

COPY

Trust deed

for the Balls 4 Life Foundation

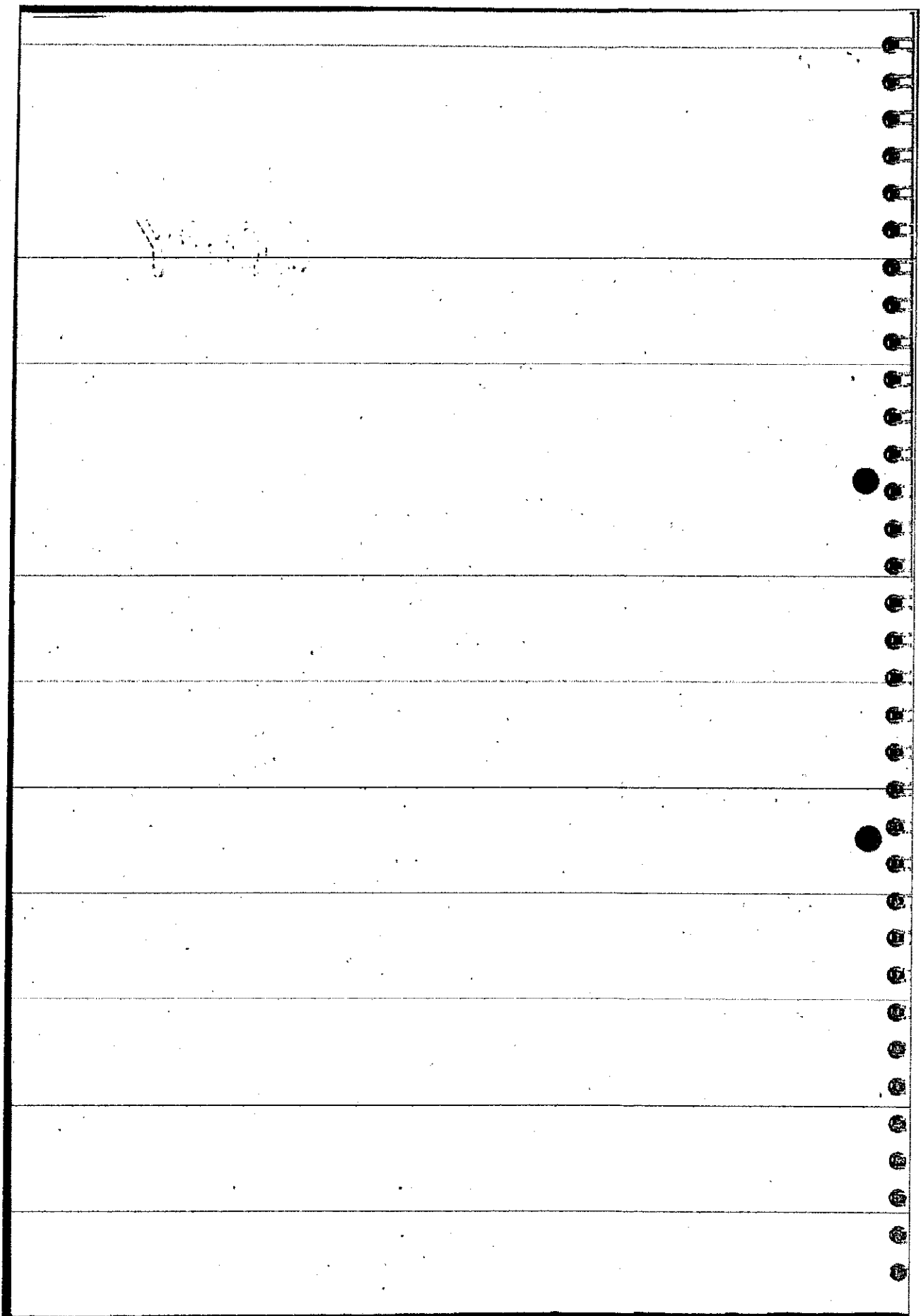
██████████ (Settlor)
Balls 4 Life Pty Ltd (First Trustee)

