
Sample Land Tax Trust

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**Smith & Partners Test Client
Unit 4
4/4 Gladstone Road
Castle Hill NSW 2154**

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Table of Contents

Definitions	1
Initial Units	1
Issue of Further Units	1
Trust	2
Authorised Investments	2
Borrowing	3
No Principal/Agent Relationship	3
Trustee	3
Indemnity to Trustee	5
Trustee's Powers	5
Unit Holders Register	11
Distribution of Income	11
Unit Certificates	11
Transfers of Units	12
Pre-Emption	12
Transmission of Units	13
Meetings	13
Auditor	14
Trustee's Remuneration	14
Trustee's Appointment, Retirement	14
Term of Trust - Vesting Date	15
Re-Purchase of Units	15
Valuation	17
Notices	17
Amendment of Trust	17
Variation	17
Managed Investment Provision	17
Unit Holders not Liable to indemnify Trustee	17
Unit Holders not Liable	17
Trustee Unit Holder	18
NSW Land Tax Provisions	18
Jurisdiction	18
Schedule A	19
Schedule B – Definitions	20
First Schedule - Application for Units	22
Second Schedule - Certificate	23
Third Schedule - Transfer	24
Fourth Schedule - Declaration	25
Fifth Schedule – Application for Re-purchase of Units	26

THIS DEED is made on the date and between the parties described in Schedule "A" and is given the name as described in Schedule "B".

BACKGROUND

It is intended by this Deed that the Trustee will accept the monies paid by the unit holders

- (A) Who have signed this Deed which are to be invested under this Deed and the Trustee may from time to time accept further funds or otherwise for investment under this Deed.
- (B) The Trustee agrees to hold the assets of the trust upon the trusts and subject to the terms and conditions of this Deed.

DEFINITIONS

- 1. Unless the contrary intention appears or the context otherwise requires in this Deed and in any instrument agreement or other document made entered or executed or issued under it, the terms and expressions set out in Schedule "B" have the meanings described in that Schedule.

INITIAL UNITS

- 2.
 - (a) The Trustee intends on or after execution of this Deed to accept from the other party or parties who have executed this Deed such sums of money as are set out opposite their names on the page they have signed and the beneficial interest in the Trust Fund is to be divided into units of \$1.00 each and those parties are deemed to be the holders of their respective units and the Trustee may issue to each of those parties who have paid the sum stated opposite their names, certificates in the form annexed or similar form.
 - (b) The Trustee may accept further cash from time to time before the Commencement Date to be held on the Trusts of this Deed and if any addition is made to the Trust Fund under the provisions of this sub-clause an additional number of units of \$1.00 each will ipso facto be created equal to the amount of cash so paid.
 - (c) Each payment under clause 2 (b) must be accompanied by an application for the number of units which will be created on payment and the applicant will be entered on the register as the holder of the units created pursuant to clause 2 (b). All applications made are to be in the form set out in the First Schedule to this Deed or similar form.
 - (d) When in the opinion of the Trustee sufficient funds have been received for the purposes of the Trust the Trustee may so inform the unit holders and after such date no further units may be created except pursuant to and in conformity with the provisions of this Deed.
 - (e) All units issued by the Trustee pursuant to this Deed must be of the same class and with the same rights.

ISSUE OF FURTHER UNITS

- 3.
 - (a) Subject to the unanimous approval of the unit holders, the Trustee may raise further monies for the purposes of this Trust ('the Additional Sum') and the following provisions have effect:
 - (i) the net value of the Trust Fund (excluding the Additional Sum) as determined by the Trustee in accordance with Australian accounting principles is to be ascertained;
 - (ii) the net value of the Trust Fund determined in accordance with clause (i) of this sub clause is to be divided by the number of units in issue and the quotient adjusted to the nearest cent is the value of a unit in the Trust Fund ("New Unit Price").

- (iii) the Additional Sum is to be divided by the New Unit Price and the resulting figure adjusted to the nearest whole number is the number of additional units ("New Units") which may be offered for subscription at the New Unit Price in accordance with the next sub-clause of this clause.
- (b) For the avoidance of doubt, any issue of further units pursuant to this clause 3 may only occur if the New Unit Price, determined pursuant to clause 3, of the units on issue immediately before the new issue of units is the same immediately after the issue of the New Units. For the avoidance of doubt, an issue of further units is absolutely prohibited if the issue of the further units will dilute the value of any units already on issue.
- (c)
- (i) New Units must (unless all the holders of the units on issue unanimously otherwise decide) be offered by the Trustee firstly for subscription at the New Unit Price to all the unit holders in proportion as nearly as may be to their then existing holdings of units.
- (ii) That offer will be made by notice to each unit holder specifying the number of New Units offered to that unit holder and the New Unit Price and shall carry the right to accept the offer in respect of any smaller number of units so offered and the New Unit Price shall carry the right to accept the offer in respect of any smaller number of units and shall limit the time (not being less than 30 days unless the offeree consents in writing to shorter period) within which the offer if not accepted shall be deemed to be declined.
- (iii) Any units declined or not accepted by any unit holder within such time must be offered in the same manner and in the said proportion to those unit holders who have accepted and thereafter units not accepted must be so offered to unit holders until finally it appears to the Trustee that no unit holder is willing to accept any further units. Any units so offered and which it appears to the Trustee no unit holder is willing to subscribe for may be disposed of as the Trustee thinks fit.
- (d) If at any time the value of a unit exceeds one dollar (\$1.00) the Trustee may, if it sees fit, without making any addition to the Trust Fund create such number of additional units as may be required for the purpose of reducing the value of each unit for the time being to one dollar (\$1.00) or any multiple of one dollar (\$1.00). Each unit holder on the date of such creation shall be entitled to that number of the additional units so created which the number of units held by that unit holder bears to the total number of units issued and outstanding immediately before the date of such creation and a new Certificate may be issued to each unit holder in respect of the additional units to which such holder is so entitled.

TRUST

- 4.1 The Trustee holds the Trust Fund in trust for the unit holders upon the terms and subject to the provisions of this Deed.
- 4.2 To the maximum extent possible, and subject to the Trustee's right of indemnity and exoneration, the unit holders have a beneficial interest in the Trust Fund, including (but not limited to) any Authorised Investment. For the avoidance of doubt, subject only to the proper expenses by and of the Trustee relating to the administration of the trust, the unit holders at all times have a present legal right to demand, and receive payment of the Trust Fund and any net income of the Trust.

AUTHORISED INVESTMENTS

5.1

- (a) After the Commencement Date the Trust Fund held and received by the Trustee shall be invested by the Trustee within a reasonable time in any investment in which a Trustee may invest and any Authorised Investments (see Schedule "B") chosen by the Trustee provided that any cash in the hands of the Trustee at any time may be retained for such purposes connected with the management, improvement and development or other purposes of any land, buildings, plant machinery, business and equipment or otherwise being Authorised Investments which have been acquired as the Trustee may determine.

- (b) Any Authorised Investments may at any time be sold by the Trustee and in this case (except where the sale has been made for the purpose of winding up the Trust) the proceeds of such sale are to be re-invested as soon as convenient by the Trustee in the acquisition of Authorised Investments.

BORROWING

5.2

- (a) The Trustee has power to borrow with or without security for any of the purposes of this Deed and may give security for any such borrowing over any of the investments of the Trust Fund.
- (b) Any borrowing may be by way of overdraft accommodation from a Bank or by way of secured or unsecured loan or from any corporation or by way of deposit or otherwise.
- (c) Security may be given by a legal mortgage or equitable fixed or floating mortgage or charge or assignment or lien or in any other form the Trustee determines.

