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National Law Firm

Head Office  
39 Stirling Highway  
Nedlands WA 6009

T: 1800 141 612

[legalconsolidated.com.au](http://legalconsolidated.com.au)

Your Reference: Unitholders Agreement  
Enquiries: Adj Professor, Dr Brett Davies  
Direct Telephone: 1800 141 612  
Email: [brett@legalconsolidated.com](mailto:brett@legalconsolidated.com)

Wednesday, 17 March 2021

Outdoorsman Nominees Pt  
12 Brodrick Drive  
Camperdown NSW 2050  
Australia

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<https://www.legalconsolidated.com.au/unitholders-agreement-introduction/> –  
telephone us, we can help you complete  
the questions.*

*Adj Professor, Dr Brett Davies - Partner*

Dear Trustee,

## **Unitholders Agreement for the Outdoorsman Unit Trust**

Thank you for instructing us to prepare the attached Unitholders Agreement.

### **How to print your document**

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document.)

### **How to sign your Unitholders Agreement**

When you are satisfied that the Deed is according to your instructions please arrange for all parties to sign and date all copies.

1. Print out a copy for each party.
2. If a company signs and has only one director (who is also the secretary) then that director alone signs for that company. However, if the company has two or more directors then two directors must sign.
3. If the person signing is a human being then the witness must be over 18 years of age, of sound mind and not related to any of the parties to the Deed. (Your spouse cannot witness your or anyone else's signature.)
4. Each person receives a copy (or an email) of the fully signed Deed.

5. If one person fails to sign then the Unitholders Agreement may not be enforceable against anyone.

### **Differences between a Unitholders Agreement and a Unit Trust Deed?**

A Unit Trust Deed and a Unitholders Agreement are different documents. They serve different purposes. The Unit Trust Deed creates a trust relationship. It sets out the rules of how the assets are held and what the Trustee must do.

In contrast, a Unitholders Agreement sets out the relationship between the Unitholders. It is a 'side agreement'. It binds the Unitholders to a set of rules. For example, the Unitholders Agreement contains comprehensive dispute resolution clauses. This minimises cost and time in handling disputes between Unitholders.

### **Does the Unitholders Agreement get "stamped"? Is it "dutiabale"?**

The Commissioner of State Revenue/Tax requires that the Unitholders Agreement (and all copies) be lodged once signed. If they are lodged late penalties are imposed.

New South Wales (\$500), Victoria (\$200), Tasmania (\$50) and the Northern Territory (\$20) impose a nominal stamp duty.

However, there is no duty payable in Queensland, Western Australia, South Australia and the Australian Capital Territory. So you do not need to lodge Unitholders Agreement in those jurisdictions.

You have not instructed us to and I confirm that we have not given you any legal or taxation advice regarding this document. We suggest that you instruct this law firm, your accountant and financial planner to consider your structure as far as it being tax effective.

I suggest that you have the document reviewed every 4 years to ensure that it continues to allow the most advantageous taxation flexibility.

### **Why do I want a Unitholders Agreement?**

Example:

*Bob co-owns a \$500,000 boat with two of his closest business partners – Ben and Jerry. He is unrelated to his partners and only engages them in joint business ventures. Bob, Ben and Jerry come to an arrangement. The boat is managed through a Unit Trust. Everyone contributed different amounts and the market value of the boat is forever fluctuating. All three partners are made Unitholders to the Trust. A Unitholders Agreement is never signed between the three business partners.*

*One day, a dispute arises as to the valuation of units that Bob and his partners own in the Unit Trust. The Unit Trust does not contain procedures for valuing units in a Unit Trust, nor dispute resolution clauses. Because Bob and his business partners did not sign a Unitholders Agreement, their only solution is pursuing time-consuming and costly litigation.*

The Unitholders Agreement saves Unitholders, such as Bob, from the headache of litigating disputes arising in Unit Trusts.

## **Unitholders Agreements can be entered into at any time**

A Unitholders Agreement manages the behaviour of Unitholders in a Unit Trust.

Unitholders Agreements are cost-effective and allow for:

1. alternative dispute resolution clauses for Unitholders
2. the issuing, valuation and transfer of units in a unit trust
3. Unitholder insurance – trauma, Total Permanent Disability, life and income protection

Unitholders Agreements outline each Unitholder's rights and obligations for one another. In the case of conflict, dispute resolution clauses manage conflict outside the courtroom. This enables the parties to reach a cost-effective solution. As the rights and behaviour of Unitholders are managed by the Unitholders Agreement, the opportunity for conflict is substantially reduced.

## **Deed of Accession**

Your Unitholders Agreement includes a Deed of Accession. When Unitholders become a party to a unit trust, they are not bound by the provisions of the pre-existing Unitholders Agreement. Upon signing the Deed of Accession, the new unitholders are bound to the Unitholders Agreement, as if the new unitholder was party to it.

The Deed of Accession, provided as part of our Unitholders Agreement, enables a speedy and simple binding of new unitholders to the Agreement.

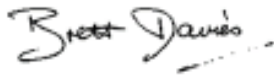
## **Unit Holders Agreement vs Business Succession Plan**

These are the differences between a Unitholders Agreement, Business Succession Planning and Key Person Insurance:

1. A **Unitholders Agreement** is a contract between the Trustee of the Unit Trust and the Unitholders. It overrides a Unit Trust Deed. It details how the company is managed. (It is like a Shareholders Agreement.)
2. A **Business Succession Plan** is an agreement to get rid of the disabled or dead owner with some money. The outgoing owner gets some money and the remaining owners get his interest in the business. A BSP does nothing to help the business itself. The business may well fold after the person leaves, but at least his wife gets some money and the remaining owners get the business. A BSP is funded with life, TPD and trauma insurance.
3. A **Key Person Insurance Agreement** is insurance paid to the business if a key person is disabled or dies. This does not deal with how to get the shares off the dead or sick outgoing owner. (The above BSP does that.) Key Person Insurance only helps the business. Key person insurance is usually to repay debt (often secured by the outgoing owners' home) or cover the cost of training up a new person.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD  
National Taxation Partner  
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

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*Depending how you answer the questions the document and our letter may be different.*

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*Dr Brett Davies  
Partner  
Legal Consolidated Barristers & Solicitors*



**Minutes to confirm the Unitholders Agreement  
for the Outdoorsman Unit Trust**

**Held At:** .....

**Present:**

Outdoorsman Nominees Pty Ltd ACN 284 781 215  
12 Brodrick Drive, Camperdown NSW 2050, Australia

**(Trustee)**

**Trust:**

The Trustee tabled a Trust Deed to establish the Outdoorsman Unit Trust.

**Resolved that:**

The Trustee acknowledges that it has the capacity at law to act as Trustee and consents to act as Trustee.