MinterEllison

LAWYERS

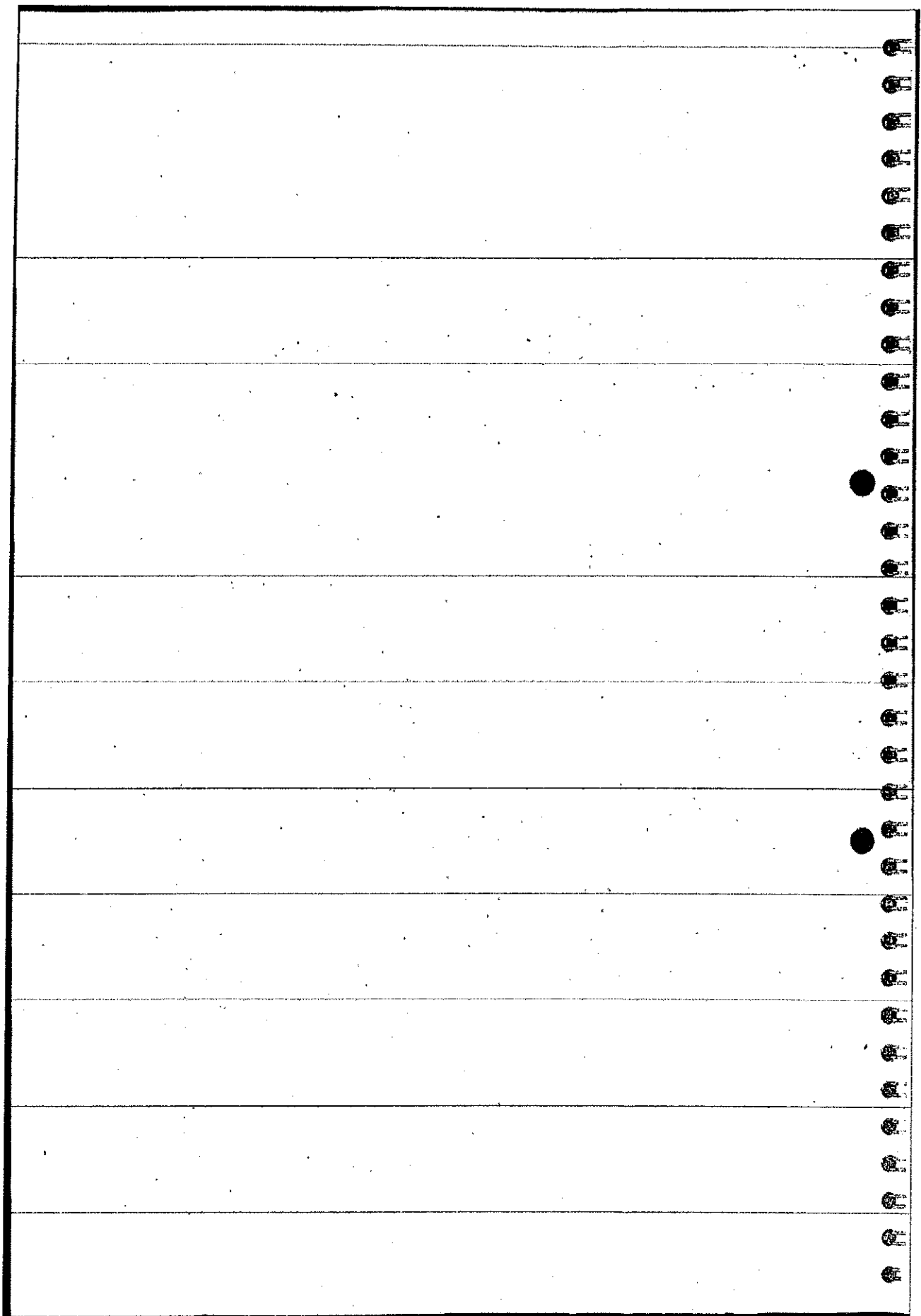
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Trust deed for the Balls 4 Life Foundation

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Details

Date

27 September 2010

Parties

Name
Short form name
Notice details

[REDACTED]
Settlor
[REDACTED]

Name
Short form name
Notice details

Balls 4 Life Pty Ltd ACN 146 269 356
First Trustee
Suite 25, 168 Melbourne Street, North Adelaide SA 5006

Recitals

- A The Settlor, wishing to establish a fund for certain charitable purposes, has paid to the First Trustee \$10.00 (Initial Sum), to be held by the Trustee on trust subject to the terms of this Deed.

