

***AUSTRALIAN THOROUGHBRED
BLOODSTOCK PTY LTD***



**UNNAMED 2019 Bay Colt
BY Tosen Stardom - Releve**

CO-OWNERS DEED

Australian Thoroughbred Bloodstock Pty Ltd
Address: 522 Beremboke Road, Beremboke, Vic 3342
Postal Address: PO Box 82 Ballan, Vic 3342
Telephone: 03 5360 8276 Email: darren@atbloodstock.com.au

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AUSTRALIAN THOROUGHBRED BLOODSTOCK PTY LTD

CO-OWNERS DEED

THIS DEED is made on _____ 2020.

BETWEEN: Each person who from time to time is bound by this Deed as an Owner by executing a deed in the form of Schedule 1 ("Owners").

AND: AUSTRALIAN THOROUGHBRED BLOODSTOCK PTY LTD (ACN 079 857 971) of 522 Beremboke Road, Beremboke, Victoria 3342 ("Manager")

RECITALS:

- A. The Owners have agreed to the terms and conditions of this Deed to enable the Owners to obtain the benefit of owning and racing the Horse.
- B. The Owners acknowledge owning and racing a Thoroughbred racehorse is speculative and fraught with risk.
- C. The Manager has agreed to manage the syndicate on behalf of the Owners in accordance with the terms and conditions of this Deed.

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

The following words have these meanings in this agreement unless the contrary intention appears:

"Horse" means the **UNNAMED 2019 bay colt by Tosen Stardom Releve** and shall have the same meaning if the Horse is gelded.

"Owners" means all the Owners that are a party to this Deed.

"Extraordinary Resolution" means a resolution that has been passed by at least 70% of the total votes that may be cast by Owners entitled to vote on the resolution.

"Manager" means the person or entity that has agreed to manage the Syndicate.

"Owner" means each purchaser of a Share at the commencement of the Owners Deed. This definition may, where the context permits, also include the original Owner and the Manager.

"Racing Victoria" means Racing Victoria Ltd of 400 Epsom Road, Flemington VIC 3052, which is the controlling body of Thoroughbred horse racing in Victoria.

"Resolution" means a resolution passed by a majority vote of those Owners entitled to vote.

"Share" means one undivided proportional ownership share in the Horse.

"Syndicate" means the business undertaking evidenced by this Deed whereby the Horse will be prepared for racing and raced for the benefit of the Owners.

"Syndicate Property" means any income or proceeds received by the Syndicate including:

- a. Prize money and bonuses received from racing the Horse.
- b. Proceeds of sale of the Horse.

- c. Trophies, which may include rugs, sashes, service nominations or any other benefit.

“Trainer” means that person that is engaged by the Owners to train the Horse for the purpose of racing.

1.2 In this agreement unless the contrary intention appears:

- a. The singular includes the plural and the plural includes the singular.
- b. A reference to any one gender includes a reference to each other gender.
- c. A reference to a person includes a reference to a firm, corporation or other corporate body.
- d. A reference to writing includes a reference to printing, typing and other methods of producing words in a visible form.
- e. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.
- f. Headings are for ease of reference and do not affect the construction of this Deed.
- g. If a party consists of more than one person this Deed binds them jointly and each of them severally.
- h. This Deed binds in addition to the parties, their respective legal personal representatives and successors.
- i. The annexed Schedules shall form part of this Deed.

2. OWNERS

2.1 As and from the date of this Deed:

- a. The Owners will own the whole of the legal and equitable title to the Horse as tenants in common upon the full sale price being paid to the auction company where the Horse was purchased;
- b. The Manager will hold any Syndicate Property it receives in trust for the Owners;
- c. No party shall encumber their Share in the Horse.

2.2 Each Share will entitle the Owner to their proportional share of net prize money and bonuses. In the event the Horse wins a trophy, it shall be held and maintained by the Manager pursuant to clause 7.

2.3 The Owners shall pay the costs of maintaining, training and racing the Horse proportionately to the number of Shares held by each Owner to the total number of Shares.

