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DISCRETIONARY TRUST DEED

establishing

THE ANCHOR FAMILY TRUST

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Date

Parties

Settlor	MOBY DICK of 2 Bay Street, Hawkinson NSW 2200 (the <i>Settlor</i>)
Initial Trustee	BRUCE “BLUEY” ANCHOR Address: 5 Pearl Avenue, Port Stephens NSW 2211 Fax: +61 2 1234 5678 Email: bluey@blueocean.law (the <i>Initial Trustee</i>)

Recitals

- A The Settlor desires to provide for the Beneficiaries.
- B For the purpose of giving effect to that desire, the Settlor has settled, or is about to settle, on the Initial Trustee the sum of \$10.00 (the *Settlement Sum*) to establish a discretionary trust in accordance with this deed (the *Trust*).
- C The Initial Trustee consents to become the trustee of the Trust in accordance with the powers, and subject to the provisions, of this deed.

Operative provisions

1. Definitions and interpretation

Definitions

1.1 The following definitions apply in this deed:

Accounting Period means each of the following:

- (a) the period commencing on the Commencement Date and ending on the following 30 June;
- (b) each subsequent period of 12 calendar months ending on 30 June;
- (c) the period commencing on the last 1 July prior to the Vesting Day and ending on the Vesting Day; and
- (d) any other period determined by the Trustees (provided that no such period may commence prior to the Commencement Date or end after the Vesting Day).

Appointors means the appointors of the Trust from time to time (being, on the date of this deed, the Initial Appointor).

Beneficiaries means the Primary Beneficiaries and the General Beneficiaries.

Child means, in respect of a particular person, any:

- (a) biological child, including any:
 - (i) child born as a result of artificial conception procedures and/or under surrogacy arrangements; and/or
 - (ii) posthumously conceived child, provided that affirmative consent to posthumous conception was given by either biological parent; and/or
- (b) legally adopted child,

of that person (whether born or adopted before or after the date of this deed), and includes any step-child of that person and any other person who is or was at any time under the guardianship or foster care of that person.

Close Relatives means, in respect of a particular person, the great-grandparents, grandparents, parents, Children, grandchildren, great-grandchildren, brothers, sisters, nephews, nieces, uncles, aunts, first cousins and Spouses of that person.

Commencement Date means the date of this deed.

Controller has the meaning given the Corporations Act.

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

Excluded Person means:

- (a) the Settlor, any child of the Settlor and any person claiming through the Settlor;
- (b) any corporation of which any such person is a member;
- (c) any trustee of any settlement or trust in which any such person has an actual or contingent beneficial interest (in its capacity as the trustee of that settlement or trust and in its own right) for so long as that interest continues; and
- (d) any Foreign Person.

Foreign Person means a "foreign person" as defined in the *Duties Act 1997* (NSW), the *Land Tax Act 1956* (NSW) and the *Duties Act 2001* (QLD) as well as a "foreign trustee" as defined in the *Duties Act 1997* (NSW), an "absentee person" as defined in the *Land Tax Act 2005* (VIC) and a "foreign purchaser" as defined in the *Duties Act 2000* (VIC).

General Beneficiaries means, at any particular time, all persons who are or were (as applicable) included in any of the following categories at that time:

- (a) the Close Relatives of the Primary Beneficiaries;
- (b) the Close Relatives of the Close Relatives of the Primary Beneficiaries;
- (c) any relative by blood or marriage of an Appointor;
- (d) any corporation, wherever incorporated or resident, of which any other Beneficiary is a member (regardless of whether or not that corporation was in existence at the Commencement Date);
- (e) the trustees of any Related Trust (in their capacity as the trustees of that Related Trust);

- (f) any executor or trustee of a will or testamentary estate of any other Beneficiary (in their capacity as the executor or trustee of that will or testamentary estate);
- (g) any charitable institution, body or organisation; and
- (h) any other person from time to time nominated to be a Beneficiary by the Trustees in accordance with clause 3.1,

regardless of whether or not those persons were in existence or were included in those categories at the Commencement Date, but excluding the Excluded Persons.

Initial Appointor means the person named in Schedule 1.

