DBA Lawyers

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UNITHOLDERS DEED – FOR REAL ESTATE INVESTMENT

Please complete all details in block letters

Firm ordering (if applicable):	
Person ordering:	
Postal address:	
Phone:	Email:
Tick here ☐ if we are to invoice the unit trust trustee (otherwise, our invoice will be made out to the person ordering)	
Documents will be delivered by email as PDF files	

IMPORTANT NOTES

This form is to order DBA Lawyers' standard unitholders deed based on the details provided in this form.

This unitholders deed is drafted for use where the unit trust holds and develops real estate. It may not be appropriate for other circumstances.

While our deed is appropriate for use with the DBA unit trust deed, we do not warrant that it is fully appropriate for use with any other unit trust deed. For example, it may override provisions in the unit trust deed that you are not expecting. If you are not using the unitholders deed in conjunction with the DBA unit trust deed, we recommend carefully considering the interaction of your trust deed and the unitholders deed and seek advice if in any doubt.

The unitholders deed is not intended to benefit any one party but rather provide a set of agreed rules regarding various aspects of the relations between unitholders and the trustee.

Provision of the unitholders deed does not include advice about tax or duty implications including on transfer of units.

Each party should review the deed to ensure they are satisfied with it before execution. If in doubt advice should be sought before execution. If changes are required to the documents additional fees will apply.

There are special provisions in this deed that seek to guide and protect trustees of SMSFs that invest in the Trust. For example, there are provisions that are aimed at ensuring that an SMSF Unitholder, together with any of its Associates, will not hold more than 50% of the Units issued in the Trust. While these provisions will assist, they cannot guarantee compliance with Superannuation Law or that such 50% limit on unitholding is not exceeded and any SMSF Unitholder should seek advice if in any doubt and monitor compliance on an ongoing basis.

TRUST DETAILS

Name of trust:
Date of execution of trust deed:
Total number of units on issue:

COMPANY TRUSTEE

Company name:	
ACN:	
Registered office:	
Full names of all directors:	

UNITHOLDERS AND PRINCIPALS

A Principal is a nominated individual person for each non-individual unitholder. A principal is usually the directing mind behind a corporate unitholder. Certain provisions of the deed are enlivened in respect of both a unitholder and the principal of that unitholder. For example, defaulting events (such as loss of capacity or bankruptcy) are deemed to have occurred if they occur to either the unitholder or their nominated principal.

An individual unitholder may select themselves as the relevant Principal, in which case the role is of no real effect. Where individual unitholders are being used, we recommend seeking advice to confirm this is appropriate.

Unitholder 1 - Full name:	ACN (if company):
Address:	Number of units held:
Principal of the unitholder:	
Principal address:	
If unitholder is holding on behalf of a trust or SMSF, provide the full name of the trust or SMSF:	

Unitholder 2 - Full name:	ACN (if company):
Street address:	Number of units held:
Principal of the unitholder full name:	
Principal address:	
If unitholder is holding on behalf of a trust or SMSF, provide the full name of the trust or SMSF:	

Unitholder 3 - Full name:	ACN (if company):
Address:	Number of units held :
Principal of the unitholder:	
Principal address:	
If unitholder is holding on behalf of a trust or SMSF, provide the full name of the trust or SMSF:	

UNITHOLDERS AND PRINCIPALS contd.

Unitholder 4 - Full name:	ACN (if company):
Address:	Number of units held:
Principal of the unitholder:	
Principal address:	
If unitholder is holding on behalf of a trust or SMSF, provide the full name of the trust or SMSF:	

Unitholder 5 - Full name:	ACN (if company):
Address:	Number of units held:
Principal of the unitholder:	
Principal address:	
If unitholder is holding on behalf of a trust or SMSF, provide the full name of the trust or SMSF:	

Unitholder 6 - Full name:	ACN (if company):
Address:	Number of units held:
Principal of the unitholder:	
Principal address:	
If unitholder is holding on behalf of a trust or SMSF, provide the full name of the trust or SMSF:	

Property address

Please provide the full address and ideally title particulars for the real estate held by the trustee. For example:

290 Coventry Street, South Melbourne Victoria 3205, Certificate of Title Volume xxx Folio xxx

Property address: ....

Asset Acquisition and Expenditure Limits

Certain matters under the unitholders deed will require the unanimous consent of the unitholders, including decisions that exceed preset limits on certain kinds of expenditure. We have included below a brief explanation of the relevant limits as well as the default threshold for those limits.

