

TRUST

**WARRNAMBOOL ART GALLERY
FOUNDATION**

FUND TRUSTEES

**DAVID FLETCHER JONES
JANET MACDONALD
ANN MORRIS
MICHAEL HENRY LEWIS STONE**

DATE

AUGUST 2008

DEED OF TRUST

WARRNAMBOOL ART GALLERY FOUNDATION

THIS DEED OF SETTLEMENT is made on

August, 2008,

BY:

JOHN JAMES TAIT and **JOHN FORBES HUNT** as directors of **THE GWEN & EDNA JONES FOUNDATION** C/- 199 Koroit Street, Warrnambool ("the Settlor") of the one part,

AND

DAVID FLETCHER JONES of 4/10 Griffith St, Port Fairy;

JANET MACDONALD of 109 Banyan Street, Warrnambool;

ANN MORRIS of 48 Hider Street, Warrnambool; and

MICHAEL HENRY LEWIS STONE of 12 Grange Road, Warrnambool.

("the Fund Trustees") of the other part.

1. INTERPRETATION

In this deed, unless the context otherwise requires:

- 1.1. words denoting the singular number shall include the plural and vice versa;
- 1.2. words denoting any gender shall include all genders;
- 1.3. where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;
- 1.4. words denoting natural persons shall include corporations and vice versa;
- 1.5. references to clauses and schedules are to clauses of and schedules to this deed;
- 1.6. headings are for convenience only and do not affect interpretation;
- 1.7. reference to any agreement or instrument shall be also to such agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- 1.8. references to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation and any legislative provision substituted for, and all regulations and statutory instruments issued under, such legislation or provision;
- 1.9. references to dollars and "\$" shall be taken as referring to amounts in Australian currency;

2. SETTLEMENT

The Settlor hereby settles the sum of **\$10,000** ("the fund") on the Fund Trustees upon the trusts and with and subject to the powers and provisions set forth in this deed, which the Fund Trustees hereby accept.

3. NAME

The fund shall be known as "**WARRNAMBOOL ART GALLERY FOUNDATION**" ("the Foundation").

4. INITIAL FUND TRUSTEES

The initial Fund Trustees shall be **DAVID FLETCHER JONES**, **JANET MACDONALD**, **ANN MORRIS** and **MICHAEL HENRY LEWIS STONE** who shall hold office for the initial terms described in Schedule 1.

5. PURPOSE OF FOUNDATION

The Fund Trustees may apply the whole or such part or parts of the capital and the income of the Foundation, the accumulations of income in this deed or by law directed or empowered to be made, and all accretions and investments and property from time to time representing the said money investments property accumulations and accretions, or any part or parts respectively of it for the sole purpose of distributing money, property or benefits to the **WARRNAMBOOL ART GALLERY** ("the Gallery") or any eligible charity, which is a charity at law and to which gifts are deductible under item 1

of the table in Section 30-15 of the Income Tax Assessment Act 1997 and is relevant to the objects of the Foundation as described in clause 6.

6. OBJECTS OF THE FOUNDATION

The application of moneys made under clause 5 may be directed towards:

- 6.1. Raising, and establishing procedures and programmes for raising, of money from the public to be applied for the acquisition of works of art to be added to the collection of the **WARRNAMBOOL ART GALLERY**.
- 6.2. Attracting and encouraging donations, gifts, bequests, endowments to the Foundation and/or the **WARRNAMBOOL ART GALLERY**.
- 6.3. Applying income of the Foundation to the Warrnambool Art Gallery for purpose of acquisition of works of art for its collection to be purchased by the Gallery in accordance with its acquisitions policy from time to time. The Fund Trustees shall not have any role in the selection of the works of art funded by grants from the Foundation.
- 6.4. Support the Gallery's educational activities and outreach programme for the promotion and understanding of art within the Warrnambool region.
- 6.5. Establishing procedures and programmes for encouraging participation by the community in the programmes and work of the Gallery generally in the region which for the purpose of this clause shall be Warrnambool and the South Western district of Victoria (bordered by the South Australian Border, the Glenelg Highway, the Hamilton Highway, a line south from Cressy to the coast, and thence along the south coast of Victoria to the commencing point).

