

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

THIS DEED is made on the _____ day of _____ 2006

PARTIES

1. **BRANDON JAMES SAUL** of 7 Henry Street, Dee Why, New South Wales 2099 ('initial unit holder 1').
2. **XSGT PTY LTD ACN 094 064 525 AS TRUSTEE FOR THE XSGT TRUST** of 41/61 Marlborough Street, Surry Hills, New South Wales 2010 ('initial unit holder 2').
3. **SHARON MARREE LONGRIDGE** of 2/13 Fletcher Street, Bondi, New South Wales 2026 ('initial unit holder 3').
4. **JULIE CARON HOWIE** of 27 Pinecrest Street, Winmalee, New South Wales 2777 ('initial unit holder 4').
5. **RODERICK ARTHUR SIMPSON** of 42 Chisholm Street, Greenwich, New South Wales 2065 ('initial unit holder 5').
6. **ROBERT WILLIAM DOOLAN** of 177 New Brighton Road, New Brighton, New South Wales 2483 ('initial unit holder 6').
7. **NORTH BYRON PROPERTY PTY LTD ACN 121 766 792** care of Cassim Calligeros Simos Ground Floor 154 Elizabeth Street Sydney NSW 2000 ('Trustee').

RECITALS

- A. The initial unit holder has paid the initial sum to the Trustee to establish a trust on the terms of this deed.
- B. The Trustee has agreed to act as trustee of the Trust and to hold all moneys and investments on the trusts and conditions set out in this deed.
- C. The provisions of this deed apply to bind the unit holders and also to benefit them.

THE PARTIES AGREE

1 Definitions

- 1.1 In this deed unless the context otherwise requires:
 - 1.1.1 'Act' means the Income Tax Assessment Act 1936;
 - 1.1.2 'deed' means this trust deed and all amendments and variations to this trust deed which may properly be made from time to time;
 - 1.1.3 'financial year' means a financial year for which income tax of a person, other than a company, is levied under the Act;

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

- 1.1.4 'initial sum' means the amount of \$100.00 paid by the initial unit holder 1 in the sum of \$74.00, by initial unit holder 2 in the sum of \$10.00, by initial unit holder 3 in the sum of \$4.00, by initial unit holder 4 in the sum of \$4.00, by initial unit holder 5 in the sum of \$4.00 and by initial unit holder 6 in the sum of \$4.00 to the Trustee on the signing of this deed to initially constitute the trust fund;
- 1.1.5 'person' includes a company, corporation, firm or body of persons;
- 1.1.6 'register' means the register of unit holders required to be maintained by this deed;
- 1.1.7 'termination date' means the date the Trust is to be wound up in accordance with this deed;
- 1.1.8 'Trust' means the unit trust established by this deed;
- 1.1.9 'Trustee' means the trustee for the time being of this Trust;
- 1.1.10 'trust fund' means:
- 1.1.10.1 the initial sum and all other moneys which are paid to the Trustee in respect of the issue of units; and
- 1.1.10.2 all other money and property which becomes subject to the trusts of this deed,
- and includes a part of the trust fund;
- 1.1.11 'unit' means an undivided part or share of the trust fund evidenced by a unit held by a unit holder in accordance with this deed;
- 1.1.12 'unit holder' means the person for the time being registered under the provisions of this deed as the holder of a unit and includes persons jointly so registered; and
- 1.1.13 'unit price' means the amount payable by the Trustee to a unit holder on redemption of a unit calculated in accordance with cl 7.3.

1.2 Interpretation

In this deed unless the contrary is expressly provided:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a gender includes each other gender;
- 1.2.3 headings are for convenience only and do not affect interpretation;
- 1.2.4 reference to legislation or a provision of any legislation includes modifications or re-enactments of the legislation, or any legislative provision substituted for,

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

and all legislation and statutory instruments and regulations issued under the legislation; and

1.2.5 an expression not otherwise defined has the same meaning as in the *Acts Interpretation Act 1954 (QLD)*.

1.3 Governing law

Unless the Trustee, with the unanimous consent of the unit holders, may otherwise determine, the Trust is to be governed by, and this deed is to be constructed in accordance with, the laws of Queensland.

2 Trust

2.1 Name of trust

The Trust is to be known as the 'North Byron Property Unit Trust'.

2.2 Initial sum

The Trustee acknowledges receipt of the initial sum which entitles initial unit holder 1 to be entered in the register as the holder of 74 units, initial unit holder 2 to be entered in the register as the holder of 10 units, initial unit holder 3 to be entered in the register as the holder of 4 units, initial unit holder 4 to be entered in the register as the holder of 4 units, initial unit holder 5 to be entered in the register as the holder of 4 units and initial unit holder 6 to be entered in the register as the holder of 4 units

2.3 Trust fund

The Trustee holds the trust fund on trust for the unit holders on the trusts and subject to the terms of this deed.

3 Beneficial interest of unit holders

3.1 Beneficial interest in the trust fund

Subject to any contrary right of holders of units of a class, or to any special rights, restrictions or conditions attaching to the issue of particular units as permitted by this deed, the beneficial interest in the trust fund as existing from time to time is vested:

3.1.1 in the unit holders for the time being; and

3.1.2 if there is more than one unit holder, in such unit holders in proportion to the number of units each holds.

3.2 No entitlement to any part of the trust fund

Subject to any contrary rights of holders of units of a class or special rights, restrictions or conditions attaching to the issue of particular units as permitted by this deed:

3.2.1 a unit does not entitle the holder of the unit to any particular asset comprised in, or any particular part of, the trust fund; and

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

3.2.2 each unit entitles a unit holder equally with all other unit holders to the beneficial interest in the trust fund as an entirety.

4 Issue and classification of units

4.1 Additional units

Subject to any restrictions or conditions on the issue of additional units and express provisions as to the issue of units as set out in this deed, the Trustee may create and issue additional units to such persons as it by resolution may determine. The issue price for each additional unit can be \$1 or an amount lower or more than \$1 as the Trustee may determine. The issue price received on issue of a unit becomes part of the trust fund.

4.2 Bound by deed

Each person upon becoming registered as the holder of a unit is entitled to the benefit of and is bound by the terms of this deed and all special rights, restrictions and conditions (if any) attaching to the unit from time to time.

4.3 Classification of units

The Trustee with the written consent of all unit holders may classify or reclassify all or some of the units already issued or to be issued by attaching special rights, restrictions, or other conditions to such units. The Trustee must enter the terms of such special rights, restrictions or other conditions affecting a classified or reclassified unit in the register and, where practicable, on or annexed to the unit certificate in respect of such classified or reclassified unit.

4.4 Application form

A person to whom units are to be issued (other than the initial unit holders) and persons to whom units may be issued as provided in cl 12.1.6, must sign a form of application supported by such evidence and information as the Trustee may prescribe or require.

4.5 Restriction on issue of units

4.5.1 A unit may not be issued to a person who is the Trustee or one of a number of trustees of the Trust. Nothing in this cl 4.5.1 is to be taken as restricting the issue of units to a director, officer or shareholder of a corporate trustee of the Trust or to a sole director or a sole shareholder of a corporate trustee of the Trust.

4.5.2 A unit may not be issued if such issue would result in a breach of cl 4.6.

4.6 Restriction on number of unit holders

The number of unit holders must not exceed 20.

5 Register of unit holders

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

5.1 Details of register

The Trustee must maintain an up-to-date register of the unit holders in which is entered:

- 5.1.1 the name and address of each unit holder as provided to the Trustee;
- 5.1.2 the number of units in respect of which each unit holder (or joint holders) is registered;
- 5.1.3 the date of issue of units;
- 5.1.4 where distinctive numbers are used by the Trustee, the numbers of the units or certificates;
- 5.1.5 particulars of transfers of units;
- 5.1.6 particulars of redemption of units;
- 5.1.7 special rights, restrictions or other conditions (if any) affecting or attaching to particular units and changes to same; and
- 5.1.8 such other particulars as the Trustee may decide.

5.2 Consequence of registration

Except as is otherwise expressly provided in this deed, a person who is entered in the register as the holder of a unit is the only person recognised by the Trustee as entitled to the unit.

5.3 Change of address

If a unit holder gives the Trustee notice in writing of a change of address, the Trustee must delete the previous address of that unit holder as shown in the register as soon as may be practicable and insert the new address as notified in its place.

