

DEED ESTABLISHING

55 Hume Street unit trust

Bull, Son & Schmidt
Solicitors
1 Chandos Street
ST LEONARDS NSW 2065

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PH: 439 5299
REF: DM:JM
SOLICITOR CODE: A110

THIS DEED made the 24th day of March 1995

PARTIES:

1. **BRUCE KENNEDY** of 1/35 Milson Road, Cremorne (the 'initial unit holder').
2. **DUSKBOUT PTY LIMITED** (A.C.N. 068 299 669) a company duly incorporated and having its registered office at 59 Christie Street, St Leonards (the 'Trustee').

RECITES:

- A. The initial unit holder intends on or before the date of this deed to pay to the Trustee the initial sum with the intention that such sum will initially constitute the Trust.
- B. The Trustee will act as trustee of the Trust so that all monies and investments to be held by it will be held upon trust in accordance with the following terms and conditions.
- C. The provisions contained in this deed shall apply to and enure for the Trustee and the holders for the time being of the issued units in the Trust.

THIS DEED WITNESSES:

Definitions and interpretation

1. (1) *Definitions*

In this deed and in any certificates and other documents referred to herein unless repugnant to or excluded by the context:

- (a) 'deed' means this deed as amended or varied from time to time.
- (b) 'financial year' means the period from the date hereof to midnight 30 June next and thereafter each period of twelve (12) months ending at midnight on 30 June and if the termination date is not 30 June in any year the last financial year shall be the period commencing on 1 July preceding the termination date and ending on the termination date.
- (c) 'Fund' means:
 - (i) the initial sum and all other monies paid to and accepted by the Trustee upon the issue of units;
 - (ii) all other money and property which becomes subject to the rights and obligations of this deed;
- (d) 'initial sum' means the amount of ten dollars (\$10.00) paid or to be paid by the initial unit holder to the Trustee upon or before the execution of this deed to constitute the Trust.
- (e) 'person' includes a company, corporation, firm or body of persons.

- (f) 'termination date' means the date upon which the trust is wound up in accordance with this deed.
- (g) 'Trust' means the trust created by this deed which shall be called the '55 Hume Street unit trust'
- (h) 'Trustee' means the Trustee or any subsequent trustee for the time being of the Trust.
- (i) 'unit' means an undivided part or share of the Fund created under the provisions of this deed and from time to time held by a unit holder.
- (j) '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.

(2) *Gender and number*

Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided.

(3) *Statutory enactments*

A reference to a statutory enactment shall be a reference to such enactment as amended from time to time.

(4) *Headings*

Headings shall not be taken into account in the construction of this deed.

(5) *Governing law*

The Trust shall be governed by and this deed shall be construed in accordance with the laws of New South Wales.

Trust

2. (1) *Initial sum*

The Trustee hereby acknowledges receipt of the initial sum to constitute the Trust which shall be divided into ten (10) units which are held by the initial unit holder.

(2) *Fund*

The Trustee shall stand possessed of the Fund upon trust for the unit holders from time to time upon the trust and subject to the terms of this deed.

Beneficial interest of unit holders

3. (1) *Beneficial interest in the Fund*

Subject to the rights of holders of units of a class, the beneficial interest in the Fund as originally constituted and existing from time to time shall be vested in the unit holders for the time being in proportion to the units held by them.

(2) *No entitlement to any part of the Fund*

A unit shall not entitle the registered holder to any particular asset comprised in or any particular part of the Fund but each unit shall entitle the registered holder equally with all other unit holders to the beneficial interest in the Fund as an entirety.

(3) *Equal value*

Notwithstanding that one or more units may have been issued at a premium, all units of the same class shall be of equal value.

Issue and classification of units

4. (1) *Additional units*

The Trustee may from time to time create and issue additional units on such terms and to such persons as it thinks fit.

(2) *Classification of units*

If the Trustee receives the written consent of all unit holders it may classify and re-classify units already issued or to be issued in such manner and on such terms as it may think fit provided the Trustee enters the terms of any special rights, restrictions and conditions attaching to such classified units in the register of unit holders.

(3) *Bound by deed*

Each person upon becoming registered as the holder of a unit shall be entitled to the benefit of and be bound by the terms and conditions of this deed and the conditions (if any) of the issue of the unit from time to time.

(4) *Application form*

The Trustee may require persons to whom units are to be issued to sign such form of application as it may from time to time prescribe or require.

(5) *Number of unit holders*

Notwithstanding the provisions of this deed the maximum number of unit holders shall be fifteen (15).

Register of unit holders

5. (1) *Details of register*

The Trustee shall keep and maintain an up-to-date register of the unit holders in which shall be entered the names and addresses of the unit holders, the number of

units in respect of which they are registered, the distinctive numbers of the certificates held by them respectively, the complete terms of any special rights restrictions or conditions affecting or attaching to units which are classified, the date of acquisition and disposal of units by a unit holder, details of the redemption of units and any other details the Trustee considers appropriate.

(2) *Other records*

The Trustee shall keep and maintain journals in respect of:

- (a) the issue and redemption of units;
- (b) the issue and cancellation of unit certificates; and
- (c) the transfer of units.

(3) *Consequence of registration*

Except to the extent provided in this deed, the person from time to time entered in the register as the holder of a unit shall be the only person recognised by the Trustee as entitled to such unit or to exercise or enjoy the rights and privileges attaching thereto.

(4) *No recognition of trust*

No person shall be recognised by the Trustee as holding any unit upon any trust and the Trustee shall not be bound by or be compelled in any way to recognise, even when having notice, any equitable, contingent, future or partial interest in any unit or any interest therein or, except only as the provisions of this deed otherwise provide, any other rights in respect of any unit except an absolute right to the entirety thereof in the unit holder. Notwithstanding the terms of this sub-clause, the Trustee may at the request of a unit holder note in the register that the unit is held by the unit holder on a particular trust but no liability shall be created by any such note and the Trustee shall not be affected with notice of any trust noted in the register.

Certificates

6. (1) *Issue of certificates*

Each unit holder shall be entitled to be issued with a certificate in respect of units registered in its name but where units are held jointly, the Trustee shall not be bound to issue more than one certificate and delivery of a certificate to one of several joint unit holders shall be sufficient delivery to all such holders.

