

7th November 2011

Dear Jonathan

Thank you for ordering a document from **LegalEDocs**, a pre-eminent provider of Australian electronic form trust documents.

This document contains the following components:

1. Section One

Section one contains instructions for establishing the trust

2. Section Two

Section Two contains the following documents:

- i. Consent to Act as Trustee document
- ii. Trust deed
- iii. Schedule for the trust
- iv. Annexure to the trust

The trust is not formed until the instructions for establishing the trust have been completed.

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Yours sincerely

The Team at LegalEDocs

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SECTION ONE

1. Instructions for Establishing the Trust

INSTRUCTIONS FOR ESTABLISHING A DISCRETIONARY TRUST

In order for the attached trust to be properly formed, the following instructions should be implemented.

1. Printing of documents

The following documents should be printed:

- Consent to act;
- Trust deed;
- Schedule; and
- Annexure.

These documents appear in section two of this document.

2. Consent to act

Before the trust deed is signed, the trustee(s) must consent to act. To do this, the document titled 'Consent to Act' should be signed by a duly appointed director(s) of the trustee company. The signed consent document should be retained with the original documents of the trust.

In order for the consent to act form to be signed, a meeting of the directors of the trustee company must be held. That meeting must accord with the constitution of that company.

3. Signing of the Trust Deed.

The trust deed should be signed by an appropriate officer of the company.

4. Settlement of Trust

The trustee should receive the settlement amount from the settlor.

5. Australian Business Number

The trustee should apply for an Australian Business Number. This can be done online with the Australian Taxation Office (www.abr.business.gov.au).

6. Stamping

Trust deeds must be stamped by and a duty paid to the relevant State or Territory Government revenue office. The contact points for the relevant state or territory government office are as follows:

State or Territory	Postal Address	Telephone	Web Address
Australian Capital Territory	GPO Box 293 Civic Square ACT 2608	(02) 6207 0028	www.revenue.act.gov.au
New South Wales	GPO Box 4042 Sydney NSW 2001	(02) 9689 6200	www.osr.nsw.gov.au
Queensland	GPO Box 2593 Brisbane Qld 4001	1300 300 734	www.osr.qld.gov.au
South Australia	GPO Box 1353 Adelaide SA 5001	1800 637 778	www.revenuesa.sa.gov.au
Tasmania	GPO Box 1374 Hobart Tas 7001	1800 001 388	www.treasury.tas.gov.au
Victoria	GPO Box 1641N Melbourne Vic 3001	13 21 61	www.sro.vic.gov.au
Western Australia	GPO Box T1600 Perth WA 6845	(08) 9262 1400	www.osr.wa.gov.au

The signed trust deed must be sent to the relevant state or territory revenue office, along with the required stamp duty in that state or territory.

7. Storage of Signed Documents

The trustee should ensure that signed copies of the trust deed and other documents are stored along with all other records required to be kept for the trust.

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SECTION TWO

1. A Consent to Act Document;
2. The Trust Deed;
3. The Schedule to the Trust Deed;
4. The Annexure to the Trust Deed.

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CONSENT TO ACT

Sample 4 Trust
22 Sample Road
Melbourne
VIC, 3000

Dear Sir/Madam,

CONSENT TO ACT AS TRUSTEE

I hereby consent to act as Trustee of the trust and provide the following information:

Trustee: Jane Smith
Address: 21 Church Street
Glen Iris
VIC, 3146

Yours faithfully

Jane Smith



SIGN HERE

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CONSENT TO ACT

Sample 4 Trust
22 Sample Road
Melbourne
VIC, 3000

Dear Sir/Madam,

CONSENT TO ACT AS TRUSTEE

I hereby consent to act as Trustee of the trust and provide the following information:

Trustee: Greg Smith
Address: 21 Church Street
Glen Iris
VIC, 3146

Yours faithfully

Greg Smith



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Sample 4 Trust

Prepared for:

Jonathan Hayward

Xx Xx

ACT xx

xx xx

All legal documents prepared by:

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed and in any documents created in connection with this Deed:

- 1.1.1 "Annexure" means the annexure created under clause 18;
- 1.1.2 "Act" means the Income Tax Assessment Act 1936 as amended from time to time;
- 1.1.3 Beneficiary means a Discretionary Beneficiary or a Unitholder;
- 1.1.4 "Unitholders' Class of Discretionary Beneficiaries" means the Discretionary Beneficiaries who are related to a Unitholder in the manner described in sub-clauses 12.2, 12.3, or 12.4;
- 1.1.5 "Deed" means this Deed as amended and includes the Schedule and the Annexure;
- 1.1.6 "Discretionary Beneficiary" has the meaning given in sub-clause 12.2, 12.3 and 12.4;
- 1.1.7 "Financial Year" means the year ending on the 30 June each year or any other period nominated in writing by the Trustee;
- 1.1.8 "First Offer" has the meaning given in clause 8;
- 1.1.9 "Fund" means:
 - 1.1.9.1 the Initial Sum, plus
 - 1.1.9.2 any other assets which becomes subject to the provisions of this Deed, less
 - 1.1.9.3 any liabilities of the Trust;
- 1.1.10 "Fund Value" has the meaning given in clause 7;
- 1.1.11 "Initial Sum" means the amount specified in the Schedule;
- 1.1.12 "Initial Unitholder" means the person nominated as the Initial Unitholder in the Schedule;
- 1.1.13 "Net Income" has the meaning given to that phrase under the law regarding the taxation of trusts set out in the Act;
- 1.1.14 "Nominated Event" has the meaning given in clause 9;
- 1.1.15 "person" includes a company, corporation, firm or body of persons recognised as a person under the Law;
- 1.1.16 "Related Unitholders' Class of Discretionary Beneficiaries" means a class of general beneficiaries which is related to a Unitholder under sub-clauses 12.2, 12.3 and 12.4;
- 1.1.17 "Related Unitholder" means a Unitholder included in a Related Unitholders' Class of Discretionary Beneficiaries;
- 1.1.18 "Required Percentage of Units" means the amount stated in the

Schedule;