5.4 No recognition of trust

Unit holders have an absolute right to the units registered in their name. The Trustee is not bound to recognise, even when having notice, any equitable, contingent or future interest, or a severable part interest, in a unit, or a trust in relation to the holding of a unit, except as may otherwise be expressly provided by this deed.

6 Certificates

6.1 Issue of certificates

Each sole unit holder is entitled to be issued with one or more certificates for the units registered in their name. Where units are held jointly, the joint holders are entitled only to a certificate in their joint names and delivery of that certificate to any one of the joint unit holders is sufficient delivery to all such holders.

6.2 Form of certificate

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

A certificate may be in the form attached to this deed, or such other form as may be prescribed by the Trustee from time to time, and must be signed by the Trustee.

6.3 Surrender of certificates

When a unit is transferred as permitted by this deed, the certificate with respect to such unit, or evidence as to its loss or destruction satisfactory to the Trustee, must be given to the Trustee. A unit holder must deliver a certificate, or such evidence as to its loss or destruction, to the Trustee upon request following the redemption of the unit, or to note a change in any special right, restriction or condition attaching to the unit.

7 Redemption of units

7.1 Redemption at request of a unit holder

If:

7.1.1 a unit holder requests the Trustee in writing to redeem all or part of the units held by such unit holder at the unit price or such lesser amount as the unit holder may agree to;

7.1.2 the Trustee determines that the units may be redeemed without detriment or disadvantage to the other unit holders or to the trust fund; and

7.1.3 the consent in writing of unit holders (including the unit holder whose units are to be redeemed) holding more than 75% of the issued units is obtained,
the Trustee may redeem such units and advise the unit holder accordingly.

7.2 Redemption without the request of a unit holder

The Trustee may at any time redeem all or any units held by a unit holder without being requested to do so at the unit price per unit by giving month's notice in writing to the unit holder of its intention to redeem such units provided the consent in writing of unit holders (including the unit holder whose units are to be redeemed) holding more than 75% of the issued units is obtained.

7.3 Calculation of unit price

The following provisions apply with respect to calculating the unit price:

7.3.1 if:

7.3.1.1 the Trustee determines an amount which it considers to be a fair and reasonable value of a unit to be redeemed;

7.3.1.2 all of the unit holders in writing consent to such determination;
and

7.3.1.3 redemption takes place within 90 days of such consents being given,

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

the value as so determined will be the unit price of the unit for the purposes of the proposed redemption;

7.3.2 in all other cases the unit price must be fixed in accordance with the following paragraphs of this sub-clause and there is no requirement on the Trustee to first act under cl 7.3.1;

7.3.3 the Trustee must have the trust fund and the units which are to be redeemed valued by a person who in the reasonable opinion of the Trustee is competent to carry out such valuations and unless the unit holder whose units are to be redeemed objects to the appointment, the auditor or the external accountant responsible for preparation of the financial statements and tax returns of the Trust may be appointed to carry out such valuation;

7.3.4 in determining the value of a unit to be redeemed, regard must be had to:

7.3.4.1 the value of the trust fund and the ratio of the relevant unit compared to the number of issued units;

7.3.4.2 special rights, restrictions or conditions attaching to the unit and to other units, including rights to income or capital of the trust fund; and

7.3.4.3 expenses incidental to a deemed realisation by the Trustee of investments, even if the appropriate method of valuation is on a going concern basis; and

7.3.5 where a unit is to be redeemed otherwise than on the last day of a financial year, the Trustee may prior to redemption pay to the unit holder whose units are to be redeemed by way of an income distribution, so much of the income of the trust fund as the Trustee considers could reasonably be attributed to such unit for the current financial year, and the amount of income to be so paid must be taken into account in any valuation under this sub-clause.

7.4 Redemption

On redemption of a unit:

7.4.1 the Trustee must pay to the relevant unit holder the unit price for each unit to be redeemed after deducting moneys owing by the unit holder to the Trustee on any account;

7.4.2 an entry must be made in the register to the effect that the unit is redeemed and that the unit holder ceases to be the holder of the unit; and

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

7.4.3 where the certificate is returned to the Trustee, the certificate must be destroyed or shown on its face as to have been cancelled.

7.5 *Payment of unit price*

The Trustee may raise out of the trust fund by borrowing in exercise of its powers in that regard a sufficient sum to provide the unit price or realise or sell any investment comprised in the trust fund to provide a sufficient sum to meet the unit price or pay the unit price out of funds on hand comprising the trust fund.

8 *Transfer of units*

8.1 *General restriction on transfer of units*

Subject to the written consent of all unit holders (including the transferor), a transfer of units cannot be effected if registration of the transfer would result in there being more than the maximum number of unit holders permitted under this deed.

8.2 *Form of transfer*

A unit may, with the consent of the Trustee and also with the written consent of unit holders (including the transferor) holding not less than 75% of the issued units, be transferred by an instrument in writing. Neither the Trustee nor a unit holder are required to give any reason for disallowing a transfer or refusing to give consent. The transfer may be in the form of that appearing on the unit certificate attached to this deed or such other form as may be permitted by the Trustee.

8.3 *Transferor holder while registered*

Every instrument of transfer must be executed by both the transferor and the transferee. Where a party to the transfer is a corporation, the Trustee may require execution by that party under its common seal. The Trustee may only deal with the transferor which remains the holder of the units to be transferred until the name of the transferee is entered in the register as the holder of the units.

8.4 *Issue of new certificate*

Upon production to the Trustee of a properly executed and stamped instrument of transfer together with the certificate for the units to be transferred and compliance with the provisions of this deed concerning the transfer of the units, the Trustee must:

8.4.1 enter the name and address of the transferee as shown in the transfer in the register as the holder of the units transferred;

8.4.2 cancel the unit certificate in the name of the transferor;

8.4.3 issue a new certificate to the transferee if it so requires for the units transferred;

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

- 8.4.4 if all of the units comprised in the original certificate have not been transferred, issue to the transferor a new certificate for the balance of the units comprised in the cancelled certificate; and
- 8.4.5 if a certificate is claimed to be lost or destroyed, the Trustee may dispense with production upon receiving evidence satisfactory to it of such loss or destruction.

9 Transmission of units

9.1 *Death of a unit holder*

In the case of the death of a unit holder, the survivor where the deceased was a joint holder, and the legal personal representative of the deceased in all other cases, is the only person recognised by the Trustee as having any title to or interest in the units held by such holder. Evidence must be given to the Trustee as it may require to enable it to verify the validity of the appointment of a legal personal representative.

9.2 *Election by representative*

A person becoming entitled to a unit ('the person entitled') in consequence of the death, liquidation or legal incapacity of a unit holder (each of which in this clause is called a 'nominated event') may, upon such information being provided and evidence being produced as may be required by the Trustee, elect in writing to be registered as the holder of the unit. Where the provisions of this deed which govern the transfer of units are complied with, a person nominated by the person entitled may become registered as the transferee of the unit.

9.3 *Effect of election*

9.3.1 Where following the occurrence of a nominated event and an election being made under cl 9.2, the person entitled to a unit has provided the Trustee with all information and evidence as the Trustee requires, that person alone is entitled to become registered as the holder of the unit by transmission and the Trustee must make an entry to such effect in the register.

9.3.2 Where an election under cl 9.2 is not made, the provisions of this deed relating to the transfer of units apply as if the nominated event had not occurred, except that the person entitled will be the transferor.

9.4 *Rights on transmission*

A person entitled to a unit by transmission may receive and give a good discharge for all moneys payable in respect of the unit but except as otherwise provided in this deed is not

NORTH BYRON PROPERTY UNIT TRUST TRUST DEED

entitled to any other rights or privileges of a unit holder unless and until he or she becomes registered in respect of the unit.

10 **Income and capital**

10.1 ***Determination of income***

The Trustee may determine whether a receipt or outgoing is to be regarded as being on account of capital or income or partly on account of one and partly on account of the other. In determining the income of the trust fund for a financial year the Trustee may so far as is reasonably possible exercise the powers conferred on it under this sub-clause so as to minimise the liability to income and capital gains tax of the unit holders. If the Trustee fails to make a determination under this sub-clause prior to midnight on 30 June in a financial year, the amount which under the provisions of the Act represent the 'net income' (within the meaning of s 95 of the Act) for that year in relation to the trust fund is to be taken to be the income of the trust fund for the purposes of this deed.

10.2 ***Accumulation of income***

10.2.1 The Trustee may before the end of a financial year resolve to accumulate a part of the income of the trust fund for that financial year:

10.2.1.1 to recoup any losses of the trust fund in any prior financial year;
or

10.2.1.2 as reserves to meet contingencies, to provide for repairs or maintenance, for depreciation or for any other purpose, whereupon such amount, will, subject to cl 10.2.2, form part of capital.