NO PRINCIPAL/AGENT RELATIONSHIP

6. Nothing in this Deed shall be construed so as to constitute the relationship of principal and agent between the unit holders and the Trustee, the relationship of partners between the unit holders and the Trustee or the unit holders inter se nor any contractual relationship between the unit holders inter se.

TRUSTEE

- 7.1 The Trustee must manage the Trust Fund and any business for the time being carried on by the Trustee pursuant to the Trust Deed and without limitation the Trustee agrees to:
- (a) **Management**
use its best endeavours to ensure that the management of the Trust Fund is carried on and conducted in a proper and efficient manner;
- (b) **Insurance**
ensure that adequate fire, storm and tempest, burglary, public risk and workers compensation and other insurance is maintained with respect to all properties of the Trust Fund as the Trustee considers appropriate;
- (c) **Deposits**
deposit all receipts from the management, development and operation of the Trust Fund into a separate account and pay all current expenses and outgoings with respect to the Trust Fund and provide such reserves for future and contingent liabilities as it considers necessary;
- (d) **Accounts**
- (i) keep or cause to be kept proper books of account of all sums of money received and expended by or on behalf of the Trust Fund and the matters in respect of which such receipt and expenditure takes place and of all sales and purchases of investments and of the assets and liabilities of the Trust Fund;
- (ii) without limitation must keep or cause to be kept such accounting and other records in respect of any business for the time being carried on by the Trustee pursuant to the provisions of this Deed, as will sufficiently explain the transactions and financial position of the said business and enable true and fair profit and loss accounts and balance sheets and any other accounts from time to time required to be prepared in respect of the said business and cause those records to be kept in such manner as to enable them to be audited;

(e) Balance Sheet

As soon as practicable after 30th June (or such other accounting date as may be determined by the Trustee) in each year prepare or cause to be prepared a profit and loss account showing the calculation of the income of the Trust Fund for the period to 30th June or other accounting date (as the case may be) and a balance sheet as at the date to which the profit and loss account is made up.

7.2

(a) Trustee May Employ Agents

The Trustee may instead of acting personally engage, employ and pay a Solicitor, accountant, broker, agent, merchant or any other person to transact any business or do any act required to be done in connection with the Trust Fund including the receipt and payment of money and is entitled to be allowed and be paid all charges and expenses so incurred and is not responsible for the default of any such person engaged or employed or for any loss occasioned thereby.

(b) Professional Fees

A Trustee being a solicitor, accountant, broker, agent, merchant or other such person is entitled to charge and be paid all usual professional or other charges for any business or act done by him or her or their firm or entity or employees in connection with the Trust including any business or act which a Trustee not being such a person could have done personally but which might reasonably be required to be done by such a person. The Trustee is entitled to retain for the Trustee's absolute use and benefit any fees or other form of remuneration payable to the Trustee for acting as a Director, employee or agent of any company in which the Trustee has invested the Trust Fund or any part of it in acquiring shares under this Deed. The Trustee is entitled to retain for the Trustee's absolute use and benefit any salary, wages or other form of remuneration payable to the Trustee by a partnership of which the Trustee becomes a Member in pursuance of the powers in this Deed.

7.3 Trustee May Act Despite Personal Conflict of Interest

- (a)** The Trustee is entitled to appointment to any position whatsoever in any company, firm, trust or organisation despite the fact that such appointment will or may cause conflict with the Trustees duties under this Deed.
- (b)** Any company, firm, trust or organisation in which the Trustee is in any way interested may deal and enter into contracts with the Trustee provided that the Trustee previously declares the nature of their interest in such company, firm, trust or organisation and in any dealing or contract.
- (c)** Inadvertent failure to make such disclosure will not operate to avoid or render voidable any such dealing or contract if such disclosure is made within a reasonable time after the inadvertent omission being discovered.
- (d)** The Trustee will not be disqualified from dealing or contracting with itself beneficially and is empowered to enter into contracts with the Trust despite clause 7.3(b).
- (e)** The Trustee may in such manner as it determines declare any interest including by entry in the Minute Book of the Trust.
- (f)** If the Trustee invests the Trust Fund or any portion in shares in any company referred to in this clause 7.3 the following provisions have effect:-
 - (i)** The Trustee is not obliged to investigate the accounts, management or control of any such company;
 - (ii)** if the Trustee is appointed a Director the Trustee may vote or refrain from voting at any meeting of directors as the Trustee may think fit notwithstanding that the Trustee may have a personal or other interest in the matter in which such vote is exercised.
- (g)** Despite any rule of law or equity to the contrary and without obtaining the order of any court or any independent legal advice the Trustee may exercise or concur in exercising all powers and discretions conferred on it by this Deed or by law even though it or any person being a trustee or any person being a director or shareholder of the Trustee (being a Company) has or may have a direct indirect or personal interest (whether as a shareholder or director or member or partner of any Company or partnership or otherwise) in the mode or result of exercising such power of

discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and even if the Trustee for the time being is the sole Trustee.

- (h) If all of the unit holders consent in writing to the Trustee acquiring an investment as part of the Trust Fund, the unit holders are to be taken as having waived all rights they may have against the Trustee at law or under this deed with respect to the Trustee's acquisition of the investment. This sub-clause applies whether the consent of the unit holders was obtained on, prior to or after the date the investment was acquired by the Trustee. The Trustee is under no obligation to seek or obtain such consent.

7.4 Liability of Trustee

In the execution of the Trusts powers and authorities no Trustee is liable for any loss to the Trust Fund arising by reason of any investment made in good faith or the negligence or fraud of any person or agent employed by that Trustee or by any other Trustee although the employment of such person or agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by any Trustee or by reason of any other matter or thing except fraud on the part of the Trustee who is sought to be made liable.

INDEMNITY TO TRUSTEE

7.5 The Trustee is indemnified and held harmless out of the Trust Fund against all claims, costs, damages, losses, fees, expenses, taxes, duties and impositions which arise in connection with or in consequence of this Deed or the Trusts hereby created except to the extent that the same arise in a manner for which the Trustee is accountable under the preceding clause provided that the right of the Trustee to enforce the indemnity conferred is limited to the Trust Fund and the Trustee has no right of indemnity, reimbursement or recompense whatsoever against any of the unit holders.

7.6 The right of the Trustee to be indemnified under clause 7.5 is limited to the assets of the Trust Fund in the hands of or under the control of the Trustee and does not extend to enable the Trustee to recover any loss or obtain reimbursement for any liability incurred from any unit holder or other person beneficially entitled to any unit.

TRUSTEE'S POWERS

8. Generally

In addition to any other power, authority or discretion vested in the Trustee by this Deed or by law, the Trustee has the following general powers and the following Trustee powers of investment which do not limit the powers, authorities and discretions otherwise vested in the Trustee by this Deed or by law.

8.1 Delegation

The Trustee may in writing delegate the exercise of all or any of the powers or discretions or authorities hereby conferred on it and execute any powers of attorney or other instruments necessary to effectuate such purpose.

8.2 Carry on Business

The Trustee has the following absolute powers and discretions which it may exercise itself and jointly with any other person or persons:

8.2.1 To commence acquire and carry on any business which the Trustee may decide can be conveniently carried on or which it is desirable that the same should be commenced, acquired or carried on in the interests of the Trust Fund or the unit holders and without limitation.

