

## CONSOLIDATED DEED OF UNIT TRUST

13 December 1985

RUDI HENDRIK VANDENBERG  
(the “**Settlor**”)

and

BOALI HOLDINGS PTY LIMITED  
ACN 008 608 062  
(the “**Initial Trustee**”)

---

## DEED OF UNIT TRUST

---

Incorporating amendments adopted 12 March 2023

VELIK SOLICITORS  
Level 3, 55 York Street  
Sydney NSW 2000  
Tel: (02) 9299 4243  
Fax: (02) 9299 4847  
Email: [lawyers@veliklaw.com.au](mailto:lawyers@veliklaw.com.au)  
Ref: SV.01787

**DEED OF UNIT TRUST** made 13 December 1985**BETWEEN:**

1. **RUDI HENDRICK VANDENBERG** (the "**Settlor**"); and
2. **BOALI HOLDINGS PTY LIMITED** ACN 008 608 062 (the "**Trustee**").

**RECITALS:**

- A. The Settlor intends by this deed to establish a trust to be known as the Boali Unit Trust.
- B. The Settlor had paid, or intends on the execution of this deed to pay, to the Trustee the Initial Sum to initially constitute the Trust Fund.
- C. The Settlor has appointed the Trustee to act as trustee of the Trust and the Trustee has consented to so act.
- D. The Settlor intends that the Trustee will hold the Trust Fund upon the trusts and subject to the terms and conditions declared and contained in this deed.
- E. This deed is made with the intention that every Unit Holder will have the benefit of the trusts and powers declared and contained, and be bound by the provisions of, this deed.

**THE PARTIES AGREE AND DECLARE AS FOLLOWS:****1. INTERPRETATION****1.1 Definitions**

In this deed, unless the context otherwise requires:

**"Accounting Period"** means the period from the date of this deed until the next following Accounting Period Balance Date and thereafter each successive period of 12 months commencing on an Accounting Period Commencement Date in a subsequent calendar year during the continuation of the Trust and ending on the Accounting Period Balance Date in the following calendar year, PROVIDED THAT if the Trust terminates on a day other than the Accounting Period Balance Date in a calendar year, the last Accounting Period shall be the period commencing on the Accounting Period Commencement Date immediately preceding the date of termination and ending on the date of termination;

**"Accounting Period Balance Date"** means 30 June or 31 October in a calendar year or such other date in a calendar year that the Trustee from time to time determines, or the Unit Holders resolve, to be the balance date for the purposes of the preparation of the accounts of the Trust;

**“Accounting Period Commencement Date”** means the date one day after an Accounting Period Balance Date in a calendar year;

**“Business Day”** means a day on which banks are open for general banking business in the Territory;

**“Capital Expenditure”** means expenditure of any of the following kinds, namely expenditure:

- (a) to carry out structural repairs or improvements or additions to the Ski Lodge;
- (b) to renew or replace any fixtures or fittings that are or form part of the Ski Lodge;
- (c) any other expenditure of a capital nature in relation to the Ski Lodge;

**“Certificate”** means a unit certificate for the time being issued to a Unit Holder under the provisions of this deed;

**“de facto spouse”** means, in respect of a person, a person with which the first-mentioned person has a de facto relationship within the meaning of that expression in section 4 Property Relationships Act 1984 (NSW);

**“Eligible Person”** has the meaning given to that expression in paragraph (d) of clause 7;

**“Immediate Family”** means, in respect of a Member, at any time:

- (a) except in the circumstances specified in paragraph (b) of this definition, the spouse, de facto spouse and children of the Member at that time; or
- (b) if the Member has no spouse, de facto spouse or child at that time, another adult individual nominated in writing by the Member to the Trustee to be the nominated Immediate Family of the Member and approved of for that purpose by the Trustee;

except as otherwise expressly determined by the Unit Holders by ordinary resolution;

**“Initial Sum”** means \$20.00;

**“Initial Unit Holders”** means the persons specified in the first schedule (if any);

**“Investment”** means any assets or investments, including without limitation the goodwill and other assets of any business, for the time being forming part of the Trust Fund and **“Investments”** means all such assets and investments;

**“Member”** means, in respect of a Unit Holder:

- (a) except in the circumstances specified in paragraph (b), (c) or (d) of this definition, the Unit Holder;
- (b) if there are 2 or more Unit Holders in respect of a Unit, the Nominated Member in respect of those Unit Holders, such Nominated Member being one of those Unit Holders, or in the case of a Unit Holder being a body corporate or a trustee, its Nominated Member as provided for in paragraph (c) of this definition;
- (c) except in the circumstances specified in paragraph (d) of this definition, if the Unit Holder is a body corporate, the Nominated Member in respect of that Unit Holder, such Nominated Member being a director or shareholder, being an individual, of the Unit Holder; or
- (d) if the Unit Holder is a trustee of a settlement or trust, the Nominated Member in respect of that Unit Holder, such Nominated Member being a beneficiary (contingent or otherwise) of the settlement or trust;

except in each case as otherwise expressly determined by the Unit Holders by ordinary resolution;

**“Month”** means a calendar month;

**“Nominated Member”** means, in respect of a Unit Holder or Unit Holders, the person nominated in writing by that Unit Holder or those Unit Holders (as the case may be) to the Trustee to be member of that Unit Holder or those Unit Holders (as the case may be);

**“Permitted Transferee”** has the meaning given to that expression in subclause 4.2;

**“Present”** means, in relation to a meeting:

- (a) physically present at the location of the meeting;
- (b) if Virtual Meeting Technology is being used, participating at the meeting without being physically present in the same place as other persons entitled to attend; or
- (c) by proxy.

**“Register”** means the register kept pursuant to clause 3.4;

**“Ski Lodge”** means the building and other improvements which are operated as a ski lodge by the Trustee, or the operations of such a ski lodge, as the context requires;

**“Ski Lodge Web Site”** means the web site for the time being for the Ski Lodge maintained by or on behalf of the Trustee;

**“Special Resolution”** means a resolution passed at a duly constituted meeting of Unit Holders or class of Unit Holders (as the case may be) on which a poll is taken and in respect of which not less than 66 2/3% of the total votes cast on the poll are cast in favour of the resolution;

**“Territory”** means the Australian Capital Territory;

**“this deed”** and **“this Deed”** means this Deed of Unit Trust;

**“Trust”** means the trusts declared and contained in this deed;

**“Trust Fund”** means the Initial Sum, all moneys paid to and accepted by the Trustee for the issue of any Units pursuant to the provisions of this deed, all moneys, investments and property paid or transferred to and accepted or acquired by the Trustee to be held upon the trusts declared and contained in this deed, all additions and accretions to the said moneys, and the investments and property from time to time representing the same, and includes any part or parts of the foregoing;

**“Trustee”** means the person hereinbefore specified as the Trustee and any person subsequently and for the time being appointed under the provisions of this deed to act as Trustee for the purposes of this deed and whether alone or together with any other person, and **“Trustees”** means any 2 or more such persons so appointed and for the time being so acting as Trustee together;

**“Unit”** means an undivided interest in or part of the Trust Fund and otherwise having the characteristics provided for in this deed;

**“Unit Holder”** means a person for the time being registered in the Register as the holder of a Unit, and includes persons jointly so registered; and

**“Vesting Day”** means the earliest of the following dates:

- (a) the date 21 years after the death of the last to die of the issue living at the date of this deed of his late Majesty King George VI;
- (b) the date prescribed by law as being the last day of the perpetuity period in respect of this deed for the purposes of the rule against perpetuities; and
- (c) 1 July 2050.

**“Virtual Meeting Technology”** means, in relation to a meeting:

- (a) a meeting where all members participate via online facilities; or
- (b) a physical meeting linked with online facilities that allow remote participation by others.

