

CLAYTON UTZ

Garry William Day
Settlor

BCB2 Pty Limited
Trustee

Discretionary Trust Deed

CLAYTON UTZ
Lawyers

Levels 23-35 No 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215 DX 370 Sydney
www.claytonutz.com

Tel + 61 2 9353 4000 Fax + 61 2 9251 7832

Our ref - 196 Contact Noel Davis

Sydney • Melbourne • Brisbane • Perth • Canberra • Darwin

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P. J. Phelan 30/05/02.
Commissioner of Stamp Duties,
Queensland

Deed of Trust dated

11th April, 2001

2001

Parties

Garry William Day of 22 Marconi Place, Little Bay in the State of New South Wales ("Settlor")

BCB2 Pty Limited, ACN 096 392 684, a company incorporated in the State of New South Wales ("Trustee")

Recitals

A. The Settlor has paid to the Trustee the sum of \$\$10.00 to be held by the Trustee on the trusts described in this Deed.

B. The trust will be known as the Bycabl Trust.

NEW SOUTH WALES DUTY
19-04-2001 0000592206-001
SECTION 58(1)
DUTY \$ *****200.00

This deed provides

1. Definitions and interpretation

1.1 Definitions

In this Deed:

"**Accounting Period**" means a period beginning on 1 July and ending on 30 June in each year, except that:

- (a) the first Accounting Period begins on the date of this Deed and ends on the first 30 June to occur thereafter; and
- (b) the last Accounting Period begins on the last 1 July before the Vesting Date and ends on the Vesting Date.

"**Appointor**" means Donn Desmond Byrne, or any person who becomes the Appointor in accordance with this Deed.

"**Beneficiary**" means any of the following:

- (a) the persons named or described in the Schedule to this Deed ("**Designated Beneficiaries**");
- (b) any company in which any one or more of the Designated Beneficiaries, either directly or indirectly through one or more interposed entities:
 - (i) holds a controlling interest; or
 - (ii) holds or is beneficially entitled to more than 50% of the voting power in the company or to rights to more than 50% of any dividends or any distribution of capital either on a return of capital or on a winding up,excluding any company that is:
 - (iii) a Trustee or former trustee of the Trust (other than in the capacity as trustee of another trust); or
 - (iv) a company in the capacity as trustee of any other trust to the extent that a distribution to that trustee would infringe the rule against perpetuities;

- (c) any fund, authority, institution, hospital, trustee (in that capacity), society, association or club or any other person or class of persons:
- (i) appointed during the life of the Primary Individual by notice given by the Primary Individual to the Trustee; and thereafter
 - (ii) appointed by the Trustee by notation,
- before the Vesting Date, but no appointment shall be made of:
- (iii) the Settlor;
 - (iv) any Trustee or any former trustee of the Trust (other than in the capacity as trustee of another trust); or
 - (v) any person in the capacity as trustee of any other trust to the extent that a distribution to that trustee would infringe the rule against perpetuities;

provided that no person or class of persons will be, become, remain or be appointed as, a Beneficiary for the purposes of this Deed if and while that person or class of persons is, becomes, or remains, an Excluded Person.

"Deed" means this Deed of Trust.

"Disqualified Person" means a person who under the laws relating to mental health applicable to the person is an incapable person, a protected person or a patient or who is a Mentally Infirm Person.

"Distributable Income" means the amount in respect of an Accounting Period determined in accordance with clause 3.1.

"Excluded Person" means any person or class of persons who, under clause 14.1, has been declared to be and who has not ceased to be, an Excluded Person.

"Exempt Income" has the meaning which applies under the Tax Act.

"Family", in relation to the Primary Individual, means:

- (a) the Primary Individual and his or her spouse;
- (b) the parents, grandparents, children, grandchildren, brothers, sisters, nephews and nieces of:
 - (i) the Primary Individual; and
 - (ii) the Primary Individual's spouse; and
- (c) the spouses of all persons mentioned in paragraph (b).

"Franked dividends" means dividends the whole or part of which are franked or taken to have been franked under the Tax Act.

"Gross Income" for an Accounting Period means the gross income of the Trust Fund for that Accounting Period determined in accordance with conventional accounting principles applicable to the administration of trusts, subject to any determination by the Trustee under clause 3.7 of this Deed.

"Income" means all income, profits and gains of every kind and includes, without limiting the

generality, amounts that are, or in the opinion of the Trustee may be, included in:

- (a) assessable income in accordance with the provisions of the Tax Act;
- (b) Tax Net Income;
- (c) if the Trustee so determines, Exempt Income

notwithstanding, in the case of any of the amounts in paragraphs (a)-(c), that they would otherwise be on capital account.

"Mentally Infirm Person" means a person who, according to the written opinions of at least 3 registered medical practitioners registered to practise medicine in Australia, obtained by or lodged with the Trustee, is a person who, through mental infirmity arising from disease, age or other reason, is incapable of managing their affairs.

"Minor" means any person under the age of 18 years.

"Primary Individual" means Donn Desmond Byrne.

"Property" means any estate or interest in any real or personal movable or immovable property of any description and wherever situate, and includes without limiting the generality of the foregoing, policies, money and choses in action and also any asset or CGT asset within the meaning applicable under the Tax Act.

"Securities" means securities of any kind issued by a company or a unit trust, including shares, units, debentures, options and warrants.

