

Bare Trust

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unit 8

Mitchell Keast Property Trust No 2

Declaration of Custody Trust for the

Mitchell Keast Superannuation Fund

Mitchell Keast Property Pty. Ltd. ACN 604792127

and

Mitchell Keast Super Pty Ltd Pty. Ltd. ACN 604790712

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BETWEEN

Mitchell Keast Property Pty. Ltd. ACN 604792127
of 6 Boulevard
PALMERSTON, NT, 0830
Australia

(Custodian)

AND

Mitchell Keast Super Pty Ltd Pty. Ltd. ACN 604790712
in its capacity as trustee for the Fund
of 6 Boulevard
PALMERSTON, NT, 0830
Australia

(Trustee)

Background

- A The Fund is a Regulated Fund and the Trustee is the trustee for the Fund.
- B In limited circumstances, the law allows the trustee of a Regulated Fund to agree to borrow funds to acquire an investment for that Regulated Fund. The relevant law is in Part 7 of the SIS Act relating to borrowing by superannuation funds. The exceptions to the general prohibition on superannuation funds borrowing provide, among other things, that for a borrowing arrangement to be allowed:
- legal title to the investment must be held by a third party on behalf of the trustee of the Regulated Fund; and
 - the lender's rights against the trustee of the Regulated Fund for any default under the borrowing arrangement must relate only to the investment for which the trustee will purchase with the money it borrows.
- C The Trustee intends to borrow funds from a lender to acquire the Authorised Investment under an arrangement of the nature described in Recital B.
- D The Custodian agrees to act as the third party described in Recital B and to hold title to the Authorised Investment under this Deed.

Operative provisions

A Custodian's Declaration of trust

What does the Custodian hold on trust?

- 1 The Custodian declares that it will hold the benefit of the Custody Fund on trust for the Trustee under this Deed, with effect from the date:

- 1.1 that the Custodian purchases the Authorised Investment as contemplated by clause 3; or
 - 1.2 the date on which the Custodian receives any property to be held or applied in accordance with the trusts under this Deed.
- 2 The parties agree that the Trust is established and is to be maintained in connection with the limited recourse borrowing arrangement with the Lender.

What information and money must the Trustee provide?

- 3 The Custodian and the Trustee agree that:
 - 3.1 the details in the Schedule to this Deed are all the relevant details regarding the Authorised Investment; and
 - 3.2 the Trustee will provide to the Custodian all funds necessary to enable the Custodian to purchase the Authorised Investment identified in the Schedule.

When the Trustee does that, it will be taken to have requested the Custodian, and the Custodian will be taken to have agreed, to purchase and take legal title to the Authorised Investment under this Deed.

What is the name of the Custody Trust?

- 4 The parties agree that the name of the Custody Trust will be the Mitchell Keast Property Trust No 2.

B Custodian to hold title

What title must the Custodian hold?

- 5 The Custodian agrees that (subject to clause 8), it will maintain legal title to the Authorised Investment until the Trustee directs it under clauses 9 to 12 of this Deed.

What bank accounts are to be used?

- 6 The Trustee must:
 - 6.1 designate one or more bank accounts of the Fund into which all amounts referred to in clause 7 may be deposited; and
 - 6.2 advise the Custodian of the details of that bank account or those accounts.

Income, accruals, accretions

- 7 The Custodian agrees to deposit, or arrange for the deposit of, the following amounts into the Cash Account or as otherwise directed by the Trustee:
 - 7.1 any interest, income or other proceeds that the Authorised Investment generates; and
 - 7.2 any accretions or accruals attributable to the Authorised Investment.

May the Custodian have listed securities held by a CHESS sponsor?

- 8 If the Authorised Investment is listed securities, then the Custodian may engage a duly licensed CHESS sponsor to hold the Authorised Investment — as long as the Custodian first obtains the Trustee's written consent. The Custodian may do that even though it has an obligation to maintain legal title to the Authorised Investments.

C Trustee to direct Custodian

What interest does the Trustee have in the Authorised Investment?

