



*Certified Practising Accountants
and Business Advisors*

CAMERON PARK INVESTMENT TRUST

NSW FIXED UNIT TRUST

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Cameron Park Investment Trust

Date 5 June 2020

Parties

1. THE GOOD OLD BOYS (NEWCASTLE) NO 3 PTY LTD - ACN 641 057 070 OF 24 ALMA ROAD, NEW LAMBTON, NSW 2305 (**'the Trustee'**); and
2. MLP NO 2 PTY LIMITED - ACN 148 958 561 OF 24 ALMA ROAD, NEW LAMBTON, NSW 2305 AS TRUSTEE FOR PULTAR FAMILY SUPERANNUATION FUND, WALMAR SUPER PTY LTD - ACN 608 168 038 OF 373 HIGH STREET, MAITLAND, NSW 2320 AS TRUSTEE FOR WALMAR SUPERANNUATION FUND, RODAN INITIATIVES PTY LTD - ACN 609 909 346 OF 59 DUDLEY ROAD, CHARLESTOWN, NSW 2290 AS TRUSTEE FOR RODAN SUPERANNUATION FUND, AMPED ELECTRICAL NEWCASTLE PTY LTD - ACN 110 860 752 OF 22 PADDOCK CLOSE, ELERMORE VALE, NSW 2287 AS TRUSTEE FOR MCLENNAN INVESTMENT TRUST, MARTO FAMILY PTY LTD - ACN 622 773 068 OF 52 HOOKE STREET, DUNGOG, NSW 2420 AS TRUSTEE FOR MARTIN FAMILY SUPERANNUATION FUND AND READAV PTY LTD - ACN 158 367 072 OF UNIT 8 LEVEL 1 20-22 SMITH STREET, CHARLESTOWN, NSW 2290 AS TRUSTEE FOR BOCK SUPERANNUATION FUND (**'the Original Members'**).

Background

- A. The Original Members and the Trustee wish to establish a trust for the benefit of the Members.
- B. To give effect to this wish the Original Members have paid or will pay the Initial Sum to the Trustee on or before the Commencement Date.
- C. The Trustee has consented to become trustee and hold the Trust Fund on trust subject to the terms set out in this Deed.

The parties agree

1. Definitions

In this Deed unless the contrary intention appears:

1.1 **'Accounting Period'** means:

- 1.1.1 the period which commences on the Commencement Date and ends on the following 30 June;
- 1.1.2 each whole year ending on 30 June during the period between the Commencement Date and the Vesting Date; and

- 1.1.3 the period which commences on 1 July immediately prior to the Vesting Date and ends on the Vesting Date;
- 1.2 **'Applicable Law'** means the Law of the Governing State;
- 1.3 **'Bank'** means any bank, credit union, building society or other financial institution;
- 1.4 **'Business Day'** means any day that Banks are generally open for business in the Governing State but not a Saturday, Sunday, public holiday or bank holiday;
- 1.5 **'Capital Gains'** means those capital gains of the Trust Fund which are liable to be treated as assessable income for the purposes of the Tax Act but which are not income according to the accounting policy adopted under **clause 12**;
- 1.6 **'Commencement Date'** means the date upon which this Deed is signed;
- 1.7 **'Encumbrance'** means any interest or power reserved in or over any interest in any asset (including any retention of title or security for the performance of any obligation) having a material adverse affect on the interest encumbered;
- 1.8 **'General Meeting'** means a general meeting of Members;
- 1.9 **'Governing State'** means New South Wales.
- 1.10 **'Initial Sum'** means the sum of \$420000;
- 1.11 **'Initial Trustee'** means the Trustee named in this Deed;
- 1.12 **'Market Value'** means the market value calculated in accordance with the method for calculating Valuation Price under **clause 8.2.5**;
- 1.13 **'Member'** means the person or corporation for the time being registered under the provisions of this Deed as the holder of Units and includes a person jointly so registered;
- 1.14 **'Member's Approval'** means the approval of Members given by resolution passed at a General Meeting pursuant to **clause 9**;
- 1.15 **'Member's Proportion'** means with respect to the Units, or to each class of Units if the context requires, a fraction:
- 1.15.1 where the numerator will be the number of issued Units of that class held by that Member; and
- 1.15.2 where the denominator will be the total issued number of Units of that class;
- 1.16 **'Net Income'** means the Trust Income of the Trust Fund for each Accounting Period;
- 1.17 **'Office'** means:
- 1.17.1 the registered office of the Trustee, if the Trustee is a company; and
- 1.17.2 the address of the Trustee, if the Trustee is a person;
- 1.18 **'Original Members'** means the Original Members as defined in this deed.

- 1.19 'Pay' means pay or apply or Set Aside, and may be effected by:
- 1.19.1 crediting such amount to the Member in the books of the Trust Fund;
 - 1.19.2 drawing a cheque in respect of the amount Payable to the Member; or
 - 1.19.3 Paying that amount in cash to the Member.
- 1.20 'Register' means the Register of Members kept pursuant to **clause 7**;
- 1.21 'Representative' means a person authorised by a Member to act as its representative under this Deed;
- 1.22 'Set Aside' in relation to a Member includes placing sums to the credit of such Member in the books of the Trust;
- 1.23 'Taxable Income' means an amount equal to the net income of the Trust Fund calculated in accordance with subsection 95(1) of the Tax Act, excluding any amount which is included only by reason of Division 207 of the Tax Act;
- 1.24 'Tax Act' means the *Income Tax Assessment Acts* of 1936 and 1997 of the Commonwealth of Australia as applicable;
- 1.25 'Trust' means **Cameron Park Investment Trust** created by this Deed;
- 1.26 'Trust Fund' means:
- 1.26.1 the Settled Sum;
 - 1.26.2 any money and other property having the nature of either capital or income acquired or accepted by the Trustee as an addition to the Settled Sum; and
 - 1.26.3 the investments and property for the time being representing those sums or any part of them;
- 1.27 'Trust Income' means, in respect of any Accounting Period, an amount equal to the Taxable Income of the Trust Fund for that Accounting Period. As an alternative, the Trustee may determine the 'Trust Income' with respect to any Accounting period to be either:
- 1.27.1 the sum of the net income of the Trust Fund determined for that Accounting Period according to the accounting policy adopted under **clause 12**; or
 - 1.27.2 any other basis as the Trustee determines.
- 1.28 'Unit' means a unit created under the provisions of this Deed and for the time being held by the Members or the Trustee; and
- 1.29 'Vesting Date' means the earliest of:
- 1.29.1 The day prior to the day on which the rule against perpetuities would be offended, or any other rule of law or equity; or
 - 1.29.2 subject to Member's Approval any day the Trustee determines.

2. **Interpretation**

In this Deed unless the contrary intention appears:

- 2.1 the **singular** includes the plural and vice versa;
- 2.2 a **gender** includes all other genders;
- 2.3 where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- 2.4 a reference to a **person** includes any corporation, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 2.5 a reference to a **clause** or **annexure** is to a clause of or annexure to this Deed;
- 2.6 a reference to a **request** or **notice** means a request or notice in writing;
- 2.7 a reference to any **party** to this or any other document includes the party's successors and permitted assigns;
- 2.8 a reference to a **document** is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices to that document, except to the extent prohibited by that document;
- 2.9 a reference to any **legislation** or legislative **provision** includes any statutory modification, substitution or re-enactment and any subordinate legislation issued under that legislation or provision;
- 2.10 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;
- 2.11 mentioning anything after **include**, **includes** or **including** does not limit what else might be included;
- 2.12 a reference to a **person** that comprises two or more persons means those persons jointly and severally;
- 2.13 the **headings** are for convenience only and do not affect the interpretation of this Deed;
- 2.14 a reference to a **month** means a calendar month;
- 2.15 a reference to **dollars** means Australian dollars;
- 2.16 a reference to **time** means time in the Governing State;
- 2.17 the **Background** is correct and forms part of this Deed.

3. **The Trust**

- 3.1 The Trust created by this Deed will be known as the **Cameron Park Investment Trust**.
- 3.2 The Trustee will hold the Trust Fund on the terms of this Deed from the Commencement Date.

4. **The Trust Fund**

4.1 **Units**

- 4.1.1 The Trustee will hold the Trust Fund on trust for the Members in proportion to each Member's Proportion.
- 4.1.2 All Units will be of equal value.
- 4.1.3 Subject only to the Trustee's right of indemnity for the proper payment of expenses with respect to the administration of the Trust, each Unit will entitle the Member, jointly with all other Members according to the Member's Proportion, to the Trust Fund as an entirety.
- 4.1.4 Except as otherwise provided in this Deed, no Member will accept a transfer of any property comprised in the Trust Fund.
- 4.1.5 The Trust Fund will initially be divided into the total number of Units set out in **Annexure A**.
- 4.1.6 Each Original Member will hold the number of Units which appears adjacent to their name in **Annexure A**.
- 4.1.7 For the avoidance of doubt, all Units must be issued, redeemed and forfeited at Market Value.
- 4.1.8 At the Vesting Date, the Trust Fund must be distributed to the Members according to the Member's Proportion
- 4.1.9 Notwithstanding anything to the contrary in this Deed, the Members:
 - (a) are presently entitled to the Net Income of the Trust, subject only to the proper payment of expenses by and of the Trustee which relate to the administration of the Trust; and
 - (b) are presently entitled to the Trust Fund (being the capital of the Trust), and may require the Trustee to wind up the Trust and distribute the Trust Fund or the net proceeds of the Trust Fund.

