

ENERGY TRUST

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"Person" includes without limiting the generality, a natural person, company, partnership, association (whether incorporated or not), trust or other legal entity whether or not it acts in the capacity as Trustee of any Trust or settlement;

"Register" means the Register established and described in clause 10 of this Deed;

"Settled Sum" means the amount of more particularly specified in Item 7 of Schedule 1 as the Settled Sum;

"Special Resolution" means a resolution passed by a majority of not less than Seventy-five percent (75%) of Unit Holders present and voting on any resolution at a meeting of which not less than Fourteen (14) days notice setting out the text of the resolution has been given to all Unit Holders entitled to attend and vote at such meeting and, where Schedule 2 makes provision for the division of units into classes, such a resolution passed at a meeting of Unit Holders of any Units in a class;

"Trust" means the Trust established by this Deed;

"Trustee" means the person or persons named in Item 3 of Schedule 1 as the Trustee (whether one or more) or such other persons as may from time to time be substituted or added as Trustee;

"Trust Fund" means the Settled Sum, all moneys paid to and accepted by the Trustee upon the issue of Units pursuant to clause 8, the accumulations of income directed or empowered to be made, all accretions and additions to the Trust Fund and the investments, property and other assets from time to time representing the said money accumulations and accretions or any part or parts of them respectively;

"Unit" means an undivided part or share in the Trust Fund having the characteristics provided in this Deed and held by a Unit Holder or by the Trustee. The expression shall include a reference to any Unit of any class of Units and however identified or referred to;

"Unit Holder" includes the Initial Unit Holder (and if more than one each of them) and the person or persons who for the time being and from time to time are registered under the provisions of this Deed as the holder or holders of Units and includes persons jointly registered as such holders;

"Unit Holders" includes persons, corporations and trustees and other legal entities who from time to time until the Vesting Day become so registered notwithstanding that such persons, corporations, trustees or other legal entities may not be in existence at the date of this Deed and in the case of such trustees notwithstanding that the trusts or settlements of which they are trustees have not been formed or come into existence at the date of this Deed;

"Vesting Day" means the first to occur of:

- (a) such date as the Trustee may with the approval of a Special Resolution appoint; or
- (b) the date of the expiration of the perpetuity period referred to in clause 2.1.

1.2 Interpretation

In the interpretation of any provision of this Deed, the following provisions will apply (in the absence of any contrary indication):

- (a) the singular shall include the plural and vice versa and any gender shall include every gender;
- (b) a reference to any statutory enactment shall be construed as a reference to that enactment as amended, modified, rewritten or re-enacted from time to time and to any such enactment repealing or replacing the first mentioned enactment or consolidating them and includes all Regulations, Orders in Council and Ordinances which may be made under or pursuant to them;
- (c) the headings contained in this Deed shall not be taken into account in its construction;
- (d) a reference to a person shall be construed as a reference to any person, company, incorporated association, partnership, body corporate, trustee or trust or other body of persons;
- (e) a reference to a person being present shall mean present in person or by proxy;
- (f) references to clauses, subclauses or schedules shall be to the clauses, subclauses or schedules of this Deed;
- (g) if any term of this Deed is by law unenforceable or made inapplicable, it shall be severed or read down but so as to maintain (as far as possible) all other terms of this Deed.

2. PERPETUITY PERIOD

2.1 Meaning

Perpetuity Period shall mean the perpetuity period applicable to dispositions effected by this Deed under the rule known as the Rule against Perpetuities (as modified by Statute) (which rule as so modified is called "the rule against perpetuities") and that period shall be the period commencing on the date of this Deed and terminating on the earliest to occur on the dates specified below:

- (a) the date being the Eightieth (80th) anniversary of the date of this Deed; or
- (b) the date being the Twentieth (20th) anniversary of the death of the last survivor of all the descendants living at the date of this Deed of Her Majesty, Queen Elizabeth II of England; or
- (c) the date calculated by reference to the law relating to perpetuities which may from time to time be applicable to these trusts; or
- (d) such other date as the Trustee may appoint.

3. JURISDICTION

3.1 Construction

This Deed shall be construed and take effect in accordance with the Applicable Law from time to time which at the date of this Deed is the law of the State or Territory in which it was executed. The Trustee may from time to time and so often as the Trustee shall consider it advantageous to the Trust Fund or otherwise in the interest of Beneficiaries by resolution declare that as from the date of such resolution (or such later date as is specified in such resolution) this settlement shall take effect and the rights and liabilities of the Trustee and of the beneficiaries as between themselves and the administration of the trusts of this Deed shall be

determined and regulated in accordance with the laws of the State, Territory or country in which the Trustee is domiciled, resident or has a place of business (provided that such State, Territory or place shall have a system of law which includes the law of trusts or otherwise which would give effect to the provisions of this Deed) and thereafter this settlement shall take effect according to the laws of such jurisdiction which laws shall, from the date of such resolution, be the Applicable Law for the purposes of this Deed.

4. UNIT HOLDERS/TRUSTEE RELATIONSHIP

4.1 Not Constitute Relationship

Nothing in this Deed shall constitute or shall be deemed to constitute the relationship of principal and agent nor the relationship of partners as between the Trustee and the Unit Holders or as between the Unit Holders inter se nor to give rise to any association of whatever nature between the Unit Holders inter se. All income payable in accordance with the provisions of this Deed to Unit Holders shall be payable to them separately and no income received by the Trustee shall be received or be construed as received by or on behalf of the Unit Holders jointly or severally.

5. NO INDEMNITY FROM UNIT HOLDER TO TRUSTEE

5.1 No Obligation

No Unit Holder shall be under any obligation to indemnify the Trustee against any liability, loss or obligation incurred by the Trustee in the course of exercising its duties, rights, powers and authorities in relation to the Trust Fund or arising from it or in the course of carrying on any authorised business or in the event of there being any deficiency in the assets of the Trust Fund as compared with the liabilities of the Trustee in relation to it however caused. The Trustee shall not have any power or authority to enter into any arrangement, agreement or contract that shall bind or purport to bind or affect any Unit Holder personally, or call upon any Unit Holder for any payment other than the amounts of such Unit Holder's subscription for Units. Any person extending credit to, contracting with, or having any claims against the Trustee shall look only to the property of the Trust Fund for the payment of any such contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable by the Trustee to such person, so that in that event neither the Trustee nor any Unit Holder, present or future, shall be personally liable.

6. DECLARATION OF TRUST

6.1 Declaration

The Trustee covenants with the Settlor and declares that it will from the date of this Deed stand possessed of the Trust Fund and the income of the Trust Fund upon the trusts and with the powers, duties and authorities and subject to such restrictions expressed in this Deed for the benefit of the Unit Holders.

7. TRUST FUND

7.1 Vest

The beneficial interest in the Trust Fund shall be vested in the Unit Holders.

7.2 Entitlement

Each Unit Holder shall be entitled to the benefit of and shall be deemed to be bound by the terms and conditions of this Deed.

8. UNIT ISSUE AND ENTITLEMENT

8.1 Beneficial Interest

Subject to any special rights attaching to any Unit each Unit shall entitle the Unit Holder in respect of that Unit (together with all other Unit Holders) to the beneficial interest in the Trust Fund as an entirety but shall not entitle a Unit Holder to any particular security or investment comprised in the Trust Fund. No Unit Holder shall be entitled to the transfer to him of any property comprised in the Trust Fund other than in accordance with the provisions contained in this Deed.

8.2 Application

Each Unit Holder (other than the Initial Unit Holders) shall sign a form of application for Units in the form of the application set out in Schedule 3.

8.3 Initial Units

The Initial Unit Holders shall hold the number of Units of the classes (if any) set out respectively opposite their names in Item 4 of Schedule 1.

8.4 Classes of Units

Unless otherwise provided in Schedule 2 all Units shall comprise one class and shall be of equal value. Where the Initial Units or any other Units issued under this Deed are expressed in Schedule 2 to be divided into classes, each class of Units shall confer the rights and be subject to the restrictions (if any) and shall be differentiated in the manner set out in Schedule 2 in addition to the other rights or restrictions contained in this Deed. In the event of any inconsistency between the provisions of Schedule 2 and the other provisions of this Deed, the provisions in Schedule 2 will prevail.

8.5 Reclassification

Units (whether issued or unissued) of any class may be reclassified by the Trustee from time to time in such manner as the Trustee thinks fit.

8.6 Issue Units

The Trustee may from time to time issue Units of any class in such manner and at such price as the Trustee shall think fit provided that no Units shall be issued unless the issue is made in accordance with this Deed or is approved by a Special Resolution or (where the Units are divided into more than one class) by a separate Special Resolution of the Unit Holders of each class. The following provisions will take effect in relation to the issue of any such Units:

- (a) the Trustee shall give notice to each Unit Holder specifying the number and classes (if any) of the Units being offered for issue and limiting the time within which the offer, if not accepted, will be deemed to be declined;
- (b) after the expiration of any time limit for accepting an offer for the issue of Units, or if any Unit Holder declines to accept the Units offered, the Trustee shall dispose of those Units as specified in subclause 8.6(d) and failing a disposal as set out in that subclause in such manner as the Trustee thinks fit;

- (c) the Trustee may satisfy any payment due to be made to any Unit Holder of any class by the issue to such Unit Holders (in proportion to their respective holdings of such Units but so that the proportion due to the holder of a partly paid Unit is reduced by the formula set out in clause 24.1) of additional Units of any class at such price and on such terms as the Trustee shall determine;
- (d) Units shall be offered in the first instance to existing Unit Holders of that class. If any offer of Units is declined or deemed to be declined as specified in this clause, those Units shall be offered to each other Unit Holder in that class and if then declined or deemed declined to each Unit Holder in each other class. Any offer for the issue of Units shall be made as nearly as possible to the existing holdings of Units of that class and without involving fractions.

9. PARTLY PAID UNITS

9.1 Issue

The Trustee may issue Units of any class ("partly paid Units") without requiring immediate payment in full in cash. In that event the following provisions shall apply:

- (a) the Trustee may from time to time make calls by notice in writing upon any Unit Holder of any class in respect of any moneys unpaid in respect of his Units. Each Unit Holder shall pay to the Trustee at the time or times so specified in such notice the amount called in respect of his Units provided that the time for payment shall be not less than fourteen (14) days after the date of such notice;
- (b) joint Unit Holders shall be jointly and severally liable to pay all calls on such Units;
- (c) the amount of calls to be paid and the times of payment of any calls may differ between Unit Holders;
- (d) the Trustee, may on the request of a Unit Holder and at its discretion, receive from any Unit Holder all or any parts of the moneys uncalled and unpaid on any Unit;
- (e) the Trustee shall as soon as practicable after payment of each call endorse the relevant certificate to show the amount cumulatively paid in respect of each Unit represented by such Certificate;
- (f) the Trustee shall have a first and paramount lien on every partly paid Unit for all money (whether immediately payable or not) called or payable at a fixed time in respect of that Unit. The Trustee shall also have a first and paramount lien on all partly paid Units registered in the name of any Unit Holder, for all moneys presently payable by that Unit Holder to the Trustee provided that the Trustee may at any time declare any Unit to be wholly or partly exempt from the provisions of this subclause. The Trustee's lien on a Unit shall extend to all income payable and/or any rights or obligations in respect of such Unit;
- (g) the Trustee may sell any Units over which the Trustee has a lien or which are forfeited by the Trustee on such terms as the Trustee thinks fit. No sale shall be made unless a sum in respect of which the lien exists is then due and payable and the notices required by the following provisions of this clause have been duly served;
- (h) the proceeds of any sale of Units shall be received by the Trustee and applied in payment of such part of the amount as is presently payable by the Unit Holder. Any

residue shall (subject to subclause (j) of this clause) be paid to the person entitled to the Units at the date of the sale;

- (i) if a Unit Holder fails to pay any call or instalment on account of a call on the due date, the Trustee may at any time serve a notice on the Unit Holder requiring payment of the amount then due on a date not less than Fourteen (14) days after service of the notice. Such notice shall provide that in default of payment the Units in respect of which the call was made will be liable to forfeiture by the Trustee;
- (j) if any Unit Holder fails to make payment after service of a demand, any Unit in respect of which notice has been given may at any time be forfeited by a resolution of the Trustee to that effect. Such forfeiture shall include all entitlements and rights in respect of the forfeited Unit not actually paid or credited to the Unit Holder as at the date of forfeiture;
- (k) the person against whom any Unit was forfeited shall cease to be a Unit Holder in relation to the forfeited Unit provided that such person shall remain liable to pay to the Trustee all moneys which were at the date of the forfeiture payable by him to the Trustee in respect of the Units, and his liability shall cease at the time when the Trustee receives payment in full of all such money in respect of the Unit;
- (l) the statutory declaration of the Trustee or a director of the Trustee that a Unit has been forfeited shall be conclusive evidence of such forfeiture as against all persons claiming to be entitled to that Unit;
- (m) the Trustee may upon receipt of the proceeds of sale, execute a transfer of the relevant Unit in favour of the purchaser of that Unit who shall be entitled to be registered as the Unit Holder in respect of that Unit. No purchaser shall be bound to see to the application of the purchase money, nor shall his title to the Unit be affected by any irregularity or invalidity or default of the Trustee in relation to the forfeiture, sale or disposal of the Unit.