2.4 Each Owner bound by this Deed agrees to the terms and conditions of the Trainer’s training agreement

2.5 The Manager may beneficially hold any number of Shares, and shall have the same rights and powers in respect of each Share he owns as though he were not also acting in another capacity under this Deed.

2.6 There shall be no more than 20 Owners.

3. SYNDICATE MANAGER

3.1 The Owners hereby appoint the Manager to manage and operate the Syndicate and manage all aspects of the racing career of the Horse on the terms and conditions of this Deed.

3.2 The Manager must at all times during the life of the Syndicate:

- a. diligently strive to carry on and conduct the Syndicate in a proper and efficient manner and to perform the functions and exercise the powers of the Manager in the best interests of the Owners as a whole and to treat each Owner equally;
 - b. for so long as the Horse continues to race, the Manager shall ensure proper and skilful management and control of the Horse in accordance with the normal standards for the racing of Thoroughbred horse racing;
 - c. the Manager shall report to the Owners any facts and circumstances known to him which may have a material effect on the health or well-being of the Horse or which may give rise to a claim under any insurance policy;
 - d. not transfer the Horse to the care of a different trainer without the authority and consent of the Owners by an Extraordinary Resolution of the Owners;
 - e. in the case of the Horse being an entire, the Manager shall ensure that the Horse is not gelded without the authority and consent of the Owners by an Extraordinary Resolution of the Owners. The Manager after consulting with the Owners may sign the "Consent for Surgery" on behalf of the Owners; and.
 - f. ensure that any Syndicate money is applied for the purpose of the Syndicate, with the expectation that all prizemoney will be received proportionally by each Owner directly by the stakes payment system relevant to the territory in which the Horse has raced.
- 3.3 The Manager may delegate all or any of his duties and responsibilities to an employee of the Manager without in any way diminishing its duties to the Owners.
- 3.4 The Manager will provide, or arrange for the provision of, accounting, secretarial and legal advice to the Syndicate.
- 3.5 The Manager will keep a register of Owners which contains their names and addresses and the number of Shares held by each Owner, the date on which the Owner was entered in the register and the date on which any person ceased to be an Owner. In the event of a Share being owned by more than one person, the Manager shall be entitled to require the owners of such Share to register their own syndicate with Racing Victoria and to own the Share in the name of such syndicate.
- 3.6 The Manager will be entitled to be reimbursed for the money paid for secretarial, legal, bookkeeping and accounting services provided in relation to the Syndicate business.

4. COMPLIANCE WITH RULES OF RACING

- 4.1 The Manager and the Owners shall at all times comply with the Rules of Racing relevant to the territory in which the Horse is racing.

5. TRANSFER OF SHARES

- 5.1 Notwithstanding anything contained in this Deed any transfer, sale or other disposal of a Share shall be conditional upon:
- a. the transferee of the relevant interest in the Horse being capable of being, or being, registered as an owner under the Australian Rules of Racing;
 - b. the transferee receiving from the Manager a copy of this Deed which the transferee must agree in writing to be bound by the terms of the Deed as if it were an original party hereto.
- 5.2 Subject to clauses 5.1, 5.3 and 5.4 all Shares shall be capable of sale, transfer or other disposal by the Owner thereof to any person with the approval of the Manager and the Owners and such approval shall not be unreasonably withheld.
- 5.3 Notwithstanding anything contained in clause 5.2 but subject to clause 5.1 the approval of the Manager and the Owners may not be required for the, sale and transfer or other disposal of a Share:

- a. to another person who is already an Owner of a Share or otherwise party to this Deed;
- b. for the purpose of transmitting the Share to a legal personal representative of a deceased Owner;
- c. by the legal personal representative of a deceased Owner to the heir or beneficiary of the estate of a deceased Owner;
- d. to the spouse or child of an Owner, or family trust or company controlled by the Owner, spouse or children;
- e. to any person whom all the Owners have previously approved of in writing;
- f. to the Trainer pursuant to clause 19 of the Trainers Service Agreement; and
- g. to the purchaser of that Share pursuant to clause 5.4(d).