(2) *Form of certificate*

Each certificate shall be in such form as the Trustee may from time to time prescribe, signed for or on behalf of the Trustee and shall specify the name of the unit holder and the number of units to which it relates and shall bear a distinctive number or letter.

(3) *Surrender of certificates*

Whenever units are transferred under these provisions, the certificate with respect to such units, or such evidence as to its loss or destruction as the Trustee may require, shall be delivered to the Trustee. A unit holder shall deliver a certificate

to the trustee upon request, following the redemption of a unit or to note any change in the conditions attaching to a unit.

Redemption of units

7. (1) *Redemption at request of a unit holder*

Any unit holder may in writing request the Trustee to redeem all or any of its units at a price per unit determined in accordance with the provisions of cl 7(2) (the 'unit price') and if the Trustee shall consider that such units may be redeemed without detriment or disadvantage to the other unit holders the Trustee may in its discretion redeem the units in respect of which such a request shall have been made by service of a notice of redemption on the unit holder.

(2) *Calculation of unit price*

For the purpose of fixing the unit price, the Trustee shall value the Fund and the units into which the Fund is divided, and if it thinks necessary or advisable have the valuation made by a person competent to make such valuation at the Trustee's expense. In determining the value of a unit regard shall be had to any special rights or restrictions or conditions relating to the entitlement of such unit to share in the income or capital of the Fund and in the distribution of the capital on the termination of the Fund and to any other rights, restrictions or conditions attaching to, or affecting, the unit or other units. The unit price shall be calculated on the basis of the value of the Fund and the various units in the Fund. In determining the unit price there shall be deducted all necessary expenses incidental to any realisation by the Trustee of any investment for the purpose of paying the unit price and a trusteeship fee payable in respect of the Fund at the rate chargeable by the Trustee on the amount of the value of the redeemed units computed from the last day of the last preceding financial year prior to the date on which the units are redeemed by the Trustee. The Trustee may pay to the holder of the redeemed units so much of the income of the Fund of the financial year as the Trustee considers should reasonably be attributed to such units and the amount of income to be so paid shall be taken into account in any valuation made or carried out under this deed.

(3) *Effect of redemption*

Upon the service of a notice of redemption pursuant to cl 7(1) the units referred to in such notice shall be redeemed, the certificate therefor cancelled, such units cancelled and the name of the holder shall be removed from the register as the holder thereof and the Trustee's obligation to pay the unit price in respect of each redeemed unit to the holder thereof shall arise.

(4) *Payment of unit price*

The Trustee may raise out of the Fund by borrowing in exercise of its powers in that behalf a sufficient sum to provide the unit price or realise or sell any investment comprised in the Fund to provide a sufficient sum to meet the unit price or pay the unit price out of funds on hand comprising the Fund. The Trustee shall pay to the holder of the redeemed units the unit price for each redeemed unit within three (3) months of the date of redemption of the unit or at the trustee's discretion, provided that in any event payment shall be made within six (6) months of the date of redemption of the unit.

Transfer of units and pre-emption rights

8. (1) *Authorised transfers*

Subject to cl 8(9), a unit may only be transferred:

- (a) to another unit holder;
- (b) to a person other than a unit holder with the written consent of all unit holders;
- (c) to a person other than a unit holder subject to the pre-emption provisions contained in sub-clauses (2) to (9) inclusive of this clause;
- (d) to a parent, child, spouse, brother or sister of the unit holder;
- (e) by the legal personal representative of a unit holder to a parent, child, spouse, brother or sister of a deceased unit holder if that unit holder has so bequeathed the unit or if any of such persons become entitled under the laws relating to intestacy; or
- (f) by the trustee of the will of a deceased unit holder to a new trustee.

(2) *Rights of other unit holders*

No unit shall be transferred to any person, other than a unit holder in accordance with cl 8(1)(c), so long as any unit holder is willing to purchase the unit at its fair value pursuant to the provisions of the following sub-clauses (3) to (9).

(3) *Fair Value*

The Trust's auditor, or if no auditor is appointed the Trust's accountant for the time being, (the 'Auditor') shall on the application of any unit holder certify in writing the sum which in the Auditor's opinion is the fair value of a unit (the 'Fair Value') and such sum shall be deemed to be the fair value for the purposes of this clause. In so certifying the Auditor shall be considered to be acting as an expert and not as an arbitrator and the determination of the Auditor shall be final and binding on the unit holder.

(4) *Transfer notice*

In order to ascertain whether any unit holder is willing to purchase a unit, the proposing transferor of a unit shall give notice in writing together with a certificate signed by the Auditor stating the Fair Value of a unit dated within one (1) month of the notice ('Transfer Notice') to the Trustee that he desires to transfer the unit at the Fair Value. This notice shall constitute the Trustee the agent of the proposing transferor for the sale of the unit mentioned to any other unit holder. The Transfer Notice may include several units and in that case shall operate as if it were a separate notice in respect of each. The Transfer Notice shall not be revocable except with the sanction of the Trustee.

(5) *Offer to unit holders*

The units specified in the Transfer Notice shall be offered by the Trustee to all unit holders (other than the proposing transferor) as nearly as may be in proportion to the existing units held by them respectively. The offer shall in each case limit the time within which the units if not accepted will be deemed to be declined and may

notify to the unit holders that any unit holder who desires to purchase a number of Units in excess of its proportion should in its reply state how many excess units it desires to have. If a unit holder does not claim its proportion, the unclaimed units shall be used for satisfying the claims in excess.

(6) *Acceptance of offer*

If the Trustee shall, within the space of twenty-eight (28) days after being served with the Transfer Notice, find a unit holder willing to purchase the units (the 'Transferee') and gives notice to the proposing transferor, it shall be bound upon payment of the Fair Value to transfer the unit to the Transferee.