10. REGISTER OF UNIT HOLDERS AND UNIT CERTIFICATES

10.1 Maintain Register

The Trustee shall keep a register of Unit Holders in which there shall be entered the following particulars:

- (a) the name and address of each Unit Holder;
- (b) the number and class of Units in respect of which each Unit Holder is registered and the distinctive numbers or letters of the Certificates held by each Unit Holder;
- (c) the date at which the name of every Unit Holder was entered in the register in respect of the Units;
- (d) the amount paid on each Unit; and
- (e) any other details considered necessary by the Trustee.

10.2 Unit Certificates

Each Certificate issued by the Trustee shall:

- (a) be in the form of the Certificate set out in Schedule 4;

- (b) specify the name and address of the Unit Holder and the number and class of Units to which it relates;
- (c) bear a distinctive number or letter;
- (d) be prima facie evidence that the person named in the Certificate is entitled to the number and class of Units comprised in it; and
- (e) be signed by the Trustee or (in the case of a corporate Trustee), by at least one Director or Secretary.

10.3 Express, Implied or Constructive Notice

No express, implied or constructive notice of any trust shall be entered in the Register unless otherwise determined by the Trustee. The person from time to time entered in the Register as the Unit Holder shall be recognised by the Trustee as solely entitled to the Units registered in his name or to exercise the rights and privileges of a registered holder of Units pursuant to this Deed. The Trustee shall not be bound by or compelled in any way to recognise any equitable, contingent, future or partial interest in any Unit or any interest in a Unit or any other rights in respect of any Unit except an absolute right to the entirety of such Unit in the Unit Holder unless required by this Deed to do so.

11. RE-ISSUE OF CERTIFICATES

11.1 Cancel and Re-issue

If any Certificate is delivered to the Trustee and is in a mutilated, worn out or defaced state the Trustee may (at its discretion) and upon delivery of evidence of ownership and an indemnity in favour of the Trustee against any claims which may be made by any other person cancel the Certificate and issue a new Certificate in its place to the Unit Holder.

11.2 Loss or Destruction

If any Certificate is lost or destroyed the Trustee shall issue a duplicate Certificate in replacement of that Certificate to the Unit Holder upon request provided that such Unit Holder shall also provide the Trustee with:

- (a) a statutory declaration by the Unit Holder stating that the Certificate has been lost or destroyed and has not been charged, pledged, sold or otherwise disposed of and if lost that proper searches have been made by the Unit Holder of all places where the lost Certificate may be found;
- (b) an undertaking given by the Unit Holder in writing that if the Certificate is found or received by the Unit Holder it will be returned to the Trustee; and
- (c) an indemnity in favour of the Trustee against all losses, damages, claims or liabilities which may arise against the Trustee in relation to the re-issue of such Certificates.

12. TRANSFER AND TRANSMISSION OF UNITS

12.1 Register Transfer

Any Unit Holder may request the Trustee to register a transfer or transfers of all or any of the Units held by him. Where required by clauses 13 and 14 the Trustee shall upon delivery to it of the relevant Certificate together with an instrument of transfer in the form set out in Schedule 5 (duly

stamped where necessary) register a transfer of Units and issue a new Certificate for the Units transferred to any transferee and a new Certificate in the name of the transferor for the balance of any Units not transferred by him (if any).

12.2 Register Entries

The Trustee shall upon being satisfied that the provisions contained in this Deed relating to the transfer of Units have been complied with make the appropriate entries in the Register and shall cancel the existing Certificate or Certificates.

13. TRANSFER OF UNITS ON DEATH OR BANKRUPTCY

13.1 Death

On the death of any Unit Holder or any one of the joint Unit Holders of any Unit the executors or administrator or survivor or survivors of such joint Unit Holders (as the case may be) shall be the only person or persons recognised by the Trustee as having any title to or interest in such Units. The executor or administrator or surviving Unit Holders shall produce such evidence of the death of such deceased Unit Holder as the Trustee shall require prior to registering any executor or administrator or surviving Unit Holders as the sole Unit Holders in respect of those Units.

13.2 Executors or Administrators

The executor or administrator of the estate of a deceased Unit Holder (not being one of several joint Unit Holders) after producing such evidence as to his title as the Trustee considers sufficient shall on delivering to the Trustee the Certificates in respect of such Units be registered by the Trustee as the holder of such Units and be entitled to be issued with a new Certificate in his name.

13.3 Bankruptcy and Insanity

Any person becoming entitled to any Units in consequence of the bankruptcy or insanity of a Unit Holder after producing such evidence as to his title as the Trustee considers sufficient shall upon making a written request to the Trustee for cancellation of the Certificates in respect of such Units be registered as the holder of such Units and be entitled to be issued with a new Certificate in his name.

13.4 Good Discharge

Any person entitled to Units by transmission shall be entitled to receive and may give good discharge for all moneys payable in respect of the Units by the Trustee but except as otherwise provided by this Deed shall not be entitled to any of the rights or privileges of a Unit Holder unless and until he shall become registered in respect of the Units.

14. PERMITTED TRANSFERS

14.1 Permitted

The following transfers are permitted transfers namely:

- (a) from a Unit Holder to any of the following:
 - (i) any spouse child son-in-law daughter-in-law grandchild and other direct issue of the Unit Holder ("specified relatives");

- (ii) the trustee of any deed of trust or settlement (a "family trust") made exclusively for the benefit of one or more specified relatives to be held by such trustee upon the terms of such deed;
 - (iii) where the Unit Holder is the trustee of a family trust any beneficiary under such family trust;
 - (iv) any corporation, all of the shares in which are beneficially owned by one or more of the persons referred to in subclauses 14.1(a)(i), (ii) or (iii);
- (b) from the executors or administrators or other legal personal representatives of a deceased Unit Holder to the widow or widower of the deceased Unit Holder or to any specified relatives entitled under or by virtue of the will of such Unit Holder;
 - (c) from the trustee of the estate of a deceased Unit Holder or of a family trust on any change of trustees, to the trustees for the time being of such estate or family trust;
 - (d) in the case of a Unit Holder being a body corporate, from such Unit Holder to another body corporate which is a related body corporate of the Unit Holder as defined in the *Corporations Act 2001 (Cth)*;
 - (e) to a mortgagee or other person approved by the Trustee pursuant to clause 15.1, by way of taking security over Units.

15. TRANSFER OF BENEFICIAL UNIT ENTITLEMENT

15.1 Not Mortgage

A Unit Holder shall not mortgage pledge or give any security over a Unit without the prior consent of the Trustee and the holders of a majority of the Units provided that it shall be a condition of any such consent that:

- (a) the proposed mortgagee or person taking security is a bank or lending institution of sound financial standing bona fide carrying on the business of lending money on security; and
- (b) the proposed mortgagee or person taking security undertakes in writing to the Trustee that in exercising any power of sale it will comply with the provisions of this Deed.

15.2 Not Register Transfer

No transfer of Units shall be registered by the Trustee unless the following procedure is followed:

- (a) a Unit Holder proposing to transfer any Units (the "proposed transferor") shall give notice in writing (a "transfer notice") to the Trustee in the form contained in Schedule 6. A transfer notice shall be irrevocable except with the consent of the Trustee or where the fair value of the Units to be sold has been fixed in accordance with subclause 15.2(k) at a price lower than the price fixed by the proposed transferor the proposed transferor may withdraw the transfer notice by giving notice in writing to the Trustee within seven days after the proposed transferor has received notice of the price so fixed;
- (b) a transfer notice may include several Units or parcels of Units and in such case shall operate as if it were a separate transfer notice in respect of each parcel;

- (c) upon receipt of a transfer notice the Trustee may in its discretion elect to redeem all or any of the Units specified in such transfer notice and shall give the Unit Holder notice within Twenty-one (21) days after receipt of the transfer notice of any election so to do and the number of Units to be redeemed. Such redemption shall be effected by payment to the proposed transferor of the fair value of those Units redeemed within Three (3) months from the date of such transfer notice and on such terms and conditions as the Trustee may determine and the provisions of clause 16 shall apply to any redemption under this subclause;
- (d) the service of a transfer notice shall constitute the Trustee the agent of the proposed transferor for the sale of the Units specified to a purchaser to be nominated by the Trustee at a price equal to the fair value of such Units or as fixed in accordance with subclause 15.2(k);
- (e) subject to subclause 15.2(c) the Units of each class comprised in a transfer notice shall in the first instance be offered by the Trustee to all the Unit Holders of that class (except the proposing transferor) by notice in writing as nearly as may be in proportion to their respective holdings of Units of the same class so that no fraction of a Unit is offered. Where any fraction of a Unit is involved the Units offered shall be taken to the next lowest whole number and any Units remaining shall be offered to Unit Holders as determined by lot and the Trustee shall issue sufficient Units at such price as is reasonable in all the circumstances to those who do not draw the lots to enable the proportion to be exactly maintained;
- (f) an offer to Unit Holders under this clause shall be deemed to have been declined if not accepted within Twenty-one (21) days. Any Unit Holder to whom such an offer is made who desires to purchase Units in excess of his said proportion shall state how many additional Units and of what class he desires to purchase at the fair value and/or whether he desires the fair value of the Units to be fixed in accordance with subclause 15.2(k);
- (g) any Units of each class declined or deemed to be declined shall be used for satisfying any request for additional Units of that class provided that if there shall be insufficient Units of any class to satisfy in full all such requests for additional Units of that class the remaining Units shall be distributed amongst the Unit Holders making such request as nearly as may be in proportion to their respective holdings of Units of that class provided always that no Unit Holder shall be bound to take more additional Units of any class than those he shall have offered to purchase;
- (h) any Unit comprised in a transfer notice which has been declined or deemed declined for sale shall be offered by the Trustee to any Unit Holder of any other class of Units by the Trustee and who is willing to purchase the Unit at the fair value specified or fixed in accordance with subclause 15.2(k). Any such Units remaining unsold after the Trustee has offered those Units for sale in accordance with this clause may be offered by the Trustee to any person selected by the Trustee with the approval of all other Unit Holders of the relevant class;
- (i) any Units contained in a transfer notice which has been declined or deemed declined for sale shall be offered by the Trustee to any Unit Holder of any class of Units by the Trustee who is willing to purchase the Unit at the fair value specified or fixed in accordance with subclause 15.2(k). Any such Units remaining unsold after the Trustee has offered those Units for sale in accordance with this clause may be offered by the Trustee to any person selected by the Trustee with the approval of all other Unit Holders of the relevant class;

