

MERNDA ON THE PARK LIFESTYLE ACTIVITY CENTRE  
PTY LTD (ACN 162 210 595)

THE MERNDA ON THE PARK SWIM  
SCHOOL UNIT TRUST

Unit Trust Deed

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This **TRUST DEED** is made the day mentioned in the First Schedule

**PARTIES**

The person or persons named and described in the First Schedule as the Trustee ("Trustee")

AND

The person or persons named and described in the First Schedule as the Founder or Founders ("Founder").

**BACKGROUND**

- A. The Trust constituted by this Deed will be known by the name if any stated in the First Schedule.
- B. The Trustee has received from the Founder the sums of money in the proportions described in the First Schedule ("Initial Sum") to establish the Trust Fund.
- C. The Initial Sum forms part of the Trust Fund and the Trustee has consented to hold the Trust Fund on the Trusts and subject to the terms of this Deed.
- D. This Trust Deed is made for the sole purpose of carrying out in the Project and with the intention that the benefits of the trusts declared will enure for the benefit of every Unit Holder who holds Units and who will be bound by the provisions of this trust Deed.

AGREED TERMS AS FOLLOWS:

## 1. INTERPRETATION

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### 1.1. Definitions

In this Deed, unless the contrary intention appears or there is something repugnant to or inconsistent with the subject matter, the following expressions have these meanings:

Accounting Period means;

- (a) Each period of twelve months ending on the 30th day of June;
- (b) The period commencing on the date of this Deed and ending on the 30th day of the following June; and
- (c) The period commencing on the first day of July prior to the Vesting Day and ending on the Vesting Day.

Applicable Law means the law of the State or Territory referred to in the Schedule provided that if this specification may not lawfully be made or will not be given effect to by any Court before which this Deed would come in question the applicable law will be the law which such Court determines.

Capital Profits means the capital profits arising from a disposal of any part of the Trust Fund.

Cash includes cheques and bank cheques;

Certificate means a certificate issued or to be issued under the provisions of this Deed in respect of Units, in the form or to the effect specified in the Second Schedule, and for the time being outstanding;

Clause means a clause of this Deed.

Company includes a unit trust scheme.

Concept Plan means the plans, drawings and specifications annexed hereto and marked "Annexure A" based on which the works associated with the Project are to be constructed or carried out;

Corporation includes any statutory corporation, corporation sole or company formed or incorporated according to Corporations Law.

Corporations Law means the Corporations Act 2001 (Cth), including any replacement, amendment, modification or supplement to that Act.

Distribute includes paying, applying or setting aside.

Fair Value means the fair value of particular Units determined in accordance with Australian accounting principles.

Foreign Income means foreign income as defined in Section 6AB(1) of the Tax Act.

Franked Dividends means dividends the whole or part of which are taken to have been franked under Part 3-6 of the Tax Act.

General Meeting means a meeting of Unit Holders convened in accordance with Clause 7.3.

Income means Trust Income.

Information Memorandum means the document which is incorporated into this Trust Deed as Annexure B.

Initial Sum means the initial sum referred to in the First Schedule.

Initial Unit Holders means the person or persons entity or entities described as such in the First Schedule.

Investment includes any one of the holdings of investments forming for the time being a constituent part of the Trust Fund including the assets and goodwill of any business vested in or carried on by the Trustee,

Issue or issued with respect to units means registration in the Register of Unit Holders in respect of those units.

Net Income means the net income of the Trust determined in accordance with Section 95(1) of the Tax Act.

Pay includes transfer, assign and convey.

Perpetuity Period means the perpetuity period applicable to dispositions effected by this Deed under the rule of law known as the rule against perpetuities (as modified by statute, which rule as so modified is called in this Deed "the Rule against Perpetuities") and that period is the period commencing on the date of this Deed and terminating on the earliest to occur of the following dates:

- (a) The 80th anniversary of the date of this Deed;
- (b) The date calculated by reference to the law relating to perpetuities which may from time to time be applicable to the Trust; and
- (c) Any other date the Trustee may at any time in the absolute discretion of the Trustee determine to be the Vesting Day.

Project means the development of the land known as Lot 5 111-113 Legent Street, MERNDA, generally in accordance with the Concept Plan.

Property includes real, personal, movable or immovable property of any description and any location including (without limiting the generality hereof) policies of assurance or endowment, cash and choses in action.

Register means the register described in Clause 2.7 of this Deed.

Set aside in relation to a Unit Holder includes placing sums to the credit of such Unit Holder in the books of the Trust Fund.

Special Resolution means a resolution passed as special business at a duly convened General Meeting by a 75% majority of the votes cast by those present and voting on the resolution.

Spouse includes:

- (a) A de-facto spouse, being a woman living with a man as his wife or a man living with a woman as her husband (as the case may be) on a bona fide domestic basis, although not legally married to each other; and
- (b) A person who is living with another person on a bona fide domestic basis in a marriage-like relationship, including a marriage-like relationship between persons of the same gender.

Tax Act means either or both of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 (as the case may be), including any replacement, amendment, modification or supplement to those Acts.

Trust means the trust constituted by and comprised in this Deed.

Trust Fund means:

- (a) The Initial Sum;
- (b) The amounts contributed or credited or paid for any units issued pursuant to this Deed;
- (c) Any addition of any nature or description to any Property, derived and received from any source at any time, whether capital or income, held by the Trustee upon the Trust and subject to the powers and provisions of this Trust;
- (d) Any accumulation of income directed or empowered to be made in this Deed;
- (e) Any Property advanced to, acquired, borrowed or raised by the Trustee that is held by the Trustee upon the Trust and subject to the powers and provisions of this Trust;
- (f) All accretions to, or the income, profits or gains of, any of those things mentioned; and
- (g) Property of every description for the time being and from time to time representing the Property referred to in sub-paragraphs (a) to (f) of this definition.

Trust Income means income produced from:

- (a) the investment of the Trust Fund;
- (b) the Property of the Trust Fund; or
- (c) any other income producing activity;

after allowing for the expenses of the Trust calculated in accordance with the law of trusts, standard accounting procedures for trusts and the administrative powers contained within this Deed and may include realised or unrealised Capital Profits if so determined by the Trustee.

Trustee means the person named as Trustee in this Deed and the Trustee for the time of this Trust being and from time to time, whether original, additional, surviving, alternate or substituted and whether the same be a natural person,

Corporation or otherwise or one or more classes of them severally.

Unfranked Dividends means dividends, which are not Franked Dividends.

Unit or Units means an undivided part or share in the Trust Fund and includes an issued Unit of any class specified in part 1 of the Third Schedule.

Unit Holders means the Initial Unit Holders and the persons who for the time being are registered under the provisions of this Deed as the holders of Units and includes persons jointly so registered and the expression "Unit Holders" will include persons, Corporations and the trustees of trusts or settlements and other legal entities who from time to time until the Vesting Day come within the foregoing descriptions notwithstanding that such persons, Corporations, trustees or other legal entities may not be in existence or have come into the defined category at the date of this Deed and, in the case of such trustees, notwithstanding that the trusts or Settlements of which they are trustees have not been formed, or come into existence, or do not fall within the defined category at the date of this Deed.

Untaxed Amount means an amount not subject to tax under the Act.

Vesting Day means the date of the expiration of the Perpetuity Period.

The expressions the consent of the Unit Holders, the special consent of the Unit Holders, the consent of a class of Unit Holders, the special consent of a class of Unit Holders, the direction of the Unit Holders, the special direction of the Unit Holders, the direction of a class of Unit Holders, and the special direction of a class of Unit Holders mean respectively consent or direction given in accordance with Clause 7.4.

## 1.2. Context

In this Deed, unless the context indicates otherwise:

- (a) The singular will mean and include the plural and vice versa and any gender will mean and include all other genders;
- (b) Headings in this Deed are for convenience only and will not affect the interpretation of this Deed;
- (c) References to persons will include a Corporation partnership or any other entity having separate legal personality;
- (d) References to a person will include the legal personal representatives, successors and assigns of that person;
- (e) Reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, rewrites, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include telex and facsimile transaction; and
- (g) References to authorities and bodies, whether statutory or otherwise, will be deemed to include references to the delegates of those authorities and bodies whether appointed by statute or otherwise.



### 1.3. Unit Holder Relationship

Nothing in this Deed will constitute or will be deemed to constitute the relationship of principal and agent between the Trustee and the Unit Holders nor the relationship of partners as between the Trustee and the Unit Holders or as between the Unit Holders inter se nor to give rise to any association between the Unit Holders inter se. All Income or capital payable in accordance with the provisions of this Deed to Unit Holders will be payable to them separately and Income or capital received by the Trustee will not be received or be construed as received by or on behalf of the Unit Holders jointly or otherwise.

## 1A PURPOSE of TRUST

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### 1A.1 Project

- (a) The Trustee and the Unit Holders acknowledge that this Trust Deed is created for the sole purpose of allowing the Trustee to carry out the Project.
- (b) The Trustee must carry out the Project generally in accordance with the Information Memorandum and must use its best endeavors to carry out the Project in the manner and in accordance with the provisions of the Information Memorandum.
- (c) The Trustee must not, in the exercise of its powers under this Deed and in carrying out the Project, take any action that is in material variation to any of the items set out in the Information Memorandum without the prior approval of the Unit Holders.
- (d) Any approval pursuant to the preceding clause 1A(c) must be by way of a special resolution of the Unitholders.

### 1A.2 Reporting

- (a) The Trustee must provide all Unit Holders with written annual progress reports in relation to the Project which will include as a minimum, a reconciliation of all expenditure of the Project for that year and a forecast of the anticipated costs of the Project for the next year.
- (b) The Trustee must advise the Unit Holders, and where applicable provide copies, of any breach or notice of default that has been served upon or communicated to the Trustee in relation to the Project.

## 2. TRUST FUND AND UNITS

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### 2.1. Declaration of Trust

The Trustee declares that it will stand possessed of the Trust Fund and the income thereof upon the trusts and with and subject to the purpose, powers and provisions concerning the same in this Deed.

### 2.2. Issue of Units and Rights Attaching

- (a) The beneficial interest in the Trust Fund as originally constituted and as existing from time to time will be vested in the Unit Holders.
- (b) Each Unit will entitle its Unit Holder together with the Unit Holders of all other Units to the beneficial interest in the Trust Fund as an entirety

but will not entitle a Unit Holder to any particular security or investment comprised in the Trust Fund or any part thereof and no Unit Holder will be entitled to have transferred to the Unit Holder any property comprised in the Trust Fund other than in accordance with the provisions contained in this Deed.