- 1.1.19 "Schedule" means the schedule included at the end of this Deed and which forms part of this Deed;
- 1.1.20 "Second Offer" has the meaning given in clause 8;
- 1.1.21 "Special Conditions" means the special conditions, if any, specified in the Schedule;
- 1.1.22 "Spouse" includes a person who lives with a person on a bona fide domestic basis as the husband, wife or partner of the person;
- 1.1.23 "Termination Date" has the meaning given in clause 23;
- 1.1.24 "Third Offer" has the meaning given in clause 8;
- 1.1.25 "Transferee Unitholder" has the meaning given in clause 8;
- 1.1.26 "Trust" means the trust created by this Deed and which shall be known by the name specified in the Schedule;
- 1.1.27 "Trustee" means the person specified as the Trustee in the Schedule and other any person or persons nominated as a Trustee this Deed;
- 1.1.28 "Unit" means an undivided part of the Fund held by a Unitholder;
- 1.1.29 "Unitholder" means the person registered under this Deed as a holder or co-holder of a Unit;
- 1.1.30 "Unit Price" has the meaning given sub-clause 7.3.1;
- 1.1.40 "Unitholders' Proportions" means the proportion that the Units held by the Unitholder at the relevant time bears to the total Units on issue at that time; and
- 1.1.50 "Vendor Unitholder" has the meaning given in clause 8.

1.2 **Gender and number**

- 1.2.1 Words meaning one gender shall include the other gender.
- 1.2.2 Words meaning the singular shall include the plural.

1.3 **Statutory enactments**

- 1.3.1 A reference to a statutory enactment shall be a reference to such enactment as amended from time to time.

1.4 **Headings**

- 1.4.1 Headings shall not be considered when interpreting this Deed.

1.5 **Governing law**

- 1.5.1 The governing law shall be the law of the state specified in the Schedule.

2. ESTABLISHMENT OF TRUST

2.1 Initial Sum

2.1.1 The Trustee acknowledges receipt of the Initial Sum.

2.1.2 The Initial Sum shall be divided into Units as stated in the Schedule.

2.2 The Fund

The Trustee shall hold the Fund on trust for the Beneficiaries under the provisions of this Deed.

3. BENEFICIAL INTEREST OF UNIT HOLDERS

3.1 No entitlement to any part of the Fund

A Beneficiary shall not be entitled to any particular asset or part thereof included in the Fund.

3.2 Units of same class of equal value

All Units of the same class shall be of equal value unless otherwise specified in the Deed or agreed to in writing by each Unitholder.

4. CREATION AND CLASSIFICATION OF UNITS

4.1 Additional Units

The Trustee may, with the written consent of the Unitholder, issue additional Units to such persons as it thinks fit.

4.2 Special Conditions Units

The Trustee may, with the written consent of each Unitholder, issue Units on such Special Conditions as the Trustee may determine.

4.3 Bound by Deed

The Trustee shall not issue Units to or permit a transfer of Units to a person unless that person agrees in writing to be bound by this Deed.

4.4 Refusal to register

The Trustee may not refuse to register a transfer of Units from any person if the terms of this deed have been complied with.

5. UNITHOLDERS' REGISTER

5.1 Details to be recorded

5.1.1 The Trustee shall maintain a register of Unitholders ("the Register").

5.1.2 The Register shall record the names and addresses of Unit holders, the total number of Units and the number of each Unit held by each Unitholder, any special terms affecting the Units, the date of issue, acquisition, disposal or redemption of each Unit and any other details the Trustee considers appropriate.

5.1.3 No transfer of Units shall be effective until the Trustee makes an

appropriate entry to record the transfer in the Register.

5.2 Identity of unitholder

- 5.2.1 The person shown in the Register as the Unitholder in relation to a Unit shall be the only person recognised by the Trustee as the Unitholder in relation to that Unit for the purposes of this Deed.
- 5.2.2 A Unitholder shall be recognised by the Trustee as holding a Unit on trust.
- 5.2.3 The Trustee shall not be required by a Unitholder or any other person to recognise any beneficial, contingent, future or partial interest in any Unit other than for the person who is shown as Unitholder in the Register.
- 5.2.4 The Trustee may note in the Register that a Unit is held by the Unitholder on trust. The Trustee shall not be affected with notice of any trust noted in the register and this note shall not create a liability or duty of care against the Trustee in favour of any other person.

6. UNITHOLDERS' CERTIFICATES

6.1 Issue of Certificates

- 6.1.1 The Trustee shall issue a certificate to each Unitholder to record the details of the Units held by each Unitholder.
- 6.1.2 Each certificate shall be in such form as the Trustee may determine
- 6.1.3 Each certificate shall be numbered, dated and cross-referenced to the Register as the Trustee deems appropriate.
- 6.1.4 The Unitholders shall return the certificate to the Trustee on request to permit any alteration to the certificate that may be required.
- 6.1.5 The certificate remains the property of the Trustee at all times.

7. REDEMPTION OF UNITS

7.1 Redemption at the request of a Unitholder

- 7.1.1 A Unitholder may request the Trustee to redeem a Unit.
- 7.1.2 The request shall be in writing.
- 7.1.3 On receipt of a request the Trustee may redeem the Unit and serve a notice of redemption on the Unitholder.
- 7.1.4 On redemption the Unitholder shall be entitled to receive the Unit Price from the Trustee for each Unit redeemed.

7.2 Redemption without the request of a Unitholder

- 7.2.1 The Trustee may redeem a Unit other than under sub-clause 7.1 by giving one month's notice in writing to the Unitholder of its intention to redeem the Unit.
- 7.2.2 The notice period referred to in sub-clause 7.2.1 may be varied by agreement in writing between the Trustee and the Unitholder.

7.2.3 On redemption the Unitholder shall be entitled to receive the Unit Price from the Trustee for each Unit redeemed.

7.3 Calculation of Unit Price

7.3.1 Unit Price shall be equal to the value the Fund ("Fund Value") divided by the number of Units on issue at the date of the valuation adjusted for any special terms or conditions attached to the Units being redeemed.