Insolvency Event means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) for a person that is a body corporate:
 - (i) except for the purpose of a solvent reconstruction or amalgamation:
 - (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed; or
 - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (C) a resolution that it be wound up is passed or proposed;
 - (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
 - (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
 - (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
 - (v) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
 - (vi) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;
 - (vii) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
 - (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;

- (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
 - (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
 - (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and
- (b) for a person that is a natural person:
- (i) a bankruptcy notice is issued against the person;
 - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
 - (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
 - (iv) the person proposes or effects a moratorium involving any of the person's creditors;
 - (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
 - (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
 - (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
 - (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

ITAA 1936 means the *Income Tax Assessment Act 1936* (Cth).

Primary Beneficiary means each person named in Schedule 2.

Related Trust means any trust, settlement or superannuation fund in which any Beneficiary has an interest, regardless of whether or not:

- (a) that interest is absolute, contingent, expectant or prospective or is liable to be:
 - (i) defeated by the exercise of any power of appointment or revocation; or
 - (ii) diminished by an increase in the number of members of the class to which that Beneficiary belongs; and
- (b) that trust, settlement or superannuation fund is in existence at the Commencement Date.

Separate Trust means a separate trust created pursuant to clause 9(b) in respect of any assets that have been Set Aside.

Set Aside means, in respect of any particular assets, the placement of those assets to the credit of any particular Beneficiaries in the books of the Trust in the absence of a determination of the Trustees under clause 9(a).

Settlement Sum has the meaning given in Recital B.

Spouse means, in respect of a particular person, any:

- (a) legally married spouse, former spouse, widow or widower of that person; and
- (a) de facto partner or same sex partner of that person who, although not legally married to that person, is living or has lived with that person on a bona fide domestic basis as though legally married to that person.

Tax Acts means the ITAA 1936 and the *Income Tax Assessment Act 1997* (Cth).

Trust has the meaning given in Recital B.

Trustee Act means the *Trustee Act 1925* (NSW).

Trustees means the trustees of the Trust from time to time (being, on the date of this deed, this Initial Trustee).

Trust Fund means, subject to clause 9(b), the trust fund of the Trust from time to time, including:

- (a) the Settlement Sum;
- (a) all money, investments and property paid or transferred to, and accepted by, the Trustees as additions to the trust fund of the Trust;
- (b) any accumulations of Trust Income made by the Trustees under this deed; and
- (c) all accretions to the trust fund of the Trust.

Trust Income means, for each Accounting Period:

- (a) the income (including any capital gains) of the Trust for that Accounting Period as determined by the Trustees in accordance with clause 7.1(a); or
- (b) if no such determination is made, the income of the Trust for that Accounting Period calculated in the same manner as net income is calculated under the Tax Acts, except that if, in calculating the net income under the Tax Acts, it is necessary to:
 - (i) gross up any amount of income (eg, tax offsets such as foreign tax credits or franking credits);
 - (ii) include any amount of deemed assessable income; or
 - (iii) make any deemed deduction,

then the grossing up, deemed assessable income (excluding net capital gains included in assessable income) and/or deemed deduction will not be included in calculating the net income of the Trust for that Accounting Period unless the Trustees determine otherwise.

Vesting Day means the first to occur of the following dates:

- (a) where the rule of law commonly known as “the rule against perpetuities” would render void any of the dispositions of trusts made under this deed relating to any property comprising the whole or part of the Trust Fund, the date of expiration of that perpetuity period; and

- (b) such date as the Trustees may revocably or irrevocably designate in writing, with the prior written consent of the Appointors, to be the “Vesting Day” of the Trust for the purposes of this deed.

Interpretation

1.2 The following rules of interpretation apply in this deed unless the context requires otherwise:

- (a) headings in this deed are for convenience only and do not affect its interpretation or construction;
- (b) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (c) a reference to a document (including this deed) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
- (d) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this deed;
- (e) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (f) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (g) a reference to writing includes any communication sent by post, facsimile or email;
- (a) a reference to time refers to time in the jurisdiction governing the Trust from time to time and time is of the essence;
- (h) the meaning of general words is not limited by specific examples introduced by “*include*”, “*includes*”, “*including*”, “*for example*”, “*in particular*”, “*such as*” or similar expressions;
- (b) a reference to a family relationship shall have a meaning that corresponds to the definition of the term “Child” in clause 1.1;
- (i) a reference to any thing is a reference to the whole and each part of it;
- (j) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (k) words in the singular include the plural and vice versa; and
- (l) a reference to one gender includes a reference to the other genders.

