

COPY OF

DEED CREATING

THE EASTLAND ENERGY

COMMUNITY TRUST

incorporating variations made by Deed Polls
dated 15 April 2002 and 2 February 2009

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THIS DEED is dated 7th May 1993

BETWEEN THE POVERTY BAY ELECTRIC POWER BOARD constituted under the Electric Power Boards Act 1925 ("the Power Board")

A N D THE GISBORNE DISTRICT COUNCIL at Gisborne ("the Council")

A N D THE TRUSTEES (TO BE NAMED) ("the Trustees")

BACKGROUND TO THIS DEED

- A In terms of the Energy Companies Act 1992 the Power Board is to prepare an establishment plan for submission to the Minister of the Crown responsible for the administration of the Act.
- B In accordance with the establishment plan the undertaking of the Power Board will vest in EASTLAND ENERGY LIMITED at Gisborne ("the Company") on the appointed day by Order in Council made by the Governor General.
- C On the appointed day the Company will issue to such persons as are specified in the order fully paid up equity securities, and debt securities of such kind, number, nominal value and terms as are specified in the Order in Council.
- D The Power Board has resolved to create a Trust for the purpose of making provision for the benefit of the community in the district and with the intention of issuing, to the Trustees equity securities and debt securities as set out in the establishment plan.
- E The Power Board will pay the sum of \$100.00 to the Trustees to be held by them upon the Trusts and with the powers, authorities and discretions contained in this Deed.
- F The Council joins in and executes this deed in acknowledgement of its participation in the attainment by the Trustees of the purposes set out in this deed and not as settlor or beneficiary.

THIS DEED WITNESSES

1 DEFINITIONS

In this Deed the following terms, where the context admits, shall have the following meanings:

- 1.1 "**The Act**" means the Energy Companies Act 1992 unless some other Act is specified in this Deed.
- 1.2 "**Appointed day**" shall have the meaning ascribed to it by the, Act.
- 1.3 "**Beneficiary**" means a natural person domiciled in the district and any other person (whether corporate or unincorporate) conducting an activity or carrying on business in the district-
 - (i) Whose name appears on the residential electoral roll of the Council; or
 - (ii) Whose name appears on the ratepayer electoral roll of the Council; or
 - (iii) Whose nominee's name appears on the ratepayer electoral roll of the Council pursuant to Section 7BG of the Local Elections and Polls Act 1976; or
 - (iv) Who at any time is listed on a roll of voters entitled to vote at an election of councillors of the Council, or

- (v) Who, on a date which is 30 days prior to the date of distribution to or for the benefit of that person of any payment pursuant to this Deed, is listed in the records of the Company as a person connected to the Company's electricity distribution system.

"Beneficiaries" has a corresponding meaning.

- 1.4 **"The Company"** means Eastland Network Limited, New Zealand Registered Company Number 338099 and also includes all other companies in the Eastland Group associated with or owned by the Trust.
- 1.5 **"Director"** or **"the directors"** means a director or the directors of the Company.
- 1.6 **"The district"** means the district of the Council as defined in the Local Government (Gisborne region) Reorganisation Order 1989.
- 1.7 **"Establishment plan"** means the establishment plan (as defined in the Act) of the Power Board.
- 1.8 **"Financial year"** means any year ending on the 31st day of March or such other date that the Trustees may adopt as the financial year of the trust.
- 1.9 **"The Council"** means the Gisborne District Council and its successors including the territorial or other authority for the time being having responsibility for the district.
- 1.10 **"The Power Board"** means The Poverty Bay Electric Power Board constituted under the Electric Power Boards Act 1925.
- 1.11 **"Purposes of the Trust"** means the purposes of the Trust specified in clause 5.
- 1.12 **"Section"** refers to a section of the Act, unless some other Act is specified.
- 1.13 **"Termination date"** means:
- (a) The day upon which shall expire the period of 80 years from the date of execution of this deed being within the perpetuity period permitted to be specified herein by Section 6 of the Perpetuities Act 1964 and the perpetuity period applicable to this Deed is hereby specified accordingly, or
- (b) Such date being earlier than the day specified above but not earlier than 20 years from the date of this Deed as the Trustees may in their absolute and uncontrolled discretion by deed appoint and that day shall for all purposes be and become the termination date in respect of the Trust Fund.
- 1.14 **"The Trust"** means Eastland Energy Community Trust established by this Deed.
- 1.15 **"The Trustees"** means the Trustees for the time being of the Trust.
- 1.16 **"Trustee appointment date"** in each year means the first day of the second quarter of the financial year.
- 1.17 **"Trust period"** means the period from the date of execution of this Deed until the termination date.

2 CONSTRUCTION

- 2.1 The clause headings and central headings shall not affect the construction of this Deed.
- 2.2 Where the context admits:

- (a) Words importing persons include corporate bodies.
- (b) Words importing the singular number include the plural number also and vice versa.
- (c) Words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act.

3 **NAME OF TRUST**

3.1 The name of the Trust is **Eastland Energy Community Trust**.

3.2 Notwithstanding clause 7 the Trustees after consultation with the Council may from time to time change the name of the Trust by resolution of the Trustees that has received the affirmative vote of not less than 75% in number of the Trustees.

4 **CREATION OF TRUST**

The Trustees shall hold upon the Trusts and with the powers, authorities and discretions contained in this Deed:

- (a) The sum of \$100.00 paid by the Power Board to the Trustees; and
- (b) All other money, investments and property added to it by the Power Board or by any other person with the consent of the Trustees including equity securities and debt securities issued to the Trustees by the Company (all in this Deed being referred to as "the Trust Fund").

5 **PURPOSE OF THE TRUST**

5.1 The Trust is established for the following purposes:

- 5.1.1 To preserve the value of the capital of the Trust Fund having regard to the effect of inflation and profits and losses from time to time earned or sustained by the Trustees in the exercise of their powers and duties under this deed, or any other losses sustained by the Trustees.
- 5.1.2 To provide for the beneficiaries in such manner as the Trustees shall from time to time decide including, without limiting the generality of the foregoing:

- (a) Paying for or subsidising the installation or maintenance of electricity reticulation or the supply of electricity in areas of the district where the Trustees, after taking such advice as they think fit and having regard to the cost of supplying power to those areas, are of the opinion that the provision of those services by the Company will not provide an acceptable commercial return to the Company except at a cost to the consumer of that electricity that is excessive having regard to the cost to the majority of consumers who are connected to the Company's electricity distribution system and who have similar load profiles.
- (b) Supporting business, community and other initiatives which in the opinion of the Trustees are likely to encourage or sustain economic growth within the district that is or may be directly or indirectly for the benefit of the beneficiaries.

5.2 No Trust purpose stated in this clause shall be deemed to have greater significance than any other such purpose.

6 APPLICATION OF THE TRUST FUND

6.1 Trusts of income

During the Trust period, the Trustees may, in their sole discretion:

6.1.1 Apply so much of the income of the Trust Fund as they think fit in payment of any of the following:

- (i) The expenses of administering the Trust Fund;
- (ii) The costs of acquiring further assets of the Trust Fund;
- (iii) Any debts or liabilities of the Trust Fund;
- (iv) Any other payments authorised by this deed

notwithstanding that such payments would be normally charged against capital.