- (c) The Trust Fund, as originally constituted by the Initial Sum, will be divided into the number of Units and be of such value as is set out in the First Schedule. The Units will:
  - (1) be held, in the first instance, by the Initial Unit Holders named in the First Schedule;
  - (2) each have a par value as set out in the First Schedule; and
  - (3) be divided into the classes (if any) set out in part 1 of the Third Schedule.
- (d) Each of the Initial Unit Holders named in the First Schedule will be entitled to and be issued the number of Units set opposite their respective names in the First Schedule and each of the persons will be deemed to be recorded in the register of Unit Holders in relation to those Units set opposite its name.
- (e) Where the Unit or Units set out respectively opposite the name of an Initial Unit Holder in the First Schedule are expressed to be divided into classes, each class of Units will confer the rights and be subject to the restrictions (if any) and will be differentiated in the manner set out in part 1 of the Third Schedule.
- (f) Unless otherwise provided in the First and Third Schedules, and subject to clause 2.3 regardless of whether one or more Units are issued:
  - (1) at a premium;
  - (2) at a discount; or
  - (3) as partly paid Units,all Units of one class will at any time and at all times be of equal value.
- (g) Save for any liability expressly contracted for, no Unit Holder will incur any liability, whether under or in connection with this Deed or by virtue of being or becoming a Unit Holder, to the Trustee any other Unit Holder or any person and in particular but without limiting the generality of the foregoing:
  - (1) no Unit Holder will incur any liability by way of indemnity or otherwise in respect of any contract, act or omission of the Trustee whether or not such contract act or omission was made in the course of the carrying on of any business made at the request direction or with the concurrence of the Unit Holder or was wrongful and whether or not at the time of such contract act or omission the Trust Fund was solvent or sufficient to meet the Trustee's right of indemnity under Clause 6.2;
  - (2) to the extent that the law allows, any statute or rule of law providing for indemnity of the Trustee by any Unit Holder is hereby negated; and

- (3) the Trustee agrees with each Unit Holder that, except in conformity with this sub-Clause, the Trustee will not claim or seek to enforce against any Unit Holder any indemnity or other liability and that the Trustee's right of indemnity against the Trust Fund is restricted to the Trustee's rights under Clause 6.2.

### 2.3. Issue of Additional Units

The Trustee, with the consent in writing of the Unit Holders, may issue additional Units from time to time with power to classify or designate the same with or without special rights privileges powers liabilities or obligations or to reclassify Units which are already issued and in respect thereof to create amend or revoke any special rights privileges powers liabilities or obligations in such manner as the Trustee thinks fit provided that, unless Unit Holders waive the operation of this provision in any particular case:

- (a) All new issues of Units of the classes set forth in part 1 of the Third Schedule will comprise the same proportion of Units of those classes as are set forth in the First Schedule and will before their issue be offered in the first instance to existing Unit Holders holding Units of that class pro rata as nearly as may be to their existing holdings and without involving fractions;
- (b) All new issues of Units of classes not previously issued will be offered in the first instance to Unit Holders (of whatsoever class) pro rata to their existing holdings;
- (c) Offers of new issues of Units will be made by notice specifying the number and class of Units offered and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the Units offered, the Trustee may dispose of those Units in such manner as it thinks most beneficial to the Trust Fund. The Trustee may likewise so dispose of any new Units which (by reason of the ratio which the new Units bear to Units held by persons entitled to an offer of new Units) cannot, in the opinion of the Trustee, be conveniently offered under this provisions; and
- (d) No Units will be issued subject to any special rights privileges powers liabilities or obligations and in respect of existing Units no rights privileges powers liabilities or obligations will be created amended or revoked.

### 2.4. Partly Paid Units

- (a) The Trustee may issue Units of any class, either under Clause 2.2 or under Clause 2.3 without requiring full immediate payment in cash for them (partly paid Units) whereupon the provisions of this Clause 2.4 will apply. The Trustee may at this time make arrangements so that the Unit Holders' obligations in relation to the timing and amounts of call payments made under paragraph (b) will vary from partly paid Unit to partly paid Unit.
- (b) The Trustee may, from time to time, make calls on a Unit Holder in respect of any money unpaid on the Units held by the Unit Holder. Such calls may specify a time at which payment is required and each Unit Holder will pay to the Trustee the amount called on the Units held by the Unit Holder within the time specified, but no Unit Holder will be obliged to comply with a time limit of less than 14 days.

- (c) The joint holders of a Unit will be jointly and severally liable to pay all calls in respect of them.
- (d) A Unit Holder may at any time offer to pay to the Trustee all, or any part of, the money uncalled and unpaid on any Units held by the Unit Holder. The Trustee may, in its absolute discretion, either accept or reject such payment.
- (e) As soon as is reasonably practicable after any Unit Holder has made a payment under paragraph (b) or paragraph (d), the Trustee will endorse the relevant Certificate to show the amount cumulatively paid in respect of each Unit represented by the Certificate.
- (f) The Trustee will have a first and paramount lien on every partly paid Unit for all money (whether immediately payable or not) called or payable at a fixed time in respect of that Unit. The Trustee will also have a first and paramount lien on all partly paid Units registered in the name of the same Unit Holder for all money presently payable by that Unit Holder to the Trustee, but the Trustee may at any time declare any Unit to be wholly or in part exempt from the provisions of this paragraph. The Trustee's lien on a Unit extends to all Income or capital of the Trust Fund payable in respect of that Unit to its Unit Holder.
- (g) The Trustee may sell any Units over which the Trustee has a lien in accordance with paragraph (f) or any other provision of this Deed, but no sale will be made unless a sum in respect of which the lien exists as is then due and payable, and until the expiration of 14 days after written notice stating and demanding payment of that part of the amount in respect of which the lien exists as is then due and payable, has been served on the Unit Holder of the Unit, or the person entitled to the Unit because of the death, bankruptcy or mental incapacity of the Unit Holder.
- (h) The proceeds of a sale under paragraph (g) will be received by the Trustee and applied in payment of the part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) will (subject to a like lien for sums not presently payable as existed on the Units before the sale) be paid to the person entitled to the Units at the date of sale.

## 2.5. Forfeiture of Partly Paid Units

- (a) Without affecting the rights of the Trustee under clause 2.4 or otherwise if a Unit Holder fails to pay any call or instalment of a call on the day appointed for its payment, the Trustee may at any time thereafter during the time that any part of the call or any instalment remains unpaid, serve a notice on the Unit Holder requiring payment of as much of the call or instalment as is unpaid.
- (b) The notice referred to in paragraph (a) will appoint a further date, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made, and will state that unless the sum demanded is paid on or before the date appointed, the Units in respect of which the call was made will be liable to forfeiture by the Trustee.
- (c) If any of the requirements of paragraphs (a) and (b) are not complied with, any Unit in respect of which notice has been given may at any time thereafter, but before the payment required by the notice has been made,

be forfeited by a resolution of the Trustee to that effect. Forfeiture will include all entitlements to all income, profits and gains of any kind in respect of the forfeited Unit not actually paid or credited to its holder before the date of the forfeiture.

- (d) A forfeited Unit may be sold or otherwise disposed of on any terms and in any manner as the Trustee thinks fit, and at any time before a sale or disposition the forfeiture may be withdrawn on any terms as the Trustee thinks fit.
- (e) A person who has forfeited any Unit will cease to be the Unit Holder of the forfeited Unit, but notwithstanding forfeiture, will remain liable to pay to the Trustee all money which was at the date of the forfeiture payable by that person to the Trustee in respect of the Unit. That person's liability for the Unit will cease at the time when the Trustee receives from whatever source (including sale of the Unit) payment in full of all money in respect of the Unit.
- (f) A statutory declaration in writing by the Trustee or if the trustee is a corporation by any of its directors, that a Unit has been forfeited on the date stated in the declaration will be conclusive evidence of the forfeiture against all persons claiming to be entitled to that Unit.
- (g) The Trustee may receive the consideration, if any, given for a forfeited Unit on any sale or disposition of the Unit and may execute a transfer of the Unit in favour of the person to whom the Unit is sold or disposed of, whereupon that person will be registered as the Unit Holder and will not be bound to see to the application of the purchase money (if any), nor will that person's title to the Unit be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the Unit.

## 2.6. Valuations

The Trustee may at any time and will, if requested by Unit Holders holding a majority of Units, cause a valuation of the Property and Investments of the Trust Fund to be made by such competent valuer or expert as the Trustee may decide.

## 2.7. Register

- (a) The Trustee will keep a Register of Unit Holders in which there will be entered the following particulars:
  - (1) the names, addresses and descriptions of the Unit Holders;
  - (2) the number of Units in respect of which they are registered and the distinctive numbers or letters of the Certificates held by them respectively;
  - (3) the date at which the name of every Unit Holder was entered in the register in respect of Units standing in his name;
  - (4) the par value of each Unit;
  - (5) the amount paid on each Unit in respect of which each Unit Holder is registered; and
  - (6) any other details considered necessary by the

Trustee.

- (b) The Certificates for Units to be issued will:

- (1) be in the form or to the effect specified in the Second Schedule;
  - (2) specify the name of the Unit Holder and the number of Units to which the Certificate relates;
  - (3) specify the par value and where relevant, the amount cumulatively paid on each Unit to which the Certificate relates;
  - (4) bear a distinctive number or letter;
  - (5) be prima facie evidence that the person named in the Certificate is entitled to the number and class (if any) of Units therein specified; and
  - (6) be signed by one or more of the Trustees or by any director of a corporate Trustee.
- (c) No notice of any trust, expressed, implied or constructive will be entered in the Register, and the person from time to time entered in the Register as the Unit Holder will be the only person recognised by the Trustee as entitled to the Units registered in his name or to exercise the rights and privileges of the registered holder thereof pursuant to this Deed. Additionally:
- (1) No person will be recognised by the Trustee as holding any Unit upon any trust and the Trustee will not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable contingent future or partial interest in any Unit or any interest therein or (except only as by the provisions of this Deed otherwise provided) any other rights in respect of any Unit except an absolute right to the entirety thereof in the Unit Holder.
  - (2) Units held by a Trustee in respect of a particular trust may be marked in the Register in such a way as to identify them as being held in respect of that trust but no liability will be created by any such marking and the Trustee will not be affected with notice of any trust recorded as aforesaid. If a transferee of Units so requests in writing, the Trustee may issue a Certificate of Units in the name of a fund which is held by a trust and, subject to the provisions of this Deed relating to transfers, may register any transfer signed by the Trustees for the time being of the fund and may pay all distribution cheques to such Trustees or to the fund by name and any such payments will be a good discharge to the Trustee who will not be bound to see to the application of any moneys paid to such fund or to the Trustees thereof.
- (d) Each person who becomes registered as a Unit Holder will be deemed to have agreed to become a party to this Deed (as it may be altered or varied from time to time), and will be entitled to the benefit of and will be bound by the terms and conditions of this Deed (as so altered or varied). Lost or destroyed Certificates:
- (1) If any Certificate issued in accordance with this trust Deed is delivered to the Trustee and is mutilated worn out or defaced, the Trustee may at its discretion and upon any evidence and indemnity being given to the Trustee as it considers adequate cancel the Certificate and issue to the Unit Holder a new Certificate in its place to the Unit Holder.
  - (2) If any Certificate issued in accordance with this trust Deed is lost or destroyed, the Trustee must on payment of a reasonable fee

if required by the Trustee, issue to the Unit Holder on their application a duplicate Certificate to the Unit Holder on their application, accompanied by:

- (A) A statutory declaration that the Certificate has been lost or destroyed and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made; and
- (B) An undertaking in writing that, if the Certificate is found or received by the Unit Holder, it will be returned to the Trustee.