## 1.2 General

In this deed, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision except that where the reference is made for the purpose of defining an expression in this deed, the reference is to the legislation or legislative provision as in force at the date of this deed;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) the singular includes the plural and vice versa;
- (d) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (e) a reference to any gender includes all genders;
- (f) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to this deed;
- (g) a recital, schedule or annexure forms part of this deed;
- (h) a reference to any agreement or document, including without limitation this deed, is to that agreement or document (and where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (i) a reference to any party to this deed or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;

- (j) a reference to a paragraph is to the paragraph in the clause or sub-clause in which the reference is made and a reference to a sub-paragraph is to the sub-paragraph in the paragraph in which the reference is made;
- (k) a reference to a person being or becoming bankrupt includes the entry of the person into of a scheme, composition, compromise or moratorium with any of its creditors under the Bankruptcy Act 1996 or otherwise, the commission by that person of an act of bankruptcy under the Bankruptcy Act 1996, or the person becoming an insolvent under administration (as defined in the Corporations Law), or the occurrence to the person or its assets of the circumstances and events which constitute any of those conditions or matters; and
- (l) a reference to a person being or becoming wound up includes the appointment to or in respect of the person or any of its assets of a liquidator, provisional liquidator, voluntary administrator or deed administrator pursuant to the Corporations Law, or of a receiver or receiver and manager or other Controller (as defined in the Corporations Law), the entry of the person into a scheme, composition, compromise or moratorium with any of its creditors, or the occurrence to the person or its assets of the circumstances and events which constitute any of those circumstances or matters.

### **1.3 Headings**

In this deed, headings are for convenience of reference only and do not affect interpretation.

### **1.4 Business Day**

If the day on which any act, matter or thing is to be done under or pursuant to this deed is not a Business Day, that act, matter or thing may be done on the next Business Day.

### **1.5 No Implied Relationships**

Nothing in this deed will constitute or give rise to, or be deemed to constitute or give rise to, the relationship of principal and agent, partnership, joint venture, employment or of an independent contractual nature between the Trustee and the Unit Holders or between the Unit Holders or will constitute or give rise to, or be deemed to constitute or give rise to, any association of other whatever nature whatsoever between Unit Holders, except as otherwise expressly stated in this deed.

### **1.6 No Unit Holder Liability**

Notwithstanding:

- (a) that an obligation or liability incurred by the Trustee has been so incurred at the request, or with the authority, consent or approval, or pursuant to a resolution or determination of, a Unit Holder or Unit Holders;
- (b) the other provisions of this deed other than clause 1.7; or
- (c) anything implied at law or in equity to the contrary,
  - (i) no Unit Holder shall be under any obligation or liability whatsoever to indemnify the Trustee against, or reimburse the Trustee in respect of, any

liability or obligation incurred by the Trustee in the course of, pursuant to, as a result or consequence of, or arising from, the Trustee performing observing exercising or complying with its duties or obligations or exercising its rights powers or authorities under or pursuant to this deed, including without limitation in relation to the Trust Fund, the carrying on by the Trustee of any business authorised by this deed or any deficiency in the assets of the Trust Fund compared with the liabilities of the Trustee in relation thereto, and howsoever caused;

- (ii) the Trustee has no power or authority to enter into any contract agreement or arrangement, or to make any promise or undertaking, that binds or affects the Unit Holders individually or jointly or severally, or call upon a Unit Holder for any payment whatsoever other than the amounts of their respective subscriptions for Units; and
- (iii) all persons extending credit to, contracting with, or having any claims against the Trustee shall look only to the property of the Trust Fund for the payment of any such credit contract or claim, and for the payment of any debt, damage, judgment, decree or money that may otherwise become due or payable by the Trustee in respect of or arising from any such credit contract or claim, so that neither the Trustee personally nor the Unit Holders, present or future, will be liable for any such credit contract claim or payment.

## **1.7. Five Year Subscription Liability**

- (a) This clause applies notwithstanding clause 1.6.
- (b) The Trustee will determine the amount to be charged to each Unit Holder by way of annual subscription (the “**Annual Subscription Charge**”) each year.
- (c) An Annual Subscription Charge shall be due and payable by each of the Unit Holders to the Trustee by such date as the Board from time to time determines, or failing such determination, by 30 November in the relevant year.
- (d) Each Unit Holder hereby grants to the Trustee a fixed charge over the Unit Holder’s Units to secure the liability of the Unit Holder to pay to the Trustee any such annual subscriptions payable by the Unit Holder.

## **2. TRUST AND TRUST FUND**

### **2.1 Constitution of the Trust Fund**

- (a) The Trustee is appointed as trustee of the Trust and accepts such appointment.
- (b) In so far as the Settlor has not already done so, the Settlor shall upon execution of this deed pay to the Trustee the Initial Sum to form part of the Trust Fund.
- (c) The Trust will be known as the Boali Unit Trust.
- (d) Each Unit Holder is entitled to the benefit, and is bound by the terms and conditions, of this deed as Unit Holder as if the Unit Holder was a party to this deed and had entered into this deed as such party.



## **2.2 Trust Fund**

- (a) The Trustee shall stand possessed of the Trust Fund upon the trusts and subject to the terms and conditions declared and contained in this deed.
- (b) The Trust Fund as originally constituted by the Initial Sum shall be divided into Units of Ten thousand Dollars which shall be:
  - (i) held by the Initial Unit Holders in the respective number set out opposite the name of the relevant Initial Unit Holder in the First Schedule (if any) and upon payment by the relevant Initial Unit Holder of the subscription price in respect of each such Unit, the Initial Unit Holder shall be a Unit Holder in respect of such Unit; and
  - (ii) divided into the classes (if any) set out in the first schedule.

## **3. UNITS**

### **3.1 Unit Entitlements**

- (a) Every Unit shall confer on its holder an undivided beneficial interest in the Trust Fund as whole and shall not confer any interest in any particular part of the Trust Fund.
- (b) Every Unit shall also confer on the Member in respect of the holder of that Unit and the Member's Immediate Family an entitlement to use the accommodation and other facilities of the Ski Lodge during its continuance, subject to the other provisions of this deed.
- (c) Where the initial Units are expressed in the first schedule to be divided into classes, the Units of each such class shall have the rights and be subject to the restrictions (if any) and be differentiated as provided in the second schedule.
- (d) Except as provided in the second schedule, all Units shall be of the same class and have the same rights and restrictions and shall confer on their respective holders an equal beneficial interest of equal value in the Trust Fund.
- (e) The Trustee may in the Trustee's absolute discretion suspend any rights attaching to any Units held by a Unit Holder, including without limitation any voting rights and any right of the Unit Holder to use any accommodation and/or other facilities of the Ski Lodge, if the Unit Holder has not paid any annual subscriptions levied on the Unit Holder or in respect of the Unit Holder's Units pursuant to clause 1.7 and which annual subscriptions are due and payable, or in respect of which Unit Holder or Units there is otherwise monies due and payable to the Trustee and unpaid.

### **3.2 Reclassification of Units**

Units of any class may be reclassified by the Trustee with the unanimous consent of all Unit Holders.

### **3.3 Issue of Additional Units**

- (a) The Trustee shall have power from time to time to issue additional Units of any class in such manner and at such price as the Trustee thinks fit provided that no additional Units shall be issued unless the issue of such Units is first approved by a majority of two thirds of the votes of all the Unit Holders or unless the issue is made in accordance with the following provisions and approved by a Special Resolution of the Unit Holders, or where the Units are of more than one class, by a Special Resolution of the Unit Holders of each such class:
  - (i) the Trustee shall give notice specifying the number and class of the Units offered and limiting a time within which the offer, if not accepted, will be deemed to be declined and after the expiration of that time or in receipt of advice or notification from the person to whom the offer is made that he declines to accept the Units offered, the Trustee may dispose of those Units to persons eligible under this deed in such manner as he thinks most beneficial to the Trust Fund;
  - (ii) the Trustee may satisfy any payment due to be made to the holders of Units of any class by the issue to such holders (in proportion to their respective holdings of such Units) of additional units of any class having a fair market value as reasonably determined by the Trustee equal to the amount of such payment.
  - (iii) Units shall be offered in the first instance to existing Unit Holders in proportion as nearly as possible to their respective existing holdings of Units and without involving fractions; and
  - (iv) the Trustee may likewise so dispose of any new Units which (by reason of the ratio which the number of the new Units bears to the number of Units then held by persons otherwise entitled to an offer of new Units) cannot in the opinion of the Trustee be conveniently offered under sub-paragraph (ii).
- (b) All persons to whom new Units are to be issued, other than persons who are already Unit Holders, shall sign such form of application as the Trustee may from time to time prescribe including an undertaking to be bound by the terms of this deed.

### **3.4 Register of Unit Holders**

- (a) The Trustee shall keep a register of Unit Holders in which there shall be entered the following particulars:
  - (i) the names addresses and descriptions of Unit Holders;
  - (ii) the number of Units in respect of which they are respectively registered and the distinctive numbers or letters of the Certificates held respectively by them;
  - (iii) the date on which the name of each Unit Holder was entered in the register in respect of Units held in his name; and
  - (iv) any other details considered necessary or desirable by the Trustee in respect of the Unit Holders or their respective holdings of Units.