This clause 4.1.9 is irrevocable, and cannot be removed, restricted or otherwise affected by the exercise of any discretion, or the failure to exercise a discretion by anyone (including, but not limited to, the Trustee) under the terms of this Deed.

- 4.1.10 For the avoidance of doubt:
 - (a) each individual Member has the complete and unfettered power to compel the Trustee to redeem all or any of the units held by the Member, with such a redemption to be affected at Market Value. For the avoidance of doubt, any redemption and cancellation of all or some of a Member's Units is at the absolute discretion of a Member, with any other member and Trustee not being able to fetter the Member's ability to compel a redemption and cancellation of all of some of that Member's Units.

- (b) in giving effect to a redemption and cancellation of any or all of the Units, or amount paid up with respect to any Units held by a Member, a Member may compel the Trustee to make an in specie distribution of any item of the Trust Fund; and
- (c) the Members may compel the Trustee to vest the Trust Fund in the Members, according to the Member's Proportion, by causing the Vesting Date to occur via Member's Approval.

4.1.11 To the maximum extent possible, and subject to the Trustee's right of indemnity and exoneration, the Members have a beneficial interest in the Trust Fund. For the avoidance of doubt, subject only to the proper expenses by and of the Trustee relating to the administration of the Trust, the Members at all times have a present legal right to demand, and receive payment of the Trust Fund and any Net Income of the Trust.

4.2 Issues of Units

- 4.2.1 The Trustee may issue additional Units from time to time in such manner as the Trustee thinks fit subject always to the Units being issued at Market Value.
- 4.2.2 For the avoidance of doubt, all Units must be issued at Market Value.
- 4.2.3 Unless all Members waive the operation of this **clause**:
 - (a) each issue of new Units will be offered in the first instance to existing Members on a pro rata basis or as near to each Member's Proportion and without involving fractions;
 - (b) offers of new Units will be made by notice in writing ('the Offer') to the Members stating:
 - (i) the number of Units offered;
 - (ii) a time within which the Offer, if not accepted, will be deemed to be declined; and
 - (iii) after the expiration of that time, or upon communication to the Trustee from a person to whom the Offer is made that they decline to accept the Units offered, the Trustee may dispose of those Units in such manner as it thinks most beneficial to the Trust Fund.
 - (c) If the new Units cannot, because of their number, be offered precisely pro rata, the Trustee must offer as many of them as possible pro rata and may offer the rest to one or more Members as the Trustee thinks fit.
 - (d) The Trustee may require any new Member to sign an application for Units being substantially in the form set out in Annexure B.

4.3 **Redemption of Units**

4.3.1 The Trustee must, at the written request of a Member ('the **Departing Member**') redeem and cancel all or any of the Units held by the Departing Member, on such terms and conditions as the Departing member requests, subject always to the condition that the Units must be redeemed at Market Value.

4.3.2 For the avoidance of doubt, all Units must be redeemed at Market Value.

5. **Calls**

5.1 **Calls**

5.1.1 Subject to **clause 5.1.9**, the Trustee may in its absolute discretion during the period described in Part I of **Annexure C** raise further capital not exceeding in aggregate the sum set out in Part II of **Annexure C** by a call ('the **Call**') upon the Members.

5.1.2 Each Call is subject to the following conditions:

- (a) the call must be made by notice in writing to each Member and must be paid by the Member within one month after it is made;
- (b) each Member will be required to contribute to the Call an amount calculated by multiplying the amount of the Call by the Member's Proportions;
- (c) the Trustee will be entitled to recover from each Member as a debt that part of the Call which:
 - (i) the Member is required to contribute under **clause 5.1.2(b)**; and
 - (ii) is unpaid by the Member.

5.1.3 The funds contributed by Members in response to a Call will form part of the capital of the Trust Fund and will be treated as capital subscribed and not as a debt owed by the Trustee to the Members.

5.1.4 The Trustee may set off against the liability of any Member to pay any part of an unpaid Call, any amount which the Trustee becomes liable to pay to that Member on any account.

5.1.5 The Trustee may:

- (a) require the Call to be paid in instalments; and/or
- (b) revoke or postpone a Call before its due date for payment.

5.1.6 At least 10 Business Days before the due date for payment of a Call the Trustee must send to the Members a notice specifying the amount of the Call, the due date for payment and the place for payment.

- 5.1.7 Failure to send a notice of a Call to any Member or a non-receipt of a notice by any Member does not invalidate the Call.
- 5.1.8 Joint Members are jointly and severally liable to pay all Calls in respect of their Units.
- 5.1.9 If both Parts I and II of **Annexure C** bear the endorsement 'not applicable' then **clauses 5.1.1 to 5.1.9** are of no effect and no Call can be made.

5.2 Interest on Unpaid Amounts

If an amount on a Call is not paid on or before the due date, the Member will pay (subject to the Trustee's discretion):

- 5.2.1 interest on the unpaid amount of the Call from the due date to the time of actual payment at a rate determined by the Trustee (not exceeding 20% per annum); and
- 5.2.2 all expenses incurred by the Trust as a consequence of the non-payment.

5.3 Lien

- 5.3.1 The Trustee has a first and paramount lien on each Member's Units for all money due and unpaid and presently payable by that Member or a Member's estate to the Trustee.
- 5.3.2 The Trustee's lien extends to all distributions payable in respect of the Units held by a Member.
- 5.3.3 Unless the Trustee determines otherwise, the registration of a transfer of a Unit operates as a waiver of the Trustee's lien on the Unit.

5.4 Lien Sale

If the Trustee has a lien on a Unit for money presently payable and the Trustee has given the Member who holds the Unit written notice demanding payment of the money, then 10 Business Days or more days after giving the notice, the Trustee may sell any Units held by the Member (provided the money has not been paid) in any manner determined by the Trustee.

5.5 Forfeiture Notice

- 5.5.1 The Trustee may at any time after a Call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay the unpaid amount, any interest that has accrued on that amount and all expenses incurred by the Trust as a consequence of the non-payment.
- 5.5.2 The notice under **clause 5.5.1** must:
 - (a) specify a day (not earlier than 10 Business Days after the date of the notice) on or before which the payment required by the notice must be made; and

- (b) state that if the Member does not comply with the notice, the Units in respect of which the Call was made or instalment was payable will be liable to be forfeited.

5.6 Forfeiture

- 5.6.1 If a Member does not comply with a notice served under **clause 5.5**, then any or all of the Units in respect of which the notice was given may be forfeited at the discretion of the Trustee together with unpaid distributions in respect of those forfeited Units.
- 5.6.2 The forfeited Units will be cancelled on terms determined by the Trustee except that the Units being forfeited must be at Market Value.
- 5.6.3 For the avoidance of doubt, any forfeiture of Units must be done so at Market Value.
- 5.6.4 On forfeiture, the interest of a Member who held Units which are the subject of the forfeiture is extinguished.
- 5.6.5 After a Unit has been forfeited:
 - (a) written notice of the forfeiture must be given to the Member in whose name the Unit was registered immediately before its forfeiture; and
 - (b) the fact of the forfeiture and the date of the forfeiture must be noted in the Register.

5.7 Liability

- 5.7.1 Upon forfeiture, the former holder of the forfeited Units remains liable to pay to the Trust:
 - (a) all money (including interest and expenses) that was payable by him or her to the Trustee at the date of forfeiture in respect of the forfeited Units; and
 - (b) interest from the date of forfeiture until payment at a rate determined by the Trustee (not exceeding 20% per annum).
- 5.7.2 The liability to the Trust of a former holder of forfeited Units ceases if and when the Trust receives payment in full of all money (including interest and expenses) payable by the person in respect of the forfeited Units.

6. The Income of the Fund

6.1 Trust Income

- 6.1.1 The Trustee will collect, receive and obtain all dividends, interest, rents and other income from the investments of the Trust Fund.
- 6.1.2 The Trustee will Pay out of the gross income of the Trust Fund all costs and disbursements and commissions, fees, taxes, management charges and

other proper outgoings in respect of the investments and administration of the Trust Fund.

- 6.1.3 Until the Vesting Date the Trustee may at any time before the expiration of each Accounting Period determine to Pay or accumulate all or any part of the Net Income for each Accounting Period. The Net Income may be Paid by an interim or final distribution.