7. PUBLIC FUND

The Foundation is a Public Fund for the purposes of receipt of donations to the Foundation for which tax deductibility is sought, and shall be subject to the following requirements:

- 7.1. Donations to the Public Fund must be kept separate from any other funds of the Foundation.
- 7.2. All donated moneys to the Foundation attracting tax deductibility and interest accruing thereon, must be credited to and kept in the Public Fund.
- 7.3. The Foundation must issue receipts in the name of the Public Fund according to the requirements of the Income Tax Assessment Act 1997 from time to time.
- 7.4. The Public Fund may be used only in the furtherance of the principal purposes of the Foundation as outlined in the Statement of Purposes of the Foundation.
- 7.5. The funds of the Public Fund shall include donations from the public.
- 7.6. If upon the winding-up or dissolution of the Foundation and/or the Public Fund after satisfaction of all its debts and liabilities if there remains any property in the public fund, the Public Fund shall not be paid to or distributed among the trustees, but shall be given or transferred to some other organisation or organisations which:
 - 7.6.1. Has objects similar to the objects of this Foundation;
 - 7.6.2. Whose Rules shall prohibit the distribution of its or their income among its or their members; and
 - 7.6.3. Which is eligible for tax deductibility of donations under Subdivision 30-B, Section 30-102 of the Income Tax Assessment Act 1997.

8. ACCUMULATION

The Fund Trustees may accumulate and add to the capital of the fund any income not applied as aforesaid so far as such accumulation shall be permitted by law. The amount of any accumulation shall be dealt with as an accretion to the fund but so that the Fund Trustees at any time or times may resort to all such accumulations and pay or apply the whole or any part or parts of them as if it or they were income of the fund.

9. NO BENEFIT TO TRUSTEES

The assets and income of the fund shall be applied solely in furtherance of the purposes stated in clause 5 and no portion shall be distributed directly or indirectly to the trustees of the Foundation except as bona fide compensation for services rendered or expenses incurred on behalf of the Foundation.

10. MANAGEMENT OF THE FOUNDATION

- 10.1. The Foundation shall be managed as a charitable trust by trustees who are natural persons.
- 10.2. The trustees must consist of a majority of persons who have a degree of responsibility to the general community.
- 10.3. The number of trustees shall be not fewer than three nor more than five.
- 10.4. The power of appointing new trustees shall reside in the Fund Trustees.
- 10.5. Apart from the terms fixed for the initial trustees terms of re-appointment or new appointments should be made for a term of three years so that to provide both continuity and change in trusteeship the Board achieves terms for each trustee of approximately 6-9 years. A Fund Trustee having completed nine years service as a trustee shall not be eligible to be re-appointed until after a period of three years has elapsed.
- 10.6. A person is not eligible for appointment or re-appointment to be a Fund Trustee if he or she has attained the age of 75 years.
- 10.7. If at any time there are fewer than two Fund Trustees, the power of appointing a new trustee or trustees shall rest jointly in the surviving trustee and **WARRNAMBOOL CITY COUNCIL**

11. POWERS

Notwithstanding that the Fund Trustees may be personally interested or concerned in the outcome of the exercise thereof the Fund Trustees shall have the following powers:

11.1. INVESTMENT

To apply and invest all moneys at any time forming part of the fund in any such investments whether involving liabilities or not or upon personal credit with or without security or interest and upon such terms and conditions as the Fund Trustees in their absolute discretion shall think fit.

The intent is that the Fund Trustees shall have the same powers in all respects as if they were absolute owner and beneficially entitled, including (without diminishing the generality of the foregoing):

- the subscription for the taking up on allotment and the purchase of any shares, stocks, bonds, mortgages, debentures, obligations or securities of any government authority or company incorporated in any part of the world;
- the grant of annuities of all kinds;
- the taking part of and the purchase of the whole or any part or share or interest in (including a minority part or share or interest in) any business or partnership and the goodwill and assets thereof; and
- the purchase or lease of any real and personal property whatsoever situated or any part or share or interest therein.

Notwithstanding that the same may not be income producing or may be of a wasting or speculative nature to exercise all rights and privileges and perform all duties and obligations appertaining or incidental thereto.

11.2. INVESTMENT OF GIFTED MONEYS

The Foundation will invest gifted moneys only in ways allowed to a trustee under Australian law.

11.3. TRUSTEE ACT

Sub-sections 6(3) and 7(2) of the Trustee Act 1958 shall not apply to the Foundation.

11.4. VARY INVESTMENTS

To vary or transpose any investments into or for any other or others of any nature whatsoever and to vary the terms of the property comprised in any security.

11.5. PROPERTY

To hold use purchase construct demolish maintain repair renovate reconstruct develop improve sell transfer convey surrender let lease exchange and grant options or rights in alienate mortgage charge pledge re-convey release or discharge or otherwise deal with any

real or personal property and in particular shares debentures or securities of any company and with or without deferred restricted qualified or special rights relating thereto.

11.6. CHARGES

To pay out of the fund or the income of it all costs charges and expenses incidental:

- to the management of the fund; or
- to the exercise of any power authority or discretion herein contained; or
- in carrying out or performing the trusts of this deed;

which the Fund Trustees at any time may incur including all income tax or other taxes payable in respect of the fund, costs in any way connected with the preparation and execution of this deed and all moneys which the Fund Trustees may be required to pay as settlement probate estate gift stamp or revenue duties including stamp gift or settlement duties payable in respect of the fund or on this trust.