- (i) To acquire and undertake the whole or any part of the business property and liabilities of any person or Company which the Trustee from time to time considers is capable of being conveniently or profitably carried on or utilised in connection or conjunction with any business in which the Trust is for the time being engaged or which in the Trustee's opinion is calculated directly or indirectly to enhance the value of or render profitable any of the Trust's property and rights.

- (ii) To apply for, purchase or otherwise acquire patents, patent rights, copyrights, trademarks, formulas, licences, concessions, designs, secret processes, technical information, franchises and other rights,

privileges, and concessions which may seem capable of being used for any of the purposes of the Trust or the acquisition of which may seem calculated directly or indirectly to benefit the Trust and to use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property rights and information so acquired.

(iii) Lands and Buildings

To purchase, take on lease or in exchange or otherwise acquire any lands and buildings or any estate or interest therein and to improve, develop, sell, mortgage, transfer lease, let, subdivide and without limitation in any other manner dispose of or deal with or use such property or rights or any of them or any part.

(iv) Dealers

To carry on business as dealers in property both real and personal of all kinds whatsoever and to exploit the same whether by sale, leasing, hire purchase or otherwise as the Trustee considers desirable.

8.2.2 Subdivide

To carry on any business on any property which may be acquired by the Trustee and to divide, subdivide, build, repair, wreck, improve, exploit and manage such property as the Trustee may think fit.

8.2.3 Lease

To let any property in such parts at such rentals upon such terms and conditions (including, without limiting the generality thereof, the grant or reservation of any necessary easements or rights) and to such tenants as the Trustee considers to be in the best interest of the Trust Fund.

8.2.4 Rents

To collect rents, occupation fees, licence fees and all other income in relation to any property or business and to issue receipts.

8.2.5 Legal Proceedings

To execute and prosecute legal proceedings of any kind and in any Court to enforce any contract entered into or to recover damages for breach of any such contract.

8.2.6 Surrender Leases

To cancel, terminate or accept surrenders of leases; to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of any property; and to sue for and recover rent and damages for breach of any lease; to sue or prosecute trespassers or any other persons for damage to any part of any property; and to abandon, settle, compromise and release any such action or suit when expedient.

8.2.7 Expenses and Taxes

To pay out of the Trust Fund or the income thereof all costs charges and expenses incidental to the management of the Trust Fund or to the exercise of any power, authority or discretion herein contained or carrying out or performing the trusts hereof which the trustee may at any time incur including all income tax or other taxes payable in respect of the Trust Fund costs in any way connected with the preparation and execution of this Deed and all stamp duty, settlement duty, gift duty, probate duty, revenue duty or any other impost or monies of whatever nature payable in respect of these presents or the gift or settlement hereby effected or in respect of any additional monies or investments paid or transferred to the Trustee upon the trusts hereof and whether under the law of the Commonwealth of Australia or of any of the States or Territories thereof or of any other country.

8.2.8 Repairs

To repair, renovate, decorate and maintain any chattels personal or any land including all fittings, fixtures, furnishings, furniture and equipment therein and the grounds and outhouses thereof.

8.2.9 Advertising

To advertise any property or any part thereof and to display signs and notices thereon.

8.2.10 Rules

To impose rules and regulations governing the conduct of the occupants of any building or any other property.

8.2.11 Superannuation

To employ and superannuate such managers, staff and servants and engage such contractors as may be necessary or desirable and to engage the services of lawyers, engineers, architects, accountants, auditors, agents and any other professional or technical advisers and to pay any person or corporation whose services are engaged out of the Trust Fund to make all such bonus payments to employees and other persons and such payments by way of superannuation or otherwise as the Trustee determines, or other returns required in connection with the Trust or its income by the law of any State or Territory or of the Commonwealth of Australia.

8.2.12 General

To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, subdivide, exploit, transfer, convey, surrender, let, lease, exchange, take and grant options, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property and in particular for shares, debentures or securities of any Company and with or without deferred, restricted, qualified or special rights relating thereto.

8.2.13 Life Insurance

To purchase, acquire or effect any reversionary or deferred property or rights of any description or any life or life-endowment or sinking-fund or term or other policy or policies of insurance of whatsoever nature and at or subject to any premium or premiums whether single or payable periodically and with or subject to any options, rights, benefits, conditions or provisions whatsoever. The Trustee has power to pay out of the income or capital of the Trust Fund as it in its absolute discretion thinks fit all sums payable from time to time for premiums or otherwise for the effecting or maintenance of any such policy or policies whether owned by the Trustee or otherwise or for the exercise or enjoyment of any option, right or benefit thereunder and any surrender of any such policy or policies shall for all the purposes of this deed be deemed to be a sale thereof.

8.2.14 Trustee Vests as if Absolute Owner

To invest the Trust Fund and deal with and manage and transpose and realise such investments entirely as it thinks fit and with such powers in all respects as if the Trustee was the absolute owner and the Trustee shall not be accountable in any way for any loss arising out of the making of any investment or out of the failure to realise any investment or out of its management of any investment.

8.2.15 Shares

To apply and invest all moneys at any time forming part of the Trust Fund in any such investments whether involving liabilities or not or upon personal credit with or without security and upon such terms and conditions as the Trustee in its absolute discretion thinks fit. To this end the Trustee has the same powers in all respects as if it were absolute owner beneficially entitled including, without limitation, the subscription for, the taking up on allotment /issue and the purchase of any shares, warrants, stocks, bonds, mortgages, debentures, obligations or securities of any government authority or company incorporated in any part of the world and the taking of and the purchase or acquisition of the whole or any part or share of interest in (including a minority part or share or interest in) any business or partnership and the goodwill and assets thereof and the purchase or acquisition of any real or personal property in any place or country or any part or share or interest therein and even though the same may not be income producing or may be wasting or speculative. To exercise all rights and privileges and perform all duties and obligations appertaining or incidental thereto. The Trustee may make or purchase any such investments for cash or in consideration of any annuity or otherwise and upon such terms and conditions as the Trustee in its absolute discretion thinks fit and it may make or purchase any such investment for a sum greater than the amount of the Trust Fund for the time being and it may agree to pay for any such investments wholly or in part from any future moneys which may come into its hands, including dividends, profits, interest or other income paid or payable in respect of any such investments.

8.2.16 Directorships

To act as a Director and to exercise all rights and privileges and perform all duties appertaining to any shares or stock for the time being subject to the trusts thereof with liberty to assent to any arrangements modifying such rights, privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any company and for any such purpose to deposit, surrender or exchange any of the said shares or stock or the title thereto and to pay any calls or contributions or other necessary expenses in connection with any such shares or stock or any such scheme or arrangement as aforesaid.

8.2.17 Loans

To advance and lend moneys to and to borrow, raise moneys from and to secure by mortgage, bill of sale, lien or charge fixed or floating, legal or equitable or otherwise howsoever the payment of any money to any persons, firms, companies, corporations or Governmental or Municipal bodies, upon such terms with or without security or interest as the Trustee deems fit. The Trustee is hereby expressly empowered to join with any other company or person in executing any mortgage or other document for the purpose of securing the payment of money to any other person or company and if the Trustee is a Company to give and to execute a registrable floating charge over the assets of the Company and the assets of the Trust Fund held by it as Trustee and to give and execute any other charge or security registrable under the Corporations Act or other Act governing such charges or registrable securities as enacted or applicable in the place of proper law relating to the Trust.