- 9 At all times up to and including the Vesting Date, the Trustee:
- 9.1 has a vested and indefeasible interest in the Authorised Investment and any other assets comprising the Custody Fund; and
- 9.2 is absolutely entitled to the Authorised Investment and any other assets comprising the Custody Fund as against the Custodian.

How may the Trustee have the Authorised Investment transferred?

- 10 The Trustee may in writing direct the Custodian to transfer, or otherwise deal with, the Authorised Investment and the other assets comprising the Custody Fund. The Custodian must do as directed. Despite any other provision of this Deed, the Custodian will not comply with a request from the Trustee to transfer the legal title to the Trustee until after any financial accommodation secured by the Authorised Investment has been repaid in full.

What information must the Custodian collect, provide etc?

- 11 The Custodian will use its best endeavours to obtain information concerning the Authorised Investment. It will communicate all that information to the Trustee as soon as practicable. For example, the Custodian must provide the Trustee with any information it needs to help it exercise a discretion about, say, voting, or about participating in bonus issues, capital reductions, share buy backs, rights plans, and so on.

May the Trustee require the Custodian to execute charge documents?

- 12 The Custodian must execute all documents the Trustee asks it to execute that are necessary to charge the Authorised Investment to secure the Trustee's payment to the Lender of all money owed in respect of the Authorised Investment.

D Restriction on Custodian's Discretion

- 13 Notwithstanding any other provision to the contrary set out in this Deed, the exercise of any Discretion (if any) by the Custodian under this Deed requires the consent of the Trustee in all instances.

E Trustee's warranties

14 The Trustee warrants that:

- 14.1 the Fund is a Regulated Fund;
- 14.2 the Fund has a written investment strategy which accords in all respects with Superannuation Law;
- 14.3 the Trustee's investment in the Authorised Investment accords with the Fund's written investment strategy;
- 14.4 the Trustee is the sole trustee of the Fund;
- 14.5 the Trustee has the power and authority to enter into this Deed;
- 14.6 the Trustee has the power and authority to purchase the Authorised Investment; and
- 14.7 this Deed is legally binding on it, and the Deed is enforceable against it in accordance with its terms.

F Duration of Trust

When does the Trust start and end?

15 The Trust commences on the date described in Clause 1 and terminates on the Vesting Date.

What must the Trustee do before the Vesting Date?

16 Before the Vesting Date, the Trustee must ensure:

- 16.1 that all money the Lender loaned to the Trustee in respect of the Authorised Investment has been repaid; and
- 16.2 that any security or charge over the Authorised Investment has been discharged in full.

What must the Custodian and Trustee do on (or soon after) the Vesting Date?

17 On the Vesting Date (or as soon as practicable after the Vesting Date) the Custodian must either:

- 17.1 transfer the Authorised Investment and any other assets comprising the Custody Fund to the Trustee; or
- 17.2 otherwise deal with the Authorised Investment and other assets comprising the Custody Fund as the Trustee may direct in writing.

G Replacement or resignation of Custodian

May the Trustee add, remove, or replace the Custodian?

- 18 At any time, the Trustee may by deed remove the Custodian, appoint a replacement custodian or appoint an additional custodian.

What must an outgoing Custodian do?

- 19 The outgoing Custodian must as soon as practicable after being removed or replaced:
- 19.1 sign all documents and do all things necessary to transfer legal title (and any CHESS Sponsorship) in the Authorised Investment and in any other asset comprising the Custody Fund to the new or continuing custodian; and
 - 19.2 sign all documents and do all things necessary to transfer any charge or security in respect of the Authorised Investment or any other asset comprising the Custody Fund to the new or continuing custodian.

What must a continuing Custodian do?

- 20 If a new Custodian is added, then as soon as practicable the continuing Custodian must sign all documents and do all things necessary to transfer legal title (and any CHESS Sponsorship) in the Authorised Investment, and in any other asset comprising the Custody Fund, to the new custodian jointly with the continuing custodian.

How may the Custodian resign?

- 21 The Custodian may resign by providing at least 60 days written notice to the Trustee. During the 60 day period, the Custodian must comply with any reasonable directions of the Trustee concerning completing the steps set out in clauses 19.1 to 19.2.