10.2.2 The Trustee may pay tax in respect of an accumulation out of the amount accumulated or out of capital.

10.3 ***Distribution of income to unit holders***

10.3.1 Subject to any special rights as to sharing of income attached to any units, the remaining income of the trust fund for a financial year is distributed to the persons who at midnight on the last day of the financial year are the unit holders in proportion to the units registered in their respective names.

10.3.2 The Trustee may determine that a part, not exceeding 50%, of such distributed income is to be retained by the Trustee ('retained moneys') which must be dealt with as provided by cl 10.4.

10.3.3 If the Trustee has not prior to midnight on 30 June of a financial year resolved to distribute the remaining income due to a unit holder in one or more of the

NORTH BYRON PROPERTY UNIT TRUST TRUST DEED

means available to it under cl 12.1, such income must be credited to a separate account in the books of the Trust in the name of the unit holder so that such moneys will constitute a debt due to the unit holder at call and will not bear interest.

10.4 *Retained moneys*

The following provisions apply to retained moneys:

- 10.4.1 the Trustee must set aside the retained moneys in separate accounts in the names of the unit holders;
- 10.4.2 interest will not accrue in respect of retained moneys;
- 10.4.3 moneys standing to the credit of a retained moneys account is a debt due to the unit holder which is payable at the earliest of:
 - 10.4.3.1 termination date;
 - 10.4.3.2 at such time as the Trustee determines; and
 - 10.4.3.3 in respect of a particular account, upon the unit holder giving not less than six months' notice in writing to the Trustee requiring payment;
- 10.4.4 retained moneys may be invested or otherwise dealt with by the Trustee in the same manner as the Trustee is authorised to invest or deal with the trust fund;
- 10.4.5 income derived from retained moneys is part of the income of the trust fund; and
- 10.4.6 the amount from time to time standing to the credit of the retained moneys accounts is to be taken into account as a debt due by the Trust in determining the value of the trust fund or the value of a unit where such valuation is to be made under a provision of this deed.

10.5 *Application of capital*

All receipts, including bonus issues, dividends, sale of rights or other benefits received by the Trustee, which the Trustee considers to be in the nature of capital and any income which is not applied or distributed under the provisions of this deed is not available for distribution as income of the trust fund while the Trust continues undetermined but must be added to and held as capital of the trust fund upon the trusts of this deed and applied, invested and dealt with as such under the provisions of this deed.

10.6 *Distribution of capital prior to termination date*

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

The Trustee may in its discretion determine at any time that the whole or any part of the capital of the trust fund be distributed or applied by the Trustee firstly in accordance with any special rights as to sharing capital attached to any units and then for such persons who at the time of such determination are the unit holders in proportion to the units registered in their respective names.

11 Categories of income and capital

11.1 Categories of income and capital

The Trustee may separately record the following categories of income or capital in the accounts of the Trust which under the Act:

11.1.1 are dividends:

11.1.1.1 which are fully franked;

11.1.1.2 which are unfranked;

11.1.1.3 to which a foreign tax credit attaches; or

11.1.1.4 to which another separately identifiable taxation consequence or benefit may attach; and

11.1.2 is income or capital:

11.1.2.1 which has an Australian source;

11.1.2.2 which has an ex-Australian source;

11.1.2.3 to which a foreign tax or other credit attaches;

11.1.2.4 which is exempt from tax or subject to differing rates of tax or tax treatment; or

11.1.2.5 which has or gives rise to any other separately identifiable taxation consequence or benefit.

11.2 Other categories

The Trustee may identify and separately record and maintain in the books of accounts of the Trust, income or capital having, or in respect of which there is attached, individual or unique characteristics other than as referred to in the preceding sub-clause.

11.3 Allocation of income or capital of a category

If the Trustee obtains the consent of all unit holders, the Trustee may by resolution determine that income of a financial year or capital which is distributed or accumulated pursuant to a determination of the Trustee or by any provision of this deed is the whole or part of the income or capital of a category so that all or a part of that income or capital is specifically or separately allocated and identified in a distribution to a unit holder or in any accumulation. If the Trustee does not obtain the consent of all unit holders, subject to any

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

contrary rights of holders of units of a class, income or capital of a category is to be taken to have been distributed pro rata to all unit holders.

11.4 Allocation of expenses

Expenses and outgoings of the Trust may at the discretion of the Trustee be allocated against and deducted from income or capital of any one or more categories.

11.5 Effect of allocation on categories of income

If the Trustee does not exercise its discretion as provided in the preceding sub-clause, outgoings and expenses of the trust fund for a financial year must be allocated firstly against and deducted from income which is not income of a category. To the extent to which that income is insufficient to absorb all expenses and outgoings, then the part which is not so absorbed must be allocated against any income of a category to which a tax credit, rebate or exemption does not attach and thereafter against the remaining income.

11.6 Distributed income retains categorisation

Income or capital to which a unit holder becomes entitled and which can be identified as being of a category, retains its separate identity on passing to or being received by the unit holder or when the unit holder otherwise becomes entitled to it.

12 Payment to unit holders

12.1 Means of payment

Subject to cl 10.3.2, a requirement in this deed to distribute, pay, apply or set aside any amount for a unit holder may be effected by the Trustee by any one or more of the following means:

- 12.1.1 with the consent of the unit holder, by placing the amount to the credit of the unit holder in a 24 hour call account;
- 12.1.2 by drawing a cheque for such amount made payable to the unit holder or paying the moneys into a bank account in the name of the unit holder;
- 12.1.3 with the consent of the Trustee, by paying the amount by cheque or in cash to a third party at the direction of the unit holder;
- 12.1.4 by applying all or part of the amount in or towards satisfaction of moneys owing by the unit holder to the Trustee on any account;
- 12.1.5 if the Trustee in its discretion thinks fit, by transferring any of the investments of the trust fund in specie to the unit holder on receiving in cash the difference between the amount to which the unit holder is entitled and the value of such investment at the valuation made by a valuer appointed by the Trustee for that purpose;

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

- 12.1.6 if the Trustee, with the consent of the unit holders, so resolves, by issuing units to unit holders entitled to such amount as though the amount not distributed had been first paid to them and thereafter paid to the Trustee as consideration for the issued units. The trustee may determine the number of units to be issued and the premium (if any) and other terms relating to such units; or
- 12.1.7 by setting the amount aside to a separate account in the books of the Trust in the name of the unit holder whereupon such moneys will constitute a debt due to the unit holder at call and will not bear interest.

12.2 *Payment by cheque*

Moneys payable by the Trustee to a unit holder by cheque may be sent through the post to the registered address of the unit holder or in the case of joint unit holders to the registered address of the joint unit holder who is first named in the register of unit holders.

12.3 *Payment to joint unit holders*

If two or more persons are entered in the register of unit holders as joint holders of any unit, the receipt of one of these persons for the moneys payable in respect of the unit will be as effective a discharge to the Trustee as if the person signing the receipt was the sole unit holder.

12.4 *Unit holder under a legal disability*

The Trustee may determine that a share of income or capital available for distribution, or as units issued under the provisions of cl 12.1.6, payable to a minor or a person under some other legal disability be held by it under a separate trust for the minor or other person under a legal disability until that person has attained the age of 18 years or otherwise ceases to be under a legal disability as the case may be, and meanwhile to retain the distributed income by holding it on trust subject to such minor or person attaining the age of 18 years or ceasing to be under such legal disability and the following provisions apply to such separate trust:

- 12.4.1 if the person entitled dies before attaining the age of 18 years or otherwise ceasing to be under a legal disability, such interest or units and accumulated income must be paid to or held for the personal representative of such person;
- 12.4.2 the Trustee may pay or apply such share of the income or capital available for distribution for the maintenance, education or benefit in life of such person and may pay it to a trustee for, or to a guardian of, any such person or to any

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

other person as trustee for such person to be so applied without being bound to see to its application;

12.4.3 any money, units or property held by the Trustee pursuant to the provisions of this sub-clause must be held by it on a separate trust and must not be included as part of the trust fund; and

12.4.4 the income arising from the property and investments held on such trust is not to be treated as part of the income of the trust fund. The provisions of this sub-clause apply as though the units, interests or retention of income are a share in the amount available for distribution to such minor or person under a legal disability.