8.2.18 Borrow

Without limiting clause 5.2, the Trustee may borrow or raise moneys to be used in deriving income or gain in augmentation of the Trust Fund even though the Trust Fund may already be wholly invested or applied or that the money to be borrowed or raised may exceed the sum or value of the Trust Fund.

8.2.19 Guarantees

- (i) To give any guarantee or indemnity for payment of money or the performance of; any contract, obligation or undertaking by any person, firm, company, corporation or association (including a unit holder) and to agree to pay and to pay and to charge the Trust Fund with the payment of any money.
- (ii) To guarantee and indemnify the borrowings of others (including a unit holder) and to pledge or charge in any manner the assets of the Fund to support such guarantees and indemnities.
- (iii) Without limiting the above, to give any mortgage, charge, pledge or security of any kind over the Trust Fund or any assets of the trust to secure the borrowings or liabilities of unit holders or others.
- (iv) To act in accordance with this clause even if the Trustee is also a unit holder and/or if the Trustee will receive a benefit of any kind arising from such act.

8.2.20 Liabilities

To apply the whole or any part of the capital or income of the Trust Fund in or towards payment of any liability undertaken by the Trustee in relation to the acquisition or property intended to form part of the Trust Fund.

8.2.21 Businesses

To acquire, carry on or join in carrying on any business either alone or in partnership with any other person or persons at the discretion of the Trustee during such period as it thinks proper with power for that purpose to employ such part or parts of the capital of the Trust Fund as it thinks fit. To employ at such salary as it thinks fit as manager of such business any person or persons (whether Trustees or a Trustee of or otherwise interested in the Trust Fund or not) or to leave the entire management of such business to any partner and to renew partnerships and generally to act in all matters relating to such business or businesses as if it were beneficially entitled thereto and without responsibility for loss.

8.2.22 Agents

To employ or engage any manager, solicitor, accountant or agent to transact all or any business of whatever nature required to be done in the premises including the receipt or payment of money and the Trustee shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.

8.2.23 Determination of Capital and Income

To determine whether any real or personal property or any increase or decrease in amount, number or value of any property or holdings of property or any receipts or payments, gains or losses from, for or in connection with any real or personal property shall be treated as and credited or debited to capital or to income and generally to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the Trust and powers of this settlement;

and every determination of the Trustee in relation to any of the matters aforesaid whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund, shall bind all parties interested therein and shall not be objected to or questioned on any ground whatsoever.

8.2.24 Counsel's Opinion

To take and act upon the opinion of any Junior, Senior or Queen's Counsel practising in the place of proper law of the Trust whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts hereof without being liable to anyone in respect of any act done by them in accordance with such opinion. This provision does not oblige the Trustee to act in accordance with any such opinion and nothing in it prohibits the Trustee from applying to the Court if it so determines or acting on the opinion of them or other Counsel.

8.2.25 Accountancy Work

If the Trustee is so qualified, to carry out accountancy and financial services including management and taxation consultancy and all other work necessarily carried out by a public accountancy business but not including auditing or liquidation services.

8.2.26 Bank Accounts

- (i) To open in the name of the Trustee or in the name of a person or corporation as nominee of the Trustee, or in the joint names of the Trustee and any other or others (and in accordance with all customs, practices and usages as may apply) any cheque, savings or other account with any bank or financial institution anywhere as the Trustee thinks fit, with full power to operate on any such account and to do so with the power to act in accordance with all terms and conditions applicable to such accounts whether relating to costs and charges in relation to such accounts or anything else.
- (ii) By itself or by its authorised officer or agent to draw, endorse, make, accept, guarantee, discount, execute, issue or be a party in any way to a commercial bill, promissory note, bill of exchange, bill of lading, letter of credit, hypothecation, facility or any negotiable or transferable instruments.

8.2.27

- (i) To authorise a bank or financial institution to pay bills of exchange drawn upon the banking account of the Trustee by the Trustee or the Trustee being a company by its authorised officer.
- (ii) To recognise as a valid endorsement on any bill of exchange or promissory note the endorsement of the Trustee or such authorised officer.
- (iii) No bank acting in pursuance of any authority herein shall be deemed privy to a breach of trust on the ground only of notice that the person giving the authority was a Trustee.

8.2.28 Occupation

To allow any unit holder to occupy, have custody of or use any immovable property, chattels, real or personal property for the time being forming part of the Trust Fund on such terms or conditions as to rent inventories repair replacement insurance outgoings or otherwise at all as the Trustees shall think fit and so that no Trustee shall be liable for any loss or damage which may occur to any property so forming part of the Trust Fund during or by reason of any such occupation custody or use except insofar as such loss or damage shall be occasioned by the conscious and wilful default or neglect of such Trustee.

8.2.29 Foreign Exchange

To deal in foreign currency and to enter into foreign currency contracts (including, without limitation, forward exchange contract, currency hedge contracts, currency options and future contracts) and/or financial market products derivatives (including, without limitation, interest rate swaps, currency swaps, forward interest rate contracts, forward exchange rate contracts and options).

8.2.30 Derivatives

To enter into any derivatives transaction(s) including but not limited to any contract or purchase or sell or deal in any derivatives product, including any interest rate swap, currency swap, currency option, interest rate option, swaption, smart forward, money market transaction, foreign exchange transaction, margin foreign exchange transaction, futures transaction, forward rate agreement,

forward rate bill transaction, synthetic forward exchange transaction, deposit transaction, currency transaction, interest rate transaction, bond option, commodity (including precious metals, electricity or energy) option or other transaction, credit derivative, equity derivative, capital market transaction, securities buy-back transaction or sell-back transaction and any other product traded, or transaction undertaken, on financial markets (whether on an exchange or not) from time to time and at any future time and synthesis or derivative of any of them and any option on any transaction or product referred to in this paragraph and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world.

8.2.31 Master Agreements - Derivatives

To enter into any master agreement(s) being any agreement (however described) that sets out the terms of, or otherwise relates to, any derivative transaction, and which is published or prepared by any bank, financial institution, domestic or international financial industry body or association, and any schedule, annexure, annex, supplement, addendum (however described) to, or of, that agreement.

8.2.32 Mortgages - Derivatives

To give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust as may be required to secure the payment or the performance of any contract obligation under or in connection with any transaction of the type referred to in paragraph 8.2.30 or 8.2.31 above.

8.2.33 Other Acts

To do all such other acts matters or things as the Trustee thinks fit.

8.2.34 Third Parties not on Notice

- (i) Despite clause 7.3, no person dealing with the Trustee shall be concerned to enquire as to the adequacy of the powers of the Trustee in relation to such dealing or as to the proper exercise by the Trustee in relation to such dealing or as to the proper exercise by the Trustee of any of the powers, authorities and discretions vested in the Trustee by the provisions of this Deed or as to the propriety or regularity of any transaction affecting the Trust Fund or any of the assets thereof or to see to the application of any moneys paid to the Trustee or to any corporation at the Trustee's direction and in the absence of fraud on the part of any such person dealing with the Trustee, such dealing shall be deemed so far as the safety and protection of such person is concerned to be within the powers of the Trustee and to be valid and effectual accordingly and the receipt of the Trustee or the receipt of any person or corporation paid as aforesaid at the direction of the Trustee shall effectually discharge any such person dealing with the Trustee from all liability in respect thereof.
- (ii) Despite clause 7.3, no mortgage, charge or other security given or created by the Trustee at any time to or in favour of any person or corporation over or in respect of the Trust Fund or any part thereof shall be invalid by reason of any error or omission whether of law or fact on the part of the Trustee or its legal or other advisers or by reason of any breach of duty or trust whatsoever unless it shall have been proved to be committed, made or omitted in personal conscious fraudulent bad faith by the Trustee and all persons claiming any beneficial interest in, over or to the Trust Fund shall be deemed to have had notice of the provisions of this clause.
- (iii) If the Trustee enters into any arrangement with any lender or with any other financier or other party, no such lender, financier, or other party shall be concerned to inquire whether there is any necessity for any borrowing, finance or other dealing by the Trustee or as to the purpose for which such borrowing, finance or other dealing is required nor as to the application of any monies so borrowed or financed.

