



**COOPER GRACE WARD**  
LAWYERS

**TRUST DEED**  
**URSUS PROPERTY TRUST**

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## TRUST DEED

### PARTIES

<b>Trustee</b>	<b>TRECELL PROPERTY PTY LTD ACN 607 659 209</b>
<b>Beneficiary</b>	<b>TRECELL PTY LTD ACN 167 567 106 as trustee for the Ursus Super Fund</b>

### BACKGROUND

The Beneficiary wants to appoint the Trustee to acquire the Original Asset as custodian for the Beneficiary on the terms of the Trust and has agreed to provide all the funds required to purchase the Original Asset.

### OPERATIVE PART

#### 1. INTERPRETATION

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##### Definitions

1.1 The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth)
<b>Fund</b>	the Original Asset and all income derived from that asset
<b>Further Payment</b>	one or more payments by the Beneficiary to payout the Loan as contemplated by section 67A(1)(c) of the SIS Act
<b>Loan</b>	the loan taken out by the Beneficiary to provide funding for the purchase of the Original Asset
<b>Original Asset</b>	the asset described in Schedule 1 Item 1 or any Replacement Asset
<b>Replacement Asset</b>	the same meaning as in the SIS Act
<b>SIS Act</b>	the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth)
<b>State</b>	the state or territory of Australia specified in Schedule 1 Item 3
<b>Transfer Notice</b>	a notice delivered to the Trustee by the Beneficiary under clause 8.2
<b>Trust</b>	the trust constituted by this deed to be known by the name specified in Schedule 1 Item 2



## **Construction**

### 1.2 In this deed:

- (a) words in the singular include the plural and vice versa;
- (b) words indicating any gender indicate the appropriate gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (e) references to any document (including this deed) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (f) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- (g) the Schedules form part of this deed;
- (h) a reference to an Item is a reference to an Item in Schedule 1 to this deed; and
- (i) headings are included for convenience only and do not affect interpretation of this deed.

## **2. TRUSTEE IS CUSTODIAN**

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- 2.1 The Beneficiary appoints the Trustee to acquire and hold the Original Asset as custodian for the Beneficiary.
- 2.2 The Trustee may only deal with the Fund as the Beneficiary directs.

## **3. DECLARATION OF TRUSTS**

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The Trustee will hold the Original Asset upon the trusts and with and subject to the powers set out in this deed.

## **4. BENEFICIARY ABSOLUTELY ENTITLED TO ASSETS**

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- 4.1 The Beneficiary is absolutely entitled to the Original Asset.
- 4.2 Any provision in this deed that might otherwise result in the Beneficiary not being absolutely entitled to the Original Asset as against the Trustee will be severed or read down accordingly.

## **5. FURTHER INVESTMENT BY BENEFICIARY**

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The Beneficiary will:

- (a) provide all the funds required to acquire the Original Asset; and
- (b) pay or reimburse the Trustee for all expenses incurred in connection with the Fund.



## **6. INCOME**

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- 6.1 The Beneficiary has an immediate and indefeasible vested interest in the income of the Fund and will be presently entitled to it.
- 6.2 The Trustee must, if requested by the Beneficiary, provide all necessary directions or authorities to cause the income of the Fund to be paid directly to the Beneficiary.

## **7. EXERCISE OF TRUSTEE'S POWERS**

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Subject to clauses 2.2 and 4.2, when exercising any power or discretion, the Trustee:

- (a) may do all things the Trustee could do if the discretion or power was vested in the Trustee personally;
- (b) is free from all responsibility and will be fully indemnified out of the Fund and income in respect of any loss arising as a result or as a consequence of the way in which the power or discretion is or is not exercised;
- (c) may act even though the Trustee, any associate of the Trustee or, if the Trustee is a corporation, any director or shareholder of the Trustee may have a direct or indirect interest in the mode or result of exercising the power or discretion or may benefit either directly or indirectly as a result of the exercise of any power or discretion or may have a direct or indirect interest in its capacity as trustee of any other trust estates;
- (d) may deal with itself in different capacities; and
- (e) must not exercise its powers in such a way that would result in the Beneficiary contravening any provision of the SIS Act.

## **8. TRANSFER OF LEGAL OWNERSHIP OF ORIGINAL ASSET**

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- 8.1 The Beneficiary has the right to acquire legal ownership of the Original Asset when it makes a Further Payment.
- 8.2 At any time after making a Further Payment, the Beneficiary may deliver a Transfer Notice to the Trustee requiring the Trustee to transfer the legal ownership of the Original Asset to the Beneficiary free from all encumbrances.
- 8.3 If the Beneficiary delivers a Transfer Notice, the Trustee must, as soon as practical after the receipt of the notice deliver to the Beneficiary:
- (a) possession of the Original Asset;
  - (b) all instruments of title required for the Original Asset; and
  - (c) signed transfers of the Original Asset to the Beneficiary capable of immediate registration (after stamping) in the appropriate office (where applicable).

