Queensland

Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984

Current as at 1 March 2002

Queensland

Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984

Contents

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Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984

An Act with respect to the authorisation of an agreement to be entered into for and on behalf of the State with others amending the agreement made and subsequently amended pursuant to the Central Queensland Coal Associates Agreement Act 1968, to provide with respect to the acquisition or transfer of or dealing in units in Queensland Coal Trust and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act 1984*.

Part 3 Agreement to amend central Queensland coal associates agreement

5 Making of agreement authorised

(1) The Premier is hereby authorised to make, for and on behalf of the State, with the other parties named in the agreement, an agreement substantially in accordance with the form of agreement set out in the schedule 1.

(2) The agreement made pursuant to the authority conferred by this section is in this part referred to as ***the agreement***.

6 Executed agreement to have the force of law

(1) Upon the making of the agreement the provisions thereof shall have the force of law as if they were an enactment of this Act.

(2) The date of the making of the agreement shall be notified by proclamation.

Part 4 Provisions affecting Queensland Coal Trust

7 Interpretation

For the purposes of this part—

Court means the Supreme Court or a judge thereof.

manager means the manager for the time being appointed pursuant to the trust deed.

Queensland Coal Trust means the trusts constituted by the trust deed and to be styled 'Queensland Coal Trust'.

reconstruction provisions means the provisions of the trust deed as amended by amendments to the trust deed taken to have been validly made by the operation of section 10A.

statutory body means any authority, board, commission, trust or other body, howsoever called, and any corporation sole which—

(a) is constituted by or under any Act; and

(b) by or pursuant to the Act by or under which it is constituted, is required to discharge functions or duties or is authorised to exercise powers or authorities.

trust deed means the deed of trust made 12 January 1984 between—

(a) Hill Samuel Australia Limited a company duly incorporated in the State of New South Wales and having its registered office at 26th Floor, 20 Bond Street, Sydney in the State of New South Wales;

(b) QCT Management Limited a company duly incorporated in the State of Queensland and having its registered office at 17th Floor, T & G Building, Queen and Albert Streets, Brisbane in the State of Queensland;

(c) Permanent Trustee Company Limited a company duly incorporated in the State of New South Wales and having its registered office at 23-25 O'Connell Street, Sydney in the State of New South Wales;

which deed, on 17 January 1984, has been approved pursuant to the Companies (Queensland) Code, section 166.

trustee means the trustee for the time being of the trusts constituted by the trust deed and includes any person acting as trustee.

unit means one of the divisional interests or parts into which the beneficial interest in the cash and investments and other property for the time being held by the trustee upon the trusts of the trust deed is divided, as is provided for in the trust deed or that deed as duly amended from time to time, and includes both a fully paid unit and a partly paid unit.

8 Dealing in units exempt in certain cases from requirement for consent or approval

Where by reason of the trustee holding (whether directly or in the name of custodians or nominees) property of a particular description or an authority relating to property of a particular description the consent or approval of a Minister, statutory body, local government or other person would but for this section be required in respect of the acquisition, transfer or other dealing (including dealing for the purposes of any arrangement under the reconstruction provisions) affecting a

unit by the provisions of any Act (other than this Act) or instrument made, issued or granted under an Act then notwithstanding those provisions that consent or approval shall not be required in respect of such an acquisition, transfer or other dealing.

9 Restriction on certain acquisitions of units

(1) A person shall not except with the consent of the Governor in Council first had and obtained acquire within the meaning of the trust deed any unit or units if—

(a) being a person who is not entitled to any units or is entitled to less than 20% of the units—the person would, immediately after the acquisition, be entitled to more than 20% of the units; or

(b) being a person who is entitled to not less than 20% but less than 90% of the units—the person would, immediately after the acquisition, be entitled to a greater percentage of the number of units than the percentage to which that person was entitled immediately before the acquisition.

(2) If a person acquires within the meaning of the trust deed any unit or units in contravention of subsection (1) and the Governor in Council has not approved of the acquisition at any time prior to the giving of the notice referred to in this subsection the Minister may with the authority of the Governor in Council first had and obtained, by signed notice, direct the manager at the material time of the trust to give effect to clauses 5A.8 to 5A.9.5 of the trust deed, with respect to that unit or those units or to such of those clauses as is appropriate in the circumstances as if the acquisition were one which caused an infringement or contravention of clause 5A.1 of the trust deed, and the manager is hereby empowered so to do.

(3) Upon receipt by the manager of a notice given by the Minister under subsection (2), the manager of the trust shall comply with the notice in all respects.

(4) Nothing in this section shall render the manager of the trust or any trustee liable or responsible by reason of any person acquiring units in contravention of this section.

(5) For the purposes of this section, where each of 2 or more persons who are associated persons within the meaning of part 5A of the trust deed has acquired within the meaning of the trust deed units each of those persons shall be deemed to have acquired the whole number of those units.

(6) Where a person has acquired within the meaning of the trust deed units in contravention of subsection (1), the person shall not be entitled to avoid any transaction whereby the person acquired the units nor to claim any refund of or otherwise to recover moneys paid under the transaction.

(7) For the purposes of this section the units to which a person is entitled shall be determined in accordance with clause 5A.5.3 of the trust deed.

10 Powers and duties of manager of trust regarding compliance with s 9(1)

(1) The manager at the material time of the trust, before or after the manager allots units to any person or registers a transfer or transmission of units, may inquire of the person registered or about to be registered as the holder whether the acquisition by that person of the units is in accordance with section 9(1) and that person shall answer the inquiry in writing.

(2) If the manager at the material time believes or suspects that the acquisition by a person of units is or was in contravention of section 9(1) the manager shall inquire of the person as provided in subsection (1).

(3) Where the manager at the material time of the trust believes or suspects on reasonable grounds that an acquisition of units is or was in contravention of section 9(1) the manager shall, in writing, notify the Minister of that fact and of the particulars on which his or her belief or suspicion is founded.

10A Amendment of trust deed to provide for certain reconstruction

(1) Notwithstanding any other law, upon amendments to the trust deed substantially in accordance with the form of amendments set out in schedule 3 being approved by special resolution of unit holders as amendments to the trust deed and the execution by the trustee and the manager of a deed supplemental to the trust deed to make the amendments so approved, the trust deed shall be taken to have been validly amended accordingly.

(2) The reconstruction provisions and the date of approval thereof as amendments to the trust deed shall be published by notification in the gazette.

(3) For the purposes of subsection (1)—

special resolution has the same meaning as it has in the trust deed.