8.2.35 Trading Facilities

To enter into any trading facility whether in connection with a flexible trading facility or margin lending facility with any financial institution or other entity and to execute all such documents and comply with such terms and conditions as may apply to such facility and the Trustee shall be entitled to be indemnified out of the assets of the Trust to satisfy any liability properly incurred by the Trustee arising out of such facility.

8.2.36 Option Facility

To enter into any option agreement relating to any lending or financing facility, agreement or transaction.

UNIT HOLDERS REGISTER

9. The Trustee must keep and maintain an up-to-date Register of the registered unit holders and enter into that Register the names of the registered holders and the number of units in respect of which they are registered and the distinct numbers of the Certificates held by them respectively. Any change of address on the part of any registered holder shall be notified to the Trustee. No notice of any Trust, express, implied or constructive, need be entered upon the Register by the Trustee, however, the Trustee may do so at their discretion.

DISTRIBUTION OF INCOME

- 10.
- (a) Unless exercise of this power has the effect of causing the Trust to be treated as a 'special trust' as defined in the Land Tax Management Act 1956 (NSW), the Trustee may determine whether a receipt or gain or outgoing is to be treated as being on account of capital or income or partly on account of one and partly on account of the other. If the Trustee does not make a determination under this subclause prior to midnight on 30 June in a financial year, the amount which under the provisions of the Act represent the net income (within the meaning of s 95 of the Income Tax Assessment Act, 1936) for that year in relation to the Trust Fund is the income of the Trust Fund for the purposes of this deed. For clarity, any exercise of this power that causes the Trust to be treated as a 'special trust' as defined in the Land Tax Management Act 1956 (NSW) is invalid.
 - (b) Subject only to the payment of proper expenses by and of the Trustee relating to the administration of the Trust, the unit holders (in the same proportions as they hold units as at the end of that year) are presently and absolutely entitled to the net income of the Trust Fund for that year.
 - (c) Net income of the Trust Fund to which a unit holder is entitled at the end of a financial year and which has not been distributed ceases to form part of the Trust Fund and is to be held by the Trustee as a separate fund upon trust absolutely for the unit holder entitled (without however any entitlement to interest or earnings on such amount and any interest or earnings form part of the Trust Fund). The Trustee has power in respect of the assets of each separate fund to mix and invest them with the assets of the Trust Fund for ease of administration.
 - (d) The Trustee may at any time before the end of a financial year, make an interim distribution of net income of the Trust to the unit holders. Such interim distributions will be subject to paragraph 10(b).
 - (e) For the avoidance of doubt, the unit holders may compel the Trustee to pay the net income or the capital of the Trust at any time, whether immediately before the end, or during, any financial year.

UNIT CERTIFICATES

- 11.
- (a) Each unit holder may be issued with a Certificate in the form in the second schedule or similar form however if a Certificate is not issued this does not affect the rights of a unit holder.
 - (b) Every Certificate may be signed by or on behalf of the Trustee and may specify the name of the unit holder and the number of units to which it relates and may bear a distinctive number or letter.

TRANSFERS OF UNITS

- 12.1 Every unit holder is entitled to transfer the units or any of the units for the time being held by the holder by a transfer in writing in the form set out in the third schedule or such other form as the Trustee may from time to time approve provided that the transferee has in the first place been approved by the Trustee. Such approval may not be unreasonably withheld.
- 12.2 Every transfer must be signed by both the transferor and the transferee and the transferor is deemed to remain the holder of the units the subject of the transfer until the name of the transferee is registered in the Register as the holder of such units.
- 12.3 Every instrument of transfer must be duly stamped if required by law and left with the Trustee and must be accompanied by the Certificate.

PRE-EMPTION

- 12.4
- (i) In addition to the requirements of clauses 12.1 to 12.3 inclusive any units proposed to be transferred must either be consented to in writing by all unit holders or must first be offered to the unit holders (other than the transferor) collectively and individually and so that they rank for acceptance *pari passu* in proportion to the units held by them and so that if any unit cannot be so apportioned such unit shall be offered to them in the order determined by lot and the Trustee shall cause the lots to be drawn accordingly.
 - (ii) The person proposing to transfer any units ("the Proposing Transferor") must give notice in writing ("Transfer Notice") to the Trustee that the Proposing Transferor desires to transfer the same. The Transfer Notice constitutes the Trustee as agent for the sale of the units to the other unit holders at the net value to be fixed for the purpose by the Trustee. A Transfer Notice may include several units and in that case operates as if it were a separate notice in respect of each. A Transfer Notice is not revocable except with the Trustee's written consent.
 - (iii) The Trustee must then determine the net value of the Trust Fund in accordance with Australian accounting principles. The net value of the Trust Fund so ascertained shall be divided by the number of units issued to all unit holders and the quotient shall be the net value of each unit.
 - (iv) If the Trustee shall within the space of forty-five days after being served with a Transfer Notice arrange with the other unit holders to purchase the units ("the Purchasing Members") and gives notice to the Proposing Transferor, the Proposing Transferor is bound on payment of the net value to transfer the units to the Purchasing Members.
 - (v) If a sale is effected between a Proposing Transferor and the Purchasing Members the price of such unit or units must be paid by the Purchasing Members to the Proposing Transferor within one calendar month from the date of the Trustee's giving notice to the Proposing Transferor.
 - (vi) If in any case the Proposing Transferor after having become bound fails to transfer the unit the Trustee may receive the purchase money and must then cause the name of the Purchasing Members to be entered in the Register as the holders of the unit and shall hold the purchase money in trust for the Proposing Transferor. The receipt of the Trustee for the purchase money or of so much thereof as shall be payable shall be a good discharge to the Purchasing Members and after their names have been entered in the register in purported exercise of the Trustee's power, the validity of the proceedings may not be questioned by any person.
 - (vii) If a sale is not effected by the Trustee the Proposing Transferor may subject to clause 12.1 transfer the unit as the Proposing Transferor sees fit however the price must be the net value of the unit determined in accordance with sub-clause (iii) of this clause.

TRANSMISSION OF UNITS

- 13.
- (a) In case of the death of any one of the joint unit holders of any unit, the survivor or survivors will be the only persons recognised by the Trustee as having any title to or interest in such units.
 - (b) The legal personal representative of a deceased unit holder of units (not being one of several joint holders) shall be the only person recognised by the Trustee as having any title to such units.
 - (c) Any person becoming entitled to any units in consequence of the death, legal incapacity or liquidation of a unit holder of such units upon producing evidence that such person sustains the character in respect of which they propose to act under this sub-clause or of their title as the Trustee thinks sufficient and in the case of a legal personal representative of a deceased unit holder (not being one of several joint holders) upon making a declaration in the form set out in the Fourth schedule or similar shall, on delivering the Certificate comprising the units to the Trustee for cancellation, be registered as the holder of those units and is entitled to a new Certificate in their name.
14. The Trustee will recognise the unit holder or their legal personal representative as the only persons having any right or interest in the units in respect of which the unit holder is registered or in the Certificate representing the same. The Trustee need not, except as ordered by a Court of competent jurisdiction, be bound to take notice of any trust or equity affecting any unit or certificate or the rights incidental thereto and the receipt of such unit holder or their legal personal representative for any money payable or any property transferred to a unit holder, is sufficient discharge to the Trustee.