(7) *Default by transferor*

If the proposing transferor having become bound makes default in transferring the unit, the Trustee may receive the purchase money and shall immediately cause the name of the Transferee to be entered in the register as the holder of the unit. The Trustee shall hold the purchase money in trust for the proposing transferor. The Trustee's receipt for the purchase money shall be a good discharge to the Transferee and after its name has been entered in the register in exercise of this power, the validity of the proceedings shall not be questioned by any person.

(8) *Offer not accepted*

If the Trustee shall not, within the space of twenty eight (28) days after being served with the Transfer Notice, find a unit holder willing to purchase the units the proposing transferor shall, at any time within six (6) months afterwards, be at liberty to sell and transfer the units, or those not placed to a unit holder, to any person and at any price.

(9) *Refusal of registration*

Notwithstanding compliance with the provisions of cl 8(1), the Trustee may refuse to register any transfer of a unit where the Trustee has a lien on the unit or where the proposed transferor is, either alone or jointly with any person, indebted to the Trustee on any account whatsoever.

(10) *Form of transfer*

A transfer of units may be effected by a written instrument of transfer in a form acceptable to the Trustee and containing, inter alia, an undertaking by the transferee to be bound by the terms of this deed.

(11) *Execution of transfer*

Before registration of the transfer, the instrument of transfer shall be executed by, or on behalf of, both the transferor and transferee and shall be duly stamped, if required by law, and left with the Trustee together with the unit certificate to which the transfer relates. Upon being satisfied that the provisions of this deed relating to transfers of units have been complied with, the Trustee shall make appropriate entries in the register of unit holders, cancel the unit certificate of the transferor relating to the units transferred and issue a new unit certificate relating to those units in the name of the transferee as unit holder.

Transmission of units

9. (1) *Death of 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, shall be the only person recognised by the Trustee as having any title to or interest in the units held by such holder.

(2) *Election by representative*

Any person becoming entitled to a unit in consequence of the death, bankruptcy or liquidation of a unit holder, or as a result of the unit holder being incapable of managing his affairs (each of which in this clause is called a 'nominated event') may, upon such evidence being produced as may from time to time be required by the Trustee, elect either to be registered himself as the holder of the unit or with the consent of the Trustee, which may be withheld in its discretion, to have some person nominated by him registered as the transferee.

(3) *Effect of election*

If such person elects to be registered himself, he shall deliver to the Trustee a notice in writing signed by him stating that he so elects. If he elects to nominate some other person to be registered as transferee, he shall testify his election by executing a transfer of the units to that person. All provisions of this deed relating to transfer of units shall apply to such notice of transfer as if the nominated event had not occurred and the notice or transfer were a transfer executed by the unit holder and the consent of the Trustee is required to be obtained to such transfer.

(4) *Rights on transmission*

A person entitled to any unit by transmission shall be entitled to receive and may give a good discharge for all moneys payable in respect of the unit but, except as otherwise provided in this deed, shall not be entitled to any other rights or privileges of a unit holder unless and until he shall become registered in respect of the unit.

The income of the fund

10.(1) *Determination of income*

The Trustee may in its discretion determine whether any receipt or outgoing or any sum of money or investment 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 and in determining the net income of the Fund for any financial year the Trustee may exercise the powers conferred on it under this sub-clause in such fashion so as to minimise the liability to income and capital gains tax of the unit holders and of itself as Trustee of the Fund. If the Trustee shall fail to make a determination under this clause prior to midnight on 30 June in any financial year then the amount which under the provisions of the Income Tax Assessment Act, 1936, represents the 'net income' (as that term is defined by s 95 of that Act) for that year in relation to the Fund shall be treated as the net income of the Fund for the purposes of this deed.

(2) *Distribution of net income*

The net income of the Fund arising in each financial year shall be dealt with not later than the end of the financial year as follows:

- (a) The Trustee shall determine the amount of the net income of the Fund in such financial year;
- (b) The Trustee shall determine the amount (if any) of the net income that shall be applied and retained in the Fund to recoup any losses of the Fund in any prior financial year which shall be applied and dealt with in the books of account of the Fund in accordance with such determination;
- (c) The Trustee shall set aside out of the income the amount (if any) to be retained in the Fund, as the Trustee considers proper, as reserves to meet contingencies, provide for repairs, or maintenance, or for depreciation or for any other purpose;
- (d) The Trustee shall determine the amount (if any) of the net income, which may be the whole or any part thereof, which shall be retained in the Fund and accumulated ('accumulated income') and which shall be credited to an account entitled 'accumulated income account';
- (e) The net income less the sums retained, applied or set aside ('income available for distribution') shall be distributed or applied by the Trustee, firstly, in accordance with any special rights as to sharing income attached to any units and then to or for such persons who at midnight on the last day of each financial year are the unit holders in proportion to the units registered in their respective names.

(3) *Accumulated income account*

The following provisions shall apply in relation to the amount of the accumulated income retained and accumulated under the provisions of this deed and credited to the account entitled 'accumulated income account':

- (a) Such accumulated income shall, subject to the provisions of this deed governing the capital of the Fund, be held and accumulated for the persons who shall be the unit holders at the termination date;
- (b) Such accumulated income shall be invested by the Trustee in any of the investments authorised by this deed or by law;
- (c) The income derived from the investment of such accumulated income shall be, and shall be deemed to be, for all purposes income of the Fund and the provisions of this deed with respect to the determination, distribution and application of the net income of the Fund shall apply to this income;
- (d) The amount from time to time standing to the credit of the 'accumulated income account' shall be taken into account for the purposes of the provisions of this deed in determining the total value of the Fund or the value of a unit.

Capital of the fund

11.(1) *Application of capital*

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

(2) *Distribution of capital prior to termination date*

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

Payment to unit holders

12.(1) *Means of payment*

A requirement pursuant to this deed to distribute, pay, apply or set aside any amount to or for a unit holder may be effected as to the whole or part by anyone or more of the following means:

- (a) by placing such amount to the credit of the unit holder in the books of the Fund provided such unit holder consents to same;
- (b) by drawing a cheque in respect of such amount made payable to or for the credit or benefit of the unit holder;
- (c) by paying the same in cash to or for the benefit of the unit holder;
- (d) if the Trustee in its discretion thinks fit, by transferring any of the investments of the 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; or
- (e) if the Trustee in its discretion thinks fit, by issuing units to unit holders entitled to such amount as though the amount not distributed had been paid to them and accepted as consideration for the units, the number of units so to be credited and issued and the terms conditions and provisions relating to such units to be determined by the Trustee as though it had resolved to issue additional units under the provisions of this deed.

