This Deed will be read, construed and interpreted according to the Laws in force in the State of Western Australia which are declared to be the proper or governing laws of this Deed.

EXECUTED by
MARTIN HUGH TUOHY
in the presence of:

Witness Occupation:

31A GRETHAM RD
WESTMINSTER WA 6061

CHARLOTTE LUCY MORRIS

ROBERT LESLIE BUNNET

Director/Secretary – Print Name

Cheng
Cheng



DEED RECORDING RETIREMENT OF TRUSTEE AND APPOINTMENT OF SUCCESSOR TRUSTEE

THE GNOCCI CHARITABLE TRUST

**Gnocci Holdings (WA) Pty Ltd
(ACN 137 829 488)
(Appointor)**

and

**Gnocci Holdings (WA) Pty Ltd
(ACN 137 829 488)
(Retiring Trustee)**

and

**Gnocci Holdings Limited
(ACN 644 038 675)
(Successor Trustee)**

EQUITAS 
LAWYERS

156 -158 Edward Street
Perth WA 6000
Australia
T 61 8 9228 2881
F 61 8 9228 2771

Liability limited by a scheme approved under Professional Standards Legislation

THIS DEED RECORDING RETIREMENT OF TRUSTEE AND APPOINTMENT OF SUCCESSOR TRUSTEE is made on the 1st day of October 2020

BETWEEN

GNOCCI HOLDINGS (WA) PTY LTD (ACN 137 829 488) (formerly known as Gnocci Holdings Pty Ltd) of 95 Belgravia Street, Belmont, Western Australia
(Appointor); and

GNOCCI HOLDINGS (WA) PTY LTD (ACN 137 829 488) (formerly known as Gnocci Holdings Pty Ltd) of 95 Belgravia Street, Belmont, Western Australia (**Retiring Trustee**); and

GNOCCI HOLDINGS LIMITED (ACN 644 038 675) of 95 Belgravia Street, Belmont, Western Australia (**Successor Trustee**).

BACKGROUND

- A. The Trust was established by the Trust Deed.
- B. The Retiring Trustee is the current appointor and trustee of the Trust and wishes to retire from that role and appoint the Successor Trustee as the new appointor and trustee of the Trust.
- C. The Successor Trustee wishes to accept the appointment as the new appointor and trustee of the Trust.
- D. The Trust Property continues to form part of the Trust Fund.
- E. The Beneficiary was, is and continues to be the sole beneficiary under the Trust and despite its change of name as a consequence of its restructuring from an incorporated association to a company limited by guarantee it retains the same Australian Business Number.
- F. The Parties agree as follows.

OPERATIVE PART

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the contrary intention appears:

Beneficiary means **BAPTISTCARE WA LIMITED (ABN 17 138 445 819)** formerly known as W.A BAPTIST HOSPITAL & HOMES TRUST (INC) of the same ABN;

Deed means this deed as may be supplemented, amended or varied from time to time by deed signed by the Parties;

Duties Act means the *Duties Act* 2008 (WA);

Effective Date means 1 October 2020;

Law means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Western Australia or local or other government in force in the State of Western Australia; and
- (b) the common law (including principles of equity) as applied from time to time in the State of Western Australia;

Liabilities means all actions, proceedings, claims, damages, losses, demands, calls, liabilities, costs (including legal costs) and expenses suffered or incurred by the Retiring Trustee in the Retiring Trustee's capacity as trustee of the Trust;

Party means a party to this Deed and **Parties** has a corresponding meaning;

Recital means the 'Background' set out at the beginning of this Deed;

Resolution means the written resolution, made by the Directors of the Trustee to accept the retirement of the Retiring Trustee as trustee of the Trust and to appoint the Successor Trustee as trustee of the Trust, dated 1 October 2020;

Trust means **THE GNOCCI CHARITABLE TRUST** constituted by the Trust Deed;

Trust Deed means the deed creating **THE GNOCCI CHARITABLE TRUST** dated 2 July 2009 and entered into by Martin Hugh Tuohy as settlor and the Retiring Trustee as trustee of the Trust, and includes all declarations of trust, amendments, variations, supplementary deeds and deeds of rectification of that document;

Trust Fund means all the property and assets from time to time, the subject of the Trust, howsoever defined in the Trust Deed; and

Trust Property means the property (both real and personal (if any)) comprising the Trust Fund.