13 Statements and accounts

13.1 *Accounting records*

The Trustee must:

13.1.1 establish and maintain proper books of account which accurately record all receipts and outgoings in relation to the trust fund; and

13.1.2 separately record all income and capital of different categories or classes as are referred to or provided for in this deed.

13.2 *Financial statements*

The Trustee must cause financial statements to be prepared by a qualified public or chartered accountant, including a profit and loss account and a balance sheet as at the end of each financial year certified by such accountant to be a true and proper statement of the affairs of the trust fund setting out all:

13.2.1 income of the trust fund;

13.2.2 capital of the trust fund;

13.2.3 costs and disbursements and other outgoings paid or payable out of the trust fund and chargeable against income;

13.2.4 capital expenditure and liabilities chargeable to capital;

13.2.5 investments and money comprised in the trust fund;

13.2.6 amounts held in the accumulated income account;

13.2.7 amounts distributed by the Trustee to unit holders; and

13.2.8 amounts held in retained moneys accounts pursuant to cl 10.4.

The unit holders may inspect such statements and the books of account in relation to the trust fund.

13.3 *Election to appoint auditor*

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

Unit holders holding 51% or more of the units may by resolution evidenced in writing and signed by such unit holders require that an auditor be appointed to examine the accounts of the trust fund, to ascertain the correctness of any financial statement in respect of the trust fund or to make such inquiry into the financial affairs of the trust fund as may be required. The auditor named in such resolution, or failing which an auditor appointed by the Trustee, must make such audit or inquiry as required. Every such auditor has a right of access to the accounts and other records of the Trustee in relation to the trust fund and may require and is entitled to be given such information and explanation as he or she desires. The costs of such auditor are to be paid out of the trust fund. The Trustee may terminate the services of an auditor.

13.4 *Collection of accounts receivable*

The Trustee must collect, receive and get in all moneys due to be paid to the Trustee arising out of the Trust (including dividends, rents and other income from investments of the trust fund) and from the carrying on of any business by the Trustee pursuant to this deed.

13.5 *Payment of accounts payable*

The Trustee must pay out of the trust fund all accounts due to be paid by the Trustee arising out of the Trust including costs and disbursements, commissions, fees, rates, taxes, insurance premiums, expenses for repairs, administration and management charges and all other proper outgoings in respect of the investments and administration of the trust fund and the carrying on of any business permitted by this deed.

14 *Appointment and removal of trustee*

14.1 *Power to appoint and remove trustee*

14.1.1 In this sub-clause the power to appoint a new trustee in the place of an existing trustee, the power to appoint a trustee in addition to and jointly with any existing trustee, and the power to remove a trustee is called 'the appointment power'.

14.1.2 Where the Trustee is a sole trustee which is a company, the appointment power is vested in the persons holding shares in the Trustee and may only be exercised by a resolution or instrument in writing signed by persons holding 75% or more of the shares in the Trustee.

14.1.3 Where the Trustee is not a sole trustee which is a company, the appointment power is vested in the unit holders and may only be exercised by a resolution

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

or instrument in writing signed by unit holders holding 75% or more of the units.

14.2 Restriction on appointment

The power of appointing a new trustee may not be exercised in favour of any person who is, at the time the power is exercised, the holder of a unit.

14.3 Provisions on appointment

The place of a trustee or trustees who have retired, resigned or been removed, may be filled by a sole appointment or by the appointment of more than one new trustee.

14.4 Transfer of records and property

Upon the resignation, retirement or removal of the Trustee, the Trustee (if a company by its responsible officer) must promptly, at the expense of the Trust:

14.4.1 hand to the new trustee all books, records, documents and other property of or pertaining to the Trust;

14.4.2 do all things necessary to transfer the legal title in the assets of the trust fund to the new trustee;

14.4.3 sign authorities and give directions as the new trustee reasonably requires to give possession or control of the trust fund as may be in the hand of third parties; and

14.4.4 give such assistance as the new trustee may reasonably require to put the new trustee into full knowledge of the affairs of the Trust.

14.5 Registered deed

Unless it is otherwise required by law for a change of trustee to be effective, it is not necessary for the retirement of a trustee or the appointment of a new trustee to be effected by a registered deed.

15 Variation of trust

15.1 Variation of trust deed

15.1.1 At any time prior to the termination date, the trusts, powers or provisions of this deed may be altered, modified, varied, amended, revoked or added to (all of which are referred to in this clause as a 'variation') as provided in this clause.

15.1.2 All variations must be by deed or other instrument in writing signed by the Trustee following the passing of a resolution by the Trustee approving of the variations.

15.1.3 A variation which concerns:

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

- 15.1.3.1 a provision of cl 3 (the beneficial interest of unit holders);
- 15.1.3.2 the issue, transfer or redemption of units;
- 15.1.3.3 appointment or removal of a trustee;
- 15.1.3.4 a provision of this cl 15 (variation of this deed);
- 15.1.3.5 voting rights at meetings of the unit holders;
- 15.1.3.6 a provision of cl 19 (limitation on liability of unit holders); or
- 15.1.3.7 a provision of cl 22.1 (termination of the Trust),

is not effective unless, on or before the instrument of variation is entered into, the consents in writing of unit holders are obtained in accordance with cl 15.1(d).

15.1.4 The consents of unit holders under the preceding paragraph is to be taken to have been given only where a unit holder or unit holders holding 95% or more of units giving entitlement to vote at meetings of the unit holders, have signified their consent in writing to the proposed variation in one or a number of separate documents, or is a part of or annexed to or endorsed on the instrument of variation.

15.1.5 A variation may not prejudicially affect the rights of a unit holder to income of the trust fund previously set aside for it or held for its benefit, or prejudicially affect the rights of unit holders, whether of a class of units or not, to participate in the income or capital of the trust fund in accordance with the provisions of this deed, unless the consent of the unit holder prejudicially affected or the consents of all unit holders whose rights are to be prejudicially affected are obtained at or prior to the time any such variation is made.

15.2 Rule against perpetuities

A variation must not infringe any applicable law or rule against perpetuities.

15.3 Time variation takes effect

If the requirements of this clause have been complied with, the provisions of this deed will be effectively altered, modified, varied, amended, revoked or added to, as the case may be, on and from the date appearing in the instrument of variation referred to in cl 15.1(b).

16 Modification of class rights

16.1 Variation of class rights

The Trustee may at any time modify or vary the rights attached to a class of units in the trust fund provided:

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

16.1.1 such modification or variation does not affect the rights of other unit holders;
and

16.1.2 all the unit holders of that class at that time consent in writing to such
modification or variation.

16.2 *Effect of variation*

Upon a class of units being modified or varied in accordance with this clause:

16.2.1 the units of such class will be held subject to any preferred, deferred or other
special rights or any restrictions whether in regard to the income or the sum
payable on redemption or on termination of the trust fund, as so modified or
varied; and

16.2.2 the Trustee must note the register of unit holders accordingly.

17 Provisions relating to trustee

17.1 *Restrictions on receipt of income*

Notwithstanding anything to the contrary in this deed, income or capital of the Trust, other than remuneration permitted under cl 17.2 and 17.3 or payments permitted under cl 17.4 and 21.1.29, may not be paid or transferred beneficially to, or applied for the benefit of, the Trustee. No discretion or power conferred by this deed may be exercised or is capable of being exercised and no provision of this deed operates so as to confer or be capable of conferring any direct or indirect benefit in the Trust on the Trustee other than remuneration properly payable to the Trustee.

17.2 *Remuneration*

The Trustee is entitled to remuneration for the Trustee's services in such sum out of the income or capital of the trust fund, whether by way of periodical fee, salary, commission or otherwise, as may be approved by unit holders holding 51% or more of the units.

17.3 *Administration expenses*

The Trustee may pay all costs, charges and expenses of administering the Trust out of the trust fund whether from capital or income as the Trustee may determine. If the Trustee is an accountant, solicitor or other person engaged in any profession, the Trustee is entitled:

17.3.1 to be reimbursed for all costs, charges and expenses of administering the
trust fund incurred by the Trustee; and

17.3.2 to charge and be paid all usual professional charges for business transacted,
time expended and acts done by the Trustee or any employee or partner in
connection with the trusts of this deed including any acts which the Trustee
not being in any profession could have done personally.