6.2 Determination Rules

The following rules will apply to any determination pursuant to **clause 6.1.3** ('**Determination**');

- 6.2.1 Any Determination will be conditional upon it being proved that the Trust Income exists at the end of the Accounting Period.
- 6.2.2 For the purposes of identifying those portions of the Net Income Paid pursuant to **clause 6.2** the Trustee may maintain two or more separate income accounts and may:
- (a) credit each income receipt to one or more of those income accounts as the Trustee thinks fit;
 - (b) debit each item of expenditure of a revenue nature to one or more of the income accounts as the Trustee thinks fit; and
 - (c) credit any Capital Gain, dividend income which is derived by the Trust Fund and which is franked within the meaning of Part 3-6 of the Tax Act or any Trust Income which entitles the recipient to a credit of foreign tax pursuant to Division 18 of Part III of the Tax Act to one or more of the income accounts.

6.3 Accumulation

- 6.3.1 The Trustee will hold so much of the Net Income for each Accounting Period which is not the subject of a Determination under this Deed in trust for the Members in accordance with each Member's Proportions on the last day of such Accounting Period.
- 6.3.2 Any amount Set Aside for any Member pursuant to **clause 6.3.1** and any amount held by the Trustee on trust for any Member pursuant to this **clause 6** will not form part of the Trust Fund, however, upon being Set Aside or becoming subject to such trust (as the case may be) the amount held by the Trustee for the Member will, from that time, be held on trust by the Trustee as a separate trust fund for such person absolutely. The Trustee will, pending Payment of that amount to such person, have the power to invest, apply or deal with such fund or any resulting income from that amount or any part of that amount in the manner authorised by **clause 6.1**
- 6.3.3 All Trust Income Payable to Members under this **clause 6** will be Payable to them separately and income received by the Trustee will not be received or construed as received by or on behalf of the Members jointly or otherwise.

- 6.3.4 Notwithstanding anything to the contrary in this **clause 6** and for the avoidance of doubt the Members:
- (a) are presently entitled to the income of the Trust, subject only to payment of proper expenses by and of the Trustee relating to the administration of the Trust; and
 - (b) are presently entitled to the capital of the Trust, and may require the trustee to wind up the Trust and distribute the Trust Fund or the net proceeds of the Trust Fund.

This **clause 6.3.4** is irrevocable, and cannot be removed, restricted or otherwise affected by the exercise of any discretion, or the failure to exercise a discretion by anyone (including, but not limited to, the Trustee) under the terms of this Deed.

7. Register of Members

- 7.1 The Trustee will keep the Register which will contain the following particulars:
- 7.1.1 the name(s) and address of each Member;
 - 7.1.2 the number of Units that each Member holds and the distinctive numbers or letters of the certificates held by each Member;
 - 7.1.3 the date on which the name and number of Units held by that Member was entered in the Register; and
 - 7.1.4 any other details considered necessary by the Trustee.
- 7.2 The Trustee will issue to each Member a certificate for the Units held by that Member. The certificate will:
- 7.2.1 be substantially in the form set out in **Annexure D**;
 - 7.2.2 state the name, address and number of Units held by the Member;
 - 7.2.3 bear a distinctive number or letter;
 - 7.2.4 be prima facie evidence that the person named in the certificate is entitled to the number of Units specified in that certificate; and
 - 7.2.5 be signed by the Trustee or, if the Trustee is a company, by any director of that company.
- 7.3 Subject to **clause 10.4**, no notice of any trust (express, implied or constructive) will be entered in the Register.
- 7.4 Subject to **clause 10.4** the person entered in the Register as the Member will be the only person recognised by the Trustee as entitled to:
- 7.4.1 the Units registered in its name; or
 - 7.4.2 exercise the rights and privileges of the Member pursuant to this Deed.
- 7.5 Except where this Deed otherwise provides:

- 7.5.1 no person will be recognised by the Trustee as holding any Unit upon trust; and
- 7.5.2 the Trustee will not be bound by or be compelled to recognise (even when having notice of such interest);
 - (a) any equitable, contingent, future or partial interest in any Unit; or
 - (b) any other rights in respect of any Unit,
 - (c) except an absolute right in the Member to the Units that Member is entitled.
- 7.6 Units held by a trustee in respect of another trust may be marked in the Register in such a way as to identify them as being held in respect of that trust but:
 - 7.6.1 no liability will be created by any such marking; and
 - 7.6.2 the Trustee will not be affected by notice of any trust recorded in this manner.
- 7.7 If a transferee of Units so requests in writing, the Trustee may:
 - 7.7.1 issue a certificate of Units in the name of a fund which is held by a trustee or another trust;
 - 7.7.2 subject to the provisions of this Deed relating to transfers:
 - (a) register any transfer signed by the trustee for the time being of that fund; and
 - (b) Pay all distribution cheques to such trustee or to the fund by its name; and
 - 7.7.3 any Payments pursuant to **clause 7.7.2** will be a good discharge to the Trustee who will not be bound to oversee the application of any monies Paid to such a fund or to the trustees of such a fund.
- 7.8 Nothing contained in this Deed will be construed in such a way as to affect the rights of any beneficiary or the beneficial ownership of any property held under any trust other than the Trust created by this Deed.
- 7.9 Each person who becomes registered as a Member will be deemed to:
 - 7.9.1 have agreed to become a party to this Deed; and
 - 7.9.2 will be entitled to the benefit of and will be bound by the terms and conditions of this Deed.

8. Unit Transfer

8.1 Transfer

- 8.1.1 Subject to this Deed, a Member may transfer its Units.

- 8.1.2 Units may be transferred by a written transfer instrument in a form approved by the Trustee and must be executed by or on behalf of the transferor and the transferee.
- 8.1.3 A transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units. A transfer of Units does not pass the right to any unpaid distributions on the Units until registration.
- 8.1.4 A Member may only transfer a Unit if each of the requirements prescribed by **clauses 8.2 and 8.3** are first satisfied unless:
- (a) the transfer is pursuant to **clause 8.5 or 8.6**; or
 - (b) the Members other than the Member proposing to transfer the Units unanimously waive or modify those requirements.

8.2 Transfer of Units

8.2.1 Transfer Notice

- (a) A Member proposing to transfer a Unit (**'the Transferring Member'**) other than pursuant to **clause 5.6** must give notice in writing to that effect (**'the Transfer Notice'**) to the Trustee.
- (b) The Trustee will then be the Member's agent for the sale of the Units.
- (c) If a Transfer Notice is given in respect of more than one Unit it will be deemed to be a separate notice in respect of each Unit, but it must specify the number of Units proposed to be transferred (**'the Sale Units'**).
- (d) A Transfer Notice may specify the price at which the Transferring Member wishes to sell each Unit (**'the Offer Price'**).
- (e) A Transfer Notice must be unconditional except that if it is given in respect of more than one Unit, it may state that none of the Sale Units will be sold unless the whole or a specified number of the Sale Units (**'the Minimum Number'**) are sold.
- (f) If the Transfer Notice does not specify an Offer Price, the Transfer Notice will constitute an offer to sell the Sale Units at market value to be fixed as provided in **clause 8.2.5 ('the Valuation Price')**.
- (g) If a Transfer Notice does specify an Offer Price, it will constitute an offer to sell at either the Offer Price or the Valuation Price, at the option of the purchaser.
- (h) A Transfer Notice is not revocable except with the written approval of the Trustee.

8.2.2 Offers

- (a) Upon receipt of a Transfer Notice, the Trustee must within 14 days give notice in writing (**'the Offer Notice'**) to all Members.
- (b) **The Offer Notice must:**
 - (i) state that the Trustee has received the Transfer Notice;
 - (ii) specify the number of Sale Units;
 - (iii) specify the Minimum Number (if any);
 - (iv) specify the Offer Price (if any); and
 - (v) inform the Members of the right of each of them to reject the Offer Price and accept the offer to sell at the Valuation Price.

- (c) The Offer Notice must offer the Sale Units to existing Members (other than the Transferring Member) in proportion to each Member's Proportions (without involving fractions).
- (d) The Offer Notice must specify that if a Member does not accept in whole or in part the offer made to that Member within one month from its receipt, the offer will be deemed to be rejected either in whole or in part (as appropriate).