10B Section 9 not to apply to reconstruction

Any arrangement proposed by the manager, and approved in accordance with the terms of the reconstruction provisions, shall be binding and shall have and be given full force and effect on and by the trustee, the manager and all persons registered or entitled to be registered as holders of units notwithstanding the provisions of sections 9 and 10 or any provision of the trust deed.

10C Court's powers

(1) After publication of the reconstruction provisions and the date of approval thereof pursuant to the provisions of section 10A, the Court may, upon application made to it for that purpose, make orders for—

(a) the convening of a meeting or meetings to consider a proposed arrangement;

(b) the approval by it of a proposed arrangement;

as provided for by, and in accordance with, the reconstruction provisions and such further or other orders ancillary thereto as it thinks fit.

(2) Upon the approval of a proposed arrangement in accordance with the terms of the reconstruction provisions, the Court may, upon application made to it for that purpose, make such orders as are necessary to ensure that the arrangement is fully and effectively carried out which may include orders for—

(a) the issue and allotment of shares in a company in substitution for units issued pursuant to the trust deed;

(b) the cancellation of units in substitution for which shares are so issued and allotted;

(c) the issue and allotment of units pursuant to the trust deed to a company in which shares are or are to be so issued and allotted in substitution for units;

(d) the provision to be made for persons who within such time and in such manner as the Court directs, dissent from the arrangement.

10D Stamp duty regarding reconstruction

(1) Where an arrangement is given full force and effect pursuant to section 10B; the company which pursuant thereto is to have units in the Queensland Coal Trust issued to it shall, on the first issue or cancellation of a unit pursuant to that arrangement, pay to the consolidated fund an amount determined by the Governor in Council (on the recommendation of the Treasurer) which amount shall be a debt due and owing to the Crown.

(2) The amount paid pursuant to subsection (1), shall be deemed to be a payment of duty for the purposes of the *Stamp Act 1894*, section 56B or the *Duties Act 2001*, chapter 2, part 8, and an offset of that amount of duty shall be allowed against duty chargeable or imposed under that Act in respect of the issue of units to the company or the cancellation of units by the unitholders pursuant to the arrangement referred to in subsection (1).

Part 5 Application of Harbours Act 1955 to certain agreements with Gladstone Harbour Board

11 Certain provisions of Harbours Act 1955 not to apply

(1) Notwithstanding the provisions of the *Harbours Act 1955*, each agreement substantially in accordance with the form of and made between the parties named in the agreement set out in schedule 2, part A, B, C or, as the case may be, D shall for the purposes of that Act be deemed to have the approval of the Governor in Council by order in council and the provisions of section 136A(4) and (5) of that Act shall not apply in respect of that agreement.

(2) The Gladstone Harbour Board shall cause notification of the date of the making of each agreement to be published in the gazette.

Part 6 Application of mortgage provisions of Land Act 1962 to special lease No. 43090

12 Interpretation

For the purposes of this part—

holder means holder of an interest as a tenant in common in the special lease.

special lease means special lease No. 43090 over portions 87 and 102 in the parish of Hector, county of Carlisle, granted under the *Land Act 1962*, section 203(a), the *Harbours Act 1955* and the *Central Queensland Coal Associates Agreement Act 1968*, part 5 as a site for plant or facilities for the storage, handling, unloading and loading of coal.

13 Power to grant mortgages of interest in special lease

(1) Notwithstanding the provisions of the *Land Act 1962*, a holder may execute a memorandum of mortgage over the holder's interest as a tenant in common in the special lease in the form prescribed under that Act or to the like effect and the execution of that mortgage shall not be a breach of the conditions of the special lease by reason only that the mortgage is not over the whole of the holding.

(2) Subject to subsection (3), the provisions of the *Land Act 1962* that apply in respect of a mortgage of a special lease granted under that Act shall apply in respect of a mortgage granted pursuant to subsection (1) and for that purpose references in those provisions to 'holdings' shall be construed as references to 'interest as a tenant in common in the special lease'.

(3) In relation to a mortgage granted pursuant to subsection (1), the rights of a mortgagee to enter and take possession under the *Land Act 1994* shall not be construed as conferring on the mortgagee under the mortgage any greater right than those of the holder.

Schedule 1

section 5

Editor's note—

Consistent with the provisions of the Act, this schedule only contains the proposed agreement authorised to be entered into by the Act as originally enacted. It does not purport to be either the agreement actually entered into or that agreement as amended from time to time.

An Agreement made the second day of April, One thousand nine hundred and eighty-four, between the Honourable JOHANNES BJELKE-PETERSEN in his capacity as the Premier of Queensland, for and on behalf of the Government of the State of Queensland of the one part and UTAH DEVELOPMENT COMPANY, a company duly incorporated according to law and having its registered office at 167 Eagle Street, Brisbane in the said State (hereinafter referred to as "Utah"); MITSUBISHI DEVELOPMENT PTY. LTD., a company duly incorporated according to law and having its registered office at 127 Creek Street, Brisbane aforesaid (hereinafter referred to as "Mitsubishi"); AUSTRALIAN MUTUAL PROVIDENT SOCIETY, a body corporate duly constituted according to law having its registered office at A.M.P. Place, 10 Eagle Street, Brisbane aforesaid (hereinafter referred to as "A.M.P."); UMAL CONSOLIDATED LIMITED (formerly Utah Mining Australia Limited), a company duly incorporated according to law and having its registered office at 26 Wharf Street, Brisbane aforesaid (hereinafter referred to as "UCL"); PANCONTINENTAL MINING LIMITED, a company duly incorporated according to law and having its registered office at A.M.P. Place, 10 Eagle Street, Brisbane aforesaid (hereinafter referred to as "Pancontinental"); BELL COAL PTY. LTD., a company duly incorporated according to law and having its registered office at 1816 Ipswich Road, Rocklea, Brisbane aforesaid (hereinafter referred to as "Bell"); GENERAL ELECTRIC MINERALS, INC., a company duly incorporated according to law and having its registered office at 18th Floor, 260 Queen Street, Brisbane aforesaid (hereinafter referred to as "General Electric Minerals"); UB MINERALS, INC., a company duly incorporated according to law and having its registered office at 18th Floor, 260 Queen Street, Brisbane aforesaid (hereinafter

referred to as "UB Minerals"); BOWEN BASIN MINERALS, INC., a company duly incorporated according to law and having its registered office at 18th Floor, 260 Queen Street, Brisbane aforesaid (hereinafter referred to as "Bowen Basin Minerals"); QCT INVESTMENT PTY. LTD., a company duly incorporated according to law and having its registered office at 17th Floor, T & G Building, Queen and Albert Streets, Brisbane aforesaid (hereinafter referred to as "QCT Investment"); and QCT MINING PTY. LTD., a company duly incorporated according to law and having its registered office at 17th Floor, T & G Building, Queen and Albert Streets, Brisbane aforesaid (hereinafter referred to as "QCT Mining") of the other part (hereinafter with their and each of their successors and permitted assigns referred to as "the Companies").

