

Dated: Thursday, 2 July, 2020

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**BELL LAMB & TROTTER TRUSTEE LIMITED**

*Trustee*

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**DECLARATION OF TRUST ESTABLISHING THE BELL LAMB & TROTTER PREPAID  
FUNERAL TRUST**

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THIS DECLARATION OF TRUST IS MADE this 2<sup>nd</sup> day of July 20 20  
by BELL LAMB & TROTTER TRUSTEE LIMITED ("Trustee")

## INTRODUCTION

- A. The Trustee wishes to establish a trust for the purposes and objects set out below:
- (a) to hold upon trust, funds received from a person who wishes to pre-pay for their funeral in advance of their death; and
  - (b) upon the death of that person, to pay or apply the funds to the Funeral Director, for the purpose of meeting the cost of that person's Funeral Arrangements.
- B. The Trustee shall hold all funds paid to them upon the terms and with and subject to the powers and discretions set out in this deed.

## OPERATIVE PART

### 1. NAME OF TRUST

- 1.1 Each trust created pursuant to this document shall be known as the relevant Applicant's '**BELL LAMB & TROTTER PREPAID FUNERAL TRUST**' ("Trust").

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In this deed, unless the context otherwise requires:

"**Applicant**" means any person who pays funds to the Trustee to be held upon trust for the provision by the Funeral Director of Funeral Arrangements for the Applicant.

"**Application Form**" means the Bell Lamb & Trotter Prepaid Funeral Trust Application Form.

"**Appointer**" means Andrew John Sloss Bell.

"**Available Prepaid Funds**" means the capital and accumulated income of the Prepaid Funds of an Applicant that are available to the Trustee to meet the cost of the Funeral Arrangements for that Applicant.

"**Exceptional Circumstances**" means in respect of the Applicant, significant hardship, a permanent change of residence to a location outside of the geographical area in which the Funeral Director can provide its services or the permanent emigration of the Applicant to another country.

"**Funeral Arrangements**" means in respect of an Applicant, the provision by the Funeral Director of professional funeral services carried out in accordance with the Funeral Arrangement Deed and any written instructions given to the Funeral Director by the Applicant including (but not limited to):

- (a) A funeral, memorial or such other service and activities;

- (b) The purchase of a plot (either prior to or following the death of the Applicant); and
- (c) The provision of a suitably inscribed headstone, plaque or other grave work (including the repair of any existing grave work).

**"Funeral Director"** means Bell Lamb & Trotter (2014) Limited.

**"Funeral Arrangement Deed"** means the Bell Lamb & Trotter Prepaid Funeral Arrangement Deed entered into by the Applicant, the Funeral Director and the Trustee recording the payment made by the Applicant to the Trustee upon trust for payment of the Funeral Arrangements provided by the Funeral Director.

**"Mental Incapacity"** for the purposes of this deed a person is Mentally Incapable (or lacking mental capacity) where:

- (a) an order is made under any law applicable to the person for the management of the person's property by a court-appointed manager, guardian, conservator or similar official; or
- (b) a certificate is provided by a suitably qualified and independent medical practitioner appointed by the Trustees stating:
  - (i) that the person lacks wholly or partly the competence to manage his or her own affairs or the competence to exercise the powers held by that person under this deed; or
  - (ii) that the person lacks wholly or partly the competence to discharge the duties of the office or position held by that person under this deed,

provided that where the certificate is sought in respect of a Trustee, the suitably qualified and independent medical practitioner shall be appointed by the other Trustees; or

- (c) the person refuses to submit to an assessment of capacity when required by the Trustees (or where a Trustee is the subject of the proposed assessment, the other Trustees) or is unable by reason of physical disability to submit to an assessment of capacity in a timely manner

**"Prepaid Funds"** means the funds which are paid to the Trustee by the Applicant during the Applicants lifetime to be held by the Trustee upon trust to meet the costs of or associated with the Applicant's Funeral Arrangements on the Applicant's death.

**"Registered Bank"** means any bank which is a registered bank as defined in accordance with section 2 of the Reserves Bank of New Zealand Act 1989.