8.2.3 Acceptance

- (a) Any Member may at any time within one month from the date of receiving the Offer Notice give written notice ('the Acceptance Notice') to the Trustee that that Member ('the Transferee Member') wishes to purchase one or more of the Units offered to that Member.
- (b) If the Transferring Member has nominated an Offer Price, the Acceptance Notice must state whether the Transferee Member wishes to buy the Units at the Offer Price or at the Valuation Price.
- (c) If the Transfer Notice does not specify an Offer Price, the Acceptance Notice will constitute an acceptance of the offer to purchase the Sale Units at the Valuation Price.
- (d) A Transferee Member may not insist on the Valuation Price being fixed before an Acceptance Notice has to be given.
- (e) The giving of an Acceptance Notice binds the proposing Transferee Member to buy according to this clause 8.2 notwithstanding that the Valuation Price has yet to be fixed.
- (f) If a Transferee Member wishes to buy more than the number of Units offered to him or her in the Offer Notice, that Transferee Member's Acceptance Notice:
 - (i) must specify the number of additional Units which that Transferee Member wishes to purchase; and
 - (ii) will constitute an offer to buy the additional Units at the same price as the Transferee Member has agreed to buy the Units offered to him or her in the Offer Notice.
- (g) Any Sale Units not accepted by a Member will be used to satisfy offers for additional Units from any Transferee Members. If there are insufficient of those Sale Units to satisfy in full all the offers for additional Units those unaccepted Sale Units will be distributed amongst the Transferee Members who made the offers pro rata as close as may be to the number of Units held by each of them. No Transferee Member can be required to take more Sale Units than are specified in that Transferee Member's Acceptance Notice.
- (h) If after the distribution of additional Units under clause 8.2.3(g) there remain some unsold Sale Units and any Transferee Member who by his or her Acceptance Notice has offered to buy more of the Sale

Units than have so far been allocated to him or her, the procedure prescribed in clause **8.2.3(g)** will be repeated until either all the Sale Units have been taken up or there are no Transferee Members remaining who have not been allocated the number of additional Units specified in his or her Acceptance Notice. For the purposes of the repeated procedure any Units to which the Transferee Member has become entitled by reason of the giving of the Acceptance Notice are to be ignored in making the pro rata calculation required by clause **8.2.3(g)**.

- (i) After the one month period referred to in clause **8.2.3(a)** has expired, the Trustee must immediately give written notice to the Transferring Member and each Transferee Member of the name of each Transferee Member and of the number of the Units specified in the Transfer Notice to which each Transferee Member is entitled. The Transferring Member must then immediately sell and transfer the Sale Units to the relevant Transferee Members at the relevant price ('the Relevant Price').

8.2.4 Excess Units

- (a) If a Sale Unit is not accepted for sale in accordance with clause **8.2.3** ('the Excess Sale Unit') the Trustee may attempt, but is not bound to find a willing and suitable purchaser for that Excess Sale Unit at a price not less than whichever is the lower of the Offer Price (if any) or the Valuation Price. If the Trustee was not required to obtain the Valuation Price the Trustee must appoint an accountant to fix the Valuation Price.
- (b) If the Trustee finds such a purchaser within one month from the last day on which an Acceptance Notice can validly be served on the Trustee, the Trustee must give an appropriate notice to the Transferring Member. The Transferring Member must then, on receiving the Sale Price, transfer the Excess Sale Unit to that purchaser.
- (c) If the Trustee does not find such a person within that one month period, the Transferring Member may at any time within the following three months sell that Excess Sale Unit to any person at a price not less than the lowest price at which the Trustee is authorised to sell the Excess Sale Units.

8.2.5 Valuation Price

- (a) As soon as necessary, the Trustee must appoint an accountant ('the Accountant') to fix the Valuation Price.
- (b) The Accountant must be a chartered accountant or a certified practising accountant actively engaged in public practice who:
 - (i) is suitably qualified to carry out a valuation of the nature and dimension required;

- (ii) has evidenced his ability to produce credible work;
 - (iii) has at least five years experience in the valuation and analysis of businesses similar to the business conducted by the Trustee;
 - (iv) has an extensive knowledge of discounted cash flow analysis;
 - (v) has the ability to meet time requirements; and
 - (vi) has no pecuniary interest that could reasonably be regarded as being capable of affecting his ability to give an unbiased opinion.
- (c) The Accountant will act as an expert and not as an arbitrator. The Accountant's decision will be final.
- (d) The Valuation Price will be that sum which in the Accountant's opinion is the fair market value of the Sale Units:
- (i) assuming a willing buyer and willing seller;
 - (ii) assuming a reasonable period within which to negotiate the sale taking into account the nature of the Trust and the state of the market;
 - (iii) assuming the Units will be freely exposed to the market with reasonable publicity;
 - (iv) on the basis that no account is taken of the interest of a special buyer.

8.3 Transfer Procedure

8.3.1 For a transfer of Units the written transfer instrument must be left at the Office together with any fee the Trustee requires. The transfer must be accompanied by a certificate for the Units dealt with in the transfer, unless the Trustee waives production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate and of evidence required by the Trustee of the transferor's right to transfer the Units.

8.3.2 Subject to the powers vested in the Trustee by this Deed, the Trustee must register all registrable transfer forms and issue certificates without charge, except where the issue of a certificate is to replace a lost or destroyed certificate.

8.4 Right to Refuse Registration

8.4.1 The Trustee may, in its absolute discretion and without assigning any reason, decline to register any transfer of Units or other securities unless it is a transfer made under either **clause 5.6** or **8.2**.

8.4.2 The Trustee may, in its absolute discretion, refuse to register any transfer of Units or other securities on which stamp duty is payable but unpaid.

8.5 Title on Death

- 8.5.1 The legal personal representative of a deceased Member who was the sole holder of Units is the only person whom the Trust will recognise as having any title to the deceased Member's Units.
- 8.5.2 If a deceased Member was a joint holder of Units, the other joint holder is the only person whom the Trust will recognise as having any title to the deceased Member's Units.
- 8.5.3 The estate of the deceased Member will not be released from any liability to the Trust in respect of the Units.
- 8.5.4 The Trust may register a transfer to a transferee who dies before the transfer is registered.

8.6 Transmission

- 8.6.1 Subject to the *Bankruptcy Act* 1966 (Cth), any person who becomes entitled to a Unit in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Trustee evidence, which is satisfactory to the Trustee of its entitlement elect to be registered as the holder of the Unit or transfer the Unit to a person nominated by it.
- 8.6.2 If the person who has become entitled to a Unit elects to be registered as the holder, then the person must deliver or send to the Trustee a written notice of election signed by it. If the person who has become entitled to a Unit elects to transfer the Unit, then the person must execute a transfer of the Unit and such person is entitled to the dividends and other rights of the registered holder of the Unit.
- 8.6.3 Where two or more persons are jointly entitled to any Unit in consequence of the death of the registered holder, they will be considered to be joint holders of the Unit.
- 8.6.4 Any person who is registered under this **clause 8.6** must indemnify the Trust against all liabilities, costs, losses and expenses incurred by the Trust as a result of registering the person.

9. General Meetings

9.1 Convening General Meeting

- 9.1.1 The Trustee may, at any time, convene a General Meeting.
- 9.1.2 The Trustee will convene a General Meeting upon a request from a Member with at least five percent of the votes that may be cast at the General Meeting.

9.2 Notice

- 9.2.1 Subject to **clause 9.2.2** at least 21 days written notice of any General Meeting (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members.

9.2.2 A Trustee may call a General Meeting on less than 21 days notice if Members with at least 95 percent of the votes that may be cast at the General Meeting agree beforehand.

9.2.3 A notice convening a General Meeting:

- (a) must specify the place, date and time of the meeting;
- (b) must if the meeting is to be held in two or more places, specify the technology that will be used;
- (c) must state the general nature of the business to be transacted at the meeting; and
- (d) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

9.2.4 The Trustee may postpone or cancel any General Meeting whenever it thinks fit (other than a meeting convened as the result of a request under **clause 9.1.2**) but must give notice of the postponement or cancellation to all persons entitled to receive notices from the Trust.

9.2.5 The failure or accidental omission to send a notice of a General Meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

9.3 Quorum

9.3.1 No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.

9.3.2 A quorum of Members is two Members unless there is only one Member, in which case a quorum is that Member.

9.3.3 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:

- (a) if the meeting was convened on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place five Business Days after the meeting, or to another day, time and place determined by the Trustee; and
 - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the General Meeting, it is automatically dissolved.

9.4 Chair

9.4.1 The Trustee will nominate the chair for every General Meeting.

9.4.2 If there is no chair or the chair is not present within 15 minutes after the time appointed for holding the General Meeting or the chair is unwilling to act as chair of the General Meeting the Members present may elect a chair.

9.4.3 If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question.

9.5 Adjournment

9.5.1 The chair may, with the consent of any General Meeting at which a quorum is present, and will, if directed by a meeting at which a quorum is present, adjourn the meeting.

9.5.2 An adjourned General Meeting may take place at a different venue to the initial meeting.

9.5.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial meeting.

9.5.4 If a General Meeting has been adjourned for more than 21 days, at least three Business Days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

9.6 Resolutions

9.6.1 Subject to clause 9.6.2, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

9.6.2 Resolutions for the purposes of clause 19 (Appointment of Trustee) and clause 23 (Variation of Trust Deed) are carried if seventy-five percent (75%) of the votes cast on the resolution are in favour of the resolution.

9.6.3 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:

- (a) the chair;
- (b) at least three Members entitled to vote on the resolution; or
- (c) Members with at least five percent of the votes that may be cast on the resolution on a poll.

9.6.4 If there is an equality of votes the chair has a second or casting vote in addition to the chair's votes as a Member, proxy, attorney or Representative.

9.6.5 Unless a poll is demanded a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that fact without proof of the number or proportion of the votes in favour of or against the resolution.