## **9. TRUSTEE'S POWERS**

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- 9.1 Subject to any further direction by the Beneficiary, the Trustee is authorised to:
- (a) do all things necessary to complete the acquisition of the Original Asset, including signing a contract and other necessary documents;



- (b) do all things necessary to provide a mortgage over the Original Asset to secure repayment of the Loan; and
- (c) sign any other documents in relation to the Loan.

9.2 Subject to clauses 2.2 and 4.2, the powers conferred upon the Trustee by this deed:

- (a) include the powers set out in Schedule 2; and
- (b) are in addition to any powers conferred upon the Trustee by any rule of law, equity or statute.

9.3 When exercising any of its powers the Trustee may enter into any contract or arrangement (including any loan, guarantee or indemnity) with and on behalf of the Trustee and any associate of the Trustee.

9.4 No contract or arrangement referred to in clause 9.3 can be avoided nor is any Trustee or any associate of the Trustee liable to account to the Trust by reason of the fiduciary relationship of the Trustee for any profit or other benefit derived by such person or for any loss suffered by the Trust as the result of any contract or arrangement mentioned in clause 9.3.

## 10. LIMITATION OF LIABILITY

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10.1 A Trustee or an officer of a corporation that is Trustee is not liable for any loss except one attributable to:

- (a) the dishonesty of the Trustee or officer; or
- (b) the wilful commission of an act known by the Trustee or officer to be a breach of trust.

10.2 No Trustee is required to take proceedings against a co-Trustee for any breach of trust.

## 11. AMENDMENT

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11.1 Subject to clause 11.2, the Beneficiary may by deed revoke, delete, or vary all or any of the trusts, powers or provisions declared or included in this deed.

11.2 The powers of variation under clause 11.1 must not be exercised in a way that:

- (a) infringes the law against perpetuities;
- (b) amends or changes the effect of clause 4; or
- (c) would result in a breach of the SIS Act.

## 12. EXPENSES, CHARGES AND INDEMNITY

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12.1 The Trustee may reimburse itself or pay or discharge out of the Fund all expenses incurred by it in acting or purporting to act as Trustee.

12.2 The Trustee's right of indemnity does not extend to and no Trustee may bring any action against the Beneficiary.

12.3 The Trustee is entitled to be fully indemnified out of the Fund and income in respect of any loss or liability incurred as a result of acting as Trustee.



### **13. DELEGATION OF POWERS**

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- 13.1 A Trustee that is a corporation may exercise or concur in exercising any discretion or power conferred on the Trustee by a resolution of its board of directors or may delegate the power to exercise or concur in exercising any discretion or power to any director or any other person or corporation.
- 13.2 The Trustee may delegate the Trustee's powers or discretions to another party. The power to delegate includes the power to appoint a delegate as its attorney either in a general or limited capacity.

### **14. REMOVAL APPOINTMENT AND RETIREMENT OF TRUSTEES**

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- 14.1 The Beneficiary may at any time by deed, remove any Trustee and may appoint any person or corporation to be a Trustee either alone or jointly with any other Trustee.

The Beneficiary may stipulate that the removal or appointment is to take effect immediately, on the occurrence of a stipulated event, on a particular date or at the end of a stipulated period.

- 14.2 A Trustee may resign by giving 90 days' written notice to the Beneficiary.
- 14.3 The Trustee is deemed to be automatically removed if the Trustee:
- (a) is found to be of unsound mind; or
  - (b) is a person whose estate is liable to be dealt with under the laws relating to mental health.
- 14.4 If two or more Trustees are initially appointed, a Trustee who resigns or is removed pursuant to the provisions of this deed is to be discharged provided there is at least one continuing Trustee notwithstanding that, after the resignation or removal, there are not at least two individuals to act as Trustees or the Trustee is not a corporation authorised by statute to administer the estates of deceased persons and other trust estates in the State.

### **15. GOVERNING LAW**

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The construction and interpretation of this deed is to be governed by the laws in force in the State which is the proper law of this deed.