2. Establishment of the Trust

Declaration of trust

2.1 The Settlor and the Initial Trustee declare that the Trustees will, on and from the Commencement Date, stand possessed of the Trust Fund and of the Trust Income on trust for

the Beneficiaries by way of a discretionary trust, with the powers and subject to the provisions of this deed.

Name of the Trust

2.2 The Trust will be known as “**THE ANCHOR FAMILY TRUST**” or such other name as the Trustees may, with the consent of the Appointors, determine in writing.

3. Beneficiaries

Trustees may add and remove/exclude Beneficiaries

- 3.1 Subject to clause 3.2, the Trustees may, at any time, with the prior written consent of the Appointors:
- (a) nominate in writing any one or more persons, or any class of persons, to be additional Beneficiaries; and/or
 - (b) remove or exclude any one or more persons, or any class of persons, from being Beneficiaries.

Excluded Persons not permitted to benefit

3.2 Notwithstanding any other provisions of this deed, the Excluded Persons are not entitled to benefit under the Trust or any Separate Trust in any way.

Request from Beneficiary to be excluded

3.3 The Trustees may, at any time, at the request, or with the consent in writing, of any Beneficiary who has legal capacity, declare in writing that the Beneficiary will, from that point onwards, not be a Beneficiary for the purpose of the Trust (including any Separate Trusts that may thereafter be created) and, upon the making of such a declaration, this deed will be read, and the Trust (and any Separate Trusts that may thereafter be created) will be given effect, as if that person were not named or described as a Beneficiary under this deed, provided however that any such declaration shall not affect any beneficial entitlement of that Beneficiary to any assets that were distributed to, or Set Aside for, that Beneficiary prior to the date of that declaration.

No interests

3.4 A Beneficiary has a mere expectancy, and does not have any interest in any Trust Income nor any part of the Trust Fund, unless and until, and then only to the extent that, any particular assets of the Trust Fund are fully and finally vested in that Beneficiary absolutely in accordance with this deed and applicable law.

Benefits are additional

3.5 Any benefits conferred on any Beneficiary under, or pursuant to, this deed will be in addition to, and not in substitution for, any provision that may be made by the Settlor for that Beneficiary, whether by settlement or will or otherwise.

4. Appointors

Initial Appointor

4.1 Upon the establishment of the Trust, the Initial Appointor will be the sole Appointor.

Retirement of Appointor

- 4.2 Any Appointor may retire from the office of Appointor by written notice to the continuing Appointors and such retirement will be effective:
- (a) immediately upon the service of such notice by the retiring Appointor; or
 - (b) if the retiring Appointor is the sole Appointor, immediately upon the appointment of a replacement Appointor.

Appointment and removal of Appointors

- 4.3 The Appointors may, at any time by instrument in writing (including by deed or will):
- (a) appoint any new Appointor in the place of any Appointor who has been removed, has retired or ceases to be an Appointor by operation of law; and
 - (b) appoint any additional Appointors.
- 4.4 Where the Appointors have appointed an additional Appointor pursuant to the power set out in clause 4.3(b), those Appointors may remove that additional Appointor at any time by instrument in writing (including by deed or will). Appointors are not otherwise entitled to remove any Appointor.

Nomination of successor Appointor

- 4.5 Any Appointor may, at any time, by instrument in writing (including by deed or will), with the unanimous consent of all other Appointors, revocably or irrevocably, nominate any person to be the successor to that Appointor's position as an Appointor. If an Appointor has made such a nomination, the nominated successor of that Appointor will be deemed to replace that Appointor immediately upon the retirement or removal of that Appointor.
- 4.6 A revocable nomination of a successor made under clause 4.5 may be revoked by instrument in writing (including by deed or will) by the Appointor who made the nomination. Any such revocation will not prevent the Appointor who made the revocation from making further nominations of successors under clause 4.5.

