

**ALIGNED CAPITAL PARTNERSHIP PTY LTD**

ACN 618 424 016

("Trustee")

and

**The parties named in the First Schedule**

("Initial Unitholders")

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**ALIGNED CAPITAL PARTNERSHIP INVESTMENT TRUST**  
**(ABN 52 704 511 804)**

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**Robert James Lawyers**

Level 22, 140 William Street  
MELBOURNE VIC 3000

Ref: 149157-2

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**THIS DEED OF TRUST** is made on the date set out in the First Schedule

**BETWEEN:**

1. The party named in the First Schedule as trustee (the "**Trustee**"); and
2. The parties named in the First Schedule as the Initial Unitholders and who execute this Deed or sign an application for units or a transfer of units as containing an agreement with the Trustee in which any applicant for or transferee of units agrees to be bound by the provisions of this Deed (the "**Initial Unitholders**").

**RECITALS:**

- A. The Trustee has accepted from those Initial Unitholders who execute this Deed the sum set out in the First Schedule (the "**Initial Contributions**") on the terms and conditions contained in this Deed and will accept further money also on the terms and conditions contained in this Deed to be invested in authorised investments.
- B. All money and investments are to be held by the Trustee on trust and subject to the terms and conditions of this Deed.
- C. It is desired that the Trustee will have an absolute discretion in relation to the administration of the Trust Fund.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this Deed and in any certificates and other documents issued under this Deed unless inconsistent in the context or subject, the following expressions shall have the following meanings:

"**accounting period**" means any period of twelve months ending on 30 June in any year provided that the period commencing on the date of this Deed and ending on 30 June next shall be an accounting period and the period commencing on the 1 July immediately prior to the vesting date and ending on the vesting date shall also be an accounting period;

"**Act**" means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (as amended);

"**authorised investments**" means all property whether real or personal movable or immovable of all kinds whatever and without limiting the above includes:

- (a) real and personal property and debt any chose in action and any estate interest right or power whatever in or over property;
- (b) any business or interest in a business including an interest in a partnership whether the same has commenced or acquired by the Trustee or arises out of an agreement entered into by the Trustee and any interest in another Trust;
- (c) goods of every description or an interest in goods;
- (d) shares, stock, units, debentures, notes, obligations or any other security in any company or corporation whether those shares stock, units, debentures, notes or other security are listed on any Australian or foreign

Stock Exchange or not and whether they are fully paid or partly paid or subject to special deferred or other rights or otherwise;

- (e) loans and deposits at call or otherwise with or without security for any term with any person firm or company and in particular with any bank or any authorised dealer in the short-term money market in Australia;
- (f) units of any type of trust;
- (g) any hire-purchase or rental agreement and any lease or licence of any kind;
- (h) freehold or leasehold land or land of any tenure in any of the States of the Commonwealth of Australia or in any of its Territories;

**"capital of the Trust Fund"** means so much of the Trust Fund as does not constitute income of the Trust Fund;

**"category"** in relation to income or capital of the Trust Fund means that part or those parts of the income or capital which the Trustee has separately identified, characterised and recorded in the books of account or records of the Trust so that it may be separately distributed or dealt with in accordance with this Deed.

**"commencement date"** means the date of this Deed.

**"Deed"** means this Deed of Trust and any amendments to it.

**"income of the Trust Fund"** has any meaning given to the term by the Trustee from time to time and in the absence of such definition includes all profits or gains taken into account in calculating the net income of the Trust, and exempt income, as defined in Section 95(1) of the Act, notwithstanding that the whole or any part of any profit or gain of the Trust Fund would but for this definition otherwise constitute capital of the Trust;

**"Investment Maximum Cap"** means the sum specified as the Investment Maximum Cap in the First Schedule;

**"Performance Fee"** means the performance fee payable to the Trustee in accordance with clause 15.

**"Register"** means the register of Unitholders;

**"Trust"** means the Trust constituted by this Deed and to be called by the name set out in the First Schedule;

**"Trust Fund"** means and shall comprise:

- (a) the Initial Contributions;
- (b) further money and authorised investments accepted by the Trustee under the trusts of this Deed;
- (c) all investments representing (a) and (b);
- (d) the proceeds of the sale, redemption or repayment of any investments;

- (e) all investments representing the reinvestment in accordance with the provisions of this Deed of any authorised investments forming part of the Trust Fund;
- (f) all authorised investments into which the above may be converted or which by the exercise of any of the powers contained in this Deed may accrue to or otherwise become subject to the trusts;

**"Unitholder"** means a person or entity that is a registered holder of one or more units and initially includes the Initial Unitholders;

**"vesting date"** means the day being one day before the 80th anniversary of the execution of this Deed;

**"voting unit"** means any unit issued in accordance with this Deed which under the terms of this Deed entitles the holder of that unit to one vote at any meeting of unitholders;

**"voting unitholder"** means any person or company registered as the holder of a voting unit;

1.2. In this Deed unless the context otherwise requires:

- 1.2.1. reference to a person includes any other entity recognised by law and vice versa;
- 1.2.2. words importing the singular include the plural and vice versa;
- 1.2.3. words importing one gender include every gender;
- 1.2.4. any reference to a party includes that party's executors, administrators or permitted assigns, or being a company, its successors or permitted assigns;
- 1.2.5. every agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation or derive any benefit in terms of this Agreement shall bind or enure for the benefit of those persons jointly and severally;
- 1.2.6. clause headings are for reference only;
- 1.2.7. reference to an Annexure or Schedule is a reference to the corresponding Annexure or Schedule to this Deed;
- 1.2.8. reference to a statute includes all regulations made under that Statute, any amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- 1.2.9. a reference to "dollars" or "\$" is to an amount in Australian currency.