- (j) within Thirty (30) days after being served with a transfer notice the Trustee shall by notice in writing to the proposed transferor nominate one or more Unit Holders or other persons referred to in subclauses 15.2(e) or 15.2(i) (in this subclause 15.2 called "the purchaser") and who wish to purchase forthwith for cash all or any of the Units comprised in the transfer notice as purchaser or purchasers of such Units whereupon the proposed transferor shall be bound upon payment of the fair value of the Units specified in the transfer notice or fixed in accordance with subclause 15.2(k) to transfer the Units to the purchaser or purchasers;
- (k) the Trustee shall:
- (i) if the Trustee resolves in its discretion to make a determination of the fair value of any Units of any class or if required by this Deed; or
 - (ii) upon receipt of a transfer notice if the Trustee considers it desirable; or
 - (iii) if required by a Special Resolution; or
 - (iv) if required by the purchaser or purchasers of a majority of the Units of any class, cause the fair value of the Units of that class to be fixed by the Trustee or if paragraph (iii) or (iv) apply by the arbitration of a chartered accountant nominated by the Trustee pursuant to the provisions of the *Commercial Arbitration Act 1990* (as amended) in force in the state provided always that in the event of the fair value fixed by the arbitration exceeding the fair value specified in any transfer notice the trustee shall forthwith give notice thereof to the purchaser or purchasers and any such purchasers may by notice in writing to the Trustee not later than Fourteen (14) days after receipt of the notice of the determination of the arbitrator elect to withdraw their acceptance of the Trustees offer to purchase whereupon the Trustee shall again offer such Units for sale in the manner specified in this clause;
- (l) if in any case the proposed transferor having become bound to transfer any Units shall default in doing so the Trustee shall be entitled to receive the purchase money and shall cause the name of the purchaser to be entered in the books of the Trust as the Unit Holder and shall cancel and issue the appropriate Unit Certificates and shall hold the purchase money in trust for the proposed transferor after deducting any costs or expenses occasioned by the proposed transferors default. The receipt of the Trustee for the purchase money shall be a good discharge to the purchaser and once his name has been entered in the Register the purchaser shall be recognised by the Trustee and all Unit Holders as the owner of such Units free from all claims by the proposed transferor or any person claiming through or in trust for the proposed transferor;
- (m) if at the expiration of Thirty (30) days after receiving the transfer notice the Trustee shall not have found a Unit Holder or other person willing to purchase all or any of the Units referred to in the transfer notice the proposed transferor may at any time within a further period of Thirty (30) days after the expiration of the first period of Thirty (30) days either:
- (i) sell and transfer those Units not accepted for sale to any person at a price not less than the fair value determined in accordance with this clause; or
 - (ii) require the Trust Fund to be wound up in which case notwithstanding anything contained in this Deed he may require the Trustee to convene an extraordinary general meeting of Unit Holders within Thirty (30) days for the purpose of considering a resolution that the Trust be wound up;

- (n) the Trustee may with the unanimous consent of all the Unit Holders vary the procedure referred to in this subclause 15.2 to meet the circumstances of any particular case and in particular may give any person or persons a preferential right to acquire any Units;
- (o) if any Unit Holder without the consent of the Trustee shall pledge as security in law or in equity any of his Units whether by way of mortgage lien or otherwise or if any Unit Holder shall execute a deed of trust or other disposition of Units in favour of any person other than a person who is a permitted transferee pursuant to clause 14 that Unit Holder shall be deemed to have served a transfer notice in respect of those Units on the date on which the Trustee becomes aware of such pledge of security deed of trust or other disposition and to have fixed as the fair value of such Units an amount to be determined by the auditor of the Trust Fund and if there is no such auditor by an accountant nominated for the purpose by the Trustee. The auditor or the accountant in making his determination shall be deemed to be acting as an expert and not as an arbitrator and accordingly the provisions of the *Commercial Arbitration Act 1990* (as amended) shall not apply but he shall consider any evidence as to the value which may be presented to him by the deemed proposed transferor or by the Trustee. The costs of obtaining the determination shall be borne by the deemed proposed transferor and may be deducted from the proceeds of sale of such Units;
- (p) in the event that any Unit Holder acting in any capacity whether as creditor or otherwise presents to a Court any petition or other proceeding seeking relief by the winding up dissolution or other termination of the Trust on any ground whatsoever the Unit Holder so acting shall be deemed on the day prior to the presentation of the petition or institution of the other proceeding to have served a transfer notice in respect of all Units owned by him and to have fixed as the fair value of such Units an amount to be determined by the Auditor of the Trust Fund and if there is no such auditor by an accountant nominated for the purpose by the Trustee. The auditor or the accountant in making his determination shall be deemed to be acting as an expert and not as an arbitrator and accordingly the provisions of the *Commercial Arbitration Act 1990* (as amended) shall not apply but he shall consider any evidence as to value which may be presented to him by the deemed proposed transferor or by the Trustee. The costs of obtaining the determination shall be borne by the deemed proposed transferor and may be deducted from the proceeds of sale of such Units.

16. COMPULSORY REDEMPTION OF UNITS

16.1 Redeem

The Trustee may at any time and from time to time upon giving a Unit Holder Fourteen (14) days notice in writing of its intention to do so redeem all or any Units held by any Unit Holder. Subject to any rights attaching to the Units being redeemed, such redemption shall be effected by payment in cash to such Unit Holder of the fair value of the Units being redeemed on such terms and conditions as the Trustee may in its absolute discretion determine. Provided that if an extraordinary meeting of Unit Holders of any class is convened in accordance with clause 42.2 in order to consider such redemption after a notice is given in accordance with this subclause 16.1 the redemption of such Units shall not be completed until a majority of the Unit Holders of that class approves of such redemption.

16.2 Cancellation

All Units redeemed shall be cancelled as from the date of redemption and shall not be capable of re-issue but this shall not restrict the creation and issue of additional Units as provided in this Deed.

16.3 Redemption Price

For the purpose of redeeming any Units the Trustee may, so as to provide a sufficient sum to meet the redemption price, either:

- (a) pay out of the Trust Fund any moneys in its hands whether or not received held or deemed to be income or being cash contributed to the Trust Fund or representing the proceeds of the sale of any investments of the Trust Fund;
- (b) borrow in exercise of its powers in that behalf contained in this Deed; and/or
- (c) realise or sell any investment comprised in the Trust Fund.

16.4 Register Entries

The Trustee shall make appropriate entries in the Register whenever any Units are redeemed and shall cancel the Unit Certificates relating to any Units which have been redeemed and issue to the Unit Holder a Unit Certificate relating to the balance (if any) of Units held by him.

17. DURATION AND TERMINATION OF THE TRUST

17.1 Commencement and Termination

Subject to the provisions of subclause 17.2 the Trust shall commence on the date of this Deed and shall terminate on the Vesting Day unless it has been terminated prior to that date under the provisions of this Deed.

17.2 Convene Meeting

On a date nominated by the Trustee being (unless the circumstances do not permit) not less than Twelve (12) nor more than Eighteen (18) months prior to the Vesting Day the Trustee shall convene a meeting of Unit Holders to determine whether the Unit Holders desire any plan for the continuation of the Trust or for its conversion into an alternative type of trust for the sale and realisation of the Trust Fund in any manner other than as provided in this Deed, or for dealing in any other way with the Trust Fund following the Vesting Day.

17.3 Plan for Continuation

Any such plan shall:

- (a) not offend any law against perpetuities in relation to this Deed or in relation to any new Deed which may be called for by the plan; and
- (b) be subject to ratification by a Special Resolution of all Unit Holders of all classes.

17.4 Act in accordance with Plan

The Trustee shall on the Vesting Day deal with all or any part of the Trust Fund (as the case may be) in accordance with such plan.

18. TERMINATION OF TRUST

18.1 Special Resolution

The Trust may be terminated at any time by a Special Resolution of all Unit Holders. Such termination shall take effect from the date nominated in such Special Resolution but shall not be retrospective.

19. PROCEDURE ON TERMINATION

19.1 Termination

Upon the termination of the Trust but subject to subclause 17.2 the Trustee shall stand possessed of the Trust Fund in trust for Unit Holders and shall:

- (a) unless otherwise authorised by a Special Resolution of the Unit Holders sell by public auction to the highest bidder all the assets constituting the Trust Fund. Any Unit Holder may bid at such auction;
- (b) (subject to any special rights or restrictions provided in the Second Schedule in relation to Units of any class) from time to time and as soon as is practicable distribute in specie or in cash the assets of the Trust Fund to the Unit Holders proportionally to their holdings in the manner set out in clause 24.1 until the assets of the Trust Fund have been completely distributed provided always that the Trustee shall retain full provision for all costs disbursements commissions brokerage fees expenses claims and advertising costs and demands incurred or expected by the Trustee in the liquidation of the Trust.

19.2 Distribution

Every distribution under the provisions of subclause 19.1 shall be made only to Unit Holders upon production of their Unit Certificates accompanied by a request for payment in such form as the Trustee shall require. On any interim distribution the Trustee shall endorse the Certificates produced with a notice of the payment made and on the final distribution the Certificates shall be surrendered unconditionally to the Trustee.

20. PAYMENT TO UNIT HOLDERS OF SURPLUS

20.1 Unanimous Consent

Notwithstanding any other provision contained in this Deed (but subject to the provisions of Schedule 2) the Trustee may at any time and from time to time before termination of the Trust with the unanimous consent of all Unit Holders affected apply any cash for the time being surplus to the immediate requirements of the Trust Fund in satisfaction of the interest in the Trust Fund conferred by the holding of a number of Units of any class to be determined by the Trustee.

20.2 Payment

Subject to the provisions of Schedule 2 each such Unit shall be satisfied by payment of such sum for each such Unit as in the opinion of the Trustee represents the reasonable value of those Units.

20.3 Applied in Proportion

Any sum applied in satisfaction of Units of any class shall be paid to the holders of Units in that class in proportion to the number of such Units held by them respectively.

21. NOTICE OF DISTRIBUTION

21.1 Notice

The Trustee shall whenever practicable give to each Unit Holder not less than Thirty (30) days notice in writing of each impending distribution and of the anticipated amount of such distribution.

22. INCOME OF TRUST FUND

22.1 Income

For the purposes of ascertaining the income of the Trust Fund:

- (a) any receipt by the Trustee of money, shares, debentures or other securities or of any other property (whether real or personal) (collectively referred to as "property") which is or the value of which is included in the assessable income of the Trust Fund in accordance with the provisions of the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* as they are amended from time to time or of any Act supplementing repealing or replacing them (jointly and separately as the context requires referred to as the "Act") shall be deemed to have been received by the Trustee on income account and to be income of the Trust Fund and any receipt by the Trustee of any property which is not or the value of which is not included in the assessable income of the Trust Fund in accordance with the provisions of the Act shall be deemed to have been received on capital account and to be part of the capital of the Trust Fund and any profit made by the Trustee which profit is included in the assessable income of the Trust Fund in accordance with the provisions of the Act shall be deemed to be a profit made on income account and to be income of the Trust Fund and any profit made by the Trustee which profit is not included in the assessable income of the Trust Fund in accordance with the provisions of the Act shall be deemed to be a profit made on capital account and to be of a capital nature provided that if Trustee within Thirty (30) days of the receipt of the property or the making of such profit or on or before the thirtieth day of June immediately following such receipt (whichever is earlier) declares in writing that the provisions of this subclause shall not operate in relation to such receipts the character of such property or its receipt on income or capital account or as part of the income or capital of the Trust Fund or income or capital profit or as part of the income or capital of the Trust Fund shall be determined as if this subclause 22.1(a) did not appear in this Deed; and
- (b) any loss or outgoing which is an allowable deduction from the assessable income of the Trust Fund in accordance with the provisions of the Act shall to the extent to which it is an allowable deduction be deemed by the Trustee to be a loss or outgoing on income account and any loss or outgoing which is not wholly an allowable deduction shall to the extent to which it is not an allowable deduction be deemed by the Trustee to be a loss or outgoing on capital account provided that if the Trustee within Thirty (30) days of the incurring of any particular loss or outgoing or on or before the thirtieth day of June immediately following such date (whichever is earlier) declares in writing that the provisions of this subclause shall not operate in relation to such deductions the character of such loss or outgoing as incurred on income or capital account or as a loss or outgoing of an income or capital nature shall be determined as if subclause 22.1(b) did not appear in this Deed.