7.3.2 In calculating the Fund Value the Trustee shall:

7.3.2.1 apply generally accepted accounting principles and valuation principles, taking the advice of accountants and valuers as required;

7.3.2.3 consider the expected cost of realising an asset or paying out a liability to allow the Unit Price to be paid to the Unitholder;

7.3.2.4 consider the proportionate interest of the Unitholder in the net income of the Trust from the start of the most recent Financial Year to the date of redemption of the Units. The payment of this part of the Unit Price may be deferred until three month's after the end of the Financial Year should the Trustee believe this is necessary to allow time to accurately calculate such amount.

7.4 Effect of redemption

Upon:

7.4.1. service of a notice of redemption under sub-clause 7.1;

7.4.2 service of a notice under sub-clause 7.2 where the Unitholder waives its right to one month's notice; or

7.4.3 one month's notice in sub-clause 7.2 where the Unitholder does not waive the right to one month's notice;

the Units referred to in the notice shall be cancelled and the Trustee shall make appropriate entries in the Register to record the cancellation

7.5 Payment of Unit Price

The Trustee shall pay the Unit Price to the Unitholder within one month of the Redemption of the Unit or as otherwise may be agreed in writing by the Trustee and the Unitholder or required by sub-clause 7.3.2.4.

8. TRANSFER OF UNITS

8.1 Transfers to Related Persons

A Unit may be transferred at any time by a Unitholder to a Person who is a member of that Unitholder's Class of Discretionary Beneficiaries and who is controlled by the Unitholder without the consent of the Trustee or any other Unitholder.

8.2 Transfers to persons other than Related Persons

A Unit may not be transferred other than sub-clause 8.1 unless the procedure set out in sub-clause 8.3 has been followed.

8.3 Procedure for transfers to persons other than Related Persons

8.3.1 A Unitholder proposing to transfer Units to a person other than a Related Person (the "Vendor Unitholder") shall give a Transfer Notice to the Trustee. The Transfer Notice shall be irrevocable and shall appoint the Trustee as the agent of the Vendor Unitholder for the sale of the Units at the Unit Price.

8.3.2 Within fourteen days of receiving a Transfer Notice the Trustee shall offer to sell the Units specified in the Transfer Notice to the Unitholders other than the Vendor Unitholder ("the Offeree Unitholders") at the Unit Price. This offer shall be in accordance with the Unitholders' Proportions at the date of the offer and shall be known as "the First Offer". The First Offer must remain open for fourteen days and may only be accepted in writing.

8.3.3 Upon an acceptance of a First Offer the Trustee shall record the transfer of Units and other appropriate entries in the Register, issue fresh Unit Certificates and do all other things necessary to record the sale.

8.3.4 On the lapse of a First Offer the Trustee shall offer to transfer the Units at the Unit Price to any Offeree Unitholder who accepted a First Offer (a "Second Offer"). If there be more than one such Unitholder the Units will be offered to them in proportion to the number of Units acquired by each of them under the First Offer.

8.3.5 On acceptance of a Second Offer the Trustee shall record the transfer of Units and other appropriate entries in the Register, issue fresh Unit Certificates and do all other things necessary to record the sale.

8.3.6 On the lapse of a Second Offer the Trustee may make a further offer (a "Third Offer") and the Third Offer shall be deemed to be a Second Offer for the purpose of the process set out in the preceding sub-clauses.

8.4 Offers not accepted

8.4.1 If the Offeree Unitholders do not accept an offer under sub-clause 8.3 the Vendor Unitholder may sell the Units to any Person at any price.

8.4.2 On being given notice of such a sale the Trustee shall record the transfer of Units and other appropriate entries in the Register, issue fresh Unit Certificates and do all other things necessary to record the transfer.

8.5 Form of Transfer

A transfer of Units may be effected by a written instrument of transfer in such form as determined by the Trustee in writing from time to time.

8.6 Execution of transfer

8.6.1 For the purposes of this sub-clause a person accepting a transfer of Units from a Unitholder shall be called a "Transferee Unitholder".

8.6.2 The Transferee Unitholder shall be responsible for ensuring all documents to record the transfer of Units are properly completed and provided to the Trustee. The Transferee Unitholder shall be responsible for all costs including stamp duty on the transfer of Units.

8.6.3 The Trustee may not refuse to register any transfer of Units at any time if the provisions of this Deed have been complied with.

9. TRANSMISSION OF UNITS

9.1 Death of Unitholder

On the death of a Unitholder, the legal personal representative of the deceased Unitholder shall be the only person recognised by the Trustee as having any title to or interest in the Units held by the deceased Unitholder.

9.2 Bankruptcy or liquidation of a Unitholder

9.2.1 A person becoming entitled to a Unit on the bankruptcy or liquidation of a unit holder (a "Nominated Event") may, subject to sub-clause 9.2.2 nominate himself or some other person to be the new Unitholder.

9.2.2 Notwithstanding any other provision in this Deed, the Trustee may refuse to register a transfer of Units under sub-clause 9.2.1 and may deem the Nominated Event to be a giving of a Transfer Notice under clause 8.

10. NET INCOME OF THE FUND

10.1 Distribution of Net Income

The Net Income of the Trust for a Financial Year may be allocated by the Trustee under a written resolution of the Trustee on or prior to the last day of that Financial Year as follows:

10.1.1 as reserves to meet any contingencies, provide for repairs or maintenance, or for depreciation or for any other purpose;

10.1.2 as reserves of accumulated income;

10.1.3 to each Unitholders' Class of Discretionary Beneficiaries in accordance with the Unitholder's Proportions and, within each Unitholders' Class of Discretionary Beneficiaries, to such Discretionary Beneficiaries as the Trustee sees fit; or

10.1.4 as otherwise as the Trustee may determine in writing subject to the written consent of each unitholder.

10.2 Different types of income, tax credits and tax rebates

10.2.1 The Trustee may separately account for different types of income, tax credits and tax rebates.

10.2.2 The Trustee may resolve in writing on or prior to the end of the Financial Year to distribute such amounts to the Discretionary Beneficiaries in each Unitholders' Class of Discretionary Beneficiaries as it sees fit. Such amounts need not be distributed proportionately to the distribution of Net Income under sub-clause 10.1.3.

10.2.3 If the Trustee fails to make a resolution under sub-clause 10.2.2 or if the resolution is not effective at law the amounts shall be distributed proportionately to the distribution of Net Income under sub-clause 10.1.3.