- (b) No notice of any trust express implied or constructive shall be entered in the Register and the person from time to time entered in the Register as the Unit Holder shall be the only person recognised by the Trustee as entitled to the Units shown on the Register as registered in his name or to exercise the rights and privileges of the registered holder thereof pursuant to this deed.
- (c) No person shall be recognised by the Trustee as holding any Unit upon any trust and the Trustee shall not be bound or compelled in any way to recognise (even when having notice thereof) any equitable contingent future or partial interest or estate in any Unit or any interest therein or (except as expressly otherwise provided in this deed) any other rights in respect of any Unit except full ownership thereof in the Unit Holder.
- (d) Units held by a Unit Holder as trustee of a particular trust may be marked in the Register in such a way but no liability shall be created by any such marking and the Trustee shall not be effected with notice of any trust so marked.

### **3.5 Unit Certificates**

- (a) Each certificate for Units to be issued shall:
  - (i) be in the form or to the effect of the Unit Certificate in the second schedule;
  - (ii) specify the name and address of the relevant Unit Holder and the number and class of Units to which the certificate relates;
  - (iii) bear a distinctive number or letter;
  - (iv) be prima facie evidence that the person named in the Certificate is entitled to the number and class of Units therein specified; and
  - (v) be signed by the Trustee or, in the case of a corporate Trustee, by any two directors of the corporate Trustee.
- (b) If any Unit Certificate issued in accordance with this deed is delivered to the Trustee and is mutilated, worn-out or defaced, the Trustee may in his reasonable discretion and upon such evidence and indemnity being given to the Trustee as he reasonably considers adequate cancel the Unit Certificate and issue to the relevant Unit Holder a new unit Certificate in its place, and the relevant Unit Holder shall bear and pay to the Trustee the reasonable cost to the Trustee of such cancellation and issue as reasonably determined by the Trustee.
- (c) If any Unit Certificate issued in accordance with this deed is lost or destroyed, the Trustee shall issue a duplicate certificate in lieu thereof to the Unit Holder on his application accompanied by:
  - (i) a statutory declaration to the effect that the certificate has been lost or destroyed and has not been pledged sold or otherwise disposed of and if lost that proper searches have been made;
  - (ii) an undertaking in writing that if it is found or received by the owner it will be returned to the Trustee; and
  - (iii) payment to the Trustee of the reasonable cost to the Trustee of such issue as reasonably determined by the Trustee.

## 4. TRANSFERS AND TRANSMISSIONS OF UNITS

### 4.1 Transmission of Units

- (a) On the death of any one of the joint Unit Holders of any Units the survivor or survivors shall be the only persons recognised by the Trustee as having any title to or interest in such Units. Evidence satisfactory to the Trustee as to such Unit Holder's death and any necessary statutory certificate enabling the Unit Holder's assets to be dealt with shall be produced by the said survivor or survivors to the Trustee.
- (b) The executor or administrator of a deceased holder of Units (not being one of several joint holders) shall be the only person recognised by the Trustee as having any entitlement to execute a transfer of such Units.
- (c) An executor or administrator of a deceased Unit Holder (not being one of several joint holders) on becoming entitled to any Units in consequence of the death of such deceased Unit Holder, upon producing such evidence as to his title to such Units as the Trustee considers sufficient, shall on delivering to the Trustee for cancellation the Unit Certificate in respect of such Units be able to transfer any such Units to a Permitted Transferee but shall not other than for the purpose of a transfer to a Permitted Transferee be registered himself as the holder of such Units.
- (d) Any person becoming entitled to any Units in consequence of the bankruptcy of a Unit Holder, upon producing such evidence as to his title to any such Units as the Trustee considers sufficient, may upon making written request to the Trustee have a Permitted Transferee registered as the holder of such Units and who shall be entitled to a new Unit Certificate in his name.
- (e) A person entitled to Units by way of transmission shall be entitled to receive a Unit Certificate in respect of such Units but except as otherwise provided by this deed shall not be entitled to any of the rights or privileges of a Unit Holder unless and until the person shall become registered in respect of the Units.

### 4.2 Permitted Transfers of Units

The following transfers of Units are permitted transfers of Units, namely:

- (a) from a Unit Holder to any of the following:
  - (i) any of the following relatives of the Unit Holder not being a minor (hereinafter called a "**specified relative**") namely the spouse, de facto spouse, child, son-in-law, daughter-in-law, grandchild or other direct issue of the Unit Holder;
  - (ii) the trustee or trustees in respect of any deed of trust or deed of settlement made exclusively for the benefit of one or more specified relatives of the Unit Holder in that capacity (hereinafter called a "**family trust**");
  - (iii) where the transferor is the trustee in respect of a deed of trust or deed of settlement then to any specified relative of any beneficiary under such deed;

- (iv) any corporation all of the shares in which are beneficially owned by one or more of the permitted transferees specified in the foregoing subparagraphs of this paragraph (a);
- (b) from the executors or administrators or other legal personal representatives of a deceased Unit Holder to the widow or widower of the deceased Unit Holder or to any specified relative of such Unit Holder entitled in each case thereto under or by virtue of the will of such Unit Holder or as one of the Unit Holder's next-of-kin;
- (c) from the trustee of a family trust to one or more of the beneficiaries of such family trust;
- (d) from the trustee of the estate of a deceased Unit Holder or of a family trust on any change of trustees of such estate or family trust to the new trustees for the time being of such estate or family trust;
- (e) in the case of a Unit Holder being a body corporate, from such Unit Holder to another body corporate which is a related company of the Unit Holder as defined in the Companies Act in force in the Territory or in the case of a body corporate incorporated outside the Territory which would be so related if the body corporate were incorporated in the Territory;
- (f) in to a mortgagee, pledgee, chargee or encumbrancee or other person approved by the Trustee under subclause 4.3

Each transferee in respect of a permitted transfer of Units referred to in the foregoing paragraphs of this clause 4.2 is hereinafter referred to as a **"Permitted Transferee"**.

#### **4.3 Pledging of Units**

A Unit Holder shall not, except as expressly otherwise provided in this deed, mortgage, pledge, charge or otherwise encumber a Unit without the prior approval of the Trustee and of a majority of the Unit Holders and it shall be a condition of any such consent that the proposed mortgagee, pledgee, chargee or encumbrancee:

- (a) is a bank or building society or credit union of sound financial standing which bona fide carries on the business of lending money on security; and
- (b) first undertakes in writing to the Trustee that in exercising any power of sale it will comply with the provisions of this clause 4.

#### **4.4 Transfers of Units Generally**

In relation to any proposed or desired transfer of Units, to which subclause 4.1, 4.2 or 4.3 applies, the Trustee may if it considers fit in its absolute discretion:

- (a) refuse to register the said transfer if it determines in its absolute discretion that the transferee is not a fit and proper person to hold the Unit or Units the subject of the said transfer (the **"Transfer Units"**);
- (b) act as agent for the transferor of the transfer Units in effecting the sale and/or transfer of the Transfer Units from the said transferor to the proposed or desired transferee of the Transfer Units;
- (c) maintain a register or other record of Units proposed or desired to be sold or transferred by existing holders of Units;

- (d) market and/or advertise Units for sale by existing Unit holders;
- (e) take steps to introduce prospective purchasers and transferees to existing Unit holders desiring or proposing to sell or transfer their existing Unit or Units;
- (f) make such charge or charges, in such manner, of such amount or amounts, as to such person or persons, including without limitation Unit holders and/or prospective purchaser and transferees of Units for the undertaking by the Trustee of any of the matters referred to in the foregoing paragraphs of this clause 4.4 as the Trustee considers fit in its absolute discretion;
- (g) make, amend rules in relation to any of the matters referred to in the foregoing paragraphs of this clause 4.4; and
- (h) do any thing necessary for or incidental to or for the purpose of any of the matters referred to in the foregoing paragraphs of this clause 4.4.