23. ACCOUNT FOR TRUST INCOME

23.1 Collect and Receive

The Trustee shall collect receive and get in all dividends interest rents and other income from the investments of the Trust Fund.

23.2 Payments

The Trustee shall pay first out of the gross income of the Trust and then out of the corpus thereof all costs and disbursements commissions fees taxes (including land tax and income tax) management charges and other proper outgoings in respect of the investments and administration of the Trust Fund.

24. TRUST INCOME

24.1 Net Income

Subject to any special rights or restrictions provided in Schedule 2 in relation to Units of any class the Trustee shall in each Accounting Period until the Vesting Day or the date of the termination of the Trust whichever is earlier pay apply or set aside the net income of the Trust Fund of that Accounting Period to or for the benefit of the Unit Holders entitled to the income of the Trust Fund in proportion to the number of Units of which they are respectively registered on the last day of that Accounting Period provided that the entitlement to the net income of the Trust Fund of a holder of a partly paid Unit shall be reduced by the proportion that the amount paid actually bears to the whole amount to be paid in respect of the Unit and any net income of the fund to which the holders of partly paid Units are not entitled (by reason only of them holding partly paid Units) shall be paid to the Unit Holders of fully paid Units in proportion to the number of such Units held by each of them on the last day of each Accounting Period provided however that the provisions of this subclause 24.1 shall not apply in respect to any partly paid Unit that is issued on terms providing that the Unit Holder is entitled to a share of net income without reduction.

24.2 Accumulate

Notwithstanding anything contained in subclause 24.1 the Trustee may with the consent of a majority of the Unit Holders entitled to any part of the income of the Trust Fund and subject to any law in force at the time in relation to this Deed accumulate all or any part of the income arisen or arising during any Accounting Period and such accumulation shall be dealt with as an accretion to the Trust Fund but so that the Trustee may at its discretion at any time or times resort to all such accumulations and pay or apply the whole or any part or parts of them as if they were income of the Trust Fund.

24.3 Interim Distributions

Subject to the provisions of Schedule 2 the Trustee may make one or more interim distributions of income during any Accounting Period among the Unit Holders in the manner set out in subclause 24.1.

24.4 Pay, Apply or Set Aside

The Trustee may determine to pay apply or set aside any amount for any Unit Holder by:

- (a) placing such amount to the credit of the Unit Holder in the books of the Trust Fund;
- (b) drawing a cheque in respect of such amount made payable to or for the credit or benefit of the Unit Holder;

- (c) paying such amount in cash to or for the benefit of the Unit Holder; or
- (d) issuing additional Units to the Unit Holder as provided in subclause 8.6(c).

24.5 Exceed Net Income

If at the end of any Accounting Period the amounts in respect of which determinations have been made pursuant to subclauses 24.1 and 24.3 exceed the net income of the Trust Fund for the relevant Accounting Period the amount of the excess shall firstly be deducted from the amounts which the Trustee has determined to accumulate and should any deficiency remain the Trustee shall subject to the provisions of Schedule 2 be deemed to have applied the capital of the Trust Fund to the extent of the deficiency and the value of the capital of the Trust Fund shall be adjusted accordingly.

24.6 Hold Net Income

The Trustee shall hold so much of the net income of the Trust Fund for each Accounting Period as shall not be the subject of a determination made at or prior to the end of such Accounting Period pursuant to the provisions of this clause 24 in trust for the Unit Holders in the manner set out in subclause 24.1.

24.7 Infants and Guardians

The Trustee may satisfy any amount payable to a Unit Holder who is an infant by paying the same to a parent or guardian of such infant and the Trustee shall not be bound to see to the application of any such distribution by such parent or guardian.

24.8 Hold in Trust

Any amount set aside for any Unit Holder and any amount held by the Trustee in trust for any Unit Holder pursuant to the provisions of this clause 24 shall not form part of the Trust Fund. Upon such amount being set aside or becoming subject to such trust (as the case may be) that amount shall be held by the Trustee as a separate trust fund on trust for such person absolutely with power to the Trustee pending payment to invest or apply or deal with such fund or any resulting income in the manner provided for in clause 27.1(d).

25. DISTRIBUTION OF CAPITAL

25.1 Special Resolution

Subject to the provisions of Schedule 2 the Trustee may with the sanction of a Special Resolution of all Unit Holders entitled to any part of the capital of the Trust Fund at any time or times and from time to time before the date of the termination of the Trust raise out of the capital of the Trust Fund any sum or sums and pay the same proportionally to all the Unit Holders entitled to receive such sums (calculated in the manner set out in clause 24.1) for their own use and benefit in addition to any income to which the Unit Holders may from time to time be entitled (if any).

26. ADDITIONAL POWERS

The Trustee shall in addition to the powers conferred upon trustees by law have the following powers:

- (a) **To Invest.** To apply and invest all moneys at any time forming part of the Trust Fund in any investments whether or not involving liabilities or upon personal credit with or without security and upon such terms and conditions as the Trustee shall in its absolute

discretion think fit or which are for the time being authorised by the law of any State or Territory of the Commonwealth to invest trust funds and to the intent that the Trustee shall have the same powers in all respects as if it were the absolute owner of the Trust Fund beneficially entitled including (without prejudice to the generality of the above) the subscription for the taking up on allotment and the purchase of any shares, stocks, bonds, mortgages, debentures, obligations or securities of any government authority or company incorporated in any part of the world and the taking and the purchase of the whole or any part or share or interest in (including a minority part or share or interest in) any real or personal property wherever situated and notwithstanding that the same may not be income producing or may be of a wasting or speculative nature and to exercise all rights and privileges and perform all duties and obligations attaching or incidental to such investments;

- (b) **To Make Acquisitions.** To make or purchase any of the investments permitted by this clause for cash or in consideration of any annuity or otherwise and upon such terms and conditions as the Trustee in its absolute discretion thinks fit. The Trustee may make or purchase any such investment for a sum greater than the amount of the Trust Fund for the time being and it may agree to pay for any such investments wholly or in part from any future moneys which may come into its hands including dividends, profits, interest or other income paid or payable in respect of any such investments;
- (c) **To Advance and To Borrow Moneys.** To advance and lend moneys (with or without security) and to jointly or jointly and severally with any entity whatsoever borrow any money, draw, accept, discount and execute bills of exchange, to raise and concur in the borrowing or raising of any money which the Trustee shall think expedient for any purpose in relation to the execution of the Trusts and powers conferred on the Trustee by this settlement, including and to secure by mortgage, bill of sale, lien or charge, fixed or floating or equitable or by any other form of security real or personal the payment of money to any persons, firms, companies, corporations or governmental or municipal bodies upon such terms with or without security or interest as the Trustee shall deem fit and the Trustee is expressly empowered to join with any other company or person in executing any mortgage or other document for the purpose of securing the payment of money to any other person or company, including the provision of trust assets and security in support of the same, the purchase of property and the payments of calls of shares are generally for the benefit of the Unit Holders by mortgaging or charging, with or without a power of sale or any part of the Trust Fund or the Trust assets from time to time representing the same with or without security and with or without interest of any such mortgage that may be in overdraft or a contributing one may also be a joint mortgage and whether in any case whatsoever the liability arising and such borrowing as jointly or jointly and severally within the other entity and to give and to execute a registerable floating charge over the assets of the company and the assets of the Trust Fund and to give and execute any other charge or security registerable under the *Corporations Act 2001 (Cth)* and the Trustee may borrow or raise moneys to be used in deriving income or gain in augmentation of the Trust Fund notwithstanding that the Trust Fund may already be wholly invested or applied or that the moneys to be borrowed or raised may exceed the sum or value of the Trust Fund provided that no person including any bank or other financial institution who advances or lends money to the Trustee shall be required or bound to enquire as to the extent of the Trustee's powers or as the application by the Trustee of the moneys so advanced or lent but such person shall at all times be entitled to assume that the acts of the Trustee are done in pursuance of its powers and duties under this Deed;
- (d) **To Give Guarantees and Indemnities.** To give any guarantee or indemnity for payment of moneys or the performance of any contract, obligation or undertaking by any

person, firm, company, corporation or association (including, without limitation, any indemnity relating to contracts, obligations or undertakings to which the Trustee is a party or in respect of which the Trustee has existing or contingent obligations or liabilities) and to secure the obligations from any such guarantee or indemnities by mortgaging or charging (by fixed or floating charge or otherwise) any undertaking of the Trustee or all or any part of the Trust Fund including any property which may subsequently be acquired by the Trustee so that it will form part of the Trust Fund, and any monies or charge created or purported to be created under this clause shall be valid in all respects irrespective of the purpose for which such guarantee or indemnities has been given and the rights of the mortgagee or chargee shall take priority in all respects over the rights of the Unit Holders and all other persons;

- (e) **To Provide Security.** To secure the performance of any debt, liability, contract, guarantee, indemnity or other engagement incurred or to be entered into by the Trustee in any way in particular by any mortgage, charge or encumbrance upon all or any of the Trust Fund;
- (f) **To Deal with Negotiable Instruments.** To draw, make, accept, endorse, discount, execute, negotiate, issue or otherwise deal with (whether as principal or agent) promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (g) **To Vary Investments.** To vary or transpose any investments into or for any other or others of any nature and to vary the terms of or property comprised in any security;
- (h) **To Deal with Real and Personal Property.** To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, take on bailment, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property (including provision of monies for the purpose of erecting buildings on real property, making improvements or developing, improving or otherwise exploiting real property whether income producing or not) and any share, interest, debentures or securities of any company and with or without deferred, restricted, qualified or special rights relating to them and any chattels, machinery, plant, stock and trade and any contract for the sale or purchase of any property, options, entitlements, rights, settled funds, estate of a deceased person, book or other debts or choses in action, upon such terms and conditions as the Trustee may think fit and in purchasing, leasing or acquiring such property the Trustee may allow the whole or any part of any money payable in respect of such purchase, lease or acquisition to remain unpaid upon such terms and conditions as the Trustee may think fit. The Trustee may secure the repayment of any money remaining unpaid and any interest thereon by way of mortgage, charge or other security over any assets or interest so nominated by the Trustee, including but not limited to assets of the Trust;
- (i) **To Acquire Insurance Policies.** To purchase or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking fund or term or other policy or policies of insurance of any nature and at or subject to any premium or premiums whether single or payable periodically and with or subject to any options rights benefits conditions or provisions and to pay out of the income or capital of the Trust Fund as the Trustee in its absolute discretion thinks fit all sums payable from time to time for premiums or otherwise for the effecting or maintenance of any policy or policies of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option right or benefit under any such policy and any surrender of any such policy shall for all purposes of this Deed be deemed to be a sale of such policy;