1. The Trustee (and where applicable each Trustee) acknowledges that it is not a disqualified person under any laws.
2. The Trustee has received a copy of the Unitholders Agreement for the Outdoorsman Unit Trust.
3. The Trustee agrees to be bound by the provisions of the Unitholders Agreement Deed.
4. The Unitholders Agreement Deed tabled at this meeting is adopted to govern the Unitholders.
5. The Unitholders Agreement Deed be submitted by the Trustee to the local duties office (if required).

**Closure:**

There being no further business the meeting was declared closed.

Signed as a true and correct record of the meeting immediately after the meeting concludes.

..... Person chairing the meeting      Date ..... 20....



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On our law firm's website, you:

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*Adj Professor, Dr Brett Davies – Partner*

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## Unitholders Agreement for the Outdoorsman Unit Trust

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This Deed is between:

Outdoorsman Nominees Pty Ltd ACN 284 781 215  
12 Brodrick Drive, Camperdown NSW 2050, Australia

(Trustee)  
and

**Name and Address**

Steven Swanson  
2 Moreton Lane, Kingsgrove NSW 2208, Australia  
as Trustee for the Steven Swanson Family Trust

Bush Tent City Pty Ltd ACN 189 794 511  
238 Oxford Drive, Leederville WA 6007, Australia

(collectively **Original Unit Holder/s**)

It is agreed:

## 1. Operative

- 1.1 At the date of this Deed, the Unitholders are the registered owners of the Units in the Trust of which the initial Trust Deed was dated 16 October 2015 in the stated amounts.
- 1.2 The Trustee carries on the Business as trustee of the Trust.
- 1.3 The Parties agree that the Business will be conducted on the terms of this Deed and that the rights for the Units are governed by the terms of this Deed.

## 2. Dictionary

**Bankruptcy Act** the *Bankruptcy Act 1966* (Cth) as amended or replaced from time to time

**Business** the business carried out by the Trust, from time to time

**Business Day** a day other than a Saturday, a Sunday and a public holiday in the State or Territory pertaining to the jurisdiction of law that is applicable to this Deed

**Confidential Information** all data, details, plans, designs, computer software, figures, financial, costings, developments, results, technical advice, trade secrets, samples, specifications, statements, forms, processes, formulae, know-how, ideas, drawings, concepts, technology, manufacturing processes, Intellectual Property Rights, contracts, documents, agreements, commercial knowledge and other proprietary information of the Business (collectively **Information**) in whatever form and however stored containing or referring to any of the Information irrespective of how it is known by or in the possession of a Party:

Including, but not limited to, Information which is relating to or developed in connection with or in support of:

- the performance of the provisions of this Deed; or

A Unitholders Agreement is an agreement between unitholders and the Unit Trust trustee. It overrides a Unit Trust Deed. It sets out how the unit trust is managed. It deals with issues not contained in a Unit Trust Deed. Unitholders' Agreements manage the behaviour of unitholders in a unit trust.

- the organisation, finance, customers, markets, products, services, suppliers or contacts of the Business;
  - not in the public domain (except as a result of a failure to comply with an obligation to maintain confidentiality); and
  - not required by law to be disclosed

**Constitution** the Constitution of the Trustee, if any

**Corporations Act** the *Corporations Act 2001* (Cth) as amended or time

**Deed** this Deed, including the recitals in the Background, any schedule and appendices

**Deed of Accession** a deed poll of accession substantially in the form set out, subject to the approval of the Unitholders in accordance with this Deed

**Event of Default** those events set out at clause 21.1

**Encumbrance** an interest or power:

- reserved in or over any interest in any asset including, without limitation, the retention of title; or
- created or otherwise arising, in or over any interest in any asset, whether by mortgage, charge, lien, pledge, trust or power, and whether or not granted or created

**Independent Valuer** an independent valuer appointed to value any Units under the requirements of this Deed:

- an independent practising accountant appointed by the parties jointly; or
- in the absence of agreement an independent practising accountant appointed by the President or equivalent of the Institute of Chartered Accountants

**Insurance Policy** a life insurance policy taken out and maintained under clause 17 for a Unitholder

**Insurance Proceeds** the insurance proceeds payable under a Life Insurance Policy

**Intellectual Property Rights** statutory and other proprietary rights in respect of trademarks, designs, patents, circuit layouts, copyrights, confidential information, know-how, moral rights and all other rights with respect to intellectual property as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation of July 1967*

**Option Agreement** the Option Agreement to be entered into pursuant to clause 19

**Parties** all of the persons that are parties to this Deed at any time

**Party** a party to this Deed and any other person that executes a Deed of Accession and becomes a party to this Deed from time to time

**Premises** the premises on which the Business is conducted from time to time

**Related Party** any person in control or acting under the control of the Unitholder, as the case requires

*Unitholders' Agreements are cost-effective. They allow:*

- *changes, in future, merely via an exchange of emails or Minutes*
- *alternative dispute resolution clauses for unitholders*
- *the issuing, valuation and transfer of units in a unit trust*
- *unitholder insurance – trauma, TPD, life and income protection*



**Respective Proportion** in relation to a Unitholder, is the proportion of the total Units in the Trust that the Unitholder owns

**Trust** the Outdoorsman Unit Trust

**Trustee** a trustee of the Trust

**Trust Deed** the Outdoorsman Unit Trust Deed dated under which the Trust was established, as amended from time to time

**Unanimous Vote** a vote or resolution passed by all Unitholders

**Unitholder** a Unitholder of a Unit in the Trust

### **3. Objectives**

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#### **3.1 Objectives**

The objectives of the Parties in entering this Deed are:

- 3.2 to set out the equitable interest of the Unitholders in the Business conducted by the Trustee; and
- 3.3 to outline the decision-making procedures for the Trust and the Trustee.
- 3.4 Carrying out objectives

To carry out the objectives each Party must:

- 3.4.1 be just and faithful and provide full information to each other for the affairs and activities of the Business;
- 3.4.2 do or cause to be done all things necessary or desirable to carry out this Deed including casting votes as Unitholders;
- 3.4.3 not unreasonably delay any action, approval, direction, determination or decision required under this Deed;
- 3.4.4 as a Unitholder or Related Party by way of minutes, signed by all the Parties, provide the services at no cost to the Trust as set out in those minutes; and
- 3.4.5 during such times that the Trustee is a company or similar then:
  - (a) to exercise voting rights, decision or control to maintain and support the objectives and purposes of the Deed;
  - (b) ensuring that directors support and vote for any reasonable proposals put forward at any meetings that are appropriate for the development and conduct of the Business; and
  - (c) all Unitholders receive notices of all director and other meetings and agendas and within a reasonable time a report as to the activities and motions passed at such meetings.

### **4. Shareholders & directors of the Trustee**

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- 4.1 While the Trustee is a company, then unless otherwise agreed by the Unitholders by a Unanimous Vote, each Unitholder is entitled to:

- 4.1.1 hold the same percentage of shares in the Trustee as per the percentage of Units held (for example if a Unitholder holds 33 1/3% of the Units then that Unitholder has 33 1/3% of the shares in the Trustee); and
- 4.1.2 be appointed as a director of the Trustee.