"Schedule" means a Schedule to this Deed.

"State" means New South Wales.

"Tax" includes all taxes, levies, surcharges, surtaxes, imposts, duties, excises and withholdings, whether direct or indirect, by whatever method collected or recovered, together with any penalties, fines, interest or statutory charges and **Taxes** has a corresponding meaning.

"Tax Act" means the *Income Tax Assessment Act 1936 (Commonwealth)* or the *Income Tax Assessment Act 1997 (Commonwealth)* as the context requires and, where appropriate, includes the *Taxation Administration Act, 1953 (Commonwealth)*, applicable imposition and/or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

"Tax Net Income", for an Accounting Period, means the net income of the Trust Fund determined pursuant to the provisions of the Tax Act applicable to the Trust in relation to the income year corresponding with that Accounting Period.

"Trust" means the Bycabl Trust, being the trust established by this Deed.

"Trust Fund" means:

- (a) the sum of \$10.00 initially settled on the Trustee by the Settlor;
- (b) any other Property which is settled on the Trustee to be held on the trusts described in this Deed;
- (c) any other Property which is borrowed or raised by the Trustee to be held on the trusts described in this Deed; and

- (d) all accretions thereto.

"Trust Fund Category" means any category into which the Trustee may, in the keeping of its records, classify any item of the Trust Fund, including:

- (a) amounts treated by the Trustee as assessable income or allowable deductions for the purposes of the Tax Act;
- (b) amounts not treated by the Trustee as assessable income or allowable deductions for the purposes of the Tax Act;
- (c) amounts treated by the Trustee as capital gains or capital losses for the purposes of the Tax Act;
- (d) amounts of dividends which are franked or unfranked for the purposes of Tax Act;
- (e) amount that are or are treated as, or are not or are not treated as, Exempt Income;
- (f) income derived from one or more sources in one or more foreign countries (including separate classifications as to whether or not this income gives rise to tax credits under the Tax Act);
- (g) interest, including amounts treated as interest under the Tax Act; and
- (h) income from the carrying on of one or more businesses of primary production by the Trustee in its capacity as such.

"Trust Net Income", for an Accounting Period, means the net income of the Trust Fund for that accounting period determined in accordance with conventional accounting principles applicable to the administration of trusts, subject to any determination by the Trustee under clause 3.7 of this Deed.

"Trustee" means BCB2 Pty Limited, or any person who becomes the Trustee in accordance with the Deed.

"Vesting Date" means:

- (a) the date which is 80 years from the date of this Deed; or
- (b) any earlier date appointed by the Trustee to be the Vesting Date.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (c) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns and, in the case of a trustee, includes any substituted or

additional trustee;

- (e) the expression "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) the word "**includes**" in any form is not a word of limitation;
- (h) references to a person's "**child**" or "**children**" include that person's stepchildren, ex-nuptial and adopted children;
- (i) a reference to a person's "**spouse**" includes another person who, although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person;
- (j) a reference to a person's "**legal personal representative**" is a reference to the person named as the executor of that person's will (whether or not the person so named has been granted probate of the will) or the administrator of that person's estate as the case may be;
- (k) references to the powers vested in the Trustee are references to all powers vested in the Trustee by law, by statute, by this Deed or otherwise; and
- (l) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.

1.3 Governing law

This Trust Deed is governed by and will be construed according to the laws of the State.

2. The trust

2.1 Establishment of Trust

The Settlor directs, and the Trustee declares, that the Trustee will hold the Trust Fund on the trusts described in this Deed.

2.2 Nature of Trust

The Trustee holds the Trust Fund on trust for the Beneficiaries.

2.3 General powers of Trustee

Subject to this Deed, the Trustee may deal with the Trust Fund as if the Trust Fund were owned beneficially by the Trustee.

3. Income of the trust fund

3.1 Distributable Income

Greater of Tax and Trust

- (a) Subject to paragraph (b), the Distributable Income of the Trust Fund in respect of an Accounting Period for all purposes of this Deed in relation to that Accounting Period is whichever is the greater of the Tax Net Income and the Trust Net Income for that Accounting Period.
- (b) Notwithstanding the foregoing, the Trustee may, in the absolute discretion of the Trustee, and if necessary disregarding any legislative provisions on the consideration for an assignment of securities of a body corporate, determine the amount of the Distributable Income of the Trust Fund in respect of an Accounting Period, and in that event the Distributable Income of the Trust Fund in respect of that Accounting Period will be the amount so determined by the Trustee (whether that amount is greater or less than the Tax Net Income for that Accounting Period). Any determination for this purpose may be made expressly or by implication from the actions of the Trustee.

3.2 Trustee's discretion

In relation to the Distributable Income of the Trust Fund, the Trustee has a discretion either:

- (a) to pay or apply all or part of the Distributable Income, in such shares as the Trustee determines, to or for the benefit of one or more of the Beneficiaries (to the exclusion of the others) who are alive or in existence from time to time; or
- (b) to accumulate all or part of the Distributable Income.

3.3 Exercise of Trustee's discretion

The Trustee may exercise its discretion under clause 3.2 in respect of all or part of the Distributable Income of the Trust Fund with respect to each Accounting Period until the Vesting Date.

