

UTR7.18 – THE SIDNEY MYER MELBOURNE SYMPHONY ORCHESTRA TRUST

Recitals-

- A. The late Sidney Myer, formerly of Clendon Road, Toorak, and formerly governing director of the Myer Emporium Ltd., presented to the University 10,000 ordinary shares of one pound each fully paid in the Myer Emporium Limited.
- B. Sidney Myer by deed dated 22 December 1932 declared that the University stood possessed of the gift shares to be held upon the subject to the following terms and conditions-
 - ‘1. The object of the donor in setting apart the said gift is to make a perpetual provision and endowment dedicated in perpetuity to the promotion and encouragement of free concerts of orchestral music in Melbourne including open-air concerts and to further and maintain the interests of the Melbourne Symphony Orchestra now being established under the auspices and direction of the University of Melbourne and the Ormond Professor of Music in the University of Melbourne.
 - 2. It is the wish of the donor that the said gift shares shall not be sold except with the consent in writing of the said Sidney Myer or his legal personal representatives but shall together with all additions or accretions thereto in the shape of any bonus or free or dividend shares or any sinking fund accretions be retained as a separate fund and shall be known as the Melbourne Symphony Orchestra Trust Fund.
 - 3. The dividends interest income and annual earnings produced by the said gift shares or by the proceeds of the sale thereof shall be kept in a separate account and shall be applied as hereinafter appears including power to provide out of the same a sinking or equalization fund. So much of the said dividends interest income and earnings as shall not be required or expended in any year and the residue thereof shall be accumulated in the said fund and may be resorted to in subsequent years for any purposes of the fund herein indicated and may be applied as if income arising in that year.
 - 4. The University of Melbourne or other of the holders of the said gift shares or any share investments representing the same shall as members of the company in which the shares constituting such trust are held have power and authority to vote upon and agree to any scheme of enlargement reconstruction or arrangement submitted by such company.
 - 5. The trust fund shall be so used and governed managed and applied that if after the sale of the shares constituting the same (or any of them) any part of the corpus or capital of or representing the said trust fund shall from any cause be lost or used or depleted then and in such case the income derived from the trust fund shall not be used for the purposes herein contemplated but shall be accumulated and applied in and about restoring and making good such lost or used or depleted capital or corpus and added to the corpus of the fund until such loss or shortage shall be made good and replaced.
 - 6. The said dividends interest income and annual earnings shall each year subject as aforesaid be applied by the University to such extent as it considers necessary in assisting the Melbourne Symphony Orchestra

in its programmes and outlay in relation to free orchestral concerts and in particular shall be used as far as practicable to provide for the presentation of free open air orchestral concerts in each concert season of the said orchestra in Melbourne.

7. The University of Melbourne shall have the absolute management and entire control of the said fund and its income and may make rescind and alter all such University trust records 1 (not being inconsistent with this declaration) as it may think fit with respect to the purposes for which the manner in which the persons by whom the terms and conditions on which and the times when the proceeds of the trust fund shall be employed or expended.
 8. It shall be lawful for the University to expend any moneys added to the said fund by way of accretions or accumulations of income in and towards the erection of a Band Stand specially constructed for the advantageous rendering of orchestral music in the open air.'
- C. On 12 November 2004 the Supreme Court of Victoria made an order substituting for the original clause 6 of the deed the following clause –
- '6. The said dividends, interest, income and annual earnings shall each year, subject as aforesaid, be applied by the University to such extent as it considers necessary in assisting the present Melbourne University Orchestra (30%) and the present Melbourne Symphony Orchestra (70%) in their programmes and outlay in relation to free orchestral concerts and in particular shall be used as far as practicable to provide for the presentation of free open-air concerts in each concert season of the said orchestras in Melbourne.'
- D. At the request of the Melbourne Symphony Orchestra and with the consent of the Supreme Court, the University and the Melbourne Symphony Orchestra have entered into an agreement of unlimited duration which provides that the income of the fund is to be shared in particular proportions between the University Orchestra (30%) and the Melbourne Symphony Orchestra (70%) on an annual basis into the indefinite future.
- E. At the time of the donation, the University received 10,000 ordinary shares of the Myer emporium. At 31 December 2004 the capital of the Melbourne Symphony Orchestra Trust Fund was \$8,584,547.92 and the accumulated income was \$932,391.97.

It is provided as follows-

1. In order to perpetuate the memory of Sidney Myer in association with his gift the fund is known as the 'Sidney Myer Melbourne Symphony Orchestra Trust Fund'.
2. The income of the fund is to be applied by Council in accordance with the trusts set out in Recital B as varied by the Supreme Court Order described in Recital C.