

**Dee England Regional Art Museum
Foundation**

DEED OF TRUST

**RICE MORE & GIBSON
SOLICITORS**

Lignori Chambers
Level 1, 149 Beardy Street
PO BOX 551
ARMIDALE NSW 2350

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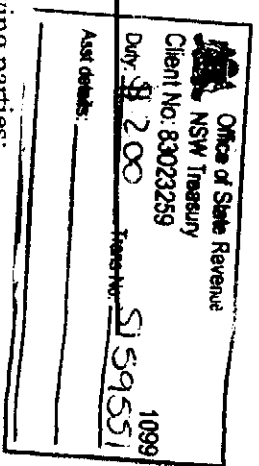
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This deed of trust

is made on ~~8th~~ **SEPTEMBER 2008** between the following parties:

1. **ACN 110 023 339 PTY LTD trading as RICE MORE & GIBSON SOLICITORS** of Liguori Chambers, Level 1, 149 Beardsy Street Armidale in the State of New South Wales, 2350.
(Founder)

2. **NEW ENGLAND REGIONAL ART MUSEUM LIMITED (ACN 131 297 731)** with registered office located at Level 1, 149 Beardsy Street Armidale in the State of New South Wales, 2350.
(Trustee)

Recitals

- A. The Founder wishes to establish a foundation fund for the purpose of supporting the housing, insuring, preserving, maintaining, conserving, restoring, presenting and promoting of artworks and to produce and improve collections vested in the care and control of the Trustee, whether or not in its capacity as trustee, for supporting visual and other cultural and artistic fields in accordance with the purposes contained in this Deed and to invest funds to raise further revenue for such purposes by the Trustee.

- B. The Founder also wishes to establish the Foundation to support visual and other cultural and artistic fields with matters incidental including but not limited to: the propagation and increased knowledge and appreciation of art; the development of professional expertise and advice; cultural awareness; education; scholarship; research; and, publications in support of such purposes by the Trustee.

This deed witnesses

- 1 **Name**
The Trust is to be known as **New England Regional Art Museum Foundation.**

2 Definitions and Interpretation

- 2.1 **Definitions**
In this deed:
Accounting Period means the period from the date of this deed to the following 30 June and then each period of 12 months ending on 30 June in each year, or any other period that the Trustee decides;
Advisory Committee means a committee established under clause 12;
Associate has the meaning outlined in section 78A of the *Income Tax Assessment Act 1936* as if the reference to the "donor" in that section were a reference to the person who under this deed is referred to in relation to the Associate;

Commissioner means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97;

Donor means the donor of a gift to the Trust;

Eligible Charity means a fund, authority or institution:

- (a) which is charitable at law; and
- (b) gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97;

ITAA 97 means the *Income Tax Assessment Act 1997*;

Major Donor means, at a particular time, a Donor who has made gifts totalling more than \$25,000 to the Foundation since the date of this Deed;

Principal Purpose of the Trust means the purpose outlined in clause 4;

Responsible Person means an individual who:

- (a) performs a significant public function;
 - (c) is a member of a professional body having a code of ethics or rules of conduct;
 - (d) is officially charged with spiritual functions by a religious institution;
 - (e) is a director of a company whose shares are listed on the Australian Stock Exchange;
 - (f) has received formal recognition from government for services to the community; or
 - (g) is approved as a Responsible Person by the Commissioner, and who, unless the Commissioner otherwise agrees, is not:
 - (1) the Founder or a Donor;
 - (2) an employee of the Founder, the Trustee or a Major Donor;
 - (3) an Associate of the Founder, the Trustee or of a Major Donor or of the directors or members of the board or other controlling committee of the Trustee other than:
 - (A) in a professional capacity;
 - (B) as a member of the board or other controlling committee of the Trustee; or
 - (C) as a member of the Trustee.
- Settled Sum** means \$20.00;
- Specified Income** means income of the Trust other than donations, gifts, government grants, and other voluntary transfers of property to the Trust;
- Trust** means the Foundation established under this Deed;
- Trustee** means the person named in this deed as the Trustee and any other trustee for the time being of the Trust; and
- Trust Fund or Foundation Fund** means:
- (a) the Settled Sum;
-

- (h) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
 - (i) all accretions to the Trust Fund;
 - (j) all accumulations of income; and
 - (k) the 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.