3.4 Invalid accumulation

If for any reason the exercise by the Trustee of the discretion to accumulate all or part of the Distributable Income pursuant to clause 3.2 is or becomes wholly or partly invalid or ineffective in respect of any particular Accounting Period, then the amount of Distributable Income in respect of which the exercise of the discretion is invalid or ineffective is deemed to have been paid or applied by the Trustee, severally in equal shares, to or for the benefit of the Beneficiaries who:

- (a) are living or in existence on the last day of the relevant Accounting Period; and
- (b) are not funds, authorities, institutions, hospitals, trustees, societies, associations or clubs.

3.5 Separate Trust Fund

Any Property dealt with for the benefit of any Beneficiary under clause 3.2(b) but retained by the Trustee ceases to form part of the Trust Fund. On being dealt with under clause 3.2(b), such property will be held by the Trustee as a separate Trust Fund in trust for the Beneficiary. While the Trustee retains such Property the Trustee may, subject to clause 6 and this clause, invest or deal with it in any manner authorised by this Deed in respect of the Trust Fund.

3.6 Interim Distributions

The Trustee may at any time during an Accounting Period make an interim distribution by way of advance against the final distribution for the Accounting Period of all or part of the Income

which is available for distribution at that time.

3.7 Determination of Income or capital

The Trustee will determine whether:

- (a) any sums of Money or holdings of real or personal Property or any increase or decrease in amount number or value of any Property or holdings of Property;
- (b) any amounts received or disbursed, or any amounts of Income, profit or gain or loss;
- (c) any amounts derived, accrued or incurred or deemed to have been derived, accrued or incurred under the Tax Act for any Accounting Period; or
- (d) any amounts that under the Tax Act are capital gains or capital losses and any amounts that are assessable income or allowable deductions with respect to the Net Income of the trust estate relating to this Trust Fund for any Accounting Period,

are on capital or income account or partly on capital and partly on income account, and in what proportions. Such determinations may be either made in writing by the Trustee or implied from the acts of the Trustee.

3.8 Applications in Excess of Distributable Income

If at the end of any Accounting Period the amounts distributed, paid or applied by the Trustee exceed Distributable Income for the Accounting Period, the excess will be debited:

- (a) first, against amounts which the Trustee has determined to accumulate, if any; and
- (b) second, if any deficiency remains or exists, the Trustee will be deemed to have applied the capital of the Trust Fund, the value of which will be adjusted accordingly.

3.9 Allocations

In the execution of any of the trusts, powers or discretions conferred on the Trustee by this Deed in relation to the Income of the Trust Fund, the Trustee may make selective allocations of particular Trust Fund Categories in accordance with clause 11.3 of this Deed.

4. Capital of the trust fund

4.1 Trustee's discretion

The Trustee may at any time before the Vesting Date distribute all or part of the capital of the Trust Fund (other than any separate Trust Fund set aside pursuant to clause 3.5), in such shares as the Trustee determines, to or for the benefit of one or more of the Beneficiaries (to the exclusion of the others) who are alive or in existence from time to time.

4.2 Exercise of Trustee's discretion

Without being under any obligation, until the Vesting Date the Trustee may exercise its discretion under clause 4.1 in respect of all or part of the capital of the Trust Fund at any time.

4.3 Exercise of discretion irrevocable

Where the Trustee has exercised its discretion in accordance with clause 4.2, that exercise of

discretion is irrevocable.

4.4 Power of advancement

In exercise of the discretions conferred by either or both of clause 3 or clause 4 of this Deed, the Trustee may pay, apply or accumulate Property comprising or comprised in the Trust Fund for the advancement or benefit of any Beneficiary.

5. Trust fund at the vesting date

5.1 Trustee's discretion

In relation to the Trust Fund on the Vesting Date, the Trustee has a discretion to pay or apply the entire amount, in such shares as the Trustee determines, to or for the benefit of one or more of the Beneficiaries (to the exclusion of the others) who are alive or in existence on the Vesting Date.

5.2 Exercise of Trustee's discretion

On or before the Vesting Date, the Trustee is entitled to exercise its discretion under clause 5.1 in respect of the entire Trust Fund (both Income and capital) which exists, or would exist but for the exercise under this clause 5.2 of that discretion, on the Vesting Date.

5.3 Residual Trust Fund

Subject to any payment, application or distribution of the Trust Fund under clauses 3, 4 and 5.2, on the Vesting Date the Trustee will hold the Trust Fund on trust for:

- (a) the Primary Individual and the spouse of the Primary Individual in equal shares, or the survivor of them; or,
- (b) if neither of the persons mentioned in paragraph (a) is alive on the Vesting Date, subject to paragraph (c) and (d), for any Child of the Primary Individual who is living at the Vesting Date and who has attained or goes on to attain the age of 21 years and if more than one equally;
- (c) if any Child of the Primary Individual dies before the Vesting Date or fails to attain the age of 21 years (an "Ineligible Child") but in either case leaves a Child (an "Eligible Grandchild") who is living at the Vesting Date and who has attained or goes on to attain the age of 21 years, then, subject to paragraph (d), in respect of the share of the Trust Fund that the Ineligible Child would have taken if that Child had been alive at the Vesting Date and had attained the age of 21 years, for that Eligible Grandchild and if more than one in equal shares;
- (d) if any Eligible Grandchild dies before the Vesting Date or fails to attain the age of 21 years but leaves a Child who is living at the Vesting Date and who has attained or goes on to attain the age of 21 years (an "Eligible Great-grandchild"), then, in respect of the share of the Trust Fund that the Eligible Grandchild would have taken if that Grandchild had been alive at the Vesting Date and had attained the age of 21 years, for that Eligible Great-grandchild and if more than one in equal shares;
- (e) if the trusts declare in (a), (b), (c) and (d) wholly fail, for any Beneficiary appointed pursuant to paragraph (c) of the definition of Beneficiary in clause 1.1 living or in existence at the Vesting Date (other than any person who is excluded from the definition of Beneficiary), and if more than one equally between them; or
- (f) if the trusts declare in (a), (b), (c), (d) and (e) wholly fail, for the persons (other than