6.1.2 Retain such part or parts as they think fit of the income of the Trust Fund not applied in accordance with the powers conferred by the preceding paragraph 6.1.1:

- (i) For the purpose of establishing or increasing a reserve fund or reserve funds to provide for any payments or liabilities of the kind mentioned in the preceding paragraph 6.1.1;
- (ii) For the equalisation of income;
- (iii) For capitalisation of income

and the Trustees may at any time or times resort to any such reserve fund for any of those purposes and may apply any part or the whole of it as if it had been income arising in any subsequent accounting period prior to the termination date. Income arising from such reserve fund shall be deemed to be income from the Trust Fund and the balance of any such reserve fund remaining at the termination date shall be deemed to be an accretion to the capital of the Trust Fund and shall follow the destination of it.

6.1.3 Exercise their discretionary powers to capitalise income in accordance with the preceding paragraph for the Trust purpose set out in clause 5.1.1.

6.1.4 From time to time apply the whole or any part of the income of the Trust Fund in such a way as in the opinion of the Trustees will achieve any one or more of the Trust purposes set out in clause 5.1.2 including but without limitation paying or applying the whole or any part of the income of the Trust Fund to or for the benefit of such one or more of the beneficiaries as the Trustees shall decide and whether or not to the exclusion of any other or others of them.

6.1.5 In exercising their discretionary powers under the preceding clause 6.1.4 for any of the purposes set out in clause 5.1.2(a) and without in any way derogating from or limiting the nature of such discretionary powers the trustees, by way of example, may:-

- (a) Pay subsidies or grants or make loans with or without interest directly or indirectly to any beneficiary.
- (b) Pay subsidies or grants or make loans with or without interest to any person firm or body constructing or maintaining any electricity work connecting with the Company's electricity distribution system.

- (c) Construct subsidise maintain or support any stand-alone electricity generation system where, after consultation with the Company, the Trustees are of the opinion that the provision of such a generation system would be cost effective.
- (d) Pay subsidies or grants or make loans with or without interest to the Company or from time to time to agree to or acquiesce in the Company retaining profits in preference to paying dividends for the purpose of enabling the Company to construct maintain or support the installation or maintenance of works that will achieve the Trust purposes set out in clause 5.1.2(a) including works that will reduce line charges and including the construction or maintenance of standalone generation systems.

6.1.6 Accumulate any income not otherwise paid or applied for the purposes previously described in this clause and hold such accumulated income together with income accumulated in previous years upon the same trusts as are set out in this deed in respect of income. The Trustees may at any time or times resort to the accumulated fund and apply the whole or any part of it in the manner set out in this deed as if it were income of the Trust Fund. Upon the termination date any income not so paid or applied shall be an accretion to the capital of the Trust Fund and shall follow the destination of it.

6.2 Trusts of capital

On the termination date the Trustees shall hold the Trust Fund upon trust for the Council.

7 VARIATION OF TRUST DEED

7.1 This Deed may be varied by resolution of the Trustees passed by the unanimous vote of the Trustees and after consultation with the Council provided that, such variations shall not alter modify or affect clauses 1.3, 1.9, 5, 6, 7 and 25 and provided further that any such variation shall not in any way limit the power of the trustees:-

- (a) To sell, transfer or dispose of any shares held by them in the Company; or
- (b) To vote as they see fit on any proposal relating to the disposal of the assets of the company.

7.2 For the purposes of this clause "company" shall include the company and any other company or undertaking which has taken over or otherwise acquired the assets of the company and in which the trustees hold shares.

8 NUMBER OF TRUSTEES

8.1 The number of Trustees shall be fixed by the Council and shall be no fewer than five nor more than seven.

9 APPOINTMENT OF TRUSTEES

9.1 Notice requesting written applications for appointment as Trustees (other than the first Trustees appointed under this Deed) shall be advertised by the Council in the second month after the end of each financial year in the principal newspaper circulating in the district.

9.2 Appointment of Trustees shall be from interested applicants and shall be made by the Council effective from the Trustee appointment date. The Council shall appoint sufficient Trustees so that at all times, save for casual vacancies as provided for in clause 12, there are no fewer than five and no more than seven Trustees.

9.3 The Council in appointing Trustees shall take all reasonable steps to ensure that:

- (i) The Trustees to be appointed shall be persons capable of representing the interests of the community as a whole;
- (ii) The Trustees to be appointed shall have adequate business and commercial ability.
- (iii) The Trustees to be appointed shall be persons who are likely to ensure that the purposes of the Trust are attained;
- (iv) While equity securities and debt securities in the Company are held as part of the Trust Fund the Trustees to be appointed shall be persons who are likely to ensure that the Company operates as a successful business and who shall have regard to the desirability of ensuring the efficient use of energy;

9.4 In appointing Trustees the Council shall ensure that:

- (i) One Trustee shall be either the Mayor of Gisborne or if the Mayor is unable or unwilling to act then instead of the Mayor one Trustee shall be such elected member of the Council as the Mayor nominates;
- (ii) Not more than one Trustee shall be a past director or past employee of the Company;
- (iii) Not more than one Trustee shall be a past employee or a past Councillor of the Council;
- (iv) The Mayor of Gisborne or the Mayor's nominee shall be the only Trustee who is also an elected member of the Council;
- (v) If the Council shall fail for one month after the appointment date to appoint trustees in accordance with this clause a casual vacancy or vacancies shall be deemed to have occurred to the extent of that failure.

9.5 No Trustee shall be aged more than 70 years at the time of appointment.

10 DISQUALIFICATION AS TRUSTEES

10.1 The following persons shall be incapable of being appointed to be, or if appointed, of continuing to be a Trustee of the Trust:

- 10.1.1 A person who is mentally disordered within the meaning of the Mental Health Act 1969.
- 10.1.2 A bankrupt who has not obtained an order of discharge or whose order of discharge is suspended for a term not yet expired, or is subject to conditions not yet fulfilled.
- 10.1.3 A person to whom an order made under Section III of the Insolvency Act 1967 applies.
- 10.1.4 A person in respect of whom a composition or arrangement with that person's creditors is in force.
- 10.1.5 A person who is subject to a property order made under Section 30 or Section 31 of the Protection of Personal and Property Rights Act 1989.
- 10.1.6 A person who has served a term of imprisonment, or has been convicted of any offence punishable by imprisonment for a term of two (2) years or more.
- 10.1.7 A person who is prohibited under Section 188A or Section 189 or Section 189(f) of the Companies Act 1955 from being a director of a Company.

10.1.8 A person who before or after appointment as a trustee under clause 9 was or is or becomes a director or employee of the Company.

10.1.9 An existing Trustee who fails to attend three consecutive meetings of Trustees without obtaining leave of absence.