**"RWT"** means Resident Withholding Tax deducted at the rate of 10.5%, 17.5%, 30% or 33% per annum, whichever is applicable.

**"Trustee"** means the trustee or trustees for the time being of the Trust, whether original, additional or substituted.

**"Trustee Company"** means any company or corporation which has been established for the sole purpose of acting as a trustee or is authorised under any statute or enactment to act as executor or administrator of a deceased persons estate and

includes a trustee corporation as defined by section 2 of the Trustee Act 1956 and a trustee company as defined by section 2 of the Trustee Companies Act 1967 or any enactments in substitution of the Trustee Act 1956 and the Trustee Companies Act 1967.

**“Trustee’s Trust Account”** means the trust account established in the name of the Trustee with a Registered Bank.

**2.2 Interpretation:** In this deed:

- (a) except as otherwise expressly provided by this document, all powers or discretions vested in the Trustees by any clause shall not in any way be limited or restricted by the interpretation of any other clause;
- (b) the interpretation of this document in cases of doubt is to favour the broadening of the powers and the restricting of the liabilities of the Trustees;
- (c) unless the context otherwise requires:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing one gender include the other genders;
  - (iii) words denoting natural persons include companies;
  - (iv) reference to a statute shall be deemed to be reference to that statute as from time to time amended, re-enacted or substituted;
  - (v) reference to a clause is, unless otherwise specified, a reference to a clause of this deed;
- (d) headings have been inserted for guidance only and shall not be deemed to form part of the context of this deed.

**3. DECLARATION OF TRUST**

3.1 The Trustee declares and acknowledges that the Trustee shall for each and every Applicant hold the Applicant’s Available Prepaid Funds upon the trust, with and subject to the powers and discretions, contained or implied in this deed and shall on the death of the Applicant apply the Applicant’s Available Prepaid Funds for the provision of Funeral Arrangements provided by the Funeral Director for that Applicant.

3.2 All Prepaid Funds received by the Trustee from an Applicant shall be vested in and held by the Trustee on a separate trust for that Applicant.

3.3 The trust for an Applicant shall be established upon receipt by the Trustee of:

- (a) the completed and signed Application Form and Funeral Arrangement Deed; and
- (b) the Applicant’s Prepaid Funds paid in cleared funds into the Trustee’s Trust Account.



#### **4. DURATION OF TRUST**

- 4.1 Subject to clause 4.2, each trust created by this deed will continue for such period as the Trustee considers is necessary to provide for the Applicant's Funeral Arrangements.
- 4.2 The Trustee may terminate a trust created by this deed by giving the Applicant, or, if the Applicant is deceased, the Applicant's administrator or executor of his or her estate, notice that the trust is terminated and paying the person to whom notice is given the Applicant's Available Prepaid Funds as at the date of termination.

#### **5. PAYMENT OF PREPAID FUNDS**

- 5.1 An Applicant may contribute Prepaid Funds at such times and on such terms and conditions as the Trustee may from time to time prescribe.
- 5.2 The payment to and receipt by the Trustee of Prepaid Funds is subject to the Applicant completing the Application Form and completing to the satisfaction of the Trustee the procedure for customer due diligence in accordance with the Anti-Money Laundering and Countering Financial Terrorism Act 2009 in respect of the funds to be held by the Trustee on trust for the Applicant.

#### **6. INVESTMENT OF FUNDS**

- 6.1 The Trustee will hold the Applicant's Prepaid Funds in the Trustee's Trust Account ("the Account") on interest bearing deposit.
- 6.2 The Trustee shall keep a separate account of all Prepaid Funds paid by an Applicant and of all income accruing to those funds.
- 6.3 The duties imposed on a trustee by section 13B and section 13C of the Trustee Act 1965 and section 30 of the Trustee Act 2019 are excluded for the purpose of the trusts created by this deed.

#### **7. INCOME**

- 7.1 RWT will be deducted from any interest accruing on the Applicants Prepaid Funds at annual intervals.
- 7.2 The accrued interest (less RWT) on the Applicants Prepaid Funds shall be added to and form part of the balance of the Applicants Prepaid Fund and shall be applied for in the provision of the Funeral Arrangements for the Applicant.