### **3. REDEMPTION, TRANSFER AND TRANSMISSION OF UNITS**

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#### **3.1. Redemption of Units**

- (a) If a Unit Holder in writing requests the Trustee to redeem all or any of his Units at a price to be determined in accordance with the provisions hereinafter contained within Clause 3.1(d), then the Trustee must redeem the Units in respect of which the request is made as soon as reasonably practicable after such request.
- (b) The Trustee may at any time and from time to time redeem any Unit by paying to the Unit Holder thereof the sum to be determined in accordance with the provisions hereinafter contained. The Trustee may determine to redeem any such Units without prior notice to the Unit Holder thereof of the Trustee's intention to redeem the said Units.
- (c) For the purpose of redeeming any Units the Trustee may (inter alia):
  - (1) Pay out of the Trust Fund or any part thereof out of any moneys in the Trustee's hands whether received, held or deemed to be income or being cash contributed to the Trust Fund or representing the proceeds of the sale of any investments of the Trust Fund;
  - (2) Raise out of the Trust Fund by borrowing in exercise of the Trustee's powers in that behalf a sufficient sum to provide the redemption sum; and
  - (3) Realise or sell any investment comprised in the Trust Fund to provide a sufficient sum to provide the redemption sum.
- (d) For the purpose of fixing the redemption sum for Units to be redeemed by the Trustee under the foregoing provisions:
  - (1) The Trustee will pay on redemption to the Unit Holder the Fair Value of the Units being redeemed as determined by the auditor of the Trust Fund, and if there is no auditor by a chartered accountant nominated by the Trustee. The auditor or chartered accountant in making their determination will be taken to be acting as an expert and not as an arbitrator, but they must consider any evidence as to value that may be presented to them by the Unit Holder or by the Trustee and have regard to any special rights or restrictions or conditions relating to the entitlement of the Units to share in the Income or capital of the Trust Fund and in distribution of the capital on the termination of the Trust Fund and to any rights, restrictions or conditions attaching to or affecting the Units. The costs of obtaining the determination are to be borne by the Trustee.
  - (2) From the value of the Units so to be redeemed will be deducted

all necessary expenses incidental to any realisation by the Trustee of any Investment for the purpose of providing the redemption sum and any trusteeship fee payable in respect of the Trust Fund at the rate chargeable by the Trustee on the amount of the value of the Units so redeemed computed from the last day of the last preceding Accounting Period prior to the date on which the Units are redeemed by the Trustee.

- (e) Upon payment to the Unit Holder of the redemption sum for a Unit redeemed, the Certificate therefore will be delivered to the Trustee for cancellation, the name of such Unit Holder will be removed from the Register as the Unit Holder thereof and such Unit will be cancelled. Failure of a Unit Holder to deliver up the Certificate will not prevent the cancellation thereof by the Trustee.

### 3.2. Transfer and Transmission of Units

- (a) Notwithstanding the following provisions of Clauses 3.2, 3.3, 3.4 and 3.5, the Trustee may in its absolute discretion treat any request for transfer or transmission of Units as a request for redemption of Units and the provisions of Clause 3.1 will mutatis mutandis apply.
- (b) Unit Holders may request the Trustee to register transfers of all or any of the Units held by them. Subject to Clauses 3.3, 3.4 and 3.5 and unless otherwise provided by this Deed, the Trustee may in its absolute discretion refuse to register a transfer (whether voluntary or by operation of law) of Units without being bound to assign any reason for such refusal.
- (c) Unless a written instrument of transfer of Units is required by law, a transfer of Units may, at the Trustee's discretion, be effected without a written instrument of transfer being submitted and, in that event, an entry made in the Register of Unit Holders with the approval of the Trustee will, if all Unit Holders consent and if the transfer is not contrary to the provisions of this Deed, be effective as evidence of the rights to the Units so transferred. The Trustee may however, if it sees fit require an instrument of transfer in writing before registering a transfer of Units.
- (d) If the law so requires or the Trustee in its discretion determines that a written instrument of transfer is necessary, the instrument of transfer will be in a form, from time to time approved by the Trustee. Before registration of the transfer, the instrument of transfer will be executed by or on behalf of both transferor and transferee and will be duly stamped (if required by law) and be left with the Trustee with the Certificate relating to the Units to be transferred.
- (e) Upon being satisfied that the provisions of this Deed relating to transfers of Units have been complied with and, if the Trustee has a discretion, that a particular transfer of Units falls within the proper exercise of such discretion, the Trustee will make appropriate entries in the Register of Unit Holders and will cancel the existing Certificate and will issue a new Certificate in the name of the transferee and if appropriate a new Certificate in the name and of the transferor for the balance of any Units retained by him.

### 3.3. Right to Transfer

The Trustee will not refuse the registration of any transfer of Units where such transfer occurs in circumstances set out in part 2 of the Third Schedule.



#### 3.4. Restriction on Right to Transfer

The provisions of part 3 of the Third Schedule apply to all transfers and the Trustee will only approve or register a transfer of Units if:

- (a) the Trustee is satisfied that there has been substantial compliance with the procedures set out in part 3 of the Third Schedule; or
- (b) the Trustee has received the consent of all Unit Holders to the waiver of the said transfer procedure and to the registration by the Trustee of the transfers of Units in question.

#### 3.5. Transmission of Units

- (a) In the case of the death of a Unit Holder, the survivor where the deceased was a joint holder and the legal personal representatives of the deceased in all other cases will be the only persons recognised by the Trustee as having any title to his interest in the Units.
- (b) Any person becoming entitled to Units in consequence of the death, mental incapacity, liquidation or bankruptcy of any Unit Holder may upon such evidence being produced as may from time to time be required by the Trustee, elect either to be registered himself as the Unit Holder or to have some person nominated by him registered as the transferee thereof but the Trustee will, in either case, have the same right to decline or suspend registration as the Trustee would have had in the case of a transfer of the Units of that Unit Holder prior to such death, mental incapacity, liquidation or bankruptcy.
- (c) If a person so becoming entitled elects to be registered himself he will deliver or send to the Trustee a notice in writing signed by him stating that he so elects. If he elects to have another person registered he will testify his election by executing a transfer of the Units to that person. All provisions of this Deed relating to the right to transfer Units and the registration of transfers of Units will be applicable to any such notice or transfer as aforesaid as if the death, mental incapacity, liquidation or bankruptcy of the Unit Holder had not occurred and the notice or transfer were a transfer executed by that Unit Holder.
- (d) A person entitled to Units by transmission will be entitled to receive and may give a good discharge for all moneys payable in respect of the Units but except as otherwise provided by this Deed will not be entitled to any of the rights or privileges of a Unit Holder unless and until he will become registered in respect of the Units.

#### 3.6. Units not to be mortgaged or transferred

Except as provided in part 2 of the Third Schedule:

- (a) A Unit Holder may not mortgage, pledge or give any security over a Unit without the prior consent of the Trustee and a majority of the Unit Holders, and it will be a condition of consent that:
  - (1) The proposed mortgagee or person taking security is a bank or lending institution of sound financial standing which bona fide carries on the business of lending money on security; and
  - (2) The proposed mortgagee or person taking security undertakes in writing to the Trustee that in exercising any power of sale it will comply with and be subject to the provisions of this Clause 3.

#### 4. PERIOD OF TRUST

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- (a) The trusts created by this Deed will commence on the date hereof and will continue until the Vesting Day.
- (b) As soon as practicable after the Vesting Day the Trustee will (subject as hereinafter provided) sell, call in and convert into money or cause to be sold, called in and converted into money, the Investments and Property constituting the Trust Fund, and;
  - (1) Within the period of six months (or later if approved by the Unit Holders, but not later than the expiration of the Perpetuity Period) from the giving of the notices to Unit Holders provided for in the next sub- Clause hereof and subject to any special rights or restrictions provided in part 1 of the Third Schedule or otherwise attaching to Units of any class divide the proceeds of such sale and conversion (less all proper costs and disbursements, commissions, brokerage fees and other outgoings and all proper provision for liabilities) in proportion to the number of Units of which they are at the date of the giving of such notice respectively registered as the Unit Holders, and
  - (2) The Trustee may in its discretion at the request of any Unit Holder transfer to such Unit Holder any assets of the Trust Fund in specie in satisfaction of the entitlement of the Unit Holder on the termination of this Trust.
- (c) The Trustee will as soon as practicable after the termination of the Trust give to each Unit Holder not less than one month notice of the impending distribution.
- (d) The Trustee may postpone the sale and conversion of any part of the Investments and Property of the Trust Fund for such time as the Trustee thinks desirable in the interests of the Unit Holders and will not be responsible for any loss attributable to such postponement.
- (e) The Trustee may if it thinks fit transfer any of the Investments or Property of the Trust Fund to the trustee of any other trust (whether or not the Trustee hereof is in any way associated with such other trust) on receiving cash equivalent to the Fair Value of such investment at the date of transfer.
- (f) The Trust may be terminated at any time before the dates referred to in paragraphs (a) and (b) of the definition of Perpetuity Period in clause 1.1 if resolved by a Special Resolution of the Unit Holders, and such termination takes effect from the date specified in the resolution.

#### 5. TRUST FUND INCOME

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##### 5.1. Determination and Classification

- (a) The Trustee will in each Accounting Period determine the Income of the Trust Fund.
- (b) The Trustee may classify the Income or capital of the Trust Fund into one or more such classes, whether by reference to source, nature or otherwise, as it may in its absolute discretion determine and may account separately for each such class or part thereof. Without limiting the

generality of the foregoing in such determination the Trustee may identify and account separately, for:

- (1) Any unrealised or realised gains relating to the re-valuation of assets;
- (2) Any Capital Profits;
- (3) The amount of any Franked Dividends;
- (4) The amount of any Unfranked Dividends;
- (5) Any Untaxed Amount;
- (6) Any Foreign Income;
- (7) Any difference between any Trust Income and Net Income before tax; and
- (8) Any amount to which a separately identifiable taxation consequence or benefit may attach.

## 5.2. Distribution of Income

- (a) The Trustee may, if the Unit Holders so direct, at any time prior to the expiration of any Accounting Period (or such other time as the Commissioner of Taxation may allow for the purposes of the Tax Act) which ends before or upon the Vesting Day determine with respect to all or any parts of the Income of the Trust Fund for that Accounting Period, to do all or any of the following:
  - (1) Subject to any special rights or restrictions provided in part 1 of the Third Schedule or otherwise attaching to Units of any class to Distribute the same or any part thereof to all or one or more of the Unit Holders or to any class of Unit Holder; and
  - (2) Accumulate the same or any part thereof.
- (b) The following rules will apply to any determination made pursuant to Clause 5.2 (a):
  - (1) Any distribution of Income will, unless otherwise specified by the Trustee, be deemed to have firstly been made out of Net Income;
  - (2) Any determination to accumulate income will be conditional upon the law in force in relation to this Deed giving effect to such determination at the end of the Accounting Period but except as provided in this Clause 5.2 paragraph (b) each such determination will be irrevocable;
  - (3) If at the end of any Accounting Period:
    - (A) the amounts proposed to be distributed under Clause 5.2(a) exceed the Income for the Accounting Period, the Trustee may apply the difference from any capital account of the Trust Fund including accumulated income;

- (B) the amounts in respect of which determinations have been made pursuant to Clause 5.2(a) exceed the Income for the Accounting Period then:
  - (i) these excess amounts will firstly be deducted from the amounts (if any) which the Trustee has determined to accumulate and only the balance of such amount or amounts (if any) would, from that time on, be accumulated; and
  - (ii) if, after such deduction, the amounts in respect of which determinations have been made pursuant to Clause 5.2(a) still exceed the Income for the Accounting Period, the Trustee will be deemed to that extent to have applied the capital of the Trust Fund pursuant to Clause 3.4 pro rata across the accounts in respect of which determinations have been made.
- (4) The Trustee may in its discretion determine and identify which Income or which part of the Income or which class of Income (whether by reference to source nature or otherwise) of the Trust Fund is the subject of any particular determination or determinations and the Income the subject of any such determination shall be treated for all purposes as being distributed or accumulated as the case may be from the Income or part or class so identified;
- (5) A determination to Distribute any amount for any Unit Holder may be made by, among other things, placing such amount to the credit of the Unit Holder in the books of the Trust Fund or drawing a cheque in respect of such amount, made payable to or for the credit or benefit, of the Unit Holder or paying the same in cash to or for the benefit of the Unit Holder;
- (6) The Trustee will have a complete discretion as to the making of any determination and will not be bound to assign any reason for the determination;
- (7) In making any determinations to distribute any amount the Trustee will, subject to any exercise of power by the Trustee to Distribute any amount in relation to the holders of "C" class units, distribute that amount to Unit Holders entitled to Income in proportion to the number of Units for which they are respectively registered at the time or in such other proportions as the Unit Holders may unanimously agree; and
- (8) The Trustee may also recoup losses at its choice from either capital or current year profits.