any person who is excluded from the definition of Beneficiary) who, in accordance with the laws of the State as they stand on the Vesting Date, would have been entitled to the estate of the Primary Individual had the Primary Individual died intestate, on the Vesting Date and domiciled in the State, and if more than one in equal shares.

6. Satisfaction of entitlements

6.1 Payment or application

In order to satisfy the entitlement of a person in favour of whom the Trustee has exercised its discretion in accordance with clauses 3.3, 4.2, 4.4 or 5.2 or is deemed to have exercised its discretion in accordance with clauses 3.4, 3.5 and 3.8 or 5.3, the Trustee may deal with that part of the Trust Fund to which the Beneficiary is entitled in one, or a combination of, the following ways:

- (a) for a Beneficiary who is not a Disqualified Person or a Minor:
 - (i) pay an amount of money or transfer a parcel of Property to the Beneficiary or to such person as the Beneficiary directs; or
 - (ii) set an amount of money or a parcel of Property aside to a separate account in the books of the Trust in the name of the Beneficiary, whereupon the Beneficiary:
 - A. will be entitled to call for payment of the money or transfer of the Property at any time; and
 - B. will be entitled to all amounts which, in the Trustee's opinion, are accretions thereto;
- (b) for a Beneficiary who is a Disqualified Person or a Minor:
 - (i) pay an amount of money into an account with a financial institution in the name of the Beneficiary, provided that the account is only able to be operated by the Trustee on behalf of or in trust for the Beneficiary; or
 - (ii) set an amount of money or a parcel of Property aside to a separate account in the books of the Trust in the name of the Beneficiary, whereupon the Beneficiary:
 - A. will be entitled to call for payment of the money or transfer of the Property at any time after ceasing to be a Disqualified Person or a Minor, as appropriate; and
 - B. will be entitled to all amounts which, in the Trustee's opinion, are accretions thereto; or
 - (iii) invest the amount in the name of the Minor (or in the name of the Trustee on behalf of the Minor) in any manner in which the Trust Fund may be invested; or
 - (iv) retain the amount on behalf of the Minor (either at interest or free of interest) and use the amount in any business carried on by the Trustee pursuant to the powers in this Deed; or
 - (v) pay the amount to a parent or guardian of the Beneficiary; or

- (vi) pay the amount to another person to be applied for the benefit of the Beneficiary; or
- (vii) pay the amount to any person who by law is entitled to receive money on behalf of or to administer the Property of the Beneficiary; or
- (c) for a Beneficiary who is a fund, authority, institution, hospital, trustee (in that capacity), society, association or club, pay an amount of money or transfer Property to the Beneficiary or a responsible officer acting on behalf of the Beneficiary.

6.2 Beneficiary a company under external administration

The Trustee may pay an amount under clause 6.1 to a Beneficiary which is a company, notwithstanding that the Beneficiary may be an externally administered body corporate within the meaning of the *Corporations Law*.

6.3 Income to which Minor entitled

Where the Trustee deals with money or Property to which a Disqualified Person or a Minor ("**relevant Beneficiary**") is entitled under either of sub-paragraphs (b)(i)-(b)(iv) of clause 6.1, the money or Property will be held by the Trustee for the benefit of the relevant Beneficiary absolutely but otherwise subject to the terms of this Deed. The Trustee may, subject to the relevant Beneficiary's entitlement:

- (a) deal with the money or Property in any way in which the Trust Fund may be dealt with under this Deed; and
- (b) apply the money or Property for the benefit of the relevant Beneficiary in any way that the Trustee thinks fit, including the payment of any tax owing by the relevant Beneficiary.

6.4 Effect on Trustee

Where the Trustee pays money or transfers Property which was part of the Trust Fund to another person in accordance with clause 6.1, the Trustee is discharged from all responsibility under this Deed in respect of that money or Property, whether or not the Trustee obtains a receipt. The Trustee is not bound to see to the application of the money or Property by the person to whom it is paid or transferred.

7. Appointment, removal and resignation of trustee

7.1 Appointor

The Appointor may resign at any time provided that the Appointor appoints another person to be Appointor. Any such appointment shall be by deed executed by the Appointor who is resigning. If the Appointor dies, the office and powers of Appointor will vest in the deceased Appointor's legal personal representative. If the Appointor becomes a Disqualified Person, the office and powers of Appointor will vest in the person responsible for managing the affairs of the Appointor.

