



The Johns Fergs Trust

DATED: THE ____ DAY OF _____ 20__

BETWEEN

Other Company Pty Ltd ACN 111 222 333 (the “Trustee”);

AND

the “Unit Holders”.

UNIT TRUST DEED

THIS DEED OF TRUST is made the _____ day of _____ 20_____.

BETWEEN: **Other Company Pty Ltd ACN 111 222 333** a company incorporated under the *Corporations Act* 2001 and having its registered office at 1 Perth Street Perth 5000 (**the “Trustee”**);

AND: **THE PERSONS NAMED AND DESCRIBED IN PART A OF SCHEDULE ONE (the “Unit Holders”)**.

RECITALS:

- A. The Trustee has agreed to act as Trustee of The Johns Fergs Trust (**the “Trust”**), which is created by this Deed.
- B. The Unit Holders as described in Part A of Schedule One have entered into this Deed and have agreed to take up by way of allotment simultaneously with the execution of this Deed the number of Units in the Trust as are set out under the name of each Unit Holder in Part A of Schedule One.
- C. The Purpose or Purposes (**the “Purpose”**) for which this Trust has been created is set out in Part B of Schedule One and the parties have entered into this Deed in order to give effect to that Purpose.

OPERATIVE PROVISIONS:

1. DEFINITIONS

1.1. In this Deed and in the Schedules to this Deed these words and phrases have the following meanings:

“**Allotment Price**” means the sum of \$252 which each Unit Holder must pay to the Trustee for each Allotment Unit allotted to him, her or it pursuant to this Deed, such payment and allotment to be made pursuant to and simultaneously with the execution of this Deed.

“**Allotment Units**” means the Units to be allotted to the Unit Holders simultaneously with the execution of this Deed and the payment of the Allotment Price by them.

“**Business**” means any business which the Trustee may at any time carry on in its capacity as Trustee of the Trust. Where the Purpose as set out in Part B of Schedule One includes the conduct of a business then this definition applies to that business also.

“**Capital**” means all money, assets and property of whatsoever kind or nature that constitute the Fund.

“**Consent**” means any written documents signed by the consenting or approving party giving his, her or its consent or approval to a proposed transaction, proposed course of conduct or proposed decision or ratification of a transaction or decision. In the case of Unit Holders, consent also includes any consent given by them in a Unit Holders’ Resolution.

“**Court**” means any Court having jurisdiction to give directions to trustees, grant relief to beneficiaries of a trust, appoint new or replacement trustees or make any other decision in any way relating to the affairs of the Trust.

“**Deed**” means this Deed of Trust creating and establishing The Johns Fergs Trust.

“**Fund**” means collectively all of the following:

- (i) the total Allotment Price paid to the Trustee by all the Unit Holders on execution of this Deed for the allotment to them of the Allotment Units (the receipt of which monies is hereby acknowledged by the Trustee);
- (ii) all further monies which the Trustee might at any time in the future receive for the allotment of Units;
- (iii) all other sums of money of a Capital nature that are at anytime hereafter received by the Trustee on behalf of the Trust, and
- (iv) all monies and property whether real or personal, whether tangible or intangible, of whatsoever kind or nature and wheresoever situate that the Trustee acquires or through other property creates or becomes entitled to and which is held by the Trustee as Capital pursuant to the terms of the Trust.

“**Income**” means all revenue earned by the Trustee in the conduct of the Trust in any Year after the deduction of all expenses, costs, outgoings, and other proper taxable deductions of whatsoever kind or nature incurred by the Trustee in the Year.

“**Meeting of Unit Holders**” means a meeting of Unit Holders, the quorum for which is more than thirty percent (30 %) in number of Unit Holders who collectively hold not less than forty percent (40 %) of the Units issued at that time in the Trust.

“**Minute of Resolution**” means a document or collection of counterparts of a document signed by Unit Holders as a Unit Holders’ Resolution.

“**Register of Unit Holders**” means the register established and maintained by the Trustee of all Unit Holders and their Unit holdings.

“**Statute**” means all applicable legislation that at any time governs, controls or regulates in any way the powers, duties and the role of Trustees or which in any way regulates, controls or protects the rights of the Unit Holders.

“**Trust**” means this Unit Trust established by this Deed.

“**Trustee**” means at the date of this Deed the party named and described as the Trustee and after the date hereof includes any new Trustee appointed pursuant to this Deed or by the Court in addition to or in replacement of any Trustee.

“**Unanimous Unit Holders’ Resolution**” means a Unit Holders’ Resolution which has either been unanimously passed at a Meeting of Unit Holders all of whom are in attendance or represented thereat or which has been signed by all the Unit Holders as a Minute of Resolution.

“**Unit Certificate**” means a certificate issued by the Trustee setting out the number and class of Units held by the Unit Holder named in that certificate as conclusive evidence of that Unit Holder’s holding of that Unit in the Trust at that time.

“**Unit Holders**” means collectively all the persons named and described in Part A of Schedule One as the Unit Holders together with all other persons who may at any time after the date of this Deed become registered in the Register of Unit Holders as holders of Units in the Trust. All of whom are and shall constitute the beneficiaries of the Trust at any relevant time.

“**Unit Holder’s Representative**” means any individual appointed in writing as the representative of a Unit Holder entitled to:

- (i) attend and vote on behalf of that Unit Holder at any Meeting of Unit Holders;
- (ii) sign any Minute of Resolution on behalf of that Unit Holder;
- (iii) give any Consent on behalf of that Unit Holder, and
- (iv) do any other act or thing or exercise any right which under this Deed the appointing Unit Holder is entitled to do.

A Unit Holder’s Representative may be appointed for a specific Meeting of Unit Holders or to sign any specific Minute of Resolution or to give any Consent or may be appointed as a standing appointment which will continue until it is revoked by the appointing Unit Holder or until any specific date in the appointment document.

“**Unit Holders’ Resolution**” means unless it is required to be a Unanimous Unit Holders’ Resolution a resolution of Unit Holders that is either:

- (i) passed at a Meeting of Unit Holders by Unit Holders that collectively are more than thirty-six percent (36 %) in number of the Unit Holders in the Trust at that time which collectively hold more than thirty-five percent (35 %) of the issued Units in the Unit Trust at that time, or
- (ii) signed as a Minute of Resolution by more than twenty-six percent (26 %) in number of Unit Holders in the Trust at that time which together hold not less than forty-one percent (41 %) of the issued Units in the Trust declaring in that Minute of Resolution that they are all in favour of the resolution set out therein being passed as a Unit Holders' Resolution.