Agreement

1. Defined terms and interpretation

1.1 Defined terms

In this Deed, unless the context otherwise requires:

Managing Committee means a managing committee appointed by the Trustee under clause 6.2.

Responsible Persons means persons who have a degree of responsibility to the community as a whole (within the meaning of Taxation Ruling TR 95/27, or such later ruling as substantially replaces same).

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

Trustee means the trustee or trustees for the time being of the Trust, whether the First Trustee or any additional or substituted trustee or trustees.

Trustee Act means the *Trustee Act 1936* (SA).

Trust Fund means:

- (a) the Initial Sum;
- (b) any money or other property having the nature of either capital or income acquired or accepted by the Trustee as an addition to the Initial Sum (Additional Sums);
- (c) any accumulations of income;
- (d) all accretions to the Trust Fund; and
- (e) the investments and property for the time being representing the Initial Sum and the Additional Sums, accumulations and accretions, or any part of them.

Vesting Day means the earlier of:

- (a) the day which the Trustee determines by deed to be the Vesting Day;
- (b) the day preceding the day on which the Trust ceases to be operated for charitable purposes.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all genders;
- (d) the use of the word 'including' does not limit what else might be included;
- (e) a reference to a thing includes all or any part of it;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (g) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (h) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (i) a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;
- (j) headings are inserted for convenience only and are not intended to affect interpretation; and
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them.

2. Trust

The trust created by this Deed (Trust) will be known as the Balls 4 Life Foundation.

3. Declaration of trust

The Trustee declares that it will hold the Trust Fund upon the trusts and on the terms contained in this Deed.

4. Purpose of trust

This Trust is established solely for, and shall be maintained solely for, the purpose of providing money, property or benefits:

- (a) to a charitable fund, authority or institution gifts to which are deductible under item 1 of the table in section 30-15 of the Tax Act; and
- (b) for any purposes set out in the item of the table in Subdivision 30-B of the Tax Act that covers the fund, authority or institution.

5. Trust Fund

5.1 Public Fund

- (a) The Trustee must hold the Trust Fund and the income thereof on trust to pay or apply (if and so far as the Trustee thinks fit) the whole or any part of the capital or income of the Trust Fund for the purposes referred to in clause 4.
- (b) The Trust must have its own bank account, and all funds must be kept separate from any funds held by the Trustee in any capacity other than as trustee of the Trust. The Trustee must also keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund.
- (c) Receipts must be issued in the name of the Trust, and state its Australian Business Number.
- (d) The public must be invited to contribute to the Trust Fund (as required by Taxation Ruling TR 95/27, or such later ruling as substantially replaces same).
- (e) No part of the Trust Fund or the income thereof may be paid, transferred or distributed, directly or indirectly, to the Trustee or any of its directors, officers or members, or to any member of the Managing Committee PROVIDED THAT nothing in this clause shall prevent the payment by the Trustee in good faith of:

- (i) remuneration for goods supplied, or services rendered, to the Trust in the ordinary course of business;
- (ii) the remuneration of members of the Managing Committee under clause 6.2(c); or
- (iii) the remuneration of the Trustee under clause 6.3(a); or
- (iv) money, property or benefits in accordance with clause 5.1(a).

5.2 Gifts, Contributions

(a) The Trustee must comply with section 382-15 of Schedule 1 of the *Taxation Administration Act 1953*.

(b) At the first occurrence of one of the following events:

- (i) the vesting of the Trust; and
- (ii) the revocation of the Trust's endorsement under Subdivision 30-BA of the Tax Act,

the Trustee must transfer any surplus referred to in section 30-125(6)(b) of the Tax Act to a charitable fund, authority or institution gifts to which can be deducted under item 1 of the table in section 30-15 of the Tax Act.

5.3 Vesting Day

On the Vesting Day, the Trustee must immediately pay or apply the surplus assets of the Trust Fund (apart from any assets already dealt with under clause 5.2) to one or more charitable funds, authorities or institutions gifts to which can be deducted under item 1 of the table in section 30-15 of the Tax Act, as selected by the Trustee in its absolute discretion.