7.2 Power to appoint and remove Trustee

Subject to clause 7.3, the Appointor has the following powers:

- (a) at any time to remove the Trustee, or, if there is more than one Trustee, to remove one or more of them; and

- (b) to appoint a new Trustee or Trustees, either in addition to one or more existing Trustee or Trustees, or in substitution for one or more Trustees who have been removed, who have resigned, or whose office has been vacated.

7.3 Ineffective exercise of power

A purported exercise of the power under clause 7.2 is ineffective and void where the Appointor purports:

- (a) to remove a sole Trustee or all of the Trustees without appointing a replacement Trustee;
- (b) to appoint himself or herself as a Trustee; or
- (c) to appoint a Beneficiary as a Trustee (unless the Beneficiary is a Beneficiary solely in its capacity as the trustee of another trust).

7.4 Resignation by Trustee

A Trustee may resign the Trusteeship at any time by giving at least 2 months' notice in writing addressed to the Appointor.

7.5 Vacation of office of Trustee

The office of a Trustee will be immediately vacated where the Trustee:

- (a) being an individual - becomes a Disqualified Person, or a bankrupt, or makes any arrangement or composition with creditors; or
- (b) being a corporation - becomes an externally administered body corporate within the meaning of the *Corporations Law* (except where it enters voluntary liquidation for the purposes of amalgamation or reconstruction).

7.6 Replacement where sole Trustee vacates office

If there is more than one Trustee, and a Trustee vacates its office, it need not be replaced. However, if a sole Trustee or all of the Trustees vacate their office, then, pending the appointment of one or more replacement Trustees by the Appointor, the Trustee will be the person who manages the affairs of the Trustee that last vacated its office.

8. Exercise of trustee's powers

8.1 Trustees to act jointly

Whenever there is more than one Trustee, the Trustees will act jointly.

8.2 Majority decision

Whenever there is more than one Trustee, any decision to be made by the Trustees in connection with the Trust may be reached by majority. A Trustee who is in a minority and whose dissent is recorded in the records of the Trust will be completely exonerated from all responsibility for participating in any formal acts necessary to give effect to the majority's decision.

8.3 Corporate Trustee

Any Trustee which is a corporation may effectively exercise or concur in exercising any power

vested in it only by:

- (a) a resolution of its general meeting; or
- (b) a resolution of its board of directors.

A resolution of a corporate Trustee's board of directors has effect subject to any contrary resolution of the Trustee's general meeting.

8.4 Exercise of power or discretion

Subject to clause 8.3 and to any specific contrary intention expressed in this Deed, the Trustee may exercise any power or discretion vested in it, including its discretions under clauses 3.2, 4.1, 4.4 and 5.1, orally, by conduct or in any other way.

9. Delegation of trustee's powers

9.1 Delegation

The Trustee may delegate the exercise of all or any of the powers vested in it to any person other than:

- (a) a Disqualified Person;
- (b) a Minor;
- (c) an Excluded Person; or
- (d) the Settlor,

including one of joint Trustees. The Trustee may execute any power of attorney or other instrument necessary to effect this delegation.

9.2 Deposit of securities

The Trustee may deposit the securities or documents of title to any property forming part of the Trust Fund with any bank trust corporation, investment broker or like institution ("**institution**") and may delegate to the institution any power vested in the Trustee in relation to this property.

9.3 Nominee

The Trustee may cause any property forming part of the Trust Fund to be registered in the name of any nominee of the Trustee or in any other name.

10. Powers of trustee

10.1 Powers of Trustee

In addition to all the powers vested in trustees by law and statute, the Trustee has the following powers:

- (a) (**Retain Property**): to retain any Property which is part of the Trust Fund, without selling, converting or altering the Property, for as long as the Trustee thinks fit;
- (b) (**Dispose of Property**): to dispose of any Property which is part of the Trust Fund for such consideration as the Trustee thinks fit;

- (c) **(Accept Property)**: to accept any additional Property which is settled on the Trustee, by any person, to be held on the trusts described in this Deed;
- (d) **(Investments)**: to invest in any form of investment and at any time to vary or transpose any investment;
- (e) **(Securities)**: in relation to any Securities which are part of the Trust Fund:
 - (i) to exercise all voting powers; and
 - (ii) to exercise all statutory powers of the Trustee with respect to securities;
- (f) **(Borrow)**: to borrow money on any terms and to grant any security over Property forming all or part of the Trust Fund or any interest in such Property to the lender of such money (all borrowings become part of the Trust Fund);
- (g) **(Guarantee, indemnity, mortgage or charge)**: to grant a guarantee, indemnity or undertaking, or a mortgage or charge over Property forming all or part of the Trust Fund, to any person in respect of any existing or future obligation owed to that person by another person;
- (h) **(Lend)**: to lend money to any person on any terms and with or without security, and to execute any mortgage or other document to secure the repayment of such money;
- (i) **(Lend to Beneficiaries)**: to lend money that forms part of the Trust Fund to a Beneficiary with or without security on such terms as the Trustee thinks fit and to charge Property comprised in the Trust Fund as security for debts or obligations of a Beneficiary;
- (j) **(Negotiable or transferable instruments)**: to issue and deal in promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferrable instruments;
- (k) **(Open accounts)**: to open and operate any account or accounts with any bank or financial institution;
- (l) **(Receipts and discharges)**: to give effectual receipts and discharges for any money or Property received by the Trustee or otherwise relating to the Trust Fund;
- (m) **(Carry on business)**: to carry on any business that the Trustee thinks fit, either alone or in partnership;
- (n) **(Employees, managers, contractors and consultants)**: to employ, contract with or retain any person to assist in discharging any of the Trustee's duties;
- (o) **(Employ Beneficiary)**: to employ any person who is or may be a Beneficiary to the same extent and in the same manner as if the person employed were not a Beneficiary;
- (p) **(Appoint agents)**: instead of acting personally, to appoint any agent to do any act in relation to the Trust Fund;
- (q) **(Act on professional opinion)**: to act on the opinion or advice of or information obtained from any professional adviser;
- (r) **(Bonuses and retirement benefits)**: to pay bonuses, gratuities and retirement benefits, and to establish or contribute to superannuation schemes, for the benefit of persons employed or formerly employed by the Trustee under this Deed, including