## 5. Additional Units in the Trust

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### 5.1 Issue of New Units

The Parties agree that the Trustee will only issue additional Units:

- 5.1.1 as per this Deed; or
- 5.1.2 where the Unitholders agree otherwise.

### 5.2 Offer to Issue Units

Any offer by the Trustee to issue Units is made as follows:

- 5.2.1 an offer of Units is made either to the Unitholders or to third parties and not to both groups at the same time;
- 5.2.2 if Units are offered to the Unitholders, the offer must have the prior approval of Unitholders and is offered in their Respective Proportions;
- 5.2.3 if Units are offered to third parties, the offer must have the prior approval of Unitholders;
- 5.2.4 the offer is in writing and is dated;
- 5.2.5 the date of the offer must not be earlier than the date of the Deed as presented;
- 5.2.6 the offer must remain open for acceptance by each Unitholder, or as the case may be, for at least 20 Business Days after the date of the offer and
- 5.2.7 the offer price for each Unit must be no less than the price determined by:
  - (a) the Unitholders acting together; or
  - (b) an Independent Valuer in accordance with Schedule 1.

(in either case, **Subscription Price**).

### 5.3 Acceptance of Offers

The Parties agree:

- 5.3.1 to accept an offer to subscribe for all or part of the Units offered under clause 5.2 a Unitholder or a third party (as the case may be) must give notice of their acceptance to the Trustee on or before the date specified in the offer;
- 5.3.2 each written acceptance must be unconditional and irrevocable to be considered a valid acceptance of the offer;
- 5.3.3 an acceptance of the offer to subscribe for a stated number of Units as above is deemed also an acceptance of an offer to subscribe for a lesser number of Units allocated to it under this clause; and

*Unitholders Agreements outline each unitholder's rights and obligations for one another. In the case of conflict, dispute resolution clauses manage conflict outside the courtroom. This enables the parties to reach a cost-effective solution. As the rights and behaviour of unitholders are managed by the Unitholders Agreement, the opportunity for conflict is substantially reduced.*

5.3.4 if no acceptance is received by the expiry of the closing date of the offer, each person to whom the offer was made is deemed to have rejected the offer.

#### 5.4 **When there are insufficient Units to satisfy all the acceptances - Apportionment**

5.4.1 Unless clause 5.5 applies, if there are insufficient Units to satisfy all the acceptances (**Accepting Persons**), the Units offered are apportioned equally amongst the Accepting Persons. If such an apportionment results in an Accepting Person receiving a greater number of Units than they have accepted, the excess is reallocated amongst the other Accepting Persons who lodged acceptances as nearly as may be in equal shares. The process is repeated until all of the Units offered are allocated.

#### 5.5 **Apportionment of Issue – Unitholder Offers**

Where an offer under clause 5.2 is made only to Unitholders in Respective Proportions, and not all the Units offered to a Unitholder are accepted by that Unitholder, such excess Units must be re-offered to those Unitholders who have accepted an offer (also Accepting Persons) in accordance with their Respective Proportions. This clause applies and if necessary, the process may be repeated until all of the Units offered have been allocated.

#### 5.6 **Notification**

Within 5 Business Days of the expiry of the period referred to in clause 5.2.6 the Trustee must notify each Accepting Person of the number of Units to be allocated to each of them for subscription pursuant to clause 5.4 or 5.5.

#### 5.7 **Completion**

Subject to the clause below, completion of the issue of additional Units must take place within 10 Business Days of the expiry of the period referred to in clause 5.2.6 at the Trustee's registered office. At completion:

- 5.7.1 each Accepting Person must subscribe for the Units allocated to them under clauses 5.4 or 5.5 by payment of the Subscription Price; and
- 5.7.2 the Trustee must deliver to each Accepting Person the certificates relating to the issued Units.

#### 5.8 **Third Parties**

For an issue of new Units to a third party, completion under clause 5.7 must not take place until that third party has signed and delivered to the Trustee a Deed of Accession in accordance with clause 7.

## 6. **Equity funding of the Trust**

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#### 6.1 **Obligation to Contribute Further Capital**

If any further capital shall at any time be considered by all the Unitholders to be necessary or expedient for efficiently carrying on the Business, further capital shall be contributed to the Trust by the Unitholders:

- 6.1.1 in their Respective Proportions; or



6.1.2 in amounts agreed upon by all the Unitholders.

## 6.2 Means of Further Capital Contributions

Further capital may be contributed to the Trust by a Unitholder by way of:

- 6.2.1 cash;
- 6.2.2 extension of credit;
- 6.2.3 the provision of financial accommodation;
- 6.2.4 the transfer, assignment or licence of tangible or intangible assets to the Trust; or
- 6.2.5 in the circumstances below.

## 6.3 Valuation of Further Capital Contributions

Any capital contributed to the Trust will be valued:

- 6.3.1 by agreement between all Unitholders; or
- 6.3.2 in the absence of agreement, by an Independent Valuer; and
- 6.3.3 on the basis that the capital contribution will be converted to Units commensurate with the value of existing Units in the Trust valued in accordance with Schedule 2.

## 6.4 Issue of Units

- 6.4.1 Where a Unitholder is to make a further capital contribution, the Unitholder may require (as a condition of such capital contribution) that Units commensurate with a valuation of that capital contribution be issued. If such Units are issued, the Unitholder is made.
- 6.4.2 The Trustee shall issue the number of Units to the relevant Unitholder determined at the time of the relevant capital contribution. The Trustee shall issue the relevant Unitholder with a certificate relating to the Units issued.

*Unitholders Agreements can be entered into at any time. You could build and sign a Unitholder Agreement many years after you started your Unit Trust.*

## 7. Deed of Accession – new Unitholders also

*Build Unitholders Agreements:*

7.1 The Unitholders do not allow the Trustee to register a person (who is not a Unitholder) as a Unitholder, under any circumstances including:

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- 7.1.1 issue of additional Units;
- 7.1.2 transfer of Units; or
- 7.1.3 otherwise,

unless that person first enters a Deed of Accession. This is substantially in the form of Schedule 1. The Deed of Accession may also vary this Deed.

## 8. Commitment to the Trust and Business

### 8.1 Unitholders to act properly

Unless there are minutes signed by all Unitholders to the contrary, each Unitholder agrees that they must:



- 8.1.1 be a fit and proper person to perform the rights, obligations and duties required of that person under this Deed;
- 8.1.2 not be a competitor (whether direct or indirect) of the Business, unless the other Unitholders consent;
- 8.1.3 not have any actual or perceived conflict of interest in the Business;
- 8.1.4 employ or engage themselves (as the case may be) diligently and faithfully in the Business;
- 8.1.5 devote their time and attention to the Business (which shall include, as a minimum, 30 hours each week); and
- 8.1.6 use best endeavours to promote the interests of, assist and cause the Trustee to carry on the Business for the greatest benefit of the Trust and Unitholders.