(2) *Payment by cheque*

Any monies 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 that one of the joint unit holders who is first named in the register of unit holders.

(3) *Payment to joint unit holders*

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

(4) *Unit holder under a legal disability*

The Trustee may determine that any share of income or capital available for distribution, or as units issued under the provisions of cl 12(1), or otherwise payable to a minor or a person under a legal disability who shall be presently entitled thereto, shall accordingly be held by it under a separate trust for such minor or person under a legal disability until he shall have attained the age of eighteen (18) years or ceased to be under such legal disability, meanwhile to accumulate the income by investment and to hold the interest on trust subject to such minor or person attaining the age of eighteen (18) years or ceasing to be under such legal disability PROVIDED THAT if the person entitled shall die before attaining the age of eighteen (18) years or otherwise ceasing to be under a legal disability, the interest or units and the accumulated income thereof shall be paid to or held for the personal representative of such a person. The Trustee may pay or apply such share of the income or capital available for distribution or any part thereof for the maintenance, education or benefit in life of such person and may pay to a trustee for, or to a guardian of, any such person, or to any other person as trustee for such person, to be so applied without being bound to see to its application by the guardian or trustee. Any money units or property held by the Trustee pursuant to the provisions of this sub-clause shall be held by it as a separate trust and shall not be included as part of the Fund and the provisions of this deed shall in all respects apply to that separate trust, mutatis mutandis, but the income arising from the property and investments held in such trust shall not be, or be deemed to be, part of the income of the Fund. In particular and without limiting the generality of the foregoing, the provisions of this clause shall apply as though any units, interests or accumulations of income were a share in the amount available for distribution to such minor or person under a legal disability.

Statements and accounts

13.(1) *Accounting records*

The Trustee shall:

- (a) establish and maintain proper books of accounts which accurately record all receipts and outgoings in relation to the Fund; and
- (b)) separately record all income and capital of different categories or classes as are referred to or provided for in this deed.

(2) *Financial statements*

In each year the Trustee shall have prepared by a qualified public accountant financial statements, 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 Fund setting out all:

- (a) income of the Fund;
- (b) sums of capital belonging to the Fund;

- (c) costs and disbursements and other outgoings paid or payable out of the Fund and chargeable against income;
- (d) capital expenditure and liabilities chargeable to capital;
- (e) investments and money comprised in the Fund;
- (f) amounts held in the 'accumulated income account';
- (g) amounts distributed by the Trustee to unit holders.

The statements prepared and the books of account in relation to the Fund shall be open to the inspection of unit holders.

(3) *Election to appoint auditor*

Unit holders holding 51.% or more of the units may by resolution, evidenced in writing and signed by these unit holders, require that an auditor be appointed to examine the accounts of the Fund, to ascertain the correctness of any statement prepared or to make such enquiry into the financial affairs of the Fund as may be required. The auditor named in the resolution, or in default thereof an auditor appointed by the Trustee, shall make the audit or enquiry as required. Every such auditor shall have a right of access to the accounts and other records of the Trustee in relation to the Fund and shall be entitled to require and to be given information and explanation as he desires. The costs of the auditor shall be paid out of the Fund.

(4) *Collection of accounts receivable*

The Trustee shall 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 Fund and from the carrying on of any business by the Trustee pursuant to this deed.

(5) *Payment of accounts payable*

The Trustee shall pay out of the Fund all accounts due to be paid by the Trustee arising out of the Trust including costs and disbursements, commission, 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 Fund and the carrying on of any business.

Appointment and removal of trustee

14.(1) *Power to appoint and remove trustee*

The power of appointment of a new trustee in the place of an existing trustee including the trustee named in this deed and in addition to and jointly with any existing trustee and the power to remove any trustee shall be vested:

- (a) where the Trustee is a company: in the persons holding shares in the Trustee in the proportions in which such persons shall hold shares in the Trustee so that any of such powers shall be exercisable by a resolution evidenced in writing signed by persons holding 75% or more of the shares in the Trustee; and
- (b) where the Trustee is not a company or includes natural persons: in the unit holders in the proportions in which the unit holders shall hold units

so that any of the powers shall be exercisable by a resolution evidenced in writing signed by unit holders holding 75% or more of the units.

(2) *Restriction on appointment*

The power of appointing a new trustee shall not be exercised in favour of any person who may at any time have been the holder of a unit in the Fund.

(3) *Transfer of records*

Upon the resignation, retirement or removal of the Trustee, the Trustee shall hand to the new trustee of the Trust all books, records, documents and other matters pertaining to the Trust and at the expense of the Trust do all things necessary to transfer the legal title in the assets of the Fund to the new trustee.

Variation of trust

15.(1) *Variation of trust deed*

At any time and from time to time prior to the termination date, the provisions of this deed may be altered, modified, varied, amended, revoked or added to by any instrument in writing executed by the Trustee. Any such alteration, modification, variation, amendment, revocation or addition shall not prejudicially affect the rights of a unit holder to income of the Fund previously set aside for him or held for his benefit, or prejudicially affect the rights of unit holders of a class of units to participate in the income or capital of the Fund in accordance with the provisions of this deed, or the conditions of issue of such class of units, unless the consent of the unit holder affected, or the consent of all unit holders of the class whose rights are to be prejudicially affected, is obtained at or prior to the time any such alteration is made. After any such written instrument has been entered into, and if required consented to, by a unit holder or by the holders of a class of units, this deed and its provision shall be construed and take effect as thereby altered, modified, varied, amended, revoked or added to.

(2) *Restriction on variation power*

No alteration, modification, variation, amendment, revocation or addition of this deed shall infringe any applicable law or rule against perpetuities or otherwise extend the termination date.