WHEREAS:

(i) Utah and Mitsubishi on the 28th day of January 1969 entered into an Agreement with the State of Queensland relating to the development of certain coal deposits in Queensland (which Agreement as amended by further Agreements made between the Honourable JOHANNES BJELKE-PETERSEN in his capacity as the Premier of Queensland, for and on behalf of the State of Queensland of the one part and Utah and Mitsubishi of the other part and dated 18th June 1970, 11th June 1971, 23rd October 1973 and 27th May 1976 and by further Agreements made between the Honourable JOHANNES BJELKE-PETERSEN in his capacity as the Premier of Queensland, for and on behalf of the State of Queensland of the one part and Utah, Mitsubishi, A.M.P. and UCL of the other part dated 1st February 1977 and 16th February 1984 is hereinafter referred to as "the Agreement");

(ii) The Agreement was authorised by the *Central Queensland Coal Associates Agreement Act* 1968-1984 (hereinafter referred to as "the Principal Act");

(iii) The interests held by Utah, Mitsubishi, A.M.P. and UCL in the operations carried on pursuant to the Agreement are seventy-six and twenty-five one hundredths per centum (76.25%), twelve per centum (12%), seven and seventy-five one hundredths per centum (7.75%) and four per centum (4%) respectively;

(iv) Utah is desirous of transferring the following interests in the benefits and obligations under the Agreement and certain leases granted pursuant thereto to the following transferees:

Interests	Transferees
3.00%	Pancontinental
5.00%	Bell
8.50%	General Electric Minerals
5.00%	UB Minerals
2.00%	Bowen Basin Minerals
12.00%	QCT Investment
9.75%	QCT Mining

(v) It is desired that Pancontinental, Bell, General Electric Minerals, UB Minerals, Bowen Basin Minerals, QCT Investment, and QCT Mining be made parties to the Agreement;

(vi) Section 4 (1) of the Principal Act provides, *inter alia*, that the Agreement may be varied pursuant to agreement between the Premier of Queensland and the Companies under the authority of any Act;

(vii) The making of this Agreement is authorised by the Parliament of the State of Queensland expressed in an Act entitled the *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act* 1984;

(viii) It is contemplated that Utah will in due course by way of universal succession merge into a company incorporated in the State of Louisiana, United States of America, (named Utah Development Company Limited) with the consequence that Utah Development Company Limited as the successor of Utah will have all the assets and liabilities of Utah (including its then benefits and obligations under the Agreement); and pursuant to the Louisiana Business Corporation Law and the *Companies (Queensland) Code* Utah Development Company

Limited will then transfer its place of incorporation to the State of Queensland;

(ix) In consideration of the foregoing recitals the parties hereto desire to vary the Agreement in the manner hereinafter set forth.

NOW IT IS HEREBY AGREED as follows:—

B. The term "the Companies" wherever it appears in the Agreement shall be deemed to refer to and include Utah, Mitsubishi, A.M.P., UCL, Pancontinental, Bell, General Electric Minerals, UB Minerals, Bowen Basin Minerals, QCT Investment and QCT Mining.

C. Pancontinental, Bell, General Electric Minerals, UB Minerals, Bowen Basin Minerals, QCT Investment and QCT Mining agree to be bound by the provisions of the Agreement as if they had been parties thereto.

D. The parties acknowledge that upon the merger and transfer of incorporation referred to in Recital (viii) the benefits and obligations then conferred or imposed by the Agreement on Utah will automatically by force of law be conferred and imposed on Utah Development Company Limited as the successor of Utah.

E. These presents are supplemental to the Agreement and subject only to such modifications as may be necessary to make the Agreement consistent with these presents the Agreement shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of these presents were inserted in the Agreement by way of addition thereto.

F. Upon making of this Agreement the provisions thereof shall have the force of law as though enacted in the *Central Queensland Coal Associates Agreement and Queensland Coal Trust Act* 1984.

G.(1) This Agreement may be executed in two counterparts, one by the Premier of Queensland, and the other by all other parties hereto, together with such copies of the counterparts as the parties may require. It shall become binding upon all parties hereto and shall take immediate effect when, the Premier of Queensland having executed a counterpart, the Premier of Queensland is notified in the manner provided in paragraph (2) of this Clause that another counterpart thereof has been executed by all other parties hereto, notwithstanding that no exchange of counterparts has then occurred.

(2) Notification pursuant to paragraph (1) hereof shall be made by letter or by telex from Utah addressed to:

The Honourable the Premier of Queensland, Premier's Department, Executive Building, 100 George Street, Brisbane, Queensland 4000
Telex No.: 41418
Answerback Code: QLDPREM

and shall be effective, where given by letter, on delivery to the aforesaid address, or, where given by telex upon receipt of the answerback code.

(3) Without prejudice to the full operation of the foregoing, the parties agree that, as soon as practicable after this Agreement becomes binding and takes effect, they will arrange for each of the two counterparts together with such copies of the counterparts as the parties may require to be executed by all parties hereto.

H. Each of the Attorneys executing this Agreement hereby respectively acknowledges that he has at the time of executing this Agreement no notice of the revocation of the power of attorney under the authority of which he executes this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first hereinbefore written.