1.2 Interpretation

In this Deed, unless the contrary is expressly provided:

- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender includes the other genders;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, executors,

successors, permitted assigns and permitted substitutes, including, without limitation, permitted persons substituted by novation;

- (iii) a reference to any legislation or legislative provision includes any modification or re-enactment of it, a legislative provision substituted for it, and a regulation or statutory instrument issued under it;
- (iv) a specific agreement or document includes that agreement or document as varied, replaced or novated from time to time (except to the extent that such variation, replacement or novation is prohibited by this Deed);
- (v) an asset includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset;
- (vi) an obligation includes any warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (vii) a right includes a power, remedy, authority or discretion;
- (d) a reference to this Deed includes all schedules, annexure and appendices referred to in it;
- (e) reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule in this Deed;
- (f) each paragraph or sub-paragraph in a list is to be read independently from the others in that list and a reference to a paragraph in a clause or sub-clause is a reference to a paragraph in the clause or sub-clause in which the reference appears;
- (g) if the word **include** and **includes** or any form of that word is used, it must be construed as if it were followed by the words **without being limited to**;
- (h) reference to a time and date in connection with the performance of an obligation by a Party is a reference to the time and date in the State of Western Australia despite that the obligation is to be performed elsewhere;
- (i) reference to an amount of money is a reference to the amount in the lawful currency of Australia;
- (j) neither this Deed nor any part or anything in this Deed is to be interpreted against a Party solely on the ground that the Party put forward this Deed or any part or anything in it; and
- (k) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

2 RETIREMENT AND APPOINTMENT

2.1 Retirement and Appointment

On and from the Effective Date upon the passing of the Resolution and the execution of this Deed by all Parties, the Retiring Trustee in the exercise of the power conferred in it by clause 13.3 of the Trust Deed and pursuant to the Resolution:

- (a) appoints the Successor Trustee as trustee of the Trust; and
- (b) retires as trustee of the Trust.

2.2 Successor Trustee Consent

From the Effective Date, the Successor Trustee consents:

- (a) to act as trustee of the Trust; and
- (b) to undertake, assume, observe and administer, the trusts, powers, duties, discretions and obligations conferred by the Trust Deed upon the trustee of the Trust.

2.3 Covenants by Retiring Trustee

The Retiring Trustee covenants that:

- (a) it will give written notice to each person or entity owing monies to the Retiring Trustee as trustee of the Trust;
- (b) it will do all things as may be necessary, to assign any debt or chose of action of the Trust to the Successor Trustee; and
- (c) subject to the powers and provisions of the Trust Deed, it will do all things necessary to transfer its interest in the property and monies comprising the Trust Fund to the Successor Trustee.

2.4 Covenants by Successor Trustee

The Successor Trustee covenants that:

- (a) subject to the powers and provisions of the Trust Deed, it will do all things necessary to take transfer of the interest of the Retiring Trustee in the property and monies comprising the Trust Fund;
- (b) it has not received a benefit of any kind out of or in connection with the Trust; and
- (c) all necessary resolutions have been passed and authority given, for it to assume office as trustee of the Trust.

2.5 Declaration

The Retiring Trustee and the Successor Trustee each declare that from the Effective Date,

the Trust Fund vests in the Successor Trustee as trustee of the Trust on the terms of the Trust Deed.

2.6 Other Terms of Trust Deed

In all other respects, the terms of the Trust Deed are ratified and confirmed.

3 NO RE-SETTLEMENT & NOMINAL DUTY ONLY

- (a) The retirement of the Trustee and appointment of the Successor Trustee does not involve a change in the beneficial ownership of the Trust Fund and does not constitute a re-settlement of the Trust.
- (b) The conveyance of the Trust Property from the Trustee to the Successor Trustee does not involve a change in the beneficial owner of the Trust Fund and is therefore a conveyance in accordance with section 119(3)(a) of the Duties Act and consequently subject to only nominal duty (if any) and not duty at the *ad valorem* rate.

4 TRANSFER OF THE TRUST PROPERTY

- (a) Subject to clause 4(c):
 - (i) the Trustee agrees to transfer the Trust Property to the Successor Trustee with the transfer to take effect as and from the Effective Date; and
 - (ii) the Parties will do all things and sign all documents to facilitate the conveyance of the Trust Property to the Successor Trustee.
- (b) The Trust will retain beneficial ownership of the Trust Property upon the conveyance of the Trust Property from the Trustee to the Successor Trustee.
- (c) The conveyance of the Trust Property from the Trustee to the Successor Trustee will not be construed as a re-settlement of the Trust Fund.