## **2. TRUST FUND**

- 2.1. The Trust Fund shall be held by the Trustee on trust for the Unitholders and in proportion to the number of units entered in the Register in their respective names.
- 2.2. Before the vesting date a Unitholder is not entitled to require the Trustee to pay to him any part of the Trust Fund nor to transfer to him any of the assets or authorised investments of the Trust Fund nor to deal with any part of the Trust Fund otherwise than as provided for in this Deed.
- 2.3. A Unitholder is not entitled to interfere with or question the exercise or the manner of exercise or non-exercise by the Trustee of any of the trusts, powers, authorities or discretions conferred on the Trustee by this Deed except as provided for in this Deed.
- 2.4. The beneficial interest of the Unitholders in the Trust Fund shall be divided into units and shall be vested in the unitholders for the time being. All initial units in the Trust Fund shall be of \$1.00 each. Each unit will confer an equal interest in the Trust Fund but shall not confer any interest in any particular part of the Trust Fund nor in any investment but only an interest in the Trust Fund as is conferred on a unit under the provisions contained in this Deed. At any given date all the units into which the beneficial interest in the Trust Fund is for the time being divided will be of equal value.
- 2.5. All applications for units must be in the form set out in the Second Schedule. Units will be created on acceptance of the application and the applicant will be entered on the Register as the holder of the units created under this clause.
- 2.6. When in the opinion of the Trustee sufficient funds have been lodged for the purposes of the Trust the Trustee may inform the Unitholders and after that date no further units will be created except in conformity with the provisions below.
- 2.7. The Trust Fund will initially be divided into the number of units of \$1.00 each set out in the First Schedule and each unit will carry an entitlement to a share in the capital of the Trust Fund on the termination of the Trust, a share in the distribution of the income of the Trust Fund in accordance with this Deed and the right to one vote in respect of each unit held.
- 2.8. The total number of Unitholders must not exceed 20.

## **3. REGISTER**

- 3.1. The Trustee must keep the Register and will enter on the Register:
  - 3.1.1. the names and addresses of Unitholders;
  - 3.1.2. the number of units in respect of which they are registered;
  - 3.1.3. the date at which the name of each Unitholder was entered in the Register in respect of any units standing in the Unitholder's name; and
  - 3.1.4. any other matter the Trustee thinks fit but so that no notice of any trust, express, implied or constructive shall be entered on the Register.

- 3.2. The Trustee may regard only the persons entered on the Register as having any right title or interest in the relevant unit.
- 3.3. Any change of name or address on the part of any Unitholder must be notified to the Trustee which will alter the Register accordingly.
- 3.4. On the registration of any person as Unitholder of any unit the Trustee will issue a certificate to that Unitholder showing the number of units of which he has been registered as holder.
- 3.5. Every certificate will be signed by or on behalf of the Trustee and will specify the name of the Unitholder and the number of units to which it relates and will bear a distinctive number or letter.
- 3.6. Each certificate will be in the form or to the effect of the Third Schedule and is prima facie evidence that the person named in the certificate is the Unitholder of the units specified in the certificate.
- 3.7. The Trustee may in its discretion issue new certificates to replace certificates which have been or are believed to have been lost destroyed or are otherwise unavailable.

#### **4. DISTRIBUTION OF INCOME**

- 4.1. The Trustee may in any accounting period until the vesting date pay apply or set aside the whole or any part of the income of the Trust Fund for that accounting period to or for the benefit of Unitholders in the proportions as they hold units in the Trust Fund.
- 4.2. A Unitholder, in its sole discretion, may elect to have its proportion of income payable to that Unitholder under this clause 4, be paid by way of an issue of further Units to that Unitholder in accordance with clause 7.
- 4.3. The Trustee may in the books of account and records of the Trust separately record each of the following categories of income received into the Trust Fund:
  - 4.3.1. any dividends and the extent (if at all) to which any of the dividends received are franked within the meaning of Part IIIAA of the Act;
  - 4.3.2. any dividends to which a foreign tax credit attaches under the Act;
  - 4.3.3. any dividends to which any other separately identifiable tax consequence or benefit is attached or arises under the Act;
  - 4.3.4. income, including any capital gain within the meaning of Part IIIA of the Act which under the Act:
    - (a) has an Australian source;
    - (b) has an ex-Australian source;
    - (c) has a foreign tax or other credit attached;
    - (d) is exempt or otherwise liable not to be taxed; and
  - 4.3.5. any income of any type or character which has or gives rise to any other separately identifiable taxation consequence or benefit.

- 4.4. For the purpose of exercising its powers under the provisions of this clause the Trustee may maintain separate accounts or account procedures in relation to each category of income (whether that category is determined by reference to source nature or otherwise) and allocate costs expenses or deductions as between the categories or parts of categories and the provisions of this clause is to be construed as if the references in them to the exercise of any power concerning the net income of the Trust Fund included in the alternative reference to the income from each category or part.
- 4.5. Expenses and outgoings of the Trust Fund may at the discretion of the Trustee be allocated against and deducted from income or capital of any one or more of the categories referred to in this clause in any manner as the Trustee determines.
- 4.6. If the Trustee does not exercise its discretion as provided in the preceding clause in respect of an accounting period, outgoings and expenses of the Trust Fund for that period shall be allocated, first against and deducted from income which is not income of a category and to the extent to which the income is not sufficient to absorb all those expenses and outgoings, then the part of the income which is not so absorbed may be allocated in a manner as the Trustee may decide against income of a category or categories to which a tax credit or rebate does not attach and thereafter against the remaining income of the Trust Fund.
- 4.7. Income or capital of the Trust Fund to which any Unitholder becomes entitled and which can be identified from the books and records from the Trust as being of a category shall retain its separate identity when it passes to or is received by that beneficiary or when that beneficiary otherwise becomes entitled to that income.
- 4.8. For the purpose of exercising its powers under this clause a sole Trustee is authorised despite that it is the sole Trustee to receive capital and other moneys and to give valid and effectual receipts for all purposes and for the purposes of any statutory enactments including the receipt of capital moneys which may or may be deemed to be capital moneys for the purposes of any statute.
- 4.9. The Trustee may after the accounts have been prepared subject to the above provisions of this clause transfer to an income distribution account the income of the Trust Fund in accordance with the requirements of this clause (less any amount transferred to the capital reserve) pending distribution to the Unitholders.
- 4.10. The Trustee may subject to the provisions of this clause (which for the avoidance of doubt, requires that Unitholders be treated equally at all times, according to the proportions a Unitholder holds in the Trust Fund), resolve that it is desirable to distribute any portion of the amount standing to the credit of a Unitholder in the income distribution account or otherwise available for distribution and accordingly the Trustee may apply such sum, to which that Unitholder is entitled, for distribution to that Unitholder who or which would have been entitled to it if it had been distributed to them as the Trustee determines in its absolute discretion in cash or by cheque drawn upon a bank to that Unitholder.
- 4.11. Whenever a resolution passed pursuant to the preceding clause is passed the Trustee will make all appropriations and applications of the undivided profits resolved to be distributed (according to the proportions a Unitholder holds in the Trust Fund) and generally shall do all acts and things required to give effect to