“**Units**” means ordinary Units issued by the Trustee at any time in the Trust and as at the date of this Deed the Units are the Allotment Units.

“**Vesting Date**” means the earlier of the following dates:

- (i) the seventieth anniversary of the date of this Deed; or
- (ii) such date as the Trustee with the Consent of Unit Holders by Unit Holders' Resolution declares in writing to be the Vesting Date; or

such date as the Unit Holders by Unanimous Unit Holders' Resolution declare to be the Vesting Date.

“**Year**” means in respect of the current year the period from the date of this Deed up to and including 30th of June next occurring and thereafter means the year commencing 1st of July in one year and finishing on 30th of June in the next year provided that the last year shall mean the year commencing on 1st of July and finishing on the Vesting Date.

1.2. Any reference to a party in this Deed is a reference to that party's assignees and lawful successors in title. Where any Unit Holder is an individual, any reference to that Unit Holder includes his or her legal personal representatives. Where any Unit Holder is a company, any reference to that Unit Holder shall where applicable, include any controller appointed to that company within the meaning of that term as defined in the *Corporations Act 2001*.

1.3. Headings are included in this Deed for convenience only and do not affect the interpretation or construction of any clause of this Deed.

1.4. Any reference to a statute also includes all amendments to that statute and where applicable includes all regulations, ordinances, by-laws, rules or codes of practice established pursuant to or in accordance with that statute.

- 1.5. Any reference to a person includes individuals, corporations and all other entities recognised by law.
- 1.6. Where applicable, the singular includes the plural and vice versa and any gender includes all genders including the neuter gender.

2. CREATION OF THE TRUST

- 2.1. The Trustee holds the Fund which as at the date of this Deed stands at \$52 500 being the collective Allotment Prices paid by the Unit Holders for the Allotment Units and hereafter all other monies, property and assets constituting at any time before the Vesting Date the Fund on Trust for the Unit Holders absolutely in proportion to the number of Units held by each of them so that one Unit entitles its holder to one equal beneficial share in the Fund.
- 2.2. The Trustee will hold all the Income from the Fund in each Year on trust for the Unit Holders absolutely in proportion to the number of Units held by each of them in the Trust so that one Unit will entitle its holder to one equal beneficial share in the Income of the Fund for that Year. The Unit Holders and each of them according to the number of Units each holds shall be presently entitled to the Income of the Trust for each Year.
- 2.3. No Unit Holder described in Part A of Schedule One shall be under any obligation after full payment of the Allotment Price to the Trustee for the Allotment Units allocated to it to make any further payment or payments in respect of those Units or to accept any liability whatsoever in respect thereof or to indemnify the Trustee for any liability incurred by the Trustee in respect of the allotment of those Allotment Units.
- 2.4. The Trustee may from time to time after the date of this Deed allot further Units in the Trust to persons that are not at the date of this Deed Units Holders provided that the Unit Holders have by Unit Holders' Resolution Consented to such allotment. The Unit Holders may attach such conditions or restrictions to their Consent as they deem fit. The Trustee may, independent of the Unit Holders, itself impose restrictions or limitations in respect to any Units allotted after the date of this Deed.
- 2.5. No Units shall be allotted after the date of this Deed unless the proposed allottee of those Units agrees and acknowledges that the terms of this Deed govern his, her or its rights as a Unit Holder in the Trust.
- 2.6. The Trustee may with the Consent of Unit Holders by Unit Holders' Resolution grant options to any person to acquire Units in the Trust. The Unit Holders may in giving

their Consent to the grant of any option to acquire Units in the Trust impose such conditions or restrictions as they think fit. The Trustee may in its absolute discretion impose such conditions and/or restrictions independent of the Unit Holders in respect of the granting of any option to any person to acquire Units in the Trust.

- 2.7. Every application for the allotment of Units in the Trust must be made in writing, signed by the applicant and be in the form of the application which is Schedule Two to this Deed.
- 2.8. The Trustee may at any time offer to existing Unit Holders on a *pro rata* basis and at any subscription price and subject to such terms as the Trustee thinks fit further Units in the Trust. If any Unit Holder fails to take up the further Units allotted to him, her or it in the time set out in the offer then the Trustee may still allot the offered Units, offered to other Unit Holders to those other Unit Holders that have taken up the offer. The percentage Unit holding of the Unit Holders in the Trust will be adjusted after such allotments. To take up an offer of further Units, the Unit Holders concerned must complete an application form in the form set out in Schedule Two, sign it and lodge it with the Trustee before the expiry date of the offer. The receipt of the application form duly signed by the Unit Holder will constitute acceptance of the offer provided it is accompanied with a cheque (which is honoured on presentation) for the subscription price of those further Units or provided the subscription price has been electronically transferred into the Trust's bank account by that Unit Holder before the expiry date of the offer.

3. TRUSTEE'S RIGHT OF INDEMNITY

- 3.1. The Trustee shall be entitled to be fully indemnified out of the Fund in respect of all liabilities incurred by the Trustee in the proper exercise of its powers as a Trustee of the Trust. The Trustee shall not be entitled to be indemnified out of the Fund where the liability incurred by the Trustee is a direct or indirect consequence of any breach of trust on the part of the Trustee or is a consequence of any fraud, dishonesty or negligence on the part of the Trustee.
- 3.2. The Trustee shall not have any right whatsoever to claim indemnity from any of the Unit Holders for any liability incurred by the Trustee, even where that liability is incurred in the proper conduct by the Trustee of the Trust.