- (j) **To Pay Management Costs.** To pay out of the Trust Fund or the income of the Trust Fund all costs charges and expenses incidental to the management of the Trust Fund or to the exercise of any power authority or discretion contained in this Deed or in carrying out or performing the trusts of this Deed which the Trustee may at any time incur including all income tax or other taxes payable in respect of the Trust Fund, costs in any way connected with the preparation and execution of this Deed and all moneys which the Trustee may be required to pay as settlement, probate, estate, gift, stamp or other revenue duties including stamp, gift or settlement duties payable in respect of the Trust Fund or on this Deed;
- (k) **To Exercise Rights in Relation to Shares.** To exercise all rights and privileges and perform all duties and do all such acts matters and things appertaining to any shares, stock or debentures in any corporation for the time being forming part of the Trust Fund as the Trustee could do if it were the beneficial owner of the shares, stock or debentures or were personally interested or concerned in the corporation and (without prejudice to the generality of the above) with liberty to assent to any arrangements modifying such rights, privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any corporation and to make any agreement in respect of or in the course of the winding up of any company and for any such purpose to deposit surrender or exchange any of the said shares, stock or debentures or the title to them and to pay any calls or contributions or other necessary expenses in connection with any such shares, stock debentures or any title to them;
- (l) **To Employ.** To employ or retain or consult any Person (including any Trustee or Unit Holder) in connection with any trade or business carried on by the Trustee or anything required to be done pursuant to the provisions of this Deed including the receipt and payment of money, to delegate to any such Person any power, authority or capacity of the Trustee and to decide the remuneration to be paid to such Person and the amount of all charges and expenses and to create or arrange any scheme of superannuation retirement benefit or pension for the benefit of any such Person;
- (m) **To Partition.** To partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other property or any interest in such property which may for the time being be subject to the Trust and to pay any moneys by way of equality of partition;
- (n) **To Promote and Acquire Companies.** To establish promote or acquire any company or companies or join in the promotion, establishment or acquisition of any company or companies;
- (o) **To Determine Property.** To determine whether any real or personal property or any increase or decrease in amount number or value of any property or holdings of property or any receipts or payments from for or in connection with any real or personal property shall be treated as and credited or debited to capital or to income and generally to determine all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trusts and powers of this Deed. Every determination of the Trustee in relation to any of these matters whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund shall bind all parties interested in the Trust Fund and shall not be objected to or questioned on any ground;
- (p) **To Open Bank Accounts.** To open any account or accounts with any bank, building society or other financial institution either on its own behalf, solely or jointly with any other person, company, corporation or association, upon such terms and conditions as

the Trustee shall think fit and to conduct and operate such accounts in such manner as the Trustee shall think fit in accordance with the customs, usages and practices of the relevant financial institution, without limiting the effect thereof, the power to operate any such account on overdraft and to agree to the relevant financial institution debiting any such account with interest, costs, charges, expenses and liabilities incurred by the relevant financial institution at any time or from time to time on behalf of the Trustee;

- (q) **To Insure the Trust Fund.** To insure and keep insured to the full insurable value, or such value as the Trustee in the circumstances shall think proper such of the assets for the time being which form part of the Trust Fund as are capable of being insured and where security is given over any part of the Trust Fund to effect insurance policies for the respective interests of the Trustee and any lender or lenders;
- (r) **To Give Receipts.** To give effectual receipts and discharges for any moneys received by or on behalf of the Trustee or otherwise relating to any of the acts matters and things provided for in this Deed and to receive property by gift inter vivos or by will or under the provisions of any other trust or trusts or otherwise and either from the Unit Holders or from any other person or persons as additions to the Trust Fund and to hold the same upon the trusts set out in this Deed and to administer such additions under the provisions of this Deed;
- (s) **To Grant Options.** To grant options in respect of any assets held subject to the trusts of this Deed to any person firm or company and on such terms and conditions as the Trustee in its absolute discretion thinks fit;
- (t) **To Become a Director.** To become a director of any company or to appoint any person to act as director of any such company and to receive the remuneration attached to such office without accounting to the Trust for any such sums provided that the Trustee shall execute all proper declarations of trust for any shares held by it on behalf of the Trust and account to the Trust for all dividends and bonuses and to exercise or concur in exercising all of the powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that the Trustee or any person being a director or shareholder of the Trustee (being a company) has or may have a direct or personal interest (whether as Trustee of any other trust or in his personal capacity or as a director or shareholder of any company or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee;
- (u) **To Act on Legal Advice.** To take such action as the Trustee shall think fit for the adequate protection of any part or parts of the Trust Fund and to take and act upon the opinion (in writing) of a legal practitioner and/or counsel in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Trust without being liable to any person (beneficially interested or not) in respect of any act done by the Trustee in accordance with such opinion provided that nothing in this provision shall prohibit or impede the Trustee from applying to any court if it shall think fit or prohibit any of the Unit Holders from so doing;
- (v) **To Remunerate Unit Holder.** To remunerate any Unit Holder who is at any time in the employ of the Trustee to the same extent and in the same manner as if that Unit Holder was not a Unit Holder hereunder and all bona fide payments made by the Trustee to any such Unit Holder in the form of remuneration for services rendered or to be rendered or on account of expenses in connection with such employment shall not be or be deemed to be payment to the Unit Holder of or on account of his or her share in the Trust Fund or the income of the Trust Fund;

- (w) **To Register Asset in Name of Nominee.** To permit any asset of the Trust Fund to be held or registered in the name of any nominee of the Trustee and to deposit securities to the deeds and other documents belonging to or related to the Trust Fund with any bank, financial institution or other safe deposit;
- (x) **To Transfer Investments to New Trustee.** With the sanction of a Special Resolution of all Unit Holders at any time to appoint either in respect of the whole of the Trust Fund or any part of it a new Trustee or Trustees in any country in the world and to transfer assign and set over the investments for the time being representing the Trust Fund or any part of it to any such new Trustee or Trustees upon similar trusts and subject to similar terms and conditions to those declared in this Deed and either subject to the control of the Trustee named in this Deed (or any substitute or additional Trustee) or to the exclusion of such control and the Trustee under this Deed shall be indemnified and held harmless by such new Trustee or Trustees against any loss which may arise from the exercise of this power;
- (y) **To Establish Trusts.** With the sanction of a Special Resolution of all Unit Holders at any time or times before the Vesting Day by any irrevocable deed or deeds (without infringing any rule against perpetuities applicable to this Deed) to establish any other trust and to declare that the whole or any part of the Trust Fund shall be held upon the trusts and with and subject to the powers and provisions of such other trust (not infringing the rule against perpetuities applicable to this Deed) in favour or for the benefit of all or one or more exclusively of the Unit Holders at the time of such declaration and upon any such declaration being made the Trustee may transfer to the trustee or the trustees for the time being of that other trust the property referred to in that declaration. Upon such declaration being made the trusts declared in this Deed attaching to such property shall cease to the extent provided in the declaration and that property shall for all purposes be subject to the trusts powers and provisions contained in that other trust and be subject to and governed by the proper law of that other trust whether or not such proper law shall be the proper law of this Deed;
- (z) **To Pay Succession Duties.** If any probate succession estate or other duties fees or taxes become payable in any part of the world in respect of the Trust Fund or any part of it on the death of any Unit Holders or any other person to pay all or any part of such duties fees and taxes out of the Trust Fund notwithstanding that any such duties fees and taxes or some part of them are not or may not be recoverable from the Trustee or from the Trust Fund by legal process in the place where such duties fees and taxes become payable;
- (aa) **To Acquire Units.** To acquire units or sub-units or parts of units in any Unit Trust whether by original subscription purchase or otherwise and whether fully or partly paid;
- (bb) **To Acquire Annuities.** To acquire annuities and any reversionary or deferred property or rights of any description whether by original creation assignment or otherwise;
- (cc) **To Do All Necessary Things.** To do all such other things from time to time as the Trustee deems necessary or expedient or beneficial to the Trust whether incidental or otherwise to the powers and authorities conferred on the Trustee by the Deed;
- (dd) **To Make Valuations on Distribution.** Upon and for the purpose of any distribution or appropriation of the Trust Fund or for any other purpose, to place such value on the Trust Fund or any part thereof as the Trustee shall deem just and proper and any such valuations made in good faith shall be absolutely final and binding on all Unit Holders;

- (ee) **To Permit Unit Holders to Reside.** To permit any person who is for the time being a Unit Holder to occupy or reside in or upon any real or immovable property for the time being held upon the trusts hereof rent free or otherwise and generally upon such terms as the Trustee shall in its absolute discretion think fit;
- (ff) **To Effect Life Assurance.** To effect any policy or policies of assurance on the life or lives of any one or more of the Unit Holders or on the life of any other person and to maintain, surrender, exchange, convert, exercise any option under or otherwise deal with such policy as if the Trustee was absolutely and beneficially entitled thereto;
- (gg) **To Employ Agents.** To employ and pay at the expense of the capital or income of the Trust Fund any agent or agents in any part of the world and whether a solicitor, attorney, banker, accountant, auditor, stockbroker, investment adviser, real estate agent or other agent to transact business and do any act required to be transacted or done in the execution of the trust hereof and if the Trustee thinks fit to act upon the advice of such agent or agents;
- (hh) **To Give Undertakings.** To give all such undertakings and enter into such contracts and incur all such obligations relating to the Trust Fund or any part or parts thereof as the Trustee in its absolute discretion thinks fit whether or not such undertakings, contracts or obligations extend or may extend until after the vesting day;
- (ii) **To Provide Guarantees as to Securities.** Either alone or jointly or jointly and severally with any other person to guarantee, secure or undertake in any way, including the granting of a mortgage or charge over the whole or any part of the Trust Fund, the discharge of any debt, liability or obligation incurred or undertaken whether in the past or in the future (prior to the vesting date) and by any other person whatsoever regardless of whether or not:
 - (i) that person happens to be a trustee of or Unit Holder under this Trust;
 - (ii) any consideration right or other benefit accrues to the Trustee in return for such guarantee security or undertaking; or
 - (iii) there is any contractual legal or fiduciary relationship between the Trustee and the person to whom or on behalf of whom the Trustee gives such guarantee security or undertaking,

provided that it shall be entirely within the discretion of the Trustee as to whether the Trustee secures from such person in consideration of such guarantee, security or undertaking an indemnity against any obligation, liability, loss, cost, charge, expense, action, claim or demand which may be sustained or suffered by or recovered or made against the Trustee under or in connection with such guarantee, security or undertaking;

- (jj) **To Exercise Voting Rights.** To exercise all voting rights appertaining to any investments from time to time or for the time being forming part of the Trust Fund in as full and free and absolute manner as if the Trustee was the owner of such investments;
- (kk) **To Provide Powers of Attorney.** To give proxies and powers of attorney (with or without power of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any property forming part of the Trust Fund;
- (ll) **To Nominate Controlling Trustees.** To invest or hold or allow to remain in the name or under the control of some or one only of the Trustees, if there be more than one, or of

any person or persons, corporation or corporations as nominees or nominee of the Trustee the whole or such part of the Trust Fund as the Trustee shall in its absolute discretion think fit;