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

2.3 Headings

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

3 Declaration of trust

The Founder and the Trustee declare that the Trustee must hold the Trust Fund and the income from the Trust Fund on the trusts, with the powers and subject to the provisions in this deed.

4 Purposes

4.1 Application of income and capital

- (a) The Trustee must hold the Foundation Fund and the income of the Foundation Fund derived in each Accounting Period on trust to pay or apply the income and, if and so far as it thinks fit, all or any part of the capital of the Foundation Fund, directly for the purpose of caring for, insuring, preserving, conserving, maintaining, restoring, presenting and improving artwork collections vested in the Trust and other collections in the care and control of the Trustee.
- (b) The purpose of the Foundation Fund may also be applied to promoting and enriching cultural awareness, education, events and matters incidental to and associated with the visual and other cultural and artistic fields and to raise further funds for such purposes by the Trustee.

- (c) The Foundation is also established for the purpose of receiving complete collections to be vested in the Trust under the care, control and management of the Trustee.
- (d) The Foundation Fund may also be applied to support visual and other cultural and artistic fields with matters incidental including but not limited to: the propagation and increased knowledge and appreciation of art within the New England Regional and wider communities; the development and provision of professional expertise, advice and services to the public or to any person or body with respect to and matter concerning art or works of art and their maintenance, conservation, preservation and restoration; cultural awareness; education; scholarship; research; promote and provide exhibitions, lectures, films publications and other educational or cultural instruction or materials in support of such purposes.
- (e) The Foundation may engage and enter into contracts with artists and entertainers, lecturers performers and artists to appear at the New England Regional Art Museum premises or other branch locations or in connection with any service provided by the Trustee in pursuance of the objects of the Trustee's Constitution.
- (f) The Foundation may charge and receive fees or other amounts for or in connection with any advice or service provided, article sold or permission given by the Foundation in its exercise of any of the functions conferred on it which fees or other amounts shall be the property of the Foundation.
- (g) The Founder has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.
- (h) Where gifts to an Eligible Charity 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 income or capital 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 Principal Purpose of the Trust, of any other trust (including a trust established by a testamentary instrument) where:
 - (1) the capital of the other trust is proposed to be 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 income or capital, 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 Trustee may accumulate

Despite clause 4.1, the Trustee may, in any Accounting Period accumulate and retain so much of:

- (a) the Specified Income as is:
 - (1) necessary to maintain the capital of the Trust Fund at a level calculated by adjusting the capital at the beginning of that Accounting Period to reflect the movement in the All Groups Consumer Price Index during the Accounting Period immediately before that Accounting Period; or
 - (2) from time to time approved by the Commissioner; and
- (b) all other receipts or income of the Trust as are from time to time approved by the Commissioner.

5 Uncommercial Transactions

- (a) Apart from a payment or application under clause 4.1, a payment under clause 15 or a payment or application approved by the Commissioner, no part of the Trust Fund or the income may be paid or applied, directly or indirectly, to or for:
 - (1) the Founder;
 - (2) the Trustee;
 - (3) a Donor; or
 - (4) an Associate of the Founder, the Trustee or a Donor by way of an Uncommercial Transaction.
- (b) In clause 5(a), an **Uncommercial Transaction** means 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 arms length basis; or
 - (2) are more favourable to the recipient than the terms referred to in clause 5(b)(1),and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

6 Establishment and operation of Gift Fund

6.1 Maintaining Gift Fund

The Trustee must maintain for the Principal Purpose of the Trust a fund (**Gift Fund**):

- (a) to which gifts of money or property for that purpose are to be made;
- (b) to which any money received by the Trust because of those gifts is to be credited; and

(c) that does not receive any other money or property.

