

Unit Trust - Fixed Deed

establishing the

Capel Three Bears Unit Trust

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A The trust

Establishment of the Unit Trust - Fixed

- 1 The initial unit holder is: Carolyn Barham as trustee for The Buddy Barham Trust.
- 2 Three Bears Corporation Pty Ltd, ACN 166 925 604 has agreed to be the initial trustee of the trust.
- 3 That unit holder has paid a settled sum of \$10 to the trustee, Three Bears Corporation Pty Ltd, ACN 166 925 604, to establish the Capel Three Bears Unit Trust which is to be governed in accordance with this deed. The initial unit holder has also paid for, and the trustee has issued to it, the number of fully and partly paid units in the trust specified in the Schedule.

Deed binds and benefits unit holders

- 4 This deed both binds and benefits all unit holders.

Issuing additional units

- 5 The trustee may create and issue additional units at any time. Unless all the unit holders provide their written consent otherwise, the price paid for each issued unit must be equal to the redemption price calculated in accordance with clause 29 at the time immediately prior to the units being issued. A person who is or becomes a unit holder is immediately bound by this deed and entitled to benefit under it.

Registration of the trust

- 6 The trustee must ensure that the trust is registered under the *Corporations Act* before the number of members exceeds 20.

Issuing fractions of units

- 7 The trustee may issue units in fractions. Their value is proportional to the value of a whole unit. If a holding includes more than one fraction of a unit, the trustee may consolidate them.

Consolidating and splitting units

- 8 The trustee may consolidate or split units, but only if each unit is consolidated or split on the same basis as every other unit. The trustee must notify each unit holder of the consolidation or split within 30 days after effecting it. The trustee must immediately amend the register to reflect the consolidation or split.

Issuing wholly paid and partly paid units

- 9 The trustee may issue units as wholly paid units or partly paid units. The issue price of partly paid units is to be paid partly on issue and partly by instalments. In the document

offering partly paid units for subscription, the trustee must set out the terms, including payment terms, on which the units are to be issued, or must state that these are at the trustee's discretion.

Failure to pay an instalment on partly paid units

10 If a unit holder fails to pay an amount due on a partly paid unit on time, the trustee has a first and paramount lien over all units registered in the name of the unit holder. The lien extends to each of the following:

- any unpaid fees or calls in respect of the units;
- any interest that may be payable in accordance with the terms on which the partly paid unit was issued;
- any distribution declared at any time in respect of the units;
- any costs incurred by the trustee in attempting to recover the amounts due by selling the partly paid unit.

A lien over units is discharged if the trustee registers a transfer of those units.

The trustee may sell units over which a lien exists

11 The trustee may sell any partly paid units over which a lien exists, as agent for the unit holder. The trustee may only do so after giving the unit holder 14 days' notice in writing, specifying the amount overdue and demanding payment of it.

Proceeds of sale

12 The trustee may apply the proceeds of sale towards payment of the overdue amount. The trustee must pay the balance, less any costs incurred in the sale, to the unit holder. If the proceeds of sale are insufficient to discharge the overdue amount and to pay the costs incurred by the trustee in selling the units, the unit holder remains liable to the trustee for the deficiency.

Transfer of units to the purchaser

13 The trustee may sign the required transfer to the purchaser on the unit holder's behalf. The transfer is as effective as if the unit holder had signed it. The purchaser is not responsible for what is done with any consideration paid by him or her. The purchaser will not be affected by any irregularity or invalidity in the procedures followed by the trustee in connection with the sale.

Interest of unit holders

14 The trustee holds the assets of the trust as a separate fund on trust for the unit holders. The beneficial interest in the trust at any time is vested in the holders of units in the trust at that time, in proportions determined in accordance with the rights attaching to the units. Each unit entitles the holder to an equal share with each other unit holder of a unit in the beneficial interest in the trust as a whole.

A unit holder is not entitled to any particular asset or part of the assets of the trust.

Restrictions on rights of unit holders

- 15 A unit holder must not do any of the following:
- interfere with the trustee's exercise of any right or power;
 - exercise a right in respect of an asset or lodge a caveat or other notice in relation to an asset or claim any interest in an asset in any other way;
 - require any asset to be transferred to the unit holder.

B Application for units

The issue price of units

- 16 Subject to clause 5, the issue price of a unit is set by the trustee.

The number of units to be issued

- 17 The trustee sets the number of wholly paid units issued by dividing the amount the trustee decides to accept from applicants by the issue price.
- The trustee sets the number of partly paid units issued by dividing the amount the trustee decides to accept from applicants by that part of the issue price for those units which is to be paid on application.

Application for units

- 18 A person who wants to subscribe for units must complete and lodge an application form as required by the trustee. The applicant must enclose with the form the application money, or the transfer of property to be vested in the trustee. The application must be in the form required by the trustee. The trustee may set a minimum application amount for units. The trustee has an absolute discretion whether to accept or reject an application.