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

17.4 Indemnity

The Trustee acting in good faith is entitled to be indemnified out of the trust fund in respect of all liabilities:

- 17.4.1 incurred by the Trustee relating to the execution of any powers, duties, authorities or discretions vested in it by virtue of this deed;
- 17.4.2 arising in or about the investment and administration of the trust fund;
- 17.4.3 incurred in the conduct and management of any business forming part of the trust fund;
- 17.4.4 arising from the acquisition of any authorised investment under any contract entered into by the Trustee; and
- 17.4.5 all actions, proceedings, costs, claims and demands in relation to any matter or thing done or omitted to be done concerning the Trust.

The right of the Trustee to be indemnified in respect of any such liability incurred by the Trustee is limited to the assets of the trust fund in the hands of or under the control of the Trustee and does not extend to enable the Trustee to recover any loss or obtain reimbursement for any liability incurred from any unit holder or other person beneficially entitled to any unit.

17.5 Exercise of powers by company trustee

The Trustee, being a company, may exercise or concur in exercising any discretion or power conferred by this deed by a majority 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 of its directors appointed unanimously from time to time by the board of directors or governing body for that purpose and may by majority resolution of its directors terminate any such delegated authority.

17.6 Exercise of powers notwithstanding relationship with unit holder

All powers and discretions conferred upon the Trustee by this deed or by law may be exercised notwithstanding that any person being a director or shareholder, or a sole director or sole shareholder, of a corporate trustee, is or may have been a unit holder or has, or may have, a direct, indirect or personal interest (whether as shareholder, director, member or partner of any company or partnership or otherwise) in the manner or result of exercising such power or discretion or may benefit 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 of the Trust.

17.7 Release of power

NORTH BYRON PROPERTY UNIT TRUST TRUST DEED

Unless a power or discretion which may be exercised by the Trustee is by the terms of this deed required to be irrevocable, the Trustee may release or revoke any power conferred upon it by this deed. Any other person upon whom any power is conferred by this deed may release or revoke any power conferred upon them. Upon the exercise of any release or revocation pursuant to this sub-clause, the power to release or revoke as so exercised is absolutely and irrevocably determined.

17.8 ***Unfettered power***

Where in this deed the Trustee is entitled to exercise a power or a discretion, such power or discretion is an absolute unfettered power or discretion and no unit holder or other person, except as provided in this deed, is entitled to:

- 17.8.1 call into question the exercise of such power or discretion;
- 17.8.2 the failure to exercise such power or discretion; or
- 17.8.3 require the Trustee to assign any reason for its exercise of such power or discretion or failure to exercise such power or discretion.

17.9 ***Professional advice***

The Trustee may take and act upon the opinion of a solicitor or barrister of at least six years standing who has continuously during that time practised in the jurisdiction where interpretation of the provisions of this deed or any document or statute, or matter concerning the administration of the Trust is to be determined without being liable to any unit holder in respect of any act done by the Trustee in accordance with such opinion, but nothing in this sub-clause prohibits or impedes the Trustee from applying to any court if the Trustee thinks fit.

17.10 ***Manager***

The Trustee is not bound to act personally but may employ a manager or other person to transact all or any business required to be done or performed by the Trustee including the receipt and payment of money and the Trustee may determine the remuneration to be paid to any such person.

17.11 ***Vacation of office***

The office of trustee is determined and vacated:

- 17.11.1 if the Trustee, being an individual, is found to be of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or if the Trustee becomes bankrupt or makes any arrangement or composition with creditors generally; or

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

17.11.2 if the Trustee, being a company, enters into liquidation, whether compulsory or voluntary (not being a voluntary liquidation for the purposes of amalgamation or reconstruction), or have an administrator, receiver or official manager or receiver and manager appointed.

17.12 Custodian trustee

It is not necessary for property, including a security, being part of the trust fund to be registered in the name of the Trustee but such property may, at the discretion of the Trustee, be registered in the name of a nominee without the necessity of disclosing that the nominee holds such property as nominee for and on behalf of the Trustee and the Trustee has the same powers and discretions in respect of such asset as if it were registered in its own name.

17.13 Documents of title

The Trustee may from time to time deposit the documents of title to property or securities for the time being subject to the Trust with a solicitor, accountant, bank, trust company, investment or stock broker or like institution in any part of the world in which the trust fund is invested or situated and the Trustee is not liable or responsible for any loss not caused by its own fault which may in any manner occur in relation to so depositing such documents of title.

18 Meetings of unit holders

18.1 Convening and adjourning a meeting of unit holders

18.1.1 The Trustee may whenever it thinks fit convene a meeting of unit holders.

18.1.2 The Trustee must convene a meeting of unit holders if required to do so by a requisition signed by or on behalf of unit holders registered as the holders in the aggregate of 20% or more of units.

18.1.3 The Trustee may adjourn a meeting of unit holders, whether called by itself or the unit holders, to such date and time, being within 21 days of the date of the adjourned meeting, and at such place, as the Trustee may determine.

18.2 Notice of meetings

18.2.1 Not less than 14 days' notice must be given of every meeting of unit holders and such notice must be given to all unit holders specifying the general nature of the business to be transacted. The date of service of the notice is to be counted as the first day but the day of the meeting is not to be counted.

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

18.2.2 A meeting may be held at shorter notice being not less than twenty-four hours with the consent of unit holders holding 90% or more of the units entitled to receive notice and attend such meeting.

18.2.3 A meeting may be held at less than twenty-four hours notice with the consent of all unit holders entitled to receive notice and attend such meeting.

18.3 Appointment of chairman

At every meeting of unit holders the Trustee must nominate some person, whether a unit holder or not, to preside as chairman. If there is an equality of votes, the chairman does not have a casting vote.

18.4 Determination of questions

Every question arising at a meeting of unit holders is to be decided in the first instance by a show of hands unless:

18.4.1 it be a question which under this deed must be decided by the holders of a prescribed percentage or more of the units in which case a poll is to be taken;
or

18.4.2 a poll is demanded.

18.5 Calling a poll

A poll may be demanded by unit holders holding not less than *****Poll***%** of the units entitled to vote at meetings of the unit holders.

18.6 One vote per unit

Upon a poll every unit holder present in person or by proxy, subject to any contrary special right, restriction or condition attaching to a unit, will have one vote for every unit held.

18.7 Giving of votes

Votes may be given either personally, by proxy, by attorney or, in the case of a unit holder which is a company, by a person appointed under seal to represent the company.

18.8 Proxies and representatives

Every instrument of proxy or appointment of a representative must be in such form as the Trustee may prescribe or otherwise in such common or ordinary form and must be signed by the unit holder. The instrument appointing a proxy must be deposited at the office of the Trustee not less than 24 hours, or such lesser period as the Trustee may agree to, before the time of holding the meeting or adjourned meeting as the case may be at which the person named as proxy proposes to vote.

18.9 Quorum

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

The quorum for a meeting is 2 or more unit holders present personally or by proxy or by representative or attorney who so represent in the aggregate not less than 51% of the units.

18.10 Joint unit holders

If there be joint unit holders of any unit;

18.10.1 any of such joint holders may vote either personally or by proxy as if such joint holder were solely entitled to the units comprised in the joint holding; and

18.10.2 if more than one of such joint holders is present at any meeting either personally or by proxy, the joint holder whose name stands first in the register in respect of the joint holding is alone entitled to vote in respect of such holding.

The executors or administrators of a deceased holder are, for the purposes of this clause, to be taken to be joint holders.

18.11 Minors

A unit holder who is a minor or a person under a legal disability may vote only by a parent or his legal guardian or by such other person as properly has the management of his or her affairs. Any such parent, legal guardian or other person may vote either personally or by proxy and may vote both on a show of hands and in a poll and may be counted in determining a quorum.

19 Limitation on liability of unit holders

19.1 No partnership

Nothing in this deed constitutes or is to be taken to constitute:

19.1.1 the relationship of principal and agent between the Trustee and the unit holders;

19.1.2 the relationship of partners as between the Trustee and the unit holders; or

19.1.3 the relationship of partners as between the unit holders among themselves.

19.2 No indemnity from unit holders

19.2.1 Notwithstanding any other provision of this deed or any rule of law to the contrary, no unit holder by reason of holding units or of the relationship created by this deed is under any obligation personally to indemnify the Trustee or any creditor of the Trustee in the event of there being any deficiency of the assets of the trust fund as compared with the liabilities of the Trustee in relation to the trust fund.

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

19.2.2 The rights of indemnity of the Trustee or of such creditor are limited to recourse to the assets of the trust fund.