6. Trustee provisions

6.1 Responsible Persons

Only Responsible Persons may act as a trustee of the Trust Fund PROVIDED THAT:

- (a) in the case of a Trustee being a company or incorporated association, that requirement will be deemed to be satisfied if a majority of its board are Responsible Persons; and
- (b) if the Trustee has appointed a Managing Committee under clause 6.2, that requirement will be deemed to be satisfied if a majority of the members of that Managing Committee are Responsible Persons.

6.2 Managing Committee

- (a) The Trustee may appoint a Managing Committee to manage and control the Trust Fund.
- (b) The composition of the Managing Committee, and the rules governing its operation, shall be as determined by the Trustee from time to time PROVIDED THAT at all times a majority of the Managing Committee must be Responsible Persons.
- (c) No member of the Managing Committee shall be entitled to receive any remuneration, emolument or other benefit for, or as consideration for, services as a member unless the Trustee otherwise determines.
- (d) Without limiting the generality of clause 6.2(a), if the Trustee appoints a Managing Committee, the Trustee delegates all of its powers, rights and obligations pursuant to clauses 6.3, 7 and 8 of this Deed to that Managing Committee.

6.3 General

- (a) The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund such remuneration as the Trustee considers to be fair and reasonable, having regard to the work done and responsibility assumed in connection with the Trust.
- (b) The Trustee may employ a solicitor or other agent to transact any business required to be done under this Deed and is not bound to act personally.
- (c) The Trustee is not responsible for:
 - (i) any loss or damage occasioned by the exercise of any discretion or power conferred by this deed or by law on the Trustee or by any failure or neglect to exercise any such discretion or power; or
 - (ii) any breach of duty or trust whatsoever,unless the same is proven to have been committed made or omitted in personal conscious and fraudulent bad faith by the Trustee charged to be so liable and all persons claiming any interest or right in or upon the income or capital of the Trust Fund shall be deemed to take with notice of and subject to the protection conferred by this deed on the Trustee.
- (d) The Trustee is entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by the Trustee in the execution or attempted execution of or as a consequence of the failure to exercise any of the trusts authorities powers and discretions conferred on the Trustee by this deed or by virtue of being the Trustee.
- (e) The Trustee's right of indemnity is limited to the right described in clause 6.3(d) and, in particular, the Trustee has no right to be indemnified by any persons in whose favour the Trust Fund has been distributed against any liability incurred by the Trustee as trustee of the Trust.
- (f) If at any time there are more than two Trustees, the powers, discretions and authorities vested in the Trustee by this Deed may be exercised by a simple majority of them.
- (g) If any Trustee is a corporation or an incorporated association, the powers, discretions and authorities vested in the Trustee by this Deed may (subject to its constituent documents) be exercised for and on behalf of that Trustee by its board, council or other governing body.
- (h) The Trustee may at any time obtain a valuation of any property of the Trust Fund from a person who the Trustee considers appropriately qualified or experienced and may rely on that valuation in exercising any of its powers under this Deed.

7. Trustee's powers

7.1 Powers and authorities

Subject always to clause 4 of this Deed, the Trustee has the following powers and authorities:

- (a) to invest the Trust Fund in any form of investment which a trustee may, under any Commonwealth or South Australian law, invest without special authorisation;
- (b) at any time, to vary an investment or to realise an investment of any part of the Trust Fund and to reinvest money resulting from the realisation in accordance with clause 7.1(b);
- (c) from time to time to provide and set aside out of the capital or income of the Trust Fund such money as the Trustee considers to be available or necessary and to pay or apply that

money in or towards discharge or reduction of any encumbrance, debt or other liability for the time being affecting the Trust Fund or any part of it;