10.1.10 A person who is a current employee of the Council.

11 ROTATION OF TRUSTEES

11.1 On each Trustee appointment date, one third of the Trustees for the time being or, if their number is not three or a multiple of three, then the number nearest one third must retire from office. A Trustee must not retire under this sub-clause until that Trustee has been in office for three years since that Trustee's last appointment.

11.2 The Trustees to retire in every year shall be those who have been longest in office since their last appointment, but as between persons who became Trustees on the same day those to retire (unless they otherwise agree among themselves) shall be determined by lot.

11.3 A retiring Trustee shall be eligible for re-appointment.

11.4 At least ten weeks prior to the Trustee appointment date the Trustees shall notify to the Council the names of all Trustees who have given notice of retirement or who have become disqualified from acting as Trustees or who are due to retire by rotation.

12 CASUAL VACANCIES

12.1 The Trustees shall have power at any time to appoint any person or persons eligible to be a Trustee to fill any casual vacancy but the Trustees shall exercise such powers so as to comply with the requirements of clauses 9.3 and 9.4. Any Trustee so appointed shall hold office only until the next Trustee appointment date, and shall then be eligible for re-appointment but shall not be taken into account in determining the Trustees who are to retire by rotation at the next Trustee appointment date.

12.2 The powers of the Trustees shall not be affected by any casual vacancy except where the number of Trustees falls below four thereby rendering the remaining Trustees incapable of forming a quorum, in which event the remaining Trustees shall be empowered to fill the-casual vacancy or vacancies necessary to bring the number of Trustees up to the minimum number of five.

13 PROCEEDINGS OF TRUSTEES

13.1 Chairperson

The Trustees shall from time to time appoint one of their number as chairperson and may remove any such chairperson from that office. The Trustees shall determine the period for which any chairperson is to hold office, if not earlier removed. If the chairperson is not present at any meeting of the Trustees, then those Trustees present may choose one of their number to be chairperson of the meeting. The Chairperson appointed by the Trustees shall not be the Mayor of Gisborne or the Mayor's nominee under clause 9.4(iii) each of whom shall be ineligible for appointment as Chairperson.

13.2 Meetings and votings

13.2.1 The Trustees may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit.

- 13.2.2 Except where some other majority is required by this Deed, questions arising at any meeting shall be decided by a simple majority of votes.
- 13.2.3 The chairperson or any two of the Trustees may at any time summon a meeting of the Trustees.
- 13.2.4 Notice of each meeting of Trustees shall be given by sending or delivering the same to the last known place of residence of, or other address for service notified by, each trustee at least fourteen days prior to the meeting provided that at any meeting the Trustees may decide to waive the notice requirement for that meeting.
- 13.2.5 Fourteen days prior public notice of each meeting of the Trustees shall be given by advertisement in the principal newspaper circulating in the district.
- 13.2.6 The quorum necessary for the transaction of the business of the Trustees shall be four Trustees or two thirds or the nearest fraction by number of two thirds of the Trustees, whichever is the greater.
- 13.2.7 The Trustees shall cause minutes to be kept of their meetings.
- 13.2.8 The Trustees may from time to time delegate any of their powers to committees consisting of no fewer than three members of their body and of such other persons (if any) as they think fit. Any committee so formed shall in exercise of the powers so delegated conform to any regulations that may be imposed on it by the Trustees. The Trustees may prescribe procedural rules for any such committee.
- 13.2.9 If any dispute or difference shall arise between the Trustees respecting any matter relating to the Trust Fund the decision of the majority of the Trustees shall be binding on the other Trustees provided that any Trustee may require the Trustees to record their disagreement and advise the Council of the disagreement.
- 13.2.10 Part VII of the Local Government Official Information and Meetings Act 1987 and any Act passed in substitution for that part of that Act shall apply to the Trust hereby constituted and to all proceedings of the Trustees as if the Trust and the Trustees were a local authority within the meaning of that Act.

14 **CONFLICTS OF INTERESTS AFFECTING TRUSTEES**

14.1 **Association with the Company**

A Trustee shall not be employed in the service of or hold any office in or become a director of the Company.

14.2 **Disclosure of interests**

A Trustee who has in any way, whether directly or indirectly, a material interest in any contract or proposed contract or arrangement or dealing with the Trust (other than as a consumer of energy or as an owner, member, officer or employee of any firm, company or organisation that is a consumer of energy) shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.

14.3 **Voting in quorum**

A Trustee required to disclose an interest by clause 14.2 may be counted in the quorum present at the meeting but shall not vote in respect of the matter in which that Trustee is interested and if the Trustee does so the vote shall not be counted.

14.4 **Adjudication on interest**

If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the chairperson of the meeting and his or her ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interests of the Trustee concerned have not been fairly disclosed. If a question of the chairperson's interest is involved then the Trustees shall appoint a disinterested Trustee and that Trustee shall have all the powers of the chairperson in determining such question.

15 **REMUNERATION AND REIMBURSEMENT OF TRUSTEES**

15.1 The Trustees shall be entitled in each financial year to such remuneration for their services as Trustees as may be reasonable having regard to the Trustees' duties and responsibilities. The amount of such remuneration shall be approved by the Council and the total remuneration shall be shown separately in the financial statements.

15.2 The Trustees shall be entitled to be reimbursed for all reasonable expenditure incurred by them on behalf of the trust, subject in every case to the provision of receipts.

16 **SPECIAL RESPONSIBILITIES**

16.1 The Trustees may take up and hold the debt security described in the Establishment Plan as the Subordinated Debt Security.

16.2 The Trustees shall ensure that full and correct accounts are kept of all the financial transactions of the Trust and its assets and liabilities and funds.

16.3 The Trustees shall within four months after the end of each financial year cause audited financial statements to be prepared, including a balance sheet, profit and loss statement, income and expenditure accounts, source and application of funds statement, Trustees' total remuneration and expenses and notes to those documents, giving a true and fair view of the financial affairs of the Trust for that financial year.

16.4 The financial statements referred to in clause 16.3 must be prepared in accordance with generally accepted accounting practice (within the meaning of Section 3 of the Financial Reporting Act 1993 applied as if the Trust was a reporting entity). The financial statements must be submitted to an auditor for audit. The auditor:

16.4.1 must be a person who is qualified to act as an auditor under Section 199 of the Companies Act 1993;

16.4.2 must not be a trustee, director, employee or agent of the Trust or the Company or otherwise disqualified from being an auditor under Section 199(2)(b) and (d) of the Companies Act 1993.

Additionally Sections 198, 200 and 202 to 207 of the Companies Act 1993 apply in relation to the auditor. These Sections apply as if references to a company were to the Trust, references to a director were to a trustee, references to a board were to trustees, references to shareholders were to beneficiaries, references to a subsidiary were to the Company and the Company's subsidiaries and all other necessary modifications were made..