## 8.2 Commitment of Unitholders

Each Unitholder must:

- 8.2.1 co-operate and use their best endeavours to ensure that the Trustee successfully carries on the Business;
- 8.2.2 not use Confidential Information in a way which damages or is reasonably likely to damage the Trustee or the Business;
- 8.2.3 not unreasonably delay an action, approval, direction, determination or decision required of them; and
- 8.2.4 approve or make decisions that are required of them in good faith and in the best interests of the Trust and the carrying on of the Business as a commercial venture.

## 8.3 Liability

Any liability incurred by the Parties:

- 8.3.1 under this Deed; or
- 8.3.2 as a result of the transactions contemplated by this Deed

must be shared between the Unitholders in accordance with their respective Proportions. Each Unitholder irrevocably and unconditionally agrees to indemnify and hold the other Unitholders harmless to the extent of that Unitholder's Respective Proportion, the other Unitholders' liability. Each Party is responsible and liable for any act committed or undertaken pursuant to this Deed.

## 9. Decision-making

### 9.1 Powers of the Trustee

Except as otherwise stated in this Deed, the Trustee has the authority to manage the Business and to control the activities of the Trust.

### 9.2 Voting Generally

Except as otherwise stated in this Deed, the Trustee's conduct shall be governed by the Trust Deed, all decisions of the Unitholders are made by simple majority.

*Over the life of the Unit Trust, it is likely that the Unitholders will want to change or amend the rights between them. The Unitholder Agreement expressly allows you to make changes, merely by:*

- an exchange of emails
- minutes

*This is provided the Unitholders unanimously agree.*

## **10. Unitholders meetings**

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- 10.1 A Unitholders meeting is called according to the Trust Deed.
- 10.2 The notice convening a Unitholder meeting states the resolutions or business proposed to be considered at the meeting and a summary of information for those resolutions and business that is relevant to a decision of a Unitholder on how to vote at the meeting.
- 10.3 A quorum for Unitholder meetings requires the attendance (in person, by representative or by proxy) of a minimum of two Unitholders.
- 10.4 Any Unitholder can call such a meeting.

## **11. Accounts and access**

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### **11.1 Accounts and Records**

The Trustee must ensure that the accounts, records and accounting information of the Trust are:

- 11.1.1 maintained in accordance with the Corporations Act and all other applicable laws; and
- 11.1.2 reflect generally accepted accounting principles, procedures and practices in Australia which have been consistently applied.

### **11.2 Access**

Each Unitholder is entitled to, at its own cost:

- 11.2.1 reasonable access during normal business hours to inspect and to copy all the contracts, books, accounts and records of the Trust together with any other financial and operating information of the Business; and
- 11.2.2 attend monthly or other management meetings with (or without) the Trustee's accountants and to contact the Trustee's accountants with any queries.

All information obtained by the Unitholders pursuant to this clause 11.2 is Confidential Information governed by this Deed.

## **12. Loan accounts**

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### **12.1 Ability to Loan Money**

The Unitholders agree that the Trust may lend money to the Unitholders. The Unitholders may loan money to the Trust from time to time on terms as agreed by a Unanimous Vote of the Unitholders.

### **12.2 Repayment of Loans**

Any monies loaned by a Unitholder to the Trust are repaid to the Unitholder as soon as practicable after the Unitholder no longer holds Units in the Trust.

## 13. Distribution policy

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### 13.1 Income Distributions

The Unitholders agree that income distributions of the Trust are made as per minutes, from time to time, signed by all the Unitholders but if there are no such minutes then quarterly as follows:

- 13.1.1 within 10 Business Days of 30 June, 30 September, 31 December and 31 March respectively each year, the Trustee determines whether the Trust has any income and if so, the amount of such income to distribute to the Unitholders as at 30 June and 31 December, respectively; and
- 13.1.2 if the Trustee determines there is income available for distribution, the Trustee distributes that income to the Unitholders in their Respective Proportions within 20 Business Days of the above dates.

### 13.2 Capital Distributions

The Unitholders agree that capital distributions will be made in accordance with the provisions of the Trust Deed.

### 13.3 Loan Account Balance

The Unitholders agree that if a Unitholder owes monies to the Trust, the funds due to the Unitholder as a result of an income distribution must be first applied to discharge the loan account balance. After discharging the loan account balance any remaining funds will then be distributed to the Unitholder.

## 14. Dealing with Units

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### 14.1 Transfers

- 14.1.1 A Unitholder must not sell or transfer any interest in their Units except under this Deed.

### 14.2 Encumbrances

- 14.2.1 A Unitholder must not provide their Units as security or Encumbrance over their Units in favour of any person without the written approval of the other Unitholders.

### 14.3 Restrictions on Transfers

- 14.3.1 A Unitholder must not transfer any interest in their Units if such transfer breaches or is an event of default under the Trust's terms. A Unitholder who transfers in breach of this clause indemnifies and holds harmless all other Unitholders against any claims, damages, expenses (including legal costs on a full and own client basis) or losses of any kind whatever arising from or in connection with this clause.

*Unitholders debating on what the Unit Trust will do and invest in is not a matter of the Unit Trust deed or a Unitholders Agreement. This is much like a company and shareholders agreement. When shareholders debate on how to run the business they don't usually update the company Constitution or the Shareholders Agreement.*



## 14.4 Repurchase or Redemption

- 14.4.1 A Unitholder must not at any time request or require the Trustee to repurchase or redeem their Units:
- 14.4.2 without the written approval of the other Unitholder; or
- 14.4.3 except as otherwise provided in this Deed.

## 15. Right of first refusal: Transfer of Units

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### 15.1 Permitted Transfer

- 15.1.1 Subject to this Deed, a Unitholder (Transferor) may sell or transfer all or some of their Units (Transfer Units) under clause 15.

### 15.2 Right of First Refusal

- 15.2.1 The Transferor must first offer the Transfer Units to the other Unitholder (Remaining Unitholder). The Transferor must make an offer in writing to each Remaining Unitholder (Offer Notice) stating:
  - 15.2.2 the number of Transfer Units it wishes to sell;
  - 15.2.3 the price it wishes to sell the Transfer Units (Transfer Price);
  - 15.2.4 the right of the Remaining Unitholder to require the Transferor to obtain independent valuation of the Transfer Units under clause 15.3; and
  - 15.2.5 the period of acceptance of the offer, which starts on the date which is 10 Business Days after the date of the Offer Notice and cease on the date which is 20 Business Days after the date of the Offer Notice (Acceptance Period).