office holders and any former office holders of a corporate Trustee;

- (s) **(Use of Trust Property by Beneficiary)**: to allow any Beneficiary to use any Property of the Trust Fund for any purpose and on any terms;
- (t) **(Dwelling house)**: to exercise all statutory powers with respect to purchasing or securing the use of a dwelling-house for a beneficiary to use as a residence;
- (u) **(Real property)**: in relation to any real property which is part of the Trust Fund:
 - (i) to carry out any construction or effect any improvements;
 - (ii) to carry out activities of primary production; and
 - (iii) to enter into any licence, lease or sublease;
- (v) **(Option to purchase or lease)**: to take or grant an option to purchase or lease any property which is or may become part of the Trust Fund for such consideration as the Trustee thinks fit;
- (w) **(Formation of entities)**: to bring into being any entity, interests in which will become part of the Trust Fund and which may or may not acquire from the Trustee property which was formerly part of the Trust Fund;
- (x) **(Action and proceedings)**: to institute or defend any action or proceeding which affects the Trust Fund and to conduct the action or proceeding in any manner that the Trustee thinks fit, including by way of settlement;
- (y) **(Compromise and settlement)**: to compromise and settle on such terms as the Trustee thinks fit all matters, actions and proceedings affecting the Trust Fund;
- (z) **(Management expenses)**: to pay all costs, charges and expenses incidental to the management of the Trust Fund or to the exercise of any power, authority or discretion or in carrying out or performing the trusts of this Deed that the Trustee considers appropriate;
- (aa) **(Tax Act elections)**: to make all elections, give all notices and enter all agreements under the Tax Act in relation to the Trust Fund;
- (bb) **(Franking)**: to frank all distributions or deemed distributions at the absolute discretion of the Trustee, subject to the provisions of the Tax Act;
- (cc) **(Franking account)**: to maintain a franking account at the absolute discretion of the Trustee, subject to the provisions of the Tax Act;
- (dd) **(Taxes and expenses)**: to pay all Taxes, costs, charges and expenses in connection with the Property which forms all or part of the Trust Fund or incidental to the management of the Trust Fund or to the exercise of any power, authority or discretion under this Deed, or which the Trustee may at any time incur in carrying out or performing the Trust in its capacity as Trustee or which may be payable by the Trust (treated as an entity), including:
 - (i) Taxes and costs, charges and expenses in connection with the preparation and execution of this Deed or the settlement of any Property on the Trustee;
 - (ii) goods and services tax payable in connection with services performed by the Trustee or by the Trust (treated as an entity); and

- (iii) amounts in respect of goods and services tax in respect of any acquisitions by the Trustee or the Trust (treated as an entity),

and, for more abundant caution, it is expressly declared that this clause enures for the benefit of the Trustee from time to time;

- (ee) **(Policies)**: to acquire, maintain and deal with in any way policies of life insurance or in respect of sickness, disability or accident in relation to any person;
- (ff) **(Receive gifts)**: to receive Property by testamentary or non-testamentary gift or under the provisions of any other trust or otherwise from any person as an addition to the Trust Fund, whether subject to liabilities or not;
- (gg) **(Gifts and donations)**: to make gifts and donations out of the Trust Fund to any person or for any purpose that the Trustee thinks fit;
- (hh) **(Appropriate Trust Fund)**: to appropriate all or any part of the Trust Fund in its actual condition or state of investment in satisfaction of the interest of any Beneficiary, and in making that appropriation, to value or have valued all or the parts of the Trust Fund. Any such appropriation will bind all Beneficiaries;
- (ii) **(Mix Funds)**: to mix any part of the Trust Fund including Income of the Trust and any money held from time to time by the Trustee pursuant to the trusts created by this Deed or any other trust with other money whether held by the Trustee under this Deed or not, and:
- (i) to apply or invest the money so mixed in any way in which the Trustee by law or by this Deed is empowered to apply or invest the Trust Fund; and
 - (ii) to exercise all powers, authorities and discretions with respect to the mixed fund that the Trustee is authorised by this Deed or by law to exercise with respect to the Trust Fund; and
- (jj) **(Incidental powers)** to do all other things incidental to the exercise of the powers otherwise conferred on the Trustee.

10.2 Trustee may contract with self in other capacities

The Trustee may, in its capacity as Trustee of the Trust, contract or otherwise deal with itself either:

- (a) in its own personal capacity; or
- (b) in its capacity as trustee of another trust.

