

# **Maxcap MF Trust Deed (v4)**

**BETWEEN**

SHERBROOK & CO PTY LTD

**AND**

The parties listed in Schedule 1 to this Deed

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|                   | <b>June 2019</b>   | <b>5</b> |

## Parties

**SHERBROOK & CO PTY LTD (ACN 611 281 906)**  
of Level 9, 575 Bourke Street, Melbourne VIC 3000

(*Trustee*)

The parties listed in Schedule 1 to this Deed

(*Beneficiaries*)

## Background

- A. The Trustee has agreed to hold the Shares as bare trustee on behalf of the Beneficiaries on the terms and condition set out in this deed.

## Terms and Conditions

### 1 Definitions and Interpretation

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#### 1.1 Definitions

The following definitions apply in this deed unless the context otherwise requires:

#### 1.2 Interpretation

**Ancillary Costs** means any cost or expense relating to the acquisition and holding of the Shares.

**Beneficiary** means the persons listed in Schedule 1 to this deed.

**Business Day** means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in Melbourne in the State of Victoria.

**Company** means Maxcap First Mortgage Fund (investor No. 164525)

**Corporations Act** means the Corporations Act 2001 (Cth).

**Deal** to grant options or rights over, to sell, transfer, assign, part with the benefit of, declare a trust over, encumber or otherwise deal with.

**Power** means a power, right, authority, discretion or remedy which is conferred on the registered holder of the Shares.

**Purchase Moneys** means all of the funds paid to acquire the Shares, up to a maximum of \$1,600,000.

**Respective Interest** means the ownership interest that each Beneficiary has in the Shares, which is stated in Schedule 1 to this deed.

**Shares** means the shares or units in the company held by the Trustee or that will be held by the Trustee which the Trustee will acquire using the Purchase Moneys.

### 2 Declaration of trust

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#### 2.1 Shares to be held on trust

The Trustee and the Beneficiaries hereby acknowledge and declare that:

- (a) the Trustee holds or will hold, and at all times will hold, any rights or interest the Trustee has or will have in the Shares upon bare trust absolutely for the Beneficiaries as tenants in common in proportion to their Respective Interests.
- (b) the Beneficiaries have provided all of the Purchase Moneys for the acquisition of the Shares and are the real purchasers of the Shares, in proportion to their Respective Interests.
- (c) the Trustee has not and will not provide any of the Purchase Moneys or Ancillary Costs to complete the acquisition of the Shares or to hold the Shares.
- (d) the Beneficiaries will indemnify the Trustee for all Purchase Moneys, Ancillary Costs and any other costs or outgoings incurred in respect of the performance by the Trustee of any of its obligations under this Deed or at law as they relate to the Shares, in proportion to their Respective Interest.

## **2.2 Directions**

The Trustee must:

- (a) immediately notify the Beneficiaries of any notice, correspondence or dealing relating to the Shares .
- (b) not exercise a Power without the unanimous consent of the Beneficiaries.
- (c) not Deal with the Shares without the unanimous consent of the Beneficiaries.

## **2.3 Rights to Shares and Dividends**

- (a) the Beneficiaries are and at all times will be absolutely entitled to the benefit of the Shares in proportion to their Respective Interests together with all dividends, rights, profits or gains accrued or to accrue in respect of the Shares;
- (b) on demand by a Beneficiary, the Trustee must immediately transfer the Shares to the Beneficiary for nil consideration, in proportion to that Beneficiary's Respective Interest, and the Trustee is authorised to complete any transfer from or other document required for the purposes of this clause 2.3(b).

# **3 Term and termination**

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## **3.1 Term**

This deed commenced on the date of this deed, and unless otherwise terminated earlier, ends on the 80<sup>th</sup> anniversary of this date of this deed.

## **3.2 Cessation**

This deed may be terminated as follows:

- (a) The Trustee may terminate this deed at any time, upon not less than 90 days' written notice; or
- (b) if the Trustee is required by the Company to exercise a Power, or Deal with the Shares (**Action**) and the Beneficiaries do not unanimously consent to taking any particular Action, this deed is immediately terminated.

Upon termination, the Trustee must transfer the Shares to the Beneficiaries, in proportion to their Respective Interest.

# **4 Confidentiality**

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## **4.1 No disclosure**

The Trustee and the Beneficiaries must maintain absolute confidentiality concerning the existence and terms of this deed and no public announcement or communication relating

to the negotiations of the parties or the existence, subject matter or terms of this deed may be made or authorised by, or on behalf of the either party without the prior written consent of the other, except that a party may make such disclosures in relation to this deed as may be necessary:

- (a) to his professional advisers, bankers, financial advisers and financiers or to any person whose consent is required under this deed or for a transaction contemplated by it upon each of those persons undertaking to keep confidential any information so disclosed; or
- (b) to comply with any applicable law or the requirement of any regulatory body.