16.5 The Trustees shall ensure that the annual financial statement discloses the name of any person to whom payments of in total of not less than \$1,000 in any one year (or as increased by the percentage annual change in the Consumer Price Index) are made by the Trustees pursuant to

- clauses 6.1.4 of this Deed except where payments are made to members of a class of persons in which case it will be sufficient to describe that class.
- 16.6 Within four months after the end of each financial year the Trustees shall cause to be prepared an annual report for the Trust which shall include amongst other things:
- 16.6.1 The financial statements set out in clause 16.3.
 - 16.6.2 The auditors report on the financial statement.
 - 16.6.3 A general description of any projects undertaken or supported by the Trust during the financial year.
 - 16.6.4 The performance results and other measures by which the performance of the Trust during that financial year may be reasonably assessed in relation to its previous statement of intent.
- 16.7 Not later than one month before the end of the financial year the Trustees shall prepare and deliver to Council a statement of intent which in respect of the subsequent year shall include amongst other things:
- 16.7.1 The objectives and directions of the Trust.
 - 16.7.2 The nature and scope of the activities to be undertaken.
 - 16.7.3 Performance targets and other measures by which the performance of the Trust may be judged in relation to its objectives.
 - 16.7.4 The kind of information which is to be provided to the beneficiaries by the Trust during the course of the year.
 - 16.7.5 The details of transactions entered into or intended to be entered into with the Company and the Council.
 - 16.7.6 Such other matters as are agreed with the Council.
 - 16.7.7 The details of any intended acquisitions, investments or divestments of a significant nature including any changes or planned changes in its shareholding in the Company.
- 16.8 Not later than one month before the end of the financial year the Trustees shall prepare and deliver to the Council the Trustees' budget estimates for the following year with sufficient detail of expenses and revenue including proposed Trustee's remuneration to enable the Council to make an informed assessment of the proposed operation of the Trust for the next financial year.
- 16.9 Prior to the public meeting, referred to in clause 16.10 the Trustees shall consult with the Council in Committee as to the content of the statement of intent and budget estimates and shall include in it such matters as are agreed between the Council and the Trustees.
- 16.10 The Trustees must, in each financial year, and no later than four weeks after the auditor reports to the Trustees on the Trust's financial statements, hold an annual meeting of beneficiaries at which:
- 16.10.1 the Trustees must report on the operation of the Trust during the preceding financial year and the Trustees' planned operations and objectives for the current year;
 - 16.10.2 the beneficiaries must appoint an auditor to hold office from the conclusion of the meeting until the conclusion of the next annual meeting of beneficiaries;

- 16.10.3 the beneficiaries must fix the fees and expenses of the auditor or determine the way in which the auditor's fees and expenses must be fixed;
- 16.10.4 the Trustees must call for and allow discussion of the annual report and statement of intent and budget estimates for the current year.
- 16.11 Not later than four months after the end of the financial year, the Trustees must make the annual report, budget estimates and statement of intent for the current year available for inspection by the public at the offices of the Trust and at other locations specified by the Trustees in the notice required to be given under clause 16.12.1. The Trustees may make a reasonable charge to any person requiring a copy of any of the documents.
- 16.12 The Trustees must give:
- 16.12.1 notice of the fact that copies of the financial statements and auditor's report are available and where they are available;
- 16.12.2 no less than 14 days' notice of the annual meeting of beneficiaries called under clause 16.10;
- in the news section of two separate editions of each newspaper that is widely read by persons in the District.
- 16.13 At the annual meeting of beneficiaries:
- 16.13.1 every beneficiary has one vote;
- 16.13.2 the quorum is 20 beneficiaries;
- 16.13.3 no business may be transacted if a quorum is not present.
- 16.14 The statement of intent may be varied or modified by the Trustees after consultation with the Council. The Trustees shall give to the Council written advice of any proposed changes to the statement of intent and within one month of such notice shall consult with the Council on the proposed changes. If required by the Council after consultation with the Trustees public notice of any change in the statement of intent shall be given by advertisement in the principal newspaper circulating in the district or at a public meeting, of the Trustees as the Council and the Trustees shall agree.

17 **DIVESTMENT OF EQUITY SECURITIES**

- 17.1 The Trustees may, at such time and in such number as they see fit after prior consultation with the directors, divest themselves of equity securities (in this clause called "shares") held by them in the Company.
- 17.2 The divestment of shares referred to in sub-clause 17.1 may be carried out by way of offer of shares to the public or by sale by private treaty or by a combination of those methods. The sale price of the shares shall be set by the Trustees after prior consultation with the Directors and such other advisors as the Trustees and the Directors shall together appoint.
- 17.3 Any public offer shall include the following requirements:
- 17.3.1 The minimum parcel of shares to be allotted to each subscriber shall be not less than 500 shares.
- 17.3.2 In the event of oversubscription the following allocation procedures will apply:

- (1) A full allocation will be made to subscribing beneficiaries in priority to other subscribers.
- (2) Where a full allocation has been made to subscribing beneficiaries, any balance of the issue shall be allocated to other subscribers as follows:
 - (i) Where the number of shares permit, each subscriber shall receive the minimum parcel of shares.
 - (ii) Where there are shares remaining after each subscriber has received the minimum parcel of shares, those remaining shares shall be allocated among the subscribers in such manner, as the Trustees decide.
 - (iii) Where the number of shares does not permit each subscriber to receive the minimum parcel of shares, the balance of the issue shall be allocated among the subscribers in such manner, as the Trustees decide.
- (3) Where a full allocation is unable to be made to subscribing beneficiaries, the issue shall be allocated to the subscribing beneficiaries in such manner, as the Trustees decide.

17.4 As long as the Trustees hold equity securities in the Company the Trustees shall at the expiration of each period of three years review their continued holding of such securities and the divestment options open to them. Such review shall take place at the time of preparation of the annual report and shall take into account the interests of the beneficiaries and the implications for the Company of the retention or divestment of those securities. The conclusions reached by the Trustees shall be included in the annual report.

18 **COMMON SEAL**

18.1 The Trust shall have a common seal.

18.2 The Trustees shall provide for the safe custody of the common seal, which shall only be used by the authority of the Trustees or of a committee of the Trustees authorised by the Trustees in that behalf, and every instrument to which the seal is affixed shall be signed by at least three of the Trustees.

18.3 The use of the Trust seal shall on each occasion be recorded in a register maintained by the Trustees for that purpose.

19 **FORM OF CONTRACTS**

19.1 Contracts on behalf of the Trustees may be made as follows:

19.1.1 A contract which if made by private persons would be by law required to be by deed may be made on behalf of the Trustees in writing under the common seal of the Trustees attested in such manner as is provided in clause 18.

19.1.2. A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged, may be made on behalf of the Trustees in writing signed by any person acting under their express authority.

19.2 A contract made according to this clause shall be effectual in law, and shall bind the Trustees and their successors and all other parties to the contract.

20 **PRESUMPTION OF VALIDITY OF ACTS OF TRUSTEES**

20.1 All acts or deeds done or made by any person acting in good faith as one of the Trustees shall be valid notwithstanding any defect that may afterwards be found in his or her appointment and the signature of any person purporting to act as one of the Trustees shall, in the absence of proof to the contrary, be sufficient evidence of his or her being one of the Trustees.