9.6.6 A poll may be demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

9.7 Taking a Poll

- 9.7.1 A poll will be taken in the manner that the chair directs.
- 9.7.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 9.7.3 The chair may determine any dispute about the admission or rejection of a vote.
- 9.7.4 The chair's determination, if made in good faith, will be final and conclusive.
- 9.7.5 A poll demanded on the election of the chair or the adjournment of a meeting must be taken immediately.
- 9.7.6 After a poll has been demanded at a General Meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

9.8 Written Resolutions

- 9.8.1 If all the Members have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a General Meeting held on the day on which the document was last signed by a Member.
- 9.8.2 For the purposes of **clause 9.8.1**, two or more identical documents, each of which is signed by one or more Members, together constitute one document signed by those Members on the days on which they signed the separate documents.
- 9.8.3 Any document referred to in this **clause 9.8** may be in the form of a facsimile transmission.
- 9.8.4 If the Trust has one Member, a resolution may be passed by the Member recording it and signing the record.

10. Members' Voting Rights

10.1 Votes of Members

- 10.1.1 Subject to this Deed:
 - (a) every Member may vote;
 - (b) subject to **clause 10.1.2**, on a show of hands every Member has one vote; and
 - (c) on a poll every Member has one vote for each Unit held by them.

- 10.1.2 A Member is not entitled to vote or to be counted in a quorum unless all calls and other sums payable by the Member in respect of Units have been paid.
 - 10.1.3 If two or more joint Members purport to vote, the vote of the joint Member whose name appears first in the Register will be accepted, to the exclusion of the other joint Member or Members.
 - 10.1.4 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
 - 10.1.5 An objection must be referred to the chair of the General Meeting, whose decision is final.
 - 10.1.6 A vote which the chair does not disallow pursuant to an objection is valid for all purposes.
 - 10.1.7 A person who has satisfied the Trustee not less than 24 hours before a General Meeting that it is entitled to a Unit by operation of law may exercise all rights attached to the Unit in relation to a General Meeting, as if the person were the registered holder of the Unit.
 - 10.1.8 If a Member appoints one proxy, that proxy may vote on a show of hands but if a Member appoints two proxies, neither proxy may vote on a show of hands.
 - 10.1.9 A proxy may demand or join in demanding a poll.
- 10.2 **Appointment of proxy**
- 10.2.1 A Member who is a natural person may appoint one or two proxies by a written appointment signed by the Member or the Member's attorney.
 - 10.2.2 A Member that is a corporation may appoint one or two proxies by a written appointment under the Member's common seal or signed by a director, secretary or attorney of the Member.
 - 10.2.3 A proxy need not be a Member.
 - 10.2.4 If a Member appoints two proxies and the appointment does not specify the proportion of the Member's voting rights to be exercised by each proxy, then each proxy may exercise one-half of the votes.
 - 10.2.5 An appointment of a proxy must be in a form approved by the Trustee and the following form will be taken to be approved by the Trustee unless the Trustee notifies the Members of a different form:

#A Unit Trust

I/We of
..... being a Member
/Members of the abovenamed Trust, hereby appoint
..... of
..... or failing him,
....., as my/our proxy to vote for me/us on

my/our behalf at the general meeting of the Trust, to be held on the day of, and at any adjournment general meeting.

Signed this day of

This form is to be used *in favour of / *against the resolution.

* Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he thinks fit.)

10.2.6 An instrument appointing a proxy will be valid if it contains the following information:

- (a) the Member's name and addresses;
- (b) the Trust's name;
- (c) the proxy's name or the office held by the proxy; and
- (d) the meetings at which the proxy may be used.

10.2.7 An appointment of a proxy may be a standing appointment.

10.2.8 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.

10.2.9 A proxy's appointment is valid at an adjourned meeting.

10.2.10 The instrument appointing a proxy or attorney (if any) must not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, be:

- (a) deposited at the Office, or at such other place as is specified for that purpose in the notice convening the meeting; or
- (b) be transmitted to a facsimile number at the Office or a facsimile number or electronic address specified for that purpose in the notice of meeting.

10.2.11 An undated proxy will be taken to be dated on the day that it is received by the Trustee.

10.3 **Validity of Proxy Votes**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if, before the vote was cast, the appointor dies, becomes of unsound mind, revokes the proxy or power or transfers the Units in respect of which the vote was cast, unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Trustee before the relevant meeting or adjourned meeting.

10.4 Representatives of Corporations

10.4.1 Any Member which is a corporation (**'the Corporate Member'**) may authorise a natural person to act as its Representative at any General Meeting.

10.4.2 A Representative may exercise at the relevant General Meeting all the powers which the Corporate Member could exercise if it were a natural person. When its Representative is present at a meeting, the Corporate Member will be considered to be personally present at the meeting.

10.4.3 The chair of a General Meeting may:

- (a) permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment; or
- (b) allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chair his or her status as a Representative within a period prescribed by the chair of the General Meeting.

11. Administration of Trust Fund

11.1 Minutes

The Trustee must keep minutes of all resolutions and proceedings.

11.2 Books and Records

The Trustee must keep books of account and records of the Trust Fund.

11.3 Corporate Trustee

If any Trustee is a corporation, the powers, discretions and authorities vested in the Trustee by this Deed may (subject to its constituent documents) be exercised for and on behalf of that Trustee by its board of directors.

11.4 Other Trust Funds

The Trustee may use, deal with and administer any part of the Trust Fund together with any asset held by the Trustee in the Trustee's own right or as trustee of any other trust.

11.5 Valuations

11.5.1 The Trustee may at any time obtain a valuation of any property of the Trust Fund from a person the Trustee considers appropriately qualified or experienced and may rely on that valuation in exercising any of its powers under this Deed.

11.5.2 The Trustee will if directed by the Members in General Meeting to do so, appoint a competent valuer or expert to value the property and assets of the Trust Fund.

12. Accounting Policy

12.1 Accounting

The Trustee must pursuant to this **clause 12** record and account for all:

- 12.1.1 income from the investment of and other accretions to the Trust Fund; and
- 12.1.2 outgoings whether on capital or revenue account.

12.2 Method of accounting

The Trustee may:

- 12.2.1 decide whether the income, accretions, expenditure and outgoings of the Trust Fund are capital or income and whether they are to be accounted for on the basis of receipts or accruals; and
- 12.2.2 account for some part of the Trust Fund on one basis and the rest of the Trust Fund on another basis.

12.3 Variation of method of accounting

The Trustee may vary the basis of accounting for the whole or any part of the income, accretions, expenditure and outgoings of the Trust Fund from one Accounting Period to the next as the Trustee thinks appropriate.

12.4 Accounting standards

Subject to **clauses 12.2** and **12.3**, the Trustee must account according to generally accepted accounting standards.

12.5 Treatment of income and capital

12.5.1 Notwithstanding anything contained in **clauses 12.2** to **12.4**, the Trustee may for any Accounting Period elect to account for the whole or some part of the Trust Fund on the basis which is used to calculate its Taxable Income for that Accounting Period, in which case:

- (a) the accruals, accretions, losses and outgoings which go to make up the Taxable Income of the Trust Fund will be treated on revenue account for all the purposes of this Deed; and
- (b) all other accruals, accretions, losses and outgoings will be treated on capital account.

12.5.2 The Trustee may determine whether any sum received or disbursed is on account of capital or revenue, or partly on account of capital and partly on account of revenue and in what proportions.

12.6 Preparation of accounts

The Trustee may from time to time and must at the end of each Accounting Period prepare accounts for the Trust Fund in accordance with this **clause 12**.

13. Indemnity

13.1 Trustee's Responsibility

Except in relation to a breach of trust knowingly or wilfully committed by the Trustee:

- 13.1.1 the Trustee is not personally responsible or liable in respect of the execution or purported or attempted execution of, or failure or neglect to exercise or carry out any of the Trustee's duties, authorities, powers or discretions;
- 13.1.2 the Trustee is entitled to be indemnified out of the Trust Fund against all liabilities incurred by the Trustee as trustee of the Trust; and
- 13.1.3 the Trustee is entitled to a lien on, and may use the Trust Fund for the indemnity and generally for the payment of all proper costs and expenses of performing the Trustee's duties under this Deed.

13.2 Trustee's Right of Indemnity

The Trustee's right of indemnity is limited to the right described in this **clause 13**. The Trustee has no right to be indemnified by any of the Members against any liability incurred by the Trustee as trustee of the Trust.

14. Remuneration

14.1 Outside interests

It is lawful for any Trustee:

- 14.1.1 to be a director or other officer of any company, the shares, stock, debentures or unsecured notes of which any of the money forming part of the Trust Fund is for the time being invested; and
- 14.1.2 to receive and retain for its own use all remuneration and expenses from time to time fixed in conformity with the constitution of that company.

14.2 Remuneration

Any Trustee may charge and be paid out of the Trust Fund or the Trust Income such remuneration as the Trustee in its absolute discretion thinks fair and reasonable, having regard to the work done and responsibility assumed in connection with the Trust.