## **5 Notices**

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### **5.1 Notices**

A notice, consent or other communication under this deed is only effective if it is in English, in writing, is signed and is either left at the addressee's address or sent to the addressee by mail. If it is sent by mail, it is taken to have been received three Business Days after it is posted. If it is faxed during business hours, it is taken to have been received on that day provided that a confirmation sheet has been produced. Otherwise it is deemed to have been received on the next Business Day.

### **5.2 Address for service**

A person's address is that set out in this deed, and if that person is also a corporation, the registered address of that person as appears on a publicly available search of the register of that corporation.

## **6 General**

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### **6.1 Waiver**

A waiver by either party of any breach or a failure to enforce or to insist upon the observance of a condition of this deed will not be a waiver of any other or of any subsequent breach.

### **6.2 Severance**

If any part of this deed is invalid, unenforceable, illegal, void or voidable for any reason, this deed will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from this deed or read down to the extent necessary to overcome the difficulty.

### **6.3 Entire agreement**

This deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

### **6.4 Costs and Expenses**

The Beneficiaries are liable for costs, charges, expenses (including any stamp duty and other taxes) of or incidental to the preparation, execution and registration of this deed, in proportion to their Respective Interest.

### **6.5 Successors and assigns**

This deed will be binding on and continue for the benefit of each party, its successors and assigns.

**6.6 Further assurances**

The parties will do everything reasonably necessary to give effect to this deed and to the transactions contemplated by it and will use all reasonable endeavours to cause relevant third parties to do likewise.

**6.7 Assignment**

- (a) This deed is personal to and will not be assigned by the Trustee without the consent in writing of the other parties.
- (b) The Beneficiaries may assign their rights and obligations under this deed by notice in writing to the other parties.

**6.8 Continuing obligations**

The expiration or termination of this deed does not operate to terminate any of the continuing obligations under this deed and they will remain in full force and effect and be binding on the party concerned.

**6.9 Applicable law**

This deed is governed by and construed in accordance with the laws of the State of Victoria and the parties irrevocably submit to the jurisdiction of the courts of that State.

**6.10 Counterparts**

- (a) This deed may be executed by the parties by counterpart and if so, the counterparts taken together constitute one and the same instrument.
- (b) A copy of a counterpart sent by facsimile machine or emailed as a PDF document must be treated as an original counterpart and is sufficient evidence of the execution of the original and may be produced in evidence for all purposes as the original.

## Schedule 1      Details of the Beneficiaries and their Respective Interests as at 30<sup>th</sup> June 2020

| Beneficiary   | Respective Interest | \$                 | \$                    |
|---|---------------------|--------------------|-----------------------|
|   |                     | Value              | NAV                   |
| Clarfield Pty Ltd (ACN 57 546 936 219) as trustee for JA Dodd Staff Superannuation Fund of 14 Birdwood Avenue Brighton VIC 3186             | 9.68%               | \$136,009          | \$137,526.05          |
| Sneaves Super Pty Ltd (ACN 611 172 073) as trustees for Sneddon Family Superannuation Fund of 24 Myrtle Grove Blackburn VIC 3130            | 9.68%               | \$136,009          | \$137,526.05          |
| Ms Dorothy Broadbent C/- HLB Mann Judd GPO Box 2850 Melbourne VIC 2001  | 9.68%               | \$136,009          | \$137,526.05          |
| Pro-Ex Developments Pty Ltd as trustee for the Pro-Ex Superannuation Fund of 245 Mill Road, Lara, Victoria, 3212                            | 6.45%               | \$90,673           | \$91,684.03           |
| Estate of the late Dianne S Lord of PO Box 101, Barwon Heads VIC 3227   | 9.68%               | \$136,009          | \$137,526.05          |
| Meyrick Webster Superannuation Fund Pty Ltd (ACN 136689480) as trustee for Meyrick Webster Superannuation Fund of PO Box 7256 Brighton 3186 | 6.45%               | \$90,673           | \$91,684.03           |
| Phyllis Dorey & Ronald Dorey as trustees for Serejski Superannuation Fund of 73/461 St Kilda Road Melbourne VIC 3004                        | 6.45%               | \$90,673           | \$91,684.03           |
| Danmere Pty Ltd as trustees for The Family Fleming Super Fund of Suite 10, 205 Montague Road South Brisbane QLD 4101                        | 6.45%               | \$90,673           | \$91,684.03           |
| Doris Enterprises Pty Ltd as trustee for Doris Superannuation Fund of 12 Struan Street Toorak VIC 3142                                      | 6.45%               | \$90,673           | \$91,684.03           |
| L & H Perlen Nominees Pty Ltd (ACN 005108805) as trustee for Louis Perlen Superannuation Fund of 41/461 St. Kilda Road Melbourne VIC 3004   | 6.45%               | \$90,673           | \$91,684.03           |
| John Hilton-Wood of 12 Struan Street Toorak VIC 3142  | 6.45%               | \$90,673           | \$91,684.03           |
| Leslie Rodgers & Valerie Rodgers as trustees for Rodgers Superannuation Fund of PO Box 98 Woodend Vic 3442                                  | 3.23%               | \$45,336           | \$45,842.02           |
| J Child Nominees Pty Ltd (ACN 626 169 202) as trustee for J Child Family Trust Lev 9, 575 Bourke Street Melbourne VIC 3000                  | 9.68%               | \$136,009          | \$137,526.05          |
| M & E Burgess Super Pty Ltd as trustee for MEVO Family Superannuation Fund of 47 Armadale Street Armadale VIC 3143                          | 3.23%               | \$45,336           | \$45,842.02           |
|   |                     |                    |                       |
|   | <b>100%</b>         | <b>\$1,405,428</b> | <b>\$1,421,102.49</b> |