21 **TRUSTEES LIABILITY**

21.1 No trustee acting or purporting to act in the execution of the trusts of this deed shall be liable for any loss not attributed to his or her own dishonesty or to the wilful commission or omission by him or her of an act where such commission or omission is known by him or her to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

21.2 Notwithstanding anything in this deed no Trustees shall be liable for any breach of trust in respect of any duty to exercise care, diligence and skill that a prudent person of business would exercise in managing the affairs of others merely because the investments of the Trust Fund are not diversified.

21.3 Notwithstanding the provisions of Section 13C of the Trustee Act and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, it is hereby declared that the care, diligence and skill to be exercised by the Trustees in exercising any power or investment shall not be that required of such persons by the said Section 13C, but shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

22 **INDEMNITY**

22.1 Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust against any liability incurred by him or her in defending any proceedings whether civil or criminal taken against him or her by reason of his or her actions in relation to or connection with the Trust in which judgment is given in his or her favour or in which he or she is acquitted by the Court in respect of any negligence, default, breach of duty or breach of trust.

23 **DUTIES OF AND RELATIONS WITH THE COUNCIL**

23.1 The officers and employees of the Council shall if required by the Trustees perform all the necessary administrative tasks to enable the Trustees to meet and to adequately discharge their functions and responsibilities under the terms of the Trust.

23.2 The Council shall, if required, provide a venue for the Trustees.

23.3 The Council shall be entitled to charge the Trust for all reasonable costs incurred pursuant to this clause.

23.4 Any decision which must be made by the Council in terms of this deed shall be made by resolution of a general meeting of the Council.

23.5 Within one month after receiving any report statement or other information provided to it by the trustees pursuant to clause 16 the Council will report in writing to the Trustees any recommendation to the Trustees it intends to make and in the absence of such report in writing the Trustees shall be entitled to assume that the Council has no recommendation to make.

- 23.6 Wherever in this deed the Trustees are required to take any action after consultation with the Council the following procedure for consultation shall apply: -
- (a) Notice of the matter requiring consultation shall be given in writing by the Trustees to the Council.
 - (b) Within one month after receipt by the Council of the Trustees' notice consultation shall take place in committee between the Trustees or their duly appointed representative and a Councillor or Councillors appointed by the Council to conduct the consultation on its behalf.
 - (c) In the event of a failure by the Council to appoint a Councillor or Councillors or in the event of a refusal of the Council's appointees to meet with the Trustees within one month after the Trustee's notice has been delivered to the Council the Trustees may proceed as if the Council had no objection to the action proposed to be taken.

24 **RECEIPT FOR PAYMENT**

- 24.1 In respect of any income, capital or other moneys paid or appropriated by the Trustees to any beneficiary pursuant to the Trusts of this Deed, it shall not be necessary for the Trustees to obtain from that beneficiary any signed receipt or discharge for any such payment.
- 24.2 Where payment to any beneficiary has been made by cheque or warrant sent through the post, payment shall be deemed to have been made if posted to the last known address of that beneficiary in a pre-paid envelope and shall be deemed to have been made at the time at which the same would have been delivered in the ordinary course of post.
- 24.3 In proving payment of any sum the Trustees may rely upon any receipt, electronic record, record of payment or other proper evidence that any payment has been directed to the appropriate recipient and a certificate in writing signed by any Trustee, the secretary or other officer of the Trust to that effect shall be conclusive proof that payment was so made.

25 **POWER OF RESETTLEMENT**

- 25.1 The powers of the Trustees in relation to income and capital contained in clause 6 of this Deed shall without in any way limiting or restricting such powers include the power for the trustees in their absolute and uncontrolled discretion at any time or times before the termination date to resettle **UPON TRUST** in any manner which in the opinion of the Trustees is wholly or in part for the benefit of any person who for the time being shall be a discretionary or capital beneficiary under the Trusts hereof the whole or any portion or portions of the capital or income of the Trust Fund provided however that such resettlement shall not transgress the rule against perpetuities and provided further that such resettlement shall not be inconsistent with the purposes of the Trust.

26 **TRUSTEES' GENERAL POWERS**

- 26.1 For the purposes of the Trust the Trustees shall have full power and authority to buy, sell, lease, invest, mortgage, deal and carry on business with and generally manage and order the Trust Fund in all respects as if the Trustees were the absolute beneficial owners of it and the powers set forth in clause 27 of this Deed shall be deemed to be in aid of this present power but shall not derogate from its generality.

27 **TRUSTEES' POWERS EXTENDED**

The Trustees in addition to all powers vested in them by statute or at law and in their absolute and uncontrolled discretion may for the purposes of the Trust exercise the following powers and authorities or any of them in respect of the Trust Fund generally, namely:

27.1 Generally deal with Trust Fund

To sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with, dispose of, or transfer any item or asset comprising the whole or part of the Trust Fund, or otherwise held by the Trustees under the terms of the Trust for such consideration and on such terms as in their discretion they may think fit; with power, without being liable for loss, to receive payment wholly or partly in cash, or in company shares, debentures, or debenture stock, and to give time for payment of the purchase money with or without security.

27.2 Real and personal property

To acquire, dispose of, exchange (with or without payment or receipt of money for equality of exchange), mortgage, sub-mortgage, lease, sublease, grant, release or vary any right or easement, or otherwise deal with real property or any estate or interest in it, or personal property of any kind; and in any such case to allow all or any of the purchase price to remain owing on mortgage and also, if the Trustees think fit, to apply in reduction of the principal sum owing under any such mortgage all or any part of any income received from the property without being required to recoup any part of the income so applied out of the capital of the Trust Fund.

27.3 To subdivide and develop property

To partition, subdivide or agree to the partition or subdivision of property of any kind which, or any interest in which, may be subject to the trusts contained in this deed; to pay moneys by way of equality of partition; to enter into any contract, agreement or arrangement with any person for or with respect to the development, improvement and turning to account of any real or personal property or any interest in it or any other right, privilege or interest subject to these trusts, or with respect to the construction of any buildings, laying out or preparing land for building purposes, or in developing or turning to account real or personal property or any rights, privileges or interest; to employ surveyors, builders, land agents, architects or contractors to prepare plans, carrying out roading, channelling and draining; and do anything else the Trustees deem desirable or necessary for the proper carrying out of the subdivision or development or for complying with the requirements of any authority set up by law.

27.4 Maintenance of property

To maintain and preserve in good and substantial order and condition the real and personal property of the Trust Fund or otherwise held by the Trustees under the terms of this deed and to pay or defray any costs.

27.5 To take lease

To lease premises from any person, acquire the interest of any lessee in any lease, hire, obtain the renewal of any lease, enter into sublease, tenancy or rights of any nature whatsoever, in and to any realty, or estate or interest in it, or in and to motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and personalty of any other description including livestock on such terms and conditions as the Trustees think fit including an optional or compulsory purchasing clause.