Allotment of units

- 19 The trustee allots units to a person by registering them in that person's name in the Unit Register. A person has no rights to a unit until it is allotted to him or her.

The register of unit holders

- 20 The trustee must maintain a register of unit holders. In it the trustee must record the following details:
- the names of the trust and the trustee;
 - the names and addresses of each unit holder and the number of units held by them;
 - the date when the units were issued;

- if the units have distinctive numbers or distinctive certificates, their numbers;
- details of all transfers and redemptions of the units;
- any other details the trustee decides to record.

The trustee must keep the register up to date

- 21 The trustee must keep the register up to date and must record any change of address of which the trustee receives written notice.

The effect of registration

- 22 The person who is registered as the holder of a unit is the only person whom the trustee will recognise as entitled to it.

Joint holders of units

- 23 If 2 or more persons are joint holders of units, the following conditions apply to them:
- the trustee is not bound to register more than 3 joint holders of a unit;
 - the joint holders are jointly and severally liable for all payments, including payment of tax, which have to be made in respect of the units;
 - if the death of a joint holder is proved to the trustee's satisfaction, the remaining joint holders are the only persons whom the trustee will recognise as having any title to the units;
 - a receipt given by one joint holder for a payment or distribution is effective against the other joint holders;
 - the person whose name appears first in the register as one of the joint holders is the person entitled to delivery of notices, payment or other communications; and delivery to that person is effective against the other joint holders.

Trusts etc not recognised

- 24 The trustee is not bound to recognise any beneficial, equitable, contingent or future interest of any person, whether under a trust or otherwise, in a unit held by a unit holder. This applies even if the trustee has notice of it.

Certificates of holdings

- 25 A unit holder is entitled to a certificate signed by the trustee that records the units held in his or her name. The trustee may decide the form of the certificate. Joint holders are entitled to only one certificate in their joint names.

Surrender of certificates

- 26 A unit holder must give the trustee his or her certificate when relevant units are transferred or redeemed, or special rights, restrictions or other conditions attached to

them are varied. If that cannot be done, the unit holder must give the trustee satisfactory proof that the certificate has been lost or destroyed.

C Redemption, transfer and transmission of units

A unit holder may apply for redemption of units

- 27 A unit holder may apply to the trustee to redeem one or more units. The unit holder must do so by giving the trustee a completed form approved by the trustee for that purpose. If redemption of the specified units would result in the applicant holding less than the current minimum number of units set by the trustee, the trustee may treat the application as being for all the units held by the applicant. The unit holder may not withdraw an application for redemption.

Redemption

- 28 The trustee has an absolute discretion whether to accept an application for redemption or not.

The redemption price of a unit

- 29 The trustee must set the redemption price, rounded to the nearest whole cent, of a unit on the basis of the following formula, applied on the date the redemption takes place:

$$\text{Redemption price} = \frac{\text{Net asset value} - \text{transaction costs}}{\text{Number of units on issue}}$$

'Net asset value' means the value of the assets less the liabilities of the trust as determined by the trustee under clause 102.

The date redemption takes place

- 30 A redemption is to take place on the next business day after the day when the trustee becomes bound to redeem the units. If the trustee becomes bound after 5:00 pm on a business day, the redemption is to take place 2 business days later.

However, if the trustee has decided that units may only be redeemed on specified days, the redemption is to take place on the next specified day. If the trustee becomes bound after 5:00 pm on the day before a specified day, the redemption is to take place on the following specified day.

Payment

- 31 Within 90 days after the redemption, the trustee must pay the applicant the redemption price for the units. However, the trustee may deduct any money owed by the unit holder to the trustee on any account before paying the applicant.

The trustee must record the redemption in the register, and must cancel the returned certificate or record on it the details of the redemption.

Funds for payment

- 32 Apart from paying cash on hand, the trustee may do any of the following to pay the redemption price:
- borrow money;
 - realise or sell any investment of the trust;
 - transfer to the applicant assets of the trust to the same value as the redemption price for the units, or hold those assets on trust solely for the unit holder.

Suspension of redemptions

- 33 The trustee may suspend redemptions of units if, as a result of either of the following, it is impractical for the trustee to calculate the net asset value:
- the closure or disruption of the efficient operation of a market in which assets of the trust are traded;
 - the trustee believes that the realisation of assets in prevailing market conditions would not reflect the value for the assets that could be obtained in an orderly market.

An application for redemption that is received during a suspension period is to be treated as having been received before 5:00 pm on the next business day after the suspension ceases.