- (d) to take on hire or lease any real or personal property for such periods and at such rent from time to time as the Trustee thinks fit with or without option of renewal or purchase;
- (e) to open accounts of every description with any bank or other financial institution on such terms and conditions as the Trustee thinks fit;
 - (i) to conduct and operate those accounts in such manner as the Trustee thinks fit in accordance with the customs, usages and practices of the relevant financial institution including but not limited to the power to operate any account in overdraft;
 - (ii) to agree to the institution debiting any account with interest, costs, charges, expenses and liabilities incurred by the institution at any time on behalf of the Trustee; and
 - (iii) to borrow or raise money and to secure the payment of that or any other money in such manner as the Trustee thinks fit or to secure the repayment or performance of any debt, liability, contract, guarantee, indemnity or other engagement incurred or entered into by the Trustee in any way with any financial institution;
- (f) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (g) to borrow and raise money from and to secure over the property of the Trust Fund or any part of it by mortgage, bill of sale, lien or charge, fixed or floating, legal, equitable or otherwise the payment of money to any person, firm, corporation, governmental or municipal body on such terms with or without security or interest as the Trustee thinks fit and to join with any corporation or natural person in executing any mortgage or other document for the purpose of securing the payment of money either jointly to the Trustee and that corporation or natural person or only to that corporation or natural person;
- (h) to borrow or raise moneys to be used in deriving income or other gain in augmentation of the Trust Fund notwithstanding that the Trust Fund may already be wholly invested or applied or that the money to be borrowed or raised may exceed the value of the Trust Fund and no lender needs to enquire whether the borrowing is necessary or as to its purpose or as to the application of the money borrowed;
- (i) to give any guarantee or indemnity or guarantee and indemnity with or without security solely or jointly with any other corporation or natural person and with or without remuneration for the payment of money or the performance of any contract, obligation or undertaking by any person, firm, corporation or association and to secure that guarantee or indemnity or guarantee and indemnity over the property (both present and future) of the Trust Fund by mortgage, bill of sale, lien or charge, fixed or floating, legal, equitable or otherwise on such terms as the Trustee thinks fit;
- (j) if the Trustee is a company, for any purpose including but not limited to the purposes set out in clauses 7.1(f) and 7.1(h), to give and to execute a registrable charge (whether fixed or floating or fixed and floating) over all the property (both present and future) of the company and the Trust Fund and to give and execute any other charge or security registrable under the *Corporations Act* or under the corresponding law of any other State or Territory of Australia;
- (k) to determine whether any sum received or disbursed is on account of capital or income or partly on account of capital and partly on account of income and in what proportions and

the decision of the Trustee whether made in writing or implied from the acts of the Trustee are conclusive and binding;

- (l) to employ and pay for such professional or other assistance as the Trustee thinks necessary in the discharge of the duties of the Trustee including assistance from a partner or a director of a Trustee;
- (m) to act on the opinion or advice of or information obtained from a financial adviser, barrister, solicitor, valuer, surveyor, broker, auctioneer or other expert but the Trustee is not responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with that opinion, advice or information;
- (n) to appoint any person or persons as the representative or attorney of the Trustee for the purpose of exercising all or any of the powers, authorities and discretions vested in the Trustee by this Deed or to revoke any such appointment, but only to the extent permitted by and in accordance with the requirements of any applicable law;
- (o) to determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund;
- (p) generally with respect to the Trust Fund to perform all acts of alienation and hypothecation and other acts of ownership to the same extent and with the same effect as might have been done if the Trustee were the beneficial owner of the Trust Fund and the decisions and actions of the Trustee whether actually made or taken in writing or implied from the actions of the Trustee are conclusive and binding on all the Beneficiaries and others who in the future acquire any interest under this Deed;
- (q) to institute and defend proceedings at law and to pursue them to their final determination or compromise as the Trustee thinks advisable;
- (r) to exercise or concur in exercising the voting and other rights attaching to any securities for the time being forming part of the Trust Fund so as to become a director or other officer or employee of any company and to vote for and to be paid and to retain for the Trustee's own use and benefit reasonable remuneration for the Trustee's services to that company;
- (s) to exercise all the powers and authorities vested in the Trustee by this Deed solely or jointly or in partnership or otherwise in conjunction with any other person or persons whether those persons act on their own behalf or as trustees of any other trust; and
- (t) to raise, collect, receive, have, hold, administer and dispose of moneys in the form of donations, legacies, bequests or as a consequence of fund-raising activities of all types or otherwise received from any other source whatsoever.

7.2 Trustee Act

The Trustee is relieved of the duties imposed on trustees by sections 7(1) and 7(3) of the Trustee Act.