### 15.3 Valuation of Units

- 15.3.1 If the Remaining Unitholder believes the Transfer Price s Notice is not fair and reasonable, that Unitholder has the Transferor to obtain an independent valuation of the Un Schedule 2.
- 15.3.2 To exercise this right the Remaining Unitholder must, wi of the date of the Offer Notice, notify the Transferor in w the Transferor to obtain independent valuation of the Un Schedule 2 (Independent Valuation Notice).
- 15.3.3 The Independent Valuation Notice suspends the Accept
- 15.3.4 Within 5 Business Days of receiving an Independent Val Transferor complies with the requirements of Schedule 2 independent valuation of the Transfer Units.
- 15.3.5 Within 5 Business Days of the receipt of the independen Transferor issues a revised Offer Notice to the Remainin (Revised Offer Notice) stating:
  - (a) the number of Transfer Units;
  - (b) the revised transfer price for each Transfer Unit which value of each Unit determined by an Independent Valuer according to the independent valuation (Revised Transfer Price); and

While [Family Trusts deeds](#) and [Self-Managed Superannuation fund deeds](#) need to be updated on average every 5 – 8 years, Unit Trust Deeds don't usually need to be updated to deal with tax and trust matters. But of course, you can update a Unit Trust, as often as you wish, if all the unitholders agree.



- (c) the revised period of acceptance of the offer which starts on the date of the Revised Offer Notice and ceases on the date which is 20 Business Days after the date of the Offer Notice (Revised Acceptance Period).

15.3.6 The Transferor must not withdraw the Transfer Notice regardless of any variation of the Transfer Price resulting from the independent valuation.

#### 15.4 Acceptance of Offers

15.4.1 The Remaining Unitholder may accept or reject the offer for some or all the Transfer Units. This is by giving written notice to the Transferor on or before the last day of the Acceptance Period or Revised Acceptance Period (as the case may be).

15.4.2 Such acceptance is unconditional and irrevocable. Otherwise it is not valid acceptance of the offer.

15.4.3 If no acceptance is received by the expiry of the Acceptance Period or the Revised Acceptance Period (as the case may be) the Remaining Unitholder(s) reject the offer.

#### 15.5 Apportionment of Transfer Units

Where not all of the Transfer Units have been accepted by the Remaining Unitholder under an Offer Notice (or Revised Offer Notice if applicable) clause 15.8 and (as applicable) clause 15.9 applies.

#### 15.6 Completing

Completing the transfer of Transfer Units takes place within 10 Business Days of the last day of the Acceptance Period or the Revised Acceptance Period (if any) (as the case may be). This is at the Trustee's registered office or other agreed location. At completion:

15.6.1 the Remaining Unitholder purchases the relevant number of Transfer Units accepted by that Remaining Unitholder under clause 15.4 by payment of the Transfer Price or the Revised Transfer Price (as the case may be):

- (a) under clause 16; or
- (b) where clause 21.5 applies, according to the Option Agreement;

**for the relevant number of Transfer Units to the Transferor; and**

15.6.2 the Transferor delivers to the Remaining Unitholder the certificate(s) for the Transfer Units and a duly executed transfer of the Transfer Units.

#### 15.7 Post Completion

After completion of the transfer of Transfer Unit(s) under clause 15.6, the Trustee:

15.7.1 registers the Remaining Unitholder as the holder of the Transfer Unit(s); and

15.7.2 takes all further action necessary to complete the transfer of the Transfer Unit(s).

## 15.8 Transfer to Third Parties

If the Transferor complies with clauses 15.1 to 15.7 and some of the Transfer Units are not accepted for purchase by the Remaining Unitholder, the Transferor may offer to sell those Transfer Units to third parties on terms approved by the Unitholders. Such terms include the requirements that the third party agrees bound by this Deed and enters into a Deed of Accession in the form of Schedule 1 before the Transfer Units is transferred to such third parties.

## 15.9 Redemption

Subject to clause below, the parties acknowledge and agree that:

- 15.9.1 If clauses 15.1 to 15.8 have been complied with, and all of the Transfer Units have not been accepted for purchase by the Remaining Unitholder or any third parties, the Transferor may transfer the relevant Transfer Units back to the Trustee on terms and conditions which are no less favourable to the Transferor than the terms and conditions set out in the Offer Notice or the Revised Offer Notice (as the case may be) at any time before the expiry of 6 months after the date of the Offer Notice or the Revised Offer Notice (as the case may be).
- 15.9.2 If no Unitholder has exercised their right to require the Transferor to obtain an independent valuation of the Units under clause 15.3 and the Trustee believes the Transfer Price stated in the Offer Notice is not fair and reasonable, the Trustee has the right to appoint an Independent Valuer and obtain an independent valuation of the Units according to Schedule 2 as if that valuation is at the request of a Unitholder. The Transfer Price payable to the Transferor for the Transfer Units is then a sum equal to the number of Transfer Units multiplied by the value of each Unit as determined by the Independent Valuer according to the independent valuation.

## 16. Payment of Unit price – special terms

### 16.1 Application

This clause applies where a Unitholder transfers any of their Units under clause 15, unless:

- 16.1.1 otherwise agreed by the Transferor and the Remaining Unitholder in an Offer Notice (or if applicable, Revised Offer Notice) under clause 15.8;
- 16.1.2 there is to be a transfer of Units to third parties under clause 15.8 and the payment terms for which will be agreed between the Unitholder and the Transferor;
- 16.1.3 there is to be a transfer of Units under the Option Agreement in the circumstances of clause 21.5.

### 16.2 Payment

A Unitholder selling, transferring or redeeming any of that Unitholder's Units (the Unitholder) agrees that full payment of the price for all Units to be transferred

*Our Unitholders Agreement also includes a Deed of Accession. When Unitholders become a party to a unit trust, they are not bound by the provisions of the pre-existing Unitholders' Agreement. Upon signing the Deed of Accession, the new unitholders are bound to the Unitholders Agreement, as if the new unitholder was party to it*

Remaining Unitholder, or the Trustee under this Deed is due and payable 12 months from the date of:

- 16.2.1 acceptance of an offer to sell or transfer such Units; or
- 16.2.2 the Event of Default which caused such Units to be offered for sale, as follows:
  - (a) 25% on the date of completion of the transfer of the Units;
  - (b) 25% within 90 days;
  - (c) 25% within 180 days; and
  - (d) the remaining 25% within 365 days.

## 17. Insurance Policies

### 17.1 Insurance Policies

- 17.1.1 Each Unitholder takes out and maintains Insurance Policies
- 17.1.2 The cost of the Insurance Policies are paid by the Unitholder in proportion to the apportionment of the Units they own.

### 17.2 Life Insurance Policies

- 17.2.1 Each Unitholder takes out and maintains an Insurance Policy with an insurance company. This is on such terms and conditions as may be agreed by the Unitholder and the Trustee.
- 17.2.2 Each of the Insurance Policies have a death cover of an amount agreed by the Unitholders. This is reviewed annually on 1 July. The review of the amount of death cover will:
  - (a) unless otherwise agreed by the Unitholders, be carried out by an Independent Valuer appointed by the Trustee; and
  - (b) reflect an amount calculated by the Independent Valuer equal to the value of the relevant Respective Proportion (as a proportion of ownership and value in the Business) to which the Unitholder relates; and
  - (c) where an Independent Valuer has been appointed under (i), if deemed necessary by the Independent Valuer, include an opinion of a person with expertise in connection with insurance matters and insurance policies.