4. TRANSFER OF UNITS

- 4.1. A Unit Holder may at any time transfer any Unit or Units held by him, her or it to any related entity within the meaning of that term as used in the *Corporations Act 2001* or to any other Unit Holder.
- 4.2. With the Consent of Unit Holders given by Unit Holders' Resolution, a Unit Holder may transfer the whole or any part of the Units held by him, her or it to any person.
- 4.3. Any transfer of Units must be in the form set out in Schedule Three signed by both the transferor and the transferee. It must be duly stamped, where this is a requirement and when lodged with the Trustee for registration, must be accompanied by the Unit Certificate(s) applicable to those Units.
- 4.4. The Trustee shall only register a transfer of Units where the transferee has acknowledged by the execution of the transfer that all rights and entitlements in respect of the Units to be transferred and in respect of the Fund and the Income therefrom are governed strictly by the terms of this Deed. Furthermore, the transferee must accept that by executing such a transfer, the transferee will on being registered as a holder of those Units become responsible for all the obligations, liabilities and limitations in this Deed that are applicable to Unit Holders.
- 4.5. Where a Unit Holder is an individual and he or she dies, the Trustee shall upon production of the appropriate Grant of Probate or Letters of Administration register the legal personal representative of that deceased Unit Holder in place of the deceased Unit Holder.
- 4.6. Where Consent is required for any transfer of Units, such transfer will not have any effect until the last to occur of the following:
 - 4.6.1. The Consent is given, and
 - 4.6.2. The transferee is registered in the Register of Unit Holders as the holder of those Units.
- 4.7. Where the transfer does not require Consent then the transfer shall take effect upon the entry of the transferee in the Register of Unit Holders as the holder of those Units.
- 4.8. The Trustee must use all reasonable endeavours to promptly process all transfers of Units provided that the Trustee will not be obliged to register any transfer of Units that has not been duly and properly stamped and has not been Consented to, where such Consent is required or is not accompanied by a Unit Certificate.

5. CANCELLATION OF UNITS

- 5.1. A Unit Holder may at any time with the Consent given by Unit Holders' Resolution request the Trustee to cancel the Units held by that Unit Holder and pay to that Unit Holder a proportion of the Fund as represents in the reasonable opinion of the Trustee the value of those Units at the time of such request. Notwithstanding that the Unit Holder has by Unit Holders' Resolution obtained Consent, the Trustee may in its absolute discretion refuse to cancel such Units without assigning any reason for such refusal.
- 5.2. In order for the Trustee to cancel any Units, the Unit Holder must complete an application for cancellation of Units in the form set out in Schedule Four and lodge it with the Trustee together with the Unit Certificates. The Trustee shall thereupon promptly request the Unit Holders to decide whether or not they Consent to the cancellation of those Units. Only if the Unit Holders Consent by Unit Holders' Resolution are the Units to be cancelled and then only if the Trustee also agrees to the cancellation of the Units.

6. REGISTER OF UNIT HOLDERS

- 6.1. The Trustee must keep a Register of the Unit Holders of the Trust and must enter therein:
- 6.1.1. The names and addresses of each Unit Holder;
 - 6.1.2. The number of Units held by each Unit Holder;
 - 6.1.3. The date on which the name of every Unit Holder was entered in the Register of Unit Holders in respect of each Unit held by that Unit Holder, and
 - 6.1.4. Such other or further information as the Trustee thinks fit.
- 6.2. Any change of name or address of any Unit Holder must be notified to the Trustee promptly and in writing. The Trustee must promptly alter the Register of Unit Holders accordingly.
- 6.3. Upon the registration of any person as a Unit Holder of any Unit the Trustee will issue a Unit Certificate to such Unit Holder showing the number of Units held by that Unit Holder.
- 6.4. Such Unit Certificate will be in the form or to the effect of Schedule Five and will be conclusive evidence that the person named therein is the Unit Holder of those Units shown therein.

6.5. The Trustee may in its discretion issue new Unit Certificates to replace any certificate which has been or are believed to have been lost or destroyed. Where a Unit Certificate has been lost, a Unit Holder may request the Trustee to issue a Replacement Unit Certificate. The Trustee may require that Unit Holder to provide a statutory declaration setting out the circumstances in which the Unit Certificate was lost or destroyed and if lost, what searches and enquiries the Unit Holder has made to attempt to locate the lost Unit Certificate.

7. RIGHTS ATTACHING TO UNITS

7.1. The Unit Holders are collectively the sole and exclusive beneficiaries of the Trust. As such, each Unit Holder has the right to participate according to the number of Units that he, she or it hold in the Trust in any distribution of the Fund and in all Income of the Fund.

7.2. Each Unit Holder is entitled to one vote for each Unit held by him, her or it in the Fund at any particular point of time.

7.3. On the Vesting Date each Unit Holder shall be entitled to participate in the distribution of the Fund on the basis that each Unit held shall represent one share in the Capital of the Fund.

7.4. No Capital asset of the Fund which consists of more than thirty percent (30%) of the Capital of the Fund shall be sold, transferred or disposed of without the prior Consent of Unit Holders given by Unit Holders' Resolution.

7.5. No amount shall be borrowed by the Trustee where that amount is greater than forty percent (40%) of the total value of the Fund unless the Unit Holders by Unit Holders' Resolution give their prior Consent.

7.6. No security shall be granted over any of the assets of the Fund which consist of more than thirty percent (30%) of the Fund unless the Unit Holders give their prior Consent by Unit Holders' Resolution.

8. CONTINUATION OF THE TRUST AND DISTRIBUTION OF THE FUND

8.1. The Trust shall continue until the Vesting Date unless it has been determined prior to that time in accordance with this Deed or any order of the Court.

8.2. Upon the Vesting Date, the Trustee must promptly realise all assets constituting the Fund and convert the same into money provided that in so doing any Unit Holder will be entitled to offer to purchase any asset of the Fund at its then current market value. In such circumstances, the Trustee will obtain an independent valuation of that asset

or alternatively seek Consent of Unit Holders given by Unit Holders' Resolution to such purchase at such price offered by the Unit Holder.