### 5.3. Accumulation and Amounts Set Aside

- (a) The amount of any accumulation will be dealt with as an accretion to the capital of the Trust Fund, but so that the Trustee may at any time resort to all such accumulations and distribute the whole or any part of those accumulations as if it were Income of the Trust Fund.

- (b) If the Trustee has not by the expiration of the Accounting Period determined to Distribute or accumulate the whole of the Income of the Accounting Period in the manner aforesaid then the Trustee will hold the Income not so Distributed or accumulated for that Accounting Period in trust for the Unit Holders whose Units are entitled to Income, in proportion to the number of such Units which they are respectively registered at the time.
- (c) Any amount Distributed to or set aside for any Unit Holders or held by the Trustee in trust for a Unit Holder pursuant to Clause 5.2 (a) or clause 5.3 (b) will not form part of the Trust Fund but will, on and from the occurrence of either event, be held by the Trustee as a separate trust fund upon trust for the Unit Holder absolutely, with the power to the Trustee, pending payment of the amount to such Unit Holder, to invest or apply for the benefit of such Unit Holder or deal with such fund or any part thereof in the manner provided for this Deed in relation to the Trust Fund.

#### 5.4. Trust Fund Capital

Subject to any special rights or restrictions attaching to any Units under part 1 of the Third Schedule or otherwise pursuant to this Deed, the Trustee will have the power from time to time prior to the Vesting Day to Distribute:

- (a) The whole or any part of the capital of the Trust Fund to the Unit Holders in proportion to the number of Units for which they are respectively registered at the time; and
- (b) Any amount set aside for any Unit Holders or held by the Trustee in trust for a Unit Holder pursuant to Clause 5.3 (b) of this Deed.

## 6. POWERS AND DUTIES OF TRUSTEES

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### 6.1. General, Additional and Specific Powers

- (a) The Trustee may, at its absolute discretion but subject always to clause 1A of this Trust Deed:
  - (1) at any time and from time to time pay or apply the whole or any part of the capital or the whole or any part of any income to which any infant Unit Holder is entitled to the parent or guardian of such infant without being bound to see to the application thereof by such parent or guardian provided that nothing contained in this Deed will operate to prevent the Trustee being entitled at any time to distribute any part of the Trust Fund to the Unit Holder;
  - (2) subject to the consent of the Unit Holders at any time or from time to time before the Vesting Day lend any sum out of the Trust Fund and any moneys held in Trust to any Unit Holder either with or without security and upon such terms and conditions as to repayment and with or without interest as the Trustee would in its absolute discretion think fit; and
  - (3) allow any Unit Holder to occupy, have custody of or use any immovable property or chattels for the time being forming part of the Trust Fund on such terms or conditions as to rent inventories, repair replacement insurance outgoings or otherwise as the Trustee would think fit and so that the Trustee will not be liable for any loss or damage which may occur to any property so forming

part of the Trust Fund during or by reason of any such occupation custody or use except insofar as such loss or damage will be occasioned by the conscious and willful default or neglect of the Trustee.

- (b) The Trustee will have power to make or vary or sell any investment and to engage in any transaction or dealing on behalf of the Trust, as the Trustee could do if the Trustee were the beneficial owner of the Trust Fund absolutely entitled to, the assets comprising the Trust Fund and any increments in the value of those assets, and, in addition to the powers otherwise conferred upon trustees by law or elsewhere in this Deed have the following additional powers:
- (1) To apply and invest all moneys at any time forming part of the Trust Fund in any such investments, whether involving liabilities or not upon personal credit with or without security and upon such terms and conditions as the Trustee would in its absolute discretion think fit;
  - (2) To the intent that the Trustees would have the same powers in all respects as if it was absolute owner beneficially entitled including without diminishing the generality of the foregoing:
    - (A) The subscription for, the taking up on allotment and the purchase of any shares, stocks, bonds, mortgages, debentures, obligations or securities of any government authority or company incorporated in any part of the world;
    - (B) The taking of and the purchase of the whole or any part or share or interest in (including a minority part or share or interest in any business or partnership and its goodwill and assets.
    - (C) The purchase of the whole, share or part of any real or personal property in any part of the world, notwithstanding that the same may not be income producing or may be of a wasting or speculative nature; and
    - (D) To exercise all rights and privileges and perform all direct and incidental duties and obligations;
  - (3) To make or purchase any such investments for cash or in consideration of an annuity or otherwise and upon such terms and conditions as the Trustee would in its absolute discretion think fit;
  - (4) The Trustee may make or purchase any such investment for a sum greater than the amount of the Trust Fund for the time being;
  - (5) The Trustee may agree to pay for such investments wholly or in part from any future moneys which may come into their hands, including dividends, profits, interest or other income paid or payable in respect of any such investments;
  - (6) The Trustee may raise or borrow or obtain at any time any money or financial accommodation (including by way of bill facility) required for the purposes of this Deed on any terms as to repayment of principal and repayment of interest (if any) as the Trustee in its absolute discretion thinks fit. The Trustee may for this purpose mortgage or charge in favour of the lender the whole or any part of

the Trust Fund or any interest in it, and such mortgage or charge will not be invalid by reason of any error or omission on the part of the Trustee;

- (7) The Trustee may borrow or raise money to be used in deriving income or gain in augmentation of the Trust Fund, notwithstanding that the Trust Fund may already be wholly invested or applied, or that the money to be borrowed or raised may exceed the sum or value of the Trust Fund. It is expressly declared that all money and other property borrowed or raised by the Trustee will become part of the Trust Fund, and the Trustee may invest the same and the resulting income thereof in any of the Property and Investments hereby authorised with all powers, authorities and discretions with respect to those Investments and Properties as are set out in relation to the Trust Fund in this Deed;
- (8) To advance and lend money to any person, firms, trusts, Corporations or governmental or municipal bodies on any terms and with or without security or interest as the Trustee thinks fit;
- (9) The Trustee is expressly empowered to join with any person, trust or Corporation in executing any mortgage or other document for the purpose of securing the payment of money to the Trustee jointly with any person, trust or Corporation;
- (10) To either alone or jointly with any other person, guarantee, indemnify, secure or undertake in any way including the giving of mortgages or charges over the whole or any part of the Trust Fund the payment or repayment of money including interest thereon previously or then lent or advanced or which may at any time or from time to time thereafter be lent or advanced to any Unit Holder or any existing or future debts, liabilities or obligations incurred or which may at any time or from time to time thereafter be incurred by any Unit Holder;
- (11) To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property and in particular with shares, debentures or securities of any Corporation and with or without deferred, restricted, qualified or special rights relating thereto and in particular to take on bailment lease or on hire and otherwise purchase and acquire any real and personal property and in particular (without limiting the generality of the foregoing) and chattels, machinery, plant and stock-in-trade;
- (12) To purchase or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking-fund or term or other policy or policies of insurance of whatsoever nature and at or subject to any premium or premiums whether single or payable periodically and with or subject to any options, rights, benefits, conditions or provisions whatsoever and to pay out of the income or capital of the Trust Fund as the Trustee in its absolute discretion thinks fit, all sums payable from time to time for premiums or otherwise for the effecting or maintenance of any policy or policies of insurance (whether owned by the Trustee or

otherwise) or for the exercise or enjoyment of any option right or benefit thereunder and any surrender of any such policy will for all the purposes of this Deed to be deemed to be sale thereof;

- (13) To pay out of the Trust Fund or the income thereof all costs, charges and expenses incidental to the management of the Trust Fund or to the exercise of any power authority or discretion herein contained or in carrying out or performing the trusts hereof which the Trustee may at any time incur including all income tax or other taxes payable in respect of the Trust Fund costs in any way connected with the preparation and execution of these presents and all moneys which the Trustee may be required to pay as settlement, probate, estate, gift, stamp or revenue duties including stamp, gift or settlement duties payable in respect of the Trust Fund or on these presents;
- (14) To exercise all rights and privileges and perform all duties and do all such acts, matters and things appertaining to any shares, stocks or debentures in any Corporation for the time being subject to the trusts thereof as the Trustee could do if it was the beneficial owner of the shares, stocks or debentures or was personally interested or concerned in the Corporation, and without diminishing the generality of the foregoing, with liberty to assent to any arrangements modifying such rights, privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any Corporation, and to make any agreement in respect of or in the course of the winding up of any Corporation and for any such purpose to deposit surrender or exchange any of the said shares stock or debentures or the title thereto and to pay any calls or contributions or other necessary expenses in connection with any such shares stock or debentures or any title thereto;
- (15) To carry on, anywhere in the world, either alone or in partnership and under such name as the Trustee thinks fit, any trade or business and to discontinue the same from time to time;
- (16) To employ any person (including any Trustee hereof) in connection with any trade or business carried on by the Trustee or in connection with anything required to be done pursuant to the provisions, including the receipt and payment of money and to decide the remuneration to be allowed and paid and the amount of all charges and expenses and to create or arrange any scheme of superannuation, retirement benefit or pension for the benefit of any person so employed;
- (17) To partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other property which or any interest in which may for the time being be subject to the trusts hereof and to pay any moneys by way of equality or partition;
- (18) To establish promote or acquire any Corporation or Corporations or join in the promotion establishment or acquisition of any Corporation or Corporations;
- (19) To appropriate any part of the Trust Fund in the actual condition or state of investment thereof in or towards the satisfaction of the interest of any person in the Trust Fund or in or towards the



satisfaction of any sum which the Trustee may determine to pay or apply to or for the benefit of any Unit Holder pursuant to this Deed and in making such appropriation to estimate the value of the component parts of the Trust Fund or to employ such persons to make such valuation as in the circumstances the Trustee deems proper without obtaining any consents otherwise required by law and every appropriation so made will bind all persons interested in the Trust Fund notwithstanding that they may not yet be in existence or may be under a legal disability;

- (20) To determine whether any real or personal property or any increase or decrease in amount number or value of any property or holdings of property or any receipts or payments from for or in connection with any real or personal property will be treated as and credited or debited to capital or to income and generally to determine all matters as to which, any doubt difficulty or question may arise under or in relation to the execution of the trusts and powers of this Deed and every determination of the Trustee in relation to any of the matters aforesaid whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund will bind all parties interested therein and will not be objected to or questioned on any ground whatsoever;
- (21) To open any account with any bank and to operate by and in all usual ways any such account and to draw accept endorse and negotiate bills of exchange or to deal with them in any other way whatsoever and to enter into agreements in respect of the drawing acceptance endorsement and negotiation of bills of exchange or any other dealing with them whatsoever;
- (22) To give effectual receipts and discharges for any monies received by or on behalf of the Trustee or otherwise relating to any of the acts matters and things provided for in these presents and to receive property by gift inter vivos or by will or under the provisions of any other trust or otherwise and either from any person as additions to the Trust Fund and to hold the same upon the trusts herein set forth and to administer such additions under the provisions;
- (23) To grant options in respect of any assets held subject to the Trust to any person firm or Corporation;
- (24) To become a director of any Corporation in which moneys forming part of the Trust Fund are invested or to appoint any person to act as director of any such Corporation and to receive the remuneration attached to such office without accounting to the Trust provided that the Trustee executes all proper declarations of trust for any shares held by them on behalf of the Trust and accounts to the Trust for all dividends and bonuses and to exercise or concur in exercising all of the powers and discretions contained in this deed or otherwise by law conferred notwithstanding that the Trustee or any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a Corporation) has or may have a direct or personal interest (whether as trustee of any other trust or in his personal capacity or as a director or shareholder of any Corporation or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly

or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee;