### 17.3 Response to Review

Notwithstanding the operation of clause 17.2(b), the Unitholders may agree:

- 17.3.1 not to undertake a review of the Insurance Policies when such policies are due for review under clause 17.2(b);
- 17.3.2 not to accept any recommendations from any review for an increase or decrease of cover on any or all Insurance Policies, however, a Unitholder must not elect to withdraw, cancel or not renew any Insurance Policies.

### 17.4 Nominated Beneficiaries

The nominated beneficiaries for each Insurance Policy of a Unitholder shall be at the sole discretion of the Unitholder to which the Insurance Policy relates.

*The Deed of Accession, provided as part of our Unitholders Agreement, enables a speedy and simple binding of new unitholders to the Agreement.*

1. Unitholders Agreement vs
2. Business Succession Plan vs
3. Key person insurance vs
4. Shareholders Agreement



## 17.5 Changes to Policies

No changes may be made in respect of any terms and conditions or other aspects of any Insurance Policies (except for changes to nominated beneficiaries referred to in sub-clause 5) without the prior written approval of the other Unitholder.

## 17.6 Proceeds & Claims

The Parties agree:

- 17.6.1 that the Insurance Proceeds of each Insurance Policy will be applied in accordance with the Option Agreement in compliance with clause 21.5; and
- 17.6.2 to comply with the provisions of clause 18 in making claims under any Insurance Policy.

## 18. Insurance claims

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18.1 Each Unitholder covenants and agrees that if they die, they (or their legal personal representative) do and procure all things reasonably necessary (including signing documents) to ensure that:

- 18.1.1 a claim for payment is made under the Insurance Policy for the death as quickly as possible;
- 18.1.2 any Insurance Proceeds are paid to the relevant nominated beneficiaries as quickly as possible;
- 18.1.3 any queries from or disputes with the relevant insurance company are dealt with as soon as possible; and
- 18.1.4 all Insurance Proceeds are used under the Option Agreement.

## 19. Option Agreement

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Each Unitholder will enter into an agreement for the sale and purchase of all Units of each dead Unitholder (Option Agreement). The Unitholders agree to negotiate in good faith the terms of such Option Agreement.

## 20. Dispute resolution

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### 20.1 Mandatory Compliance

If a dispute arises out of or in relation to to this Deed (including any dispute as to breach or termination of this Deed or as to any claim in tort, in equity or under any statute) a Party to this Deed may not start any court or arbitration proceedings regarding the dispute unless it complies with clauses 20.2, 20.3 and 20.4 except where the Party seeks urgent interlocutory relief.

### 20.2 Dispute Notice

A Party claiming that a dispute has arisen under this Deed must give written notice to the other Parties stating the nature of the dispute.



## 20.3 Dispute Resolution Techniques

On receipt of a dispute notice under clause 20.2 the Parties endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques.

These include mediation, expert evaluation or determination or similar techniques agreed by them.

## 20.4 Mediation

If the Parties do not agree within 5 Business Days of the date of the dispute notice (or a further period as agreed in writing by them) as to:

- 20.4.1 the dispute resolution technique and procedures to be adopted;
- 20.4.2 the timetable for all steps in the dispute resolution procedures; and
- 20.4.3 the selection and compensation of the independent person required (if any) for the dispute resolution technique,

the Parties must mediate the dispute according to the Rules for Mediation & Conciliation of the Institute of Mediators & Arbitrators (Victorian Chapter) and the President (or equivalent of that Institute or the President's nominee will select the mediator and determine the mediator's remuneration to be paid by the Parties to the dispute in equal shares.

# 21. Default

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## 21.1 Events of Default

An Event of Default occurs if the Unitholder:

- 21.1.1 breaches any material provision of their employment contract in which case the employment contract is terminated with effect from the date the Unitholder resigns as employee;
- 21.1.2 breaches any provision of this Deed and:
  - (a) does not remedy that breach within 20 Business Days of receiving notice advising of that breach from another Party or the breach cannot be remedied; or
  - (b) the breach is incapable of being remedied.
- 21.1.3 has entered into or resolved to enter into an arrangement of compromise with or assignment for the benefit of their creditors or any class of creditors or proceedings are commenced in relation to an arrangement, composition or compromise;
- 21.1.4 convenes a meeting of creditors or proposes or enters into an arrangement or composition for the benefit of any of their creditors;
- 21.1.5 is unable to pay its debts within the meaning of the Corporations Act or suspends payments of its debts;
- 21.1.6 commits an act of bankruptcy or takes advantage of the provisions of Part X of the Bankruptcy Act;
- 21.1.7 becomes bankrupt or is convicted of an offence for which the possible penalties include imprisonment;

You need separate agreements for each of these situations:

A [Unitholders Agreement](#) is a contract between the unitholders. It overrides a Trust Deed. It states how the Unit Trust is managed and how the Unitholders behave amongst themselves. (It is similar to a [Shareholders Agreement](#).)

- 21.1.8 dies;
- 21.1.9 becomes totally and permanently disabled, incapacitated or infirm;
- 21.1.10 becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health.

## 21.2 Consequence of Default

If any Event of Default occurs in relation to a Unitholder (**Defaulting Party**), at the election of any other Party by giving written notice to all Parties:

- 21.2.1 all rights attaching to Units held by the Defaulting Party will be suspended; and
- 21.2.2 the Defaulting Party will be deemed to have notified the Trustee that it wishes to transfer all of the Units held by it; and
- 21.2.3 the Trustee must comply with clauses 21.3 and 21.4.

## 21.3 Independent Valuation

Within 5 Business Days of receiving notice from a Party that an Event of Default has occurred in relation to the Defaulting Party, the Trustee must comply with the requirements of Schedule 2 to obtain an independent valuation of the Units held by the Defaulting Party.

## 21.4 Right of First Refusal

On receiving the determination by the Independent Valuer of the independent valuation of the Units, the Trustee must offer the Units held by the Defaulting Party at a price equal to the independent valuation of the Units subject to clause 21.5 in accordance with the procedures set out in clause 15.

## 21.5 Option Agreement

- 21.5.1 Where an Event of Default has occurred in relation to a Unitholder where that Unitholder dies and Insurance Proceeds will be paid under that Unitholder's Insurance Policy then in relation to the Unitholder's obligation to offer all its Units for transfer, clause 21.3 shall first apply and the terms of the Option Agreement shall subsequently apply in place of clause 21.4.
- 21.5.2 If clause 21.5(a) does not apply upon the death of a Unitholder because no Insurance Proceeds will be paid under the relevant Insurance Policy, then the provisions of clauses 21.3 and 21.4 apply. Time in respect of obligations under clauses 21.3 and 21.4 shall run from the date it is determined that the Option Agreement or this clause does not apply (unless otherwise agreed by the Unitholders).