MEETINGS

- 15.
- (a) **Holders**
The Trustee may at any time convene a meeting of the unit holders and the Trustee, at the request of the unit holders who at the date of the requisition hold between them not less than 25% of the units, must proceed to convene a meeting of the unit holders.
 - (b) **Notice**
Not less than seven days' notice shall be given to unit holders of every such meeting (except where all unit holders otherwise agree in writing) and the notice must specify the general nature of the business to be transacted.
 - (c) **Chair**
At a meeting convened at the request of the unit holders a person nominated by the meeting (being a unit holder or in the case of a company, their duly appointed representative) is to preside and at any other meeting convened by the Trustee a person nominated by it (whether or not a unit holder) is to preside. The Chairperson does not have a casting vote (in the event of an equality of votes) in addition to the vote or votes to which they may be entitled as a unit holder.
 - (d) **Poll**
Every question arising at any meeting mentioned in this clause may be decided in the first instance by a show of hands unless –
 - (i) it is a question which under this Deed must be decided by a specified majority of the votes of the unit holders; or
 - (ii) if a poll is demanded.
 - (e) A poll may be demanded by any unit holder before or immediately after any question is put to a show of hands
 - (f) **One Vote Per Unit**
Upon a poll every unit holder present in person or by proxy shall have one vote for every unit held by him or her. Joint holders shall be entitled to only one vote being that of the first named holder on the Register.

(g) Quorum

The quorum for a meeting is unit holders or unit holder present in person or by proxy not being less than two in number (unless the number of unit holders is one in which case a quorum shall be one) and holding (or representing by proxy) a total of not less than twenty-five per centum (25%) of the units.

(h) Adjournment

The Chairperson may with the sanction of the meeting adjourn it to such time and place as the Chairperson shall determine. The Chairperson shall adjourn any meeting at which a quorum is not present.

(i) Proxy

Votes at a meeting of the unit holders may be given either personally or by proxy. A proxy may be in the usual or common form or in such other form as the Trustee may approve. A company being a unit holder may vote by any authorised representative who may speak or demand a poll and generally act as a proxy on its behalf.

(j) Resolution without Meeting

If all unit holders sign a document that states they are in favour of the resolution in the terms set out in that document then the document is deemed to satisfy any provisions of this Deed requiring a resolution or meeting of unit holders and shall be deemed to have been made on the latest date appearing on that document.

AUDITOR

16.

- (a) The Trustee may appoint an auditor of the Fund who holds office subject to this clause or until such time as the auditor may voluntarily retire by notice in writing.
- (b) If at any time unit holders holding at least 75% of units then issued by resolution at a duly convened meeting or by notice in writing, request the Trustee to terminate the appointment of any auditor, then the Trustee shall by notice in writing to the auditor remove the auditor, and the Trustee may then appoint another auditor to take their place.
- (c) The auditor may be the auditor of the Trustee.

TRUSTEE'S REMUNERATION

17. The Trustee may be paid by way of remuneration for its services as Trustee for each period of one year during the continuance of this Deed such reasonable fee as the unit holders shall from time to time by resolution determine.

TRUSTEE'S APPOINTMENT, RETIREMENT

18.

- (a) The Trustee may retire upon giving written notice to the unit holders of its desire to do so and the unit holders may by resolution appoint a new Trustee.
- (b) If the Trustee dies or being a company goes into liquidation or ceases to carry on business or a Receiver, an official Manager or Administrator is appointed, the unit holders shall forthwith by resolution remove the Trustee from its appointment under this Deed and appoint another Trustee.
- (c) The Trustee may be removed and another Trustee may be appointed by resolution of a meeting of the unit holders duly convened and of which notice has been given to the Trustee, if such resolution is passed by a majority of unit holders present in person or by proxy and holding between them not less than 50% of the units then issued.

- (d) Any removal and/or appointment under clause 18 may be by Deed signed by the Trustee and by the new Trustee as appropriate and may but need not be also signed by the unit holders or the legal personal representatives of the holders. This provision does not require a Trustee whose office is vacated or who is removed in terms of clause 18(a) or (b) to sign that Deed.

TERM OF TRUST – VESTING DATE

19.

- (a) The Trust created by this Deed, unless previously determined under these provisions, shall continue until the Vesting Date.
- (b) If at a meeting of unit holders duly convened under any of the provisions of clause 15, a resolution is passed by a majority of unit holders present in person or by proxy and holding between them not less than 75% of the units then issued that the Trust hereby created shall be determined, the Trustee shall determine it accordingly.

20. On determination of the Trust under clause 19 the following provisions have effect

- (a) Subject to paragraph 20(e) the Trustee must as soon as practicable sell, call in, convert into money or cause to be sold called in and converted into money the investments of the Trust Fund and divide the proceeds of the sale and all undistributed income less all profit, costs and charges and expenses among the unit holders in proportion to the number of units of which they are respectively registered as the holders.
- (b) The Trustee must as soon as practicable after the determination of the Trust give to each unit holder notice thereof and of the impending distribution.
- (c) The Trustee may postpone the sale, calling in and conversion of any part of the investments of the Trust Fund for such time as it thinks it desirable to do so in the interests of the unit holders and shall not be responsible for any loss attributed to such postponement.
- (d) The Trustee may retain in its hands or under its control for as long as it thinks fit such part of the Trust Fund as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust Fund or any of the investments thereof provided that any investments so retained, to the extent that they are ultimately found not to be required, shall remain subject to the Trust for conversion and distribution contained in sub-clause (a).
- (e) Instead of receiving money upon the vesting of the Trust as contemplated by paragraph 20(a), the unit holders may compel the Trustee to make in specie distributions of the Trust Fund to the unit holders. The value of such in specie distributions cannot exceed the proportionate entitlement of the unit holders as provided for in paragraph 20(a), and the difference between the value of such in specie distributions and the proportionate entitlement provided for in paragraph 20(a) must be paid as money to the unit holder. For the avoidance of doubt, upon the Vesting Date occurring, the unit holders must receive their proportionate entitlement as provided for in paragraph 20(a).

RE-PURCHASE OF UNITS

21.

- (a) Subject to the application of paragraph 21(i), after the Commencement Date, any unit holder may at any time, in the form set out in the Fifth Schedule or such other form as the Trustee approves, request that the Trustee re-purchase all or any of the units that they hold in their name and such a unit holder must at the same time deliver to the Trustee the relevant Certificate together with a form of request to repurchase duly executed ("the Re-Purchase Form"). For the avoidance of doubt, the unit holders may unconditionally redeem their units as provided for in this clause 21.
- (b) Within seven (7) days after receipt of the Re-Purchase Form, the Trustee will cause a valuation to be made of the net asset value of the Trust Fund according to generally accepted Australian accounting standards. A copy of the valuation must be given to each unit holder within seven (7) days after the Trustee has received it. The unit holder who made the request referred to in paragraph 21(a) may, within thirty (30) days of receipt of the valuation, withdraw, by notice, in

writing to the Trustee, that request in which event the Trustee must notify all other unit holders in writing of that withdrawal and the Trustee shall take no further action to implement the re-purchase request.