#### **8. PAYMENT FOR FUNERAL ARRANGEMENTS**

- 8.1 Following the death of an Applicant the Trustee agrees to:
- (a) Notify the Funeral Director of the death of the Applicant and request that the Funeral Director provide the Funeral Arrangements for the Applicant in accordance with the Funeral Arrangement Deed; and



- (b) Make payment to the Funeral Director for provision the Funeral Services in accordance with clause 8.2.

8.2 The Trustee may only release the Applicant's Prepaid Funds to the Funeral Director upon the Trustee receiving:

- (a) A copy of the Funeral Arrangement Deed signed by the Applicant and the Funeral Director;
- (b) The Applicant's death certificate;
- (c) An invoice from the Funeral Director for the provision of the Funeral Arrangements; and
- (d) Confirmation satisfactory to the Trustee that the Funeral Arrangements have been carried out by the Funeral Director in accordance with the Applicant's Funeral Arrangements as outlined in the Funeral Arrangement Deed.

8.3 The signed receipt of an officer of the Funeral Director shall be a full discharge to the Trustee of the Trustees obligations to the Funeral Director and the Applicant under this deed.

8.4 In the event that:

- (a) the Funeral Director fails to perform its obligations under the Funeral Arrangement Deed; or
- (b) the Funeral Director is placed in liquidation, receivership or under statutory management; or
- (c) it becomes evident, in the reasonable opinion of the Trustee that the Funeral Director cannot, or will not be able to performs its obligations under the Funeral Arrangement Deed,

the Trustee shall pay the Applicant's Prepaid Funds to the Applicant, or if the Applicant has died, to the personal representative of the deceased Applicant. The signed receipt by the Applicant (if living) or the Applicant's personal representatives (if the Applicant is deceased) shall be a full discharge to the Trustee for the Trustees obligations to the Applicant or the Applicants personal representatives under this deed.

## **9. EARLY WITHDRAWAL**

9.1 Subject to clause 9.2, the Applicant may not request an early withdrawal of any amount from the Applicant's Prepaid Funds prior to the Applicant's death.

9.2 Where an Applicant notifies the Trustee that due to Exceptional Circumstances they require the withdrawal of the Applicant's Prepaid Funds, the Trustee may in it is discretion waive clause 9.1 and allow an early withdrawal of an amount equal to the value of the Applicant's Prepaid Funds at the time notification is received.

9.3 The Applicant must provide the Trustee such information as the Trustee in its discretion requires to exercise its discretion under clause 9.2.

## 10. APPOINTMENT AND REMOVAL OF TRUSTEES

- 10.1 The Appointer shall have the powers, exercisable from time to time, to appoint and remove Trustees.
- 10.2 The Appointer may transfer the powers of appointment and removal of Trustees to such person or persons as the Appointer nominates by deed or will. Where such a transfer is made, it shall apply to both the powers of appointment and removal set out in clause 10.1 which are held by the Appointer.
- 10.3 If the Appointer dies, subject to the terms of any transfer of the powers of appointment and removal of Trustees made by the Appointer by deed during the Appointers lifetime, those powers shall, from the date of the Appointer's death be exercisable by the legal personal representatives from time to time of the Appointer and after the final distribution of the estate of the Appointer, by the Trustees.
- 10.4 If the Appointer is unable or unwilling to act or is Mentally Incapable, the Appointer's powers of appointment and removal of Trustees shall be exercisable by:
- (a) a person holding an enduring power of attorney over the property of the Appointer who is Mentally Incapable;
  - (b) if the Appointer has not appointed an attorney under an enduring power of attorney, a property manager appointed under a property manager appointed under the Protection of Personal and Property Rights Act 1988 to act as manager of the Appointer's property;
  - (c) otherwise in accordance with the provisions of section 92 of the Trustee Act 2019.
- 10.5 The Appointer (and any subsequent holder or holders of the powers of appointment and removal of Trustees) shall have the power to appoint and remove such additional and advisory Trustees as the holder or holders may determine.
- 10.6 The Appointer (or any subsequent holder or holders of the power of appointment) may (jointly, if more than one) appoint:
- (a) an individual; or
  - (b) a company; or
  - (c) a combination of the two,
- to be a Trustee or Trustees of the Trust.
- 10.7 Where an individual is appointed as Trustee there must be a minimum of two Trustees appointed (whether those trustees be two individuals or one individual and a company to hold the position of Trustee. Where however a company is appointed as Trustee the company may be appointed as the sole Trustee.
- 10.8 The exercise of the powers of appointment and removal shall always be by deed but, in the case of the powers held by the Appointer who is a natural person, may be by will.
- 10.9 Each appointment or removal of a Trustee shall take effect as provided in the instrument of appointment or of removal, may be conditional to take effect on a future