the resolution and all appropriations applications or other acts and steps will be effective and binding on all the Unitholders.

- 4.12. Subject to the other provisions of this clause any distribution of income must be made to the Unitholders at all times equally (according to the proportions a Unitholder holds in the Trust Fund), when the Trustee resolves to make the distribution provided that if any share in the distribution shall fail in whole or in part to vest absolutely in or to be paid to or applied for the benefit of some Unitholder or Unitholders under the above provisions then (subject to the trusts powers and provisions contained in this Deed or which may apply by statute) that share and any share or shares which may accrue by virtue of this present provision shall to the extent that they fail to vest or be paid or applied be held by the Trustee as an accretion to the other share or shares of the other Unitholders (and if more than one in the proportions which the shares bear to each other) on the trusts and with and subject to the applicable powers and provisions contained in this Deed so that the trusts shall not at the date of accrual have failed as provided above.

## **5. CAPITAL RESERVE**

- 5.1. Prior to distributing any income of the Trust Fund to the Unitholders, and if permitted by law, the Trustee may establish (in its absolute discretion) a reserve and set aside out of the income of the Trust Fund of that accounting period amounts or portions of the income as the Trustee in its discretion thinks proper as the reserve (the "capital reserve").
- 5.2. The capital reserve may at the discretion of the Trustee be drawn against for payment of any liability or contingency arising in respect of any of the authorised investments held by the Trustee.
- 5.3. The Trustee may at any time distribute from the capital reserve to the Unitholders sums of money (or at the election of a Unitholder, the issue of new units) in accordance with clause 7) as it shall determine and in proportion to their respective unit holdings.

## **6. CAPITAL**

The Trustee may in accordance with the provisions of this Deed, out of the capital of the Trust Fund, including any category of capital of the Trust Fund, raise any sum or sums and pay the same to any Unitholder (or transfer in specie any authorised investments being part of the trust fund to any Unitholder) for that Unitholders own use and benefit, provided that the Unitholder becomes liable for any capital gains tax which arises as a result.

## **7. ISSUE OF FURTHER UNITS**

- 7.1. The Trustee may determine to issue new units up to the Investment Maximum Cap provided:
- 7.1.1. the new units are issued at market value which shall be determined in accordance with applicable accounting standards by a registered valuer appointed by the Trustee;
- 7.1.2. the new units are offered by the Trustee in the first instance for subscription at the new unit price to the Unitholders in proportion to their then existing unit holdings. The offer is to be made by notice to each Unitholder specifying the number of new units offered to that Unitholder and the new unit price and will carry the right to that Unitholder to accept the offer in respect of any smaller number of

units and will limit the time (being at least 30 days) within which the offer if not accepted will be deemed to be declined. Any units declined will be offered in the same manner and in the same proportion to those Unitholders who have accepted and again units not accepted will be offered to Unitholders until finally it appears to the Trustee that no Unitholder is willing to accept any further units. Any units offered but which it appears no Unitholder is willing to subscribe for may be disposed of as the Trustee decides.

## **8. DECLARATION OF TRUSTS**

- 8.1. The Trustee declares that the Trustee will from the date of this Deed hold the Trust Fund and the income derived from it in trust for the Unitholders on the terms and subject to the provisions of this Deed.
- 8.2. After the commencement date the Trust Fund held and received by the Trustee will be invested by the Trustee within a reasonable time in authorised investments chosen by the Trustee provided that any money in the hands of the Trustee at any time may be retained for purposes connected with optimising the cost and returns on authorised investments, which may have been acquired as the Trustee may determine (and may include the Trustee holding cash when it is deemed no suitable authorised investments are available at an appropriate price).
- 8.3. Any authorised investments may at any time be sold by the Trustee but in this case (except where the sale has been made for the purpose of winding up the Trust) the proceeds of sale are to be re-invested by the Trustee in the acquisition of authorised investments, and at such times, which the Trustee deems optimal for the Trust Fund.

## **9. DUTIES OF THE TRUSTEE**

The Trustee shall manage the Trust Fund and the investments and any business carried on by the Trustee pursuant to the Trust Deed provided that the Trustee will not be bound in any case to act personally always being at full liberty to employ any contractors managers solicitors accountants clerks workmen employees or servants or agents to transact all or any business of whatever nature and without in any way limiting the generality of the above the Trustee shall:

- 9.1. use its best endeavours to ensure that the management of the Trust is carried on and conducted in a proper, efficient and lawful manner;
- 9.2. deposit all receipts from the management development and operation of the Trust Fund into a separate bank account and pay all current expenses and outgoings concerning the Trust Fund and provide reserves for future and contingent liabilities as the Trustee considers to be necessary;
- 9.3. keep or cause to be kept proper books of account of all sums of money received and expended by or on behalf of the Trust Fund and the matters for which receipt and expenditure takes place and of all sales and purchases of investments and of the assets and liabilities of the Trust Fund and without in any way limiting the generality of the above keep or cause to be kept accounting and other records in respect of any business carried on by the Trustee under the provisions of this Deed as will sufficiently explain the transactions and financial position of the business and enable true and fair profit and loss accounts required to be prepared concerning the business and cause those

records to be kept in a manner as to enable them to be conveniently and properly audited; and

- 9.4. prepare or cause to be prepared as soon as practicable after 30 June (or other accounting date as may be decided on by the Trustee) in each year a profit and loss account showing the calculation of the income of the Trust Fund for the period to that 30 June or other accounting date (as the case may be) and a balance sheet as at the date to which the profit and loss account is made up.