- (25) To take such action as the Trustee will think fit for the adequate protection of any part of the Trust Fund and to take and act upon the opinion (given in writing) of an attorney at law or Counsel practicing in any country where the Trust Fund or any part thereof may for the time being be invested in relation to the interpretation or effect of these presents or any other document or statute or as to the administration of the trusts hereof without being liable to any of the persons beneficially interested in respect of any act done by the Trustee in accordance with such opinion provided that nothing in the provision will prohibit or impede the Trustee from applying to any court if they will think fit or prohibit any of the Unit Holders from doing so and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by the presents;
- (26) To remunerate any Unit Holder who is at any time in the employ of the Trustee to the same extent and in the same manner as if the Unit Holder so employed were not a Unit Holder hereunder and all bona fide payments made by the Trustee to any such Unit Holder in the form of remuneration for services rendered or to be rendered or on account of expenses in connection with such employment will not be or be deemed to be payment to the Unit Holder of or on account of his share in the Trust Fund or the income thereof;
- (27) To permit any Property or Investment to be held or registered in the name of any nominee of the Trustee and to deposit securities to the Deeds and other documents belonging or related to the Trust Fund with any bank;
- (28) With the consent of the Unit Holders, in any condition or circumstances which the Trustee thinks expedient to appoint either in respect of the whole of the Trust Fund or any part thereof new Trustees in any country in the world and to transfer assign and set over the investments for the time being representing the Trust Fund or any part thereof to any such new Trustees upon similar trusts and subject to similar terms and conditions to those declared in these presents and either subject to the control of the Trustee of these presents or to the exclusion of such control and the Trustee of these presents will be indemnified and held harmless against any loss which may arise from the exercise of this power;
- (29) With the consent of each class of Unit Holders at any time before the Vesting Day by any irrevocable deed (without infringing any rule against perpetuities to this Deed) to appoint that the whole or any part of the Trust Fund will thenceforth be held upon the trusts and with and subject to the powers and provisions of any other trust (not infringing the rule against perpetuities applicable to this Deed) and approved by the Trustee in favour or for the benefit of all or one or other of the Unit Holders registered at the time of such appointment and upon any such appointment being made the Trustee may transfer to the Trustees for the time being of the said other trust property comprised in the said appointment and

thereupon the trusts herein declared concerning such property will cease and determine and the said property will for all purposes be subject to the trusts powers and provisions contained in the said other trust and be subject to and governed by the proper law of the said other trust whether or not such proper law will be the proper law of this trust;

- (30) In the event of any probate, succession, estate or other duties fees or taxes becoming payable in any part of the world in respect of the Trust Fund or any part thereof on the death of any Unit Holder or any other person at their absolute discretion to pay all or any such duties, fees and taxes out of the Trust Fund notwithstanding that part of such duties, fees or taxes are not or may not be recoverable from the Trustee or from the Trust Fund by legal process in the place where the same become payable;
- (31) To give any guarantee or indemnity for payment of moneys or the performance of any contract obligation or undertaking by any person firm company corporation or association upon such terms with or without security as the Trustee shall deem fit and to secure any such guarantee or indemnity by mortgaging or charging (by a fixed or floating charge or otherwise) any undertaking of the Trustee or all or any part of the Trust Fund including any property which may subsequently be acquired by the Trustee so that it will form part of the Trust Fund and the rights of the mortgagee or chargee shall take priority in all respects over the rights of the beneficiaries and all other persons whatsoever;
- (32) To draw, make, accept, endorse, discount, execute, guarantee, issue and be a party in any way to promissory notes, bills of exchange, letters of credit, hypothecations, bills of lading, warrants, debentures and other negotiable or transferable instruments or facilities involving the raising, borrowing or lending of moneys by or to the Trustee and to enter into any option agreement relating to any such facility or instrument;
- (33) To enter into alone or with others any agreement or arrangement for obtaining credit upon such terms as the Trustee may see fit including but not limited to obtaining, upon deferred terms as to payment, goods, trading stock or other property or services of any nature;
- (34) To mix the Trust Fund including its income and any other monies held from time to time by the Trustee pursuant to these Trusts with other monies held by the Trustee pursuant to any provision of this Deed or under any other trust:
  - (A) To invest the monies so mixed in any investment, property, interest, arrangement or business or in any other mode or manner in which the Trustee may by law or by this Deed be empowered to invest the Trust Fund;
  - (B) To exercise all powers, authorities and discretions with respect to the mixed fund which the Trustee is by this Deed or by law authorised to exercise with respect to the Trust Deed; and
  - (C) To make such arrangements with respect to the money and

their investment with any other person as the Trustee would be authorised or empowered by law or by this Deed to make or enter into;

- (35) To exercise such additional or other powers (if any) as are referred to in the First Schedule or the Trustee and the Unit Holders may agree.
  - (36) To enter into any derivatives contract or purchase or sell or deal in any derivatives product, and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world;
  - (37) To give and execute any mortgage, charge or other security over all or any parts of the assets of the Trust as may be required to secure the payment or the performance of any contract obligation under or in connection with any transaction of the type referred to in clause 6.1(b)(36) hereof; and
  - (38) To enter into any interest rate and foreign currency transactions.
- (c) Notwithstanding anything herein to the contrary or otherwise contained, the Trustees will have power at their absolute discretion:
- (1) To sell, transfer, hire, lease or dispose of any real or personal property of the Trust Fund or to lend or advance any moneys to the Trustee in its personal capacity or in its capacity as trustee of other trust funds or otherwise howsoever or to any Corporation or partnership whatsoever notwithstanding that the Trustee or any of them is a shareholder or director or member or partner of such Corporation or partnership or to a wife, husband, child or children of any Trustee;
  - (2) To buy, transfer, acquire, hire or lease any real or personal property or to borrow any moneys from the Trustee in its personal capacity or in the capacity of the Trustee or any of them as trustee or trustees of other Trust Funds or otherwise howsoever or from any Corporation or partnership whatsoever notwithstanding that the Trustee or any of them is a shareholder or director or member or partner of such Corporation or partnership or from the husband or wife or child or children of any Trustee;
  - (3) To carry on or carry out any profit making undertaking or scheme in partnership with the Trustee in its personal capacity or in the capacity of the Trustees or any of them as trustee of other Trust Funds or otherwise howsoever or with any company or partnership whatsoever notwithstanding that the Trustee or any of them is a shareholder or director or member or partner of such company or partnership or with the husband or wife or child or children of any Trustee;
  - (4) To exercise all the powers and discretions vested in the Trustee notwithstanding that the Trustee or any of them may be Unit Holders and generally to deal with the Trustee or any of them in its personal capacity in all respects as if there were two separate persons to the dealings and without limiting the generality of

anything herein contained the Trustee will have power in its absolute discretion to sell to itself in its capacity as trustee of other trust funds either for cash or upon terms any assets being shares or a joint or undivided interest in property where other shares in the same company or companies or another joint or undivided interest in the same property are held by the Trustee in such other capacity as aforesaid and to divide assets in specie between the Trust Fund and such other trust funds in such manner as the Trustee will think fit; and

- (5) To reclassify receipts of income as receipts of capital and to reclassify receipts of capital as receipts of income; to reclassify distributions of income as distributions of capital and distributions of capital as distributions of income; to recoup past years' losses out of current year's profits or out of capital as it determines and to allocate expenses against capital or against income as it determines.
- (d) The Trustee may in writing appoint an attorney and delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effect such purpose.
- (e) The Trustee will not be bound in any case to act personally but will be at full liberty to act as managers or to employ any contractors, manager, solicitor, accountant, clerk, workman, employee or servant or any agent to transact all or any business of whatever nature required to be done in these premises, including the receipt and payment of money and the Trustee will decide the remuneration to be allowed and paid and all charges and expenses so incurred.
- (f) A sole Trustee for the time being is hereby authorized, notwithstanding that it is the sole Trustee, to receive capital and other moneys and to give valid and effectual receipts therefore for all purposes and for the purposes of any statutory enactments including the receipt of capital moneys which may or may not be deemed to be capital moneys for the purpose of any Statute.
- (g) Any Trustee (except where the Trustee is a company of which the Founder is a director or shareholder), who may be a solicitor or accountant or any firm of which he may be a member, will be entitled to make all usual and proper charges for both his professional and other services in the administration for the Trusts and for his time and trouble that he would have been entitled to make if not a Trustee and so employed.
- (h) Any Trustee (except where the Trustee is a company of which the Founder is a director or shareholder) may from time to time charge and retain out of the Trust Fund such Trustee's commission as is reasonable having regard to any charges from time to time being made and paid pursuant to clause 6.1(g) and as is approved by the Unit Holders in General Meeting PROVIDED THAT where any Trustee is a corporation which carries on or holds itself out as carrying on as part of its ordinary business, the business of acting as a trustee and it publishes a scale or notice of the fees which it charges or on which it is prepared to act as a trustee, then the remuneration payable to that corporation as a Trustee of this Trust must be in accordance with the scale or notice of fees published by that corporation as in force from time to time or such lesser amount as that Trustee may elect to charge.

- (i) No person dealing with the Trustee should be concerned as to enquire as to the adequacy of the powers of the Trustee in relation to such dealing or to the exercise of such power.
- (j) Nothing in this trust Deed prevents the Trustee or any of the Trustees (except where the Trustee is a company of which the Founder is a director or shareholder) or their or its directors or officers or any of them from at any time subscribing for, purchasing, holding, dealing in or disposing of Units or from otherwise contracting or acting in any capacity as insurer, representative or agent or entering into any insurance, financial, banking, agency or other transaction with any other of them or any Unit Holder or any Company whose shares form part of the Trust Fund or from being interested in any such contract or transaction or otherwise.
- (k) The receipt of a Unit Holder for any monies payable in respect of the Units represented by the Unit Holder's Certificate is a good discharge to the Trustee, and if several persons are registered as joint Unit Holders or in consequence of the death or bankruptcy of a Unit Holder are entitled to be so registered, any one of them may give effectual receipts for any such monies. The terms and conditions of this trust Deed and of any supplemental deed entered into under the provisions of clause 7.1 are binding on each Unit Holder or any person claiming through the Unit Holder as if he, she or it had been a party to this trust Deed.