6.2 Limits on use of Gift Fund

The Trustee must use the following only for the Principal Purpose of the Trust:

- (a) gifts made to the Gift Fund;
- (b) any money received because of those gifts.

6.3 Winding up

- (a) At the first occurrence of:
 - (1) the winding up of the Gift Fund; or
 - (2) the Trust ceasing to be a prescribed private fund under item 2 of the table contained in section 30-15, of the ITAA97any surplus assets of the Gift Fund must be transferred to
 - (3) Eligible Charities
- as the Trustee decides.

(b) Where gifts to an Eligible Charity 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 must be made in accordance with those conditions.

6.4 Bank account

The Trustee must maintain a separate bank account for the Gift Fund.

6.5 Gift Fund forms part of the Trust Fund

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

7 Qualifications of Trustee

- (a) The Trustee must be:
 - (1) a Responsible Person; or,
 - (2) five or no more than seven persons, at least four of whom are Responsible Persons; or
 - (3) a company or other body corporate whose Board of Directors or other controlling body includes a majority of Responsible Persons.
- (b) If the requirement in clause 7(a) is at any time not met the Trustee must not exercise any discretion or power until the requirement is met or 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.
- (c) If the requirement in clause 7(a) is 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 7(b)(1), the Trustee may by writing appoint a new or additional Trustee.

8 Trustee's powers

8.1 Investment

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.

8.2 Other powers

The Trustee may:

- (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 or exchange the whole or any part of the investments or property of the Trust/Foundation;
- (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) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) attract and encourage donations, gifts (by Will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;

- (i) 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;
- (j) 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;
- (k) apply any part of the Trust Fund to sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (l) 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;
- (m) 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;
- (n) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Charity to occupy the property on the terms and conditions the Trustee thinks fit;
- (o) appoint an alternative Trustee including either individual persons or a company or other body corporate whose board of directors or other controlling body includes at least one Responsible Person or as otherwise required pursuant to clause 7 of this Trust Deed.
- (p) do all other things incidental to the exercise of the Trustee's powers under this deed.

8.3 Powers are supplementary

The powers and discretions in clause 8.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

9 Liability for breaches of trust

9.1 Trustee

The Trustee, where purporting to act in the exercise of the trusts of this deed or exercise 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 or liability, unless the loss or liability is attributable to:
 - (c) the dishonesty of the Trustee; or
 - (d) the wilful commission or omission of an act known by the Trustee to be a fraudulent breach of trust in bad faith.

9.2 Officers, agents or employees

Any officer, agent or employee of the Trustee purporting to exercise 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 or liability, unless the loss or liability is attributable to:
 - (c) the dishonesty of that officer, agent or employee of the Trustee; or
 - (d) the wilful commission or omission of an act known by that officer, agent or employee of the Trustee to be a fraudulent breach of trust in bad faith.

10 Indemnity of Trustee from Trust Fund

The Trustee is entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee 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
- (b) 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 10(a) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this deed.

11 Books of account and receipts

11.1 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.

11.2 Financial statements

As soon as practicable after the end of each Accounting Period 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 Accounting Period.

11.3 Audit

The financial statement must be audited by a person registered, or taken to be registered as an auditor under Part 9.2 of the *Corporations Act 2001*

11.4 Receipts

Receipts issued for gifts must state:

- (a) the name of the Trust Fund;

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

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 a number of individuals with appropriate knowledge and expertise.
- (c) Where an advisory committee is established in relation to visual artwork collections and/or individual artworks vested in the Foundation on trust, not less than three individuals shall form an advisory committee determined by the Trustee with at least two of whom shall be knowledgeable and experienced in the related area of visual arts.
- (d) 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.
- (e) 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 any person as a patron of the Trust.