## **10. POWERS OF THE TRUSTEE**

The Trustee has the discretion to and may in addition to and not in derogation of any other powers and discretions the Trustee has by law or which are conferred on it by other provisions of this Deed to do the following:

- 10.1. commence, acquire and carry on any business which the Trustee may decide can be conveniently carried on or which it desires to commence, acquire or carry on in the interests of the Trust Fund or the Unitholders and without limiting the generality of the above:
  - 10.1.1. establish, conduct, acquire, and carry on, or assist, subsidise or contribute to, or arrange for, or be concerned, directly or indirectly, in the establishment, conduct, acquisition and carrying on of any business trade, industry, occupation, transaction, pursuit, undertaking or enterprise, whatever, whether managerial, retailing manufacturing, trading, real and personal estate, primary production, mining, financial, commercial, building or otherwise;
  - 10.1.2. enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise that may seem conducive to the Trust's objects or any of them and to obtain from any government or authority, any rights, privileges and concessions which the Trustee thinks are desirable to obtain and to carry out, exercise and comply with any of those arrangements, rights, privileges and concessions;
  - 10.1.3. acquire and undertake to acquire the whole or any part of the business, property and liabilities of any person or company that business being a business which the Trustee is authorised to carry on and that property being property which is suitable for the purposes of the Trust; and
- 10.2. let any property in parts and at rentals on terms and conditions (including without limiting the generality of those terms the grant or reservation of any necessary easements or rights) and to tenants as the Trustee considers to be in the best interest of the Trust Fund;
- 10.3. cancel, terminate or accept surrenders of lease, or institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of the property and to sue for and recover rent and damages for breach of any lease or to sue or prosecute trespassers on any property and abandon, settle compromise and release any action or suit when expedient;
- 10.4. advertise any property or any part of a property and to display signs and notices concerning the property and to impose rules and regulations governing the conduct of the occupants of any building or any other property;

- 10.5. execute and prosecute legal proceedings of any kind in any court to enforce any contract entered into or to recover damages for breach of any contract;
- 10.6. pay out of the Trust Fund or the income of the Trust Fund all costs charges and expenses incidental to the management of the Trust Fund;
- 10.7. employ and superannuate managers staff and servants and engage contractors as may be necessary or desirable and to engage the services of lawyers, engineers, architects, accountants, auditors, agents and any other professional or technical advisers and to pay any person or corporation whose services are engaged out of the Trust Fund to make all payments to employees and other persons and payments by way of superannuation and the like as to the Trustee shall seem appropriate or other returns required in connection with the Trust or the income of the Trust by the law of the Commonwealth of Australia or of any of the States or Territories or of any other country;
- 10.8. hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, subdivide, exploit, transfer, convey, surrender, let, lease, exchange, take and grant options or rights, in alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property and in particular for shares debentures or securities of any company and with or without deferred restricted qualified or special rights relating to that property.
- 10.9. purchase, acquire or effect any reversionary or deferred interest in property or rights of any description or any life or life-endowment or sinking-fund or term or other policy of insurance of whatever nature and at or subject to any premium whether single or payable periodically and with or subject to any options rights benefits conditions or provisions whatever the Trustee having the power to pay out of the income or capital of the Trust Fund as it in its absolute discretion decides all sums payable for premiums or otherwise for the effecting or maintenance of any policy whether owned by the Trustee or otherwise or for the exercise or enjoyment of any option right or benefit under any policy and any surrender of any policy is to be deemed to be a sale of that policy;
- 10.10. despite that the Trust Fund consists of trust moneys invest them in any of the authorised investments and deal with and manage and transpose and realise those investments entirely as it thinks fit and with powers in all respects as if the Trustee were the absolute owner of those investments and the Trustee is not accountable in any way whatever for any loss arising out of the making of any investment or out of the failure to realise any investment or out of its management of any investment;
- 10.11. apply and invest all moneys at any time forming part of the Trust Fund in any investments whether involving liabilities or not or on personal credit with or without security and on terms and conditions as the Trustee shall in its absolute discretion decide it being the intention of the parties to this Deed that the Trustee have powers in all respects as if it were the absolute owner beneficially entitled including without diminishing the generality of the above the subscription for the taking up on allotment and the purchase of any shares, stocks,, bonds mortgages, debentures, obligations or securities of any government authority or company incorporated in any part of the world (whether listed on an Australian stock exchange, other foreign stock exchange, or unlisted) and the taking of and the purchase or acquisition of the whole or any part or share or interest in (including a minority part or share or interest in) any business or partnership and its goodwill and assets and the purchase or acquisition of any real or personal property wherever situate or any part or share or interest of any real or personal property and despite that it may not be income producing or wasting or

speculative to exercise all rights and privileges and perform all duties and obligations appertaining or incidental to that purchase and the Trustee may make or purchase any investments otherwise and on any terms and conditions as the Trustee shall in its absolute discretion decide and it may make or purchase any investment for a sum greater than the amount of the Trust Fund and it may agree to pay for any investments wholly or in part from any future moneys which may come into its hands including dividends profits interest or other income to be received from any investments;