- 8.3. The Trustee must after the realisation of the assets of the Fund promptly distribute the whole of the Fund to Unit Holders in proportion to the number of Units held by each of them. Where any assets of the Fund cannot be promptly realised then the Trustee may in its absolute discretion distribute those assets *in specie* to Unit Holders attributing a value to such assets as the Trustee reasonably believes is a fair and true value.
- 8.4. Even though the Vesting Date has not occurred, the Trustee will be entitled from time to time to distribute *in specie* to the Unit Holders the whole or any part of the assets constituting the Fund and/or realise any part of the assets constituting the Fund and distribute the proceeds thereof to the Unit Holders. All such distributions *in specie* of assets of the Fund and all proceeds of realisations of assets of the Fund must be distributed to Unit Holders in proportion to the number of Units held by each of them at that time.
- 8.5. The Trustee may before distributing the Fund, deduct therefrom sufficient money to pay all expenses and costs involved in the realisation and distribution of the Fund.
- 8.6. The Trustee may from time to time in its absolute discretion where any person under a disability is a Unit Holder retain out of the Income which would otherwise be distributed or credited to such Unit Holder a sum estimated by the Trustee to be the amount of tax which might be assessed to the Trustee in respect of the Income to which such Unit Holder is presently entitled, and the amount so retained shall be Income to which no beneficiary is presently entitled but the Trustee may in its absolute discretion use the said amount or any part thereof to pay any tax assessed to the Trustee in respect of that Unit Holder.
- 8.7. An infant may be a Unit Holder. Any payment by the Trustee of any amount to which an infant is entitled to any parent or guardian of that infant or other person having for the time being the care or custody of such infant shall be a good discharge to the Trustee.

9. AMENDMENT OF THE TRUST

- 9.1. Subject to clause 9.2 of this Deed and the terms upon which the Fund is held under this Trust, the Trust may be amended by the Unit Holders by Unit Holders' Resolution at any time and in any way provided that any such amendment shall not reduce the

rights of any Unit Holders or impose any additional obligation or liability on the Unit Holders unless the Unit Holders by Unanimous Unit Holders' Resolution so decide.

9.2. No amendment to this Trust shall have any retrospective operation at all.

9.3. Unless the Unit Holders otherwise state in the Unit Holders' Resolution, any amendment to the terms of the Trust must be set out in a Deed of Amendment executed by the Trustee and by all Unit Holders who voted in favour of the Unit Holders' Resolution to amend the Trust.

10. POWERS OF THE TRUSTEE

10.1. **(To carry out the Purpose):** The Trustee shall have all powers reasonably required in order to enable the Trustee to fully carry out the Purpose and all powers which may be incidental to or which may facilitate or be reasonably necessary to assist the Trustee in carrying out the Purpose.

10.2. **(To Conduct the Business):** The Trustee shall have power to conduct the Business. As such the Trustee shall have all the powers that an individual (not being a trustee) would have in order to be able to reasonably, properly and efficiently carry on and conduct the Business.

10.3. **(Statutory Powers):** The Trustee has all the powers conferred on trustees by Statute at any relevant time during the continuance of the Trust.

10.4. **(Investment Powers):** In addition to all investments permitted by any Statute for the investment of trust funds, the Trustee has power to invest the whole or any part of the Fund:

10.4.1. in any kind of investment as the Trustee decides is a proper and appropriate investment for the Fund;

10.4.2. in any shares in any company including any listed companies, private companies and/or statutory corporations;

10.4.3. in any units in any other trust or in taking any interest or share or entitlement in any other trust;

10.4.4. in any bonds, debentures, securities, bills of sale, mortgages, charges or like securities;

10.4.5. by lending with or without security to any person, company or entity any part of the Fund on such terms and rates of interest as the Trustee thinks fit;

10.4.6. in purchasing any real or personal property of whatsoever kind or nature and wheresoever situate;

- 10.4.7. in purchasing any intangible right or interest including the right or interest in any copyright or other intellectual property;
- 10.4.8. in purchasing any option to acquire any real or personal property or to acquire any intangible property;
- 10.4.9. in leasing or acquiring any licence over any income producing asset of whatsoever kind or nature;
- 10.4.10. in purchasing any future right or entitlement of whatsoever kind or nature;
- 10.4.11. in any other investment that a company or individual not being a trustee would reasonably invest in having regard to the nature of the investment, the available Capital in the Fund and all other relevant considerations.
- 10.5. **(Other Businesses):** Subject to the approval of Unit Holders by Unit Holders' Resolution, the Trustee has power to carry on any business anywhere in the world, either alone or in partnership or joint venture and in any trade, industry or profession of whatsoever kind and to discontinue the same from time to time. The Trustee also has the right to purchase any such business and to sell any such business.
- 10.6. **(Purchase of Annuities):** The Trustee has the power to purchase for cash or such other consideration as may be required, any annuity or income stream on such terms and conditions as the Trustee may in its absolute discretion think proper. The Trustee may in exercising this power make or purchase any such annuity for a sum greater than the amount of the Fund at that time and the Trustee may agree to pay for any such annuity wholly or in part from any future monies which may come into the Fund.
- 10.7. **(Lend or Borrow Money):** The Trustee may at any time lend any part of the Fund to any person, including a Unit Holder, on such terms as the Trustee may deem prudent and whether secured or unsecured and the Trustee may from time to time borrow any amount from any bank or other institution and grant such security in respect of such borrowing over the Fund. Provided that where such borrowing is of an amount that requires the Unit Holders to Consent then the Trustee must not borrow such monies or grant such securities unless it has first obtained such Consent. The Trustee may in furtherance of this power join with any company or other person in executing any mortgage or other document for the Purpose of securing a payment of any money to or by the Trustee jointly with any other person. Any reference to a person herein shall also include a Unit Holder.

- 10.8. **(Guarantees):** The Trustee may from time to time for the proper Purposes of the Trust give any guarantee or indemnity for the payment of any money or the performance of any contract obligation or undertaking by any person, firm, company, corporation or association and give any security over any property forming part of the Fund to secure such guarantee or indemnity. Provided however that the Trustee must not give any such guarantee, indemnity or security in respect of such guarantee or indemnity unless the Trustee has first obtained the Consent of the Unit Holders by Unit Holders' Resolution.
- 10.9. **(Deal with Property):** The Trustee may hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, assign, surrender, let, lease, license, exchange, take or grant options or rights, or alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property (tangible or intangible) including (without limitation) shares, debentures or securities of any company and with or without deferred, restricted, qualified or special rights relating thereto.
- 10.10. **(Expenses):** The Trustee may pay out of the Fund or Income all costs, charges, taxes, and expenses of and incidental to the management of the Fund or to the exercise of any power, authority or discretion herein contained or in carrying out or performing the Trust hereof which costs, charges, taxes or expenses the Trustee may at any time incur, including all income tax, capital gains tax, goods and services tax and any other taxes at any time payable.
- 10.11. **(Shares and Securities):** The Trustee may exercise all rights, powers, privileges and perform all duties and do all such acts, matters and things appertaining to any shares, securities or debentures in any corporation for the time being held in this Trust as the Trustee could do if it were the beneficial owner of those shares, securities or debentures or were personally interested in the corporation. Without diminishing the generality of the foregoing the Trustee may assent to, approve of or ratify any arrangements modifying such rights, powers, privileges or duties and agree to any scheme of arrangement for the reconstruction of any corporation or vote in favour of or against any increase or reduction in capital of any corporation and may make any agreement in respect of or in the course of the winding up of any corporation and for such purpose deposit, surrender or exchange any of the said shares, securities or debentures or the documents of title thereto for some other property or money and to

pay any calls or contributions or other necessary expenses in connection with any such shares, stocks or debentures or any title thereto.