Signed by THE HONOURABLE JOHANNES BJELKE-PETERSEN, Premier of the State of Queensland, for and on behalf of the said State in the presence of: }

Signed by Theodore Reginald Dankmeyer, a duly constituted Attorney of Utah Development Company in the presence of: }

Signed by Hiroyoshi Tsuchiya, a duly constituted Attorney of Mitsubishi Development Pty. Ltd. in the presence of: }

Signed by Raymond Greenshields, a duly constituted Attorney of Australian Mutual Provident Society in the presence of: }

Signed by Robert John Flew, a duly constituted Attorney of Umal Consolidated Limited in the presence of: }

Signed by Stephen John Lonergan, a duly constituted Attorney of Pancontinental Mining Limited in the presence of: }

Signed by Edward Henry Gilbert, a duly constituted Attorney of Bell Coal Pty. Ltd. in the presence of: }

Signed by Stephen Karl Brimhall, a duly constituted Attorney of General Electric Minerals, Inc. in the presence of: }

Signed by Stephen Karl Brimhall, a duly constituted Attorney of UB Minerals, Inc. in the presence of: }

Signed by Stephen Karl Brimhall, a duly constituted Attorney of Bowen Basin Minerals, Inc. in the presence of: }

Signed by Lynn Arnold, David Graham Davis, a duly constituted Attorneys of QCT Investment Pty. Ltd. in the presence of: }

Signed by Lynn Arnold, David Graham Davis, a duly constituted Attorneys of QCT Mining Pty. Ltd. in the presence of: }

Schedule 2

section 11

PART A

This Deed made the day of , One Thousand Nine Hundred and Eighty-Four between:

THE GLADSTONE HARBOUR BOARD of Gladstone in the State of Queensland, a Harbour Board constituted by the *Gladstone Harbour Board Act* 1913 and continued by the *Harbours Act* 1955-1982 (hereinafter referred to as "the Board");

UTAH DEVELOPMENT COMPANY a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "UDC");

MITSUBISHI DEVELOPMENT PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Mitsubishi");

AUSTRALIAN MUTUAL PROVIDENT SOCIETY a corporation incorporated in the State of New South Wales, Australia (hereinafter referred to as "AMP Society");

GENERAL ELECTRIC MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 1");

UB MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 2");

BOWEN BASIN MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 3");

QCT INVESTMENT PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Investment");

QCT MINING PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Mining");

BELL COAL PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Bell"); AND

PANCONTINENTAL MINING LIMITED a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Pancontinental").

RECITALS:

A. UDC has developed the Blackwater mine in Central Queensland and owns certain property in connection therewith.

B. The Board and UDC are parties to an agreement dated 24th October 1981 (hereinafter referred to as "the Clinton Coal Facility Agreement") relating to the use of the Clinton Coal Facility.

C. UDC has agreed to transfer participating interests in the Blackwater mine and certain property relating to it so that the participating interests therein will upon those transfers be as follows:

UDC	35.00%
Mitsubishi	12.00%
AMP Society	7.75%
GE No. 1	8.50%
GE No. 2	5.00%
GE No. 3	2.00%
QCT Investment	12.00%
QCT Mining	9.75%
Bell	5.00%
Pancontinental	3.00%

D. UDC has agreed to assign part of its rights, interests, benefits, duties, obligations and liabilities under the Clinton Coal Facility Agreement to Mitsubishi, AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental in proportion to their respective percentage participating interests set out in Recital C and the

Board has agreed to accept those assignments on the terms and conditions of this Deed.

E. It is contemplated that shortly after such assignment UDC will by way of universal succession merge into a company incorporated in the State of Louisiana, United States of America, (named Utah Development Company Limited) with the consequence that Utah Development Company Limited as the successor of UDC will have all the assets and liabilities of UDC (including its then rights, interests, benefits, duties, obligations and liabilities under the Clinton Coal Facility Agreement); and pursuant to the Louisiana Business Corporation Law and the *Companies (Queensland) Code* Utah Development Company Limited will then transfer its place of incorporation to the State of Queensland.

NOW THIS DEED WITNESSES and it is hereby agreed and declared by and between the parties as follows:—

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires, the following expressions shall have the meanings assigned to them:—

"Effective Date" shall mean the date notified to the Board by UDC pursuant to Clause 7 as being the date on which the transfers to the Incoming Venturers referred to in Recital C take effect.

"Incoming Venturers" shall mean Mitsubishi, AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental.

"Private Parties" shall mean parties to the Clinton Coal Facility Agreement at any time other than the Board.

1.2 In the interpretation of this Deed unless the context otherwise requires the singular includes the plural and vice versa. A reference to a recital or clause is a reference to a recital or Clause of this Deed.

2. The Incoming Venturers and UDC agree with the Board that on and from the Effective Date they will be bound by the Clinton Coal Facility Agreement as Private Parties, having several liability thereunder in

proportion to their respective percentage participating interest set out in Recital C, saving that when any of the Private Parties defaults under the provisions of the Clinton Coal Facility Agreement the non-defaulting Private Parties on demand by the Board shall pay to the Board or be responsible for the whole of the liability under the provisions of the Clinton Coal Facility Agreement which the defaulting Private Party has failed to meet or which results from that default *pro-rata* calculated according to their respective participating interests set out in Recital C.

Any amount so paid shall constitute a debt due and payable by the defaulting Private Party to the non-defaulting Private Parties which have paid the same and may be recovered from the defaulting Private Party in any Court of Competent Jurisdiction (without prejudice to other means of recovery available to the non-defaulting Private Parties).

3.1 The Board agrees with the Incoming Venturers and UDC that on and from the Effective Date the Incoming Venturers and UDC will have the rights conferred upon the Private Parties by the Clinton Coal Facility Agreement in proportion to their respective percentage participating interests set out in Recital C.

3.2 The Private Parties agree with the Board that on and from the Effective Date Clause 6.2 of the Clinton Coal Facility Agreement shall operate so that the whole of the Security Deposit moneys and interest for the repayment period in question are retained if the aggregate quantity of coal shipped by Utah and the Private Parties from their Blackwater mine in the relative Contract Half Year is less than 250 000 tonnes, and refunds pursuant to Clause 6.3 shall apply only in respect of Contract Half Years after the end of the Scheduled repayments in which such aggregate number of tonnes exceeds 250 000.

4. The parties agree that on and from the Effective Date UDC will be released and discharged from all those duties, obligations and liabilities it has under the Clinton Coal Facility Agreement to the extent of the interests assigned by it to the Incoming Ventures but not otherwise.

5. The Parties ratify and confirm the provisions of the Clinton Coal Facility Agreement as novated and amended herein and acknowledge that

upon the merger and transfer of incorporation referred to in Recital E the rights, interests, benefits, duties, obligations and liabilities then conferred or imposed by the Clinton Coal Facility Agreement on UDC will automatically by force of law be conferred and imposed on Utah Development Company Limited as the successor of UDC.

6. This Deed may be executed in separate counterparts by the parties hereto. Upon delivery to UDC of counterparts executed by all the parties all the parties hereto will become bound by the provisions of this Deed.

7. UDC agrees that it will forthwith upon transfer to the Incoming Ventures of the percentage participating interest set out in Recital C notify the Board by telex of the Effective Date which notification shall be effective from the time of despatch of such telex.