- 10.12. appoint any representative to act as a director on behalf of the Trustee of any company in which any money forming part of the Trust Fund is invested and may receive the remuneration attached to that office or permit its representative to receive that remuneration without being liable to account to the Trust for it and any representative may become qualified to act as a director (if allowed by company's articles of association) by holding in the representative's own name shares belonging to the Trustee provided that representative executes a declaration of trust in favour of the Trustee generally and surrenders to the Trustee the certificates of those shares and provided the representative accounts to the Trustee for all dividends and bonuses paid;
- 10.13. act as a director and to exercise all rights and privileges and perform all duties appertaining to any shares or stock subject to the trusts with liberty to assent to any arrangements modifying those rights privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any company and for any purpose to deposit surrender or exchange any of the shares or stock or the title to them and to pay any calls or contributions or other necessary expenses in connection with any shares or stock or any scheme or arrangement referred to above;
- 10.14. draw, make, accept, endorse, discount, execute, establish and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments and letters of credit and to enter into agreements in respect of them;
- 10.15. take let part with possession or enter into agreement by bailment, lease, hire or hire-purchase or in exchange or otherwise purchase sell or acquire any real or personal property including (but without limiting the generality of the above) any chattels, machinery, plant and stock-in-trade;
- 10.16. guarantee and give guarantees and indemnify and give indemnities either alone or jointly or jointly and severally for payment of money or the performance of any contract obligation or undertaking by any person company corporation or association and to agree to give security of any nature for any guarantee or indemnity;
- 10.17. apply the whole or any part of the capital or income of the Trust Fund in or towards payment of any liability undertaken by the Trustee in relation to the acquisition of authorised investments intended to form part of the Trust Fund;
- 10.18. acquire, carry on, or join in carrying on, any business either alone or in partnership with any other person or persons at the discretion of the Trustee during the period as it shall think proper with power for that purpose to employ in that business part or parts of the capital of the Trust Fund as it decides and employ at a salary as it decides as manager of the business any person (whether otherwise interested in the Trust Fund or not) or to leave the entire management of the business to any partner in the business and to renew partnerships and generally to act in all matters relating to the business or

businesses as if it were beneficially entitled to the business and without responsibility for loss;

- 10.19. delegate the exercise of all or any of the powers or discretionary authorities conferred under this Deed and execute any powers of attorney or other instruments necessary to effect that delegation;
- 10.20. employ any manager, solicitor, accountant or agent to transact all or any business of whatever nature required to be done under this Deed including the receipt or payment of money and the Trustee shall decide the remuneration to be allowed and paid and all charges and expenses incurred;
- 10.21. determine whether any receipt, profit, gain, payment, loss or outgoing, sum of money, investment or other authorised investments (including any actual or deemed capital gain under the Act) is to be treated as income or capital of the Trust Fund in any Accounting Period for trust account purposes and such determination, if made, shall be so made on or before the last day of the Accounting Period and in default of the Trustee making a determination pursuant to this clause any receipt, profit, gain, payment, loss or outgoing, sum of money, investment or other authorised investments received, derived or incurred by the Trustee during the Accounting Period which is included in the net income of this Trust for the purposes of the Act shall be deemed to be income for trust account purposes and amounts not so included shall be deemed to be capital for trust account purposes;
- 10.22. determine all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trusts and powers contained in this Deed and every determination of the Trustee in relation to any matter arising under clause 10.22 whether made on a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund will bind all interested parties and will not be objected to or questioned on any ground whatever;
- 10.23. take and act on the opinion of any Queen's Counsel or barrister admitted to practice in the High Court of Australia whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the above Trusts without being liable to any one in respect of any act done by them in accordance with that opinion provided nothing in this Deed obliges the Trustee to act in accordance with that opinion and provided that nothing contained in this Deed will prohibit the Trustee from applying to a Court if it thinks appropriate;
- 10.24. open an account with a bank, building society or other financial institution and operate the account in all usual ways; and
- 10.25. do all other things as may be incidental to or which the Trustee in its absolute discretion may deem necessary for the proper and full exercise of the above powers.

## **11. TRANSFER OF UNITS**

- 11.1. Every Unitholder is entitled to transfer any of the units held by the Unitholder by written instrument in the form set out in the Fourth Schedule or in any other form as the Trustee may approve provided the transferee has in the first place been approved by the Trustee and the approval will not be unreasonably withheld, and provided that the maximum number of Unitholders permitted under this Deed is not exceeded.

- 11.2. Every instrument of transfer must be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of the units until the name of the transferee is registered in the Register as the holder of those units
- 11.3. Every instrument of transfer where so required must be stamped and left with the Trustee and must be accompanied by a certificate.
- 11.4. It is the basic intention of the parties that each Unitholder be at liberty to transfer any unit to any close relative or to a trust or company substantially owned or controlled by the Unitholder and/or his close relatives or to a beneficiary of any trust but so that no unit otherwise be transferred without the other Unitholders being given the right to purchase it at its fair value. The following paragraphs of this clause are to be construed and given effect in light of that basic intention.
- 11.5. Subject to the above any units proposed to be transferred must first be offered to the Unitholders (other than the transferor) collectively and individually but so that they rank for acceptance in proportion to the units held by them and in accordance with the rights attaching the units and the corresponding entitlement of those Unitholders and so that if any unit cannot be apportioned that unit shall be offered to them in the order determined by lot and the Trustee shall cause the lots to be drawn accordingly. For the avoidance of doubt, an offer under this clause 11.5 does not require a Unitholder to purchase any or all of the Units offered to it.
- 11.6. The person proposing to transfer any units (the "**proposing transferor**") shall give written notice (the "**transfer notice**") to the Trustee of his intention to transfer the units. The transfer notice shall appoint the Trustee as the proposing transferor's agent for the sale of the units to the other Unitholders at market value which shall be determined in accordance with applicable accounting standards by a registered valuer appointed by the Trustee. A transfer notice may include several units and will operate as if it were a separate notice in respect of each unit. A transfer notice will not be revocable except with the sanction of the Trustee.
- 11.7. Within 45 days after being served with a transfer notice the other Unitholders must purchase the units which have been offered under clause 11.5, and which that Unitholder has elected to purchase (the "**purchasing members**") and shall give notice to the proposing transferor and the proposing transferor will be bound on payment of the price to transfer the units to the purchasing members.
- 11.8. If a sale is effected the purchasing members must pay the price within one calendar month from the date of the Trustee giving notice to the proposing transferor.
- 11.9. If the proposing transferor after having become bound defaults in transferring any unit the Trustee may receive the price and hold it in trust for the proposing transferor and cause the name of the purchasing members to be entered in the Register as the holders of the unit. The receipt by the Trustee of the price constitutes a good discharge to the purchasing members and after their names have been entered in the Register in purported exercise of the above power the validity of the proceedings may not be questioned by any person.
- 11.10. If a sale is not effected by the Trustee, the proposing transferor may subject to the above, transfer the unit as the transferor sees fit, provided that the Trustee has given its prior written consent (not unreasonably withheld) to the transfer to a third party, and the maximum number of Unitholders permitted under this Deed is not exceeded.