5.4 Owners have first right of refusal.

- a. If at any time an Owner wishes to transfer his Share or Shares ("the proposing transferor") to any person other than a person referred to in paragraphs (a) to (f) both inclusive of clause 5.3, the Owner shall give notice in writing to the Manager that he desires to transfer the Share or Shares in the Horse.
- b. The Owners Manager shall offer the Shares specified for sale to the Owners.
- c. If the number of acceptances for the Share or Shares comprised exceeds the number of such Share or Shares offered for sale and in the absolute opinion of the Manager (whose decision shall be final) no agreement can be reached between the Owners, the Manager shall make such provision as he thinks fit for the settlement of any difficulties which may arise in regard to the transfer of such Share or Shares to an intending purchaser and may conduct a ballot in such manner as the Manager determines, to decide who shall be the successful purchaser.
- d. If no purchaser for a Share specified is found, the proposing transferor may then:
 - i. sell and transfer the Share to any person (subject to clause 5.1); or
 - ii. offer the Share for sale by public auction or public tender provided that the Manager has given the Owners prior notice of the time and place of the public auction.

5.5 A transferor of a Share shall remain liable for all obligations and liabilities attributable to that Share to the date of registration of the transferee as the Owner of the Share and a transferee shall be liable for all obligations and liabilities attributable to the Share whether arising before or after his registration as Owner.

6. OFFERS TO PURCHASE

- 6.1 Upon receipt of any offer by the Manager from a prospective purchaser of any proprietary interest in the Horse, the Manager shall advise in writing to each of the Owners the terms of the offer and the Owners shall advise the Manager in writing if they accept or decline the offer made within 72 hours of receipt of the notice of offer.
- 6.2 The Owners agree that they each hold their proprietary interest in the Horse severally, not jointly, but notwithstanding such the Owners further agree that they are bound by acceptance of any such offer by the Owners by an Extraordinary Resolution of the Owners, subject to clauses 5.1 and 5.4..
- 6.3 On the acceptance of the offer each Owner undertakes to perform any act required of them by the Manager to have the sale implemented and completed.
- 6.4 For clarity, the minority are bound by the decision by those Owners holding in aggregate 70% or more of the Horse's proprietorship to accept the offer to purchase all or part of the Horse which may result in the sale of all of the Owners interests or a proportional share of each Owner's interest.

6.5 In the event of either the sale of the Horse or any proprietary interest in the Horse, or the sale of Shares by any of the Owners, no commission will be applicable to be paid to the Manager.

6.6 In the event the Horse, has commercial interest for sale as a stallion the Manager is appointed as Exclusive Agent to sell the Horse on behalf of the Owners and in addition to commission payable in clause 6.5 should the Horse retire to stud for commercial stud duties, the Manager shall be entitled to 1 free 'lifetime' Stallion Breeding Right.

7. TROPHIES

7.1 Should the Horse win any rugs, sashes, trophies, service fees or nominations or any other prize or benefit from a race, that is not prize money distributed by a racing authority through a stakes payment system, then the Owners agree that the Manager will ask each Owner to submit one only tender price to purchase that item or thing from the Owners with the highest tender price to be the ascribed value. The Owner with the highest tender will pay to the other Owners pro rata the value of that item or thing less the winning Owner's share in that item or thing before the tender process commenced. If no owner wishes to acquire, then the Manager will endeavour to sell the item and distribute proceeds accordingly.

8. COMPLAINTS

8.1 If a complaint regarding either the operation of the Syndicate, the conduct of the Manager, including the amount of any fees, expenses or levies charged under this Deed, is received from an Owner then the Manager:

- a. must acknowledge that complaint in writing within thirty (30) days of receipt of the complaint;
- b. must ensure the complaint is given proper consideration;
- c. must act in good faith to correct any problem identified by the complaint as far as possible without adversely affecting the rights of third parties;
- d. may provide any of the following remedies:
 - i. an explanation of the circumstances giving rise to the complaint;
 - ii. an apology; or
 - iii. compensation for any loss suffered by the complainant directly as a result of the conduct of the Manager identified by the complainant.
- e. must communicate with the complainant within ninety (90) days of receipt of the complaint:
 - i. the determination in relation to the complaint;
 - ii. the remedies (if any) available to the complainant.