10.3 **Default Distributions**

If the Trustee fails to allocate Net Income for a Financial Year under sub-clause 10.1 or fails to allocate any different type of income, tax credit or tax rebate under sub-clause 10.2, or if any such allocation is not effective at law, the Net Income, type of income, tax credit or tax rebate, as the case may be, shall be deemed to be allocated to the Unitholders in accordance with the Unitholders' Proportions at the end of the Financial Year.

11. **CAPITAL OF THE FUND**

11.1 **Application of capital of the Fund**

Any amounts which are deemed by the Trustee to be capital shall not be available for distribution as Net Income. Such amounts shall be added to and held as capital and shall be applied under the provisions of this Deed.

11.2 **Distribution of capital prior to Termination Date**

The Trustee may determine in writing that any part of the capital of the Fund may be distributed to a Unitholder or a Unitholders' Class of Discretionary Beneficiaries. This distribution shall be in accordance with any special rights attached to any Units. The distribution shall be to each Unitholders' Class of Discretionary Beneficiaries in accordance with the Unitholder's Proportions and, within each Unitholders' Class of Discretionary Beneficiaries, to such Discretionary Beneficiaries as the Trustee sees fit.

11.3 **Default capital distribution**

If an allocation of capital under sub-clause 11.2 is not effective at law, the amount of the capital shall be deemed to be allocated to the Unitholders in accordance with the Unitholders' Proportions at the end of the Financial Year.

12. **DISCRETIONARY BENEFICIARIES**

12.1 **Classes of Discretionary Beneficiaries**

12.1.1 For each Unitholder there is a Unitholders' Class of Discretionary Beneficiaries.

12.1.2 A Unitholders' Class of Discretionary Beneficiaries is created when a person becomes a Unitholder and all persons in that class become Discretionary Beneficiaries.

12.1.3 A Unitholders' Class of Discretionary Beneficiaries terminates when a person ceases to be a Unitholder and all Discretionary Beneficiaries in that Unitholders' Class of Discretionary Beneficiaries cease to be Discretionary Beneficiaries.

12.2 **Natural person Unitholder**

Where a Unitholder is a natural person and does not act as a trustee of a trust the Unitholders' Class of Discretionary Beneficiaries shall be:

12.2.1 the spouse of the Unitholder;

- 12.2.2 a parent of the Unitholder;
- 12.2.3 child or grandchild of the Unitholder born;
- 12.2.4 any private company incorporated in Australia, of which the Unitholder or a person described in sub-clauses 12.2.1, 12.2.2. or 12.2.3. is a director or a shareholder; and
- 12.2.5 the trustee of any trust of which the Unitholder or a person described in sub-clauses 12.2.1, 12.2.2 or 12.2.3 is a beneficiary or discretionary object.

12.3 **Company Unitholder**

Where a Unitholder is a corporation (not acting as a trustee), the Unitholders' Class of Discretionary Beneficiaries shall be:

- 12.3.1 any director or shareholder of the corporation;
- 12.3.2 the spouse of any person described in clause 12.3.1;
- 12.3.3 any child or grandchild or parent of any person described in sub-clauses 12.3.1 or 12.3.2;
- 12.3.4 any private company incorporated in Australia of which a person described in sub-clauses 12.3.1, 12.3.2 or 12.3.3 is a director or a shareholder;
- 12.3.5 the trustee of any trust of which any persons described in sub-clauses 12.3.1, 12.3.2, 12.3.3 or 12.3.4 is a beneficiary or a discretionary object; but
- 12.3.6 does not include the Trustee.

12.4 **Trustee Unitholder**

Where a Unitholder acts as a trustee of a trust, the Unitholders' Class of Discretionary Beneficiaries shall be:

- 12.4.1 each beneficiary or discretionary object of the trust of which the Unitholder is trustee;
- 12.4.2 the spouse of any person described in clause 12.4.1;
- 12.4.3 any child or grandchild or parent of any person described in sub-clauses 12.4.1 or 12.4.2;
- 12.4.4 any private company in which a person described in sub-clauses 12.4.1, 12.4.2 or 12.4.3 is a director or a shareholder;
- 12.4.5 the trustee of any trust, whether now existing or hereafter created of which any person described in sub-clauses 12.4.1, 12.4.2, 12.4.3 or 12.4.4 is a beneficiary or a discretionary object.

13. PAYMENTS TO BENEFICIARIES

13.1 Means of payment

A requirement to distribute, pay, apply or set aside any amount of Net Income to or for a Beneficiary may be satisfied by:

13.1.1 by placing such amount to the credit of the Beneficiary in the Trust's accounts;

13.1.2 by drawing a cheque in respect of such amount made payable to or for the credit or benefit of the Beneficiary;

13.1.3 by paying the same in cash to or for the benefit of the Beneficiary;

13.1.4 if the Trustee thinks fit, by transferring any of the investments of the Fund in specie to the Beneficiary on receiving in cash the difference between the amount to which the Beneficiary is entitled and the value of such investment at the valuation made by a valuer appointed by the Trustee for that purpose;

13.1.5 if the Trustee thinks fit, by issuing Units to Unitholders entitled to such amount in full discharge of the amount due; and or

13.1.6 by such other means as the Trustee may determine.

13.2 Cheque

Any monies payable by the Trustee to a Unitholder or a member of a Unitholders' Class of Discretionary Beneficiaries may be sent through the post to the address shown on the Register for the Unitholder.

13.3 Payment to co-Unitholders

The Trustee may determine that any share of Net Income, capital or any tax credit or tax rebate available for distribution to a minor or a person under a legal disability who shall be presently entitled thereto, shall be held by it under a separate trust for such minor or person under a legal disability until he shall have attained the age of eighteen (18) years or ceased to be under such legal disability.

13.4 Unpaid distributions to comprise separate trusts

An unpaid distribution shall comprise a separate trust for the benefit of the Unitholder and shall not comprise a loan.

13.5 Definition

In this clause a reference to a Unitholder includes a reference to a Discretionary Beneficiary.