## 6.2. Trustee's Liabilities and Indemnities

- (a) The Trustee and any officer of any Trustee which is a corporation:
  - (1) Will be indemnified out of the Trust Fund from and against any liabilities incurred by them in the execution of or attempted execution of or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions conferred on them by this Deed by virtue of being the Trustee hereof or any expense and liability that may be incurred in prosecuting, defending or intervening in any action or suit in respect of the provisions of this Deed, except where the same arises out of any act of fraudulent or willful default or breach of trust by the Trustee or officer charged to be liable;
  - (2) Will not incur any liability to anyone in respect of doing or performing or failing to do or perform any act or thing which, by reason of any provision of any present or future law of the State or Territory referred to in the First Schedule, the Commonwealth of Australia or any State or Territory thereof or any ordinance, rule, regulation or by-law made pursuant thereto or of any decree, order or judgment of any court of competent jurisdiction either the Trustee is required to do or perform or is hindered prevented or forbidden from doing or performing;
  - (3) Will not incur any liability to anyone in consequence of the Trustee relying in good faith on information provided to the Trustee by any Unit Holder or any other person on behalf of a Unit Holder which proves to be incorrect;
  - (4) Will not be liable to account to Unit Holders or the legal personal representative of a Unit Holder for any payments made by the Trustee in good faith to any duly empowered fiscal authority for

taxes imposts or other charges made upon or in respect of the Trust or with respect to any transaction hereunder, notwithstanding that any such payment ought or need not have been made except to the extent that such payments may be attributable to the Trustee's own act of deceit, neglect or default;

- (5) May act upon information obtained from Unit Holders or the opinion advice of or information obtained from barristers or solicitors being persons independent of the Trustee and instructed by the Trustee and upon any statement of or information obtained from any bankers, accountants or other persons appointed by the Trustee being persons independent of the Trustee and believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted and the Trustee is not liable for anything done or suffered by it in good faith in reliance upon any such opinion advice statement or information;
  - (6) Will not be responsible for any misconduct mistake oversight error of judgement forgetfulness or want of prudence on the part of any auditor, actuary, approved valuer, attorney, banker receiver and manager, barrister, solicitor, agent or other person acting hereunder as agent or adviser of the Trustee except to the extent that such loss is attributable to the Trustee's own act of deceit, neglect or default;
  - (7) Will not be liable for any action taken or thing suffered by the Trustee in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, holding out certificate for stock, plan of re- organisation, application or other paper or document reasonably believed by the Trustee to be genuine and to have been possessed, produced, passed, signed or endorsed by the proper parties where liability but for this indemnity would attach by reason solely that such paper or document was not, in fact, genuine or so possessed produced passed signed or endorsed.
- (b) Save and except in the case of fraudulent or willful default or breach of trust in no event will the Trustee or any officer of the Trustee which is a corporation be bound to make any payment to Unit Holders or the legal personal representatives of Unit Holders except out of the Trust Fund or be liable to Unit Holders or the legal personal representatives of Unit Holders to any greater extent than the moneys and assets of the Trust Fund vested in or received by the Trustee in accordance with this Deed.
  - (c) Should the Trustee purchase or otherwise acquire any authorised investment in regard to which there is a liability, the Trustee will have a right of indemnity out of the Trust Fund in respect of that liability except to the extent that such liability may be attributable to the Trustee's own act of deceit, neglect or default.
  - (d) In the event that the Trustee has incurred a liability as Trustee and the Trustee is entitled under the terms hereof or otherwise as allowed by law to be indemnified in respect of such liability out of the Trust Fund the Trustee may claim such indemnity from the Trust Fund but the Trustee will not be entitled to be indemnified in respect thereof by any Unit Holder unless by a separate agreement with that Unit Holder.
  - (e) Where there is more than one Trustee neither will be bound to

take proceedings against the other for any breach or alleged breach of trust.

- (f) All persons claiming any beneficial interest in over or upon the Property subject to this Trust will be deemed to take with notice of and subject to the protection hereby conferred upon the Trustee.
- (g) The Trustee shall have no claim of any nature against any Unit Holder, nor shall any Unit Holder have any liability of any nature for or in respect of any liabilities incurred by the Trustee in the execution of or attempted execution of or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed.

### 6.3. Trustee's Determinations

- (a) Any determination or exercise by the Trustee of any power discretion or authority conferred on the Trustee by this Deed may be made:
  - (1) By oral declaration of the Trustee or resolution of the Trustee recorded in the records or minutes of the Trustee; or
  - (2) In writing signed by the Trustee;
- (b) Every Trustee who is a Corporation may exercise or concur in exercising any discretion or power hereby conferred on the Trustee by a resolution of such Corporation or by a resolution of its board of directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to one or more members of its board of directors or governing body appointed from time to time by the said board of directors or governing body for that purpose; and
- (c) In the case of a sole corporate Trustee, by a resolution of such Corporation or by a resolution of its board of directors or governing body whether such resolutions were properly recorded in minutes or not.
- (d) Once such a decision has been so recorded it will be irrevocable insofar as it relates to distribution of Income with respect to the Income of the Accounting Period to which it relates.

### 6.4. Trustee's Covenants

The provisions of this Deed regarding the method of appointment and removal of the Trustee will have effect notwithstanding any inconsistent applicable legislative provisions, to the extent permitted by the law.

- (a) The Trustee (and if there be more than one jointly and severally) covenants with the Unit Holders as follows:
  - (1) That the Trustee will act continuously as Trustee under the Trusts set forth in this Deed until such Trusts are determined as herein provided or the Trustee has retired in the manner hereinafter provided;
  - (2) That a Trustee will ipso facto cease to be a Trustee if, being a Corporation, such Trustee will go into liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or if a receiver is appointed of the undertaking of the Trustee or any part thereof or if it ceases to carry on business or fails or neglects after reasonable notice from



the Unit Holders to carry out or satisfy any duty imposed upon a Trustee by this Deed or if the Unit Holders so direct in writing or if any Trustee being an individual becomes bankrupt or makes any arrangement or composition with his creditors generally or becomes of unsound mind or person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

- (b) Any Trustee, other than a sole Trustee, may retire upon giving one month notice in writing to the Unit Holders or without giving such notice with the consent of the Unit Holders.
- (c) Any sole Trustee may retire upon the giving of one month notice in writing to the Unit Holders and appointment of a substitute Trustee or without giving such notice upon appointment of a substitute Trustee.
- (d) The Unit Holders may decide at any time to do any one or more of the following:
  - (1) Remove any Trustee;
  - (2) Appoint a substitute Trustee on any Trustee or Trustees ceasing for any reason to be a Trustee or Trustees; and
  - (3) Appoint an additional Trustee.

and any new Trustee will effectively be appointed upon execution by such Trustee of a Deed whereby such Trustee undertake to the Unit Holders performance of the obligations of a Trustee hereunder.

- (e) Upon retirement, a Trustee will be released from all obligations under this Deed arising after the date of such retirement except an obligation to concur in any assurance necessary or which the then Trustee considers desirable to vest the Trust Fund or any part thereof in such then Trustee.
- (f) The costs charges and expenses of and in connection with the retirement and replacement of any Trustee or the appointment of any additional Trustee will be recouped from the Trust Fund.
- (g) The Trustee will have the sole and absolute discretion in the exercise of all rights appertaining to the Property and Investments comprised in the Trust Fund and no Unit Holder will have any right with respect to the Trust Fund to attend meetings of shareholders or Unit Holders of Corporations or Companies in which the Trustee holds Shares or Units or other interests or to vote or take part in or consent to any corporate or shareholders or Unit Holders action or, save as expressly provided by this Deed, to interfere with or question the exercise or non-exercise by the Trustee of the rights and powers of the Trustee as the owner of the Property and Investments of the Trust Fund.
- (h) A new Trustee must execute a deed in such form as is approved by a majority of the Unit Holders in General Meeting whereby such new Trustee undertakes to the Unit Holders jointly and severally to observe and comply with all of the obligations of a Trustee hereunder.

## 7. GENERAL PROVISIONS

### 7.1. Variation of Trust

- (a) With the special consent of the Unit Holders, the Trustee may at any time and from time to time by supplemental deed or by resolution revoke, add to or vary all or any of the provisions of this Deed or any of the trusts hereinbefore limited or the trusts limited by any variation or alteration or addition made previously and may by the same or any other deed or resolution declare any new or other trusts or powers concerning the Trust Fund or any part or parts thereof the trusts whereof will have been so revoked added to or varied but so that the Rule against Perpetuities is not thereby infringed and so that such new or other trusts powers discretions alterations or variations:
  - (1) Will not affect the beneficial entitlement to any amount set aside for any Unit Holder prior to the date of the variation alteration or addition; and
  - (2) Are not in favour of or does not result in any benefit to the Founder or Trustee or either other than in its capacity as a Unit Holder where applicable.
- (b) This Deed is not capable of being revoked, added to or varied otherwise than as expressly herein provided.
- (c) Notwithstanding anything to the contrary hereinbefore expressed or implied, no discretion or power by this Deed conferred upon the Trustee or any other person may be exercised, and no provision of this Deed may operate so as to confer or be capable of conferring any benefit or interest on any Trustee, and this Clause is not capable of being varied as provided by Clause 7.1 or otherwise.

### 7.2. Reporting and Accounts

- (a) The Trustee will keep a complete and accurate record of all receipts and expenditures on account of the Trust Fund.
- (b) Promptly after the close of each Accounting Period, the Trustee will prepare a written accounting report (prepared in accordance with normally accepted accounting procedures) for such period consisting of a balance sheet and statement of income and expenditure and a list of assets held at the close of such year and a copy thereof will be furnished upon request to the Unit Holders.
- (c) With the consent of the Unit Holders the accounting report will include the names and addresses of all persons or firms having custody of all or any portion of the assets of the Trust Fund.
- (d) The Trustee will at the direction of the Unit Holders appoint an auditor to examine and ascertain the correctness of the accounts of the Trust Fund and the Trustee may, in its discretion without such direction, appoint an auditor if it sees fit.

### 7.3. Meetings and Notices

- (a) The Trustee or the Unit Holders of not less than 20 per cent of the registered Units in all classes with voting entitlement, or of Units of a given class with voting entitlements, may convene a meeting of the Unit Holders or Unit Holders of that class (as the case may be).

- (b) Subject to the consent of all the Unit Holders or the Unit Holders in a particular class (as the case may be) to shorter notice not less than one days notice will be given of any meeting of Unit Holders and such notice will specify the general nature of the business to be transacted and the place day and time of the meeting.
- (c) Notice of every meeting of Unit Holders will be given in any manner authorised by this Deed to:
  - (1) Every Unit Holder with voting entitlements, except those Unit Holders who (having no registered address within the Commonwealth of Australia) have not supplied to the Trustee an address within the Commonwealth of Australia for the giving of notices to them:
  - (2) Every person entitled to a Unit with voting entitlements in consequence of the death, mental incapacity, liquidation or bankruptcy of a Unit Holder who but for his death or bankruptcy would be entitled to receive notice of the meeting; and
  - (3) The auditor (if any) for the time being of the Trust Fund.
- (d) The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at that meeting.
- (e) The Chairman of the meeting will be a person appointed by a majority of the Unit Holders present and entitled to vote at such meeting.
- (f) At any meeting voting will be by a show of hands, unless a poll be demanded by Unit Holders holding not less than 20 per cent of the voting Units in all classes or Units of the class concerned issued and upon a poll every Unit Holder present in person or by proxy will have one vote for every Unit held by him with voting rights.
- (g) Votes may be given either personally or by proxy. A proxy may but need not be a Unit Holder and in the case of a Unit Holder being a Corporation, the proxy may be any officer of such Corporation.
- (h) In the case of joint registered Unit Holders, any one of such joint holders may vote either personally or by proxy as if he were solely entitled to the Units comprised in the joint holding but if more than one of such joint holders be present at any meeting either personally or by proxy that one of the persons to present whose names stands first in the register in respect of the joint holding will alone be entitled to vote in respect thereof. Several executors or administrators will for the purpose of this sub-Clause be deemed joint holders.
- (i) Every instrument of proxy will be in a form approved from time to time by the Trustee and will be deposited with the Trustee at any time before the time of holding the meeting at which the person named in such instrument proposes to vote.
- (j) A quorum for a meeting of Unit Holders, or a class of Unit Holders, will be registered Unit Holders present in person or by proxy and holding not less than 50 per cent of all issued voting Units in all classes or 50 percent of all issued voting Units of the class at the date of such meeting.