Right to transfer units

- 34 A holder of units may transfer units to another person with the trustee's consent. However, the units must first be offered to other unit holders at a price set by the trustee. The trustee must set the price, rounded to the nearest whole cent, for a unit on the basis of the following formula, applied on the date the transfer is to take place:

$$\text{Sale price} = \frac{\text{Net asset value} - \text{transaction costs}}{\text{Number of units on issue}}$$

'Net asset value' means the value of the assets less the liabilities of the trust as determined by the trustee under clause 102.

- 34.1 The trustee has an absolute discretion to give or withhold consent to a transfer to another person. The trustee does not have to give reasons for withholding consent.
- 34.2 A transfer must be in a form approved by the trustee, and must be signed by both the transferor and the transferee.

The transferor remains holder

- 35 The transferor remains the unit holder until the transferee is registered in the register as the holder of the units.

Transmission of units on the death of a unit holder

- 36 If a unit holder dies, the trustee will only recognise the legal personal representative of the deceased – or, in the case of a joint holder of units, the surviving joint holder – as entitled to an interest in the deceased's units.

Election by a personal legal representative

- 37 The legal personal representative of a deceased unit holder may elect in writing to be registered as the unit holder or to have another person registered as the unit holder. The trustee must act on the election, recording the transmission by election. A legal personal representative is not entitled to exercise any right as unit holder under this deed until he or she is registered. However, he or she may give a valid receipt for money received in respect of the units.

Issuing a new certificate

- 38 If the trustee has consented to a transfer or the legal personal representative of a unit holder has elected to be registered or to have some other person registered as the unit holder, the trustee must register the transferee, legal personal representative or other person as the holder of the units when the trustee is given a properly executed and stamped transfer in the correct form, plus the certificate for the units. The trustee must cancel the certificate, issue a new certificate to the new holder, and issue an amended certificate to the previous holder if that holder continues to hold some of the units recorded on the cancelled certificate.

D Distributions

Trustee's right to determine meaning of income

- 39 The trustee may, instead of relying on the definition of 'income of the trust fund' set out in this deed, decide at any time prior to 30 June in a financial year to adopt, for that financial year, another definition of 'income of the trust fund'. The trustee's power to make such a decision under this clause 39 is unconfined and not merely administrative.

The trustee may accumulate income

- 40 During a financial year, the trustee may resolve to accumulate a part of the income for that financial year. The trustee may do so for any of the following purposes:
- to recoup a loss in an earlier financial year;
 - as a reserve to meet contingencies, to provide for repairs and maintenance, for depreciation or for any other purpose.

The trustee may pay tax for an accumulated amount out of that amount or out of capital.

The distribution of income

- 41 The trustee must distribute the remaining income of the trust for a financial year to those who, immediately before the commencement of the next financial year, are unit holders. The trustee must do so in proportion to the number of units they hold.

Interim distributions

- 42 The trustee may decide to make an interim distribution to unit holders of the estimated income of the trust.

Other distributions

- 43 The trustee may at any time distribute any amount of capital or income to unit holders in proportion to the number of units each holds as at a date the trustee determines. The trustee may do so by way of cash payment or by issuing bonus units at the issue price determined at that date by the trustee.

Failure to resolve distribution or retention

- 44 If, before the commencement of the next financial year, the trustee fails to resolve to distribute remaining income from a financial year or to retain it, that income must be credited to a separate account in the books of the trust in the names of the unit holders. The money will be a debt to the unit holders and will not bear interest.

Trust for unit holder under a legal disability

- 45 The trustee may hold on trust for a unit holder who is under a legal disability any amount which is distributable under this deed to that unit holder, including a distribution in the form of an issue of units. The trustee may do so until the unit holder ceases to be under a legal disability. The assets and income of that trust are not part of the assets or income of this trust.

Details of the trust for a unit holder under a legal disability

- 46 The trust for a unit holder under a legal disability is subject to the following rules:
- if the unit holder dies before ceasing to be under a legal disability, the trustee must hold the assets of that trust on trust for the unit holder's personal legal representative;
 - the trustee may distribute assets of the trust towards the maintenance, education or benefit of the unit holder and may distribute assets to a trustee or guardian of that unit holder, without being responsible for what that person does with the distribution.

Trustee may determine what is income and what is capital

- 47 In determining the income of the trust for a financial year, the trustee may decide whether, and to what extent, a receipt or outgoing is on account of income or capital. The

trustee's power to make such a decision under this clause 47 is unconfined and not merely administrative. The trustee's decision is final.

Allocation of income or capital of a category

- 48 If the trustee distributes or accumulates income or capital, the trustee does so on a pro rata basis to all unit holders. However, with the consent of all unit holders, the trustee may decide that income of a financial year, or capital which is distributed or accumulated under this deed, is the whole or part of the income or capital of a category. The result that all or part of that income or capital is specifically or separately allocated and identified in a distribution or accumulation. Save for the unit holders' consent, the trustee's power to make such a decision under this clause 48 is unconfined and not merely administrative.