date or upon the occurrence of a future event, and may, if so specified, be revocable until effective.

- 10.10 A Trustee who is or becomes Mentally Incapable shall cease to be a Trustee and the Appointer may appoint a replacement Trustee. For the avoidance of doubt for the purposes of this deed and the Trust, Mental Incapacity shall not revoke the power of attorney granted under sub-clause 10.11.
- 10.11 To facilitate the vesting, transfer or assignment of the assets comprising the Trust Fund to the Trustee or Trustees for the time being, following the exercise of the power of removal or upon the Mental Incapacity of a Trustee, every person, at any time being a Trustee, irrevocably appoints the person or persons having the power of removal of Trustees to be their attorney to do all things necessary to vest, transfer and assign all property forming the Trust Fund and no person shall be concerned to inquire of or question the propriety or otherwise of such vesting, transfer or assignment. For the avoidance of doubt for the purposes of this deed, Mental Incapacity shall not revoke the power of attorney granted under this clause.

## 11. LIABILITY AND INDEMNITY OF TRUSTEES

- 11.1 **No liability of Trustees with exceptions:** No Trustee or former Trustee or any officer of any Trustee or former Trustee shall be liable for any loss incurred in relation to an Applicant's Available Prepaid Funds that is not attributable to that Trustee's or officer's dishonesty, wilful misconduct or gross negligence and no Trustee shall be bound to take any proceedings against a co-Trustee or former Trustee for any breach or alleged breach of trust committed by a co-Trustee or former Trustee or any officer of any co-Trustee or former Trustee.
- 11.2 **Indemnity of Trustees:** Each Trustee or former Trustee or officer of any Trustee or former Trustee shall be entitled to a full and complete indemnity from the Available Prepaid Funds of an Applicant for any liability which that that Trustee, former Trustee or officer may incur in any way arising out of or in connection with that Trustee or officer acting or purporting to act as or on behalf of a Trustee of the Trust in relation to the administration or management of the Applicants Available Prepaid Funds, provided such liability is not attributable to that Trustee's or officer's own dishonesty, wilful misconduct or gross negligence.

## 12. GOVERNING LAW

- 12.1 The Trust is established under the laws of New Zealand which shall govern the effect and construction of this document and over which the courts of New Zealand shall have exclusive jurisdiction.

## 13. AMENDMENT OF TRUST DOCUMENT

- 13.1 The Trustees may by deed supplemental to this document alter, modify add to or cancel the provisions of this document including this clause) in the following circumstances:

- (a) If in the opinion of the Trustee, the alteration is:
- (i) made to correct a manifest error or is a formal or technical nature;

- (ii) is necessary or desirable for the management and administration of the trust; or
  - (iii) is necessary or desirable in view of a change of legislation or regulations imposed on the trust by law; and
- (b) In the opinion of the Trustee, the alteration is not likely to be materially prejudicial to the interests of any Applicant.

**SIGNED AS A DEED**

Signed by **BELL LAMB & TROTTER TRUSTEE LIMITED** as Trustee



**BELL LAMB & TROTTER TRUSTEE LIMITED**  
by its DIRECTOR/DIRECTORS

(if signed by one director)  
in the presence of:



Signature of witness

JANET L. MORRISON

Name of witness

ADMINISTRATOR

Occupation

CHRISTCHURCH.

City/town of residence