27.6 To let

To lease, let or bail any property forming part of the Trust Fund or held by the Trustees pursuant to the provisions of this deed including livestock for such period at such rental and to any persons, upon terms and conditions as the Trustees decide, including an optional or compulsory purchasing clause, and to accept surrenders from, make allowances to and arrangements with a

lessee, tenant or bailee, with or without consideration, and generally to manage them as the Trustees may think fit.

27.7 To insure

To effect and keep valid and subsisting insurances of whatever nature in respect of any property forming part of the Trust Fund, to pay premiums from either or partly from both of capital or income; to transfer, surrender or charge any legal or beneficial interest in any policy; to accept, with or without consideration, any transfer or mortgage of any legal or beneficial interest in such policy; to agree with the insurer on any variation of terms of any policy and to hold accept and deal with any interest in any policy or proceeds.

27.8 Depreciation and reserve funds

To start, and to subscribe to, any depreciation or reserve funds for any purpose the Trustees may deem advisable, and to determine in their discretion whether those funds are income and capital.

27.9 Managers and agents

To employ and pay out of the Trust Fund such managers, agents, advisers, banks, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons to transact any business or do any act required to be done in connection with the administration of the trusts and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance with them and generally to exercise all the powers conferred by s 29 of the Trustee Act 1956 as if the proviso to s 19(3) were deleted.

27.10 Employees

To engage or employ persons including a Trustee or a person having an interest in or who is the holder of an office in a corporate Trustee, or obtain such other assistance as the Trustees may deem requisite, to provide staff amenities and to vary and terminate any contract of employment.

27.11 Management expenses

To pay out of the Trust Fund or the income of it, all costs, charges and expenses incidental to the management of the Trust Fund or to the exercise of any power, authority or discretion or in carrying out or performing the trusts of this deed which the Trustees consider appropriate.

27.12 To pay general expenses

To pay insurance premiums, rates, taxes, rents and outgoings in connection with real or personal property of the Trust Fund, to manage such property and effect repairs as the Trustees may consider necessary or advisable. Where the Trustees are unable to charge such expenditure against income of the Trust Fund they shall be at liberty to charge the same to capital.

27.13 To lend

To lend moneys forming part of the Trust Fund or give credit to any person including a beneficiary on such terms as may seem expedient. Any such lending or receiving of credit may be made at call or for a period of time and may be made at a rate of interest or at no interest and may involve taking of security in any form or without security.

27.14 To borrow

To raise or borrow moneys either alone or jointly with another, from any person including a firm or company, at such rate of interest or free of interest and on terms and conditions and for purposes as the Trustees may decide, and to secure the repayment of any moneys or other

indebtedness by mortgage, charge, security or other encumbrance over the whole or any part of the Trust Fund as the Trustees in their discretion may decide and from time to time to vary or renew the same; or to have the repayment secured over property of a third party which may include property of a trustee of a Beneficiary, whether such third party collateral security is given alone or jointly with property of the Trust Fund, no lender being concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purposes for which it is required, or as to the application of moneys borrowed.

27.15 Commercial bills

To draw, endorse, accept, guarantee or be a party in any way to a commercial bill or other bill of exchange, promissory note, letter of credit, hypothecation or other facility involving the raising, borrowing or lending of money by or to the Trustees.

27.16 Credit

To enter into, alone or with others, any agreement or arrangement for obtaining credit upon such terms and conditions as the Trustees may think fit including but not limited to obtaining, upon deferred terms as to payment, goods, trading stock or other property or services of any nature.

27.17 Guarantees and indemnities

Whether with or without security and whether alone or jointly or severally or both jointly and severally with any other person to guarantee, indemnify, secure by way of mortgage, charge or otherwise the whole or part of the Trust Fund; or undertake in any way the payment or repayment of money or debts (including any interest whether existing or to accrue) previously or then lent or to be advanced, or an existing or future duties, undertakings, liabilities or obligations incurred by any person including a Beneficiary; and to guarantee or indemnify with or without security, or secure the due performance of any contract, agreement, covenant or obligation due or accruing and to authorise any company in which the Trustees hold shares to enter into any such security.

27.18 Bank accounts

To open in the name of the Trustees or in the name of a person or corporation as nominee of the Trustees, or in the joint names of the Trustees and another, any cheque, savings or other account with any bank or financial institution as the Trustees think fit, with full power to operate on any such account including, but without limiting the generality of the foregoing, power to sign, draw and endorse cheques and other negotiable or transferable instruments on any such account and to close the same.

27.19 To carry on business

To carry on alone or jointly with another any business or an interest in any business, and use all or part of the Trust Fund in carrying on such business as the Trustees may decide, without liability for losses sustained by the Trust Fund; with power to charge against or pay or retain out of the Trust Fund all debts, costs, expenses or other outgoings incurred in carrying on such business or for the purpose of carrying it on or for the purpose of establishing a proposed business; and, without limiting the generality of the foregoing, the Trustees shall have the following powers exercisable at any time:

- (a) to investigate and determine the feasibility or desirability of establishing or carrying on or acquiring any business or an interest in any business which the Trustees propose or consider establishing or carrying on or acquiring (the Trustees shall be entitled to incur expenses in or in connection with any investigation and determination and to pay or recoup such expenses out of income or capital of the Trust Fund whether or not pursuant

to that investigation and determination the Trustees proceed to establish or carry on that business); and

- (b) to establish any business; and
- (c) to acquire the whole or part of the goodwill of an existing business; and
- (d) to acquire the assets or an interest in the assets of or used in any business; and
- (e) to undertake to meet liabilities or contingent liabilities incurred or to be incurred by any person in or about the establishment or carrying on or acquisition of the whole or part of an existing business, the goodwill and assets of which, or any of which, are proposed to be acquired by the Trustees and to give indemnities for, or enter into, guarantees of such liabilities and contingent liabilities of any of them; and
- (f) to acquire or join in acquiring chattels and stock in trade for use in, or in connection with, any business carried on or proposed to be carried on by the Trustees or in which the Trustees may acquire an interest; and
- (g) to make payments or loans, incur expenses or liabilities (including donations), or give guarantees which the Trustees consider to be for the benefit of any business carried on by, or proposed to be carried on by, the Trustees or in which the Trustees may have an interest or which the Trustees consider will promote or facilitate such business, notwithstanding that the Trustees may be under no legal or enforceable obligation to make such payments or incur such expenses or liabilities, and notwithstanding that such payments or the incurring of such expenses or liabilities do not produce any direct benefit to the Trust Fund; and
- (h) to engage and employ agents, contractors and employees on whatever terms and conditions and with whatever powers and authorities the Trustees think fit, and dismiss them and engage and employ others; and
- (i) to employ any person including one or more of the Trustees to be a manager of all or part of the business at such salary and on such other terms and conditions as the Trustees think fit; and
- (j) to enter into any covenant or agreement in restraint of trade; and
- (k) to enter into contracts for importing or exporting goods and to enter into contracts for the shipping or other transportation of goods; and
- (l) to recoup any losses incurred in carrying on any such business or venture out of the capital or out of the income (whether past or future) of the Trust Fund or out of both of such capital and income in such proportions and in such manner as the Trustees shall think fit; and
- (m) to sell the goodwill of any business.