- (mm) **To Deal In Derivatives.** To purchase sell or trade in derivatives of all kinds without limiting the generality of the foregoing including options and futures contracts;
- (nn) **To Invest In Syndicates.** To invest in syndicates of all kinds without limiting the generality of the foregoing including property investment syndicates;
- (oo) **To Carry on Businesses as a Pastoralist.** To carry on the business as a Pastoralist, Grazier, Farmer, Stud Proprietor, Dairyman, Livestock Breeder or Stock and Station Agent;
- (pp) **To Make Deposits.** To make deposits at call or for a term with any bank, financial institution, or Person on such terms and conditions as the Trustee may decide;
- (qq) **To Remunerate Unit Holder.** To remunerate any Unit Holder who is at any time in the employ of the Trustee to the same extent and in the same manner as if the Unit Holder so employed were not a Unit Holder, and all bona fide payments made by the Trustee to any such Beneficiary in or on account of expenses in connection with such employment shall not be or be deemed to be payment to the Unit Holder of or on account of his, her or its share in the Trust Fund or the income;
- (rr) **To Determine All Matters of Doubt.** To determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund;
- (ss) **To Institute Proceedings.** To institute and defend proceedings at law and to proceed to their final end and determination or compromise such proceedings as the Trustee shall consider advisable;
- (tt) **To Incorporate Companies.** To incorporate or promote the incorporation of any company or companies in any place under the law of that place at the expense of the Trust Fund with limited or unlimited liability and to sell to any such company the whole or any part of the Trust Fund and so that the consideration for such sale of the Trust Fund or any part of it to any such company may consist wholly or partly of securities of such company which may be credited as fully or partly paid and may be allotted to or otherwise vested in the Trustee and be capital moneys in the Trustee's hands. The following powers shall apply to any such incorporation or sale:
 - (i) That all or any part of the expenses in connection with such formation or formations and sale or sales may be paid out of the Trust Fund;
 - (ii) That the Trustee may become a director or servant of any such company or companies and may receive the remuneration attaching to such office without being liable to account for it and that any Trustee may become qualified as a director (if the relevant articles of association permit) by the holding in its own name of shares belonging to the Trust provided that it executes a declaration of trust thereof in favour of this Trust and delivers to any other trustee the certificates of any of such shares and that it accounts to this Trust for all dividends and bonuses payable in respect of such shares;

- (iii) That the consideration for any such sale or sales may comprise either cash, debentures or debenture stock, preference (redeemable or otherwise) or ordinary or deferred shares (whether fully or partly paid) and with such rights attaching to them including without limiting the generality of the above the right to convert from time to time from the one to the other as the Trustee may think fit or may comprise all or any of the above in such proportions as the Trustee may think fit; and
- (iv) That the price for any sale or sales shall be fixed in such manner as the Trustee may determine;
- (uu) **To Deposit Securities or Documents of Title.** To deposit the securities or documents of title to property of the Trust Fund with a bank, financial institution, trust company, investment broker or like institution in any part of the world and to delegate to such bank, trust company, investment broker or other like institution such of the trusts and powers by this Deed or by law vested in the Trustee as the Trustee may consider expedient to so delegate and the Trustee shall not be liable or responsible for any loss whatsoever not caused by its own fraud which may occur in relation to such property;
- (vv) **Exercise of Discretion by Trustee Corporation.** In the case of a Trustee who is a corporation or company to exercise or concur in exercising any discretion or power conferred on the Trustee by a resolution of such corporation or company or by a resolution of its board of directors or governing body or to delegate the right and power to exercise or concur in exercising any such discretion or power to one or more members of its board of directors or governing body appointed from time to time by the board of directors or governing body for that purpose;
- (ww) **Corporations Act 2001 (Cth) Powers.** To exercise the powers of a company as provided for in Section 124 of the *Corporations Act 2001 (Cth)* substituting where appropriate either the words "the Trustee" or "the Trust Fund" for the words "the company";
- (xx) **To Act Notwithstanding Personal Interest.** To exercise or concur in exercising all of the powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that the Trustee or any Person being a director or shareholder of a Trustee (being a company) has or may have a direct or personal interest (whether as Trustee of any other settlement or in his personal capacity or as a director or shareholder of any company or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee;
- (yy) **To Establish Other Trusts** To establish and support out of the Trust Fund any association institution fund scheme or other trust calculated to benefit the Beneficiaries or the employees or ex-employees of this Trust, any company, partnership, association, union of interest or syndicate in which this Trust may be interested or the dependents or associates of such Persons and to grant pensions and allowances and to make payments towards insurance;
- (zz) **To Make Gifts.** To make out of this Trust from time to time to any Person or Persons or to any associations or institutions or corporations or charities except the Settlor and his personal representatives or the Trustee or any former Trustee or any corporation or trust in which the Settlor or his personal representatives or the Trustee or any former Trustee has any actual or contingent beneficial interest such gifts or advances as the Trustee

may in its absolute discretion think fit whether such gifts or advances shall be for religious, charitable or benevolent purposes or objects or not;

- (aaa) **To Exchange Property.** To exchange property for other property of a like or different nature and for such consideration and on such conditions as the Trustee may consider advisable;
- (bbb) **To Compromise.** To compromise and settle or compound for such consideration and upon such terms and conditions as the Trustee may consider advisable all or any action, suit, proceeding, difference or demand or matter relating to the Trust created or to the Trust Fund and all such compromises and settlements shall be binding on all the Unit Holders and others who at any time acquire any interest under this Trust;
- (ccc) **To Carry on Business.** To carry on any business which the Trustee may in its absolute discretion think fit either alone or in association with any other Person, or in partnership including (without restricting the generality of this) associations or partnerships with the Trustee either in its own right or in its capacity as trustee or in any other capacity or with a company or companies in which the Trustee is directly or indirectly interested either in its own right or in its capacity as trustee or in any other capacity and for such purpose to retain and employ the whole or any part of the Trust Fund and also to advance for the purposes of such business such further moneys forming part of the Trust Fund as the Trustee shall think proper and to expend any moneys forming part of the Trust Fund in managing and carrying on such business including the purchase or acquisition of any property and if the Trustee considers necessary in the course of such management or carrying on such business to borrow money or mortgage and give security over any property forming part of the assets of such business with priority (if the Trustee thinks fit) over any charge created by this Deed and generally to act in all matters relating to the said business as if the Trustee were beneficially entitled to it and it is further provided that if an associate or partner of any such business shall be engaged therein at the time of his death the Trustee may carry on that business in association or partnership with the estate of the deceased associate or partner for so long as the Trustee in its absolute discretion determines;
- (ddd) **To Apply for Grants.** To enter into any arrangement, contract, agreement or understanding with any Government or semi-government department or agency for any purpose which in the opinion of the Trustee would derive a benefit for the Trust;
- (eee) **Provision of Security.** Any security provided by the Trustee in accordance with this clause or any other provision of this Deed which requires the provision of security by the Trustee shall not be invalid by reason of any error or omission whether of law or fact on the part of the Trustee or its legal and other advisers or by reason of any breach of duty or trust unless it is proven to have been committed, made or omitted by a fraudulent or conscious act of bad faith by the Trustee and all persons claiming any interest in, over or to the Trust Fund shall be deemed to have had notice of this clause.
- (fff) **To Enter Currency Exchange Transaction**
To enter into and perform:
 - (a) and transaction involving, or in connection with, an exchange of streams of payment between counterparties whether directly or indirectly;
 - (b) any transaction involving, or in connection with, trading commodities, securities or currency at a fixed price for delivery or settlement, whether immediately or at a future date;

- (c) any transaction for managing, lessening, hedging, or protecting against movements in currency exchange, interest or discount rates or against costs of borrowing, lending or obtaining financial accommodation.

and without limiting the generality of the foregoing, the power conferred on the Trustee as aforesaid shall include power for any purpose to enter into and perform any interest rate swap or exchange transaction, currency swap or exchange transaction, rate cap, rate floor, rate collar, option contract relating to swaps, futures contract, currency option and forward rate agreement or any interest and or currency protection or any combination of such transactions, contracts or agreements or any other transactions, financial arrangements or contracts of a kind or class similar to the transactions herein referred to, and to give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust as may be required to secure the payment or the performance of any contract obligation under or in connection with any transaction of the type referred to in this sub –paragraph.

27. POWERS OF TRUSTEE

27.1 Powers

The Trustee may in its absolute discretion and notwithstanding anything to the contrary contained or otherwise provided in this Deed:

- (a) subject to the provisions of Schedule 2 with the sanction of a Special Resolution of all Unit Holders entitled to receive the capital of the Trust Fund at any time and from time to time before the Vesting Day out of the capital of the Trust Fund but not out of any moneys referred to in subclause 27.1(d) raise any sum or sums and pay the same (in addition to any entitlement to income or share of income) to the Unit Holders entitled to the same in proportion to the Units registered in their respective names at the time (calculated in the manner set out in subclause 24.1) for their own use and benefit or apply the same to or for the benefit of those Unit Holders in like proportions;
- (b) with the sanction of a Special Resolution at any time and from time to time before the Vesting Day lend any sum or sums out of the Trust Fund and any moneys held in trust under this Deed to any Unit Holder either with or without security and upon such terms and conditions as to repayment and with or without interest as the Trustee shall in its absolute discretion think fit;
- (c) at any time and from time to time pay or apply the whole or any part of the capital or the whole or any part of any income or accrued or accumulated income to which any infant Unit Holder is entitled in such manner as the Trustee in its absolute discretion thinks fit for the benefit of such infant and without limiting the generality of the above in particular for the maintenance education or advancement of such infant and in the exercise of such power may pay the same to a parent or guardian of such infant without being bound to see to the application of such sum by such parent or guardian;
- (d) invest any amount held by the Trustee in trust pursuant to clause 24.8 on behalf of the person entitled to that amount by investing the same and any resulting income in any of the investments authorised by this Deed in respect of the Trust Fund but the Trustee may at any time and from time to time in its absolute discretion resort to such first-mentioned and last-mentioned income and may pay apply or deal with the same or any part of it in such manner as the Trustee in its absolute discretion thinks fit for the

benefit of any infant Unit Holder pursuant to and in the terms of the power contained in subclause 27.1(c);

- (e) at any time and from time to time pay or transfer any investments or money appropriated to a share to which any person is or becomes absolutely entitled to such person absolutely if he is of full legal competence or to a parent or guardian of any infant Unit Holder as trustee for such infant Unit Holder without being bound to see to the application of that payment or transfer;
- (f) allow any Unit Holder to occupy have custody of or use any immovable property or chattels for the time being forming part of the Trust Fund on such terms or conditions as to rent, inventories, repair, replacement, insurance, outgoings or otherwise as the Trustee shall think fit and so that the Trustees shall not be liable for any loss or damage which may occur to any such property during or by reason of any such occupation custody or use except insofar as such loss or damage shall be occasioned by the conscious and wilful default or neglect of the Trustee;
- (g) appoint at any time one or more attorneys under a power or powers of attorney to act jointly or severally and with or without power for any such attorney or delegate in a specific transaction or class of transactions or generally and in a particular place or in any place in relation to executing any document or doing any act or receiving notices, moneys or property in respect of the Trust or any asset for the time being comprised in it or to be required by the Trustee or in respect of any borrowing or raising of moneys by the Trustee and whether by way of commercial bill, accommodation or otherwise or in respect of the exercise of any power conferred on the Trustee by this Deed or by law whether or not the Trustee has disclosed to any such attorney or to any person dealing with such attorney that in respect of the power to be so delegated it is acting as Trustee.

28. RETENTION OF SEPARATE TRUST

28.1 Separate

Subject to the powers appearing in this Deed no provision in this Deed shall require or cause the Trustee to join the Trust Fund with any other trust referred to in any other deed of trust (whether created by the Initial Unit Holders (or any one or more of them) or any other person) so as to cause any Two (2) or more trust funds to become One (1) trust fund but the Trustee shall keep the Trust Fund the subject matter of this Deed entirely separate and distinct from any other trust fund.