5 INDEMNITY

The Successor Trustee indemnifies the Retiring Trustee out of and to the extent of the net assets of the Trust, against all Liabilities unless the Liabilities (or any of them) are due to:

- (a) the Retiring Trustees' own dishonesty or lack of good faith;
- (b) the Retiring Trustees' wilful commission or omission of an act known by the Retiring Trustee to be a breach of trust; or
- (c) the Retiring Trustee acting beyond the scope of the Retiring Trustee's powers as trustee of the Trust.

6 NOTICE TO PERSONS DEALING WITH TRUST

The Parties will jointly give notice to all tenants, lessees, managing agents or others of the

Retiring Trustee's retirement as trustee of the Trust and the appointment of the Successor Trustee in place of the Retiring Trustee, so as to direct the payment of any rent deriving from the properties comprising the Trust Fund, to the Successor Trustee or as it may direct.

7 MISCELLANEOUS PROVISIONS

7.1 Governing Law and Jurisdiction

This Deed is governed by and construed in accordance with the laws in force in the State of Western Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia and the courts of appeal from them.

7.2 Waiver

- (a) No failure or delay by a Party in exercising any right or power conferred under this Deed will operate as a waiver of that right or power.
- (b) No single or partial exercise of any right or remedy arising from or in connection to this Deed, will preclude any other or further exercise of that, or any other, right or remedy.

7.3 Counterparts

This Deed may be executed in counterparts which, when taken together, will constitute one instrument.

7.4 Attorneys

Each person who executes this Deed on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

7.5 Moratorium Legislation

Unless application is mandatory by Law, any present or future Law will not apply to this Deed so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Successor Trustee.

7.6 Severance

Any provision of this Deed which is illegal or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

7.7 Rights Cumulative

The rights provided in this Deed are cumulative and are not exclusive of any rights provided by Law or any other agreement, except to the extent expressly provided in this Deed.

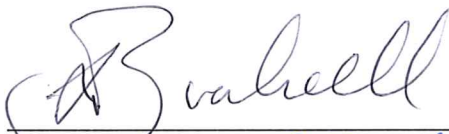
7.8 Whole Agreement

- (a) This Deed comprises the whole agreement between the Parties.
- (b) This Deed may only be amended by deed between the Parties.
- (c) The Recitals forms part of the operative provisions of this Deed and are to be considered in the interpretation of this Deed.

EXECUTED BY THE PARTIES AS A DEED

THE APPOINTOR

EXECUTED for and on behalf of)
GNOCCI HOLDINGS (WA) PTY LTD (ACN 137 829 488))
 by authority of its Directors)
 in accordance with section 127 of the)
Corporations Act 2001 (Cth))



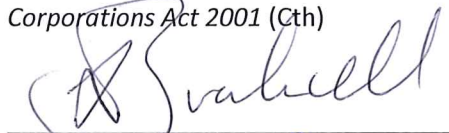
Director – Print Name: RUSSELL BRICKNELL



Director/Secretary – Print Name: AMANDA VIVIAN

THE RETIRING TRUSTEE

EXECUTED for and on behalf of)
GNOCCI HOLDINGS (WA) PTY LTD (ACN 137 829 488))
(ACN 009 254 746))
 by authority of its Directors)
 in accordance with section 127 of the)
Corporations Act 2001 (Cth))



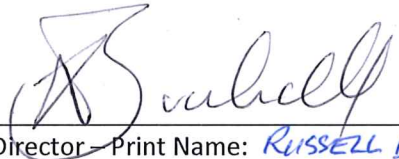
Director – Print Name: RUSSELL BRICKNELL



Director/Secretary – Print Name: AMANDA VIVIAN

THE SUCCESSOR TRUSTEE

EXECUTED for and on behalf of)
GNOCCI HOLDINGS LIMITED (ACN 644 038 675))
by authority of its Directors)
in accordance with section 127 of the)
Corporations Act 2001 (Cth))



Director – Print Name: **RUSSELL BRICKNELL**



Director/Secretary – Print Name: **AMANDA ULAN**

**RESOLUTION OF DIRECTORS OF
GNOCCI HOLDINGS (WA) PTY LTD
DATED 1ST DAY OF OCTOBER 2020**


Resolved: That effective of the 1st October 2020, Gnocci Holdings (WA) Pty Ltd (ACN 137 829 488) has agreed to retire as trustee of the Gnocci Charitable Trust.

Furthermore it was agreed to appoint Gnocci Holdings Limited (ACN 644 038 675) as the successor trustee of the Gnocci Charitable Trust.

Signed as a true and correct record.



R.J. Bricknell



A. Vivian



G.R. McGrechan