11.7. SHARES

To exercise all rights and privileges and perform all duties and do all such acts matters and things appertaining to any shares stocks or debentures in any corporation for the time being subject to the trusts hereof as the Fund Trustees could do if they were the beneficial owner of the share stock or debentures or were personally interested or concerned in the corporation (and without diminishing the generality of the foregoing) liberty:

- to assent to any arrangements modifying such rights privileges or duties;
- to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any corporation;
- to make any agreement in respect of or in course of the winding up of any company;

and for such purpose to deposit surrender or exchange any of the said shares stock or debentures or the title thereto and to pay any calls or contributions or other necessary expenses in connexion with any shares stock or debentures or any title thereto.

11.8. QUESTIONS

To determine all matters as to which any doubt difficulty or question may arise under or about the trusts and powers of this deed and whether any real or personal property or any increase or decrease in amount number or value of any property or holdings of property or any receipts or payments from or in connexion with any real or personal property shall be treated as and credited or debited to capital or to income.

Every determination of the Fund Trustees in relation to any of the matters aforesaid whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Fund Trustees shall bind all parties interested therein and shall not be objected to or questioned on any ground whatsoever.

11.9. BANKING

To open any account or accounts with any bank or banks and to operate such account or accounts in such manner as the Fund Trustees determine.

11.10. RECEIPTS

To give effectual receipts and discharges for any moneys received by or on behalf of the Foundation or otherwise relating to any of the acts matters and things provided for in this deed.

To receive property by gift inter vivos or by will or under the provisions of any other trust or trusts or otherwise or from any other person or persons as additions to the fund and to hold the same upon the trusts of this deed set forth and to administer such additions under its provisions.

11.11. DEALING WITH DIRECTORS

To become a director of any company in which moneys forming part of the fund are invested or to appoint any person to act as director of any such company and to receive the remuneration attached to such office without accounting to the Foundation therefore provided that the Fund Trustees execute all proper declarations of trust for any shares held by them on behalf of the fund and account to the fund for all dividend and bonuses and to exercise or concur in exercising all of the powers and discretions contained in this deed or otherwise by law conferred notwithstanding that the Fund Trustees or any person being a fund trustee or any

person being a director or shareholder of a fund trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his or her personal capacity or as a director or shareholder of any company or otherwise) in the mode or result of exercising such power or discretion and notwithstanding that the Fund Trustees for the time being is a sole trustee.

11.12. ADVICE OF COUNSEL AND PROTECTION OF FUND

To take such action as the Fund Trustees shall think fit for the adequate protection of any part or parts of the fund and take and act upon the opinion (given in writing) of a barrister or solicitor practising in any country where the fund or any part thereof for the time being may be invested about this deed or any other document or statute or as to the fund or the administration of the trusts hereof without being liable to any of the persons beneficially interested in respect of any act done by the Fund Trustees in accordance with such opinion provided that nothing in this provision shall prohibit or impede the Fund Trustees from applying to any court as they think fit and doing all such other things as may be incidental to the exercise of the powers and authorities conferred on the Fund Trustees by this deed.

11.13. NOMINEE

To permit any asset of the fund to be held or registered in the name of any nominee of the Fund Trustees and to deposit securities deeds and other documents belonging or related to the fund in such places with such persons as the Fund Trustees from time to time in their absolute discretion may think fit.

11.14. POWER TO DELEGATE

The Fund Trustees shall act jointly but also may delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Fund Trustees, and may execute any powers of attorney or other instrument necessary to effectuate such purpose. Where anything provided for in this deed is required or entitled to be done by deed it may be done by a signed writing in which it is stated that the power contained in this clause is being exercised.

12. TRUST MANAGER

The Fund Trustees shall not be bound in any case to act personally but shall be at full liberty to employ to act as manager or to employ any contractors manager solicitor accountant clerk workman employee or servant or any agent to transact all or any business of whatever nature required to be done in the administration of the fund or under this deed including the receipt and payment of money. The Fund Trustees shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.

13. ACCOUNTS

The Fund Trustees shall keep complete and accurate records of all receipts and expenditures on account of the fund. Promptly after the close of each accounting period the Fund Trustees shall prepare a written accounting report including where required separately, the Public Fund (prepared in accordance with normally accepted accounting procedures) for such period consisting of a balance sheet a statement of income and expenditure and a list of assets held at the close of each year.

14. FINANCIAL YEAR

The financial year of the Foundation shall commence on 1st July and end on the following 30th June unless otherwise fixed by the Fund Trustees.

15. DONOR RECORDS

The Fund Trustees shall maintain records of all gifts made to the Foundation as required by any accounting standard or legislation but shall not disclose the names of donors or the amounts of any donation (other than as required by such standard or legislation), without the consent of the donor.