29. GENERAL PROVISIONS RELATING TO THE TRUSTEE

29.1 Additional Powers and Discretions

Notwithstanding any provision to the contrary or otherwise contained in this Deed the Trustee shall have power in its absolute discretion:

- (a) to sell, transfer, hire, lease or dispose of any real or personal property of the Trust Fund or to lend or advance any moneys to the Trustee in its personal capacity or in its capacity as trustee of any other trust or otherwise or to any company or partnership notwithstanding that the Trustee is a shareholder, director, member or partner of such company or partnership or to a spouse, child or children of any Trustee absolutely;
- (b) to buy, transfer, acquire, hire or lease any real or personal property or to borrow any moneys from the Trustee in its personal capacity or in the capacity of trustee of any

other trust or otherwise or from any company or partnership notwithstanding that the Trustee is a shareholder, director, member or partner of any such company or partnership or from the spouse or child or children of any Trustee;

- (c) to carry on or carry out any profit-making undertaking or scheme in partnership with the Trustee in its personal capacity or in the capacity of trustee of any other trust or otherwise or with any company or partnership notwithstanding that the Trustee is a shareholder director member or partner of such company or partnership or with the spouse or child or children of any Trustee;
- (d) to exercise all the powers and discretions vested by this Deed in the Trustee notwithstanding that the Trustee may be a Unit Holder and generally to deal with the Trustee in its personal capacity in all respects as if there were two separate persons to the dealings;
- (e) to exercise all the powers and discretions in this Deed jointly with any other person, company or partnership notwithstanding the Trustee may be a shareholder, director, member or partner of such company or partnership or with any spouse or child of the Trustee,

and without limiting the generality of anything contained in this clause 29 the Trustee shall have power in its absolute discretion to sell to itself in its capacity as the trustee of any other trust either for cash or upon terms any assets being shares or a joint, or undivided interest in property where other shares in the same company or companies or another joint or undivided interest in the same property are held by the Trustee in such other capacity and to divide assets in specie between the Trust Fund and such other trust funds in such manner as the Trustee shall think fit.

30. TRUSTEE MAY ACT JOINTLY

30.1 More than one Trustee

If at any time there is more than One (1) Trustee such Trustees shall act jointly and they may in writing delegate to One (1) or more of such Trustees the exercise of all or any of the powers or discretions or authorities conferred by this Deed on the Trustee and execute any powers of attorney or other instrument necessary to effect such purpose.

31. ALTERNATE TRUSTEE

31.1 Alternate

Any Trustee being a natural person may with the consent of the other Trustee or Trustees (if any) appoint any person to be an alternate Trustee in his place and so that any such appointment shall have effect during such period only as such Trustee may from time to time be absent from the State or Territory of the Applicable Law and each Trustee may by power under his hand revoke or alter such appointment.

32. TRUSTEE'S SOLE DISCRETION

32.1 Discretion

Subject to this Deed the Trustee shall have the sole and absolute discretion in the exercise of all rights appertaining to the shares or other investments comprised in the Trust Fund. No Unit Holder shall (save as is expressly provided in this Deed) have any right with respect to the Trust

Fund to attend meetings of shareholders or to vote or take part in or consent to any corporate or shareholders' motion or to interfere with or question the exercise or non-exercise by the Trustee of the rights and powers of the Trustee as the owner of the investments of the Trust Fund.

33. DISCHARGE TO TRUSTEE

33.1 Receipt

The receipt of a Unit Holder for any moneys payable in respect of the Units represented by his Unit Certificate shall be a good discharge to the Trustee and if several persons are registered as joint Unit Holders or in consequence of the death bankruptcy or insanity of a Unit Holder are entitled to be so registered any one of them may give an effectual receipt for any such moneys.

34. TRUST DEED BINDING

34.1 Binding

The terms and conditions of this Deed and of any supplemental deed entered into under the provisions of clause 62 of this Deed shall be binding on each Unit Holder and any person claiming through him as if he had been a party to this Deed.

35. TRUSTEE'S COVENANTS

35.1 Covenant

The Trustee covenants to exercise all due diligence and vigilance in protecting the rights of the Unit Holders provided however that no Trustee shall be responsible for:

- (a) any loss or damage occasioned by the exercise of any discretion or power conferred by this Deed or by law on the Trustee or by failure to exercise any such discretion or power or by any error or forgetfulness whether of law or of fact; or
- (b) any breach of duty or trust on the part of the Trustee or its legal or other advisers or generally unless it shall be proved to have been committed made or omitted in personal conscious fraudulent bad faith by the Trustee charged to be so liable. All persons claiming any beneficial interest in any Units or upon the Trust Fund shall be deemed to take the same with notice of the provisions of this clause 35.

36. TRUSTEE'S INDEMNITY

36.1 Indemnity

Without derogating from the effect of clause 5 the Trustee shall be entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts authorities powers and discretions contained in this Deed or conferred by law on the Trustee or by virtue of being the Trustee but shall not be entitled to indemnity or reimbursement from the Unit Holders or any of them.

37. TRUSTEE TO SEEK ADVICE**37.1 Engage Consultants**

The Trustee shall not be bound in any case to act personally but shall be at full liberty to act as a manager and to employ any contractor, manager, solicitor, accountant, clerk, workman, employee or servant or any agent to transact all or any business of any nature required to be done in relation to the Trust Fund and the investment of it including the receipt and payment of money and the Trustee shall decide any remuneration required to be allowed and paid and all charges and expenses so incurred.

38. TRUSTEE TO PROVIDE DISCHARGE**38.1 Discharge**

A sole Trustee for the time being is authorised notwithstanding that he is the sole Trustee to receive capital and other moneys and to give valid and effectual receipts for them for all purposes and for the purposes of any statutory enactment including the receipt of capital moneys which may or may not be deemed to be capital moneys for the purposes of any Statute.

39. PROFESSIONAL MAY CHARGE**39.1 Proper Charges**

Any Trustee who may be a solicitor or accountant or any firm of which he may be a member shall be entitled to make all usual and proper charges for both his professional and other services in the administration of the trusts set out in this Deed as if he was not the Trustee. The Trustee may from time to time charge and retain out of the Trust Fund such commission as it may think reasonable and as the Unit Holders in general meeting may approve.

40. CONFLICT OF INTEREST**40.1 Not Prevent**

Nothing in this Deed shall prevent the Trustee or any subsidiary of the Trustee or the directors or officers of the Trustee (if a company) or any of them from subscribing for, purchasing, holding, dealing in or disposing of Units or from otherwise at any time contracting or acting in any capacity as insurer, representative or agent or entering into any insurance, financial, banking, agency or other transaction with any other of them or any Unit Holder or any company whose shares form part of the Trust Fund or from being interested in any such contract or transaction or otherwise.

41. RESIGNATION AND APPOINTMENT OF TRUSTEES**41.1 Continue to Act**

The Trustee covenants with the Unit Holders that it will act continuously as Trustee until determination of the Trust or until the Trustee has retired or been removed from office in the manner provided in this clause 41.

41.2 Disqualification

A Trustee shall be disqualified from holding office if:

- (a) being an individual he becomes insolvent or of unsound mind or does or suffers anything which would disqualify him from holding office as a director of a company under the law relating to companies; or
- (b) being a company it goes into liquidation or if a receiver manager or official manager of any of its assets or undertakings is appointed.

41.3 Retirement

A Trustee may retire upon giving One (1) month's notice in writing to the Unit Holders of that Trustee's desire to do so. Such retirement shall not take effect until:

- (a) a general meeting of Unit Holders is held to consider the appointment of a Trustee or Trustees in place of the retiring Trustee which meeting shall be convened by the retiring Trustee as soon as practicable after giving such notice; and
- (b) the new Trustee has executed the deed referred to in subclause 41.6.

41.4 Removal and Replacement by Unit Holders

The Unit Holders shall be entitled in writing or in general meeting:

- (a) by Special Resolution to remove any Trustee or to appoint an additional Trustee;
- (b) by Special Resolution to appoint a Trustee in place of any Trustee who dies or retires or is disqualified or removed from office.

41.5 Actions

A Trustee shall on retirement or removal take such action as is necessary to vest the Trust Fund or cause it to be vested in any new Trustee or Trustees and shall deliver to such new Trustee or Trustees all books documents records and other property relating to the Trust Fund and a continuing Trustee shall take such action as is necessary to cause title to any assets of the Trust Fund to be amended to include any additional Trustee.

41.6 New Deed

Any new Trustee shall execute a deed whereby such new Trustee shall undertake to the Unit Holders jointly and severally all of the obligations of a Trustee under this Deed as if named originally as Trustee and agreeing to be bound by the provisions of this Deed.

41.7 Costs and Expenses

The costs charges and expenses of and in connection with the retirement and replacement of any Trustee or the appointment of any additional Trustee shall be discharged out of the Trust Fund.

42. MEETINGS OF UNIT HOLDERS

42.1 Annual General Meeting

The Trustee may, with the majority agreement of all Unit Holders, in each year convene an annual general meeting of the Unit Holders which shall be held between the First (1st) day of August and the Thirty-first (31st) day of December or such other period as the Unit Holders by majority agree in each year.

42.2 Extraordinary General Meeting

The Trustee shall convene an extraordinary general meeting of all Unit Holders or of Unit Holders of a class upon the request of not less than Ten percent (10%) of the holders of issued Units in the Trust or of that class within Thirty (30) days of such request or in default such meeting may be convened by such Unit Holders.

43. NOTICE OF MEETING

43.1 Notice

Fourteen (14) days notice at the least (exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which notice is given) of all general meetings specifying the place the day and the hour of meeting and in the case of special business the general nature of that business shall be given to all Unit Holders.

44. BUSINESS AT MEETINGS

44.1 Special

All business to be transacted at an extraordinary general meeting and all business that is transacted at an annual general meeting shall be deemed to be special business with the exception of the consideration of the accounts and balance sheets, the reports of the auditor (if any) the nomination (if thought fit) of the auditor and the fixing of his remuneration and the fixing of the remuneration of the Trustee.

45. QUORUM

45.1 Requirements

No business shall be transacted at any general meeting unless at the time when the meeting proceeds to business there are present in person or by proxy at least Two (2) Unit Holders (unless there is only One (1) Unit Holder in which case One (1) Unit Holder shall form a quorum) or if more than One (1) class of Units, One (1) Unit Holder from each class. No special business shall be transacted unless there are present in person or by proxy at least Two (2) Unit Holders who between them hold at least Forty (40%) of the issued Units of the class entitled to vote at the meeting.

46. NO QUORUM PRESENT

46.1 Consequence

If within Fifteen (15) minutes from the time appointed for the meeting a quorum is not present:

- (a) the meeting if convened upon the requisition of Unit Holders shall be dissolved; and
- (b) in any other case it shall stand adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within Fifteen (15) minutes from the time appointed for the meeting the meeting shall be dissolved.

47. CHAIRMAN**47.1 Appointed**

The Chairman of the meeting shall be a person appointed for the purpose by the Unit Holders present at such meeting.

48. ADJOURNMENT**48.1 Adjourn**

The Chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but so that:

- (a) no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
- (b) when a meeting is adjourned for Ten (10) days or more at any one time notice of the adjourned meeting shall be given in accordance with clause 43; and
- (c) it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

49. VOTING**49.1 Show of Hands or Poll**

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the Chairman; or
- (b) by any Unit Holder or Unit Holders present in person or by proxy and holding not less than One-tenth (1/10) of the total voting rights of all the Unit Holders having the right to vote at the meeting,

and unless a poll is demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. Any demand for a poll may be withdrawn at any time.

50. DEMANDING A POLL**50.1 Demand**

If a poll is demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded provided that a poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith.

51. EQUALITY OF VOTES**51.1 No Casting Vote**

In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.

52. VOTING ENTITLEMENT**52.1 One Vote**

Subject to any special rights or restrictions provided in Schedule 2 in relation to the Units of any class each Unit Holder present shall be entitled to vote at general meetings of Unit Holders and on a show of hands shall have One (1) vote and on a poll shall have One (1) vote for each Unit he holds.