Asset Acquisition Limit: $ ....

A decision to acquire real estate or other assets over this dollar value will require the unanimous consent of the unitholders. If no amount is inserted, we will use $50,000.

General Expenditure Limit: $ ....

A decision to spend money on any one particular outgoing or payment over this dollar value will require the unanimous consent of the unitholders. If no amount is inserted, we will use $10,000.

Capital Expenditure Limit: $ ....

A decision to spend money on any capital expenditure for the property of the unit trust over this dollar value will require the unanimous consent of the unitholders. If no amount is inserted, we will use $15,000.

Nominated Control Percentage

A unitholder (or a ‘Group’ in respect of a unitholder) may appoint a director of the corporate trustee of the unit trust if they hold at least this percentage of issued units in the unit trust. Further, if a unitholder (or a ‘Group’) ceases to hold at least this percentage of units, a director they appointed to the corporate trustee of the unit trust is deemed to have resigned.

Please note that a ‘Group’ refers to one or more unitholders that are ‘Associates’ (ie, a relative or associate as those terms are defined in section 10 of the *Superannuation Industry (Supervision) Act 1993* (Cth) (SISA) and a Part 8 associate for the purposes of Part 8 of the SISA).

Unless otherwise instructed, the Nominated Control Percentage used in the unitholders deed will be 20%.

Nominated Control Percentage: ....%

If no percentage is inserted, we will use 20%.

Nominated State or Territory

The Nominated State or Territory for the deed is used to determine the following things:

- The governing law of the deed (ie, which jurisdiction is the interpretation of the deed subject to).
- The president of the law society of which State or Territory which may be asked to appoint a valuer.
- The relevant jurisdictions Commercial Arbitration Act that applies to any arbitration.

Unless otherwise instructed, the Nominated State or Territory used in the unitholders deed will be that of the State or Territory in which the Property is situated.

Nominated State or Territory: ....

If state or territory is written above, the Nominated State or Territory used in the unitholders deed will be that of the State or Territory in which the Property is situated.

Appointment of Property Valuer and Unit Valuer

Where disputes occur and the unitholders cannot agree on a value of the property or an appropriate property valuer or unit valuer the deed provides for a particular person to appoint an appropriate valuer.

There are certain persons/organisations that typically take on this role in this sort of agreements, such as the president of the law society of a relevant state or territory.

Where the parties cannot agree on the appointment of a Professional Real Estate Valuer, the deed provides that the following person/organisation will be asked to appoint such a valuer:

- the Australian Valuers Institute; or, where that service is not offered by the Australian Valuers Institute or it longer exists or it refuses to nominate a valuer,
- the Australian Property Institute; or, where that service is not offered by the Australian Property Institute or it no longer exists or it refuses to nominate a valuer,
- the President of the Law Society or Institute of the Nominated State or Territory.

Where the parties cannot agree on the appointment of a Professional Real Estate Valuer, the deed provides that the following person/organisation will be asked to appoint such a valuer:

- the Australian Valuers Institute; or, where that service is not offered by the Australian Valuers Institute or it longer exists or it refuses to nominate a valuer,
- the President of the Law Society or Institute of the Nominated State or Territory; or, where that service is not offered by the President of that Law Society or Institute or it no longer exists or it refuses to nominate a valuer,
- the President of CPA Australia.

For details on Australian Valuers Institute, see here: https://www.valuersinstitute.com.au/.

For details on the Australian Property Institute, see here: www.api.org.au.

If the parties wished for different valuation rules/provisions to apply, changes would need to be made to the deed before execution. If changes are required, please let us know.

Mediation and Arbitration

Where disputes occur, the parties to the deed are typically required to first proceed with mediation and subsequently arbitration, before commencing litigation.

The deed provides that mediation shall be administered by the Australian Disputes Centre (**ADC**) in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC.

The deed provides that arbitration shall be administered by ADC and conducted in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to arbitration.

For more details see the ADC website: https://disputescentre.com.au/

If the parties wished for different mediation or arbitration rules/provisions to apply, changes would need to be made to the deed before execution. If changes are required, please let us know.

SPECIAL INSTRUCTIONS
As a law firm we are not licensed to provide financial product advice under the *Corporations Act 2001* (Cth).