#### **4.5 Registration of Transfers of Units**

- (a) Unit Holders may request the Trustee to register a transfer of all or any of the Units held by them. Unless expressly otherwise provided by this deed, the Trustee shall upon delivery to him of the relevant Unit Certificate register a transfer (whether voluntary or by operation of law) of Units and issue a new Unit Certificate for the Units transferred to the transferee and if applicable, a new Unit Certificate in the name of the transferor for the balance of any Units retained by the transferor.
- (b) In so far as a written instrument of transfer of Units is not required by law, a transfer of Units may, in the Trustee's discretion, but subject to the other provisions of this deed, be effected without a written instrument of transfer being submitted to the Trustee. In that event, an entry made in the Register with the approval of the Trustee, and if at any time the Unit Holders by Special Resolution so require, with the approval by resolution of Unit Holders, shall be effective as evidence of the relevant transferee's entitlement to the Units so transferred. However, the Trustee may, in the Trustee's discretion, require an instrument of transfer in writing duly completed and executed by the relevant transferor and transferee and/or an undertaking to be signed by or on behalf of the transferee to be bound by the terms of this deed to be submitted to the Trustee before the Trustee registers a transfer of relevant Units.
- (c) If the law requires, or the Trustee in his discretion requires, that a written instrument of transfer be submitted to the Trustee before the Trustee registers a transfer of Units, the instrument of transfer shall be in a form from time to time approved by the Trustee for that purpose. Before the Trustee registers any such transfer, the instrument of transfer shall be executed by or on behalf of both the transferor and transferee.
- (d) On each proposed transfer of Units, the Trustee shall upon being satisfied that the provisions contained in this deed relating to the transfer of Units have been complied with, make the appropriate entries in the Register and shall cancel the existing Unit Certificate or Certificates in respect of the Units transferred and shall issue a new Certificate or Certificates in the name of the transferee and, if appropriate, a new Certificate or Certificates in the name of the transferor for the balance of any Units retained by him.

- (e) On The Trustee may in the Trustee's absolute discretion refuse to register a written instrument of transfer lodged with the Trustee if the transferor in respect of the said written instrument has not paid any annual subscriptions levied on the Unit Holder or in respect of the Unit Holder's Units the subject of the said written instrument of transfer pursuant to clause 1.7 and which annual subscriptions are due and payable, or in respect of which Unit Holder or Units there is otherwise monies due and payable to the Trustee and unpaid.

## **5. MEETINGS OF UNIT HOLDERS**

### **5.1 Meetings Generally**

- (a) If any Unit Holder so requests, an Annual General Meeting of the Unit Holders shall be held within 6 months after the end of the financial year of the Trust in each year. All general meetings other than the Annual General Meeting shall be called Extraordinary General Meetings.
- (b) The Trustee may whenever it thinks fit convene an Extraordinary General Meeting of the Unit Holders, and an Extraordinary General Meeting shall be convened by the Trustee within twenty-eight (28) days after receipt by the Trustee at any time of a requisition to do so by the holders of not less than ten per cent by number of the then issued Units, and failing such convening by the Trustee by such requisitioning holders.
- (c) All business shall be deemed special that is transacted at an Extraordinary General Meeting and all business that is transacted at an Annual General Meeting shall also be deemed special with the exception of the consideration of the accounts and balance sheets, the reports of the Auditor (if any), the nomination (if thought fit) of the Auditor, the fixing of the Auditor's remuneration and the fixing of the remuneration of the Trustee.

### **5.2 Holding of Meetings**

- (a) Any general meeting of the Unit Holders may be held using Virtual Meeting Technology provided the technology gives each person entitled to attend the meeting, a reasonable opportunity to participate without being physically present in the same place.

To avoid doubt:

- i. a reasonable opportunity to participate includes a reasonable opportunity to exercise a right to speak; and
  - ii. a person may elect to exercise a right to speak (including a right to ask questions) orally rather than in writing.
- (b) All Unit Holders so participating in the meeting are taken for all purposes to be Present at the meeting while so participating.
- (c) All Unit Holders so participating in the meeting who are entitled to vote at the meeting:
  - i. must be given the opportunity to participate in the vote in real time; and
  - ii. may be given the opportunity to record a vote in advance of the meeting at the election of the Unit Holder.

### 5.3 Notices of Meetings

- (a) Twenty-one (21) days' notice at least (exclusive of the day on which the relevant notice of meeting is served or deemed to be served but inclusive of the day on which notice is given) of each general meeting is to be given to Unit Holders and must set out:
  - (i) the day, time and place for the meetings; and
  - (ii) if Virtual Meeting Technology is to be used in holding the meeting, sufficient information to allow the Unit Holders to participate in the meeting by means of technology; and
  - (iii) the general nature of the meeting's business; and
  - (iv) if a special resolution is to be proposed at the meeting, an intention to propose a special resolution and stating that resolution; and
  - (v) if a Unit Holder is entitled to appoint a proxy, a statement setting out the following information:
    - A. that the Unit Holder has a right to appoint a proxy;
    - B. whether or not the proxy needs to be a Unit Holder of the trust; and
    - C. that the Unit Holder who is entitled to cast 2 or more votes may appoint two proxies and may specify the proportions or number of votes each proxy is appointed to exercise.
- (b) A notice of meeting is taken to be given in accordance with clause 15.

### 5.4 Quorum and Adjournment

- (a) No business shall be transacted at any general meeting of Unit Holders unless, when the meeting proceeds to business, there are Present at the meeting Unit Holders who between them hold at least fifteen per cent by number of the issued Units.
- (b) If within thirty (30) minutes from the time appointed for the meeting set out in the notice of meeting, a quorum is not present:
  - (i) if convened upon the requisition of Unit Holders, the meeting is dissolved; but
  - (ii) in any other case the meeting of the Unit Holders that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting, is adjourned to a meeting (the "resumed meeting") at a later time.



- (c) The directors may specify:
  - (i) the date and time of the resumed meeting; and
  - (ii) if any of the Trust's Unit Holders are entitled to physically attend the resumed meeting - the location or locations at which the Unit Holders may do so; and
  - (iii) if Virtual Meeting Technology is to be used in holding the meeting - sufficient information to allow the Unit Holders to participate in the resumed meeting by means of the technology.
- (d) If the directors do not specify one or more of the things mentioned in subclause 5.4(c):
  - (i) if the date is not specified - the meeting is adjourned to the same day in the next week; and
  - (ii) if the time is not specified – the meeting is adjourned to the same time; and
  - (iii) if any of the Unit Holders was entitled to physically attend the meeting and the location is not specified - the meeting is adjourned to the same location or locations as were specified for the original meeting; and
  - (iv) if Virtual Meeting Technology was used in holding the meeting, participation in the resumed meeting by means of the technology must be provided in the same manner as set out in the notice for the original meeting.
- (e) If at the resumed meeting a quorum is not present within 30 minutes after the time appointed for the resumed meeting, the meeting will be dissolved.
- (f) At each meeting of Unit Holders the Chairman of the meeting shall be a person appointed by the Trustee unless such person is not present at the meeting within 15 minutes after the time for the holding of the meeting or refuses to act as Chairman in which case the persons present at the meeting shall choose one of their number to be the Chairman.
- (g) The Chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but so that:
  - (i) no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place;
  - (ii) when a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given to Unit Holders; and
  - (iii) save as aforesaid it shall not be necessary to give notice of, or of the business to be transacted at, an adjourned meeting.

## 5.5 Voting

- (a) At any general meeting of Unit Holders a resolution put to the vote of the meeting must be decided:
  - (i) on a poll, if:
    - A. Virtual Meeting Technology is used in holding the meeting; or
    - B. a poll is demanded; or
  - (ii) otherwise, on a show of hands.
- (b) If Virtual Meeting Technology is not used in holding the meeting, a poll may be demanded:
  - (i) by the Chairman;
  - (ii) by at least three Unit Holders Present; or
  - (iii) by Unit Holder or Unit Holders Present at the meeting and representing not less than one tenth by number of the total voting rights of all the Unit Holders having the right to vote at the meeting.
- (c) If a Virtual Meeting Technology is not used in holding the meeting, unless a poll is demanded, a declaration by the Chairman that, on a show of hands, a resolution has been passed or passed unanimously or by particular majority or lost and an entry to that effect in the books containing the minutes of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. Any demand for a poll may be withdrawn at any time.
- (d) A poll taken in accordance with subclause 5.5(a)(i) must be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll will be treated as having occurred at the meeting at which the poll occurred, but provided that a poll demanded in respect of the election of a Chairman or on a question of adjournment must be taken immediately after it is demanded.
- (e) In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll occurs is not entitled to a second or casting vote.
- (f) Subject to any special rights or restrictions set out in the second schedule in relation to Units of any class, each Unit Holder present at the meeting is entitled to vote at general meetings of Unit Holders and on a show of hands has one vote and on a poll has one vote for each Unit that the Unit Holder holds.
- (g) In the case of joint Holders of Units, the vote of the senior holder Present who tenders a vote shall be accepted to the exclusion of the votes of the other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register.
- (h) A Unit Holder who is of unsound mind or lacks legal capacity within the meaning of or under any law applicable in the Territory may vote whether on a show of hands or on a poll by his committee or trustee or such other person vested at law with such power on behalf of or as trustee of the estate of the Unit Holder and any such committee trustee or other person may vote by proxy or attorney.