- 10.12. **(Employment and Employees' Remuneration):** The Trustee may at any time employ any person in connection with the Business or in connection with anything required to be done pursuant to the provisions hereof including the receipt and payment of money. The Trustee may also decide the remuneration to be allowed and paid and the amount of all charges and expenses and may create or arrange any superannuation, retirement benefit or pension scheme for the benefit of any person so employed.
- 10.13. **(Land Development):** The Trustee may develop, partition or agree to the development partition of or to sub-divide or agree to the development or subdivision of any land or other property owned by the Trust or any interest in which may for the time being be subject to the Trust and to pay out any monies in respect to those activities.
- 10.14. **(Acquire Companies):** The Trustee has power to establish, promote or acquire any shares in any company or companies or join in the promotion, establishment or acquisition of any company or companies carrying on any business activities or holding any assets.
- 10.15. **(Open Bank Accounts):** The Trustee may open any account or accounts with any bank or banks, credit union or other financial institution and to operate by and in all usual ways any such account or accounts.
- 10.16. **(Give Receipts):** The Trustee may give effectual receipts and discharges for any monies received by or on behalf of the Trustee or otherwise relating to any of the acts, matters and things provided for in this Deed.
- 10.17. **(Protection of the Fund):** The Trustee has power to take such action as the Trustee shall think fit for the adequate protection of the whole or any part or parts of the Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee.
- 10.18. **(To Take and Act on Legal Advice):** The Trustee may take and act upon the opinion (given in writing) of a legal practitioner practising in any country where the Fund or any part thereof may for the time being be invested in relation to the interpretation or effect of this Deed or any other document or Statute or as to the administration of the Trust without being liable to any of the Unit Holders interested in respect of any act

done by the Trustee in accordance with such opinion (provided that nothing in this power shall prohibit or impede the Trustee from applying to any Court for directions if it shall think fit or prohibit any of the Unit Holders from so doing).

10.19. **(To Employ Unit Holders):** The Trustee may employ and remunerate any Unit holder being an individual in the Business or in any other activity conducted by the Trustee.

10.20. **(General Power):** The Trustee has full power to do all other things which a natural person can do without limitation except for any express limitation in this Deed or any Statute that expressly prohibits or imposes pre-conditions to any particular act or conduct by a Trustee.

11. TRUSTEE DEALING WITH THE TRUST

11.1. Notwithstanding any general principle of law, any Trustee or any director or shareholder of any Trustee and any relative of any Trustee or of a director or shareholder of any Trustee may, acting honestly and properly, enter into any transaction with or concerning or in relation to the Fund in any capacity without such transaction being voidable by reason only of the relationship or capacity of the parties and without any obligation to account for any profit to the Trust or Unit Holders. This shall apply notwithstanding that the Trustee or any such person has or may have a direct or personal interest in the mode or result of any exercise of any power or discretion by the Trustee or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee is the sole Trustee of the Trust at that time.

12. RETAINER OF PROFESSIONALS, CONSULTANTS AND CONTRACTORS

12.1. The Trustee shall not be bound to act personally but shall be at liberty to retain any persons whatsoever including without limitation any expert, financial or business consultant, contractor, manager, solicitor, accountant, clerk, workman, employee or servant or agent to do anything or to transact any business of whatever nature on the Trustee's behalf. This includes the receipt and payment of money.

12.2. The Trustee may retain such advisors as it thinks fit and may act on such advice.

12.3. The Trustee shall decide the remuneration to be allowed and paid to such persons and all charges and expenses so incurred may be paid by the Trustee out of the Fund.

13. COVENANTS BY THE TRUSTEE

13.1. The Trustee hereby promises and undertakes to all Unit Holders to:

- 13.1.1. act continuously as Trustee under this Trust until the Trust is determined as aforesaid or until the Trustee is removed or retires;
- 13.1.2. exercise all due diligence and vigilance in carrying out its powers, functions and duties and in protecting the rights and interest of the Unit Holders;
- 13.1.3. act at all times honestly in the best interests of the Unit Holders as a whole;
- 13.1.4. keep or cause to be kept proper books of account in relation to the Fund and the Income and will in respect of each Year draw up a balance sheet and profit and loss accounts together with such notes and explanations and further accounts as are necessary to give a fair and true view of the financial position of the Fund for that Year, and
- 13.1.5. post or cause to be posted each Year a copy of such balance sheet and profit and loss accounts, notes, explanations and further accounts to each Unit Holder.

14. RETIREMENT AND REMOVAL OF TRUSTEE

- 14.1. The Trustee may retire by the giving one (1) month prior written notice to the Unit Holders of its intention so to do.
- 14.2. The Trustee may be removed at any time by Unit Holders' Resolution. A new trustee or additional trustee must be appointed by a deed of appointment to that effect.
- 14.3. The Unit Holders may by Unit Holders' Resolution decide to appoint a new or additional trustee and by deed of appointment executed by the new trustee and all Unit Holders that voted in favour of the Unit Holders' Resolution effect such appointment of the new trustee or additional trustee.
- 14.4. Where there is a Statutory requirement to register any deed of appointment, that deed of appointment must be so registered and all Unit Holders shall use their best endeavours to ensure this promptly occurs.

15. APPOINTMENT OF AUDITOR

- 15.1. The Trustee may if it thinks fit from time to time appoint an auditor to audit the accounts of the Fund.
- 15.2. The Unit Holders may by Unit Holders' Resolution appoint an auditor to audit the accounts of the Fund.
- 15.3. Any auditor shall be given full access to all the books, records and financial documents of the Trust. The Trustee and all Unit Holders must co-operate with the

auditor and provide the auditor with all information and documentation as the auditor may require for the purpose of carrying out the audit.