- 11.11. A Unitholder may elect that any Units which are not transferred following the procedure set out in this clause 11, be redeemed pursuant to clause 19.

## **12. DEATH OF UNITHOLDER**

- 12.1. In the case of the death of any one of the joint Unitholders the survivor or survivors will be the only persons recognised by the Trustee as having any title to or interest in those units.
- 12.2. The legal personal representative of a deceased Unitholder (not being one of several joint holders) will be the only person recognised by the Trustee as having any title to those units.
- 12.3. Any person becoming entitled to any units in consequence of the death of a Unitholder will on producing evidence as the Trustee requires and in the case of a legal personal representative of a deceased Unitholder (not being one of several joint Unitholders) on making a declaration in the form set out in the Fifth Schedule and on delivering up the certificate comprising those units to the Trustee for cancellation be registered himself as the holder of those units and be entitled to a new certificate in his own name.
- 12.4. The Trustee will recognise the Unitholder (or the legal personal representative of a deceased Unitholder being a natural person) as the only party having any right or interest in the units for which that party is registered or in the certificate representing the units and unless a court otherwise orders, will not be bound to take notice of any trust or equity affecting any unit or certificate or their incidental rights and the receipt of that Unitholder (or legal personal representative of a deceased Unitholder as the case may be) for any money payable under this Deed or any authorised investments transferable under this Deed to a Unitholder is a good discharge to the Trustee.

## **13. MEETING OF UNITHOLDERS**

- 13.1. The Trustee may at any time convene a meeting of the Unitholders and the Trustee shall at the request of the Unitholders who at the date of the request collectively hold more than 50% of the voting units proceed to convene a meeting of the Unitholders provided that if all of the voting units are held by one registered unitholder, a resolution in writing of that registered unitholder shall be deemed to have arisen out of validly convened and constituted meeting.
- 13.2. At least 7 days' notice must be given of every meeting and the notice must specify the general nature of the business to be transacted.
- 13.3. At a meeting convened at the request of the voting Unitholders a person nominated by the meeting (being a voting Unitholder or his proxy) is to preside and at any other meeting convened by the Trustee a person nominated by it (whether or not a Unitholder or his proxy) is to preside. The Chairman will have a casting vote (in the event of an equality of votes) in addition to the vote or votes to which he is entitled as a Unitholder or as proxy.
- 13.4. Every question arising at any meeting mentioned in this clause is to be decided in the first instance by a show of hands of the Unitholders or their proxies unless a poll is demanded.

- 13.5. A poll may be demanded by any voting Unitholder present in person or by proxy before or immediately after any question is put to a show of hands of the Unitholders.
- 13.6. On a poll every voting Unitholder present in person or by proxy is entitled to have one vote for every voting unit held by him. Joint holders are entitled to only one vote being that of the first named holder on the Register.
- 13.7. There will be a quorum for a meeting if there are at least two Unitholders present in person or by proxy and they hold (or represent by proxy) between them at least 75% of the issued voting units provided that if all of the voting units are held by one unitholder then the quorum shall be the presence in person or by proxy of that unitholder.
- 13.8. The Chairman may with the sanction of the meeting adjourn it to a time and place as he determines. The Chairman must adjourn any meeting at which a quorum is not present.
- 13.9. Votes at a meeting of the Unitholders may be given either personally or by proxy. A proxy must be in the usual or common form or in any other form as the Trustee agrees. A company being a Unitholder may vote by any authorised representative who may speak or demand a poll and generally act as a proxy on its behalf.

#### 14. THE AUDITOR

- 14.1. The Trustee may appoint an auditor of the Trust Fund who will hold office subject to this clause or until he voluntarily retires by written notice.
- 14.2. If at any time the Unitholders of at least 75% of the issued units resolve at a duly convened meeting or by written notice request any auditor appointed under this clause to retire then the Trustee must by written notice to the auditor remove him and the Trustee shall appoint another auditor to take his place.
- 14.3. The auditor may be the auditor of the Trustee.

#### 15. PERFORMANCE FEE

In addition to the Trustee's right of indemnity the Trustee is entitled to be paid a performance fee, calculated each year on 30<sup>th</sup> June as follows:

- 15.1. An investment hurdle shall be set at 7% p.a. prorated cumulative (**Investment Hurdle**);
- 15.2. The investment return shall be calculated as the percentage proportion by which the Trust Fund has increased or decreased from one year earlier (**Investment Return**);
- 15.3. The investment outperformance shall be calculated as the Investment Return, less the Investment Hurdle (**Investment Outperformance**);
- 15.4. Provided that the Investment Return is greater than or equal to the Investment Hurdle (assessed on a prorated cumulative basis), the performance fee payable to the Trustee shall be calculated as 20% of the Investment Outperformance.