14 Amending this deed

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 or the income of the Trust Fund becomes subject to any trusts other than public charitable trusts; and
- (b) unless the Commissioner consents to the revocation, addition or variation:
 - (1) no part of the Trust Fund or the income of the Trust Fund becomes subject to trusts other than trusts for the provision of money, property or benefits to or for Eligible Charities;
 - (2) no amendment is made to or affecting clauses 4.1 or 5;
 - (3) no amendment is made which authorises the Trustee to invest money of the Trust Fund other than in a manner in which trustees

are permitted to invest under the laws of Australia or of any State or Territory of Australia;

- (4) no amendment is made to this clause 14 so as to permit this deed to be amended in a manner prohibited by clause 14(b)(1), (2) or (3); and
- (5) the Trustee notifies the Commissioner of the amendment.

15 Trustee's remuneration

The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However, the maximum remuneration chargeable by the Trustee in respect of any Accounting Period must not exceed an amount equal to the maximum commission chargeable by trustee companies under the *Trustee Companies Act 1964* (NSW) in respect of that Accounting Period.

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

The Trustee and any person who is a member of the Board or other controlling committee of the Trustee or a member 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 if the Trustee is a sole trustee.

16.4 Delegation of powers

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 receipts

The Trustee may receive money and other property and give valid receipts for all purposes including:

- (a) those of any statute; and
- (b) 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, and even if the Trustee is a sole trustee.

16.6 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) If on the winding up of the Trust any property remains after the satisfaction of all its debts and liabilities, the Trustee must pay or apply the property to or for Eligible Charities, or for the establishment of Eligible Charities, as the Trustee decides pursuant to this deed.
- (b) Where gifts to an Eligible Charity 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 of income or capital under this clause must be made in accordance with those conditions.

18 Governing law

This deed is governed by the laws of the State of New South Wales.

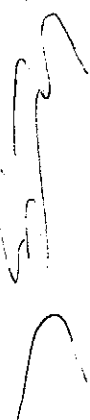
Executed as a deed:

Signed sealed and delivered by
**ACN 110 203 339 PTY LTD t/as
RICE MORE & GIBSON SOLICITORS**
in the presence of:



Witness

DIANNE MILLER
Solicitor of the Supreme Court of NSW



~~SOLICITOR/DIRECTOR~~

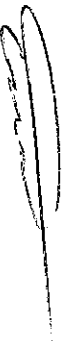
TIM RICE
Solicitor of the Supreme Court of NSW
Liquori Chambers, The Mall, Armidale 2350



~~SOLICITOR/DIRECTOR~~

Name (please print)

Signed sealed and delivered by
**NEW ENGLAND REGIONAL ART
MUSEUM LIMITED (ACN 131 297 731)**
in the presence of:

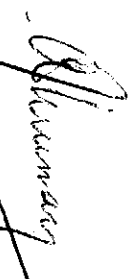


Witness

MEG LARKIN
CHAIRMAN



Christopher K. C. Serow
Solicitor of the Supreme Court of NSW
Liquori Chambers, The Mall, Armidale 2350



ANDREW MURRAY
DEPUTY CHAIRMAN

Name (please print)

Schedule 1 Declaration by Trustees

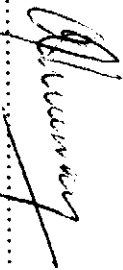
(Section 22C)

The trustees of the NEW ENGLAND REGIONAL ART MUSEUM FOUNDATION, after having regard to the effect of this declaration (including its effect on the liability of the trustees to income tax), declare that the power conferred by section 22C of the Charitable Trusts Act 1993 to provide money, property or benefits to or for an eligible recipient, or for the establishment of an eligible recipient, within the meaning of section 22A of that Act, is approved as a power that the trustees for the time being of the NEW ENGLAND REGIONAL ART MUSEUM FOUNDATION are authorised to exercise.

Deed dated 13th SEPTEMBER 2008.


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Meg Larkin
Chairman
New England Regional Art Museum Limited


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Andrew Murray
Deputy Chairman
New England Regional Art Museum Limited