H Trustee indemnifies Custodian

- 22 The Trustee agrees to indemnify and keep the Custodian indemnified against all liabilities, actions, proceedings, demands, claims, costs, damages, stamp duty, taxes, losses and expenses incurred or sustained by the Custodian or brought or made against the Custodian:
- 22.1 in relation to the purchase of the Authorised Investment;
 - 22.2 by virtue of the Custodian holding legal title to the Authorised Investment; and
 - 22.3 as a consequence of the Custodian complying with any direction of the Trustee under this Deed.

I Trustee to pay Custodian's costs

- 23 The Trustee indemnifies the Custodian against, and will pay the Custodian on demand, the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes in connection with:
- 23.1 the negotiation, preparation, execution, stamping and registration of this Deed;

- 23.2 the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Deed; and
- 23.3 any amendment to, or consent, waiver or release of or under, this Deed.

J Notices to the parties

- 24 All notices to be given to or demands to be made under this Deed must be in writing. They may be delivered in person or sent by mail or facsimile to the party's current business address.
- 25 All notices are to be treated as having been served:
- 25.1 if posted, 48 hours after the date of posting;
- 25.2 if delivered personally, on the actual date of receipt; and
- 25.3 if sent by facsimile, in the normal course of transmission.

K Jointly and Severally Liable

- 26 If two or more persons or entities comprise a party to this Deed, then each person or entity is jointly and severally liable for the obligations of that party under this Deed.

L Limitation

- 27 Notwithstanding anything else to the contrary contained in this Deed the Custodian and the Trustee agree that:
- 27.1 the Custodian's rights against the Trustee for, in connection with, or as a result of (whether directly or indirectly) either of the following defaults are limited to rights relating to the Authorised Investment:
- default on the relevant advance made by the Lender to the Trustee; or
 - default on the sum of the borrowing and charges related to that advance; and
- 27.2 if the Trustee has a right relating to the Authorised Investment (other than a right to acquire legal ownership of the Authorised Investment on repayment to the Lender of the relevant loan), then the Custodian's rights and the rights of any other person against the Trustee for, in connection with, or as a result of, (whether directly or indirectly) the Trustee's exercise of its right, are limited to rights relating to the Authorised Investment.

M Compliance with Superannuation Law

- 28 The Custodian and the Trustee agree that all arrangements in respect of the Custody Trust as contained in, or referred to in, this Deed must be strictly in accordance with Superannuation Law including, without limitation, for the purpose:

- 28.1 of ensuring the concessional tax treatment of the Fund and of amounts paid into or out of the Fund; and
- 28.2 of the Fund's status as a Regulated Fund.
- 29 For this purpose:
- 29.1 The provisions of this Deed which (whether expressly or impliedly) confer or impose discretions, powers, rights or obligations on the parties are to be read as:
- 29.1.1 extending to confer or impose on the parties any discretions, powers, rights or obligations as may be necessary to ensure compliance with Superannuation Law; and
- 29.1.2 circumscribing any discretions, powers, rights or obligations of the parties to the extent necessary to ensure compliance with Superannuation Law; and
- 29.2 If a provision of this Deed (whether express or implied) is inconsistent with this purpose, then that provision must be read down to the extent necessary to ensure compliance with the requirements of this clause 29. If it is not possible to read down a provision of this Deed in that manner, then that provision is severable without effecting the validity or enforceability of the remaining part of that provision or of other provisions in this Deed.

N General and interpretation

- 30 Time is of the essence of all obligations under this Deed.
- 31 This Deed may only be varied or replaced by a document executed by the parties.
- 32 Each party must promptly execute and deliver all documents and promptly take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.
- 33 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties. It survives this Deed's termination.
- 34 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.
- 35 The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion.
- 36 This Deed is governed by, and interpreted under, the laws of the jurisdiction set in the Schedule.
- 37 If a party consists of more than one person, then this Deed binds them jointly and each of them severally.
- 38 This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.
- 39 If a payment or other act is required to be made or done on a day which is not a Business Day, then the payment or act must be made or done on the next following Business Day.