53. JOINT UNIT HOLDERS ENTITLEMENT**53.1 Senior**

In the case of joint Unit Holders the vote of the senior Unit Holder present who tenders a vote shall be accepted to the exclusion of the votes of the other joint Unit Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.

54. UNIT HOLDERS WHO MAY VOTE**54.1 Requirements**

A Unit Holder who is of unsound mind or a patient or an infirm person within the meaning of any statute may vote whether on a show of hands or on a poll by his committee or by the Public Trustee or by such other person as properly has the management of his estate and any such committee trustee or other person may vote by proxy or attorney.

55. INFANT UNIT HOLDER**55.1 Entitlement to Vote**

A Unit Holder who is an infant may vote by either of his parents or by his guardian upon such evidence being produced of the relationship or of the appointment of the guardian as the Trustee may from time to time require.

56. UNIT HOLDER RESOLUTION**56.1 In Writing**

A resolution in writing signed by all the Unit Holders entitled to vote at a general meeting of Unit Holders or of Unit Holders of any class shall be as valid and effectual as if it had been passed at a duly called and constituted general meeting of Unit Holders or of Unit Holders of that class as the case may be. Any such resolution may consist of a number of duplicate copies of One (1) document which have been signed (in the aggregate) by all Unit Holders.

57. PROXIES**57.1 In Writing**

Any instrument appointing a proxy shall be in writing in any usual form under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under seal or under the hand of an officer or attorney duly authorised and may name Two (2) or more persons to act as proxies in the alternative. A proxy need not be a Unit Holder.

58. CERTIFIED COPY OF AUTHORITY**58.1 Copy**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited with the Trustee prior to the time of any meeting or adjourned meeting at which the person named in the instrument proposes to vote. If the Trustee has not received such copy prior to that time the Trustee shall be entitled to disregard such power or authority and any vote cast by any such proxy.

59. DEEMED PRESENCE**59.1 Present**

A Unit Holder shall for all purposes be deemed to be present at a meeting if present either in person or by his proxy.

60. ACCOUNTS AND AUDIT**60.1 Maintain Records**

The Trustee shall keep a complete and accurate record of all receipts and expenditures on account of the Trust Fund.

60.2 Prepare Accounting Report

Promptly after the close of each Accounting Period the Trustee shall prepare a written accounting report (prepared in accordance with normally accepted accounting procedures) for such period consisting of a balance sheet and statement of income and expenditure and a list of assets held on the last day of the Accounting Period and a copy of that report shall be furnished to all the Unit Holders not less than Fourteen (14) days before the annual general meeting if any is to be held and if none is to be held before the Thirty-first (31st) day of December in each year.

60.3 Information in Accounting Report

The accounting report shall include the names and addresses of all persons or firms having custody of all or any portion of the assets of the Trust Fund.

60.4 Appoint Auditor

If the Unit Holders at any general meeting nominate an auditor the Trustee shall appoint that auditor and if the Unit Holders do not make a nomination the Trustee may in its discretion if it thinks fit appoint an auditor to examine and ascertain the correctness of the accounts of the Trust Fund and of every company and Unit Trust a majority of the shares or units (as the case may be)

in which are owned as part of the Trust Fund and to report to the Trustee and to the Unit Holders in respect of such accounts.

61. VARIATION OF TRUSTS

61.1 Trustee

The Trustee may at any time and from time to time by supplemental deed revoke, add to or vary all or any of the trusts, powers, authorities or discretions contained in this Deed or the trusts, powers, authorities or discretions declared by any such revocation addition or variation from time to time and may at any time and from time to time declare any new or other trusts, powers, authorities or discretions concerning the Trust Fund or any part or parts of it but so that any law against perpetuities is not infringed and so that such new or other trusts, powers, authorities, discretions, revocations, additions or variations:

- (a) relate to the management or control of the Trust Fund or the investment of it or to the Trustee's powers or discretions contained in this Deed;
- (b) shall not be in favour of or for the benefit or result in any benefit to the Initial Unit Holders or the Trustee but shall otherwise be for the benefit of all or one or more of the Unit Holders or the next-of-kin of all or any of the Unit Holders; and
- (c) shall not affect the beneficial entitlement to any amount set aside for any Unit Holder prior to such revocation addition or variation,

provided that no such supplemental deed shall take effect unless and until it has been ratified within Sixty (60) days after the date appearing on such Deed by a unanimous resolution of all the Unit Holders. If such Deed is not ratified it shall be of no effect.

61.2 Not Revoke or Vary

This Deed shall not be capable of being revoked added to or varied otherwise than as expressly provided in this clause 61.

62. NOTICES

62.1 Delivery

Any notice may be given by the Trustee to any Unit Holder by delivering it to him personally or by sending it by ordinary post to him at the address within Australia notified by such Unit Holder to the Trustee from time to time or (in the case of a company) to the Unit Holder's registered office or other address within Australia as shall be notified to the Trustee (where such company does not have a registered office in Australia). Where a notice is sent by post service of the notice shall be deemed to be effected:

- (a) by properly addressing prepaying and posting a letter containing the notice; and
- (b) in the case of a notice of a meeting Two (2) days after the date of its posting and in any other case at the time at which the letter would be delivered in the ordinary course of post; and,

if the Trustee shall determine any notice may be given by means of telex telegram facsimile or cablegram and service of such notice shall be deemed to be effected if:

- (i) in the case of telegram or cablegram if it is properly addressed paid for and lodged for transmission with a competent authority or body at the time at which in the ordinary course of business the telegram or cablegram would be delivered;
- (ii) in the case of telex when the recipient's correct answer back code is received by the sender; and
- (iii) in the case of facsimile when the sender's machine confirms a completed transmission to the Unit Holder's correct facsimile number as advised to the Trustee.

62.2 Joint Holders

Any notice may be given by the Trustee to the joint Holders of a Unit by giving the notice to the Unit Holder first named in the Register in respect of the Unit.

62.3 Representatives

Any notice may be given by the Trustee to any person entitled to a Unit in consequence of the death, lunacy, liquidation, receivership or bankruptcy of a Unit Holder by sending it through the post in prepaid letter addressed to such person by name or by the title of representative of the deceased, lunatic, liquidator, receiver or assignee in bankruptcy or by any like description at the address (if any) within Australia supplied for the purpose by the person claiming to be entitled or (until such address has been supplied) by giving the notice in any manner in which the same might have been given if the death, lunacy, liquidation, receivership or bankruptcy had not occurred.

62.4 Meeting

Subject to subclause 62.5 notice of every meeting of Unit Holders shall be given in the manner authorised above to:

- (a) every Unit Holder except those Unit Holders who have not supplied to the Trustee an address within Australia for the giving of notices to them;
- (b) every person entitled to a Unit in consequence of the death, lunacy, liquidation, receivership or bankruptcy of a Unit Holder who but for his death, lunacy, liquidation, receivership or bankruptcy would be entitled to receive notice of the meeting; and
- (c) the auditor (if any) for the time being of the Trust Fund.

62.5 Not Invalidate Meeting

The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at that meeting.

62.6 Form of Signature

The signature to any notice to be given by the Trustee may be written or printed or stamped and the signature may be that of the Trustee or (in the case of a company) of any director or secretary of the Trustee.

63. INTERESTED TRUSTEE**63.1 Personal Interest**

Notwithstanding any rule of law or equity to the contrary the Trustee in the exercise of any or all of the powers herein declared shall have the fullest power to exercise or concur in exercising all of the powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that the Trustee or any person being a Trustee or any person being a Director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as Trustee of any other settlement or in his personal capacity or as a Director or shareholder of any Company or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

SCHEDULE 1

Item 1: DATE OF DEED: 21/06/2005

Item 2: NAME OF TRUST: ENERGY TRUST

Item 3: TRUSTEE/S: VALLEY ENERGY PTY LTD
ACN 114 859 620

**Item 4: INITIAL UNIT
HOLDERS:** 1

Unit Holder Name: ANTHONY BARAKAT AND TERRIE BARAKAT ATF A & T
BARAKAT SUPER FUND

Address: 5 WHYENBAH STREET
HAMILTON QLD 4007
AUSTRALIA

No & Class: 10 ORD at \$1.00 each.

Item 5:

(a) NO. OF INITIAL UNITS: 10

**(b) VALUE OF INITIAL
UNITS:** \$10

Item 6: APPLICABLE LAW: QUEENSLAND (REFER CLAUSE 3)

Item 7: SETTLED SUM: \$10.00

Item 8: SETTLOR: ACIS SETTLEMENTS PTY. LTD.
ACN 081 961 391

SCHEDULE 2

CLASSES OF ORIGINAL UNITS

SCHEDULE 3

APPLICATION FOR UNITS

To the Trustees,

ENERGY TRUST

Full name of Applicant: _____

Full street address of Applicant: _____

Hereby apply for: _____ Unit/s

Class of Unit _____

Amount paid per Unit: \$ _____

Amount Unpaid per Unit: \$ _____

I enclose my cheque in the sum of \$ _____ made payable to the Trustee.

Upon the acceptance of this application by the Trustee and the corresponding issue of any Units referred to in this application, I/we agree to be bound by the terms, covenants and conditions of the Trust Deed of the above-named Trust.

Dated: / /

Signature: _____
Applicant

SCHEDULE 4

UNIT CERTIFICATE

NAME OF TRUST: ENERGY TRUST

DATE OF TRUST: 21/06/2005

CERTIFICATE NO:

DATE OF ISSUE: / /

THIS IS TO CERTIFY THAT:

OF:

is the Registered Holder of the Unit/s as shown in the panel herein in the above-named Trust, subject to the terms and conditions of the Trust Deed.

Number of Units	Class of Units	Serial Numbers		Amount Agreed to Pay per Unit	Amount Unpaid Per Unit
		From	To		

Signed for and on behalf of the Trustee/s by:)

) _____
) _____
) _____
) _____

Trustee/s or person/s authorised by corporate Trustee/s

NOTE: – This Certificate must be given up to the Trustee on application to transfer any or all of the Units comprised herein.

~~X~~----- ENERGY TRUST

RECEIVED CERTIFICATE NO.:

NAME OF UNIT HOLDER:

DATE OF ISSUE: / /

for the Unit/s as shown in the panel herein in the above-named Trust, subject to and with the benefit of the terms and conditions of the Trust Deed constituting the said Trust.

Number of Units	Class of Units	Serial Numbers		Amount Agreed to Pay per Unit	Amount Unpaid Per Unit
		From	To		

Signed: _____
For and on behalf the Unitholder

Print name of signatory

SCHEDULE 6

TRANSFER NOTICE

To: Trustee/s
ENERGY TRUST

I/We _____

of _____

being registered as the Unit holder of _____ Units in the above named Unit Trust
hereby GIVE NOTICE

that I/we desire to transfer _____ Units for the sum of \$ _____ per
Unit.

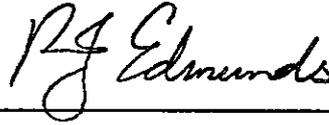
Dated: / /

Transferor's signature

Print Name

Executed as a Deed.

EXECUTED AS A DEED by ACIS)
SETTLEMENTS PTY LTD ACN 081 961 391)
as Settlor by being signed by the sole)
director of the Company pursuant to the)
Corporations Act 2001 (Cth):)
)
)
)



RHONDA JOYCE EDMUNDS
Sole Director

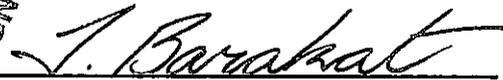
EXECUTED AS A DEED by VALLEY)
ENERGY PTY LTD ACN 114 859 620 as)
Trustee by being signed on behalf of the)
directors of the Company pursuant to the)
Corporations Act 2001 (Cth):)
)
)
)

SIGN



ANTHONY BARAKAT
Director

SIGN



TERRIE BARAKAT
Director

Client REF: 4363