19.2.3 A unit holder is not liable for any loss or damage howsoever incurred or suffered by the Trustee in acting as trustee of the Trust or otherwise in connection with the Trust to the extent to which the loss or damage exceeds so much of the consideration (if any) payable for issue of the units held by the unit holder as may be unpaid and outstanding.

19.2.4 The Trustee expressly waives, releases, forfeits and abandons all rights and remedies which it otherwise might have at law or in equity to recover from a unit holder moneys by reason of any right of indemnity or subrogation notwithstanding that any such right may not be able to be satisfied or discharged in whole or in part out of the assets comprising the trust fund.

19.3 *No right of action if unit holders consent to investment*

If all of the unit holders consent in writing to the Trustee acquiring an investment as part of the trust fund, the unit holders are to be taken as having waived all rights they may have against the Trustee at law or under this deed with respect to the Trustee's acquisition of the investment. This sub-clause applies whether the consent of the unit holders was obtained on, prior to or after the date the investment was acquired by the Trustee.

20 Investment powers

20.1 *Power to invest and vary investments*

The Trustee may invest the trust fund in any form of investment and vary an investment at any time.

20.2 *Diminishing the duty of care*

If the Trustee is not a public company or a subsidiary of a public company, there is no obligation on the Trustee in exercising a power of investment to exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

20.3 *Review of investment performance*

The Trustee may, but is not required to, review at any time or at fixed intervals the performance (individually or as a whole) of the Trust investments.

20.4 *Broadening of investment power*

The Trustee may exercise the power to invest the trust fund or vary an investment without the need to comply with any rule and principle of law or equity including a duty to invest the trust fund in investments which are not speculative, hazardous or involving waste. For the

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

purposes of this and the next sub-clause, the expressions 'vary an instrument' and 'varying an investment' includes realising an investment or a change to a term or condition of an investment.

20.5 Investment advice

In exercising the power of investment, the Trustee may, but is not required to, having regard to the size and nature of the Trust, do either or both of the following:

20.5.1 obtain and consider independent and impartial advice for the investment of the trust fund, varying an investment or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and

20.5.2 pay out of the trust fund the reasonable costs of obtaining the advice.

21 General powers

21.1 General powers

In the administration of the Trust and in the exercise of the powers, authorities and discretions conferred by this deed or by law, the Trustee has the following powers which are in addition to the powers, authorities and discretions vested in it by any other provision of this deed or by law and which do not limit the powers, authorities and discretions otherwise vested in the Trustee by this deed or by law:

21.1.1 *Generally deal with trust fund:* to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with, dispose of or transfer any item or asset comprising the whole or part of the trust fund or otherwise held by the Trustee under the terms of the Trust for such consideration and on such terms as it may think fit as if it were the absolute and beneficial owner of the trust fund;

21.1.2 *Real property:* to acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, let, grant, release or vary any right or easement or otherwise deal with real property or any estate or interest in real property;

21.1.3 *Personal property:* to acquire, dispose of, exchange, hire, lease, let, mortgage or otherwise deal with personal property of any kind;

21.1.4 *Lease:* to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases and tenancies or rights of any nature in and to any realty or estate or interest in land or in and to motor vehicles, computer hardware and software, fixtures

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

and fittings, furniture, utensils, plant and equipment and other personal property of any other description;

- 21.1.5 *To let:* to lease and let property forming part of the trust fund for such period, at a rental and to persons and upon such terms as the Trustee may decide and to accept surrenders from, make allowances to and arrangements with, a tenant with or without consideration as the Trustee may think fit;
- 21.1.6 *Employment:* to engage or employ persons, including a person having an interest in or who is the holder of an office in the Trustee, or obtain such other assistance as the Trustee may deem requisite, to provide staff amenities and to vary and terminate any contract of employment;
- 21.1.7 *Engage experts:* to employ or engage agents or professionals in the execution of these trusts and powers and instead of acting personally from time to time, to employ or engage and pay out of the trust fund such managers, agents, advisers, solicitors, barristers, auditors, accountants, brokers, surveyors, valuers or other persons to transact any business or to do any act required to be done in connection with the administration of these trusts and to act upon the opinion or advice of any such person without being responsible for loss or damage occasioned in so acting;
- 21.1.8 *Power to lend:* to lend moneys forming part of the trust fund, or give credit to any person or company on such terms as the Trustee may decide, in particular without limiting the generality of the foregoing, to any unit holder or person having an interest in or to the holder of an office in the Trustee and any such lending or giving of credit may be made at call or for a period of time and may be made at a rate of interest or at no interest, and may involve the taking of security in any form or without security;
- 21.1.9 *Power to borrow:* to raise or borrow moneys either alone or jointly with another or others, from any person including a firm or company, either bearing or free of interest and on terms and conditions and for purposes as the Trustee may decide, and to secure the repayment of any moneys or other indebtedness by mortgage, charge or other security or encumbrance over the whole or part of the trust fund as the Trustee may decide or to have the repayment secured over property of a third party which may include property of the Trustee or a unit holder whether such third party collateral security is given alone or jointly with property of the trust fund and no lender is required

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

to inquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required, or as to the application of moneys borrowed;

- 21.1.10 *Commercial bills:* to draw, endorse, accept, guarantee or be a party in any way to a commercial bill or other bill of exchange, promissory note, letter of credit, hypothecation or other facility involving the raising, borrowing or lending of moneys by or to the Trustee;
- 21.1.11 *Credit:* 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;
- 21.1.12 *Attorney:* to appoint any person as the representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this deed or by law and to revoke any such appointment;
- 21.1.13 *Service entity:* to act as a service entity in providing office supplies and services, including professional or other employees, office furniture and equipment of all types, stationery, telephone and electricity services, management, administration and consultancy services and anything incidental to them;
- 21.1.14 *Bank accounts:* to open in the name of the Trustee or in the name of a person or corporation as nominee of the Trustee or in the joint names of the Trustee and another, any cheque, savings deposit or other account with any bank or financial institution wherever situated with full power to operate on any such account including, without limitation, power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account;
- 21.1.15 *Management expenses:* to pay out of income or capital all costs, charges and expenses incidental to the management of the trust fund or to the exercise of any permitted power, authority or discretion or in carrying out or performing the trusts of this deed;
- 21.1.16 *Pay general expenses:* to pay insurance premiums, rates, taxes, rents and outgoings in connection with real or personal property of the trust fund and to manage property and effect repairs as the Trustee may consider necessary or

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

advisable and where the Trustee is unable to charge such expenditure against income it is at liberty to resort to capital;

- 21.1.17 *Corporate securities:* with respect to any company in which the Trustee holds shares, debentures, options, convertible notes or other security ('securities') to exercise the following powers in addition to powers conferred by law:
- 21.1.17.1 to pay calls on securities or permit securities to be forfeited and sold;
 - 21.1.17.2 to purchase securities and take up securities of a new issue;
 - 21.1.17.3 to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
 - 21.1.17.4 to sell securities at a price and upon terms as the Trustee may decide;
 - 21.1.17.5 to assent to or join in any arrangement relating to the sale, transfer or exchange of any securities or modifying any rights, privileges or interests in relation to securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any securities or of the capital of any company in which any securities form part of the trust fund or by which any securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and to pay out of capital or income any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
 - 21.1.17.6 to agree in respect of a winding up with the liquidator of the company or any member or creditor of the company, or in a voluntary administration, as the trustee thinks fit;
- 21.1.18 *Unit trust interests:* to acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust as

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

income or capital and as unit holder the Trustee may in its absolute discretion consent to a breach of trust by the trustee of the unit trust or give its consent to, or waive its rights with respect to, any action taken or to be taken by the trustee of the unit trust and the Trustee may so act even if the Trustee's actions may not be in the interests of the Trust or the unit trust;

- 21.1.19 *Franchises:* to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature relating to subject matters of all kinds;
- 21.1.20 *Subdivision of property:* to partition or subdivide property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;
- 21.1.21 *Development of property:* to enter into any agreement with any person with respect to the development and turning to account of any real or personal property or any interest in property and any other right, privilege or interest for the time being subject to these trusts or with respect to the construction of any buildings, laying out or preparing land for building purposes or in developing or turning to account real or personal property or any rights, privileges or interests;
- 21.1.22 *Promotion of companies:* to establish, promote or acquire any company or join in the promotion or establishment of any company and to do anything which a person, not being a trustee, is authorised or empowered to do under any law relating to or governing any such company;
- 21.1.23 *Maintain property:* to maintain and preserve in good and substantial order and condition real or personal property of the trust fund or otherwise held by the Trustee under the terms of this deed and to pay or defray those costs;
- 21.1.24 *Guarantees and indemnities:* power, whether with or without security and whether alone or jointly or severally or both jointly and severally with any other person, to guarantee, indemnify, secure by way of mortgage, charge or otherwise over the whole or part of the trust fund or undertake in any way the payment or repayment of money or debts (including any interest whether existing or to accrue) previously or then lent or to be advanced or any existing or future duties, undertakings, liabilities or obligations incurred or which may at any future time be incurred by any person whether a unit holder or not and to guarantee, indemnify or secure, with or without security, the due