- (i) A Unit Holder who is an infant may vote by either of his parents or by his guardian upon such evidence being produced of the relationship of or the appointment of the guardian (as the case may be) as the Trustee may from time to time properly require. In the event of both parents of an infant Unit Holder desiring to vote on behalf of the infant where no guardian has been appointed, the elder parent only shall be entitled to vote.

## **5.6 Circulating Resolutions**

- (a) A resolution in writing signed by all the Unit Holders entitled to vote at a general meeting of Unit Holders or of Unit Holders of any class shall be as valid and effectual as if it had been passed at a duly called and constituted general meeting of Unit Holders or of Unit Holders of that class as the case may be. Any such resolution may consist of duplicate copies of one document one of which copies shall have been signed by each Unit Holder.
- (b) Except as mandatorily required by any applicable law, in lieu of holding a meeting of Unit Holders, the Trustee may send to each of the Unit Holders entitled to receive notice of a meeting or to vote, a notice which contains:
  - (i) the resolutions to be considered and voted on by Unit Holders;
  - (ii) a summary of information relating to each such resolution which the Trustee considers relevant to the decision as to how to vote on the resolution;
  - (iii) provision for the Unit Holders to indicate the way in which they cast their votes on each such resolution;
  - (iv) an address to return the notice to; and
  - (v) a date, being not less than twenty-one (21) days after service of the Notice on the Unit Holders, by which the notice duly completed and executed is to be returned to the Trustee if the Unit Holder's vote on each such resolution is to be counted
- (c) If the number of Unit Holders who duly return any such notice to the Trustee would constitute a quorum at a meeting of Unit Holders to pass the resolutions the subject of the notice had a meeting been duly convened and had those Unit Holders attended the meeting and voted thereat, then a meeting is deemed to have been held with the Unit Holders who returned the notices being deemed Present at the meeting and votes deemed to have been cast as set out in the duly returned notices. The said resolutions will be deemed to have been passed if the said resolutions would have been passed had a meeting of Unit Holders been held and the votes cast as set out in the said duly returned notices.

## **5.7 Proxies**

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

- (b) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited with (or faxed to) the Trustee not less than 24 hours before the time for holding the relevant meeting or adjourned meeting and in default the instrument of proxy shall not be treated as valid.
- (c) A form of proxy must be despatched with each notice of meeting of Unit Holders.

## **6. TRUSTEE**

### **6.1 General Provisions Relating to the Trustee**

- (aa) The Trustee may comprise one or more natural persons and/or bodies corporate.
- (a) If at any time, the Trustee comprises more than one person, and whether natural persons and/or bodies corporate, the Trustees shall act jointly and they may in writing delegate the exercise of all or any of the powers or discretions hereby conferred on the Trustees and execute any power of attorney or other instrument necessary to effect such delegation.
- (b) Any one of two or more Trustees being a natural person may with the consent of the other Trustee or Trustees appoint another person to be an alternate Trustee in the first-mentioned Trustee's place and so that any such appointment shall have effect during such period only as that Trustee may from time to time be absent from the place where the Trust Fund is being administered and that Trustee may by power under his hand revoke or alter such appointment as alternate Trustee.
- (c) Subject to the other express provisions of this deed, the Trustee shall have the sole and absolute discretion in exercising all rights relating to or in respect of the Investments, and no Unit Holder shall save as is herein expressly provided have any right with respect to the Trust Fund to attend meetings of shareholders or to vote or take part in or consent to any corporate or shareholder's motion with or question the exercise or non-exercise by the Trustee of the rights and powers of the Trustee as the legal owner of the Investments.
- (d) The receipt of a Unit Holder for any moneys payable in respect of the Units represented by his Unit Certificate shall be a good discharge to the Trustee and if several persons are registered as joint Unit Holders or in consequence of the death or bankruptcy of a Unit Holder are entitled to be so registered any of them may give effectual receipts for any such moneys. The terms and conditions of this deed and of any supplemental Deed entered into under the provisions of this deed shall be binding on each Unit Holder and any person claiming through him as if he had been a party to this deed.

- (e) The Trustees hereby jointly and severally covenant to exercise all due diligence and vigilance in protecting the rights of Unit Holders provided that no Trustee shall be responsible for-
  - (i) any loss or damage occasioned by the exercise by the Trustee of any discretion or power hereby or by law conferred on the Trustee or by any failure by the Trustee to exercise any such discretion or power or by any error or forgetfulness by the Trustee whether of law or of fact.
  - (ii) any breach of duty or trust whatsoever on the part of the Trustee or its legal or other advisors or generally unless the breach shall be proved to have been committed made or omitted in personal conscious fraudulent bad faith by the Trustee charged to be so liable.
- (f) Without affecting anything in clause 1.6, the Trustee shall be entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by the Trustee in the execution or attempted execution or as a consequence of the failure to exercise any of the trustee authorities powers and discretions contained in this deed or by virtue of being the Trustee hereof.
- (g) The Trustee shall not be bound in any case to act personally but shall be at full liberty to act as managers or to employ any contractors managers solicitors accountants clerks workmen employees or servants or any agents to transact all or any business of whatever nature required to be done in relation to the Trust Fund and the investments thereof including the receipt and payment of money and the Trustee shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.
- (h) A sole Trustee hereof for the time being is hereby authorised notwithstanding that he is such sole Trustee to receive capital and other moneys and give valid and effectual receipts therefor for all purposes and for the purposes of any statutory enactments including the receipt of capital moneys which may or may not be deemed to be capital moneys for the purposes of any Statute.
- (i) Any Trustee hereof who may be a solicitor or accountant, and any firm of which he may be a member, shall be entitled to make all usual and proper charges for both the Trustee's professional and other services in the administration of the trusts hereof that the Trustee would have been entitled to make if the Trustee were not a Trustee hereof. The Trustee from time to time may charge and retain out of the Trust Fund such Trustee's commission as he may think reasonable and as the Unit Holders in general meeting may approve.
- (j) Nothing in this deed shall prevent the Trustee or any subsidiary of any of the Trustees or the directors or officers or any of them from subscribing for purchasing holding dealing or in disposing of Units or from otherwise at any time contracting or acting in any capacity as insurer representative or agent or entering into any insurance financial banking agency or other transaction with any other of them or any Unit Holder or any company whose shares form part of the Trust Fund or from being interested in any such contract or transaction or otherwise.

## 6.2 Appointment and Removal of Trustees

- (a) The Trustees jointly and severally covenant with the Unit Holders that they will act continuously as Trustees under the trusts herein set forth until such Trusts are determined as herein provided or until the Trustees have retired or have been removed from office in the manner herein provided.
- (b) A person shall be disqualified from holding office as a Trustee if:
  - (i) being an individual, the person is or ceases to be sui juris, is or becomes incapable because of ill health, injury, addiction or unsoundness of mind from managing the Trustee's own affairs, is or becomes bankrupt or does or suffers anything which does or would disqualify the person from holding office as a director of a company.
  - (ii) being a company, is wound up or passes a resolution for its winding up or an application is made for its winding up except for the purposes of a reconstruction, amalgamation, merger or consolidation on terms approved by the Unit Holders before that step is take.
- (c) A Trustee may retire upon giving one month's notice in writing to the Unit Holders of that Trustee's desire to do so but such retirement shall not take effect until a general meeting of Unit Holders called to consider the appointment of a Trustee or Trustees in place of the retiring Trustee has appointed a new Trustee and that Trustee has executed a Deed of Trust as hereinafter provided. The appointment of such new Trustee shall take place within 6 weeks from the date of the said notice.
- (d) The Unit Holders may by a 75 per cent majority in writing or in general meeting-
  - (i) remove any Trustee or to appoint an additional Trustee; or
  - (ii) by special resolution to appoint a Trustee in place of any Trustee who dies or retires or is disqualified or removed from office.
- (e) A Trustee shall on retirement take such action as is necessary to vest the Trust Fund or cause it to be vested in any new Trustee or Trustees and shall deliver to such new Trustee all books documents records and other property relating to the Trust Fund and a continuing Trustee shall take such action as is necessary to cause the Title to any assets of the Trust Fund to be amended to include any additional Trustee.
- (f) A new Trustee shall execute a Deed in such form as is approved by the Unit Holders in general meeting whereby such new Trustee shall undertake to the Unit Holders jointly and severally all of the obligations of a Trustee hereunder.
- (g) The costs charges and expenses of and in connection with the retirement and replacement of any Trustee or the appointment of any additional Trustee shall be recouped from the Trust Fund.