16. COMMUNITY COMMUNICATION & SUPPORT

In pursuit of its objective to attract community interest in the Warrnambool Art Gallery the Foundation annually shall present to a meeting of members of the public a report on its activities in the previous year and audited financial accounts. The meeting shall be held within five months of the end of the Foundation's financial year. The Fund Trustees shall invite to the meeting all persons who, and representatives of corporate persons who, have given a donation to the Foundation in the preceding

five financial years and such other persons as the Fund Trustees see fit. The procedures for invitation to, content of, and conduct of the meeting shall be as the Fund Trustees fix from time to time.

17. DISCLOSURE

Without prejudice to any right of the Fund Trustees under the general law to refuse disclosure of any document it is hereby declared that the Fund Trustees shall not be bound to disclose to any person any of the following documents, that is to say:

- 17.1. Any document disclosing any deliberations of the Fund Trustees (or any meeting of directors of a corporate fund trustee) on the manner in which the Fund Trustees should exercise any power or any discretion conferred upon the Fund Trustees by this deed or disclosing the reason for any particular exercise of any such power or any such discretion or the material upon which some reason shall or might have been based;
- 17.2. Any other document relating to the exercise or proposed exercise of any power or any discretion conferred on the Fund Trustees by this deed.

18. INDEMNITY - GENERAL

No Fund Trustees shall be responsible for:

- 18.1. Any loss or damage occasioned by the exercise of any discretion or power hereby or by law conferred on the Fund Trustees or by failure to exercise any such discretion or power; or
- 18.2. Any breach of duty or trust whatsoever unless it shall be proved to have been committed made or omitted in personal conscious fraudulent bad faith by the Fund Trustees charged to be so liable;
- 18.3. All persons claiming any beneficial interest in the fund shall be deemed to take with notice of and subject to the protection hereby conferred on the Fund Trustees.

19. FURTHER INDEMNITY

The Fund Trustees shall be entitled to be indemnified out of the assets for the time being comprising the fund against liabilities incurred by them in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts authorities powers and discretion hereof or by virtue of being the Fund Trustees under this deed.

20. VARIATION OF TRUSTS

- 20.1. Subject to sub-clause 2 the Fund Trustees for the time being at any time and from time to time by deed may revoke add to or vary any of the trusts hereinbefore limited or the trusts limited by any variation or alteration or addition made thereto from time to time, and by the same or any other deed or deeds may declare any new or other trusts or powers concerning the fund or any part or parts of it. Any such new or other trusts powers discretion alterations or variations may relate to the application, management, or control of the fund or the investment of it or to the trustees' powers or discretion in this deed contained, provided however that:
- 20.2. The amendment shall not be in favour of or for the benefit of or result in any benefit to any trustee of the Foundation or any person who shall have made a gift to the Foundation, but otherwise may be for the benefit of any entity or organisation which has similar charitable objects to the Foundation, and which at the time of variation has income tax exempt status under the Income Tax Assessment Act 1997 as amended and is qualified as a deductible gift recipient under that Act.
- 20.3. The Fund Trustee shall notify the Commissioner of Taxation of any changes, variations or alterations made to this trust deed.

21. WINDING UP

If the Foundation is wound up or its endorsement as a deductible gift recipient is revoked, the Foundation must transfer its assets to another Public Art Gallery in regional Victoria donations to which attract tax deductibility under Item 1 of the Table in Section 30-15 of the Income Tax Assessment Act 1997 or to any other charitable organisation which:

- 21.1. Has objects similar to the objects of this Foundation;
- 21.2. Whose Rules shall prohibit the distribution of its or their income among its or their members; and

21.3. Which is eligible for tax deductibility of donations under Subdivision 30-B, Section 30-102 of the Income Tax Assessment Act 1997.

EXECUTEED AS A DEED.

SIGNED by **JOHN JAMES TAIT** and)
JOHN FORBES HUNT (as directors of **THE GWEN &**)
EDNA JONES FOUNDATION) in the presence of:)

Witness:

SIGNED by **DAVID FLETCHER JONES**)
in the presence of:)

Witness:

SIGNED by **JANET MACDONALD**)
in the presence of:)

Witness:

SIGNED by **ANN MORRIS**)
in the presence of:)

Witness:

SIGNED by **MICHAEL HENRY LEWIS STONE**)
in the presence of:)

Witness:

SCHEDULE 1
INITIAL TRUSTEES AND TERM OF APPOINTMENT

DAVID FLETCHER JONES	Term ending 1st November. 2012
JANET MACDONALD	Term ending 1st November, 2012
ANN MORRIS	Term ending 1st November, 2011
MICHAEL HENRY LEWIS STONE	Term ending 1st November, 2011