- 40 If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 41 If it is not possible to read down a provision of this Deed in the manner described above, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.
- 42 A reference in this Deed to:
- 42.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - 42.2 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
 - 42.3 a person includes the legal personal representatives, successors and assigns of that person;
 - 42.4 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the relevant purposes or objects of the first-mentioned body;
 - 42.5 this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - 42.6 the singular includes the plural and vice versa; and
 - 42.7 a gender includes the other genders.
- 43 If a party that is a trustee makes a covenant, agreement, undertaking representation or warranty, then the covenant, agreement, undertaking, representation or warranty is to be construed as having been made in the capacity as trustee of the relevant trust.

O Definitions

- 44 In this deed unless expressed or implied to the contrary:

Authorised Investment means the investment specified in the Schedule.

Cash Account means the account established under clause 6.

Custody Fund means the Authorised Investment together with the following assets transferred to the Custodian and other amounts which accrue or are paid in respect of the Authorised Investment:

- all right title and interest of the Custodian from time to time in the Authorised Investment;
- all income and other proceeds generated from the holding of the Authorised Investment; and
- all other income, proceeds, accretions or accruals attributable to the Custody Trust.

Custody Trust means the trust known as "Mitchell Keast Property Trust No 2" created by operation of this Deed.

Deed means this trust deed, including all schedules.

Discretion means a right or power to act in accordance with one's own judgment.

Fund means the Mitchell Keast Superannuation Fund.

Lender means each person from whom the Trustee is borrowing in order to acquire Authorised Investment, as identified in the Schedule.

Regulated Fund means a 'regulated superannuation fund' within the meaning of section 19 of the SIS Act and a 'complying superannuation fund' within the meaning of Part 5 of SIS Act.

Schedule means the schedule to this Deed.

SIS Act means the Superannuation Industry (Supervision) Act 1993 (Cth).

Superannuation Law means:

- any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the Superannuation Industry (Supervision) Regulations 1994 (Cth); and
- any lawful requirement in relation to the Fund by any authority or body that has responsibility in connection with the regulation of superannuation, or taxation in relation to superannuation.
- It includes:
 - changes to any such laws or requirements after the date of this Deed; and
 - any proposed law or lawful requirement that the trustee believes may have retrospective effect.
- **Trustee** means the trustee for the time being of the Fund, who as at the date of this Deed is the person identified on page 1.

Vesting Date means either:

- the date which is 80 years from the date of this Deed; or
- any earlier date the Custodian and Trustee jointly determine.

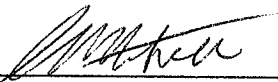
Execution

Executed by the parties.

Dated: 17 March 2015

Executed by

Mitchell Keast Property Pty. Ltd. ACN
604792127, in accordance with section
127(1) of the *Corporations Act* 2001 (Cwth):



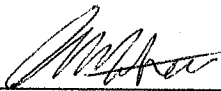
Andrew Murray Mitchell, director



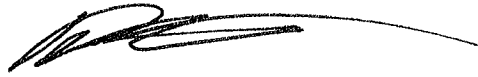
Deidre Keast, director

Executed by

Mitchell Keast Super Pty Ltd Pty. Ltd. ACN
604790712, in its capacity as trustee for the
Fund, in accordance with section 127(1) of
the *Corporations Act* 2001 (Cwth):



Andrew Murray Mitchell, director



Deidre Keast, director

Schedule

Lender:	WESTPAC BANKING CORPORATION Limited
Lender ABN/ACN (if applicable):	007457141
Lender Address for Notices:	13 Knuckey Street DARWIN, NT, 0800 Australia
Lender Fax:	
Loan Amount:	\$440,000.00
Loan Term:	15 years
Authorised Investment:	Unit 8 8 Marshall Street JOHNSTON, NT, 0832 Australia Volume 789 Folio 018, Town of Palmerston, Lot 11314 on S2013/163A
Jurisdiction:	Northern Territory
Settlement Date (if applicable):	1 January 2016