## 7. DIRECTORS OF CORPORATE TRUSTEE

- (a) This clause 7 applies to a Trustee which is a body corporate.
- (b) The board of directors of the Trustee shall exercise all the rights powers discretions and authorities of the Trustee under and pursuant to this deed, except as otherwise expressly stated in this deed.
- (c) The Unit Holders in meeting may from time to time appoint Eligible Persons to be directors of the corporate Trustee and the chairman of the meeting at which any such appointment is made shall communicate such appointment to the board of directors of the Trustee.
- (d) Each of the following persons who have not been disqualified from being an Eligible Person as provided in paragraph (e) of this clause shall be an Eligible Person for the purposes of this clause:
  - (i) each Member;
  - (ii) the spouse or de facto spouse of that Member, and
  - (iii) any adult child of that Member.
- (e) A person is disqualified from being an Eligible Person if the person:
  - (i) is or becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - (ii) is or becomes of unsound mind or otherwise lacks legal capacity within the meaning of or under any law applicable to the Territory;
  - (iii) is or becomes disqualified at law from being a director of the Trustee; or
  - (iv) where the appointee is to hold or does hold shares in the Trustee, the appointee fails to execute or to comply with the terms of a deed in a form and terms approved by the Unit Holders whereby the appointee agrees to transfer the appointee's shares in the Trustee to the person nominated by the board of directors of the Trustee in the Trustee in the event that the appointee ceases to be an Eligible Person or ceases to be a director of the Trustee.
- (f) The Unit Holders in meeting may resolve by Special Resolution to remove any director of the Trustee and the chairman of the meeting at which any such nomination is made shall communicate such resolution to the board of directors of the Trustee.
- (g) The Trustee shall use its best endeavours to cause:
  - (i) the appointees, and only the appointees, of the Unit Holders in meeting to be appointed as directors of the Trustee; and
  - (ii) any person who has ceased to be an Eligible Person or who the Unit Holders in meeting have resolved be removed as a director of the trustee to be removed as a director of the Trustee.

## 8. TRUSTEE POWERS

### 8.1 Additional Powers

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

- (a) to acquire by grant of assignment the leasehold interest from Kosciusko Thredbo Pty Limited on Lot 23 Thredbo Village by club or commercial or other lease and for this purpose to raise funds from the issue of units or borrowings from a bank, building society or otherwise;
- (b) to apply and invest all moneys at the 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 shall in his absolute discretion think fit and to the intent that the Trustee shall have the same powers in all respects as he was the absolute owner beneficially entitled including without diminishing the generality of the foregoing the subscription for the takings upon allotment and the purchase of any shares stocks Units in Unit Trusts 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 of the whole or any part or share or interest (including a minority part or share or interest) in any business or partnership and the goodwill and assets thereof and the purchase of any real or personal property wheresoever situated or any part or share or interest therein and notwithstanding that the same may not be income producing or may be of a wasting or speculative nature and to exercise all rights and privileges and perform all duties and obligations appertaining or incidental thereto;
- (c) to make or purchase any such investments for cash or otherwise and upon such terms and conditions as the Trustee shall in the Trustee's absolute discretion think fit, and for that purpose the Trustee may make or purchase any such investments for a sum greater than the amount of the Trust Fund for the time being and the Trustee may agree to pay for any such investments wholly or in part from any future moneys which may come into the Trustee's hands including dividends profits interest or other income paid or payable in respect of any such investments;
- (d) to advance and lend moneys to, and to borrow and raise moneys from and to secure by mortgage or bill hire facility or otherwise howsoever the payment of money to any persons firms companies corporations or governmental municipal bodies and upon such terms with or without security or interest as the Trustee shall deem fit and the Trustee is hereto expressly empowered to join in with any company or natural person executing any mortgage or other document for the purpose of securing the payment of money to the Trustee jointly with any company or natural person or for the purpose of securing the payment of money to the Trustee jointly with any company or natural person or for the purpose of securing the payment of money to any company or natural person;
- (e) to give any guarantee or indemnify for payment of money or the performance of any contract obligation or undertaking by any person firm or company corporation or association to vary or transpose any investments into or for any other or others of any nature whatsoever and to vary the terms of or property comprised in any security;



- (f) to hold use purchase construct demolish maintain repair renovate reconstruct develop improve sell transfer convey surrender let lease exchange take and grant options or rights in alienation mortgage charge pledge recover release or discharge or otherwise deal with any real or personal property and in particular with shares debentures or securities of any company and with or without deferred property or rights of any description or any life, endowment, sinking-fund, 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 and to pay out of the income or capital of the trust fund as the Trustee in his absolute discretion thinks fit all sums payable from time to time for premiums or otherwise for the effecting or maintenance of any policy or policies of insurance (whether owned by the Trustees 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 purposes of this deed be deemed to be a sale thereof;
- (g) 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 in carrying out or performing the trusts hereof which the Trustee may at any time 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 the presents and all moneys which the Trustee may be required to pay as settlement probate estate gift stamp or revenue duties including stamp gift or settlement duties payable in respect of the Trust Fund or on these presents;
- (h) to exercise all rights and privileges and perform all duties and do all such acts matters and things appertaining to any shares stock units in unit trusts or debenture in any corporation for the time being subject to the trusts hereof as the Trustee could do if he was the beneficial owner of the shares stock units in units trusts or debenture or was personally interested or concerned in the corporation and without diminishing the generality of the foregoing 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 in the capital of any corporation and to make any agreement in respect of or in the course of the winding up of the company and for such purpose to deposit surrender or exchange any of the titles thereto and to pay any calls or contributions or other necessary expenses in connection with such shares stock debentures or any title thereto;
- (i) to carry on either alone or in partnership and under such name as the Trustee thinks fit any trade or business whatsoever, to receive and pay money in connection with the carrying on of any such trade or business, and to alter or discontinue any such trade or business from time to time;
- (j) without limiting the generality of paragraph (i), to carry on the business of, and operate and manage, a ski lodge;
- (k) without limiting the generality of paragraph (j), for the purpose of carrying on the business of a ski lodge, to advise capital expenditure budgets for the ski lodge;

(l) also, without limiting the generality of paragraph (j), for the purpose of operating and managing a ski lodge:

- (1) to manage and operate the accommodation at the ski lodge, including without limitation bookings and rates to be charged for the said accommodation and the use of the accommodation at, and the common areas and other facilities of, the ski lodge, and in each case whether by Units Holders, Immediate Family of Unit Holders, guests of Unit Holders or of Immediate Family of Unit Holders, members of the public or otherwise;
- (2) to manage and operate the restaurant and kitchen facilities at the ski lodge (if any);
- (3) to employ or otherwise contract the services of any manager or managers and/or staff at or for the ski lodge;
- (4) to manage and administer the nomination and appointment of Members of Unit Holders; and
- (5) make, update and amend rules for the purpose of operating and managing a ski lodge and manage and administer, including without limitation require compliance by Units Holders, Immediate Family of Unit Holders, guests of Unit Holders or of Immediate Family of Unit Holders, members of the public and otherwise with, such rules as so made, updated and amended,

in each case as the Trustee determines in its absolute discretion but not so as to be inconsistent with the other express provisions of this deed;

- (m) to maintain, repair and make additions and alterations to the Ski Lodge;
- (n) to employ any persons including any Trustee and/or any Unit Holder in connection with any trade or business carried on pursuant to the provisions of this subclause, and in connection with so employing any such persons, determine and pay the remuneration of any person so employed, pay any expenses properly incurred by any person so employed in the course of the person's said employment and establish any superannuation, pension or retirement scheme or arrangement for the benefit of any persons so employed and vary or terminate any such scheme or arrangement;
- (o) to partition or agree to partition or to subdivide or agree to the subdivision of any land or other property which or any interest in which for the time being may be subject to the trusts hereof and pay any moneys by way of equality of partition;
- (p) to establish promote or acquire any company or companies and/or join in the promotion establishment or acquisition of any company or companies;
- (q) to determine whether any real or personal property or any increase or decrease in amount number or value of any property or holdings of property or any receipts or payments from for or in connection with any real or personal property shall be treated as and credited or debited to capital or income and generally to determine all matters as to which doubt difficulty or question may arise under or in relation to the execution of the trusts and powers of this deed 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 Unit Holders and all other parties interested therein and shall not be objected to or questioned on any ground whatsoever;