- (k) The Chairman may with the sanction of the meeting adjourn the meeting to such time and place as he will determine and he will adjourn any meeting at which a quorum is not present.
- (l) A notice may be given by the Trustee to any Unit Holder either personally or by sending it by post to him at his registered address or (if he has no registered address within the Commonwealth of Australia) to the address (if any) within the Commonwealth of Australia supplied by him to the Trustee for the giving of notices to him. Where a notice is sent by post, service of the notice will be deemed to be effected in the case of a notice of a meeting on the day after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post. If the Trustee will so determine a notice may be given by means of telex, telegram, cablegram, facsimile transmission or radiogram and service of such notice will be deemed to be effected if the telex, telegram, cablegram, facsimile transmission or radiogram is properly addressed paid for and lodged for transmission with a competent authority or body and to have been effected at the time at which in the ordinary course the telex, telegram, cablegram, facsimile transmission or radiogram would be delivered.
- (m) A notice may be given by the Trustee to the joint holders of a Unit by giving the notice to the Unit Holder first named in the register of Unit Holders in respect of the Unit.
- (n) A notice may be given by the Trustee to the persons entitled to a Unit in consequence of the death, mental incapacity, liquidation or bankruptcy of a Unit Holder by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased lunatic or liquidator or assignee of the bankrupt or by any like description at the address (if any) within the Commonwealth of Australia supplied for the purpose by the persons claiming to be entitled or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, mental incapacity, liquidation or bankruptcy had not occurred.
- (o) The signature to any notice to be given by the Trustee may be written or printed or stamped and the signature may be that of one or more of the Trustee or of any Director or Secretary of a corporate Trustee.
- (p) If a poll is duly demanded, it may be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll is the resolution of the meeting at which the poll was demanded; provided that a poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (q) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded is not entitled to a second or casting vote.

#### 7.4. Unit holders Consents

For the purposes of this Deed the consent of the Unit Holders or any class thereof to any act or thing or the direction of the Unit Holders or any class thereof in relation to any act or thing will conclusively be deemed to have been given on production of:

- (a) A consent in writing executed by or on behalf of all the Unit Holders or the class thereof as the case may be; or
- (b) A minute signed by the chairman of the meeting of the Unit Holders or a

class thereof that at a duly convened meeting of the Unit Holders or a class thereof a resolution was duly passed in favour of such consent or direction by a majority of (or in the case of special consent or special direction not less than 75 per cent) of the votes of Unit Holders of every class of Units present in person or by proxy at the meeting or on a poll if the same be demanded.

7.5. Acts by more than one Trustee

- (a) If there are at any time 2 or more Trustees:
- (1) They must act jointly, and they may in writing delegate the all or any of the powers or discretionary authorities hereby conferred on the Trustee to a committee of the Trustees or to one or more of the Trustees;
  - (2) Any exercise by those Trustees of any power, discretion or authority conferred on the Trustee by this trust Deed (including without limiting the generality of the foregoing the variation of any of the Trusts provisions terms and conditions herein contained pursuant to Clause 7.1 may be made:
    - (A) In writing signed by all (or where Clause 7.5 (a)(3)(C) applies, by a majority of) the Trustees;
    - (B) By a resolution duly passed at a meeting of the Trustees; or
    - (C) As provided in Clause 7.5 (a)(3)(C);
  - (3) In the event of disagreement between the Trustees as to any matter affecting the Trust Fund or as to the exercise or omission or abstention from exercising any of the Trustees' powers and discretions hereunder:
    - (A) The matter for decision must be referred to a vote of all the Trustees (either at a meeting of the Trustees or by telephone or other means of communication allowing all persons participating to hear each other at the same time);
    - (B) In the event of there being a majority for or against the proposal, the Trustees must, subject as hereinafter in this Clause 7.5 (a)(3)(C) provided, give effect to the wishes of such majority as though it were a decision by all the Trustees; and
    - (C) In the event of deadlock, the matter must if any Trustee so requires be referred for decision to an arbitrator appointed in accordance with any arbitration law currently in force in the place where a majority of the Trustees are resident and, if a majority is not resident within one jurisdiction, in the place where this trust Deed was executed by the Founder, and the Trustees must give effect to the award of the arbitrator under such arbitration as though it were a decision by all the Trustees, and if any Trustee fails to do so any other Trustee may do so in the name of all the Trustees;

PROVIDED NEVERTHELESS that no variation may be made

pursuant to Clause 7.1 except by the unanimous decision of the Trustees; and

- (4) Every Trustee which is a corporation or Company may attend meetings of the Trustees by its representative appointed as provided in Clause 7.5 (b);
- (b) Every Trustee which is a corporation or Company may exercise or concur in exercising any discretion or power hereby conferred on the Trustee by a resolution of such corporation or Company or by a resolution of its board of directors or governing body, or may delegate the right and power to exercise or concur in exercising any such discretion or power to a representative appointed for the purpose by its board of directors or governing body.

#### 7.6. Disclosure

Without prejudice to any right of the Trustee under the general law to refuse disclosure of any document, it is hereby declared that the Trustee is not bound to disclose to any person any of the following documents, that is to say:

- (a) Any document disclosing any deliberations of the Trustee (or any of them, if more than one) as to the manner in which the Trustee should exercise any power or any discretion conferred upon the Trustee by this trust Deed, or disclosing the reasons for any particular exercise or non-exercise of any such power or any such discretion or the material upon which such reasons were or might have been based; and
- (b) Any other document relating to the exercise or proposed exercise of any power or any discretion conferred on the Trustee by this trust Deed (not being legal advice obtained by the Trustee at the cost of the Trust Fund).

#### 7.7. Professional charging power

- (a) Any Trustee (not being the Founder) who may be a solicitor or accountant, or any firm of which they are a member, is entitled to make all usual and proper charges for their professional and other services in the administration of the Trusts hereof and for their time and trouble that they would have been entitled to make if not a Trustee and so employed. The Trustee from time to time may charge and retain out of the Trust Fund such Trustee's commission as it may think reasonable and as the Unit Holders in General Meeting may approve.
- (b) Subject to the preceding clause 7.7(a), the Trustee is not entitled to charge or pay itself any fee or commission for the purpose of carrying out the Project or administering this Trust.

## FIRST SCHEDULE

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1. Date of Making this Deed

2. Name of Trust

Mernda on the Park Swim School Unit Trust

3. State or Territory

Victoria

4. Founder

Nicholas Terziovski

5. Trustee

MERENDA ON THE PARK LIFESTYLE ACTIVITY CENTRE PTY LTD (ACN 162 210 595)

6. Initial Unit Holders

Unit Holder Name	Unit Class	No. of Units	Par Value per Unit	Amount Paid per Unit for Initial Sum	Amount Unpaid per Unit
Christopher & Stephanie Chambers	A	90,000	\$1.00	\$1.00	\$0.00
G and J Howgate Super Pty Ltd (ACN 616 884 201) ATF G&J Howgate Superannuation Fund	A	100,000	\$1.00	\$1.00	\$0.00
Gesslein Family Super Pty Ltd (ACN 164 046 717)	A	75,000	\$1.00	\$1.00	\$0.00
Langdon Family Superannuation Fund Pty Ltd (ACN 625 359 686) ATF Langdon Family Superannuation Fund	A	100,000	\$1.00	\$1.00	\$0.00
Dian Novia Permata Putri	Ordinary	1,000	\$1.00	\$0.00	\$1.00

7. Additional Trustee Powers

Nil

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SECOND SCHEDULE

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# Certificate

The Mernda on the Park Swim School Unit Trust

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Certificate No.: .....1.....

for .....90,000 ..... unit(s)

This is to certify that:

Christopher and Stephanie Chambers

.....  
Please Print Name of Unit Holder

is the Registered Holder of the undermentioned Units in the above named Trust constituted by the Deed and entered in the Register of Unit Holders on the:

..... day of ..... 2019

Number of Unit(s)	Unit Class	Par Value per Unit	Amount Paid per Unit (\$)	Amount Unpaid per Unit (\$)	Fixed Income Return per Unit (%)
90,000	A	\$1.00	\$1.00	\$0.00	9.15% pa

Executed by and on behalf of the Trustee:

.....  
Trustee/Director of Trustee Company

.....  
Date

Note: This original certificate must be delivered to the Trustee on application to transfer any of the above units.

# Certificate

## The Mernda on the Park Swim School Unit Trust

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Certificate No.: .....2.....

for .....100,000 ..... unit(s)

This is to certify that:

G and J Howgate Super Pty Ltd (ACN 616 884 201) ATF G&J Howgate Superannuation Fund

.....  
Please Print Name of Unit Holder

is the Registered Holder of the undermentioned Units in the above named Trust constituted by the Deed and entered in the Register of Unit Holders on the:

..... day of ..... 2019

Number of Unit(s)	Unit Class	Par Value per Unit	Amount Paid per Unit (\$)	Amount Unpaid per Unit (\$)	Fixed Income Return per Unit (%)
100,000	A	\$1.00	\$1.00	\$0.00	9.15% pa

Executed by and on behalf of the Trustee:

.....  
Trustee/Director of Trustee Company

.....  
Date

Note: This original certificate must be delivered to the Trustee on application to transfer any of the above units.

# Certificate

The Mernda on the Park Swim School Unit Trust

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Certificate No.: .....3.....

for .....75,000 ..... unit(s)

This is to certify that:

Gesslein Family Super Pty Ltd (ACN 164 046 717)

.....  
Please Print Name of Unit Holder

is the Registered Holder of the undermentioned Units in the above named Trust constituted by the Deed and entered in the Register of Unit Holders on the:

..... day of ..... 2019

Number of Unit(s)	Unit Class	Par Value per Unit	Amount Paid per Unit (\$)	Amount Unpaid per Unit (\$)	Fixed Income Return per Unit (%)
75,000	A	\$1.00	\$1.00	\$0.00	9.15% pa

Executed by and on behalf of the Trustee:

.....  
Trustee/Director of Trustee Company

.....  
Date

Note: This original certificate must be delivered to the Trustee on application to transfer any of the above units.

# Certificate

The Mernda on the Park Swim School Unit Trust

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Certificate No.: .....4.....

for .....100,000 ..... unit(s)

This is to certify that:

Langdon Family Superannuation Fund Pty Ltd (ACN 625 359 686) ATF Langdon Family Superannuation Fund

.....  
Please Print Name of Unit Holder

is the Registered Holder of the undermentioned Units in the above named Trust constituted by the Deed and entered in the Register of Unit Holders on the:

..... day of ..... 2019

Number of Unit(s)	Unit Class	Par Value per Unit	Amount Paid per Unit (\$)	Amount Unpaid per Unit (\$)	Fixed Income Return per Unit (%)
100,000	A	\$1.00	\$1.00	\$0.00	9.15% pa

Executed by and on behalf of the Trustee:

.....  
Trustee/Director of Trustee Company

.....  
Date

Note: This original certificate must be delivered to the Trustee on application to transfer any of the above units.

# Certificate

## The Mernda on the Park Swim School Unit Trust

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Certificate No.: .....5.....

for .....1,000 ..... unit(s)

This is to certify that:

Dian Novia Permata Putri

.....  
Please Print Name of Unit Holder

is the Registered Holder of the undermentioned Units in the above named Trust constituted by the Deed and entered in the Register of Unit Holders on the:

..... day of ..... 2019

Number of Unit(s)	Unit Class	Par Value per Unit	Amount Paid per Unit (\$)	Amount Unpaid per Unit (\$)	Fixed Income Return per Unit (%)
1,000	ORD	\$1.00	\$1.00	\$0.00	% pa

Executed by and on behalf of the Trustee:

.....  
Trustee/Director of Trustee Company

.....  
Date

Note: This original certificate must be delivered to the Trustee on application to transfer any of the above units.