16. NOTICES TO UNIT HOLDERS

- 16.1. All notices or communications of any kind by the Trustee to the Unit Holders may be sent by facsimile or email and shall be deemed received on the day of sending or may be sent by pre-paid post addressed to the registered addresses of the Unit Holders in the Register of Unit Holders, or in the case of joint holdings to the Unit Holder first appearing on the Register of Unit Holders. If sent by pre-paid post such notice or communication shall be deemed to have been received on the third day following the day on which such notice or communication was posted.
- 16.2. Any notice or communication may sent by a Unit Holder to another Unit Holder or to the Trustee by facsimile or be emailed and shall be deemed received on the day of sending.
- 16.3. Any payment may be made by electronic funds transfer to or from the Trustee's account.

17. MEETINGS OF UNIT HOLDERS

- 17.1. The Trustee may convene a Meeting of Unit Holders at any time and shall convene a Meeting of Unit Holders upon receiving a request in writing to do so, signed by Unit Holders collectively holding more than fifteen percent (15%) of the issued Units.
- 17.2. Not less than ten (10) days prior written notice shall be given to all Unit Holders of every Meeting of Unit Holders (unless all the Unit Holders agree to dispense with or agree to shorter notice) and such notice shall specify the general nature of the business to be transacted thereat. The accidental failure to give notice to any Unit Holder will not invalidate any Meeting of Unit Holders.
- 17.3. A person who is a Unit Holder or a Unit Holder's Representative and who is nominated by the Trustee shall chair each Meeting of Unit Holders. The appointment of a chairperson may be a standing appointment. The chairperson shall not have a casting vote. Before any proposed Unit Holders' Resolution can be decided, the chairperson must determine that a quorum is present. If no quorum is present, the chairperson must adjourn the Meeting of Unit Holders to a date no more than thirty (30) days thereafter.

- 17.4. Votes may be given either personally or by a Unit Holder's Representative or by proxy. A Unit Holder shall for all purposes be deemed to be present at a Meeting of Unit Holders if present in person or by proxy or by Unit Holder's Representative.
- 17.5. In the case of joint Unit Holders, any one of such joint Holders may vote either personally by Unit Holder's Representative or by proxy as if he, she or it were solely entitled to the Units comprised in the Unit holding but if more than one of such joint Unit Holders is present at any Meeting of Unit Holders either personally or by Unit Holder's Representative or by proxy only the joint Unit Holder present whose name stands first in the Register of Unit Holders in respect of the joint holding will be entitled to vote in respect of those jointly held Units.
- 17.6. Every instrument of proxy whether for a specified Meeting of Unit Holders or otherwise shall be in the form or to the like effect as set out in Schedule Six. A proxy will not be entitled to vote or stay in attendance at a Meeting of Unit Holders if that proxy's Unit Holder is at the Meeting of Unit Holders.
- 17.7. The instrument appointing a proxy must be deposited at the office of the Trustee not less than twenty-four (24) hours before the time of the Meeting of Unit Holders or adjourned meeting (as the case may be) at which the proxy named in such instrument is empowered to vote.
- 17.8. Subject to clause 17.3, the Chairperson may adjourn to such time and place as he or she shall determine any Meeting of Unit Holders at which a quorum is not present.
- 17.9. Where a Unit Holder is a company then it may by resolution of its board appoint a Unit Holder's Representative to attend and vote on its behalf at all meetings of Unit Holders.

18. REMUNERATION OF TRUSTEE

- 18.1. The Trustee shall be entitled to such remuneration as the Unit Holders may by Unit Holders Resolution decide.
- 18.2. The Trustee is entitled to be reimbursed out of the Fund for all proper expenses incurred by it in acting as Trustee of the Trust.

EXECUTED by all the Parties as a Deed on the day and year first mentioned.

SIGNED AS A DEED BY)
Other Company Pty Ltd)
ACN 111 222 333 as Trustee pursuant to)
Section 127 of the *Corporations Act 2001*)
in the presence of:

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SIGNED AS A DEED BY)
James Sample)
in the presence of:

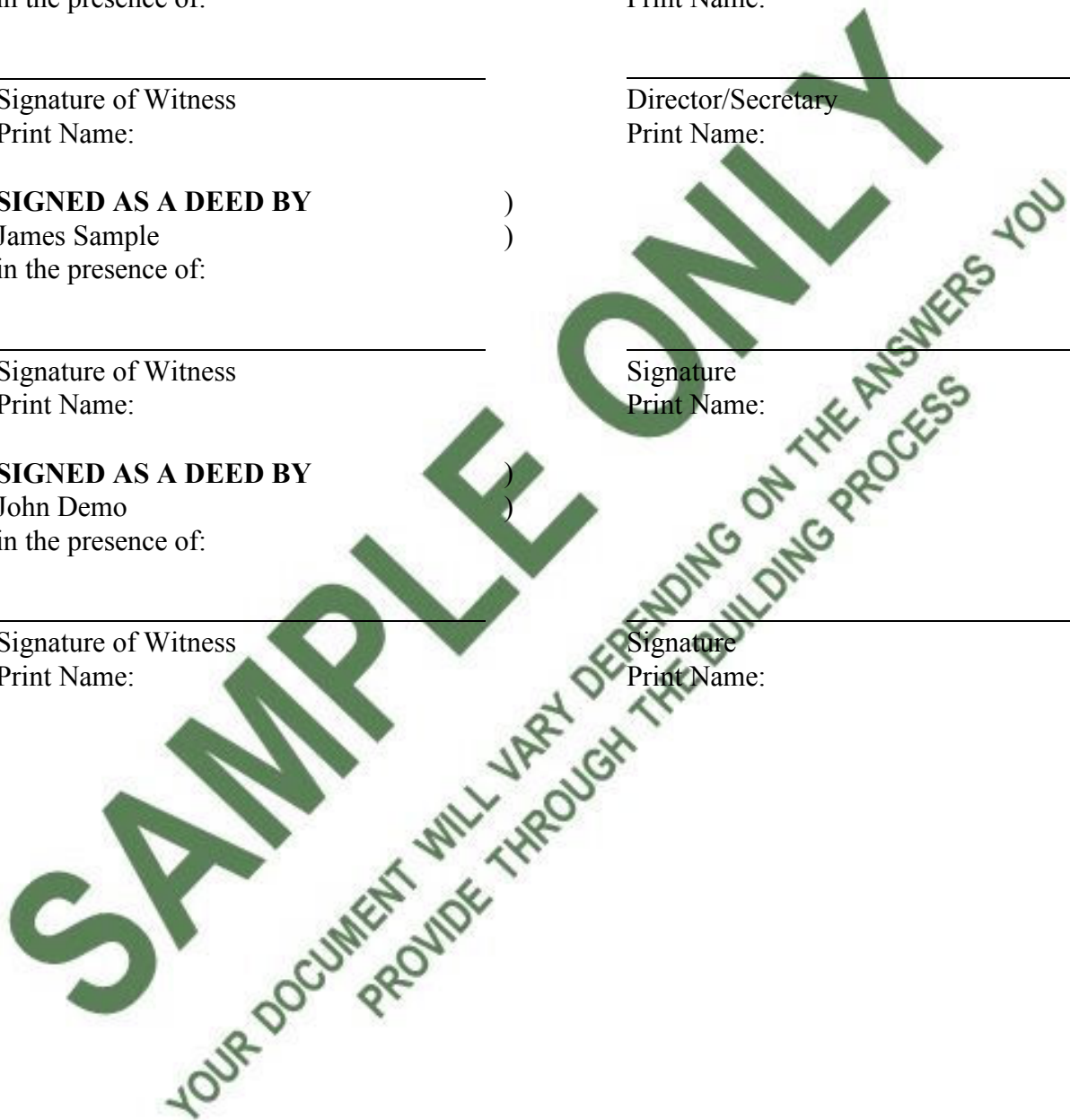
Signature of Witness
Print Name:

Signature
Print Name:

SIGNED AS A DEED BY)
John Demo)
in the presence of:

Signature of Witness
Print Name:

Signature
Print Name:



SCHEDULE ONE

PART A: THE UNIT HOLDERS

Name of the Unit Holder: James Sample
Address: 26 Sample Avenue Springfield New South Wales
Number of Allotment Units: 50
Allotment Price per Unit: \$10.00

Name of the Unit Holder: John Demo
Address: 6A Mona Vale Road Pymble New South Wales
Number of Allotment Units: 30
Allotment Price per Unit: \$10.00

PART B: THE PURPOSE OF THIS TRUST

To invest in new sample technologies

Initial: _____

SCHEDULE TWO
APPLICATION FOR UNITS

_____ of _____
 (“**the Applicant**”) hereby applies to be allotted _____ Units in The Johns Fergs Trust
 (“**the Unit Trust**”). Enclosed is a cheque in the sum of \$ _____ as the subscription
 price for the Units to be issued in accordance with the provisions of The Johns Fergs Trust
 created by Deed dated the _____ day of _____ 200__ between
 _____ Pty Limited ACN _____ as the Trustee and
 _____ Pty Limited ACN _____ and _____ Pty Limited ACN _____ as the
 Unit Holders (“**the Trust Deed**”).

It is acknowledged that the Units hereby applied for when issued shall have the rights set out
 in the Trust Deed, a copy of which has been provided to the Applicant:

UNDERTAKING AND ACKNOWLEDGMENT

The Applicant agrees and undertakes to the Trustee and the Unit Holders of the Trust to be
 bound by the terms of the Trust Deed, and acknowledges that all rights to participate in the
 Fund, the subject of the Trust created by the Trust Deed arise out of the Units to be allotted in
 the Trust and that those rights are as set forth in the said Trust Deed. The Applicant also
 acknowledges that the rights and obligations of all Unit Holders in the Unit Trust are
 governed by the terms of the Trust Deed and that the Applicant will not interfere with,
 challenge or dispute those rights.

DATED _____ day of _____ 20__

 Applicant

ACCEPTANCE OF APPLICATION

This Application is accepted by the Trustee.

DATED _____ day of _____ 20__

SIGNED BY _____)
 _____ **PTY LIMITED**)
 ACN _____ pursuant to s127)
 of the *Corporations Act* 2001 with)
 the authority of the Board of Directors:

 Director

 Director/Secretary

Initial: _____

**SCHEDULE THREE
TRANSFER OF UNITS**

_____ of _____ (“**the Transferor**”)
 in consideration of the sum of \$ _____ paid to the Transferee by
 _____ of _____ (“**the Transferee**”)
 do hereby transfer to the Transferee _____ Units issued in The Johns Fergs Trust (“**the Unit Trust**”) created by Deed dated the _____ day of _____ between
 _____ Pty Limited ACN _____, as Trustee and
 _____ Pty Limited ACN _____ and _____ Pty
 Limited ACN _____ as Unit Holders (“**the Trust Deed**”).

UNDERTAKING AND ACKNOWLEDGMENT

The Transferee hereby undertakes to the Trustee and all Unit Holders of the Trust and agrees to be bound by the terms of the Trust Deed as if the Transferee was a Unit Holder that was a party to the Trust Deed. The Transferee acknowledges that Units, the subject of this Transfer, are subject to the terms and conditions contained in the Trust Deed and that his/her/its entitlements to participate in the assets and income of the said Unit Trust shall be governed by the terms of the Trust Deed. The Transferee and the Transferor acknowledge that the approval of the Trustee to this Transfer is given in reliance upon the Transferee's agreement, undertaking and acknowledgement herein to be bound by the terms and conditions of the said Trust Deed.

SIGNED by the Transferor)
 in the presence of:) _____
 Transferor

 Witness

SIGNED by the Transferee)
 in the presence of:) _____
 Transferee

 Witness

SIGNED FOR AND ON BEHALF of)
 the Trustee as approval to this Transfer) _____
 Director of Trustee

 Witness

Initial: _____

**SCHEDULE FOUR
REQUEST FOR CANCELLATION OF UNITS**

To the Trustee

_____ Pty Limited

ACN ____ _

_____ Pty Limited ACN _____ (“the Unit Holder”) being the registered holder of _____ Units in the _____ Unit Trust hereby requests that _____ Units held by the Unit Holder in the Unit Trust be cancelled and that the Trustee in consideration of that cancellation allocate from the Trust Fund such amount as the Trustee decides is the fair value of the Units to be cancelled and pay that amount by way of distribution to the Unit Holder simultaneously with the cancellation, as the value of the cancelled Units.