Automatic removal of Appointor

- 4.7 An Appointor will be deemed to have been immediately removed from the office of Appointor if:
- (a) the Appointor, being an individual, dies, is imprisoned or is found to be of unsound mind or the Appointor or his/her estate becomes liable to be dealt with in any way under a law dealing with mental health;
 - (b) an Insolvency Event occurs in relation to the Appointor;
 - (c) the Appointor is:
 - (i) acting in the capacity of, on behalf of, or as directed by, a trustee in bankruptcy, liquidator, administrator, the Family Court Registrar or any enforcement officer of the Family Court; or
 - (ii) a party to, or subject to any order arising from, any proceedings in or related to the Family Court (including any mediation, arbitration or other dispute resolution proceedings required by the Family Court or family law legislation); or

- (d) a material breach of this deed occurs in relation to the Appointor for the purposes of clause 16.6.

Vacation of office of Appointor

- 4.8 If the office of Appointor is vacated for any reason and there are no successor Appointors pursuant to clause 4.5:
- (a) an Appointor must be appointed as soon as possible by a majority of the Primary Beneficiaries; or
 - (b) if none of the Primary Beneficiaries are still alive, or all of the Primary Beneficiaries are legally incapacitated, and the last Appointor was:
 - (i) an individual, that individual's legal personal representative will be deemed to be an Appointor with immediate effect; or
 - (ii) a company or other body corporate, there will be no replacement Appointor.

Copies to be kept

- 4.9 A copy of all:
- (a) notices of retirement of an Appointor under clause 4.2;
 - (b) nominations of a successor Appointor under clause 4.5; and
 - (c) revocations of such nominations under clause 4.6,
- must be provided to the Trustees and kept with this deed.

Decisions of the Appointors

- 4.10 If the office of Appointor is held by more than one person, every decision or exercise of a power capable of being made by the Appointors will be valid only if made with the approval of a majority of the Appointors.

5. Trustees

Initial Trustee

- 5.1 Upon the establishment of the Trust, the Initial Trustee will be the sole Trustee. By executing this deed, the Initial Trustee hereby consents to act as Trustee.

No obligation for multiple trustees

- 5.2 There will be no obligation for the Trust to have more than one Trustee.

Removal of Trustees

- 5.3 Subject to clause 5.8, the Appointors may remove any Trustee at any time by instrument in writing (including by deed or will).

Retirement of Trustee

- 5.4 Subject to clause 5.8, any Trustee may retire from the office of Trustee by written notice to the continuing Trustees and to the Appointors and such retirement will be effective:
- (a) immediately upon the service of such notice by the retiring Trustee; or

- (b) if the retiring Trustee is the sole Trustee, immediately upon the appointment of a replacement Trustee.

Appointment of Trustees

- 5.5 Subject to clause 5.8, the Appointors may, at any time by instrument in writing (including by deed or will):
- (a) appoint any new Trustee in the place of any Trustee who has been removed, has retired or ceases to be a Trustee by operation of law; and
 - (b) appoint any additional Trustees.

Automatic removal of Trustee

- 5.6 A Trustee will be deemed to have been immediately removed from the office of Trustee if:
- (a) the Trustee, being an individual, dies, is imprisoned or is found to be of unsound mind or the Trustee or his/her estate becomes liable to be dealt with in any way under a law dealing with mental health;
 - (b) an Insolvency Event occurs in relation to the Trustee;
 - (c) the Trustee is:
 - (i) acting in the capacity of, on behalf of, or as directed by, a trustee in bankruptcy, liquidator, administrator, the Family Court Registrar or any enforcement officer of the Family Court; or
 - (ii) a party to, or subject to any order arising from, any proceedings in or related to the Family Court (including any mediation, arbitration or other dispute resolution proceedings required by the Family Court or family law legislation); or
 - (d) a material breach of this deed occurs in relation to the Trustee for the purposes of clause 16.6,
- and, in the event of such removal, clause 5.9 will apply.

Vacation of office of Trustee

- 5.7 Subject to clause 5.8, if the office of Trustee is vacated for any reason, the Appointors must appoint a Trustee as soon as possible.

Trustees not permitted to benefit

- 5.8 Any removal, retirement or appointment of a Trustee under clause 5.3, 5.4, 5.5 or 5.7 will not take effect unless and until, as a condition precedent to the removal, retirement or appointment taking effect, the terms of this deed are permanently and irrevocably amended so that:
- (a) in the case of the removal or retirement of a Trustee, none of the continuing Trustees remaining after the removal or retirement is or can become a beneficiary under the Trust; and
 - (b) in the case of the appointment of a Trustee, none of the Trustees after the appointment is or can become a beneficiary under the Trust.