Allocation of expenses

- 49 The trustee may decide to allocate expenses and outgoings to income or capital of any one or more categories. The trustee's power to make such a decision under this clause 49 is unconfined and not merely administrative. If the trustee does not make such a decision, then the expenses and outgoings are to be allocated in the following way:
- first, against income which is not income of a category;
 - second, against income of a category to which a tax credit, rebate or exemption does not attach;
 - third, against the remaining income.

Distributed income and capital remain in categories

- 50 Income or capital to which a unit holder becomes entitled and which can be identified as being of a category, remains of that category after the unit holder becomes entitled to it and after it is passed to or received by the unit holder.

Reinvestment

- 51 The trustee must determine the procedure for reinvestment in relation to distributions, while complying with the investment policy contained in the information memorandum. The trustee must give the unit holders 30 days' written notice of the procedure to be used.

Method of distribution

- 52 The trustee may distribute an amount for a unit holder under this deed in any one or more of the following ways:
- with the unit holder's consent, by placing the amount to the credit of the unit holder in a 24 hour call account;
 - by drawing a cheque for the amount payable to the unit holder or paying the amount into a bank account in the name of the unit holder;
 - by paying the amount by cheque or in cash to a third person as directed by the unit holder;

- by satisfying any amount owed by the beneficiary to a third person;
- by applying any part of the amount towards satisfaction of money owing by the unit holder to the trustee on any account or owing to any other person;
- by transferring any of the assets of the fund in specie to the unit holder;
- if all the unit holders consent, by issuing units to the unit holder;
- by setting the amount aside in a separate account in the books of the trust in the name of the unit holder, which amount will be regarded as a liability of the trust.

An amount paid by cheque is to be paid either personally or by post to the unit holder's registered address.

E Meetings of unit holders

Convening meetings

- 53 The trustee may convene a meeting of unit holders at any time. The unit holders may require the trustee to do so by a notice signed by or for unit holders who hold more than 20% of the units on issue.

Notice of meetings

- 54 The trustee must give at least 7 clear days' written notice of a meeting to all unit holders, specifying the date, time and place of the meeting and the business that is to be transacted.

A meeting may only be held on shorter notice (but no less than 24 hours' notice) with the consent of unit holders who hold at least 75% of the units on issue.

Chair

- 55 At each meeting, the trustee must nominate a person, whether a unit holder or not, to be chair. The chair has a deliberative vote, but not a casting vote. The decision of the chair on any matter relating to the meeting and its resolutions is final.

The decision of questions

- 56 A question put to a meeting of unit holders is to be decided by a show of hands. However, this does not apply if:
- the question is to be decided by the holders of a prescribed percentage of the units on issue; or
 - a poll is demanded.

In each case, a poll must be taken instead.

A poll

- 57 The unit holders who are present at a meeting may demand a poll. On a poll, each unit holder who is present is entitled to one vote per unit held. This does not apply to the extent of any special right, restriction or condition that attaches to a unit.

Voting

- 58 A unit holder may cast a vote personally, by proxy or by attorney; or, in the case of a company, by a representative.

Proxies etc

- 59 A proxy or appointment of a representative must be in a common form or a form approved by the trustee. A proxy must be signed by the unit holder. An appointment of a representative must be signed by the CEO or other officer of the corporation.

A proxy must be deposited at the trustee's office at least 24 hours before the meeting to which it relates.

Meeting procedures

- 60 The quorum for a meeting is 2 or more unit holders who represent at least 50% of the units on issue. If there is only one person who holds units in the trust, that unit holder is the quorum.

If a quorum is not present within 30 minutes after the scheduled commencement of the meeting, the meeting is adjourned to a time, date and place determined by the trustee. This does not apply if the unit holders required the meeting to be convened. In that case, the meeting is dissolved.

The quorum for an adjourned meeting is those present.

The trustee may adjourn a meeting

- 61 The trustee may at any time adjourn a meeting to another time, date and place. The date must be no more than 21 days after the date of the adjourned meeting.

Resolutions are binding on all unit holders

- 62 A resolution passed at a meeting of unit holders binds all unit holders. No objection may be made to any vote cast unless it is made at the meeting.

A resolution in writing signed by all the unit holders entitled to vote at a meeting of unit holders is as valid and effectual as if it had been passed at a duly called and constituted meeting of unit holders. The written resolution may consist of duplicate copies of one document of which copies have been signed by each unit holder.

F Powers, liability and indemnity of the trustee

All powers of an individual owner in relation to assets

- 63 The trustee has all the powers in relation to the assets of the trust that it is possible to give a trustee, including all the powers that an individual would have as the legal and beneficial owner of the assets.