8. If the Effective Date is not prior to or on 31st May, 1984 this Deed shall cease to be of any force or effect.

9. This Deed shall be governed and construed by and in accordance with the laws of the State of Queensland and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of competent jurisdiction of that State to hear and determine any disputes arising hereunder.

10. The Incoming Venturers agree to bear any stamp duty payable on this Deed or on any counterpart in relative proportion to their respective percentage participating interests set out in Recital C.

11. No party hereto shall by virtue of the execution of this Deed or by any of its terms be construed as having been constituted a partner, agent or representative of another party for any purpose whatsoever. The duties, obligations and liabilities of the Private Parties shall in every case be several in the percentages set out in Recital C, and not joint nor joint and several.

12. Notwithstanding Clause 11 hereof the Private Parties hereby nominate Utah Development Company and such other Company or person as the Private Parties may nominate from time to time in writing to the Board as their designee for the administration of the Clinton Coal Facility Agreement on behalf of the Private Parties.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first hereinbefore written.

PART B

This Deed made the day of , One Thousand Nine Hundred and Eighty-Four between:

THE GLADSTONE HARBOUR BOARD of Gladstone in the State of Queensland, a Harbour Board constituted by the *Gladstone Harbour Board Act* 1913 and continued by the *Harbours Act* 1955-1982 (hereinafter referred to as "the Board");

UTAH DEVELOPMENT COMPANY a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "UDC");

MITSUBISHI DEVELOPMENT PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Mitsubishi");

AUSTRALIAN MUTUAL PROVIDENT SOCIETY a corporation incorporated in the State of New South Wales, Australia (hereinafter referred to as "AMP Society");

GENERAL ELECTRIC MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 1");

UB MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 2");

BOWEN BASIN MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 3");

QCT INVESTMENT PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Investment");

QCT MINING PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Mining");

BELL COAL PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Bell"); AND

PANCONTINENTAL MINING LIMITED a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Pancontinental").

RECITALS:

A. UDC has developed the Blackwater mine in Central Queensland and owns certain property in connection therewith.

B. The Board and UDC are parties to an agreement dated 24th January 1983 (hereinafter referred to as "the Improved Harbour Charge Agreement") relating to the payment of certain harbour charges to the Board by UDC.

C. UDC has agreed to transfer participating interests in the Blackwater mine and certain property relating to it so that the participating interests therein will upon those transfers be as follows:

UDC	35.00%
Mitsubishi	12.00%
AMP Society	7.75%
GE No. 1	8.50%
GE No. 2	5.00%
GE No. 3	2.00%
QCT Investment	12.00%
QCT Mining	9.75%

Bell	5.00%
Pancontinental	3.00%

D. UDC has agreed to assign part of its rights, interests, benefits, duties, obligations and liabilities under the Improved Harbour Charge Agreement to Mitsubishi, AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental in proportion to their respective percentage participating interests set out in Recital C and the Board has agreed to accept those assignments on the terms and conditions of this Deed.

E. It is contemplated that shortly after such assignment UDC will by way of universal succession merge into a company incorporated in the State of Louisiana, United States of America, (named Utah Development Company Limited) with the consequence that Utah Development Company Limited as the successor of UDC will have all the assets and liabilities of UDC (including its then rights, interests, benefits, duties, obligations and liabilities under the Improved Harbour Charge Agreement); and pursuant to the Louisiana Business Corporation Law and the *Companies (Queensland) Code* Utah Development Company Limited will then transfer its place of incorporation to the State of Queensland.

NOW THIS DEED WITNESSES and it is hereby agreed and declared by and between the parties as follows:—

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires, the following expressions shall have the meanings assigned to them:—

"Effective Date" shall mean the date notified to the Board by UDC pursuant to Clause 7 as being the date on which the transfers to the Incoming Venturers referred to in Recital C take effect.

"Incoming Venturers" shall mean Mitsubishi, AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental.

"Private Parties" shall mean parties to the Improved Harbour Charge Agreement at any time other than the Board.

1.2 In the interpretation of this Deed unless the context otherwise requires the singular includes the plural and vice versa. A reference to a recital or clause is a reference to a Recital or Clause of this Deed.

2. The Incoming Venturers and UDC agree with the Board that on and from the Effective Date they will be bound by the Improved Harbour Charge Agreement as Private Parties, having several liability thereunder in proportion to their respective percentage participating interests set out in Recital C, saving that when any of the Private Parties defaults under the provisions of the Improved Harbour Charge Agreement the non-defaulting Private Parties on demand by the Board shall pay to the Board or be responsible for the whole of the liability under the provisions of the Improved Harbour Charge Agreement which that defaulting Private Party has failed to meet or which results from that default *pro-rata* calculated according to their respective participating interests set out in Recital C.

Any amount so paid shall constitute a debt due and payable by the defaulting Private Party to the non-defaulting Private Parties which have paid the same and may be recovered from the defaulting Private Party in any Court of Competent Jurisdiction (without prejudice to any other means of recovery available to the non-defaulting Private Parties).

3. The Board agrees with the Incoming Venturers and UDC that on and from the Effective Date the Incoming Venturers and UDC will have the rights conferred upon the Private Parties by the Improved Harbour Charge Agreement in proportion to their respective percentage participating interests set out in Recital C.

4. The parties agree that on and from the Effective Date UDC will be released and discharged from all those duties, obligations and liabilities it has under the Improved Harbour Charge Agreement to the extent of the interests assigned by it to the Incoming Venturers but not otherwise.

5. The parties ratify and confirm the provisions of the Improved Harbour Charge Agreement as novated and amended herein and

acknowledge that upon the merger and transfer of incorporation referred to in Recital E the rights, interests, benefits, duties, obligations and liabilities then conferred or imposed by the Improved Harbour Charge Agreement on UDC will automatically by force of law be conferred and imposed on Utah Development Company Limited as the successor of UDC.

6. This Deed may be executed in separate counterparts by the parties hereto. Upon delivery to UDC of counterparts executed by all the parties all the parties hereto will become bound by the provisions of this Deed.

7. UDC agrees that it will forthwith upon transfer to the incoming Venturers of the percentage participating interest set out in Recital C notify the Board by telex of the Effective Date which notification shall be effective from the time of despatch of such telex.

8. If the Effective Date is not prior to or on 31st May, 1984 this Deed shall cease to be of any force or effect.

9. This Deed shall be governed and construed by and in accordance with the laws of the State of Queensland and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of competent jurisdiction of that State to hear and determine any disputes arising hereunder.