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 Fund provided that all the unit holders of that class at that time shall consent in writing, whereupon the units of that class shall be held on, and subject to, any preferred, deferred or other special rights or any restrictions, whether in regard to the income payable or the sum payable to the holder on the redemption of any units by the Trustee or on the termination of the Fund, as modified or varied pursuant to the provisions of this clause. In the event of such rights being modified or varied the trustee shall note the register of unit holders accordingly.

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 (3), shall not in any circumstances be paid or transferred beneficially to, applied for the benefit of, the Trustee or any person who at any time has been a trustee. No discretion or power conferred by this deed shall be exercised or capable of being exercised and no provision of this deed shall operate so as to confer or be capable of conferring any direct or indirect benefit in or out of the Trust on the trustee or any person who at any time has been a trustee other than remuneration properly payable to the Trustee.

(2) *Remuneration*

The Trustee shall, if the Trustee so requires, be entitled by way of remuneration for the Trustee's services to such sum out of the income or capital of the Fund whether by way of periodical fee, salary, commission or otherwise as shall be determined by unit holders holding 51% or more of the units.

(3) *Administration expenses*

The Trustee may pay all costs, charges and expenses of administering the Fund out of the Fund whether from capital or income as the Trustee may determine. Any Trustee being an accountant, solicitor or other person engaged in any profession shall, in addition to any entitlement under these provisions, be entitled to charge and be paid, from time to time, all usual professional charges for business transacted, time expended and acts done by the Trustee or any employee or partner of the Trustee in connection with the trusts of this deed including any acts which the Trustee not being in any profession could have done personally.

(4) *Indemnity*

The Trustee acting in good faith shall be entitled to be indemnified out of the Fund in respect of all liabilities incurred by the Trustee relating to the execution of any powers, duties, authorities or discretions vested in it by virtue of the provisions of this deed and in respect of all actions, proceedings, costs, claims and demands in relation to any matter or thing done or omitted to be done concerning the Trust provided that the right of the Trustee to be indemnified in respect of any liability incurred by the Trustee or arising in or about the investment and administration of the Fund, in the conduct and management of any business forming part of the Fund, in the acquisition of any authorised investment under any contract entered into by the Trustee, or by reason of the execution of any power, duty, authority or discretion vested in the Trustee, shall be limited always to the assets of the Fund in the hands of the Trustee for the time being and shall 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.

(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 resolution of its members in general meeting or by a resolution of its board of directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to one or more of its board of directors or governing body 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.

(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 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.

(7) *Release of power*

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 paragraph the power to release or revoke shall be absolutely and revocably determined.

(8) *Unfettered power*

Where in this deed the Trustee is entitled to exercise a power or a discretion, such power or discretion shall be an absolute unfettered power or discretion and no unit holder or other person, except as expressly herein provided, shall be entitled to call into question the exercise of such power or discretion or the failure to exercise such power or discretion. The Trustee shall not be required to assign any reason for its exercise of such power or discretion or failure to exercise such power or discretion.

(9) *Professional advice*

The Trustee may take and act upon the opinion of a solicitor or barrister of at least five 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 any 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 clause shall prohibit or impede the Trustee from applying to any court if the Trustee shall think fit.

(10) *Manager*

The Trustee shall not be bound to act personally and 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. The Trustee may determine the remuneration to be paid to any such person.

(11) *Vacation of office*

The office of trustee shall ipso facto be determined and vacated if the Trustee being an individual shall be 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 shall become bankrupt or make any arrangement or composition with creditors generally or if the Trustee being a company shall enter into liquidation whether compulsory or voluntary (not being a voluntary liquidation for the purposes of amalgamation or reconstruction) or have a receiver or official manager or receiver and manager appointed.

(12) *Custodian trustee*

It shall not be necessary for property including a security being part of the Fund to be registered in the name of the Trustee but the same 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. The trustee shall have the same powers and discretions in respect of such asset as if it were registered in its own name.

(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 Fund is invested or situated. The Trustee shall not be liable or responsible for any loss not caused by its own fault, which may in any manner occur in relation thereto or by reason thereof.

Meetings of unit holders

18.(1) *Convening a meeting of unit holders*

The Trustee may whenever it thinks fit convene a meeting of unit holders. The Trustee shall 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 51% or more of units.

(2) *Notice of meetings*

Not less than seven (7) days' notice shall be given of every meeting of unit holders and notice shall be given to all unit holders and shall specify the general nature of the business to be transacted. A meeting may be held at shorter notice being not less than twenty four hours with the consent of all of the unit holders entitled to receive notice and attend such meeting. 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.

(3) *Appointment of chairman*

At every meeting of unit holders some person nominated by the Trustee, whether a unit holder or not shall preside as chairman. The chairman in the event of an equality of votes shall not have a casting vote.

(4) *Determination of questions*

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

- (a) 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 shall be taken; or
- (b) a poll be demanded.

(5) *Calling a poll*

A poll may be demanded by unit holders holding not less than 51% of the units.

(6) *One vote per unit*

Upon a poll every unit holder present in person or by proxy shall have one vote for every unit held by it.

(7) *Giving of votes*

Votes may be given either personally or by proxy.

(8) *Proxies*

Every instrument of proxy shall be in such form as the Trustee may prescribe or otherwise in common or ordinary form and shall be signed by the unit holder. The instrument appointing a proxy shall be deposited at the office of the Trustee not less than twenty-four (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.

(9) *Quorum*

The quorum for a meeting shall be two (2) or more unit holders present personally or by proxy or attorney and representing personally or by proxy or attorney in the aggregate not less than 51% of the units.

(10) *Joint unit holders*

If there be joint unit holders of any unit, any of such joint holders may vote either personally or by proxy as if he or she were solely entitled to the units comprised in the joint holding but if more than one of such joint holders be present at any meeting, either personally or by proxy, the joint holder whose name stands first in the register in respect of the joint holding shall alone be entitled to vote in respect thereof. The executors or administrators of a deceased unit holder shall for the purposes of this clause be deemed joint holders.

(11) *Minors*

A unit holder who is a minor or a person under a legal disability shall vote only by a parent or his legal guardian or by such other person as properly has the management of his 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 shall be counted in determining a quorum.