## **16. RETIREMENT OF THE TRUSTEE**

- 16.1. The Trustee may retire on giving twelve months' notice to the Unitholders of its desire to so do, and by a resolution passed by the Unitholders of at least 75% of the voting units at a meeting duly convened a new trustee may be appointed in its stead.
- 16.2. If the Trustee goes into liquidation or ceases to carry on business or a receiver or an official manager of the trustee is appointed or if for any other reason it is deemed necessary for the trustee to be removed the Unitholders shall as soon as possible by resolution at a meeting duly convened passed by the Unitholders of at least 75% of the units remove the trustee from its appointment under this Deed and appoint another trustee in its stead.

## **17. PERIOD OF TRUST**

- 17.1. The Trust created by this Deed begins at the date of this Deed and unless previously determined under the provisions of this Deed will continue until the vesting date.
- 17.2. If at a meeting of Unitholders duly convened under any provisions of the trust deed a resolution to determine the Trust is passed by the Unitholders holding between them at least 75% of the issued voting units the Trustee shall determine it accordingly.

## **18. DETERMINATION OF THE TRUST**

On determination of the Trust the following clauses are to have effect:

- 18.1. The Trustee must as soon as practicable sell call in and convert into money or cause to be sold called in and converted into money the investments of the Trust Fund and divide the proceeds of the sale and all undistributed profits and income less all costs charges and expenses among these Unitholders in proportion to their respective unit holdings;
- 18.2. the Trustee must as soon as practicable after the determination of the Trust give to each Unitholder notice of the determination and of the impending distribution;
- 18.3. the Trustee may postpone the sale calling in and conversion of any part of the investments of the Trust Fund for as long as it thinks it desirable in the interests of the Unitholders and will not be responsible for any loss attributed to a postponement; and
- 18.4. the Trustee may retain in its hands or under its control for as long as it decides that part of the Trust Fund as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) of the Trust or any of its investments provided that any investments so retained to the extent that they are ultimately found not to be required remain subject to the trusts for conversion and distribution contained in this clause.

## **19. REDEMPTION OF UNITS**

- 19.1. A Unitholder, without reason, may require the Trustee on 12 months' prior written notice of 30<sup>th</sup> June each year, to redeem the whole or any part of any units held by that Unitholder and that redemption shall be effected by a payment to that Unitholder of the market value of the units which shall be determined in accordance with applicable accounting standards by a registered valuer

appointed by the Trustee (on an end-of-month valuation, averaged over a 3 month period prior to the date of redemption).

- 19.2. The Trustee, in its sole discretion, may elect to redeem units under this clause at a date earlier to the expiry of the 12 month prior written notice period (in which case, the market value of the units shall be determined in accordance with applicable accounting standards by a registered valuer appointed by the Trustee, on an end-of-month valuation, averaged over a 3 month period prior to the date the Trustee, in its sole discretion, elects to effect the redemption).
- 19.3. All units redeemed will be cancelled as from the date of redemption.
- 19.4. For the purposes of redeeming any units the Trustee may so as to provide a sufficient sum to meet the redemption price or equivalent value do any of the following:
  - 19.4.1. pay out of the Trust Fund any moneys in its hands whether or not received as income held or deemed to be income or being cash contributed to the Trust Fund or representing the proceeds of the sale of any investments of the Trust Fund;
  - 19.4.2. exercise any of its powers contained in this Deed;
  - 19.4.3. realise or sell any Trust Fund investments; or
  - 19.4.4. distribute the equivalent of the redemption price by a distribution of any part or the whole of any Trust Fund asset or assets in specie or by a distribution of any part or the whole of any Trust Fund investment or investments in specie.
- 19.5. The Trustee must make appropriate entries in the Register whenever any units are redeemed and must cancel the certificate relating to any units which have been redeemed and issue to the Unitholder a certificate relating to the balance (if any) of units held by him.

## **20. VALUATION OF THE TRUST FUND**

- 20.1. At any other time, if Unitholders holding between them more than 50% of the issued voting units by writing signed by them request, or if at a duly convened meeting the Unitholders holding between them more than 50% of the issued voting units resolve, a valuation of the Trust Fund must be made by the Trustee. The cost of any valuation of the Trust Fund made pursuant to this clause is to be paid out of the Trust Fund.
- 20.2. In addition to clause 20.1, the Trust Fund must be valued on a half-yearly basis, and audited once per year.

## **21. NOTICES**

- 21.1. Any notice required to be given to a Unitholder or to the Trustee is deemed to have been duly given if it is in writing and either delivered or sent by post in a prepaid envelope addressed if to the Unitholder to his address appearing in the Register or if to the Trustee addressed to the address last notified for that purpose and is deemed to be served on the second day following that on which it is posted.
- 21.2. Service of a notice or document on any one of several joint Unitholders is deemed effective service on the other joint Unitholders.

## 22. AMENDMENT

The Trustee may with the consent of all Unitholders make by deed any amendment or addition to this Deed which it has approved having regard to all the circumstances of the case and provided any amendment or addition will not prejudice the interests of Unitholders and after the execution of any supplemental deed this Deed shall take effect as amended or added to.

## 23. MISCELLANEOUS

- 23.1. All Unitholders are entitled to the benefit of and are bound by the terms and conditions of this Deed.
- 23.2. The Trustee may exercise or concur in exercising the powers and discretions of this Deed or by law given despite that it or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising any power or discretion or may benefit either directly or indirectly as a result of the exercise of any power or discretion and despite that the Trustee is the sole Trustee.
- 23.3. Subject always to any express provision to the contrary every discretion vested in the Trustee is absolute and uncontrolled and every power vested in it is exercisable at its absolute discretion and the Trustee has the like discretion in deciding whether or not to exercise any power. The Trustee is not responsible for any loss or damage not attributed to its own wilful dishonesty which may be occasioned by the exercise of any discretion or power under this Deed or by law conferred on the Trustee or by failure to exercise any discretion or power or for any loss or damage accruing as a result of or for any loss or damage accruing as a result of concurring or refusing or failing to concur in any exercise of any power or discretion.
- 23.4. The Trustee:
- 23.4.1. if acting in good faith is entitled to be indemnified out of the Trust Fund for all liabilities incurred by it relating to the execution of any powers duties authorities or discretions vested in it under this Deed and concerning all actions proceedings costs claims and demands relating to any matter or thing done or omitted to be done concerning the Trust Fund;
- 23.4.2. acknowledges and agrees that:
- (a) the recourse of the Trustee and any creditor of the Trustee is limited to the Trust Fund;
  - (b) a Unitholder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust; and
  - (c) the liability of each Unitholder in its capacity as such is limited to its investment in the Trust.
- 23.5. The perpetuity period applicable to the trusts and powers of and under this Deed is the period expiring on the vesting date.