14.3 Solicitors, accountants and professionals

Any Trustee or director or officer of a corporate Trustee being a solicitor, accountant or other professional person:

- 14.3.1 may be employed to transact any business or do any act required to be done in connection with the Trust; and
- 14.3.2 is entitled to be paid all proper costs, charges, fees and expenses for any professional business or act done by him or his firm in relation to the Trust

as he would have been entitled to receive in respect of that business if he had not been a Trustee or a director of a Trustee.

15. General Powers

15.1 All powers at law

Except as expressly provided, the Trustee has in addition to all the specific powers provided in this Deed:

- 15.1.1 all the powers authorities and discretions of a natural person;
- 15.1.2 all powers, authorities and discretions conferred by the common law, equity and by legislation on trustees; and
- 15.1.3 will not be restricted or obligated by provisions relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories.

15.2 Trustee may act as if beneficial owner

The Trustee may generally with respect to the Trust Fund perform all acts of alienation and hypothecation and other acts of ownership to the same extent and with the same effect as might have been done if the Trustee were the beneficial owner of the Trust Fund.

15.3 Acts binding on Members

The decisions and actions of the Trustee whether actually made or taken in writing or implied from the actions of the Trustee are conclusive and binding on all the Members and others who in the future acquire any interest under this Deed.

15.4 Partnership

The Trustee may exercise all the powers and authorities vested in the Trustee by this Deed solely or jointly, or in partnership, or otherwise in conjunction with any other person or persons, whether those persons act on their own behalf or as trustees of any other trust.

16. Investment Powers of Trustee

16.1 General investment powers

Subject to Clause 16.6, the Trustee may invest the Trust Fund or any part of it in any form of investment the Trustee thinks fit and desirable, including:

- 16.1.1 any one or more of the investments sanctioned by law in any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- 16.1.2 payment of premiums on any policy of assurance on the life of any person, whether or not any such policy stands in the name of the Trustee;

- 16.1.3 the purchase of lands of any tenure anywhere in the world, including the purchase of any lands subject to any Encumbrance;
- 16.1.4 the acquisition by original subscription or by purchase or otherwise:
 - (a) the shares or options of any class or type, whether fully paid or not; or
 - (b) debentures, notes, bonds or other holdings or securities in any company;
- 16.1.5 the securities or an option over the securities of any company notwithstanding any restriction on the right of the transfer of such securities, the appointment of directors, or otherwise;
- 16.1.6 the purchase hire or lease of any real or personal property;
- 16.1.7 hiring or leasing lease any real or personal property on such terms as the Trustee thinks fit;
- 16.1.8 the purchase or acquisition of units or sub-units of any fixed or flexible unit trust;
- 16.1.9 on deposit with any financial institution or company (any deposit may be made free of interest to any company in which the Members or any of them are shareholders or in which any part of the Trust Fund is invested in shares); and
- 16.1.10 in any business or businesses carried on by the Trustee.

16.2 Power to Vary Investment

The Trustee may at any time vary or realise an investment of any part of the Trust Fund and reinvest money resulting from the realisation in any form of investment.

16.3 Set Aside Capital or Income

The Trustee may provide and set aside out of the capital or income of the Trust Fund to discharge or reduce any Encumbrance, debt or liability affecting the Trust Fund or any part of it.

16.4 Blending Investments

To blend for the purposes of investment as it may from time to time decide any moneys which the trustee holds upon the Trust herein declared with other moneys (whether or not such moneys are subject to any other settlement or trust and whether or not the Trustee is trustee of such other settlement or trust) and to join with any other person or persons including a trustee or another trust in making common investment including carrying on any business partnership or joint enterprise.

16.5 Derivatives

- 16.5.1 To enter into, grant, acquire, participate in or deal with in any manner (including for the purpose of risk management, enhancing investment return

or substitution for physical holdings) any financial arrangement including without limitation any interest rate cap/collar/floor agreement, interest rate swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, futures contract, derivatives agreement, or any other like contract and any hedging, swapping or like arrangement whether or not related to any other property forming part of the trust fund, and including any instrument under which a right or option in respect of a financial arrangement may be exercised

- 16.5.2 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 or obligation under or in connection with any transaction of the type referred to in sub-clause 16.5.1.

17. Banking and Borrowing Powers of Trustee

17.1 Bank Accounts

The Trustee may open accounts of every description with any bank or other financial institution and in doing so:

- 17.1.1 conduct and operate those accounts in accordance with the customs, usages and practices of the relevant financial institution, including the power to operate any account in overdraft;
- 17.1.2 agree to the institution debiting any account with interest, costs, charges, expenses, liabilities and government imposts incurred by the institution at any time on behalf of the Trustee; and
- 17.1.3 borrow or raise money; and
- 17.1.4 secure the payment of any money or the performance of any debt, liability, contract, guarantee, indemnity or other engagement incurred or entered into by the Trustee in any way the Trustee thinks fit.

17.2 Negotiable Instruments

The Trustee may draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.

17.3 Borrowings

- 17.3.1 The Trustee may borrow or raise moneys to be used in deriving income or other gain in augmentation of the Trust Fund, notwithstanding that the Trust Fund may already be wholly invested or applied or that the money to be borrowed or raised may exceed the value of the Trust Fund.
- 17.3.2 No lender need enquire whether the borrowing is necessary or as to its purpose or as to the application of the money borrowed.

17.4 Security

The Trustee may borrow and raise money from, and grant an Encumbrance over, the property of the Trust Fund to secure the payment of money to any person, on such terms (with or without security or interest) as the Trustee thinks fit, and to join with any corporation or natural person in executing any mortgage or other document to secure the payment of money either jointly to the Trustee and that corporation or natural person or only to that corporation or natural person.

17.5 Validity of Security

17.5.1 No Encumbrance given or created by the Trustee to or in favour of any person or corporation over or in respect of the Trust Fund or any part of it will be invalid by reason of:

- (a) any error or omission (whether of law or fact) on the part of the Trustee or its advisers; or
- (b) of any breach of duty or trust whatsoever;
- (c) unless it is proved to have been committed, made or omitted in personal conscious fraudulent bad faith by the Trustee.

17.5.2 All persons claiming any beneficial interest in the Trust Fund are deemed to have had notice of **clause 17.5.1**.

17.6 Grant of Guarantee

17.6.1 The Trustee may:

- (a) give any guarantee or indemnity with or without security, solely or jointly with any other person, and with or without remuneration for the payment of money or the performance of any contract, obligation or undertaking by any person;
- (b) grant any Encumbrance over the property (both present and future) of the Trust Fund to secure that guarantee and or indemnity; and
- (c) if a company, give and execute a registrable charge or other security under the *Corporations Act 2001* (Cth) over all the property (both present and future) of the company and the Trust Fund.

17.6.2 This power may be exercised even if there may be no contractual, legal, or fiduciary relationship between the Trustee and the person to whom or on behalf of whom the guarantee and or indemnity will be given.

17.7 Loan Trust Fund

The Trustee may lend any part of the Trust Fund to any person (including any Beneficiary) with or without interest with or without security and upon such terms and conditions as the Trustee determines.

18. Specific Powers of Trustee

18.1 Conduct Business

The Trustee may conduct and terminate any trade, business or profit making undertaking or scheme anywhere in the world, either alone, in partnership or by joint venture, and under any name.

18.2 Employ

The Trustee may employ and pay remuneration to any person (including a Member or Trustee) in connection with:

18.2.1 the transaction of any trade, business or profit making undertaking or scheme carried on by the Trustee; or

18.2.2 anything required to be done pursuant to this Deed.

18.3 Incorporate Company

18.3.1 The Trustee may incorporate any company (including a company to act as Trustee of the Trust Fund or any part of it) in any place under the law of that place at the expense of the Trust Fund with limited or unlimited liability for any purpose, including to acquire the Trust Fund or any part of it.

18.3.2 The consideration in the case of a sale of the Trust Fund or any part of it to a company incorporated pursuant to this **clause 18.3** may consist wholly or partly of fully paid shares, stock, debentures or debenture stock or other securities of the company, and may be credited as fully paid and may be allotted to or otherwise vested in the Trustee and be capital in the Trustee's hands.

18.4 Investment in Private Companies

18.4.1 If the Trustee invests the Trust Fund or any part of it in the stocks or shares of any proprietary or private company, then the Trustee will be responsible only for so much of the stock or shares and the dividends and income from them as is actually transferred and paid to the Trustee.

18.4.2 The Trustee is excused from attending any meetings of the company and is authorised from time to time to appoint and give such proxy as it thinks fit to represent the Trustee at any general meeting.

18.4.3 Nothing in this **clause 18.4** will oblige the Trustee to:

- (a) investigate the accounts or management or control of the company;
- (b) enquire into or in any manner to question by bringing an action, suit or proceedings, or in any other manner whatsoever to seek to interfere with the management, government or control of the company by its directors; or

- (c) take any step or bring any action, suit or proceedings, or in any other manner whatsoever to seek to vary the articles of association or constitution of the company or wind up the company.