8. Third party dealings

- (a) No person dealing with the Trustee needs:
 - (i) to enquire as to the adequacy of the powers of the Trustee in relation to any dealing or as to the proper exercise by the Trustee of any of the powers, authorities and discretions vested in the Trustee by this Deed;

(ii) to enquire as to the propriety or regularity of any transaction affecting the Trust Fund or any part of it; or

(iii) to see to the application of any money paid to the Trustee or to any person or corporation at the Trustee's direction:

(b) In the absence of fraud on the part of a person dealing with the Trustee, so far as the safety and protection of that person is concerned, the dealing is deemed to be within the powers of the Trustee and, therefore, to be valid and effective accordingly. The receipt of the Trustee or the receipt of any person paid at the direction of the Trustee discharges any person dealing with the Trustee from all liability in respect of the payment.

9. Variation

The Trustee may at any time by deed vary any provision of this Deed and may by the same or any other deed declare any new or other trusts, powers or discretions concerning the Trust Fund or any part of it PROVIDED THAT the new or other trusts, powers, discretions, alterations or variations are not contrary to the purpose of the Trust (as described in clause 4).

10. Change of trustees

10.1 Appointment

The Trustee may by deed appoint a new trustee or trustees in place of a Trustee or in addition to any Trustee.

10.2 Resignation

A Trustee may resign or renounce that position by notice in writing to the other Trustees (if any) and upon the giving of such notice the person giving the same shall cease to be a Trustee of the Trust Fund PROVIDED THAT a sole Trustee may not resign except upon appointing a new Trustee or Trustees in his, her or its place.

10.3 Disqualification

(a) The office of a Trustee, being a natural person, will be immediately determined and vacated if that Trustee:

(i) dies;

(ii) is found to be a lunatic or of unsound mind;

(iii) becomes:

(A) an insolvent under administration for the purposes of the *Corporations Act 2001 (Cth)*;

(B) subject to a debt agreement under Part IX of the *Bankruptcy Act 1966 (Cth)*; or

(C) otherwise the subject of any order or arrangement made or entered into under any law of Australia or any of its State or Territories relating to insolvency.

(b) The office of a Trustee, being a body corporate, will be immediately determined and vacated if that Trustee:

(i) is wound up or deregistered pursuant to the *Associations Incorporations Act 1985 (SA)*;

(ii) becomes an 'externally administered body corporate' for the purposes of the *Corporations Act 2001 (Cth)*;

- (iii) has a provisional liquidator appointed to it; or
 - (iv) is otherwise the subject of any order, arrangement or administration made or entered into under any law of Australia or any of its States or Territories relating to insolvency.
- (c) If a sole trustee is disqualified under paragraphs (a) or (b), a new Trustee or Trustees shall be appointed by Balis 4 Life Pty Ltd to act in his, her or its place (or if that organisation is the sole trustee that has been disqualified, or it no longer exists at the relevant time, then the appointment shall be made by the person who chaired its board immediately prior to it being disqualified or ceasing to exist, or if that person is deceased then by the next longest serving board member).

10.4 General

- (a) A copy of all notices of changes in the trusteeship of the Trust must be endorsed or attached to this Deed and those notices will be sufficient evidence to any person having dealings with the Trustees of this Deed as to the facts to which it relates.
- (b) Any person dealing with the Trustee of the Trust may rely upon a copy of this Deed and of the notices endorsed upon or attached to it certified by the Trustee or the Trustee's solicitor to the same extent as he or she might rely on the original.
- (c) Any person becoming a Trustee of the Trust may accept the account rendered and the property delivered to him or her by the continuing Trustee or its predecessors in office without being bound to enquire further as to the assets of the Trust Fund.

11. Proper law

- (a) The law of the Trust is the law of South Australia and this Deed is to be interpreted according to the law of South Australia and the courts of that state have jurisdiction to determine any dispute arising under it.
- (b) The provisions of the Trustee Act or any other act relating to trustees for the time being in force in South Australia apply to the Trustee and to this Deed and the Trustee is entitled to exercise all the powers conferred by the Trustee Act except in so far as they are inconsistent with or expressly or impliedly modified by this Deed.

Signing page

EXECUTED as a deed.

Signed by [redacted] in the presence of

[redacted] ← Signature of witness

[redacted] Name of witness (print)

[redacted] Signature of director

[redacted] (Please refer to appendix)

SCOTT GONEST MATTHEWS
Name of director (print)

KELLY MARIE NUSTOR
Name of director/company secretary (print)