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

performance of any contract, agreement, covenant or obligation of any person whether a unit holder or not;

- 21.1.25 *Power to set aside:* to set aside out of income or capital from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- 21.1.26 *Superannuation and bonuses:* to pay bonuses, gratuities or retirement benefits or to establish and support or aid in the establishment and support of schemes providing superannuation, death and retirement benefits or any one or more of such benefits in respect of employees or ex-employees of the Trustee, including in the case of a corporate trustee directors or other holders of any office of the Trustee and the dependants of any of such persons and for the benefit of employees, ex-employees and their dependants of any company or person associated with the Trustee;
- 21.1.27 *Futures contracts and options:* to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world to buy, sell, open, close-out or otherwise deal in futures contracts of all kinds and to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss orders to tender and take delivery of commodities and currencies which are the subject of any futures contract or option and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange;
- 21.1.28 *To mix funds:* to mix the trust fund including its income and any other moneys held from time to time by the Trustee pursuant to these trusts with other moneys held by the Trustee pursuant to any provision of this deed or under any other trust and;
- 21.1.28.1 to invest the moneys 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;
- 21.1.28.2 to exercise all powers authorities and discretions with respect to the mixed fund which the Trustee is by this deed or by law is authorised to exercise with respect to the trust fund; and

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

- 21.1.28.3 to make such arrangements with respect to the moneys 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;
- 21.1.29 *Trustee's power to deal with itself:* notwithstanding any rule of law to the contrary, to acquire as property of the trust fund real or personal property the beneficial interest in which is at the date of such acquisition the absolute property of the Trustee provided that any property so acquired is acquired for a consideration being not greater than the current market value of the property and upon such acquisition the beneficial interest in and to the property will be held by the Trustee upon the trusts contained in this deed;
- 21.1.30 *Policies:* to effect or acquire policies of life assurance of any kind on the life of any person or in respect of sickness, disability or accident to any person and to pay premiums, transfer, surrender, change the situs of and deal with such policies in any manner, whether or not such policies are individual policies on the life of one person or a group policy on the lives of two or more persons, and to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- 21.1.31 *Determination between capital and income:* to determine whether real or personal property, or any increase or decrease in value of any property, or any receipts or payments from, for or in connection with real or personal property, is to be treated as and credited or debited to capital or to income and generally to determine all matters as to which any doubt may arise in relation to the execution of the Trust and powers of the Trust and every determination of the Trustee in relation to any of these matters, whether 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, binds all interested parties and may not be objected to on any ground;
- 21.1.32 *Partnerships and joint ventures:* to enter into partnership or a joint venture with any person on such terms as the Trustee thinks fit and to vary the terms of or terminate and be a party to the partition of assets of any such partnership or joint venture;
- 21.1.33 *To permit a unit holder to use trust property:* to permit a unit holder to reside in any house, flat, strata title lot or other residential unit or to use any personal

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

property which, or the proceeds of sale of which, may for the time being be subject to the Trust with or without consideration and generally upon such terms as the Trustee in its discretion thinks fit;

- 21.1.34 *Agency and licences:* to apply for, purchase or hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business or venture which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- 21.1.35 *Choses-in-action:* to acquire choses-in-action, including debts and obligations of all kinds, for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with such choses-in-action in any way on such terms and conditions as the Trustee may see fit;
- 21.1.36 *Advertise:* to adopt such means of making known and advertising any business which the Trustee is empowered to carry on or in pursuing any power as may seem expedient or desirable;
- 21.1.37 *Make gifts and donations:* to make gifts or donations out of the trust fund for any charitable, scientific or educational purposes;
- 21.1.38 *Receive gifts:* to receive property by gift inter vivos or by will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund and whether subject to liabilities or not and to hold the same upon these trusts and to administer such additions as part of the trust fund;
- 21.1.39 *Legal proceedings:* to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination and to compromise and settle any such dispute or proceedings for such consideration and upon such terms and conditions as the Trustee may decide;
- 21.1.40 *Intellectual property rights:* to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like conferring any exclusive or non-exclusive or limited right to use or any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account property rights or information so acquired;
- 21.1.41 *Power to appropriate trust fund in specie:* to appropriate in specie any portion of the trust fund, or any investment to or towards the share or entitlement of a unit holder and to charge any such share or entitlement with such sum of

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

money by way of equality as the Trustee may think fit and for these purposes the Trustee may fix the value of any real or personal property forming part of the trust fund and every such appropriation, charge and valuation is binding on all persons who may at any time be entitled to any interest in the trust fund;

21.1.42 *Release of powers:* by irrevocable deed to renounce and release any power conferred on the Trustee under the Trust in respect of the whole or part of the trust fund or the income and upon such renunciation and release coming into effect, such power is to be taken to be at an end and no longer exercisable by the Trustee to the extent of such renunciation and release;

21.1.43 *Incidental powers:* to do all other things as may be incidental to the exercise of the powers, rights, discretions and authorities conferred on the Trustee by this deed;

21.1.44 *Carry on business:* from time to time to carry on alone or jointly with another or others any business or an interest in any business and use the trust fund in carrying on such business as the Trustee may decide with power to charge against or pay or retain out of the trust fund all debts, costs, expenses and other outgoings incurred in carrying on such business or for the purpose of carrying it on or for the purpose of establishing a proposed business and without limitation the Trustee has the following powers:

21.1.44.1 to investigate and determine the feasibility or desirability of establishing or carrying on or acquiring any business or an interest in any business which the Trustee proposes or considers establishing or carrying on or acquiring and the Trustee is entitled to incur expenses in or in connection with any investigation and determination and to pay or recoup such expenses out of income or capital whether or not pursuant to that investigation and determination the Trustee proceeds to establish or carry on that business;

21.1.44.2 to establish any business;

21.1.44.3 to acquire the whole or part of the goodwill of an existing business;

21.1.44.4 to acquire the assets, or an interest in the assets, of or used in any business;

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

- 21.1.44.5 to undertake to meet liabilities or contingent liabilities incurred or to be incurred by any person in or about the establishment or carrying on or acquisition of the whole or part of an existing business the goodwill and assets of which or any of which are proposed to be acquired by the Trustee and to give indemnities for or enter into guarantees of such liabilities and contingent liabilities or any of them;
- 21.1.44.6 to acquire, or join in acquiring, chattels and stock in trade for use in, or in connection with, any business carried on or proposed to be carried on by the Trustee or in which the Trustee may acquire an interest;
- 21.1.44.7 to make payments or incur expenses or liabilities (including donations) which the Trustee considers to be for the benefit of any business carried on by or proposed to be carried on by the Trustee or in which the Trustee may have an interest or which the Trustee considers will promote or facilitate such business notwithstanding that the Trustee may be under no legal or enforceable obligation to make such payments or incur such expenses or liabilities and notwithstanding that such payments or the incurring of such expenses or liabilities do not produce any direct benefit to the trust fund;
- 21.1.44.8 to sell the goodwill of any business;
- 21.1.44.9 to enter into any covenant or agreement in restraint of trade;
- 21.1.44.10 to enter into contracts for importing or exporting goods and to enter into contracts for the shipping or other transportation of goods; and
- 21.1.44.11 to carry on any business in the same manner and with the same powers and rights as the Trustee would have in relation to the business as if it were carrying it on in its own right and not as trustee and in carrying on such business:
 - (A) the Trustee may transfer title to any property which it holds as trustee, with or without consideration, notwithstanding any limitation on such power which might otherwise by operation of law or under any other provision of this deed prevent such title

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

being effectually or validly transferred by reason of it being a trustee or the transferee having notice that it is a trustee;

(B) any person dealing with the Trustee may contract with and make payments to the Trustee without being required to inquire as to whether the Trustee has power to deal with them under this deed or whether the Trustee is properly exercising any power it may have in so dealing and such person is not obliged to inquire as to the proper application by the Trustee of any payment so made or is accountable for the non-application of such money notwithstanding that such person was on notice that the Trustee was carrying on such business as a trustee; and

(C) the title of any person to whom property is transferred by the Trustee, whether with or without consideration, is not affected by any notice that the Trustee held title to such property as a trustee and the receipt of the Trustee is an absolute discharge for any payment made to the Trustee.