## 21.6 Other Remedies

Clause 21.2 is in addition to and not to the exclusion of any other rights or remedies that the other parties may have against a Defaulting Party.

## 22. Acknowledgement and warranties

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Each Party acknowledges that:

- 22.1 it has relied on its own enquiries in respect of all matters relating to this Deed and has not relied on any representation, warranty, condition or statement made by or on behalf of any other Party other than as set out in this Deed;
- 22.2 any conditions or warranties which may otherwise be implied by law into this Deed are expressly excluded to the extent permitted by law; and
- 22.3 each Party releases the other Party from all actions, claims, demands and liability which it may have or claim to have, or but for this release, it might have had against the other party arising out of any representation, warranty, covenant or provision not set out or referred to in this Deed.

## 23. Termination

### 23.1 Termination

This Deed terminates:

- 23.1.1 by mutual written agreement of the Unitholders;
- 23.1.2 in respect of a Unitholder when they no longer hold the Units;
- 23.1.3 in respect of the Trustee, when it ceases to be trustee of the Trust;
- 23.1.4 if the Trust is wound up by resolution of Unitholders.

### 23.2 Without Prejudice

Termination of this Deed under clause 23.1 will be without prejudice to the rights of the Parties.

## 24. Conflict or inconsistency with documents

### 24.1 Agreement to Prevail

If there is any conflict between a provision of this Deed and a provision of the Trust Deed the provisions of this Deed prevail. On receipt of a written request from any Party, all Parties shall take the necessary steps to amend any inconsistency in the constitution of the Trust Deed.

### 24.2 Amendment to Trust Deed

The Parties are not required to amend the Trust Deed pursuant to clause 24.1 if the Trustee receives advice from its legal advisers or auditors that the amendment may result in adverse taxation consequences for its Unitholders.

### 24.3 Approval Despite Inconsistency

Each of the Parties approves all redemptions, subscriptions and transfers of Units contemplated or effected pursuant to this Deed notwithstanding any provision of the Trust Deed, and expressly authorises the Trustee to give effect to this Deed.

A Business Succession Plan is an agreement to get rid of the disabled or dead owner with some money. The outgoing owner gets some money and the remaining owners get his interest in the business. A BSP does nothing to help the business itself. The business may well fold after the person leaves, but at least his wife gets some money and the remaining owners get the business. A BSP is funded with life, TPD and trauma insurance. My doctoral thesis was on this topic.



## **25. Relationship between the Parties**

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This Deed does not create a relationship of employment, agency or partnership between the Parties.

## **26. Further action**

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Each Party must use reasonable efforts to do all things necessary or desirable to give full effect to this Deed and refrain from doing anything that may hinder performance of this Deed.

## **27. Costs**

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The costs associated with the preparation, negotiation and execution of this Deed are borne equally by the Unitholders.

## **28. Assignment**

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A Party must not assign or otherwise deal with this Deed or any right under this Deed without the prior written consent of each other Party, which must not be unreasonably withheld.

## **29. Waiver**

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The failure of a Party at any time to require performance of any obligation under this Deed is not a waiver of that Party's right:

- 29.1 to insist on performance of, or claim damages for breach of, that obligation unless that Party acknowledges in writing that the failure is a waiver; and
- 29.2 at any other time to require performance of that or any other obligation under this Deed.

**Any waiver of any right or power under this Deed must be in writing and signed by the Party (or Parties) granting such waiver.**

## **30. Governing law and jurisdiction**

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This Deed is governed by the laws applicable in the State or Territory in which the Trustee is situated, as evidenced by the Trustee's address in this Deed, and where more than one Trustee, then the first Trustee's address. Each Party submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

## **31. Notice**

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### **31.1 Written Notice**

A notice given under this Deed must be:



- 31.1.1 in writing signed by the sender and marked for the attention of the person set out in clause 31.2;
- 31.1.2 hand delivered or sent by prepaid post to the recipient's address for service stated in clause 31.3, or subsequently notified in writing to each Party; or
- 31.1.3 by email.

### 31.2 Receipt of Notice

A notice given under clause 31.1 is taken to be received

- 31.2.1 if hand delivered, on the date of delivery if delivered on a Business Day or on the next Business Day if delivered on a non-Business Day;
- 31.2.2 if sent by prepaid post in Australia, 2 Business Days after the date of posting;
- 31.2.3 if sent by airmail to an address outside Australia, 7 Business Days after the date of posting to an address in Australia, 7 Business Days after the date of posting;
- 31.2.4 if via email, then 12 hours from sending.

### 31.3 Parties' Details

Unless agreed to otherwise, each Party's address for service is the address corresponding to each Party in the Deed, unless updated in writing.

## 32. Severability

Any part or whole of a provision of this Deed that is illegal or unenforceable is severed from this Deed and the remaining provisions of this Deed shall survive.

## 33. Variations or amendments

This Deed is varied or amended only in writing signed by each Party.

## 34. Legal advice

Each Unitholder agrees and acknowledges that they have had the opportunity to obtain independent legal advice in respect of each and every provision of this Deed.

## 35. Preparation of document

The Parties agree that the provisions of this Deed will not be construed against a Party because that Party prepared this Deed (or any provision of it).

## 36. Interpretation

In this Deed, unless the contrary intention appears:

- 36.1.1 headings are for ease of reference only and do not affect the meaning of this Deed;
- 36.1.2 the singular includes the plural and vice versa and words importing a gender include other genders;

Key person insurance agreement is insurance paid to the business if a key person is disabled or dies. This does not deal with how to get the shares off the outgoing owner. Key person insurance just helps the business. Key person insurance is usually to repay debt (often secured by the outgoing owners' home) or cover the cost of training up a new person.

- 36.1.3 other grammatical forms of defined words or expressions have corresponding meanings;
- 36.1.4 a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Deed and a reference to this Deed includes any schedules and annexures;
- 36.1.5 a reference to a document or agreement, including this Deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- 36.1.6 a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- 36.1.7 a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- 36.1.8 a reference to a Party includes its executors, administrators, successors and permitted assigns;
- 36.1.9 words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- 36.1.10 a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
- 36.1.11 words and expressions defined in the *Corporations Act 2001* (Cth) as at the date of this Deed have the meanings given to them in the *Corporations Act 2001* (Cth) at that date;
- 36.1.12 despite the above clause words and expressions defined by reference to the *Corporations Act 2001* (Cth), have the meanings given to them in the *Corporations Act 2001* (Cth) as at the date of this Deed; and
- 36.1.13 a reference to writing includes all means of representing or reproducing words, figures or symbols in a permanent and visible form.