Execution Page

**Executed on 15<sup>th</sup> November 2017**

**EXECUTED by SHERBROOK & CO Pty Ltd** )  
**(ACN 611 281 906)** in accordance with section )  
127(1) of the Corporations Act 2001 )

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a series of loops and a final flourish.

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Signature of Sole Director / Company  
Secretary



# MaxCap

## Investment Management

August 14, 2020

### Sherbrook & Co Pty Ltd ATF MaxCap Trust

Att: Andrew Lord  
Level 9  
575 Bourke Street  
Melbourne VIC 3000  
Australia

Investor No.: 164525

Part A: Your Details:

Tax file number (TFN)/ Tax identification number(TIN) : Received; Country of residence at 30 June 2020 : Australia; You are recorded as being: Trust

## MaxCap First Mortgage Fund

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### 2020 tax return information for the year ended 30 June 2020

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#### Part B: Summary of 2020 tax return (supplementary section) items

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| Item                                | Amount (\$) | Tax return label |
|-------------------------------------|-------------|------------------|
| Non-primary production (NPP) income | 106,299.37  | 13U              |
| Franked distributions from trusts   |             | 13C              |
| Franking credits                    |             | 13Q              |
| TFN amounts withheld                |             | 13R              |

#### Part B: Capital Gains Information

| Item                             | Amount (\$) | Tax return label |
|----------------------------------|-------------|------------------|
| Net capital gain                 |             | 18A              |
| Total current year capital gains |             | 18H              |

#### Part B: Foreign source income and foreign assets or property

| Item                             | Amount (\$) | Tax return label |
|----------------------------------|-------------|------------------|
| Assessable foreign source income |             | 20E              |
| Other net foreign source income  |             | 20M              |
| Foreign income tax offset        |             | 20O              |

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#### Part C: Components of Distribution

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| Australian income    | Cash Distribution | Tax Paid or Franking Credits | Taxable Amount |
|----------------------|-------------------|------------------------------|----------------|
| Interest             | 106,299.37        |                              | 106,299.37     |
| Dividends: unfranked |                   |                              |                |

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# MaxCap

## Investment Management

August 14, 2020

### Sherbrook & Co Pty Ltd ATF MaxCap Trust

Att: Andrew Lord  
Level 9  
575 Bourke Street  
Melbourne VIC 3000  
Australia

Investor No.: 164525

Part A: Your Details:

Tax file number (TFN)/ Tax identification number(TIN) : Received; Country of residence at 30 June 2020 : Australia; You are recorded as being: Trust

## MaxCap First Mortgage Fund

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### 2020 tax return information for the year ended 30 June 2020

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Other assessable Australian income

NCMI - Non-primary production

Excluded from NCMI - Non-primary production

|  |                   |  |                   |
|--|-------------------|--|-------------------|
| <b>Non-primary production income (A)</b> | <b>106,299.37</b> |  | <b>106,299.37</b> |
|--|-------------------|--|-------------------|

Dividends: franked amount (X)

|                      |                          |                         |                       |
|----------------------|--------------------------|-------------------------|-----------------------|
| <b>Capital gains</b> | <b>Cash Distribution</b> | <b>Foreign Tax Paid</b> | <b>Taxable Amount</b> |
|----------------------|--------------------------|-------------------------|-----------------------|