- (c) If the unit holder has not withdrawn the re-purchase request within sixty (60) days after receipt of the valuation as contemplated in paragraph 21(b), and subject to the application of paragraph 21(i), the Trustee is compelled to re-purchase the units disclosed in the Re-Purchase Form.
- (d) The value of the Trust Fund as ascertained pursuant to sub-clause (b) shall be divided by the number of units issued to all unit holders and the quotient shall be the re-purchase price for each unit. If any asset of the Trust Fund sold by the Trustee pursuant to sub-clause (e) realises less than the value placed on that asset in the valuation for the purposes of sub-clause (b), then the valuation referred to in sub-clause (b) shall be adjusted and the re-purchase price recalculated accordingly.
- (e) Upon the value of each unit for the purposes of re-purchase being known, the Trustee shall notify the unit holders who lodged the re-purchase request.
- (f) If in the opinion of the Trustee the circumstances so warrant and the Trustee can so arrange, the Trustee may borrow monies in order that cash shall be available in the Trust Fund to make payments required under this clause. Otherwise the Trustee shall realise such investments as shall be necessary to re-purchase the unit or units.
- (g) Such monies shall be used by the Trustee in satisfaction of the re-purchase and on such payment being made the units re-purchased shall be cancelled and shall not be re-issued and appropriate entries must be made in the Register.
- (h) The costs of any valuation of the investments of the Trust Fund made pursuant to this clause shall be paid out of the Trust Fund however all other expenses of a repurchase of units including stamp duty shall be paid by the unit holder making the request.
- (i) Despite any other provision of this Deed, the Trustee shall not be compelled to re purchase the units disclosed in a Re-Purchase Form if any one or more existing unit holder(s) and the unit holder(s) that have provided the Re-Purchase Form as contemplated in paragraph 21(a) agree to purchase the units at a value being not less than the value determined in this clause 21. Such units shall be offered to the unit holders as if the Re-Purchase Form were a Transfer Notice and the provisions of clause 12 hereof shall apply in the like manner as if the Re-Purchase Form was a Transfer Notice. For the avoidance of doubt:
 - (A) if not all of the units disclosed in the Re-Purchase Form are purchased by unit holder(s) pursuant to this paragraph 21(i), then the units not purchased must be re-purchased by the Trustee; and
 - (B) this paragraph 21(i) only applies if the unit holder(s) who provide a Re Purchase Form pursuant to paragraph 21(a) agree that their units instead of being re-purchased by the Trustee, should be transferred to the existing unit holder(s) as purchaser(s).
- (j) For the avoidance of doubt, the right of a unit holder to compel the Trustee to re purchase any units held by the unit holder cannot be effected by any other unit holder or by the exercise of a discretion or power by any other third party (including the Trustee).
- (k) Instead of receiving money upon the re-purchase of any units, the unit holder that issues a Re-Purchase Form pursuant to paragraph 21(a) may compel the Trustee to make in specie distributions of the Trust Fund to the unit holder. The value of such in specie distributions cannot exceed the re-purchase price as provided for in paragraph 21(d), and the difference between the value of such in specie distributions and the re-purchase price provided for in paragraph 21(d) must be paid as money to the unit holder. For the avoidance of doubt, upon a re-purchase occurring, the unit holder must receive the re-purchase price as provided for in paragraph 21(d).

VALUATION

22. At any time after the Commencement Date if unit holders holding between them not less than 75% of the units then issued, by writing signed by them so request or if at a duly convened meeting a majority of unit holders present in person or by proxy and holding between them not less than 75% of the units then issued so resolve, a valuation of the investments of the Trust Fund must be made by the Trustee. The cost of any valuation of the Trust Fund made pursuant to this clause shall be paid out of the Trust Fund.

NOTICES

- 23.
- (a) Any notice required to be given to a unit holder or to the Trustee shall be deemed to have been duly given if it is in writing and either delivered or sent by post in a prepaid envelope addressed, if to the unit holder, to their address appearing in the register, or if to the Trustee addressed to the address last notified for such purpose and shall be deemed to be served on the second day following that on which the same is posted.
 - (b) Service of such notice or document on any one of several joint unit holders is effective service on the other joint unit holders.

AMENDMENT OF TRUST

24. Subject to clause 29, the Trustee may with the consent of a resolution in respect of which all then unit holders shall have voted in favour at any time by deed make any amendment or addition to this Deed which it has approved having regard to all the circumstances of the case and provided that any such amendment or addition will not prejudice the interest of unit holders without their written consent and after the execution of any such amending deed this Deed shall take effect as amended.

VARIATION

25. All unit holders shall be entitled to the benefit of and shall be bound by the terms and conditions of this Deed and any amending deed.

MANAGED INVESTMENT PROVISION

26. The number of unit holders must not exceed 20 and nothing in this Deed shall permit the issue of units if this would result in the number of unit holders exceeding this number.

UNIT HOLDERS NOT LIABLE TO INDEMNIFY TRUSTEE

- 27.1 No Unit Holder shall be under any obligation to indemnify the Trustee or any creditor against any liability or obligation incurred by the Trustee in the exercise of its duties, rights and powers under this Trust or arising therefrom or in the course of carrying on any business pursuant to these trusts or for any deficiency in the Trust Fund.

UNIT HOLDERS NOT LIABLE

- 27.2 The Trustee shall not have any power or authority to enter into any contract that may so bind the unit holders personally either jointly or severally, or call upon them or any one or more of them for any payment.
- 27.3 All persons or corporations extending credit to, contracting with, or having any claims against the Trust and or the Trustee shall not look to any unit holder for the payment of any such contract or

claim, or for the payment of any debt, damages claim, judgment or decree, or for any money that may otherwise become due or payable by the Trustee, so that the unit holders, present or future, shall not be personally liable for any such liability or obligation.

- 27.4** Nothing in this clause affects the liability of a unit holder to pay any unpaid and outstanding consideration for the issue of units to a unit holder under the provisions of this Deed.
- 27.5** The Trustee expressly waives, releases, forfeits and abandons all rights and remedies which it otherwise might have at law or in equity to recover from a unit holder moneys by reason of any right of indemnity or subrogation notwithstanding that any such right may not be able to be satisfied or discharged in whole or in part out of the assets comprising the Trust Fund.

TRUSTEE UNIT HOLDER

- 28.** Despite any other provision of this Deed the Trustee may be and may become a unit holder.

NSW LAND TAX PROVISIONS

- 29.**
- (a) Notwithstanding anything to the contrary in this Deed and for the avoidance of doubt:
- (i) the unit holders are presently entitled to the income of the Trust as provided for in clause 10 of the Deed, subject only to payment of proper expenses by and of the Trustee relating to the administration of the Trust; and
- (ii) the unit holders are presently entitled to the capital of the Trust, and may compel the trustee to:
- (A) redeem their units pursuant to clause 21 of the Deed; or
- (B) wind up the Trust pursuant to clause 19 of the Deed,
- and distribute the Trust Fund or the net proceeds of the Trust Fund to them;
- (iii) the unit holders may compel the Trustee to make in specie distributions of the Trust Fund to them pursuant to clauses 20(e) and 21(k) of the Deed.
- (iv) only one class of unit can be on issue with respect to the Trust, which entitles the unit holder to be presently entitled to the income and capital of the Trust as described in this clause 29.
- (b) Subject to paragraph 29(d), this clause 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.
- (c) Subject to paragraph 29(d), this deed cannot be amended if the effect of the amendment is to cause the Trust to be treated as a 'special trust' as defined in the Land Tax Management Act 1956 (NSW).
- (d) This clause 29 does not apply unless and until the Trust Fund includes land in New South Wales to which the Land Tax Management Act 1956 (NSW) applies.