Specific powers

- 64 The trustee has each of the following specific powers:
- to invest the assets of the trust and vary such investment at any time, and to enter into and pay for those investments;
 - to advance or lend money to any person, with or without any security being provided;
 - to borrow and raise money from any person;
 - to provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations;
 - to mortgage, pledge, charge or otherwise provide the assets of the trust as security for any borrowing, facility, guarantee, indemnity, lease or other contractual obligation;
 - to purchase, acquire, sell, transfer, hire, lease, dispose of, manage, divide, encumber or otherwise deal with any real or personal property;
 - to sell, transfer, hire, lease, dispose of, manage, divide or otherwise deal with any assets of the trust;
 - to purchase, acquire, vary, sell, transfer or dispose of any deferred property or rights, or any life, life endowment, term or other policy, and to make any relevant payment or pay any premium from the assets of the trust;
 - to pay out of the assets of the trust any costs, charges, taxes, duties or expenses of the trust including those which are:
 - incidental to the management of the assets of the trust;
 - incidental to, or incurred in the exercise of, any power, authority or discretion of the trustee;
 - incurred because of the death of a trustee, appointor or any beneficiary;
 - to exercise all rights and perform all duties associated with the trustee holding shares, stock or debentures in any company;
 - to establish, purchase, acquire, promote or conduct any company, business, profit-making undertaking or scheme, either in the trustee's own capacity or in its capacity as trustee (or both), and either solely or with any person and to sell, transfer, dispose of or wind up any such company, business, undertaking or scheme;

- to employ any person to carry on any business of the trust or to do anything in connection with matters required to be done under this deed, and to remunerate that person (and make arrangements as to that person's superannuation);
- to appropriate, wholly or partly, any asset of the trust in satisfaction of any interest a person may have in the assets of the trust or any benefit which the trustee determines to pay to or apply for the benefit of, a beneficiary;
- to value, or engage a person to value in whole or in part, the assets or any asset of the trust;
- to open and operate bank accounts in the usual way, to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities;
- to give receipts for money received;
- to deposit any securities, deeds or other documents with any bank;
- to underwrite shares, securities or other obligations;
- to grant options in respect of any of the assets of the trust;
- to become a director, or appoint any person as a director, of any company an interest in which forms part of the assets of the trust, and to be independently paid an amount appropriate for such a position;
- subject to the relevant provisions of this deed, to appoint new trustees in relation to all or any part of the fund on any terms the trustee sees fit;
- to receive any real or personal property by gift or by will as additions to the assets of the trust;
- to grant, cancel or redeem an annuity;
- to divide the assets in their own particular form, without first realising those assets, between the trust fund and any other trusts established under this deed;
- to exercise a power or discretion even though the trustee or a director, member, associate or relative of the trustee has or may have a direct or indirect interest in the method or result of exercising the power or discretion, or may benefit directly or indirectly from its exercise, provided that such power or discretion is exercised in good faith and for a proper purpose;
- to take any action to protect the assets of the trust;
- to mix the trust fund with any other money, funds or property, including without limitation, other trusts' money, funds or property and may join with any other person or the trustee in its personal capacity or as trustee or any other trust fund or both of them in making common investments;
- in addition to the power set out in clause 66, to appoint in writing an attorney or attorneys and delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the trustee and execute any powers of attorney or other instruments necessary to effect such purpose;
- to make any election required or permitted at law;

- subject to the provisions of this deed, to exercise all or any of these powers:
 - as the trustee sees fit;
 - either alone or jointly with any person including a trustee for any other trust or the trustee in its personal capacity or as trustee of any other trust fund and to assume joint or several liability in respect of any joint exercise of these powers; and
 - in relation to the assets of the trust, as if the trustee was the beneficial owner of those assets.

In this clause, the term 'any person' is taken to include the trustee in his or her personal capacity, the trustee as trustee of another trust, any director, member, associate or relative of the trustee and any company, business or partnership in which the trustee is a director, member, partner or otherwise involved.

The trustee's borrowing power is unlimited

65 The trustee has power to borrow and to offer guarantees to the extent that the trustee thinks fit.

Authority to act on the trustee's behalf

66 The trustee may authorise another person to exercise a power or discretion of the trustee. If the trustee authorises another person to exercise a power or discretion of the trustee, the trustee may include in the authority provisions to protect persons dealing with the authorised person. The trustee remains liable for the acts and omissions of the authorised person.

The trustee may appoint a manager

67 The trustee is not required to act personally, but may appoint a person to manage the trust on the trustee's behalf.

The trustee may register assets in the name of a nominee

68 The trustee may register the assets in the name of a nominee. The trustee retains all the trustee's powers in relation to assets registered in the nominee's name.

The trustee may deposit title documents

69 The trustee may deposit documents of title to any asset with a solicitor, accountant, bank, trust company, investment broker, stock broker or similar person in the place where the assets are invested or situated.