DATED _____ day of _____ 20__

SIGNED BY _____)
_____ **PTY LIMITED**) Director
ACN _____ pursuant to s127)
of the *Corporations Act 2001* with)
the authority of the Board of Directors: _____
Director/Secretary

Initial: _____

SCHEDULE FIVE
UNIT CERTIFICATE

Certificate No:

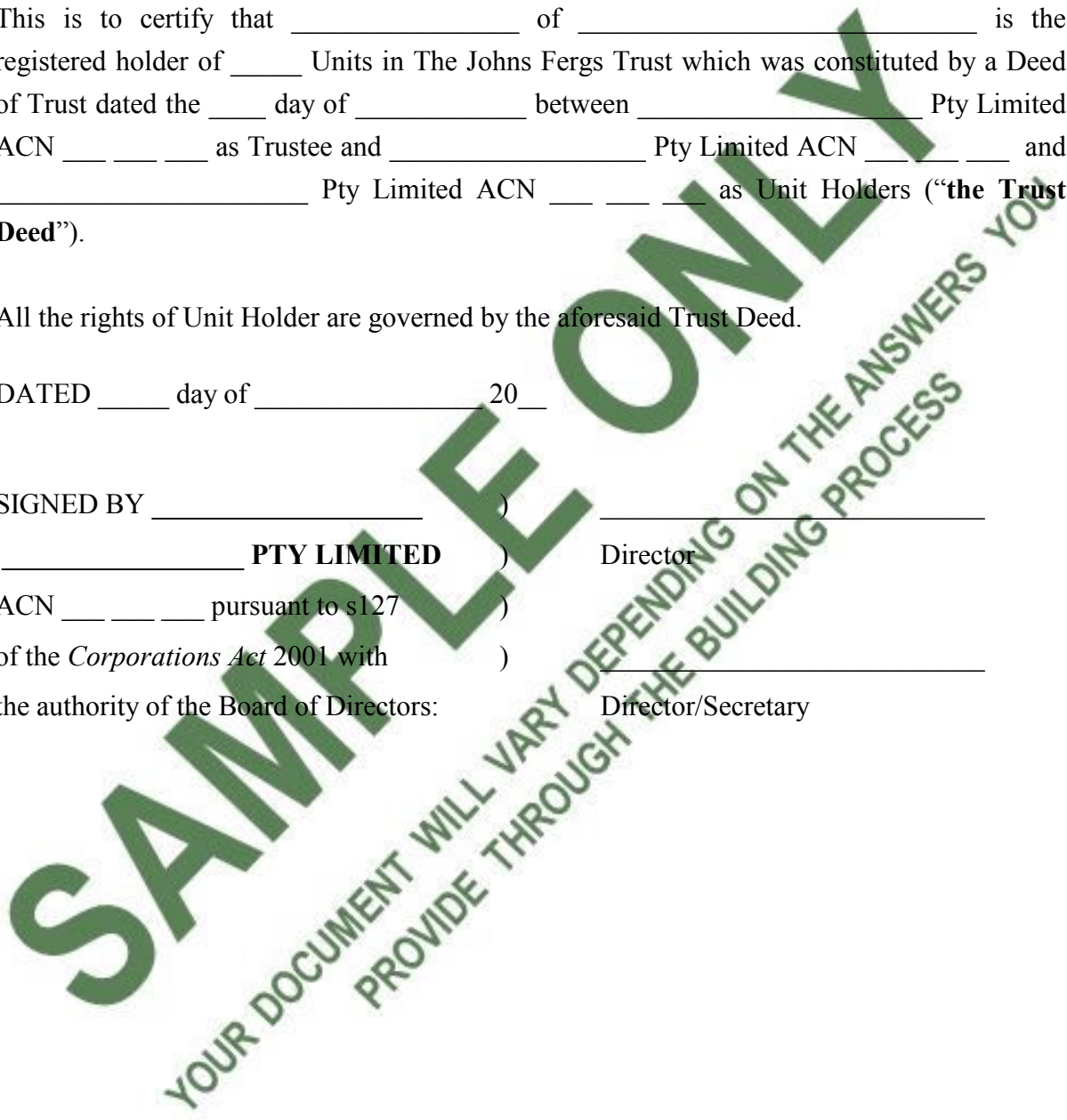
This is to certify that _____ of _____ is the registered holder of _____ Units in The Johns Fergs Trust which was constituted by a Deed of Trust dated the _____ day of _____ between _____ Pty Limited ACN _____ as Trustee and _____ Pty Limited ACN _____ and _____ Pty Limited ACN _____ as Unit Holders (“the Trust Deed”).

All the rights of Unit Holder are governed by the aforesaid Trust Deed.

DATED _____ day of _____ 20__

SIGNED BY _____)
_____ **PTY LIMITED**) Director
ACN _____ pursuant to s127)
of the *Corporations Act* 2001 with)
the authority of the Board of Directors: Director/Secretary

Initial: _____



**SCHEDULE SIX
FORM OF PROXY FOR A COMPANY UNIT HOLDER**

_____ Pty Limited ACN____ _ being a Unit Holder of _____ Units in The Johns Fergs Trust hereby appoint _____ of _____ as its proxy to vote for it and on its behalf at the Meeting of Unit Holders to be held on the _____ day of _____ 20____ and at any adjournment thereof.

DATED _____ day of _____ 20__

SIGNED BY _____)
 _____ **PTY LIMITED**) Director
 ACN _____ pursuant to s127)
 of the *Corporations Act 2001* with)
 the authority of the Board of Directors: Director/Secretary

FORM OF PROXY FOR AN INDIVIDUAL

_____ of being a Unit Holder of _____ Units in The Johns Fergs Trust hereby appoints _____ of _____ as my proxy to vote for me and on my behalf at the Meeting of Unit Holders to be held on the _____ day of _____ 20____ and at any adjournment thereof.

DATED _____ day of _____ 20__

SIGNED by _____)
 in the presence of: _____)

 Signature

 Witness

 Print name of Unit Holder

Initial: _____