14. STATEMENTS AND ACCOUNTS

14.1 Accounting records

The Trustee shall maintain proper books of accounts to separately record all income, capital tax credits and tax rebates as determined by the Trustee.

14.2 **Financial Statements**

The Trustee shall procure financial statements, including a profit and loss account and a balance sheet, as at the end of each Financial Year showing:

- 14.2.1 the Net Income of the Trust for the Financial Year;
- 14.2.2 the gross income of the Trust for the Financial Year;
- 14.2.3 the expenses of the Trust for the Financial Year;
- 14.2.4 the liabilities of the Trust as at the end of the Financial Year;
- 14.2.5 the assets in the Fund as at the end of the Financial Year;
- 14.2.6 the amounts held in any reserve account as at the end of the Financial Year;
- 14.2.7 issued units as at the end of the Financial Year;
- 14.2.8 any unpaid distributions to Unitholders or Discretionary Beneficiaries;
or
- 14.2.9 any other matter required to be recorded by the Trustee to comply with any law relating to trusts or companies or to any activity carried on by the Trustee.

14.3 **Election to appoint an auditor**

- 14.3.1 Unitholders holding more than the Required Percentage of Units may by written resolution require an auditor to be appointed to audit the accounts of the Fund
- 14.3.2. The cost of the audit shall be paid out of the Fund.

14.4 **Administration of the Trust**

The Trustee may do all things required to properly administer the Trust.

15. **APPOINTMENT AND REMOVAL OF TRUSTEE**

15.1 **Retirement of Trustee**

- 15.1.1 A Trustee may retire after giving two months written notice to the Unitholders or such other notice as may be agreed in writing by the Unitholders and the Trustee.
- 15.1.2 The Unitholders may appoint a new Trustee by a resolution passed by Unitholders holding more than the Required Percentage of Units.

15.2 **Removal of Trustee**

- 15.2.1 If the Trustee is put into liquidation, ceases to carry on business, or has a receiver or administrator appointed, or a similar event occurs the Unitholders may by written resolution remove the Trustee and appoint a new Trustee in its place.

15.2.2 In any other case, the Unitholders may remove the Trustee and appoint a new Trustee after giving one month's written notice to the Trustee. The resolution must be passed by Unitholders holding more than the Required Percentage of Units.

15.3 Additional Trustee

The Unitholders may appoint an additional trustee after giving notice to the Trustee. The resolution must be passed by a written resolution of Unitholders holding more than the Required Percentage of Units.

15.4 Restriction on appointment

A Trustee may not be a Unitholder.

15.5 Change of Trustee

15.5.1 On a change of Trustee the old Trustee shall do all things necessary to give effect to the change of Trustee

15.5.2 On a change of Trustee the old Trustee shall be deemed to have irrevocably appointed the new Trustee its attorney for these purposes and authorises the new Trustee to sign all documents and give all authorities and undertakings required to do this.

16. VARIATION OF TRUST

16.1 Variation of trust Deed

16.1.1 This Deed may be amended, revoked or added to by any instrument in writing executed by the Trustee.

16.1.2 Any such amendment, revocation or addition shall not prejudicially affect the rights of a Unitholder to net income of the Fund or prejudicially affect the rights of Unitholders of a class of Units to participate in the Net Income or capital of the Fund, or the conditions of issue of such class of Units. This is unless the consent of the Unitholder affected, or the consent of all Unitholders of the class whose rights are to be prejudicially affected, is first obtained.

16.2 Restriction on variation power

No amendment, revocation or addition of this Deed shall infringe any applicable law or rule against perpetuities or otherwise extend the Termination Date.

17. VARIATION OF CLASS RIGHTS

17.1 Variation of class rights

The Trustee may vary the rights of a class of Units if all the Unitholders of that class consent to the variation in writing. On doing this the Units of that class shall be held on, and subject to the varied rights.

18. TRUSTEE POWERS

18.1 Trustee Powers

18.1.1 The Trustee's powers include all powers vested on a trustee under the law applying to trustees and, without limiting the generality of the

foregoing, include the powers set out in this Deed including the Annexure.

18.1.2 The exercise or non-exercise of the Trustee's powers shall not be able to be challenged in anyway by any Unitholder or Discretionary Beneficiary.

19. MEETINGS OF UNIT HOLDERS

- 19.1 The Trustee may call a meeting of the Unit Holders and at the request in writing signed by Unit Holders, who at that time hold not less than 25 per cent of all issued Units the Trustee shall call a meeting of the Unitholders.
- 19.2 The Trustee shall give at least three days written notice of every meeting of the Unitholders and shall specify in the notice the general nature of the business to be transacted.
- 19.3 At a Unitholders meeting a Unitholder nominated by the meeting shall preside and at any other meeting convened by the Trustee a person (whether or not a Unitholder) nominated by the Trustee shall preside.
- 19.4 Every question arising at a meeting of the Unitholders shall be decided on a show of hands unless a poll is demanded. Each Unitholder shall have one vote for each Unit held by that Unitholder.
- 19.5 A Unitholder may demand a poll before or immediately after a question is put to a show of hands. The demand for a poll may be withdrawn.
- 19.6 Two Unit Holders present in person or by proxy and holding (or representing by proxy) between them not less than 50 per cent of the issued Units of a particular class is the quorum for a meeting.
- 19.7 With the sanction of the meeting the Chairman may adjourn the meeting to a time and place determined by him.
- 19.8 The Chairman shall adjourn a meeting at which a quorum is not present.
- 19.9 The Unit Holders may vote at a meeting either personally or by proxy. A proxy shall be in the usual or common form or in any other form approved by the Trustee. A Unitholder which is a company may vote by an authorised representative who may speak or demand a poll and generally act as a proxy on its behalf.

20. LIMITATION ON LIABILITY OF UNIT HOLDERS

20.1 No other relationship

Nothing in this Deed shall create or be deemed to create a relationship of principal and agent between the Trustee and the Unitholders, a relationship of partners as between the Trustee and the Unitholders, or a relationship of partners between the Unitholders.

20.2 No indemnity from Unitholders

20.2.1 No Unitholder shall be under any obligation personally to indemnify the Trustee or any creditor of the Trustee in the event of there being any deficiency of the assets of the Fund.