8.2 If after the procedures set out in clause 8.1 having been completed or not completed to the satisfaction of the complainant then the Manager shall inform the complainant that the complainant may be entitled to have the matter dealt with by mediation before an Officer of the Integrity department at Racing Victoria whose determination shall be final.

9. DEFAULT

9.1 If an Owner ("Defaulting Party"):

- a. defaults in the performance of his obligations under this Deed and such default is not remedied within 14 days of being given written notice of such default by the Manager; or
- b. is an insolvent under administration as defined in the Corporations Act or if a corporate goes into liquidation, receivership or has an administrator or a controller appointed;

then the Defaulting Party shall not until such time as default is rectified be entitled to exercise any of the rights conferred on the Owner by this Deed (including without limiting the generality of the foregoing the rights specified in clause 2.2 and the right to attend or vote at the Owners' meetings) and the Owners may by Resolution require the Defaulting Party in relation to his Shares to sell to

them (in proportion to the Shares held by them or on such other basis as the Resolution shall authorise) all such Shares by giving written notice to the Defaulting Party.

- 9.2 The purchase price for the Shares of the Defaulting Party shall be the value of the Defaulting Party's Shares as determined by a recognised bloodstock valuer nominated by the Manager.
- 9.3 The purchase and sale of the Shares of the Defaulting Party shall be effected as soon as practicable after the price has been determined and the Manager shall execute as trustee of the Defaulting Party all such documents and do all things as are necessary to complete such purchase and sale. For the purpose only of effecting a sale in consequence of default, the Owner in default in consideration of these presents hereby nominates, constitutes and appoints the Manager his attorney under power to execute and do all such instruments and things as shall be necessary to sell, convey and assure a buyer the Share or Shares so sold. This includes, but is not limited to the recovery of outstanding training fees, agistment fees, vet fees, transport fees and insurance fees. This agreement empowers the syndicate manager to identify all outstanding fees and deduct from the funds raised from the sale of the share. Should the outstanding fees exceed the sale value of the share or should fees be outstanding when the horse is retired or dies then the syndicate manager is authorised to engage a debt recovery professional to retrieve the debt and the associated costs of recovery of said debt.
- 9.4 The rights conferred by clause 9.1 shall not prejudice any other rights which the Manager or a party to this Deed may have against the Defaulting Party.
- 9.5 The Defaulting Party shall be entitled to receive any proceeds from the sale of Shares by the Manager not required to be applied by the Manager in rectifying the default of the Defaulting Party under the terms of this Deed.

10. TERMINATION OF THIS DEED

- 10.1 This Deed (as it may be amended from time to time) shall have full force and effect until:
- a. the Horse dies;
 - b. is retired from racing;
 - c. is sold; or
 - d. the Manager or any Owner applies to and obtains a direction by order of a court or tribunal for the winding-up of the Syndicate.

Whichever shall occur first.

- 10.2 The Horse shall only be retired from racing, sold, or otherwise disposed of pursuant to and in accordance with the terms of an Extraordinary Resolution of the Owners.
- 10.3 On termination of this Deed all assets of the Syndicate shall be sold and the funds paid to the Owners in proportion to the number of shares held.
- 10.4 All rights and obligations which have accrued prior to the date of termination shall not be affected or prejudiced by termination.

11. INDEMNITIES

- 11.1 The Owners acknowledge that liabilities incurred by the Manager in the course of complying with the terms of this Deed are to be borne by the Owners and paid accordingly.
- 11.2 The Owners hereby acknowledge that as between them all expenses and liabilities incurred under or as a consequence of being parties to this Deed are to be borne by them *pari passu* to the number of Shares held. Each Owner covenants with every other Owner to indemnify and keep indemnified such other Owners against all expenses and liabilities to the extent that such expenses and liabilities are borne otherwise than in the proportions stated in this Deed provided nothing in this clause requires any Owner to indemnify any other Owner in respect of expenses and liabilities incurred as a result of a particular Owner's negligence, breach or default under this Deed or contravention of any statute.
- 11.3 No Owner shall pledge the credit of the Syndicate or hold himself out as acting on behalf of the other Owners and if an Owner purports to do so, the Owner shall be personally liable for any debt so created.