10. The Incoming Venturers agree to bear any stamp duty payable on this Deed or on any counterpart in relative proportion to their respective percentage participating interests set out in Recital C.

11. No party hereto shall by virtue of the execution of this Deed or by any of its terms be construed as having been constituted a partner, agent or representative of another party for any purpose whatsoever.

The duties, obligations and liabilities of the Private Parties shall in every case be several in the percentages set out in Recital C, and not joint nor joint and several.

12. Notwithstanding Clause 11 hereof the Private Parties hereby nominate Utah Development Company and such other Company or person as the Private Parties may nominate from time to time in writing to the Board as their designee for the administration of the Improved Harbour Charge Agreement on behalf of the Private Parties.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first hereinbefore written.

PART C

This Deed made the day of , One Thousand Nine Hundred and Eighty-four between:

THE GLADSTONE HARBOUR BOARD of Gladstone in the State of Queensland, a Harbour Board constituted by the *Gladstone Harbour Board Act* 1913 and continued by the *Harbours Act* 1955-1982 (hereinafter referred to as "the Board");

BHP MINERALS LIMITED a company incorporated in the State of Western Australia, Australia (hereinafter referred to as "BHP Minerals");

AUSTRALIAN MUTUAL PROVIDENT SOCIETY a corporation incorporated in the State of New South Wales, Australia (hereinafter referred to as "AMP Society");

GENERAL ELECTRIC MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 1");

UB MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 2");

BOWEN BASIN MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 3");

QCT INVESTMENT PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Investment");

QCT MINING PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Mining");

BELL COAL PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Bell"); AND

PANCONTINENTAL MINING LIMITED a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Pancontinental").

RECITALS:

A. BHP Minerals has developed the Gregory mine in Central Queensland and owns certain property in connection therewith.

B. The Board and BHP Minerals (formerly named Dampier Mining Company Limited) are parties to an agreement dated 16th May 1979 (hereinafter referred to as "the Clinton Coal Facility Agreement") relating to the use of the Clinton Coal Facility.

C. BHP Minerals has agreed to transfer participating interests in the Gregory mine and certain property relating to it so that the participating interests therein will upon those transfers be as follows:

BHP Minerals	47.00%
AMP Society	7.75%
GE No. 1	8.50%
GE No. 2	5.00%
GE No. 3	2.00%
QCT Investment	12.00%
QCT Mining	9.75%
Bell	5.00%
Pancontinental	3.00%

D. BHP Minerals has agreed to assign part of its rights, interests, benefits, duties, obligations and liabilities under the Clinton Coal Facility Agreement to AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental in proportion their respective percentage participating interests set out in Recital C and the Board has agreed to accept those assignments on the terms and conditions of this Deed.

NOW THIS DEED WITNESSES and it is hereby agreed and declared by and between the parties as follows:—

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires, the following expressions shall have the meanings assigned to them:—

"Effective Date" shall mean the date notified to the Board by BHP Minerals pursuant to Clause 8 as being the date on which the transfers to the Incoming Venturers referred to in Recital C take effect.

"Incoming Venturers" shall mean AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental.

"Private Parties" shall mean parties to the Clinton Coal Facility Agreement at any time other than the Board.

1.2 In the interpretation of this Deed unless the context otherwise requires the singular includes the plural and vice versa. A reference to a recital or clause is a reference to a Recital or Clause of this Deed.

2. The Incoming Venturers and BHP Minerals agree with the Board that on and from the Effective Date they will be bound by the Clinton Coal Facility Agreement as Private Parties, having several liability thereunder in proportion to their respective percentage participating interests set out in Recital C saving that when any of the Private Parties defaults under the provisions of the Clinton Coal Facility Agreement the non-defaulting Private Parties on demand by the Board shall pay to the Board or be responsible for the whole of the liability under the provisions of the Clinton Coal Facility Agreement which the defaulting Private Party has failed to meet or which results from that default pro-rata calculated according to their respective participating interests set out in Recital C.

Any amount so paid shall constitute a debt due and payable by the defaulting Private Party to the non-defaulting Private Parties which have paid the same and may be recovered from the defaulting Private Party in any Court of Competent Jurisdiction (without prejudice to any other means of recovery available to the non-defaulting Private Parties).

3.1 The Board agrees with the Incoming Venturers and BHP Minerals that on and from the Effective Date the Incoming Venturers and BHP Minerals will have the rights conferred upon the Private Parties by the Clinton Coal Facility Agreement in proportion to their respective percentage participating interests set out in Recital C.

3.2 The Private Parties agree with the Board that on and from the Effective Date Clause 11.2 of the Clinton Coal Facility Agreement shall operate so that the whole of the Security Deposit moneys and interest for the repayment period in question are retained if the aggregate quantity of coal shipped by the Private Parties from other than their Blackwater mine in the relative Contract Year is less than 1 200 000 tonnes.

4. The parties agree that on and from the Effective Date BHP Minerals will be released and discharged from all those duties, obligations and liabilities it has under the Clinton Coal Facility Agreement to the extent of the interests assigned by it to the Incoming Venturers but not otherwise.

5. The parties ratify and confirm the provisions of the Clinton Coal Facility Agreement as novated and amended herein.

6. The Private Parties agree with the Board that the Clinton Coal Facility Agreement shall not provide them with any entitlement relative to the shipment of any coal from the Blackwater mine.

7. This Deed may be executed in separate counterparts by the parties hereto. Upon delivery to BHP Minerals of counterparts executed by all parties all the parties hereto will become bound by the provisions of this Deed.

8. BHP Minerals agrees that it will forthwith upon transfer to the Incoming Venturers of the percentage participating interests set out in Recital C notify the Board by telex of the Effective Date which notification shall be effective from the time of despatch of such telex.

9. If the Effective Date is not prior to or on 31st May 1984 this Deed shall cease to be of any force or effect.

10. This Deed shall be governed and construed by and in accordance with the laws of the State of Queensland and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of competent jurisdiction of that State to hear and determine any disputes arising hereunder.

11. The Incoming Venturers agree to bear any stamp duty payable on this Deed or on any counterpart in relative proportion to their respective percentage participating interests set out in Recital C.

12. No party hereto shall by virtue of the execution of this Deed or by any of its terms be construed as having been constituted a partner, agent or representative of another party for any purpose whatsoever. The duties, obligations and liabilities of the Private Parties shall in every case be several in the percentages set out in Recital C, and not joint nor joint and several.