21.2 Power to act as a director

The Trustee, being a natural person, may become a director of any company in which any moneys forming part of the trust fund are from time to time invested and may receive the remuneration attached to such office without being liable to account.

21.3 Power to act notwithstanding personal interest

The Trustee may exercise or concur in exercising all powers and discretions given under this deed or by law notwithstanding that it, or any person being a director or shareholder of the Trustee, has or may have a direct or indirect interest 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.

22 Termination of trust

22.1 Termination of trust

The Trust must wind-up and terminate on the first to occur of:

22.1.1 the date of termination which unit holders holding not less than 90% of the units notify the Trustee in writing that the Trust is to be determined;

22.1.2 if at any time the Trustee considers it to be in the interests of the unit holders, the date the Trustee so determines; or

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

22.1.3 80 years from the date of this deed.

22.2 Procedure on termination

The Trustee must on the termination date:

22.2.1 as soon as practicable sell, call in and convert into money the investments and property constituting the trust fund;

22.2.2 pay out all debts and liabilities in relation to the Trust; and

22.2.3 pay the remainder, less all proper costs, disbursements, fees and other outgoings and less all proper provisions for future liability, to the unit holders (subject to any right, restriction or condition affecting the units into which the trust fund is divided relating to the right to share in the capital of the trust fund on the termination of the trust fund) in proportion to the number of units of which they are at the termination date respectively registered as the holders.

22.3 ***Postponement of sale***

In winding up the Trust the Trustee may postpone the sale, calling in and conversion of any part of the investments and property of the trust fund for such time as it thinks desirable in the interests of the unit holders and is not responsible for any loss attributable to such postponement.

22.4 ***Provision for liabilities***

In winding up the Trust the Trustee may make such provision as in its discretion it considers necessary to provide for any outgoings or liabilities (actual or contingent) in respect of the trust fund or any of the investments of the trust fund before making any distribution to the unit holders and subject to this must hold the part of the trust fund or the investment so retained in trust for the unit holders otherwise entitled.

23 **Notices and service**

23.1 ***Notices***

Subject to the provisions of cl 23.3, for a notice or demand given under this deed to be properly made it must be in writing; and

23.1.1 where the notice or demand is given by an individual, it must be signed by such party personally or by a solicitor acting for the individual or by any agent or attorney of such party authorised in writing; and

23.1.2 where the notice or demand is given by a company, it must be executed under seal or signed by a director or secretary of such company or by a solicitor acting for the company or by any agent or attorney of the company who is duly authorised in writing in that regard.

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

23.2 Service

In addition to any method of service authorised by the law governing this deed, service of a notice or demand is sufficient and effective if:

23.2.1 where service is to be on a company, the notice or demand is:

23.2.1.1 delivered or sent by pre-paid post to the registered office or a place of business of that company;

23.2.1.2 served personally on any director of that company;

23.2.1.3 where the company to be served is a unit holder, the notice or demand is delivered or sent by prepaid post to the address of the unit holder as shown in the register; or

23.2.1.4 served by facsimile in accordance with cl 23.4; and

23.2.2 where service is to be upon a natural person, the notice or demand is:

23.2.2.1 served personally;

23.2.2.2 delivered or sent by pre-paid post to the place of business or residence of that person;

23.2.2.3 where the person to be served is a unit holder, the notice or demand is delivered or sent by prepaid post to the address of the unit holder as shown in the register; or

23.2.2.4 served by facsimile in accordance with cl 23.4.

23.3 Provisions regarding service

Notwithstanding the provisions of the two previous sub-clauses:

23.3.1 service of a notice or demand on any one of several joint unit holders is to be taken to be effective service on all joint holders;

23.3.2 a notice or demand to be served at an address in Australia and sent by pre-paid post from within Australia is properly served only if it is sent by prepaid ordinary, express or security post and is to be taken to have been served on the next business day following the date of posting; and

23.3.3 a notice or demand to be served at an address outside Australia and sent by pre-paid post from within Australia is properly served only if it is sent by any form of pre-paid airmail post and is to be taken to have been served on the sixth business day following the date of posting.

23.4 Facsimile service

23.4.1 Service of a notice or demand may be effected by facsimile transmission to a facsimile number known by the sender of the notice or demand to be a

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

current facsimile number of the person or company ('receiver') to be served, and is to be taken to have been served when the facsimile machine of the sender produces a report showing the date and time of the transmission and the facsimile number of the receiver. Where the receiver within 24 hours of transmission notifies the sender that the transmission was not wholly received in legible form, service by facsimile is effective where a retransmission is sent in conformity with this clause, and no such notice is given by the receiver.

23.4.2 A facsimile communication transmitted after 5:00 pm, Brisbane time, or on a day other than a Saturday, Sunday or public holiday in Brisbane ('business day') is to be taken to have been transmitted and received on the next business day in Brisbane.

Signed Sealed and delivered by _____ }

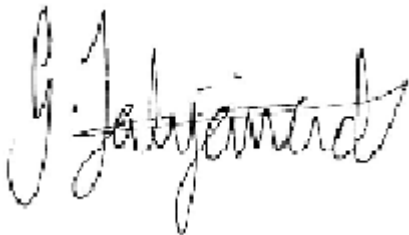
BRANDON JAMES SAUL



.....

[Signature]

in the presence of:



.....

[Signature of Witness]

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

EXECUTED BY XSGT PTY LTD ACN 094 064 525}

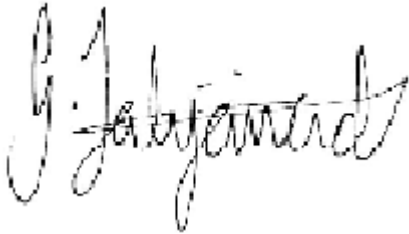
AS TRUSTEE FOR THE XSGT TRUST

In accordance with s127 of the Corporations Act



.....
[Sole Director]

:



.....
[Signature of Witness]

Signed Sealed and delivered by

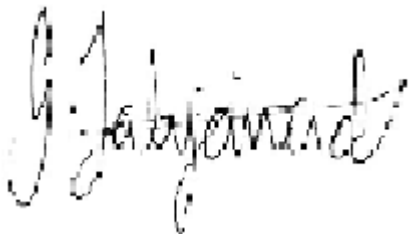
}

SHARON MARREE LONGRIDGE



.....
[Signature]

in the presence of:



.....
[Signature of Witness]

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

Signed Sealed and delivered by _____ }

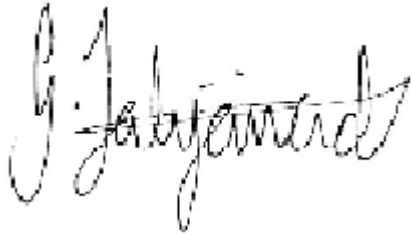
JULIE CARON HOWIE



.....

[Signature]

in the presence of:



.....

[Signature of Witness]

Signed Sealed and delivered by _____ }

RODERICK ARTHUR SIMPSON

.....

[Signature]

in the presence of:

.....

[Signature of Witness]

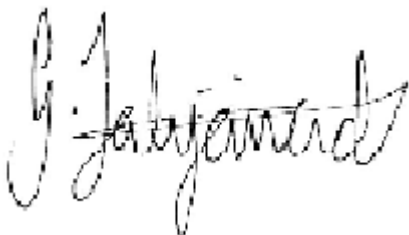
Signed Sealed and delivered by _____ }

ROBERT WILLIAM DOOLAN



in the presence of:

[Signature]



.....

[Signature of Witness]

**NORTH BYRON PROPERTY UNIT TRUST
TRUST DEED**

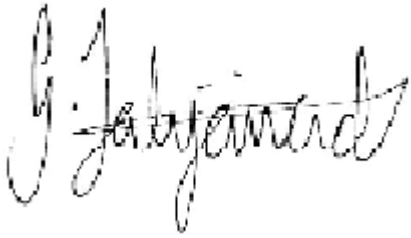
EXECUTED BY **NORTH BYRON PROPERTY PTY}**

LTD ACN 121 766 792

In accordance with s127 of the Corporations Act



.....
[Sole Director]

:


.....
[Signature of Witness]