18.5 Exercise of Voting Rights

18.5.1 The Trustee may exercise or concur in exercising the voting and other rights attaching to any securities for the time being forming part of the Trust Fund so as to become a director or other officer or employee of any company, and to vote for and to be paid and to retain for the Trustee's own use and benefit reasonable remuneration for the Trustee's services to that company.

18.5.2 The Trustee will have the sole and absolute discretion in the exercise of all rights appertaining to the share or other investments comprised in the Trust Fund and no Member will 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 shareholder's action or, save as expressly provided by this Deed, 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 investment of the Trust Fund.

18.6 Determination of Questions

The Trustee may 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.

18.7 Legal Proceedings

The Trustee may institute and defend proceedings at law and pursue them to such final determination or compromise as the Trustee thinks advisable.

18.8 Engagement of Professionals

18.8.1 The Trustee may:

- (a) employ and pay for such professional or other assistance (including assistance from a partner or a director of a Trustee) as the Trustee thinks necessary in the discharge of the duties of the Trustee; and
- (b) act on the opinion or advice of or information obtained from a financial adviser, accountant, barrister, solicitor, valuer, surveyor, broker, auctioneer or other expert.

18.8.2 The Trustee is not responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with that opinion, advice or information.

18.9 Residential Property

The Trustee may purchase a house property (whether by purchase of an existing house or by purchase of land and the construction of a house on it) and permit any one or more of the Members to live in and have the use and occupation of the house property

rent free or otherwise for whatever period expiring on or before the Vesting Date. During that period the Trustee may:

- 18.9.1 out of the Trust Fund insure the house against loss or damage;
- 18.9.2 keep it and all buildings, erections and improvements on the land in good and tenable condition; and
- 18.9.3 pay all rates and taxes assessed on the land or on the owner or occupier of the land or payable in respect of the land.

19. Appointment of Trustee

19.1 Retirement of Trustee

- 19.1.1 Any Trustee may retire upon giving one month's notice in writing to the Members of that Trustee's desire to do so.
- 19.1.2 On the retirement of a Trustee the Members may, in General Meeting, appoint a substitute Trustee. If the retiring Trustee is the sole Trustee, the Members will, in General Meeting, as soon as practicable appoint a substitute Trustee of the Trust Fund.
- 19.1.3 A new Trustee so appointed will execute a deed in such form as is submitted with the Member's Approval whereby the new Trustee will undertake to the Members jointly and severally all of the obligations of the retiring Trustee and from the date of the deed the retiring Trustee will be released from all further obligation under this Deed.
- 19.1.4 A Trustee will upon retirement take such action as is necessary to vest or cause to be vested in any new Trustee or Trustees the Trust Fund and all books documents records and other property relating to the Trust Fund.
- 19.1.5 The costs charges and expenses of and in connection with the retirement and replacement of any Trustee or the appointment of any additional Trustee will be recouped from the Trust Fund.
- 19.1.6 Any deed replacing, removing or adding a trustee is not required to be registered as contemplated in the following provisions (as amended or replaced from time to time), if they are part of the Applicable Law:

WA: Sections 7 and 9 of the *Trustees Act 1962* (WA);

SA: Sections 14, 14A, 14B, 15 and Part 5 of the *Trustee Act 1936* (SA);

NSW: sections 6, 7, 8 and 12 of the *Trustee Act 1925* (NSW);

Victoria: Sections 41, 42 and 44 of the *Trustee Act 1958* (Vic);

Queensland: Sections 12 and 14 of the *Trusts Act 1973* (Qld);

Tasmania: Sections 13, 14 and 31 of the *Trustee Act 1898* (Tas);

NT: Sections 11, 12 and Part IV of the *Trustee Act 1907* (NT);

ACT: Sections 6, 7, 8 and 12 of the *Trustee Act 1925* (ACT)]

And any other corresponding provisions of comparable legislation

19.2 Removal of Trustee

19.2.1 Subject to Member's Approval, the Members may remove the Trustee as a trustee of the Trust.

19.2.2 The Trustee will be automatically removed as trustee of the Trust if:

- (a) being a company it goes into liquidation or a receiver is appointed in respect of any of its property; or
- (b) it ceases to carry on business; or
- (c) it fails or neglects after reasonable notice from the Members to carry out or satisfy any duty imposed upon a Trustee by this Deed.

19.3 Appointment of Trustee

19.3.1 Subject to Member's Approval, the Trustee may by deed appoint a person or corporation to be a trustee of the Trust.

19.3.2 The Members must give Member's Approval to the form of the deed appointing a person or corporation as trustee of the Trust.

19.3.3 Any requirement under any state trust law that the minimum number of trustees must be two and is capable of being expressly excluded by this deed is expressly excluded.

19.4 Trustee's Covenants

The Trustee covenants with the Members that it will act as Trustee under the Trust until the Trust is determined or the Trustee has retired or been removed from the Trust in accordance with this **clause 19**.

20. Successor Trustee not a Beneficiary

Any entity who is or at any time has been a Successor Trustee is absolutely prohibited from being a Member under this Deed. This clause is not capable of being amended and is irrevocable.

21. Conflict of Interest

The Trustee shall have the power generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that 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 person capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any

such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

22. Third Party Dealings

22.1 Third Party Dealings

No person dealing with the Trustee needs:

22.1.1 to enquire as to the adequacy of the powers of the Trustee in relation to any dealing or as to the proper exercise by the Trustee of any of the powers, authorities and discretions vested in the Trustee by this Deed;

22.1.2 to enquire as to the propriety or regularity of any transaction affecting the Trust Fund or any part of it; or

22.1.3 see to the application of any money paid to the Trustee or to any person or corporation at the Trustee's direction.

22.2 Fraud

In the absence of fraud on the part of a person dealing with the Trustee, the dealing is deemed to be within the powers of the Trustee and, therefore, to be valid and effective accordingly.

22.3 Discharge of liability

The receipt of the Trustee or the receipt of any person paid at the direction of the Trustee discharges any person dealing with the Trustee from all liability in respect of the payment.

23. Variation of Trust Deed

23.1 Power to vary

Subject to **clauses 23.2 and 23.3** and Members Approval, the Trustee may at any time by deed:

23.1.1 vary any provision of this Deed;

23.1.2 declare any new or other trusts, powers or discretions concerning the Trust Fund or any part of it.

23.2 Law against perpetuities

The Trustee may not exercise the powers in **clause 23.1** to infringe the law against perpetuities (if applicable) nor the law relating to accumulations (if applicable).

23.3 Restrictions on power

The new or other trusts, powers, discretions, alterations or variations may not:

23.3.1 be in favour of, or for the benefit of, the Settlor or result in any benefit to the Settlor; or

- 23.3.2 affect the beneficial entitlement to any amount already Set Aside for or vested in any Member unless that Members consents in writing.

24. Notice

24.1 Deemed to have been given

A notice under this Deed is deemed to have been given if it is in writing and executed by the sender or its agent and is:

- 24.1.1 delivered to the address on page one of this Deed (or any other address notified to all parties in writing);
- 24.1.2 sent by pre-paid post to the address on page one of this Deed (or any other address notified to all parties in writing);
- 24.1.3 sent by facsimile transmission to the recipient's last known facsimile number; or
- 24.1.4 sent or delivered to the recipient in accordance with the *Corporations Act 2001* (Cth) or any other legislation.

24.2 When received

A notice given in accordance with this clause is deemed to have been received:

- 24.2.1 if delivered or transmitted by facsimile;
 - (a) on the day of transmission or delivery if the transmission or delivery occurred before 5.00 pm on a Business Day and,
 - (b) otherwise, on the next Business Day; and
- 24.2.2 if sent by pre-paid post, on the third Business Day after posting.

24.3 Two or more persons

Where two or more persons comprise a party, notice to one is effective notice to all.

25. General

25.1 Assignment

The rights and obligations of each party under this Deed are personal and cannot be assigned, charged or otherwise dealt with, without the prior written consent of all parties.

25.2 Counterparts

This Deed and any document required by this Deed may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile.

25.3 Entire Agreement

This Deed records the entire agreement between the parties as to its subject matter. Any prior negotiations, agreements, arrangements, representations and understandings as to the subject matter of this Deed are superseded by this Deed.

25.4 Further assurance

Each party must promptly execute all documents and do all things that another party reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

25.5 Governing law

This Deed is governed by the laws of the Governing State and the Commonwealth of Australia.

25.6 Jurisdiction

The parties submit to the jurisdiction of the Courts of the Governing State and the Commonwealth of Australia.

25.7 No merger

The rights and obligations of the parties will not merge on completion of any transaction under this Deed or upon the execution of any other agreement or other document in connection with the subject matter of this Deed.

25.8 Preparation of Document

All parties participated in the preparation of this Deed. No party will be deemed to be the author or drafter of this Deed or any part of it.