Discounted capital gain

Capital gains: other method

NCMI capital gains

**Net capital gain**

CGT concession amount

**Total current year capital gains (B)**

|                       |                          |                           |                       |
|-----------------------|--------------------------|---------------------------|-----------------------|
| <b>Foreign income</b> | <b>Cash Distribution</b> | <b>Foreign Tax Offset</b> | <b>Taxable Amount</b> |
|-----------------------|--------------------------|---------------------------|-----------------------|

Assessable foreign source income

**Cash distribution (C)**

|  |                   |  |  |
|--|-------------------|--|--|
| <b>Cash distribution sub-total (A+X+B+C)</b> | <b>106,299.37</b> |  |  |
|--|-------------------|--|--|

**Other non-assessable amounts**

Tax-free amounts

Tax-deferred amounts

|                                |                   |  |  |
|--------------------------------|-------------------|--|--|
| <b>Gross cash distribution</b> | <b>106,299.37</b> |  |  |
|--------------------------------|-------------------|--|--|

**Other amounts deducted from trust distribution**

TFN amounts withheld

|                              |                   |  |  |
|------------------------------|-------------------|--|--|
| <b>Net cash distribution</b> | <b>106,299.37</b> |  |  |
|------------------------------|-------------------|--|--|

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# MaxCap

Investment Management

August 14, 2020

**Sherbrook & Co Pty Ltd ATF MaxCap Trust**

Att: Andrew Lord  
Level 9  
575 Bourke Street  
Melbourne VIC 3000  
Australia

Investor No.: 164525

Part A: Your Details:

Tax file number (TFN)/ Tax identification number(TIN) : Received; Country of residence at 30 June 2020 : Australia; You are recorded as being: Trust

## **MaxCap First Mortgage Fund**

If any of the information above in Part A is incorrect, please update your details with the administrator at [InvestorRegistry@apexfunds.com.au](mailto:InvestorRegistry@apexfunds.com.au)

# MaxCap

## Investment Management

July 28, 2020

### Sherbrook & Co Pty Ltd ATF MaxCap Trust

Att: Andrew Lord  
Level 9  
575 Bourke Street  
Melbourne VIC 3000  
Australia

Investor No.: 164525

## MaxCap First Mortgage Fund

### Fund Performance for series Ordinary Units

|                                  |                | Net Asset Value |
|----------------------------------|----------------|-----------------|
| Opening Net Asset Value per Unit | March 31, 2020 | AUD 1.0093      |
| Closing Net Asset Value per Unit | June 30, 2020  | AUD 1.0112      |
| Performance for the period       |                | 2.01%           |

### Summary of Unitholder Activity for the period

| Transaction Type | Date           | Consideration /<br>(Proceeds) | NAV per Unit<br>AUD | Units Issued /<br>(Redeemed) | Balance of<br>Units held |
|------------------|----------------|-------------------------------|---------------------|------------------------------|--------------------------|
| Opening Balance  | March 31, 2020 |                               |                     |                              | 1,550,000                |
| Redemption       | June 24, 2020  | (145,212.76)                  | 1.0044              | (144,572)                    |                          |
| Closing Balance  | June 30, 2020  |                               |                     |                              | 1,405,428                |

### Unitholder Value as of June 30, 2020

|                          |                         |
|--------------------------|-------------------------|
| Number of units held     | 1,405,428               |
| Net Asset Value per Unit | 1.0112                  |
| Value of Unitholding     | <b>AUD 1,421,102.49</b> |

Your total commitment is 1,550,000.00, of which, 0.00 remained uncalled as of 30-Jun-2020.

30th June 2020

Danmere Pty Ltd  
205 Montague Road  
South Brisbane QLD 3142

RE: Unitholding of The Family Fleming Super Fund

Holding investment in the SHERBROOK & Co Pty Ltd ATF Maxcap MF Trust

This confirmation is issued by SHERBROOK & CO Pty Ltd as the arranger of  
the special purpose vehicle SHERBROOK & CO Pty Ltd (ACN 611 281 906)  
as trustee for 'Maxcap MF Trust'

| DISTRIBUTION ADVICE |                 |
|---------------------|-----------------|
| Units               | Maxcap MF Trust |
| Units Held          | 90,673          |
| Unit Ownership %    | 6.45%           |
| Initial Investment  | \$100,000       |
| Income (FY 2020)    | \$ 6,858.02     |
| Tax Return Code     | 13U             |
| Admin Fee (Inc GST) | \$ 2,377.76     |
| Distribution Paid   | \$ 16,743.35    |
| Capital Repaid      | \$ 9,368.58     |
| Capital Gain        | \$ 41.34        |
| Tax Return Code     | 18H             |