Limitation on liability of unit holders

19.(1) *No partnership*

Nothing in this deed shall constitute or be deemed to constitute:

- (a) the relationship of principal and agent between the Trustee and the unit holders.
- (b) the relationship of partners as between the Trustee and the unit holders.
- (c) the relationship of partners as between the unit holders among themselves.

(2) *No indemnity from unit holders*

Notwithstanding any other provision of this deed or provision deemed to be included herein or any rule of law to the contrary, no unit holder shall, by reason thereof, or by reason of the relationship created with the Trustee, be 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 Fund as compared with the liabilities of the Trustee. The only rights, if any, of indemnity of such Trustee or of such creditor shall be limited to recourse to the assets of the Fund. A unit holder shall not be 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 same exceeds so much of the consideration (if any) payable for the issue of units to the unit holder as may be unpaid and outstanding. 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 monies 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 Fund.

Investment powers

20.(1) *General power of investment*

Subject to the provisions of this deed, the Trustee shall have all the powers over and in respect of the Fund and the investments thereof which it could exercise if it were the absolute and beneficial owner. The Trustee shall exercise that diligence and prudence as an ordinary prudent man of business would exercise in conducting his own affairs.

(2) *Specific powers of investment*

The Trustee shall have the power to apply or invest any monies requiring or available to be invested under this deed in any investment of whatsoever kind or nature as the Trustee in its discretion shall think fit notwithstanding that any such investment is not by law authorised for the investment of trust monies or that the investment does not produce income or that no dividend or interest is payable in respect thereof and whether or not the investment shall involve waste or be subject to liability, with or without security, and otherwise upon and subject to any terms or conditions as the Trustee shall in its absolute discretion think fit. In particular, without restricting the generality of the foregoing, the Trustee shall have the power to apply or invest any monies requiring or liable to be invested under this deed either alone or in partnership or co-ownership with any other person or persons:

- (a) Authorised investments: in any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust moneys;
- (b) Real and personal property: in the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country and although the acquisition is not made primarily for the production of income;
- (c) Property development: in developing and turning to account any real or personal property, or any interest therein, or any property right or

interest which is or may be subject to these trusts, and without limiting such generality by constructing, reconstructing, maintaining or improving any buildings or by laying out and preparing land for subdivision, conversion to strata or similar title, and for buildings;

- (d) Shares: in the acquisition of fully or partly paid shares including; redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto, and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country; or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
 - (e) Options and rights: in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (d) of this sub-clause;
 - (f) Deposit: on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business and any deposit may be made free of interest to any company or corporation or firm in which a unit holder shall be a shareholder or in which any part of the Fund is invested in its shares;
 - (g) Business: in acquiring and carrying on any manufacturing, trading, primary production or other business in Australia or elsewhere;
 - (h) Insurance: in the acquisition of any policy of assurance or insurance of any kind whatsoever;
 - (i) Loans: in making loans to any person or company whether executor, trustee or otherwise, with or without interest, and whether secured or unsecured and for any period whatsoever fixed or otherwise;
 - (j) Precious objects: in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
 - (k) Commodity contracts: in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or futures contracts of any kind which are quoted on a recognised stock exchange
 - (l) Permanent building society: in the lodgment of monies with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
 - (m) Deferred property: in the acquisition of any reversionary or deferred property or rights of any description;
- (3) *Power to vary*

The Trustee shall have the power, which it may exercise from time to time in its discretion, to change or vary any investment for the time being forming part of the Fund made by it pursuant to the provisions of this deed or authorised by law.

21.(1) *General powers*

In the administration of the trusts declared by this deed and in the exercise of the powers, authorities and discretions conferred by this deed or by law, the Trustee shall have the following powers. These powers shall be in addition to the powers, authorities and discretions vested in it by any other provision of this deed or by law and which shall not limit or be limited by, or be construed so as to limit or be limited by the powers, authorities and discretions otherwise by this deed or by law vested in the Trustee that is to say:

- (a) Generally deal with Fund: to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund or otherwise held by the Trustee under the terms of the Trust for such consideration and on such terms as in its discretion it may think fit;
- (b) 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 of any estate or interest therein;
- (c) Personal property: to acquire, dispose of, exchange, hire, lease, let, mortgage or otherwise deal with personal property of any kind;
- (d) 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, tenancies or rights of any nature whatsoever in and to any realty or estate or interest therein motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personality of any other description;
- (e) To let: to lease and let property forming part of the Fund or held by the Trustee pursuant to the provisions of this deed for such period at such rental and to those persons and upon such terms and conditions in all respects as the Trustee may decide to accept surrenders from and make allowances to and arrangements with a lessee or tenant with or without consideration as the Trustee may think fit;
- (f) 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 obtaining other assistance as the Trustee may deem requisite, to provide staff, amenities and to vary and terminate any contract of employment;
- (g) Engage experts: to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the Fund such managers, agents, advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons to transact any business or to do any act required to be done in connection with the administration of the trusts declared in this deed and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- (h) To lend: to lend and advance monies forming part of the Fund or give credit to any person on such terms as may seem expedient; in particular, without limiting the generality of the foregoing, to any unit holder or person having an interest in or 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 taking of security in any form whatsoever or without security;

- (i) To borrow: to raise or borrow moneys either alone or jointly with another or others, from any person, firm or company, either bearing or free of interest and on such terms and conditions and for such purposes as the Trustee may decide to secure the repayment of any such monies or other indebtedness of the Trustee by mortgage, charge, or other security or encumbrance over the whole or any part of the Fund, as the Trustee in its discretion may decide, or to have the repayment secured over property of a third party which may include property of a Trustee or unit holder whether such third party collateral security is given alone or jointly with property of the Fund. No lender shall be concerned to enquire as to whether the necessity of any such borrowing has arisen or to the purpose for which it is required or to the application of the monies borrowed;
- (j) 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 any other facility whatsoever involving the raising, borrowing or lending of monies by or to the trustee as trustee of the Trust;
- (k) Credit: to enter into alone or with others any agreement or arrangement for obtaining credit upon such terms and conditions 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 whatsoever;
- (l) 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;
- (m) 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 thereto;
- (n) Bank accounts: to open in the name of the Trustee or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee thinks fit, with full power to operate on any such account including, but without limiting the generality of the foregoing, power to sign, draw and endorse cheques and other negotiable or transferable instruments on any account and to close the same;
- (o) Management expenses: to pay out of the Fund or the income thereof all costs charges and expenses incidental to the management of the Fund or to the exercise of any power authority or discretion herein contained or in carrying out or performing the trusts of this deed which the Trustee considers appropriate;
- (p) Pay general expenses: to pay insurance premiums, rates, taxes, rents and outgoings in connection with any real or personal property of the

Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable. Where the Trustee is unable to charge such expenditure against income of the Fund it shall be at liberty to resort to capital;

- (q) Corporate securities: with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ('securities') to exercise the following powers in addition to powers conferred by law:
- (i) to pay calls on securities or to permit securities to be forfeited and sold;
 - (ii) to purchase securities and to take up securities of a new issue;
 - (iii) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
 - (iv) to sell securities at such price and upon such terms with or without security as the Trustee thinks fit;
 - (v) 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 the securities to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and to pay out of the capital of the Fund or property held in trust pursuant to the provisions of this deed or the income thereof 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
 - (vi) to agree in respect of a winding up with the liquidator of the company or any member of such company or any other person, in all things as the Trustee shall think fit, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any monies by way of equality of division or partition.
- (r) Unit trust interests: to acquire units or sub-units of any fixed or flexible unit trust whatsoever 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 income or capital of the Fund;
- (s) 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;

- (t) Subdivision of property: to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay monies by way of equality or partition;
- (u) Development of property: to enter into any contract, agreement or arrangement with any person for or with respect to the development and turning to account of any real or personal property or any interest therein 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 any land for building purposes or in developing or turning to account any such real or personal property or any rights privileges or interests;
- (v) 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;
- (w) Maintain property: to maintain and preserve in good and substantial order and condition any real or personal property of the Fund or otherwise held by the Trustee under the terms of this deed and to pay or defray those costs;
- (x) 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 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 time hereafter be incurred, by any person whether a unit holder or not and to guarantee, indemnify or secure, with or without security, the due performance of any contract, agreement, covenant or obligation of any person whether a unit holder or not;
- (y) Power to set aside: to set aside out of the income or capital of the Fund 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;
- (z) 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 of 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 company 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;
- (aa) 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 buy, sell, open, close-out or otherwise deal in futures contracts of all kinds 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

an 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 on, utilise or deal with the facilities of any stock, option or futures exchange;

- (bb) To mix funds: to mix the Fund including its income and any other monies held from time to time by the Trustee pursuant to the trusts created by this deed or under any other trust with other monies whether held by the Trustee pursuant to any provision of this deed or not, to invest the monies so mixed in any investment, property, interest, arrangement or business or in any other mode or manner in which the Trustee may by law or by this deed be empowered to invest the Fund, to exercise all powers, authorities and discretions with respect to the mixed fund which the Trustee is authorised by this deed or by law to exercise with respect to the Fund and in particular to make such arrangements with respect to the monies and their investment with any other person as the Trustee would be authorised or empowered by law or pursuant to this deed to make or enter into.
- (cc) Trustee's power to deal with itself: notwithstanding any rule or law or equity to the contrary, to acquire as property of the Fund real or personal property the legal and 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 shall be held by the Trustee upon the trusts contained in this deed.
- (dd) 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; to pay premiums, transfer, surrender, change the situs of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons; 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;
- (ee) Determination between capital and income: to determine whether real or personal property, or any increase or decrease in amount, number or value of any property, or any receipts or payments from, for or in connection with real or personal property, shall be treated as and credited or debited to capital or to income of the Fund. Generally to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the Trust and powers of the Trust. 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 facts or proceedings of the Trustee in relation to the Fund, shall bind all interested parties and shall not be objected to or questioned on any ground whatsoever;
- (ff) Partnerships and joint ventures: to enter into partnership or joint ventures with any person on such terms and conditions as the Trustee shall think 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;
- (gg) 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 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 shall think fit;

- (hh) Agency and licenses: to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (ii) 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 the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- (ji) 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 herein as may seem expedient or desirable;
- (kk) Make gifts and donations: to make gifts or donations out of the Fund for any charitable, scientific or educational purpose;
- (11) 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 Fund, whether subject to liabilities or not and to hold these gifts upon the trusts in this deed and to administer such additions under these provisions;
- (mm) 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 or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- (nn) 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 the property rights or information so acquired;
- (oo) Power to appropriate trust fund in specie: to appropriate in specie any portion of the Fund or any investment representing the same to or towards the share or entitlement of a unit holder under this deed and to charge any such share or entitlement with such sum of money by way of equality as the Trustee may think fit. For such purposes the Trustee may fix the value of any real or personal property forming part of the Fund and every such appropriation, charge and valuation shall be binding on all persons who may at any time be entitled to any interest in the Fund;
- (pp) 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 any part of the Fund or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;

- (qq) Incidental powers: to do all such other things as may be incidental to the exercise of the powers rights discretions and authorities hereby conferred on the Trustee.
- (rr) 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 Fund or any part thereof or any assets included for the time being in the Fund in carrying on such business as the Trustee may decide. The Trustee has power to charge against or pay or retain out of the Fund all debts, costs, expenses or 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. Without limiting the generality of the foregoing, the Trustee shall have the following powers exercisable from time to time and at any time or times:
 - (i) 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. The Trustee shall be entitled to incur expenses in or in connection with any investigation and determination and to pay or recoup such expenses out of the Fund or out of the income whether or not pursuant to that investigation and determination the Trustee proceeds to establish or carry on that business;
 - (ii) to establish any business;
 - (iii) to acquire the whole or part of the goodwill of any existing business;
 - (iv) to acquire the assets or an interest in the assets of or used in any business;
 - (v) 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;
 - (vi) 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;
 - (vii) 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 unenforceable 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 Fund.
 - (viii) to sell the goodwill of any business;