## **37. Confidential Information**

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- 37.1 Each party keeps confidential the terms of this Deed, the contents of all negotiations leading to its preparation and any other information relating to the Trustee, the Trust Deed or to the other Unitholders that it obtains as a result of this Deed or anything done under it (**Confidential Information**), and must not disclose or permit the disclosure of such Confidential Information to any other person. If a Party becomes aware of a breach of this obligation, that party immediately notifies the other Parties.
- 37.2 This Deed does not prohibit the disclosure of Confidential Information by a Party where:
  - 37.2.1 The other Parties have consented to the disclosure of the relevant Confidential Information.
  - 37.2.2 The disclosure is specifically contemplated and permitted by this Deed.
  - 37.2.3 The disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this Deed and the Party disclosing the Confidential Information ensures that the relevant

employee, subcontractor, agent or representative complies with the terms of this clause.

37.2.4 The disclosure is to a professional adviser to provide advice for matters arising under or in connection with this Deed and the party disclosing the Confidential Information ensures that the professional adviser complies with the terms of this clause.

37.2.5 The disclosure is required by a court or governmental or administrative authority.

37.2.6 The disclosure is required by applicable law or regulation.

37.2.7 The disclosure is required to be made by virtue of the laws that govern a relevant stock exchange.

37.2.8 To the extent required by that party's financiers or other persons in relation to the provision of finance for completion of the transactions contemplated by this Deed.

37.3 All obligations of confidence set out in this Deed continue until this Deed ends.

EXECUTED as a Deed on .....20.....

EXECUTED for and on behalf of  
**Outdoorsman Nominees Pty Ltd**  
ACN 284 781 215

Member, by authority of its Directors in  
accordance with section 127  
*Corporations Act 2001 (Cth)*

Key person insurance agreement is insurance paid to the business if a key person is disabled or dies. This does not deal with how to get the shares off the outgoing owner. Key person insurance just helps the business. Key person insurance is usually to repay debt (often secured by the outgoing owners' home) or cover the cost of training up a new person.

\_\_\_\_\_  
Signature of Director or Secretary

\_\_\_\_\_  
Signature of Director (if a 2<sup>nd</sup>)



SIGNED, SEALED AND DELIVERED by  
**Steven Swanson**  
as Trustee for the **Steven Swanson Family Trust**

\_\_\_\_\_  
**Steven Swanson**

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

EXECUTED for and on behalf of  
**Bush Tent City Pty Ltd**  
ACN 189 794 511

Member, by authority of its Directors in  
accordance with section 127  
*Corporations Act 2001 (Cth)*

\_\_\_\_\_  
Signature of Director or Secretary

\_\_\_\_\_  
Signature of Director (if a 2<sup>nd</sup>)

## Schedule 1

### Deed Poll of Accession

This Deed is dated .....20.....

By: .....  
(New Unitholder)

In favour of: The Trustees (Trustee) of the Outdoorsman Unit Trust and the parties listed in this Schedule.

#### Background

This Deed is supplemental to a Unitholders Agreement in relation to the Trustees and the Trust.

#### Operative Part

##### 1. New Unitholder to be Bound

The New Unitholder confirms that it has been supplied with a Unitholders Agreement and covenants with all present parties to the Unitholders Agreement (whether original or by accession) (Parties) to observe, perform and comply with the terms of the Unitholders' Agreement so that the New Unitholder, from the date on which the New Unitholder is registered as a holder, shall be a party to the Unitholders' Agreement.

##### 2. Address for Notice

The address of the New Unitholder for the purposes of the Unitholders Agreement is:

.....  
.....  
.....

##### 3. Governing Law and Jurisdiction

This Deed is governed by the laws as per the Unitholders Agreement Deed and the New Unitholder submits to the non-exclusive jurisdiction of that jurisdiction.

##### 4. Legal Advice

The New Unitholder acknowledges and agrees that it has had the opportunity to obtain independent legal advice in respect of each and every term and condition of this Deed and the Unitholders' Agreement.

#### Shareholders Agreement

– a company has a Shareholders Agreement. While a Unit Trust has a Unitholders Agreement. They do similar jobs but for different entities.

Build Unitholders Agreement:

<https://www.legalconsolidated.com.au/unitholders-agreement-introduction/>





## Schedule 2

### Independent Valuation

#### 1. Appointment of Independent Valuer

If this schedule applies, the Unitholders must appoint an independent chartered accountant as an Independent Valuer to determine the value of each Unit in accordance with this schedule. If the Unitholders fail to agree on an independent chartered accountant, the Independent Valuer will be appointed by the President (or equivalent) for the time being of the Institute of Chartered Accountants in Australia.

#### 2. Independence of the Independent Valuer

The Independent Valuer and the firm or company of which the Independent Valuer is an employee, partner, director or consultant must not have had any business dealings with any Unitholder in the 2 years before the date of appointment.

#### 3. Valuation

The Independent Valuer must be instructed to determine the fair market value of the Units by valuing the Trust (including any subsidiary of the Trust) as a whole on a going concern basis as at the end of the month before the month in which the Independent Valuer is appointed under this schedule (**Valuation Date**). The fair market value of each Unit will be the proportionate amount of the value of the Trust or the Trustee, without regard to any premium for control.

#### 4. Access to Information

The Parties must ensure that the Independent Valuer has a right of access at all reasonable times to the accounting records and other records of the Trust (including any subsidiary of the Trust) and is entitled to require from any officer of the Trust such information and explanation as the Independent Valuer requires to value the Trust.

#### 5. Period of Determination

The Parties must use their best endeavours to ensure that the Independent Valuer makes a determination as soon as practicable and in any event within 30 Business Days after receiving instructions.

#### 6. Process

The Parties agree that, in determining a value for the Units under this schedule, the Independent Valuer:

- (a) will act as an expert and not as an arbitrator;
- (b) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as he or she determines appropriate;
- (c) must provide the Parties with a draft of their determination and must give the Parties an opportunity to comment on the draft determination before it is finalised; and

- (d) may engage such assistance as they reasonably believe is appropriate or necessary to decide.

## 7. Final and Binding

The Independent Valuer's determination will be final and binding on the Parties save in the event of manifest error in such determination.

## 8. Costs

- (a) In the absence of agreement the reasonable costs and expenses of the Independent Valuer will be paid in the following circumstances by the Party or Parties indicated:
- (b) if the purpose of the valuation is for the issue of Units under clause 5.2, the Trustee;
- (c) if the purpose is for a Unitholder to sell its Units under clause 15 and a valuation is requested after the issue of an Offer Notice:
  - (i) where the valuation determines a price per Unit of less than 10% (either side) of the price per Unit of the Transfer Price, the Trustee;
  - (ii) where the valuation determines a price per Unit of more than 10% (either side) of the price per Unit of the Transfer Price, the selling Unitholder, being the Transferor under clause 15;
- (d) where a sale or transfer of Units is to be effected between Unitholders yet (with the agreement of the Unitholders) not in accordance with processes in clauses 15 or 21.5, by those Unitholders in equal shares (or otherwise by agreement between them);
- (e) where none of the above applies, by the Trustee.

*You can build this document here:*

[https://www.legalconsolidated.com.  
au/unitholders-agreement-  
introduction/](https://www.legalconsolidated.com.au/unitholders-agreement-introduction/)