27.20 **To farm**

Without in any way limiting or restricting the foregoing general powers the Trustees have the powers:

- (a) to sell and purchase sheep and other livestock; and
- (b) to purchase stores, feed for stock, machinery, vehicles and other implements and things; and

- (c) to borrow money upon bank overdraft, or by mortgage (with power of sale) of the farm property, or by any other security, so that no person lending money to the Trustees need enquire as to the purpose of borrowing or to see to the application of the proceeds or to see that no more is borrowed than is required; and
- (d) to engage and employ agents, contractors and employees on whatever terms and conditions and with whatever powers and authorities the Trustees think fit, and dismiss them and engage and employ others; and
- (e) to leave the entire management of the farm to a manager without the Trustees needing to attend personally to the management further than requiring the manager to render such periodic accounts of management as are reasonable, and without being in any way answerable or accountable for any dishonest or other wrongful act of the manager; and
- (f) to use and apply for the purpose of the farm any money represented other parts of the Trust Fund which the Trustees think fit; and
- (g) to apply for and accept new leases and licences, amalgamate, surrender, convert and change tenures of leases and licences, agree upon values of improvements, appear before any courts, be represented by solicitors and counsel, and generally act in relation to any land as if the Trustees were the beneficial owners of any leases or licences forming part of the Trust Fund.

27.21 **Partnerships and joint ventures**

To enter into partnership or joint venture with any person on such terms and conditions as the Trustees think fit; to advance to, or employ in, any partnership or other business, with or without taking security, or to withdraw, the whole or any part of the capital or income of the Trust Fund; to agree to the introduction at any time of any new partner or the withdrawal of any existing partner; and to renew or vary the terms of such partnership, agree to the distribution or retention of profits of the partnership and terminate and be a party to the partition of assets of any such partnership or joint venture.

27.22 **To wind up a partnership**

To cause or concur in the winding up of the affairs of any partnership or other business, or the withdrawal of the Trustees upon whatever terms and in whatever manner they think fit.

27.23 **Companies**

To promote, form and incorporate or concur in any steps or proceedings which may be taken to incorporate a limited liability company for any purpose including purchasing, leasing or otherwise acquiring any undertaking, business and assets, including the assets of any company in which they hold shares, or which or an interest in which forms part of the Trust Fund or which the trustees decide to acquire for the benefit of the trust fund, and without limiting the generality of the foregoing the Trustees have the power:

- (a) to sell and transfer any undertaking, business and assets to any company or the Trustees for any company proposed to be formed; and
- (b) to carry out and complete any scheme or arrangement for the amalgamation of the undertaking, business and assets of any company on whatever terms as to the price or consideration being received in cash, or in shares (ordinary, preference or deferred), or in debentures or debenture stock of the purchasing company, or partly in one way and partly in another, and generally upon whatever terms and conditions the Trustees think fit, with power to allow time for payment of the whole or part of any cash consideration whether with or without security; and

- (c) to subscribe for and take securities, whether shares, stock, debentures, options or convertible securities of any kind of any company having whatever rights and privileges, and subject to whatever obligations the Trustees think fit, and notwithstanding that the Trustees may incur a liability for future calls on those shares, and notwithstanding that the Trust Fund may be insufficient to meet any such calls that may be made; and
- (d) to pay calls on securities or permit securities to be forfeited and sold; and
- (e) to purchase securities and take up securities of new issue; and
- (f) to make advances, loans, give guarantees, or provide in such other manner and upon whatever terms and conditions (and in the case of advances, loans, and Guarantees, either with or without taking security) as the Trustees think proper; and
- (g) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustees whether or not the company may do or cause to be done some act which the Trustees could not have done personally and notwithstanding that the result of such vote may diminish the value of the shares or the interest of any beneficiary of the Trust Fund and the Trustees are not responsible for any loss that may be occasioned; and
- (h) to sell securities at such price and upon such terms with or without security as the Trustees think fit; and
- (i) to assent to or join in any arrangement relating to the sale, transfer or exchange of any securities or modifying any rights, privileges or interests in relation to them; to agree to any scheme of arrangement for the increase or reduction of the value or amounts of any such shares or stock or of the capital of any company in which the securities form the whole or any part of the Trust fund, or by which any such securities are substituted or given in exchange either wholly or partly for other securities, whether in the same company or not and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to them; to pay out of the income or capital of the Trust Fund or property held by the Trustees, pursuant to the provisions of this deed, any contribution or expense incurred in connection with such scheme or arrangement and generally to manage and deal with any securities as if the Trustees owned them beneficially; and
- (j) without prejudice to the generality of the powers of the Trustees, if any company in which the Trustees hold shares is reconstructed or rearranged or creates a further issue of capital or carries into effect any scheme for capitalisation of its profits or for merger with any other company, the Trustees have the power to take up further shares in the company, or in any new company which may be formed in connection with the reconstruction, rearrangement or merger as they in their discretion think fit, whether the shares so taken up are wholly paid up or partly contributory, and may agree to the reconstruction, rearrangement, further issue of capital, capitalization of profits, or merger on whatever terms and conditions they think fit, and may execute any relevant deed, agreement or other documents; and
- (k) to agree in respect of a winding up with the liquidator of the company or any member of the company or any other person in all things as the Trustees shall think fit for the division or partition in kind or specie of the assets or property of whatsoever nature of the company; to accept any of such assets and property in payment or satisfaction of any interest of the Trustees in the company with power to pay any moneys by way of equality of division or partition.

27.24 Superannuation and bonuses

To pay bonuses, gratuities or retirement benefits or to establish and support or aid in the establishment and support of schemes providing superannuation, death and retirement benefits or any one or more of such benefits in respect of employees or ex- employees of the Trustees, including in the case of a corporate Trustee directors or other holders of any office of the company and the dependants of any such persons, and for the benefit of employees, ex-employees and their dependants of any company or person associated with the Trustees.

27.25 Choses in action

To acquire choses in action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the same in any way on such terms and conditions as the Trustees think fit.

27.26 Intellectual property rights

To apply for, purchase or otherwise acquire and to sell patents, patent rights, copyright, trade marks, designs, formulas, licences, concessions, know how and the like conferring any exclusive or non-exclusive or limited right to use, or any other intellectual property rights, and to use, exercise, develop or grant licences in respect of or otherwise turn to account property rights or information so acquired.

27.27 To advertise

To adopt such means of making known advertising any business or venture which the Trustees are empowered to carry on as seem expedient or desirable.

27.28 Agencies and licences

To apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business or venture which the Trustees are empowered by this deed to engage in, and to surrender, relinquish, sell, vary or assign the same.