10.3 Personal interest

All powers vested in the Trustee may be exercised by the Trustee notwithstanding that:

- (a) the Trustee; or
 - (b) if the Trustee is a company, any director or shareholder of the Trustee,
- is, may have been, or may in the future be:
- (c) a Beneficiary; or

- (d) directly or indirectly interested (whether in a personal capacity, as director or shareholder of a company, as a partner of a partnership or in any other capacity) in the result of the exercise of the power.

10.4 Absolute and uncontrolled power

All powers vested in the Trustee are absolute and uncontrolled. For the avoidance of doubt, the duty of care, diligence and skill, the duty to have regard to certain matters and all other duties which would otherwise be imposed on the Trustee by any statute are excluded, to the extent permitted by law.

10.5 Disclaimer of power by Trustee

The Trustee may, by a written instrument executed by the Trustee, disclaim any power vested in it, whereupon the power will be permanently revoked.

11. Accounts

11.1 Trustee must keep accounts

The Trustee must establish and maintain proper books of account in relation to the Trust Fund (prepared in accordance with accounting practices and standards generally accepted in the State) and must keep accurate accounts of its trusteeship.

11.2 Trust Fund Categories

Without limiting clause 11.1, the accounts kept by the Trustee must enable, in a manner determined by the Trustee, the identification and tracing of particular Trust Fund Categories which are derived by the Trust and distributed to particular Beneficiaries, accumulated, or dealt with in any other way.

11.3 Allocation of Trust Fund Categories

In the exercise of any discretion under this Deed, the Trustee may selectively allocate particular Trust Fund Categories to particular Beneficiaries, to be paid, applied or accumulated or for any other purpose. All amounts of particular Trust Fund Categories to which particular Beneficiaries become entitled retain their character when paid to or applied for the benefit of particular Beneficiaries.

11.4 Audit

The Trustee may have its accounts audited annually by any accountant.

12. Expenses and trustee remuneration

12.1 Expenses

The expenses of administering the Trust in accordance with this Deed, including the remuneration of the Trustee, will be charged against the Trust Fund, first against the Distributable Income and then, if the Distributable Income is not sufficient, against the capital of the Trust Fund.

12.2 Receipts

The Trustee will be freed of responsibility in respect of any amount paid out of the Trust Fund in relation to the expenses of administering the Trust if the Trustee obtains a receipt from any

responsible officer of the person or association to whom the amount is paid.

12.3 Trustee remuneration - certain corporations

Any Trustee being a corporation authorised by the laws of any State or Territory of Australia to take in its own name a grant of probate and may charge remuneration in accordance with its scale of fees from time to time in force. That Trustee may, without accounting for any resultant profit, act as banker and perform any service in relation to the Trust Fund on the same terms as would be made with the customer.

12.4 Trustee remuneration - solicitor or chartered accountant

A Trustee being a solicitor or chartered accountant may charge his or her usual professional and other charges for all time spent and acts done by him or her, or any of his or her partners or employees, in the administration of the Trust.

12.5 Trustee remuneration - generally

Any Trustee not referred to in clause 12.3 or 12.4 may charge, in respect of an Accounting Period, such remuneration as the Trustee thinks fit, provided it does not exceed the aggregate of:

- (a) 5% of the Trust Income of the Trust Fund for that Accounting Period; and
- (b) 2% of the value of that part of the Trust Fund which the Trustee dealt with in accordance with clause 6 during the Accounting Period.

12.6 Goods and Services Tax

- (a) Notwithstanding any other provision in this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by an entity will, subject to paragraph (b), be reduced by an amount equal to any input tax credits to which that entity is entitled in respect of that cost, expense or other amount.
- (b) If GST becomes payable in relation to any supply made by the Trustee or an entity ("**Supplier**") in connection with this Deed:
 - (i) any consideration to be provided under any other provision of this Deed for that supply ("**Agreed Amount**") is exclusive of GST;
 - (ii) the Supplier is entitled to recover an additional amount from the recipient of that supply ("**Recipient**"), that amount to be calculated by multiplying the Agreed Amount by the applicable GST rate and the additional amount so calculated shall be payable on demand being made by the Supplier; and
 - (iii) the Supplier will provide a tax invoice to the Recipient in respect of that supply no later than 7 days after the additional amount is paid by the Recipient.
- (c) "**GST**", "**GST law**" and other terms used in this clause have any meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except "**GST law**" also includes any applicable rulings. Any reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier is a member.

13. Release and indemnities

13.1 Breach of Trust

The Trustee is not liable for any breach of trust, except to the extent that a breach results from the Trustee's intent or gross negligence.

13.2 Exercise of or failure to exercise power

The Trustee is not liable for any loss or damage occurring as a result of the Trustee exercising or failing to exercise any power vested in it.

13.3 Trustee Act or other Act

For the avoidance of doubt, the Trustee is not liable for any loss or damage occurring as a result of the Trustee's breach of any duty imposed by any statute.

13.4 Tax

The Trustee is entitled to be fully indemnified out of the Trust Fund against all Taxes and impositions arising in connection with the Trust or any supplies by the Trustee to or in connection with the Trust, including any GST pursuant to clause 12.6 or otherwise and any Tax imposed by the *A New Tax System (Ultimate Beneficiary Non-Disclosure Tax) Act (No. 1) or (No. 2) 1999* but excluding any Tax payable under the Tax Act in respect of the taxable income, if any, derived by the Trustee in the Trustee's own right.