- (ix) to enter into any covenant or agreement in restraint of trade;
- (x) to enter into contracts for importing or exporting goods and to enter into contracts for the shipping or other transportation of goods.
- (xi) to carry on any business in the same manner and with the same powers and rights as the Trustee would have if it were carrying on the business in its own right and not as trustee. It is expressly declared that the Trustee shall have power in its discretion in the course of, or in connection with, the carrying on of any business to transfer title with or without consideration to any property which it holds as trustee notwithstanding any limitation on such power which might otherwise by operation of law or under any other provision of this deed prevent the title being effectually or validly transferred by reason of it being a Trustee or the transferee having notice that it is a trustee. Any person dealing with the Trustee in, or in connection with, such business may contract with and make payments to the Trustee without being required to enquire 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. No such person shall be obliged to enquire as to the proper application by the Trustee of any payment so made or shall be accountable for the non-application of the payment notwithstanding that such person was on notice that the Trustee was carrying on such business as a trustee. The title of any person to whom property is transferred by the Trustee whether with or without consideration in the course of or in connection with the carrying on of the business shall not be affected by any notice that the Trustee held title to the property as a trustee. The receipt of the Trustee shall be an absolute discharge for any payment made to the Trustee;

(2) *Power to act as a director*

A Trustee who is a natural person may become a director of any company in which any monies forming part of the Fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it.

(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 powers 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.

Notices and service

22.(1) *Notices*

Subject to the provisions of cl 22(3) for any notice or demand given under this deed to be properly made, it shall be in writing and where the notice or demand is

given by an individual signed by such party personally or by any solicitor acting for such party or by any agent or attorney authorised in writing and where the notice or demand is given by a company it is executed under seal or by any director of the company or by any solicitor acting for the company or by any agent or attorney authorised in writing.

(2) *Service*

Service of a notice or demand shall be sufficient and effective if:

- (a) Where service is to be made on a company, the notice or demand is:
 - (i) delivered to the registered office of that company;
 - (ii) served personally upon any director of that company;
 - (iii) posted by ordinary prepaid post or by security mail in an envelope addressed to the company at its registered office or place of business last known to the person serving the notice or demand in which event the notice or demand shall be deemed to have been received on the second business day following the date upon which the envelope containing the same was posted.
- (b) Where service is to be made upon a natural person, the notice or demand is:
 - (i) served personally upon that person;
 - (ii) delivered to the home or place of business of that person;
 - (iii) posted by ordinary prepaid post or by security mail in an envelope addressed to the party at this place of residence or business last known to the person serving the notice or demand in which event the notice or demand shall be deemed to have been received on the second business day following date upon which the envelope containing the same was posted.

(3) *Reservations regarding service*

Notwithstanding the provisions of the two previous sub-clauses:

- (a) Service of a notice or document on any one of several joint unit holders shall be deemed effective service on the other joint holders.
- (b) Any notice or document delivered at or posted to the registered address of a unit holder shall, notwithstanding that such unit holder be dead and whether or not the Trustee has notice of his death, be deemed to have been duly served and such service shall be deemed a sufficient service on the legal personal representative of the deceased unit holder and all persons (if any) registered as joint unit holders with him in respect of the units.

Termination of trust

23.(1) *Termination of trust*

The Trust shall be wound-up and terminate on the first to occur of:

- (a) in the event that unit holders holding not less than 100% of the units shall notify the Trustee in writing that the Trust hereby created shall be determined, the date the trustee is so notified;
- (b) if at any time the Trustee considers it to be in the interests of the unit holders, the date the Trustee so determines;
- (c) 80 years from the date of this deed.

(2) *Procedure on determination*

The Trustee shall on the termination date:

- (a) as soon as practicable sell, call in and convert into money the investments and property constituting the Fund;
- (b) pay out the debts and liabilities in relation to the Trust; and
- (c) pay the proceeds of such sale, calling in and conversion, less all proper costs and disbursements, fees and other outgoings and all proper provisions for liability, to the unit holders (subject to any right restrict or condition affecting the units into which the Fund is divided relating to the right to share in the capital of the Fund on the termination of the Fund or on the redemption of any units) in proportion to the number of units of which they are at the termination date respectively registered as the holders.

(3) *Postponement of sale*

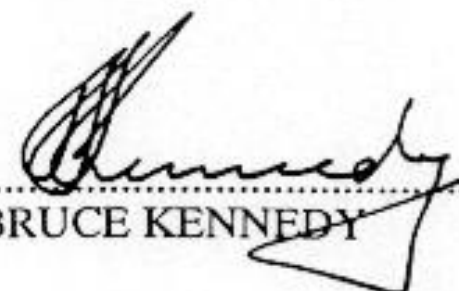
In winding up the Trust the Trustee may postpone the sale, calling in and conversion of any part of the investments and property of the Fund for such time as it thinks desirable in the interests of the unit holders and shall not be responsible for any loss attributable to such postponement.


(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 Fund or any of the investments of the Fund before making any distribution to the unit holders and subject to this shall hold the part of the Fund or the investment so retained in trust for the unit holders otherwise entitled.

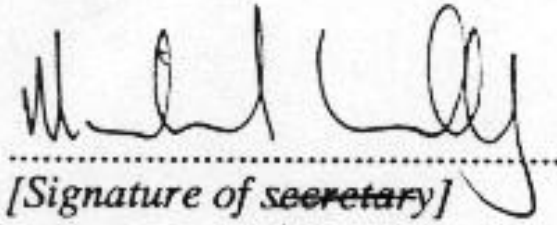
EXECUTED AS A DEED

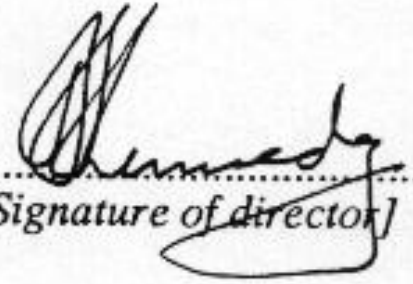
SIGNED SEALED & DELIVERED by
BRUCE KENNEDY in the presence of:


BRUCE KENNEDY


Witness

THE COMMON SEAL of **DUSKBOUT
PTY LIMITED** was affixed
in the presence of:


[Signature of ~~secretary~~]
director


[Signature of director]