Liability of the trustee

70 The trustee is not liable to the unit holders in respect of any loss unless it arises from fraud, gross negligence or breach of trust on the part of the trustee. Any liability is limited to the assets of the trust.

Indemnity to the trustee

- 71 The trustee is entitled to an indemnity out of the assets of the trust in respect of any liability incurred in connection with acting as trustee of the trust. This does not apply if the liability arose from fraud, gross negligence or breach of trust on the part of the trustee.

No indemnity from unit holders

- 72 A unit holder is under no obligation whatever to personally indemnify the trustee or a creditor of the trust in relation to any liability, loss, damage or expense either incurred or suffered in connection with the trust. A unit holder's sole liability is in respect of any amount unpaid on partly paid units. The trustee is unable to exercise any right by way of subrogation or indemnity against a unit holder.

The trustee may insist on protection

- 73 The trustee is entitled not to enter into an agreement, execute a document or assume liability of any type in connection with the trust unless it includes a provision limiting the trustee's liability to the extent of the trustee's right to an indemnity from the assets of the trust.

Remuneration

- 74 The trustee is entitled to remuneration for acting as trustee in accordance with a special resolution passed by the unit holders. The remuneration may be in the form of fees, salary, commission or other remuneration. It may be paid out of capital or income of the trust.

Administration expenses

- 75 The trustee may pay all the expenses and costs of administering the trust out of the income or capital of the trust. If the trustee is engaged in a profession, the trustee may charge usual professional charges for any professional work done for the trust by the trustee or a professional, partner or employee.

Conflict of interests

- 76 The trustee (and an associate of the trustee) is entitled to be trustee of another trust, and to deal in any way with the trust established by this deed, or a unit holder, despite being trustee (or an associate of the trustee) of the trust. However, the trustee must disclose any interest of the trustee (or an associate) in a contract or transaction to unit holders before the contract or transaction is entered into. And the trustee (and associate) must also act in good faith at all times towards the unit holders in respect of the contract or transaction.

Release of a power

- 77 The trustee may release or revoke any power conferred on the trustee by this deed, except one which by the terms of this deed is irrevocable. Any other person may release or revoke a power conferred on that person by this deed. If a power is released or revoked by the trustee or other person, the clause granting that power ceases to operate.

Exercise of powers at the trustee's discretion

- 78 The trustee has an absolute discretion whether to exercise a power under this deed and as to how to exercise a power. Neither a unit holder nor any other person may challenge an exercise of a power or a failure to exercise it, or require a reason for its exercise or non-exercise.

Advice

- 79 The trustee may rely on advice from a qualified lawyer in relation to interpreting and applying this deed and anything to be done or not done under it. The trustee may rely on advice or information supplied by any other person in relation to any matter that the trustee believes in good faith is within that person's competence and will not be liable for relying on that advice or information.

G Appointment, retirement and removal of the trustee

The trustee of the trust

- 80 The initial trustee of the trust is named in the Schedule.

Appointment of a new trustee

- 81 The unit holders may appoint a new trustee by passing a special resolution. They may appoint a single trustee or more than one. The appointment is effective when the new trustee executes a deed binding the trustee to comply with this deed. Registration of the deed is not required unless the law demands it.
- 82 The appointment provisions of this deed apply to the exclusion of any statutory appointment provisions. Registration of any deed which changes the trustees is not required to give effect to a change of trustee or to vest the trust's assets in a new trustee.

Retirement of the trustee

- 83 A trustee may retire by giving the unit holders 3 months' written notice, or such shorter period as specified in a special resolution of the unit holders. However, unless there is a remaining trustee, the retirement is only effective when a new trustee has been appointed.

Removal of the trustee

- 84 The unit holders may remove a trustee at any time in accordance with law or by passing a special resolution.

Termination of the appointment of the trustee

- 85 The appointment of a trustee terminates automatically if any of the following occurs:
- the trustee is found to be of unsound mind, or the trustee or his or her estate becomes liable to be dealt with in any way under a law dealing with mental health;
 - the trustee becomes bankrupt or makes an arrangement or composition with his or her creditors;
 - the trustee enters into compulsory or voluntary liquidation (except for the purposes of amalgamation or reconstruction), or has an administrator, receiver, official manager, or receiver and manager appointed to any part of its assets.

The transfer of assets

- 86 On retirement or removal of a trustee, or automatic termination of a trustee's appointment, the trustee must immediately do each of the following at the trust's expense:
- hand over the books, accounts, documents and property of the trust to the new trustee;
 - do everything necessary to vest the assets of the trust in the new trustee;
 - do everything reasonably required by the new trustee to hand over to the new trustee possession and control of any assets in the hands of third parties;
 - do everything reasonably required by the new trustee to inform the new trustee of the full state of affairs of the trust.

H Variation and termination of trust

No Variation of clause

- 87 Clause 81 concerning the appointment of a new trustee cannot be varied.