## SCHEDULE 1

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**Item 1      Original Asset**

Address: Unit 1, 71 Birley Street, Spring Hill Queensland 4000

Real Property Description: Lot 1 on Survey Plan 125374, County of Stanley, Parish of North Brisbane, Title Reference: 50315375

**Item 2      Name of Trust**

Ursus Property Trust

**Item 3      State**

Queensland



## SCHEDULE 2

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### TRUSTEE POWERS

- (a) To dispose of property by way of exchange for other property.
- (b) To deal in any way with all types of property, including to purchase, lease, hire, or otherwise acquire any real or personal property (including shares, options, units, debentures and similar securities) and to enter into any contract for the sale or purchase of any property, and to take and grant options in respect of any property.
- (c) To lease or sub-lease any property.
- (d) To accept the surrender of any lease.
- (e) To pay all outgoings in respect of property.
- (f) To grant easements, licences, and profits a prendre and enter into party wall agreements and agreements that relate to fencing.
- (g) To expend money in the improvement or development of property.
- (h) To expend money for the repair, maintenance, upkeep or renovation of property.
- (i) To give any guarantee or indemnity either alone or with others for the payment of money or the performance of any contract, liability, obligation or guarantee incurred or entered into by the Beneficiary and to guarantee or indemnify to become liable for the payment of money or for the performance of any obligations by the Beneficiary, and for the purpose of securing the payment of any moneys or the performance of any obligations for which the Trustee may become liable under any guarantee or indemnity to mortgage, encumber, pledge or charge the Fund or any part of it.
- (j) To grant security over and to charge, mortgage or pledge the Original Asset for the payment of any money payable by the Trustee or the Beneficiary and no lender need enquire into the necessity for any borrowing or to the application of the money borrowed.
- (k) To sell, call in and convert into money any property or otherwise alienate or dispose of all or any part by any means and on conditions that the Trustee thinks fit.
- (l) To invest and deal with property and to vary or transpose any investment into other investments.
- (m) To rescind, cancel, modify, renew or vary any contract or agreement, to compromise with or make allowances to any person in relation to any contract or agreement and, without limiting the generality of the foregoing, the Trustee may waive or vary any right exercisable by the Trustee that arises from a failure to comply at or within the proper time with any term of any agreement or contract.
- (n) To compromise and settle on terms and conditions which the Trustee thinks fit all matters arising in relation to the Fund and all compromises and settlements will be binding on the Beneficiary and others who might afterwards acquire any interest under this deed.





- (o) To sue and be sued and (without limiting the generality of the foregoing) to sue and be sued by the Trustee in any capacity other than Trustee including the personal capacity of the Trustee.
- (p) To agree and settle accounts with all persons liable to account to the Trustee in relation to the Fund and for that purpose to give receipts releases and discharges.
- (q) To do anything that in the opinion of the Trustee ought to be done in relation to this Trust as fully and effectively as if the Trustee were the beneficial owner of the assets of the Fund.
- (r) To employ any consultants the Trustee considers appropriate in the discharge of its duties including a consultant who is a partner, employer or employee of a Trustee or an officer, member or employee of a company that is a Trustee.
- (s) To act on the opinion or advice of any consultant and the Trustee will not be responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with that opinion or advice.
- (t) To do or to omit to do all acts and things and execute all instruments that the Trustee thinks desirable.
- (u) To open and operate accounts with banks and other financial institutions including joint and partnership accounts and to sign, make, draw, execute, endorse, discount, hypothecate or otherwise negotiate cheques, bills of exchange, promissory notes, drafts and orders for the payment of money in any manner the Trustee thinks fit, and to authorise other persons to operate on any account and sign, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- (v) To transfer any asset in specie to the Beneficiary.
- (w) To make any election required or permitted under any legislation.
- (x) To enter into any arrangement with any government or semi-government body or authority that would be of advantage to the Fund and in particular that may provide a grant, subsidy or other benefit.



SIGNED AS A DEED on the date the last party signed this document

SIGNED SEALED AND DELIVERED by TRECELL )  
PROPERTY PTY LTD ACN 607 659 209 in )  
accordance with section 127(1) of the Corporations )  
Act 2001 (Cth) by two directors: )

✓ *K Purcell*

**KERRIE MARIE PURCELL**  
Director

✓ 17/8/15  
Date

✓ *B.P. Trembath*

**BERNARD PETER TREMBATH**  
Director

✓ 17.08.15  
Date

SIGNED SEALED AND DELIVERED by TRECELL )  
PTY LTD ACN 167 567 106 as trustee for the )  
Ursus Super Fund in accordance with section )  
127(1) of the Corporations Act 2001 (Cth) by two )  
directors: )

✓ *K Purcell*

**KERRIE MARIE PURCELL**  
Director

✓ 17/8/15  
Date

✓ *B.P. Trembath*

**BERNARD PETER TREMBATH**  
Director

✓ 17.08.15  
Date

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