20.2.2 A Unitholder shall not be liable for any loss or damage howsoever incurred or suffered by the Trustee in acting as trustee of the Trust.

20.2.2 In this clause a reference to a Unitholder includes a reference to a Discretionary Beneficiary.

20.3 **Notices**

A notice required to be given to a Unitholder shall be deemed to have been duly given if it is in writing and is either delivered or sent by post in a prepaid envelope addressed to the Unitholder at the address shown on the Register. Notices sent by post shall be deemed to be served on the second day following the day of posting.

21. **PROPER LAW**

The law of the state specified in the Schedule shall apply to this Trust.

22. **NO PUBLIC OFFER**

It is expressly declared and provided that no offer or invitation shall be made to the public in respect of a Unit or Units in this Trust and that all offers or invitations shall comply with the relevant legal requirements.

23. **TERMINATION OF TRUST**

23.1 **Termination of trust**

The Trust shall be wound-up and terminate on the first to occur of:

23.1.1 Unitholders holding not less than 75% of the Units giving written notice to the Trustee that the Trust shall be determined;

23.1.2 the Trustee resolving to determine the Trust; or

23.1.3 eighty years from the date of this Deed.

23.2 **Procedure on determination**

23.2.1 The date of such an event shall be called the "Termination Date".

23.2.2 The Trustee shall on the Termination Date call in and convert the Fund to money, pay the liabilities of the Trust and pay the net amount to the Unitholders. This shall be subject to any Special Conditions or rights affecting the Units and shall be in accordance with the Unitholders' Proportions on the Termination Date.

23.3 **Postponement of sale**

In winding up the Trust the Trustee may postpone the sale, calling in and conversion of any part of the investments and property of the Fund for such time as it thinks is in the interests of the Unitholders. The Trustee shall not be responsible for any loss attributable to such postponement.

23.4 **Provision for liabilities**

In winding up the Trust the Trustee may make such provisions as it considers necessary to provide for any actual or contingent liabilities in respect of the Fund or any of the investments of the Fund. The Trustee may withhold such amounts from the amounts distributed to Unitholders on a separate trust

pending ultimate payment of the amount to the Unitholders.

24. SPECIAL CONDITIONS


24.1 The Deed shall include any Special Conditions stated in the Schedule and these Special Conditions may be expressed to take precedence over any other provision in this Deed.


25. EXECUTION AS A DEED (NEXT PAGE)


25. EXECUTION AS A DEED


This document has been executed as a Deed on the date set out in the Schedule.

EXECUTED BY THE TRUSTEES

Jane Smith).....
)Trustee 


in the presence of:).....
)Witness 


Greg Smith).....
)Trustee 


in the presence of:).....
)Witness 


).....
)Trustee

in the presence of:).....
)Witness

Signed By)..... 
David Sample)Director (if unit holder is a company or trust)

in the presence of:)..... 
)Witness

Signed By)..... 
Lisa Sample)Director (if unit holder is a company or trust)

in the presence of:)..... 
)Witness

Signed By).....
)Director (if unit holder is a company or trust)

in the presence of:).....
)Witness

Signed By).....
)Director (if unit holder is a company or trust)

in the presence of:).....
)Witness

Signed By).....
)Director (if unit holder is a company or trust)

in the presence of:).....
)Witness

THE SCHEDULE CONTAINING THE DETAILS OF THE TRUST

Start Date 7th November 2011

Trust Name: Sample 4 Trust

Trustees: Jane Smith
Greg Smith

22 Sample Road
Melbourne, VIC, 3000

Unit Holders: (50 Ordinary Units)
David Sample
22 Sample Road, Melbourne, 3000

(50 Ordinary Units)
Lisa Sample
22 Sample Road, Melbourne,

Initial Sum: \$ 1000
(Represented by 100 Ordinary units of \$ 10 held by the unit holders)

Special Conditions: Nil

Proper Law: VIC

Required percentage of Units for majority decisions 51%

ANNEXURE: TRUSTEE'S POWERS

The Trustee's powers shall include the powers set out in the following paragraphs and shall not be able to be challenged in any way by any Unitholder or Discretionary Beneficiary:

- (1) The power to in its absolute discretion accept any property given or transferred to the Trustee as Trustee of this settlement.
- (2) The power to in its absolute discretion retain property in the condition in which it has been received by the Trustee for such period as the Trustee may think fit notwithstanding that it may have been received by way of bonus or be of a wasting, reversionary or depreciating nature.
- (3) The power to in its absolute discretion retain the whole or any part of the Trust Fund in the form of cash for such period and in such currency as the Trustee may think fit notwithstanding that the cash retained may be earning no interest at all.
- (4) The power to in its absolute discretion retain for such period as the Trustee may think fit any property notwithstanding that it may not be producing any income.
- (5) The power to in its absolute discretion purchase, lease or otherwise acquire any property (whether income-producing or not) in any country upon such terms and conditions as the Trustee may think fit. In purchasing, leasing or acquiring any property, the Trustee may allow the whole or any part of any money payable in respect of such purchase, lease or acquisition to remain unpaid upon such terms and conditions as the Trustee may think fit and the Trustee may secure the payment of any money remaining unpaid and any interest thereon by mortgage, charge or other security over the whole or any part of the Trust Fund. If the property purchased, leased or acquired consists of or includes stocks, shares, notes, debentures, bonds, mortgages and other securities (whether secured or not) in or issued by any corporation or other entity of whatever kind in any country then, any such stocks, shares or other securities may be wholly or partially paid up and may bear less than a commercial rate of interest or no interest at all and may be for any term and may be expressed in any currency and may be upon such other terms and conditions as the Trustee may think fit.
- (6) The power to in its absolute discretion to acquire and retain policies of assurance and policies of insurance on the life of any person and upon such conditions as the Trustee may think fit.
- (7) The power to in its absolute discretion acquire and retain annuities for such period and upon such terms and conditions as the Trustee may think fit.
- (8) The power to in its absolute discretion advance or lend money to any person, corporation, bank, government, public body or authority in any country, either with or without security and either bearing or not bearing interest and in such currency and upon such terms as to repayment and otherwise as the Trustee may think fit.
- (9) The power to in its absolute discretion lend any property other than money to any person or corporation, either with or without security and for such period and upon such terms as to use, return and otherwise as the Trustee may think fit. If the Trustee takes any security in relation to any money or property advanced or lent, the value of the security may be less than the amount of money or the value of the property advanced or lent and the Trustee shall not be obliged to obtain any valuation of the security or the property lent.
- (10) The power to in its absolute discretion sell, exchange or otherwise dispose of any property and to grant options or rights to purchase, exchange or otherwise acquire any property upon such terms and conditions as the Trustee may think fit; and to vary any