The trustee may vary this deed

- 88 Except as stated in clause 87, the trustee may vary this deed by resolving to approve the variation. The resolution must be signed by the trustee or by an authorised officer of the trustee. It is not necessary to execute a deed varying this deed in accordance with the resolution.

However, a variation concerning any of the following matters is not effective unless the unit holders consented to it by passing a special resolution at the time of the variation or before it:

- the beneficial interest of unit holders;
- the issue, transfer or redemption of units;
- the appointment or removal of a trustee;
- the variation of this deed;

- voting rights at meetings of the unit holders;
- limitation of the liability of unit holders; and
- termination of the trust.

Variation may not affect rights

89 The trustee may not vary this deed, without the consent of the affected persons, in a way that prejudicially affects:

- the rights of a unit holder to income of the trust previously set aside or held for the benefit of that unit holder;
- the rights of unit holders to participate in the income or capital of the trust in accordance with this deed.

The time variation takes effect

90 A variation takes effect on the date specified in the resolution. If no date is specified, it takes effect on the date of the resolution.

Termination date

91 The trust terminates 80 years after the date of this deed. It terminates at an earlier date if either of the following occurs:

- unit holders holding at least 90% of the units on issue notify the trustee that it is to terminate on a specified earlier date;
- the trustee decides in the interests of all unit holders that it should terminate at a specified earlier date.

Termination

92 On termination of the trust, the trustee must realise the assets of the trust, pay all its liabilities, and distribute the remainder (after deducting any amount the trustee is entitled to and any amount the trustee decides is appropriate to cover actual, contingent and future liabilities) to the unit holders in accordance with their entitlements, in proportion to the number of units in respect of which they are registered.

Retained amounts

93 The trustee must hold any retained amounts on trust for the unit holders in accordance with their entitlements at the time of termination of this deed.

Power to postpone a sale

94 The trustee may postpone the realisation of any asset for any period the trustee thinks desirable.

I Miscellaneous

More than one trustee

- 95 If there is more than one trustee at any time, the trustees must exercise their powers and discretions by at least a majority of the trustees.

Statements and accounts

- 96 The trustee must establish and maintain proper books of account which accurately reflect all receipts and outgoings of the trust. The trustee must separately record all income and capital of different categories referred to in this deed.

Financial statements

- 97 The trustee must ensure that financial statements are prepared as at the end of each financial year. The statements are to include a profit and loss account and a balance sheet. They are to be certified by a certified practising accountant to be a true and proper statement of the affairs of the trust in accordance with generally accepted accounting principles. They must set out:
- the income of the trust;
 - the capital of the trust;
 - costs and disbursements and other outgoings paid or payable out of the trust and chargeable against income;
 - capital expenditure and liabilities chargeable to capital;
 - investments and money comprised in the trust;
 - amounts held in the accumulated income account;
 - amounts distributed to unit holders;
 - amounts held in retained income accounts.

Access to the accounts and books

- 98 A unit holder is entitled to inspect the books and accounts of the trust on giving the trustee reasonable notice.

Auditor

- 99 The trustee may appoint an auditor for the trust.

Unit holders holding at least 20% of the units on issue may at any time request in writing that the trustee appoint an auditor to examine the books and accounts of the trust to ascertain whether any financial statement is correct and to inquire into the financial affairs of the trust. The unit holders may name the auditor or leave it to the trustee to choose one. The trustee must give the auditor access to the books and accounts and must give the auditor any information or explanation the auditor asks for and must co-operate fully

with him or her. The costs of the audit are to be paid out of the trust. The trustee may terminate the services of the auditor.

The trustee may require proof

- 100 The trustee may require proof satisfactory to the trustee of the identity and right of a person to a unit or any interest in a unit.

Currency conversion

- 101 If it is necessary to convert an amount from one currency to another, the trustee must decide when the conversion is to take place and the basis on which it is to be done.

The trustee may value the assets and liabilities

- 102 The trustee may at any time value the assets and liabilities of the trust. In doing so, the trustee is not to be regarded as having a valuer's knowledge or any expertise in valuing assets. The trustee may determine what valuation methods and policies to apply. The valuation of an asset must be a market valuation unless the trustee decides that there is no market for an asset or that the market value does not represent its fair value.

The trustee, in making a valuation of the assets and liabilities of the trust, may seek the opinion of the trust's auditors. If no auditor has been appointed to the trust, the trustee may seek the opinion from the trust's accountant. The auditor or accountant as the case may be must confirm to the trustee in writing the market value of the assets of the trust.

No partnership etc

- 103 This deed does not create the relationship of partners, or of principal and agent, between the trustee and the unit holders. It does not create the relationship of partners between the unit holders.