25.9 Preservation of rights

All rights under this Deed are in addition to and do not abrogate, limit or reduce any other rights that party may have.

25.10 Relationship

Unless otherwise specified nothing in this Deed creates a relationship of principal and agent, employer and employee, partnership or joint venture between the parties.

25.11 Severance

Any provision of this Deed that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from this Deed but only to the extent necessary to avoid that effect. All other provisions of this Deed continue to be valid and enforceable.

25.12 Time is of the essence

Unless otherwise specified, time is of the essence in this Deed.

25.13 **Waiver**

A right or obligation under this Deed cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.

26. **Costs**

26.1 **Legal costs**

The Trustee must pay from the Trust Fund the costs in relation to the negotiation, preparation and execution of this Deed and any document required by this Deed.

26.2 **Stamp duty**

The Trustee must pay from the Trust Fund all stamp duty, registration fees and any other fees charged by any government authority or body in respect of this Deed and any document required by this Deed.

Annexure A

Register of Unit Holders – Cameron Park Investment Trust

Folio No.1

Name: **THE GOOD OLD BOYS (NEWCASTLE) NO 3 PTY LTD - ACN 641 057 070** acting in its capacity as trustee of the Cameron Park Investment Trust or otherwise the trustee or trustees for the time being of the Cameron Park Investment Trust

Address: 24 Alma Road, New Lambton, NSW 2305

Date of Transfer or Issue	Name and address of Unitholder	Transferred		No. of Units	Class of Units	Certificate No.	Distinctive Nos.		Balance Units Held	Amount agreed to pay per unit	Amount paid per unit	Fully Paid?
		To	From				From	To				

Annexure B

**APPLICATION FOR UNITS
CAMERON PARK INVESTMENT TRUST**

The Trustee(s)

Cameron Park Investment Trust

I/We, [*Name of prospective member*] hereby apply for [*Number of Units*] units and enclose the sum of \$[*consideration*] in full payment for the units.

I/We hereby agree to accept the units allotted and to be bound by the terms of **Cameron Park Investment Trust** deed and of any amendments to that Deed.

I/We hereby authorise my/our name to be placed on the register of members in respect of the units.

Dated

.....

[*insert name of prospective Member*]

Annexure C

Part I: Period within which calls may be made under **clause 5.1.1**

Not Applicable

Part II: Maximum aggregate of calls made under **clause 5.1.1**

Not Applicable

Cameron Park Investment Trust

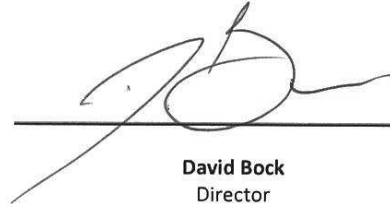
Executed as a Deed

The Initial Trustee

Signed, Sealed and Delivered by THE GOOD OLD BOYS (NEWCASTLE) NO 3 PTY LTD - ACN 641 057 070
by:



Michael Pultar
Director




David Bock
Director

The Unitholder

Signed, Sealed and Delivered by MLP NO 2 PTY LIMITED - ACN 148 958 561 as trustee for Pultar
Family Superannuation Fund by:



Michael Pultar
Director



Linda Pultar
Director

The Unitholder

Signed, Sealed and Delivered by WALMAR SUPER PTY LTD - ACN 608 168 038 as trustee for Walmar
Superannuation Fund by:



Mark Lathan
Director



Helen Walpole
Director

Annexure D

UNIT CERTIFICATE

Cameron Park Investment Trust

(Constituted by the Trust Deed dated the day of)

CERTIFICATE NO [insert certificate number]

This is to certify that [insert name of member] of [insert address of member] is the registered holder of [insert number of units held] units of the class shown (if any) in the Trust.

NO OF UNITS	CLASS	DISTINCTIVE NUMBERS		AMOUNT AGREED TO PAY PER UNIT	AMOUNT PAID PER UNIT	FULLY PAID?
		FROM	TO			

DATED this day of

.....
Trustee/Director of Corporate Trustee

.....
Full Name of Signatory (Printed)


This Certificate must be delivered to the Trustee on application to transfer any of the Units comprised in that application.

The Unitholder

Signed, Sealed and Delivered by READAV PTY LTD - ACN 158 367 072 as trustee for Bock Superannuation Fund by:



David Bock
Director

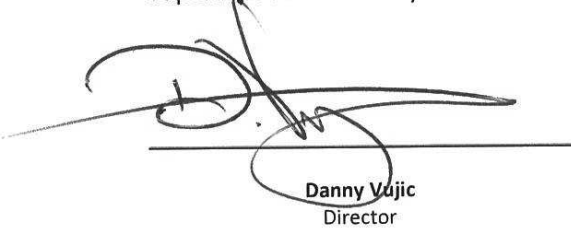


Reagan Bock
Director

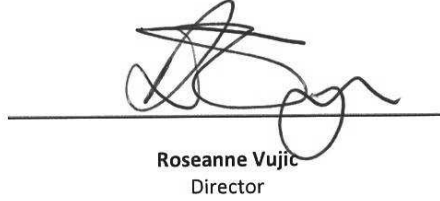
Cameron Park Investment Trust

The Unitholder

Signed, Sealed and Delivered by RODAN INITIATIVES PTY LTD - ACN 609 909 346 as trustee for Rodan Superannuation Fund by:



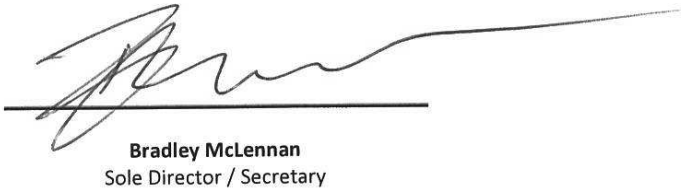
Danny Vujic
Director



Roseanne Vujic
Director

The Unitholder

Signed, Sealed and Delivered by AMPED ELECTRICAL NEWCASTLE PTY LTD - ACN 110 860 752 as trustee for McLennan Investment Trust by:



Bradley McLennan
Sole Director / Secretary

The Unitholder

Signed, Sealed and Delivered by MARTO FAMILY PTY LTD - ACN 622 773 068 as trustee for Martin Family Superannuation Fund by:



Christopher Martin
Director



Alison Martin
Director

Director resolution

THE GOOD OLD BOYS (NEWCASTLE) NO 3 PTY LTD - ACN 641 057 070

Trust deed


- 1 The Company has received a trust deed establishing CAMERON PARK INVESTMENT TRUST signed by MLP NO 2 PTY LIMITED - ACN 148 958 561 as trustee for Pultar Family Superannuation Fund, WALMAR SUPER PTY LTD - ACN 608 168 038 as trustee for Walmar Superannuation Fund, RODAN INITIATIVES PTY LTD - ACN 609 909 346 as trustee for Rodan Superannuation Fund, AMPED ELECTRICAL NEWCASTLE PTY LTD - ACN 110 860 752 as trustee for McLennan Investment Trust, MARTO FAMILY PTY LTD - ACN 622 773 068 as trustee for Martin Family Superannuation Fund and READAV PTY LTD - ACN 158 367 072 as trustee for Bock Superannuation Fund as initial unitholders, together with applications for units and payment of the initial unit application amounts by the unitholders.
- 2 The Company proposes to act as trustee of the trust pursuant to the trust deed.

Resolution

- 3 That THE GOOD OLD BOYS (NEWCASTLE) NO 3 PTY LTD - ACN 641 057 070 accepts trusteeship of CAMERON PARK INVESTMENT TRUST.
- 4 To execute the trust deed and any ancillary documents required to establish the trust.
- 5 To accept the applications from the unit holders and issue the units so subscribed.
- 6 To arrange for stamping (if applicable).
- 7 To establish a bank account for the Trust and deposit the subscription amounts into that account.


The Directors

Signed by Michael Pultar, David Bock, Christopher Martin, Danny Vujic, Mark Lathan and Bradley McLennan:




Michael Pultar
Director

Dated: 5-6-2020.



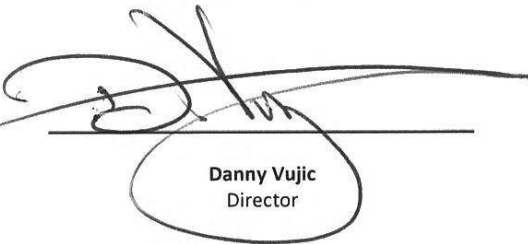
David Bock
Director

Dated: 6.6.2020



Christopher Martin
Director

Dated: _____



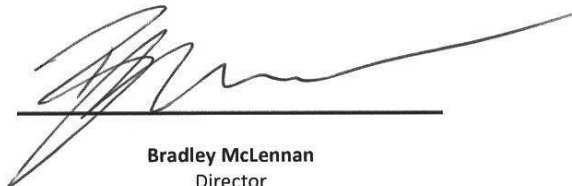
Danny Vujic
Director

Dated: _____



Mark Lathan
Director

Dated: _____



Bradley McLennan
Director

Dated: _____