13. Notwithstanding Clause 12 hereof the Private Parties hereby nominate Utah Development Company and such other Company or person as the Private Parties may nominate from time to time in writing to the Board as their designee, for the administration of the Clinton Coal Facility Agreement on behalf of the Private Parties.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first hereinbefore written.

PART D

This Deed made the day of One Thousand Nine Hundred and Eighty-Four, between:

THE GLADSTONE HARBOUR BOARD of Gladstone in the State of Queensland, a Harbour Board constituted by the *Gladstone Harbour Board Act* 1913 and continued by the *Harbours Act* 1955-1982 (hereinafter referred to as "the Board");

BHP MINERALS LIMITED a company incorporated in the State of Western Australia, Australia (hereinafter referred to as "BHP Minerals");

AUSTRALIAN MUTUAL PROVIDENT SOCIETY a corporation incorporated in the State of New South Wales, Australia (hereinafter referred to as "AMP Society");

GENERAL ELECTRIC MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 1");

UB MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 2");

BOWEN BASIN MINERALS, INC. a company incorporated in the State of Nevada, United States of America (hereinafter referred to as "GE No. 3");

QCT INVESTMENT PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Investment");

QCT MINING PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "QCT Mining");

BELL COAL PTY. LTD. a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Bell"); AND

PANCONTINENTAL MINING LIMITED a company incorporated in the State of Queensland, Australia (hereinafter referred to as "Pancontinental").

RECITALS:

A. BHP Minerals has developed the Gregory mine in Central Queensland and owns certain property in connection therewith.

B. The Board and BHP Minerals are parties to an agreement dated 25th February, 1983 (hereinafter referred to as "the Improved Harbour Charge Agreement") relating to the payment of certain harbour charges to the Board by BHP Minerals.

C. BHP Minerals has agreed to transfer participating interests in the Gregory mine and certain property relating to it so that the participating interests therein will upon those transfers be as follows:

BHP Minerals	47.00%
AMP Society	7.75%
GE No. 1	8.50%
GE No. 2	5.00%
GE No. 3	2.00%
QCT Investment	12.00%
QCT Mining	9.75%
Bell	5.00%
Pancontinental	3.00%

D. BHP Minerals has agreed to assign part of its rights, interests, benefits, duties, obligations and liabilities under the Improved Harbour Charge Agreement to AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental in proportion to their respective percentage participating interests set out in Recital C and the Board has agreed to accept those assignments on the terms and conditions of this Deed.

NOW THIS DEED WITNESSES and it is hereby agreed and declared by and between the parties as follows:—

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires, the following expressions shall have the meanings assigned to them:—

"Effective Date" shall mean the date notified to the Board by BHP Minerals pursuant to Clause 7 as being the date on which the transfers to the Incoming Venturers referred to in Recital C take effect.

"Incoming Venturers" shall mean AMP Society, GE No. 1, GE No. 2, GE No. 3, QCT Investment, QCT Mining, Bell and Pancontinental.

"Private Parties" shall mean parties to the Improved Harbour Charge Agreement at any time other than the Board.

1.2 In the interpretation of this Deed unless the context otherwise requires the singular includes the plural and vice versa. A reference to a recital or clause is a reference to a Recital or Clause of this Deed.

2. The Incoming Venturers and BHP Minerals agree with the Board that on and from the Effective Date they will be bound by the Improved Harbour Charge Agreement as Private Parties, having several liability thereunder in proportion to their respective percentage participating interests set out in Recital C saving that when any of the Private Parties defaults under the provisions of this Agreement the non-defaulting Private Parties on demand by the Board shall pay to the Board or be responsible for the whole of the liability under the provisions of the Improved Harbour Charge Agreement which the defaulting Private Party has failed to meet or which results from that default pro-rata calculated according to their respective participating interests set out in Recital C.

Any amount so paid shall constitute a debt due and payable by the defaulting Private Party to the non-defaulting Private Parties which have paid the same and may be recovered from the defaulting Private Party in any Court of Competent Jurisdiction (without prejudice to any other means of recovery available to the non-defaulting Private Parties).

3. The Board agrees with the Incoming Venturers and BHP Minerals that on and from the Effective Date the Incoming Venturers and BHP Minerals will have the rights conferred upon the Private Parties by the Improved Harbour Charge Agreement in proportion to their respective percentage participating interests set out in Recital C.

4. The Parties agree that on and from the Effective Date BHP Minerals will be released and discharged from all those duties, obligations and liabilities it has under the Improved Harbour Charge Agreement to the extent of the interests assigned by it to the Incoming Venturers but not otherwise.

5. The parties ratify and confirm the provisions of the Improved Harbour Charge Agreement as novated and amended herein.

6. This Deed may be executed in separate counterparts by the parties hereto. Upon delivery to BHP Minerals of counterparts executed by all the parties all the parties hereto will become bound by the provisions of this Deed.

7. BHP Minerals agrees that it will forthwith upon transfer to the Incoming Venturers of the percentage participating interests set out in Recital C notify the Board by telex of the Effective Date which notification shall be effective from the time of despatch of such telex.

8. If the Effective Date is not prior to or on 31st May 1984 this Deed shall cease to be of any force or effect.

9. This Deed shall be governed and construed by and in accordance with the laws of the State of Queensland and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of competent jurisdiction of that State to hear and determine any disputes arising hereunder.

10. The Incoming Venturers agree to bear any stamp duty payable on this Deed or on any counterpart in relative proportion to their respective percentage participating interests set out in Recital C.

11. No party hereto shall by virtue of the execution of this Deed or by any of its terms be construed as having been constituted a partner, agent or representative of another party for any purpose whatsoever. The duties, obligations and liabilities of the Private Parties shall in every case be

several in the percentages set out in Recital C, and not joint nor joint and several.

12. Notwithstanding Clause 11 hereof the Private Parties hereby nominate Utah Development Company and such other Company or person as the Private Parties may nominate from time to time in writing to the Board as their designee for the administration of the Improved Harbour Charge Agreement on behalf of the Private Parties.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first hereinbefore written.

Schedule 3 Proposed amendments to Trust Deed

section 10A

(1) By deleting Clause 3.6 of the Trust Deed and substituting the following:—

3.6 Winding Up if Legislation Affects Income of Fund

If at any time during the term of the Trust any legislation is enacted which in the opinion of the Manager or the Trustee may have the effect of materially diminishing the amount of income of the Trust Fund available for distribution to Unit Holders then the Manager and the Trustee may agree to determine and wind up the trust and the provisions of Clause 3.7 shall apply to such winding up or the Manager may propose an Arrangement to or with the Unit Holders or any class of them in accordance with the provisions of Clause 3.8.