contract for sale, buy at any auction, rescind any contract for sale and resell upon such terms and conditions as the Trustee may think fit. Any consideration due to the Trustee in respect of any sale, exchange, disposition, option or right may consist of money or property or partly of money and partly of property and the Trustee may allow any such consideration to remain outstanding either with or without security and either bearing interest and for such period and upon such terms and conditions as the Trustee may think fit. In selling, exchanging or otherwise disposing of the whole or any part of the Trust Fund and in granting any options or rights in relation thereto the Trustee shall not be obliged to obtain any valuation of the whole or the part to be sold, exchanged or disposed of or which is to be the subject of the option or right but may accept such consideration as it may think fit.

- (11) The power to in its absolute discretion lease or license and to grant options or rights to lease or license any property to any person including a Unitholder for such period and for such rent or consideration including rent free and upon such terms and conditions as the Trustee may think fit.
- (12) The power to in its absolute discretion promote or carry on any business, scheme or undertaking of any nature in any country (including any business, scheme or undertaking of a speculative nature) upon such terms and conditions as the Trustee may think fit.
- (13) The power to in its absolute discretion join or enter into partnership or into any arrangement for sharing of profits, co-operation, joint adventure or otherwise in any country with any person, corporation or other entity for the purpose of promoting or carrying on any business, scheme or undertaking of any nature (including any business, scheme or undertaking of a speculative nature) upon such terms and conditions as the Trustee think fit.
- (14) The power to in its absolute discretion borrow money in any currency or obtain any other form of financial accommodation for any purpose whatsoever upon such terms and conditions as the Trustee may think fit. The amount of money borrowed or value of financial accommodation obtained may exceed the net value of the Trust Fund at or after the time of the borrowing or obtaining of the financial accommodation. The Trustee may secure any liability in respect of any money borrowed or any financial accommodation obtained, and any interest thereon, by mortgage, charge or other security over the whole or any part of the Trust Fund.
- (15) The power to in its absolute discretion ensure that no person, corporation, bank, society, association or other body lending or advancing money to the Trustee as Trustee of this settlement shall be concerned to see that such money or financial accommodation is needed or that no more than is needed is borrowed or obtained or to see to the application of the money borrowed or proceeds of the financial accommodation.
- (16) The power to in its absolute discretion guarantee the performance of any person, company or other entity (including any Unitholder) in relation to any agreement, contract, undertaking or promise and the Trustee may secure any such guarantee by mortgage, charge or other security over the whole or any part of the Trust Fund.
- (17) The power to in its absolute discretion separately indemnify any person, company or other entity (including any Unitholder) for any costs, expenses, losses or outgoings incurred by reason of the non-performance of any person, company or other entity in relation to any agreement, contract, undertaking or promise.
- (18) The power to in its absolute discretion create, give, renew, alter or vary any mortgage, charge or other security over the whole or any part of the Trust Fund for any purpose whatsoever and upon such terms and conditions as the Trustee may think fit.
- (19) The power to in its absolute discretion release or discharge either wholly or in part any

mortgage, charge or other security whether or not the whole of the indebtedness or other liability secured by the mortgage, charge or other security has been repaid or discharged.

- (20) The power to in its absolute discretion make, add to, enlarge, alter, demolish or reconstruct any improvements on any land whether the title to such land be freehold, leasehold or some other title.
- (21) The power to in its absolute discretion repair, maintain, renovate or improve any property.
- (22) The power to in its absolute discretion insure any property in which the Trustee has an interest upon such terms and conditions as the Trustee may think fit. Any such insurance need not be for the full value of the property insured but may be for such amount as the Trustee may think fit. The Trustee shall not be obliged to obtain any valuation of any property for the purpose of insuring it.
- (23) The power to in its absolute discretion surrender any property (whether onerous or not) upon such terms and conditions as the Trustee may think fit.
- (24) The power to in its absolute discretion accept any shares, units, notes, debentures or other securities in any corporation and/or other entity in any country wholly or in partly in place of or in exchange for any shares, units, notes, debentures or other securities forming part of the Trust Fund.
- (25) The shares, units, notes, debentures or other securities in the corporation may be wholly or partially paid up and the notes, debentures or other securities in the corporation and/or other entity may bear less than a commercial yield or no yield at all and may be for any term and may be expressed in any currency and may be upon such terms and conditions as the Trustee may think fit.
- (26) The power to in its absolute discretion exercise all rights and privileges in respect of any shares, units, notes, debentures or other securities from time to time forming part of the Trust Fund in such manner as the Trustee may think fit.
- (27) The power to in its absolute discretion pay calls on any shares, units, notes, debentures or other securities or to allow same to be forfeited.
- (28) The power to in its absolute discretion promote or assist in promoting any corporation in any country for any purpose whatsoever including any speculative purpose.
- (29) The power to in its absolute discretion sell or transfer any property to any corporation and/or other entity including a corporation and/or other entity which the Trustee may have promoted or assisted in promoting in consideration consisting wholly or in part of shares wholly or partially paid up or wholly or in part of units, notes or debentures of whatever term and yield or wholly or in part of cash or property payable immediately or by instalments either with or without security and either bearing or not bearing income. Such shares, units, notes, debentures, securities or cash shall be deemed to be corpus or part of the corpus of the Trust Fund and no apportionment or allowance shall be made in respect of any income comprised in the whole or the part of the Trust Fund which was sold or transferred.
- (30) The power to in its absolute discretion appoint itself or to accept appointment or election and to act as director, manager or secretary of or hold any other office in any corporation and/or other entity in any country in which any part of the Trust Fund may be invested, or which the Trustee has promoted or assisted in promoting.