12. NO REPRESENTATION

- 12.1 Each Owner acknowledges that no representation or warranty has been made by any party to this Deed in respect of either:
 - a. the soundness or racing ability of the Horse or the subsequent suitability of the Horse for breeding or otherwise; or
 - b. the reliability or adequacy of any insurance cover arranged on behalf of the Owners.

13. GOVERNING LAW

13.1 The law governing the terms of this Deed is the law of Victoria and the forum for all disputes shall be the Courts of Victoria to whose jurisdiction the parties unconditionally submit and agree to confine themselves.

14. AMENDMENT

14.1 The provisions of this Deed may only be amended by an Extraordinary Resolution of the Owners, however, no amendment shall be made which adversely affects the right of an Owner to share prize money and bonuses from racing the Horse or the right of an Owner to share in the proceeds of the sale of the Horse.

15. EXECUTION

15.1 It shall be sufficient for an Owner to become a party to this Deed by executing Schedule 1 of this Deed and forwarding such a Schedule to the Manager and such an executed Schedule may be taken as evidence of the execution of this Deed by each Owner so executing and forwarding such a Schedule. Each Owner must sign and forward such a Schedule to the Manager immediately upon becoming entitled to be registered as an Owner.

Executed as a deed.

Executed by AUSTRALIAN THOROUGHBRED)
BLOODSTOCK PTY LTD A.C.N 079 857 971 in)
accordance with section 127 of the *Corporations*)
Act 2001:)

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary
(BLOCK LETTERS)

.....
Name of Director
(BLOCK LETTERS)

**UNNAMED 2019 Bay Colt
BY Tosen Stardom- Releve
SCHEDULE 1 - EXECUTION BY OWNER**

THIS DEED is made on 2020

BY: ("Owner")

IN FAVOUR

OF: Each person who from time to time is bound by the Co-Owners Deed as an Owner by reason of executing a deed in the form of this Schedule 1 ("Owners").

AND: AUSTRALIAN THOROUGHBRED BLOODSTOCK PTY LTD (ACN 079 857 971) of 522 Beremboke Road, Beremboke, Victoria 3342 (" Manager")

RECITALS:

- A. The Owner has been accepted by the Manager to be an Owner of Shares under the Co-Owners Deed.
- B. The Subscriber has agreed to enter into this Deed for the benefit of each other party to the Co-Owners Deed.

OPERATIVE PROVISIONS:

- 1. The Owner hereby covenants and agrees with the Manager and each Owner from time to time of Shares in the Horse that he is bound by all the provisions of the Co-Owners Deed and shall comply with all the obligations imposed on an Owner thereunder as if he had executed the Co-Owners Deed and was an original party thereto.
- 2. Words and expressions used in this deed shall have the same meaning as they have in the Co-Owners Deed.
- 3. In the event that this Deed is executed by an agent, or representative, principal or director on behalf of the Owner, or if the Owner is an organisation or a corporation, **the undersigned hereby unconditionally guarantees the full and prompt** performance by the Owner of any and all obligations under this Deed and agrees that he/she will be personally liable, jointly and severally liable with the Owner to pay on demand any monies owed by the Owner under this Agreement and shall indemnify each Owner for any loss suffered by the non-performance by the Owner. The undersigned warrants full disclosure to the Owner of the terms of this Deed. This guarantee and warranty shall remain in effect regardless of whether the agent, representative, principal or director retains his or her status as such following the execution of this Deed.

EXECUTED as a deed

[Subscriber - if an individual]

SIGNED, SEALED AND DELIVERED)
 by)
 in the presence of:) Signature of Subscriber

.....
Signature of witness

.....
Name of witness (block letters)

.....
Address of witness