JURISDICTION

- 30.** The proper law of this Deed shall be the laws of NSW unless the Trustee determines that the proper law shall be that of some other place which the Trustee considers reasonably connected with this Trust.

SCHEDULE A

DATE OF DEED:

PARTIES:

SMITH PTY LTD
A.C.N. 000 000 000
22 SMITH STREET
CASTLE HILL NSW 2154

FIRST PART (herein called "the Trustee")

and the (several) parties who execute this Deed or sign an application for units or a transfer of units containing an agreement with the Trustee under which the applicant for or transferee of units agrees to be bound by the provisions of this Deed.

SECOND PART

INITIAL SUM: \$10.00

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SCHEDULE B

DEFINITIONS

“AUTHORISED INVESTMENTS” means

- (a) any investment not prohibited by law that a Trustee may invest in;
- (b) without limitation, all property whether real or personal movable or immovable of all kinds wherever located and without limitation and any investment that the Trustee is expressly or impliedly permitted to acquire or hold under any other provision of this Deed including without limitation those referred to in clause 8 and below;
- (c) real and personal property, any debt, any chose in action and any estate, interest, right or power whatsoever in or over property;
- (d) any business or interest therein and any partnership interest and any interest in another trust;
- (e) chattels personal of every description or interest therein;
- (f) shares, stock, units, debentures, notes, obligations or any other security in any company or corporation whether such shares, stock, units, debentures, notes or other security be listed on any Stock Exchange or not, and whether the same be fully paid or partly paid or subject to special, deferred or other rights or otherwise;
- (g) loans and deposits at call or otherwise, with or without security, for any term with any person, firm or company and in particular with any Bank, financial institution or any authorised dealer in the short term money market in Australia;
- (h) units of any fixed or flexible trust;
- (i) any hire purchase or rental agreement and any lease or licence of any kind whatsoever;
- (j) freehold or leasehold land or land of any tenure in any of the States of the Commonwealth of Australia or in any of its Territories.

“CHILD” includes an adopted child.

“MARRIED PERSON” includes a defacto partner/spouse. **“SPOUSE”** includes a defacto partner/spouse.

“THE COMMENCEMENT DATE” means the date on which the Trustee notifies pursuant to clause 2 (d) hereof of the receipt of sufficient moneys for the purpose of the trust and in the absence of such notification such date as the Trustee determines either expressly or by necessary implication appears to have determined.

“THE TRUST FUND” means and comprises:

- (i) the amounts referred to in Schedule “A” initially paid to the Trustee being the total of the amounts set opposite the names of the unit holders;
- (ii) further cash accepted by the Trustee under the provisions of this Deed;
- (iii) all investments representing the said sum and said cash;
- (iv) the proceeds of the sale, redemption or repayment of any such investments;
- (v) all investments representing the re-investment in accordance with the provisions herein of any property forming part of the Trust Fund;
- (vi) the proceeds of any borrowing by the Trustee in pursuance of this Deed;

(vii) any net income which is not distributed;

(viii) all investments and property into which the above may be converted or which by the exercise of any of the powers herein contained may accrue to or otherwise become subject to the trusts hereof.

"**THE TRUST**" means this Trust named:
Sample Land Tax Trust

"**THE VESTING DATE**" means whichever is the earlier date of:

- (a) the day immediately prior to the eightieth anniversary of the Commencement Date; or
- (b) the date as determined by the unit holders pursuant to paragraph 19(b) of this Deed.

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FIRST SCHEDULE

APPLICATION FOR UNITS

I hereby apply for _____ Unit(s) in the Trust established by
the Trust Deed dated _____
between _____

(therein called "the Trustee") of the first part and the several persons therein mentioned of the second part (hereinafter called "the Trust Deed").

I request such Unit(s) be issued to me at the price of \$1.00 each and I enclose payment for \$ _____

In the event of my becoming a Holder of Units I hereby agree to be bound by the provisions of the Trust Deed.

DATED this day of _____

Executed for and on behalf of _____

A.C.N. _____

(Corporate unit holder)

Director
OR

Sole Director / Secretary

Director or Secretary

Signed: _____

Print Name: _____

(Individual unit holder)

SECOND SCHEDULE

Cert. No.

CERTIFICATE

Cert. No: _____

The undersigned Trustee of a Trust Deed dated
made between

(therein called "the Trustee") of the first part and the several persons therein mentioned of the second part
hereby certifies that

is the Holder of _____ Unit(s) issued this _____ day of

pursuant to the Trust constituted by the said Trust Deed, such Units being held subject to and with the
benefit of the terms and conditions of the said Trust Deed.

DATED this _____ day of

SIGNED for and on behalf of the Trustee

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THIRD SCHEDULE

TRANSFER

I/We,

of

(hereinafter called the Transferor)

in consideration of the sum of (\$)

paid to

by

of

(hereinafter called Transferee) hereby transfers to the Transferee of Units of the fund constituted by the Trust Deed dated

and made between

of the first part and the several persons therein mentioned of the second part to hold the same unto the Transferee subject to the several conditions on which the Transferor held the same immediately before the execution hereof and the Transferee hereby agrees to take the same Units subject to the said conditions.

IN WITNESS our hands this day of

Witness to signature of Transferor:

ADDRESS:

TRANSFEROR

OCCUPATION:

Signed

Print Name

Witness to signature of Transferee:

ADDRESS:

TRANSFEEE

OCCUPATION:

Signed

Print Name

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FOURTH SCHEDULE

DECLARATION

TO: The Trustee under a Trust Deed dated the _____ day of _____ and made between
the Trustee of the first part and the several persons therein mentioned of the second part.

I/We, being the Executor(s) of the Will (Administrator(s) of the Estate) of the deceased the Holder
of _____ Units, of the Fund constituted by the abovementioned Trust Deed

HEREBY AUTHORISE AND REQUEST you to register me/us as holder(s) of the said Units and to issue to
me/us a Certificate for the same in my/our name(s).

DATED this _____ day of _____

SIGNATURE(S)

Signed

Print Name

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FIFTH SCHEDULE

APPLICATION FOR RE-PURCHASE OF UNITS

(name of Unit holder)

("Unit Holder")

applies for the re-purchase of (number of units) units held by the Unit Holder in the (name of unit trust) in accordance with clause 21 of the Trust Deed.

Date:

Signed by the Unit Holder in the presence of:

Signature of Witness

(Name of Witness)

Signature of Unit Holder

OR

Execute by the Unit Holder

(company name)
(ACN)

by its undersigned directors in accordance with section 127 of the Corporations Act 2001

OR

Executed by the Unit Holder

(company name)
(ACN)

by its sole Director/Secretary

Received by Trustee on:

Executed as a Deed on the Date of this Deed

Executed for and on behalf of

SMITH PTY LTD
A.C.N. 000 000 000

(Trustee)

.....
Director Director or Secretary

OR

.....
Sole Director / Secretary

Signed Sealed and Delivered by
DEBBIE SMITH
(Individual unit holder)
in the presence of:

.....
DEBBIE SMITH

.....
Witness (Signature)

.....
Print Name of Witness

Amount to be paid and accepted by
the Trustee pursuant to clause 2(a): \$10.00

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