- (r) to open any account or accounts with any bank, building society or credit union and to operate by and in all usual ways any such account or accounts;
- (s) to give effectual receipts and discharges for any moneys received by or on behalf of the Trustee or otherwise relating to any of the acts matters and things provided for in these presents and to receive property by gift inter vivos or by will or under the provisions of any other trust or trusts or otherwise and either from the settlor or from any other person or persons as additions to the Trust Fund and to hold the same upon the trusts herein set forth and to administer such additions under the provisions hereof;
- (t) to grant options in respect of any assets held subject to the Trusts of this deed to any person firm or company;
- (u) to become a director of any company in which moneys forming part of the Trust fund are invested or to appoint any person to act as director of any such company and to receive the remuneration attached to such office without accounting to the Trustee therefore provided that the Trustee executes all proper declarations of trust for any shares held by him on behalf of the Trust and account to the Trust for all dividends and bonuses and to exercise or concur in exercising all of the powers and discretions contained in this deed or otherwise by law conferred notwithstanding that the Trustee in any personal capacity or as a director or shareholder of any company or otherwise in the mode or result of exercising such power or discretion may benefit directly or indirectly as a result thereof notwithstanding that the Trustee for the time being is a sole Trustee;
- (v) to take such action as the Trustee shall think fit for the adequate protection of any part or parts of the Trust Fund and to take and act upon the opinion (given in writing) of Legal Counsel in relation to the interpretation or effect of these presents or any other documents or statute or as to the administration of the trusts hereof without being liable to any of the persons beneficially interested in respect of any act done by the Trustee in accordance with such opinion provided that nothing in this provisions shall prohibit or impede the Trustee from applying to the Court for directions or for a declaration if he shall think fit or prohibit any of the Unit Holders from so doing;
- (w) to remunerate any Unit Holder who is at any time in the employ of the Trustee to the same extent and in the same manner as if the Unit Holder so employed were not a Unit Holder hereunder and all bona fide payments made by the Trustee to any such Unit Holder in form of remuneration for services rendered or to be rendered or on account of expenses in connection with such employment shall not be or be deemed to be payment to the Unit Holder of or on account of his or her share in the Trust Fund or the income thereof;
- (x) to permit any asset of the Trust Fund to be held or registered in the name of any nominee of the Trustee and to deposit securities to the deeds and other documents belonging to or related to the Trust Fund with any bank;
- (y) to manage and administer the annual subscriptions levied on Unit Holders and any other amounts payable by the Unit Holders to the Trustee; and
- (z) to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustees by these presents.

## 8.2 No Joining of Trust Funds

Except as otherwise expressly stated in this deed, nothing contained in this deed shall require or cause the Trustee to join the Trust Fund with any other trust fund so as to cause any two or more trust funds to become one trust fund, and the Trustee shall keep the Trust Fund entirely separate and distinct from any other trust fund.

## 9. INCOME OF THE TRUST FUND

- (a) The Trustee shall collect receive and get in all dividends interest rents and other income from the Investments.
- (b) The Trustee shall pay from the gross income of the Trust Fund all costs disbursements commissions fees taxes (including land tax and income tax) management charges and other proper outgoings incurred in respect of the Investments and the administration of the Trust Fund, including without limitation the costs of proper operation, administration, maintenance and repair of the Ski Lodge and any donations, including without limitation a donation to the Thredbo Ski Patrol, properly determined by the Trustee or resolved by the Unit Holders to be made by the Trustee.
- (c) Subject to any special rights or restrictions provided in the Second Schedule in relation to Units of any class, in each Accounting Period until the Vesting Day or the date of termination of the Trust whichever first occurs, in its absolute discretion the Trustee may:
  - (i) pay, apply or set aside the net income of the Trust Fund for that Accounting Period to or for the benefit of the Units Holders in proportion to the number of Units held by each Unit Holder at the end of the Accounting Period; or
  - (ii) subject to any law in force at the time, accumulate all or any part of the net income in accordance with subclause 9(d).
- (d) (i) Where the Trustee exercises its discretion under subclause 9(c)(ii) to accumulate all or any part of the net income of the Trust Fund in an Accounting Period, in its absolute discretion the Trustee may:
  - (A) apply such income so accumulated to recoup past losses of capital and/or income of the Trust Fund; or
  - (B) deal with such income so accumulated as an accretion to the Trust Fund.
- (ii) Notwithstanding clause 9(d)(i), the Trustee may pay or apply the whole or any part of those accumulations as if they were income of the Trust Fund for the Accounting Period.
- (e) The Trustee may at any time during an Accounting Period make one or more interim distributions of income for the Accounting Period, each such interim distribution to be made among the Unit Holders in proportion to the number of Units of which they are respectively registered at the time of such distribution.

- (f) The Trustee may pay apply set aside or distribute any amount to or for the benefit of any Unit Holder by:
  - (i) placing such amount to the credit of the Unit Holder in the books of the Trust Fund; or
  - (ii) by drawing a cheque in respect of such amount made payable to or for the credit or benefit of the Unit Holder; or
  - (iii) by paying same in cash to or for the benefit of the Unit Holder; or
  - (iv) by issuing additional Units to the Unit Holder as provided in clause 3.3.
- (g) If the aggregate amounts of interim distributions of income made by the Trustee during an Accounting Period pursuant to paragraph (e) exceed the net income of the Trust Fund for the Accounting Period the amount of the excess shall first be deducted from the amounts which the Trustee has determined to accumulate in respect of the Accounting Period pursuant to paragraph (d) and second should any excess remain from the capital of the Trust Fund, and for this purpose the Trustee shall be deemed to have applied the capital of the Trust Fund to pay the said remaining excess and the value of the said capital shall be thereupon adjusted accordingly.
- (h) The Trustee shall hold so much of the net income of the Trust Fund for each Accounting Period as has not been paid applied set aside or distributed at or prior to the end of such Accounting Period pursuant to the foregoing provisions of this clause in trust for the Holders of Units in proportion to the number of Units of which they are respectively registered as Unit Holders on the last day of such Accounting Period.
- (i) The Trustee may satisfy any amount payable to a Unit Holder who is an infant by paying the same to a parent or guardian of such infant and the Trustee shall not be bound to see to the application thereof by such parent or guardian.
- (j) All income payable in accordance with the provisions of this deed to Unit Holders shall be payable to them separately and no income received by the Trustee shall be received or be construed as received by or on behalf of the Unit Holders jointly or severally.

## **10. CAPITAL OF THE TRUST FUND**

The Trustee may with the sanction of a Special Resolution at any time or times and from time to time before the date of termination of the Trust out of the capital of the Trust Fund pay any sum or sums to Unit Holders in proportion to the number of Units registered in their respective names as at the date of such Resolution for their own use and benefit in addition to any income to which the said Unit Holders may from time to time be entitled.

## **11. ACCOUNTS AND AUDIT**

- (a) The Trustee shall keep an accurate record of all receipts and expenditures in account of the Trust Fund.
- (b) Promptly after the close of each Accounting Period, the Trustee shall prepare a written accounting report of the Trust Fund (prepared in accordance with normally accepted accounting procedures) for such Accounting Period consisting of a balance sheet and statement of income and expenditure and a list of assets held at the close of such Accounting Period, and a copy thereof shall be furnished to the Unit Holders by the earlier to occur of the following dates, namely the date fourteen (14) days before the Annual General Meeting next following the close of the said Accounting Period and the date being the Accounting Period Balance Date next following the close of the said Accounting Period. The Trustee may furnish to a Unit Holder a copy of any such written accounting report in the same manner in which the Trustee may give a notice to the Unit Holder in accordance with clause 15(a) or by placing a copy of the said written accounting report on the Ski Lodge Web Site.
- (c) The accounting report shall include the names and address of all persons or firms having custody of the assets of the Trust Fund.
- (d) If the Unit Holders at the annual general meeting nominate an auditor, the Trustees shall appoint that auditor and if the Unit Holders do not make a nomination the Trustee, in its absolute discretion may appoint an auditor to examine and ascertain the correctness of the accounts of the Trust Fund and of every company a majority of shares in which are owned as part of the Trust Fund and report thereon to the Trustees and to the Unit Holders.