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## THIRD SCHEDULE

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### PART 1: RIGHTS AND CLASSES OF UNITS

Units may be divided into the following classes with the following rights, privileges and restrictions:

#### 1. **Class A Units**

(a) Entitlements (**preference units**): Each class A Unit carries:

- (1) The right, ranking in priority to all other classes of Units, to receive a part of the Income of the Trust Fund in each Accounting Period at a rate or proportion set out in the Certificate issued for that Unit on the amount paid on that Unit; and
- (2) The right, ranking in priority to all other classes of Units, to payment out of the capital of the Trust Fund of the amount paid on that Unit together with any Income due and owing.

(b) Restrictions:

- (1) No right to vote at any meeting of the Unit Holders or on any resolution of Unit Holders other than in accordance with Clauses 1A, 2.3 and Clause 7.1.
- (2) Upon receipt of distribution of Income and capital from the Trust Fund as outlined in clause 1(a)(1) and 1(a)(2) herein, Class A Unit Holders will have no further entitlement to any distribution of Income of capital from the Trust Fund.

#### 2. **Class B Units**

(a) Entitlements (equal entitlement to capital):

Subject to the rights attaching to class A Units, each class B Unit carries entitlement to the income of the Trust Fund in each Accounting Period and the capital of the Trust Fund as initially constituted and as existing from time to time, which ranks equally with each Ordinary Units.

(b) Restrictions:

- (1) No right to vote at any meeting of the Unit Holders or on any resolution of Unit Holders other than in accordance with Clause 2.3 and Clause 7.1;

#### 3. **Class C Units**

(a) Entitlements (equal entitlement to income):

Subject to the rights attaching to class A Units, each class C Unit carries entitlement to Income of the Trust Fund in each Accounting Period, which ranks equally with each Ordinary Unit.

(b) Restrictions:

- (1) No right to vote at any meeting of the Unit Holders or on any resolution of Unit Holders other than in accordance with Clause

2.3 and Clause 7.1;

- (2) No entitlement to the capital of the Trust Fund.

4. **Class D Units**

- (a) Entitlements (voting):

Each class D Unit carries the right to one vote at any meeting of Unit Holders holding Ordinary Units and any meeting in accordance with Clauses 2.3 and Clause 7.1.

- (b) Restrictions:

- (1) No entitlement to the Income of the Trust Fund; and
- (2) No entitlement to the capital of the Trust Fund.

5. **Ordinary Units**

- (a) Entitlements

Subject to the rights attaching to class A Units, each Ordinary Unit carries all of the rights afforded to a Unit Holder in accordance with the terms of this Deed, including the right to Income and the capital of the Trust Fund.

- (b) Restrictions

Nil



## PART 2: PERMITTED TRANSFERS

The following transfers are permitted transfers under Clause 3.3 namely:

- (a) To any of the following permitted transferees –
  - (1) Any other Unit Holder holding Units of the class being transferred;
  - (2) Any relative of the transferor falling within the following description (called specified relatives) namely, the spouse son daughter son in law daughter in law or grandchild or other direct issue;
  - (3) The trustee or trustees of any deed of trust or settlement made solely for the benefit of one or more of the specified relatives of the transferor to be held by such trustee or trustees upon the terms of such deed (called a family trust);
  - (4) Any Corporation, all of the shares in which are beneficially owned by permitted transferees as aforesaid or by one or more of them; and
  - (5) Where the transferor is the trustee of a deed of trust or settlement or is a Corporation, then to any specified relative (defined as aforesaid) of any beneficiary under the deed of trust or settlement or of any beneficial owner of shares in the Corporation (as the case may be);
- (b) From the executors or administrators or other legal personal representatives of a deceased Unit Holder to any person who is already a Unit Holder holding Units of the class held by the deceased or to the widow or widower of the deceased Unit Holder or to any of the specified relatives of such Unit Holder entitled in each case thereto under or by virtue of the will of such Unit Holder or as one of his next of kin;
- (c) From the trustees of a family trust to the beneficiary or beneficiaries entitled thereto pursuant to such family trust;
- (d) From the trustees of the will of any deceased Unit Holder or of any family trust on any change of trustees to the trustees for the time being of such will or family trust; and
- (e) In the case of a Unit Holder being a Corporation, from such Unit Holder to another Corporation which is in relation to such Unit Holder a related Corporation within the meaning stated in the Corporations Law.

### PART 3: PROCEDURES FOR TRANSFERS

The transfer procedure is as follows:

- (a) A Unit Holder desiring to sell or transfer a Unit (called the "proposed transferor") will serve the Trustee with a notice (called "a transfer notice") of his desire specifying the Units which he desires to sell or transfer and the price he fixes as the value thereof and such notice will appoint the Trustee his agent to sell the Units at the value determined as hereinafter provided;
- (b) A transfer notice may include several Units in which case it will operate as if it were a separate notice in respect of each Unit. A transfer notice will not be revocable except with the sanction of the Trustee;
- (c) The Trustee may accept the value fixed by the Unit Holder for the purpose of this clause but if the Trustee is of opinion that it is too high or too low or if no value is stated in the transfer notice the Trustee may refer the question to the auditor of the Trust or to any registered company auditor to be selected by the Trustee for the determination of the Fair Value and the Fair Value as determined by such auditor will be deemed to be the value of the Units for the purpose of this clause. Such auditor in making such valuation will be deemed to be acting as an expert and not as an arbitrator. The costs of obtaining the determination of the auditor will be borne as to one half by the person giving the transfer notice and as to the other half by the Trust;
- (d) Units comprised in a transfer notice will, in the first instance, be offered by notice in writing to all the Unit Holders (except the proposed transferor) as nearly as may be in proportion to their respective holdings of Units provided that where the Units are divided into different classes, the Units comprised in a transfer notice will in the first instance be offered to the Unit Holders of Units of that class (excepting the proposed transferor) as nearly as may be proportionate to their respective holdings of Units of that class;
- (e) The offer to Unit Holders will state that if the same is not accepted in whole or in part within fourteen days from its receipt it will be deemed to be declined and such offer will also require any Unit Holder who desires to purchase Units in excess of his said proportion to state how many additional Units he desires to purchase at the Fair Value;
- (f) Any Units not accepted from the said offer will be used for satisfying the said request for additional Units but if there will be insufficient of the said unaccepted Units to satisfy in full all such requests for additional Units the said unaccepted units will be distributed amongst the Unit Holders making such request as nearly as may be in proportion to the respective holdings of Units (or of Units of the particular class in question as the case may be) in like manner to that set out in paragraph (d) provided that no Unit Holder will be bound to take more additional Units than those he will have offered to purchase;
- (g) If and to the extent to which any offer made as aforesaid is accepted, the proposed transferor will be bound to transfer the Units accepted and the Unit Holder accepting the offer will be bound to pay the Fair Value as aforesaid for the Units;

- (h) Any Unit comprised in the transfer notice, which has not been accepted as for sale aforesaid will be dealt with as follows:
- (1) The Trustee will use its best endeavours to find a Unit Holder or any person selected by the Trustee as one whom it is desirable in the interest of the Trust to admit as a Unit Holder and who is willing to purchase the Unit at the Fair Value thereof fixed as aforesaid;
  - (2) If before the expiration of two months from the date of service on the Trustee of such transfer notice the Trustee will find a Unit Holder or person selected as aforesaid willing to purchase the Units they will give notice to the proposed transferor and he will thereupon be bound upon payment of the Fair Value to transfer the Units to the Unit Holder or person selected as aforesaid willing to purchase the same; and
  - (3) If by the expiration of the said period of two months the Trustee will not find a Unit Holder or person selected as aforesaid willing to purchase the whole of the Units mentioned in the transfer notice and give notice in manner aforesaid the proposed transferor will at any time within three months thereafter be at liberty to sell or transfer the Units not so purchased to any person at the Fair Value and on terms no more favourable than those upon which the Trustee has been authorised to sell;
- (i) If in any case a Unit Holder having become bound to transfer any Units will make default in so doing the Trustee may receive the purchase money and will thereupon cause the name of the person accepting such Units to be entered in the books of the Trust as the Unit Holder thereof and will hold the purchase money in trust for the Unit Holder in default. The receipt of the Trustee for the purchase money will be a good discharge to the person accepting such Units and after that person's name has been entered in the books of the Trust in purported exercise of the aforesaid power the validity of the proceedings will not be questioned by any person and
- (j) The Trustee may with the consent of the Unit Holders (of a relevant class or classes) vary the foregoing procedure to meet the circumstances of any particular case and in particular may give any person or persons a preferential right to acquire any Units.

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SIGNING PAGE

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**FOUNDER**

<b>SIGNED SEALED AND DELIVERED</b>	)	
by <b>NICHOLAS TERZIOVSKI</b>	)	
in the presence of:	)	.....
.....		
Witness		
.....		
Name of Witness		

**TRUSTEE**

<b>EXECUTED by MERNDA ON THE PARK LIFESTYLE ACTIVITY CENTRE PTY LTD)</b>	
<b>(ACN 162 210 595)</b> by being signed by the	)
person(s) authorized to sign on behalf of	)
the Company in accordance with	
the Corporations Act 2001	
.....	.....
Director/Secretary	Director
.....	.....
Full Name	Full Name

**UNIT HOLDERS**

<b>EXECUTED by LANGDON FAMILY SUPERANNUATION FUND PTY LTD</b> )	
<b>(ACN 625 359 686)</b> by being signed by the )	
person(s) authorized to sign on behalf of )	
the Company in accordance with	
the Corporations Act 2001	
.....	
Director	Director
.....	
Full Name	Full Name

<b>EXECUTED by Gesslein Family Super Pty Ltd</b> )	
<b>(ACN 164 046 717)</b> by being signed by the )	
person(s) authorized to sign on behalf of )	
the Company in accordance with	
the Corporations Act 2001	
.....	
Director	Director
.....	
Full Name	Full Name

<b>EXECUTED by G and J Howgate Super Pty Ltd</b> )	
<b>(ACN 616 884 201)</b> by being signed by the )	
person(s) authorized to sign on behalf of )	
the Company in accordance with	
the Corporations Act 2001	
.....	
Director	Director
.....	
Full Name	Full Name

**SIGNED SEALED AND DELIVERED** )  
by **Christopher Chambers** )  
in the presence of: ) .....

.....  
Witness

.....  
Name of Witness

**SIGNED SEALED AND DELIVERED** )  
by **Stephanie Chambers** )  
in the presence of: ) .....

.....  
Witness

.....  
Name of Witness

**SIGNED SEALED AND DELIVERED** )  
by **Dian Novia Permata Putri** )  
in the presence of: ) .....

.....  
Witness

.....  
Name of Witness

ANNEXURE A

UNIT  
APPLICATION

Mernda on the Park Swim School  
Unit Trust

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I, .....

of .....

hereby apply for.....

“A” Class Unit(s) for the sum of \$.....

at the price of \$.....

per Unit which A Class Unit(s) are preference Units which entitle the holder to a Fixed Return

of \$.....1.00.....

per Unit from the Income or capital in Mernda on the Park Swim School Unit Trust

and agree to be bound by the terms of the Deed and to hold such Units subject to the terms and conditions in the Deed.

Deed dated on...../...../..... where there was established a trust known as

“Mernda on the Park Swim School Unit Trust”

Executed by:

.....  
Signature

...../...../  
Date

.....  
Please Print Name

.....  
Capacity



## ANNEXURE B

### INFORMATION MEMORANDUM

## ANNEXURE B

### CONCEPT PLAN