- 23.6. The cost of any valuation of the Trust Fund made under any clause contained in this Deed is to be paid out of the Trust Fund.

#### **24. GOVERNING LAW**

This Deed is governed by and shall be construed in accordance with the laws of Victoria for the time being in force, and the Trustee and Unitholders agree to submit to the non-exclusive jurisdiction of the courts of Victoria.

**EXECUTED AND DELIVERED AS A DEED**

**EXECUTED** by **ALIGNED CAPITAL PARTNERSHIP PTY LTD ACN 618 424 016** in accordance with Section 127(1) of the Corporations Act:

.....  
~~Director\*/Sole Director and Sole Company Secretary\*~~ ~~Director\*/Secretary\* — Sign here~~  
– Sign here

**Erling Asger Sorensen** .....  
Full Name (Print) Full Name (Print)

\* delete whichever does not apply

**SIGNED SEALED & DELIVERED** by **Kim Sorensen as trustee for the Sorensen Family Trust** in the presence of : )  
)  
)

.....  
Witness Kim Sorensen as trustee for the Sorensen Family Trust - Sign here

.....  
Name of Witness (Print)

## FIRST SCHEDULE

<b>Date of this Deed</b>	1 <sup>st</sup> July 2021
<b>Trustee</b>	<b>ALIGNED CAPITAL PARTNERSHIP PTY LTD</b> ACN 618 424 016 of 48 Mills Street, Hampton, VIC 3188
<b>Initial Contributions</b>	\$100
<b>Investment Maximum Cap</b>	\$100,000,000 (excluding all accumulated income and gains in the Trust Fund).
<b>Name of Trust</b>	Aligned Capital Partnership Investment Trust
<b>Number of units initially issued</b>	20

### The Initial Unitholders:

<b>Unitholder</b>	<b>No. of Units</b>
Kim Sorensen as trustee for the Sorensen Family Trust of 48 Mills Street Hampton, Victoria 3188, Australia	20

**SECOND SCHEDULE**

**APPLICATION FOR UNITS**

**ALIGNED CAPITAL PARTNERSHIP INVESTMENT TRUST**

To: **ALIGNED CAPITAL PARTNERSHIP PTY LTD ACN 618 424 016**  
of 48 Mills Street, Hampton, VIC 3188  
as Trustee (the "**Trustee**")  
for THE ALIGNED CAPITAL PARTNERSHIP INVESTMENT TRUST  
(the "**Trust**")

I, \_\_\_\_\_ of \_\_\_\_\_ apply  
for \_\_\_\_\_ units in the Trust established by the Trust Deed dated \_\_\_\_\_ 20\_\_\_\_  
between the Trustee and the Unitholders as defined in the Trust Deed.

I request the units to be issued to me at the price of \$\_\_\_\_\_ each and I enclose a cheque for  
\$ \_\_\_\_\_  
in payment in full.

If I become a Unitholder I agree to be bound by the provisions of the Trust Deed.

**DATED**

.....  
Applicant

.....  
Witness

**THIRD SCHEDULE  
FORM OF CERTIFICATE**

Certificate Number\_\_\_\_\_

**ALIGNED CAPITAL PARTNERSHIP INVESTMENT TRUST  
CERTIFICATE**

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**ALIGNED CAPITAL PARTNERSHIP PTY LTD ACN 618 424 016** of 48 Mills Street, Hampton, VIC 3188 (the "**Trustee**") as Trustee of a Trust Deed dated \_\_\_\_\_ (the "**Trust Deed**") and made between the Trustee and the Unitholders as defined in the Trust Deed certify that \_\_\_\_\_ is the Unitholder of \_\_\_\_\_ units in the Trust constituted by the Trust Deed, the units being held subject to and on the terms and conditions contained in the Trust Deed.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

.....  
Trustee

**FOURTH SCHEDULE**

**TRANSFER OF UNITS**

**ALIGNED CAPITAL PARTNERSHIP INVESTMENT TRUST**

I \_\_\_\_\_ of \_\_\_\_\_ (the "Transferor") in consideration of the sum of \$\_\_\_\_\_ paid to me by \_\_\_\_\_ of \_\_\_\_\_ (the "Transferee") transfer to the Transferee \_\_\_\_\_ units in the above Unit Trust constituted by the Trust Deed dated \_\_\_\_\_ 20\_\_ and made between **ALIGNED CAPITAL PARTNERSHIP PTY LTD ACN 618 424 016** and the Unitholders as defined in the Trust Deed to hold them subject to the conditions on which I held them and I the Transferee agree to take the units subject to the same conditions.

**DATED**

.....  
Transferor

.....  
Transferee

**FIFTH SCHEDULE**

**DECLARATION**

**ALIGNED CAPITAL PARTNERSHIP INVESTMENT TRUST**

To: The Trustee under a Trust Deed dated \_\_\_\_\_ and  
made between the Trustee and the several persons mentioned  
in the Trust Deed as the Unitholders.

I/We being the Executor(s) of the Will/Administrator(s) of the Estate of  
deceased the Unitholder of the Fund constituted by the abovementioned Trust Deed authorise  
and request you to Register me/us as the holder(s) of the units and to issue to me/us a  
Certificate in my/our names(s).

**DATED**

.....  
Signature(s)