## **12. DURATION AND TERMINATION OF THE TRUST**

- (a) Subject to paragraph (b), the Trust shall commence on the date of this deed and terminate on the Vesting Day unless it has been terminated prior to the Vesting Day of this deed under the other provisions of this deed.
- (b)
  - (i) On a date to be reasonably selected by the Trustee being a date not less than six months prior to the Vesting Day, the Trustee shall convene a meeting of Unit Holders to determine whether the Unit Holders resolve by Special Resolution to implement any plan for continuation of the Trust or for its conversion into an alternative type of trust or for the sale and realisation of the Trust Fund in any manner other than as herein provided.
  - (ii) Any such plan so resolved to be implemented shall not seek to extend the Vesting Day.
  - (iii) The Trustee shall on the Vesting Day deal with all or any part of the Trust Fund in accordance with any such plan so resolved to be implemented.

- (c) The Trust may be terminated at any time before the Vesting Day if so resolved by a Special Resolution of the Unit Holders.
- (d) Upon the termination of the Trust but subject to any Plan hereinbefore referred to, the Trustee shall proceed as follows:
  - (i) The Trustee shall unless otherwise authorised by a Special Resolution of the Unit Holders sell by public auction to the highest bidder all property and investments constituting the Trust Fund. Any Unit Holder may bid at the auction.
  - (ii) Subject to any special rights or restrictions provided in the second schedule in relation to the Units of any Class the Trustee shall from time to time and as soon as is practicable distribute the cash available in the Trust Fund to Unit Holders proportionally to their holdings until the assets of the Trust Fund have been completely turned into cash and distributed to the Unit Holders PROVIDED ALWAYS that the Trustee shall retain from such cash a sufficient amount to fully provide for all costs disbursements commissions brokerage fees expenses claims and advertising costs and demands incurred or expected to be incurred by the Trustee in the liquidation of the Trust.
  - (iii) Each distribution to a Unit Holder under sub-paragraph (ii) shall be made only to a Unit Holder on production of the relevant Unit Certificates with a notice of the payment made, and for the final such distribution the relevant Unit Certificates shall be surrendered to the Trustee.

### **13. APPLICATION OF SURPLUS CASH**

- (a) Notwithstanding anything herein contained, the Trustee may at any time and from time to time before termination of the Trust, with the prior unanimous consent of all Unit Holders, apply any cash for the time being surplus to the immediate requirements of the Trust Fund, as reasonably determined by the Trustee, in satisfaction of any interest in the Trust Fund conferred by the holding of a specified number of Units of any class.
- (b) Subject to the terms of any such consent, each such Unit shall be satisfied by payment of such sum for each such Unit as in the reasonable opinion of the Trustee represents the fair market value thereof.
- (c) Subject to the terms of any such consent, any sum applied in satisfaction of Units of any class shall be paid to the Holders of Units of that class in proportion to the number of such Units held by them respectively.
- (d) The Trustee shall whenever practicable give to each Unit Holder not less than one month's notice of each impending distribution and of the anticipated amount thereof.

#### 14. VARIATION OF TRUSTS

The Trustee may:

- (a) at any time and from time to time by resolution or by supplemental deed revoke add to or vary all or any or any part of the trusts declared or contained in this deed or any other provisions of this deed; and
- (b) by the same or any other resolution or deed declare any new or other trusts or powers concerning the Trust Fund or any part or parts thereof,

but so that the Vesting Day is not extended and so that such new or other trust powers discretions alterations or variations:

- (c) shall not be in favour of or for the benefit or result in any benefit to the settlor or Trustee or any of them but shall otherwise be for the benefit of all or one or more of the Unit Holders or the next-of-kin of all or any of the Unit Holders; and
- (d) shall not affect the beneficial entitlement to any amount set aside for any Unit Holder prior to the variation alteration or addition,

PROVIDED THAT no such variation alteration or addition shall take effect unless and until it has been previously approved, or has been ratified, by a Special Resolution of the Unit Holders.

#### 15. NOTICES

- (a) Any notice is taken to be given by the Trustee to any Unit Holder:
  - (i) if it is given to the Unit Holder in person, on the day it is given; or
  - (ii) if it is sent by post, provided the notice is properly addressed, prepaid and posted under cover of a letter containing the notice, 3 days after it is posted; or
  - (iii) if it is sent by means of an electronic communication, on the business day after it is sent; or
  - (iv) if it is sent by giving the Unit Holder (by means of an electronic communication or otherwise) sufficient information to allow the recipient to access the document electronically, on the business day after the day on which the information is sent to the Unit Holder.
- (b) A notice, a copy of which the Trustee purports to transmit by electronic communication to a Unit Holder in accordance with paragraph (a)(iii) will be deemed duly served on the Unit Holder by the Trustee, notwithstanding that the Trustee may subsequently receive an electronic communication at the Trustee's electronic communication address for the time being, to the effect that the transmission of the Trustee's electronic communication to the Unit Holder has failed ("**Failed Message**"), unless the Trustee so receives the Failed Message before the business day after the electronic communication is sent.



- (c) A notice may be given by the Trustee to the joint holders of a Unit by giving the Notice to the Unit Holder first named in the register of the Unit Holders in respect of the Unit.
- (d) A Notice may be given by the Trustee to the persons entitled to a Unit in consequence of the death, mental incapacity, liquidation or bankruptcy of a Unit Holder by sending it through the post in a prepaid letter addressed to them by name or by the title or representative of the deceased, incapable person or liquidator or assignee of the bankrupt or by any like description at the address (if any) within Australia supplied for the purpose by the persons claiming to be entitled or until such an address has been supplied by giving the notice in any manner in which the same might have been given if the death, incapacity, liquidation or bankruptcy had not occurred.
- (e) Notice of every meeting of Unit Holders shall be given in accordance with clause 15(a) to:
  - (i) every Unit Holder except those Unit Holders who (having no registered address within Australia) have not supplied to the Trustee as address within Australia for giving of notices to them.
  - (ii) every person entitled to a Unit in consequence of the death, incapacity liquidation or bankruptcy would be entitled to receive notice of the meeting.
  - (iii) the auditor (if any) for the time being of the Trust Fund.
- (f) The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at the meeting.
- (g) The signature to any notice to be given by the Trustee may be written or printed or stamped and the signature may be that of one or more of the directors or secretary of the Trustee.

## **16. GENERAL**

### **16.1 Governing Law**

This agreement is governed by the law in force in the Territory.

### **16.2 Submission to Jurisdiction**

The parties submit to the non-exclusive jurisdiction of the courts of the Territory and any courts that may hear appeals from those courts in respect of any proceedings in connection with this deed.

### **16.3 Waiver**

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right given to that party under this deed does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right under this deed. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

**16.4 Severability**

Any provision in this deed which is invalid or unenforceable in any jurisdiction will, for the purposes of that jurisdiction, be read down, if possible, so as to be valid and enforceable, or otherwise severed to the extent of the invalidity or unenforceability without affecting the validity or enforceability of the remaining provisions of this deed or of the first-mentioned provision in any other jurisdiction.

Executed as a deed.

**FIRST SCHEDULE**UNIT HOLDERSNAMEADDRESSNO.

**SECOND SCHEDULE**

(Constituted by Trust Deed dated > day of

THIS IS TO CERTIFY that > of > is the registered holder of Units in the above-named Trust subject to the provision of the Trust deed constituting the said Trust.

Details of such Units are set out below and were entered in the Register of Unit Holders on the > day of >

The Rights of the class of Units other than Ordinary Units are:

Register Folio	Number (words)	Figures	Class	Certificate Number

Signed for and on behalf of the  
Trustees of the said Trust by >

Trustees/Directors of Corporate  
Trustee

This Certificate must be delivered to the Trustees on Application to >

**SIGNED, SEALED AND DELIVERED** by )  
**RUDI HENDRICK VANDENBERG** in the )  
presence of: )

.....

.....  
Witness  
Name (printed):

**THE COMMON SEAL** of **BOALI** )  
**HOLDINGS PTY LTD** was hereunto affixed )  
pursuant to a resolution of the Board of )  
Directors in the presence of: )

.....

.....  
Secretary  
Name (printed):

Director  
Name (printed):