- (31) The power to in its absolute discretion enter into any arrangements with any Government or any public or private body or authority to obtain any rights, authorities, privileges or concessions which the Trustee may think desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, authorities, privileges and concessions.
- (32) The power to in its absolute discretion apply for, promote and obtain any statute, order, regulation, or other authorisation or enactment which may benefit any part of the Trust Fund and to oppose any bills, proceedings or applications which may seem directly or indirectly to prejudice any part of the Trust Fund.
- (33) The power to in its absolute discretion engage or employ any person, firm or corporation (including any Unitholder) in any country to do any act or transact any business upon such terms as to remuneration and otherwise as the Trustee may in its absolute discretion think fit even if the act or business is such that the Trustee could do itself.
- (34) The power to in its absolute discretion appoint any person or corporation to act as the agent or attorney of the Trustee for the purpose of executing or exercising all or any of the powers, authorities and discretions given to the Trustee by this clause and to revoke any such appointment. Any such appointment or revocation shall be upon such terms and conditions as the trustee may in its absolute discretion think fit.
- (35) The power to in its absolute discretion allow documents of title in respect of any property to remain out of the power and possession of the Trustee whether with or without security and for such period and upon such terms and conditions as the trustee may think fit.
- (36) The power to in its absolute discretion allow any property to be held by or registered in the name of any person or corporation in any country whether with or without security and for such period and upon such terms and conditions as the Trustee may think fit.
- (37) The power to in its absolute discretion give receipts for capital and other moneys notwithstanding that the Trustee is not the sole trustee of this settlement and to allow any person or corporation to give a receipt on behalf of the Trustee. Any receipt shall be a valid and effective and an absolute discharge to the person, corporation or entity in whose favour it is given.
- (38) The power to in its absolute discretion commence, defend or otherwise take part in any proceedings in any court, tribunal or other judicial, quasi-judicial or administrative body including any arbitration. The Trustee may conduct such proceedings in such manner as it may in its absolute discretion think fit and may discontinue, withdraw from, compromise or proceed to the final determination of any such proceedings on such terms and conditions (including a total admission of liability at any stage of the proceedings) as the Trustee may think fit.
- (39) The power to compromise, compound, abandon or otherwise settle any debt, account, claim or thing whatsoever relating to the whole or any part of the Trust Fund including releasing in whole or in part the payment or transfer of any property owing or due to the Trustee.
- (40) The power to in its absolute discretion determine (i) whether any property (the term "property" for the purposes of this sub-clause shall include money but not property which is part of the Net Income of the Fund) received by the Trustee is received as corpus of the Trust Fund or as income of the Trust Fund and the extent which such property is received as corpus of the Trust Fund or income of the Trust Fund; and (ii) whether any property applied, disbursed or expended by the Trustee is applied, disbursed or expended out of the corpus of the Trust Fund or out of the income of the Trust Fund; and (iii) to treat any tax credits or rebates as either income or corpus having regard to the manner of and nature of the particular tax credit or rebate.

- (41) Subject to any applicable law (in particular, any law relating to the lending of moneys to superannuation funds or their members) and subject to the written consent of all Unit Holders at any time or times and from time to time before the Vesting Day lend any sum or sums out of the Trust Fund and any moneys held in trust pursuant to the Deed to any Unitholder either with or without security and upon such terms and conditions as to repayment and with or without interest as the Trustee shall think fit.
- (42) The power to in its absolute discretion move, transmit or reinvest all or any part of the Trust Fund to whatever location and at such time or times as the Trustee may think fit.
- (43) The power to in its absolute discretion do anything and to execute any writing incidental to or which may facilitate any exercise of the powers, authorities and discretions conferred on the Trustee by this clause.
- (44) Notwithstanding anything herein to the contrary or otherwise contained the Trustee with the consent of all Unit Holders, shall have power to: (i) sell, transfer, hire, lease or dispose of any real or personal property of the Trust Fund or to lend or advance any moneys to the Trustee in the Trustee's personal capacity or in the capacity of trustee of another trust fund or otherwise howsoever or to any company or partnership whatsoever notwithstanding that the Trustee be a shareholder, director, member or partner of such company or partnership or to a wife, husband, or child of any Trustee absolutely; (ii) buy, transfer, acquire, hire or lease any real or personal property or to borrow any moneys from the Trustee in the Trustee's personal capacity or in the capacity of the trustee of another trust fund or otherwise howsoever or from any company or partnership whatsoever notwithstanding that the Trustee be a shareholder, director, member or partner of such company or partnership or from the husband, wife or child of any Trustee; (iii) to exercise all the powers and discretions vested in the Trustee notwithstanding that the Trustee may be a Unitholder and generally to deal with the Trustee in its personal capacity in all respects as if there were two separate persons to the dealings; (iv) to divide assets in specie between the Trust Fund and other trust funds in such manner as the Trustee shall think fit.
- (45) The power in its absolute discretion to advance and lend moneys to, and to borrow and raise moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies whether alone or jointly with any other company or person upon such terms with or without security or interest as the Trustee shall deem fit and to secure the repayment of those moneys by mortgaging or charging (by fixed or floating charge or otherwise) any undertaking of the Trustee or all or any part of the Trust Fund including any property which may subsequently be acquired by the Trustee so that it will form part of the Trust Fund; and any mortgage or charge created or purporting to be created under this clause shall be valid in all respects irrespective of the actual application of the moneys borrowed and the rights of the mortgagee or charge shall take priority in all respects over the rights of the beneficiaries hereunder and all other persons whatsoever.
- (46) Generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his/her personal capacity or a shareholder or director or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.
- (47) The Trustee shall be entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to execute any of the trusts authorities powers and discretions hereof or by virtue of being the Trustee hereof.

- (48) The power in its absolute discretion to open any account or accounts with any financial institution and to operate such account or accounts and to draw, make, accept, endorse, discount, issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument.
- (49) The power in its absolute discretion to enter into any option agreement relating to any lending or financing facility, agreement or transaction.
- (50) The power in its absolute discretion
- (i) to enter into any derivatives contract or purchase or sell or deal in any derivatives product, 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;
 - (ii) 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 (i) hereof.

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