13.5 Corporate Trustee

Where the Trustee is a company, the provisions of this clause 13 will apply to each person who is a director of the corporate Trustee at the time any liability is incurred in connection with the Trust Fund.

14. Excluding beneficiaries

14.1 Excluded Persons

The Primary Individual may, at any time before the Vesting Date, declare that a specified person or class of persons (whether or not the person or class of persons is a Beneficiary immediately before the declaration) is or are an Excluded Person.

14.2 Effect of declaration

A declaration in accordance with clause 14.1 takes effect on the date specified in the declaration and continues to have effect thereafter, but does not derogate from any interest in the Trust Fund to which any Beneficiary is indefeasibly entitled on or before the date of the declaration.

14.3 Declaration revocable unless otherwise specified

A declaration made in accordance with clause 14.1 may be revoked at any time before the Vesting Date, unless the Primary Individual specifies at the time of making the declaration that it is to be irrevocable.

15. Disclaimer by beneficiaries

15.1 Disclaimer

Any person, not being a Disqualified Person or a Minor, who is, or may become, a Beneficiary, may declare by written notice to the Trustee that he, she or it:

- (a) disclaims a particular interest in the Trust Fund; or
- (b) is to be treated as an Excluded Person.

15.2 Effect of declaration

A declaration made in accordance with clause 15.1 takes effect on the date that it is received by the Trustee, but may be retrospective in operation if the person making the declaration so specifies.

15.3 Declaration revocable unless otherwise specified

A declaration made in accordance with clause 15.1 may be revoked at any time before the Vesting Date, unless the person specifies at the time of making the declaration specifies that it is to be irrevocable.

16. Resettlement of trust

16.1 Trustee may resettle Trust Fund

The Trustee may, at any time before the Vesting Date, with or without consideration, pay or transfer all or part of the Trust Fund to the trustee or trustees of another trust under which all or any of the Beneficiaries are beneficiaries (whether absolutely, contingently, presumptively or prospectively), provided that, as a result:

- (a) no person who is excluded from the definition of Beneficiary acquires an interest in the resettled property; and
- (b) the rule against perpetuities is not infringed.

16.2 Effect of resettlement

Property which is resettled in accordance with clause 16.1:

- (a) is no longer held on the trusts described in this Deed;
- (b) becomes subject to the terms of the trust on which it is resettled; and
- (c) remains subject to the laws of the State, where the trust on which it is resettled is governed by the laws of the State.

17. Change of jurisdiction

17.1 Resignation by Trustee and appointment of new Trustee

The Trustee may, at any time:

- (a) resign as Trustee;

-
- (b) appoint another person as the new Trustee in any place outside the State; and
 - (c) transfer the Trust Fund to the new Trustee; or
 - (d) resettle the Trust Fund pursuant to clause 16 in any place outside the State.

17.2 Governing law

After the Trustee has exercised the powers described in clause 17.1, this Deed will be governed by the laws of the place in which the outgoing Trustee transferred the Trust Fund to, or resettled the Trust Fund upon, the new Trustee.

17.3 New Trustee

A new Trustee appointed under clause 17.1 will be governed by this Deed. The new Trustee will, to the extent permitted by law, become a party to all dealings with third parties into which the outgoing Trustee had entered, without the need for any further written instrument.

18. Alteration of this deed

Notwithstanding any other provisions of this Deed, the Trustee may, at any time before the Vesting Date, by Deed, alter any provision of this Deed except:

- (a) clause 5;
- (b) clause 7; and
- (c) this clause 18,

provided that:

- (d) neither the Settlor nor any person who was formerly the trustee of the Trust (other than in that person's capacity as trustee of another trust) becomes a Beneficiary; and
- (e) the rule against perpetuities is not infringed.

Schedule 1
Designated Beneficiaries

The Designated Beneficiaries comprise the following:

- (a) Donn Desmond Byrne of 73 Lord Street, Roseville in the State of New South Wales ("**Primary Individual**");
- (b) Helen Margaret Byrne (who is the Spouse of the Primary Individual);
- (c) the Children, Grandchildren and Great-grandchildren of the Primary Individual;
- (d) all the Spouses of all the Children of the Primary Individual; and
- (e) any future Spouse or Spouses of the Primary Individual.

Executed as a deed.

Signed sealed and delivered by Garry
William Day in the presence of:



Signature of Witness


DIEGO DELGADO.

Name of Witness in full

Signature



Executed by BCB2 Pty Limited, ACN 096
392 6784 by or in the presence of:



Signature of Director

DONN DESMOND BYRNE

Name of Director in full



Signature of Secretary/other Director

HELEN MARGARET BYRNE

Name of Secretary/other Director in full



Office of State Revenue
NSW TREASURY

OSR 018 - 12/99

Official Receipt

PARRAMATTA
19/04/2001 1153 CLASSGI A008268 801791B1
DUTIES CN 5779664 APPL ID 592206
PAYMENT TYPE C *****0.00
 Q *****202.00
 H *****0.00
TOTAL TENDERED *****202.00
CHANGE/REFUND *****0.00
TOTAL PAID *****202.00