Notices

- 104 A notice or other communication that is required to be given or made or that may be given or made to the trustee is only given or made if it is in writing and delivered personally or sent to the address or fax number set out in the Schedule, or a replacement address or fax number notified to unit holders by the trustee.

A notice or other communication that is required to be given or that may be given to a unit holder is only given if it is in writing and delivered personally or sent to the unit holder's registered address or fax number last notified in writing to the trustee.

Time notice is given

- 105 A notice or other communication is given or made:
- when it is delivered personally;
 - when it should have been delivered in the ordinary course of the post (3 days within Australia; 10 days outside Australia);

- when the sender receives an acknowledgement or transmission report from the sender's fax that the notice or other communication has been sent in full.

A notice or other communication that is given or made after normal business hours is given or made at 9:00 am on the next business day (recipient's business day and time).

Waiver

- 106 The trustee or a unit holder may only waive a right or a requirement for the performance of a duty by specifically waiving it in writing. Nothing else suffices.

Other rights are preserved

- 107 This deed does not affect any other rights the trustee or a unit holder may have apart from the deed.

Joint and several obligations

- 108 The obligations imposed on anyone under this deed are imposed jointly and severally.

Laws

- 109 References to laws in this deed refer to those laws as amended, or, if repealed, any laws that supersede the repealed laws, if that is consistent with the overall purpose of this deed and does not lead to an anomaly.

Counterparts

- 110 This deed may be executed by executing identical documents.

Jurisdiction

- 111 This deed is governed by the law of Western Australia. Each party submits to the jurisdiction of the courts of that jurisdiction. No party may argue, on the basis of the doctrine of forum non conveniens or any other basis, that the courts of that jurisdiction should not exercise jurisdiction.

Definitions

Associate means what it means under the *Corporations Act*.

Business day means Monday to Friday, except public holidays in the jurisdiction stated in clause 111.

Clear days in relation to a period of notice, excludes the day the notice is given and the day it becomes effective.

Corporations Act means the *Corporations Act 2001* (Cth).

Financial year means the period from 1 July in a year to 30 June in the next year. It also means the lesser period ending on 30 June after the date of this deed; and the period from 1 July until the termination of the trust before 30 June of the next year.

Income for a given financial year, excludes any income for that year that the trustee has decided to accumulate.

Income of the trust fund means, subject to clause 39, the net income of the trust as defined in section 95(1) of the *Income Tax Assessment Act 1936* (Cth) (as amended).

Law includes a requirement under a law, and the rules of a stock exchange or other body with which rules the trustee must comply.

New trustee includes any remaining trustee.

Net asset value means the value of the assets less the liabilities of the trust as determined by the trustee under clause 102.

Person includes an entity that is not a legal entity.

Present means present in person or by proxy, or in the case of a corporation, by a representative.

Realise includes sell, call in and convert into money.

Special resolution means a resolution passed by 75% of unit holders present and entitled to vote.

Tax means any type of tax, duty, charge, fee or other requirement imposed by a government or government agency or authority of any type.

Trustee if there is more than one trustee at any time, then at that time 'trustee' means 'trustees'.

Unit holder means a person who is registered as a unit holder at the relevant time, either separately or jointly. If a unit holder is dead or is bankrupt, 'unit holder' means the person entitled to the unit holder's units.

Unit means a unit in the trust deed.

Writing includes writing in electronic form.

Schedule

Date of this deed

22 March 2016

Names (and ACNs or ABNs if applicable) and addresses of initial unit holders, the number of initial fully paid units held by each and the number of initial partly paid units held by each:

Unit Holder 1

Carolyn Barham of 23 Richmond Circus, East Fremantle WA 6158 as trustee for The Buddy Barham Trust

Number of fully paid units: 67500 of \$1.17 each.

Number of partly paid units: 0 of \$1.17 each of which \$0.00 has been paid and \$0.00 is unpaid.

Name of the trust

Capel Three Bears Unit Trust

Name and address of the trustee

Three Bears Corporation Pty Ltd, ACN 166 925 604
Floor 1, 10 Kings Park Road
West Perth
WA, 6005

The law of the jurisdiction that governs this deed

Western Australia

Execution

Executed as a deed.

Dated: 12/3/16

Executed by

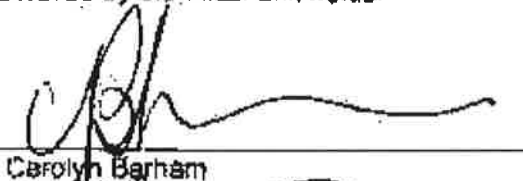
Three Bears Corporation Pty Ltd ACN
166925604, in its capacity as trustee, in
accordance with section 127(1) of the
Corporations Act 2001 (Cwth):



David Barham, sole director and sole
company secretary

Signed, sealed and delivered by the initial unit holder

Signature:


Carolyn Barham

Witness signature:



Witness name:

Kelly Finnis