(2) By inserting at the end of Clause 3.7 of the Trust Deed a new Clause 3.8 as follows:—

3.8 Arrangements and Reconstruction

3.8.1 In this clause 3.8 unless the context otherwise requires—

"Arrangement" includes a scheme for the reorganisation of the affairs of the Trust whereby some or all of the issued units in the Trust are cancelled, and issued units are immediately thereafter all held by a company not being a company in the capacity of a trustee of a trust estate, and newly issued non-redeemable shares in the company are allotted and issued to or vested in the Unit Holders whose units are cancelled in the scheme and the total number of shares issued in the scheme is equal to or is a multiple of the total number of issued units in the Trust which are cancelled and are in the same proportion for each Unit Holder to the number of units held by that Unit Holder as have been cancelled, but does not include such a scheme as would reduce or remove the right of the Trustee to indemnity from the Trust assets or as would result in such an amendment to the Trust Deed as

would adversely affect the capacity of the Trustee to perform its financial obligations as Trustee.

"Draft Explanatory Statement" in relation to a proposed Arrangement between the Manager, the Trustee and the Unit Holders or any class of them means a statement—

(a) explaining the effect of the proposed Arrangement and, in particular, stating any material interests of the Trustee and the Manager or if the Trustee or the Manager is or includes a company the directors of the Trustee or the Manager, whether as directors, as Unit Holders or otherwise, and the effect on those interests of the proposed Arrangement insofar as that effect is different from the effect on the like interests of other persons; and

(b) setting out such information as is material to the making of a decision by a Unit Holder whether or not to agree to the proposed Arrangement, being information that is within the knowledge of the Trustee or the Manager and has not previously been disclosed to the Unit Holders.

"Commission" means the Commissioner for Corporate Affairs of the State of Queensland.

"Court" means the Supreme Court of the State of Queensland.

"Explanatory Statement" means any Draft Explanatory Statement, including such amendments as may be required by the Court, approved by the Court for despatch with notices of meeting as provided by Clause 3.8.3.

"State" means the State of Queensland.

3.8.2 Subject to this Clause 3.8 the Trustee, the Manager and the Unit Holders or any class of them may make or enter into an Arrangement.

3.8.3 Where an Arrangement is proposed between the Trustee, the Manager and the Unit Holders or any class of them, the Court may, on application in a summary way of the Trustee, the Manager or such Unit Holders as hold collectively not less than ten per cent of the issued units or any class thereof order a meeting or meetings of the Unit Holders or class of Unit Holders to be convened in such manner, and to be held in such place or places within or outside the State, as the Court directs and, where the Court makes such an order, the Court may approve an Explanatory Statement to accompany notices of the meeting or meetings.

3.8.4 The Court shall not make an order pursuant to an application under Clause 3.8.3 unless—

(a) 14 days notice of the hearing of the applications or such lesser period of notice as the Court or the Commission permits, has been given to the Commission; and

(b) The Court is satisfied that the Commission has had a reasonable opportunity:—

(i) to examine the terms of the proposed Arrangement to which the application relates and a Draft Explanatory Statement relating to the proposed Arrangement; and

(ii) to make submissions to the Court in relation to the proposed Arrangement and the Draft Explanatory Statement.

3.8.5 The Court shall not make an order under Clause 3.8.3 that a meeting be held in another State or in a Territory unless it appears to the Court that some or all of the Unit Holders reside in that State or Territory and that it is desirable and expedient that such a meeting be so held.

3.8.6 An Arrangement is binding on the Unit Holders, or on a class of Unit Holders, if, and only if—

(a) at a meeting convened in accordance with an order of the Court under Clause 3.8.3 the Arrangement is agreed to by a majority of Unit Holders, or of the Unit Holders included in that class of Unit Holders, present and voting, either in person or by proxy, being, a majority whose units have nominal values that amount, in the aggregate, to not less than 75% of the total of the nominal values of all the units of the Unit Holders present and voting in person or by proxy; and

(b) it is approved by order of the Court.

3.8.7 Where the Court orders two or more meetings of Unit Holders or of a class of Unit Holders to be held in relation to the proposed Arrangement the meetings shall, for the purposes of Clause 3.8.6, be deemed together to constitute a single meeting and the votes in favour of the proposed Arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed Arrangement cast at each of the meetings shall be aggregated, accordingly.

3.8.8 The Court may grant its approval to an Arrangement subject to such alterations or conditions as it thinks just.

3.8.9 An order of the Court that is made for the purposes of Clause 3.8.6. (b) shall take effect on the date that the Court determines and specifies in the order.

3.8.10 If an Arrangement as approved provides for amendment of the terms of this Deed in a manner set forth therein, upon an order for approval taking effect under Clause 3.8.8 then, notwithstanding the provisions of Clause 26.1 this Deed shall be amended accordingly.

3.8.11 The provisions of this Clause 3.8 shall take effect from the date upon which the Parliament of the State of Queensland enacts legislation to give the provisions of this Clause 3.8 the force of law or otherwise ratifies or confirms same.

(3) By inserting at the end of Part 15 of the Trust Deed new Clauses 15.14 and 15.15 as follows:—

15.14 Enabling Legislation

Without limiting the generality of the foregoing provisions of this Part 15 the Manager is hereby expressly empowered and directed to seek from the Government or the Parliament of the State of Queensland legislation to give the provisions of Clause 3.8 or any Arrangement thereunder the force of law or otherwise to ratify or confirm same.

15.15 Reimbursement for costs of procuring legislation

Without limiting the generality of Clause 23.4 the Manager shall be entitled to be reimbursed out of the Trust Fund for the costs and expenses reasonably incurred in the course of seeking the said legislation in preparing and making an application for an Arrangement under Clause 3.8 and all necessary and incidental expenses.

(4) By inserting at the end of Part 12 of the Trust Deed a new Clause 12.19 as follows:—

12.19 Provision of moneys to company

Notwithstanding any provisions of the Trust Deed to the contrary, the Manager may purchase, or subscribe for shares in a company acquired or incorporated for the purpose of effecting an Arrangement (as defined in

Clause 3.8 of this Deed) pursuant to Clause 3.8 of this Deed. The Manager may lend or pay moneys to a company acquired or incorporated pursuant to this Clause as the Manager shall consider appropriate in the interests of the Unit Holders to effect an arrangement pursuant to Clause 3.8 of this Deed.