27.29 Financial dealings

- (a) To enter into such dealings as leases of any type of property including equipment, machinery or plant of any type or any other types of property, leasing or rental arrangements.
- (b) To purchase, acquire, invest in or otherwise deal in debt instruments or obligations including commercial bills.
- (c) To take underwriting and sub-underwriting positions.
- (d) To carry on the business of stockbrokers, sharebrokers, merchant bankers and financiers generally.
- (e) To engage brokers and commission agents, to vary and determine the terms of any such engagement and either directly or through any broker or agents in any market in any part of the world to buy, sell, open, close out or otherwise deal in the future contracts of all kinds, or enter into, vary, exercise, abandon or sell any put or call option rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop loss orders; to tender and take delivery of commodities and currencies which are the subject of any futures contract or option and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

- (f) To purchase, invest in or otherwise acquire interest in aquatic, horticulture, general, farming, land supervision or development, films or any type of investment project whether singly or through joint ventures, partnerships, special partnerships, companies limited or unlimited or with no liability or otherwise.
- (g) To buy, sell, bail, trade in and deal in any live or dead stock or chattels and to make arrangements with agents or others for the transit of any live or dead produce or chattels either by sea or land.
- (h) To acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or of settlement by the Trustees in the establishment of such unit trust; and to exercise all rights including voting rights and perform all obligations as a holder of any units in such Trust and to accept all distributions by the Trustees of such unit trust as income or capital of the Trust Fund.
- (i) To acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchise, franchise agreements, licences or things of like nature relating to subject matters of all kinds.
- (j) To invest in the company to achieve any one or more of the Trust purposes set out in clause 5.1.2 by subscribing for equity securities and debt securities notwithstanding that such debt securities may be subordinated debt securities of a type referred to in clause 16.1.

27.30 **To determine between capital and income**

To determine whether real or personal property or any increase or decrease in amount, number or value of any property or any receipt or payment from, for, or in connection with real or personal property shall be treated as and credited or debited to capital or income of the Trust Fund and generally to determine all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trusts and powers of this deed. Every determination of the Trustees in relation to any of the above matters whether upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustees in relation to the Trust Fund shall bind all parties and shall not be objected to or questioned on any ground. If any company in which the Trust Fund may be interested declares any dividend which in the opinion of the Trustees has been paid out of profits other than trading profits of the financial year in respect of which such dividend has been declared the Trustees shall determine how much of that dividend ought to be treated as capital and how much as income of the Trust Fund, such determination to be made at the absolute and uncontrolled discretion of the Trustees after considering the nature of the profit used to pay the dividend and the account to which the dividend has been debited in the books of the company and the Trustees shall not be liable to any person pursuant to the payment of any moneys in accordance with any such determination by the Trustees.

27.31 **To mix funds**

To mix the Trust Fund, including the income of it and any other moneys held by the Trustees or any part of it, with other moneys held by the Trustees pursuant to any provision of this deed or under any other trust; to invest the moneys so mixed in any investment, property, interest, arrangement or business or in any other mode or manner in which the Trustees may by law or by this deed be empowered to invest the Trust Fund; to exercise all powers, authorities and discretions with respect to the mixed fund which the Trustees are by this deed or by law authorised to exercise with respect to the Trust Fund and in particular to make such arrangements with respect to the moneys and their investment with any other person as the Trustees would be authorised or empowered to make or enter into by law or by this deed.

27.32 To receive gifts

To receive property by gift inter vivos or by will or under the provisions of any other Trust or otherwise from any person as an addition to the Trust Fund and whether subject to liabilities or not and to hold the same upon the trusts set forth in this deed and to administer such additions under these provisions.

27.33 Beneficiaries

To do all things as the Trustees think to be in the interest of the Beneficiaries or any one or more of them including, by way of illustration and not of limitation, the powers:

- (a) to sell to any Beneficiary any real or personal property forming part of the Trust Fund on such terms as the Trustees consider fair and reasonable including the power to allow money to remain owing to the Trustees unsecured or secured by mortgage whether first or subsequent; and
- (b) to appropriate and partition any part of the Trust Fund, whether capital or income or any undivided interest in it, in or towards satisfaction of the share of any Beneficiary (whether sui juris or otherwise) and to charge the part, interest or share with whatever sum by way of equality of partition as the Trustees may think fit; and for that purpose to fix the value of any part or interest so appropriated and the value of any other property forming part of the Trust Fund by whatever means they think fit and every such appropriation, partition and valuation is final and binding, on all persons beneficially interested in the Trust Fund; and
- (c) to transfer to any Beneficiary becoming absolutely entitled the property or interest appropriated pursuant to paragraph 27.33(b), subject to whatever mortgages or charges or conditions the Trustees consider necessary to secure the share or interest or the balance of the share or interest in the Trust Fund including the income to any other person who is beneficially interested; and
- (d) to apply any part of the Trust Fund in or towards the payment of gift duty on gifts to the Trust Fund or in the payment of estate duty properly charged against the Trust Fund or in the payment of gift duty or estate duty or other duties payable in respect of any other gift or any other estate or any other Trust Fund as a result of which or in which any one of more of the persons expectantly or presumptively or contingently entitled to a share in the capital or the income of the Trust Fund are in any way interested or benefited; and
- (e) to appropriate in specie any portion of the Trust Fund or any investment representing the same to or towards the share or entitlement of a Beneficiary and to charge any share or entitlement with such sum of money by way of equality as the Trustees may think fit and for these purposes the Trustees may fix the value of any real or personal property forming part of the Trust Fund and every such appropriation, charge and valuation shall be binding on all persons who may at any time be entitled under this deed to any interest in the Trust Fund; and
- (f) if any Beneficiary is a bankrupt, or assigns or charges or purports to assign or charge his or her interest in the Trust Fund without the consent of the Trustees, or if any other event shall happen by which a Discretionary Beneficiary would, if an interest had vested in him or her absolutely, be deprived of the personal enjoyment of it, then such interest shall not be payable to him or her during such time as he or she would be deprived of the personal enjoyment but shall be held by the Trustees, during such period either continuous or discontinuous, as they shall in their absolute discretion think fit, upon trust to pay all or any part of such interest or apply the same for or towards the personal support, maintenance, comfort, education, advancement in life or otherwise for the

benefit of the Discretionary Beneficiary and of such person's spouse and child or children or remoter issuer and whether minors or adults.

27.34 Opinions

To take and act upon the opinion of any barrister or solicitor or both practising in New Zealand or in any other jurisdiction whether in relation to the interpretation of this deed or any other document or any statute or as to the administration of the trusts without being liable in respect of any act done by them in accordance with such opinion, and to make any application to the court the Trustees may think fit and all expenses of the opinion or the application shall be paid out of the Trust Fund.

27.35 Legal Proceedings

To institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination and to compromise and settle any such dispute or proceedings for such consideration and upon such terms and conditions as the Trustees may decide.

27.36 Audit

To appoint an auditor to fill any casual vacancy in the office of auditor and to fix the fees and expenses of the auditor. Any auditor appointed by the Trustees will hold office until the conclusion of the next annual meeting of beneficiaries.

27.37 To release any powers

To renounce irrevocably and release any power conferred on the Trustees under the Trust in respect of the whole or part of the Trust Fund or the income or any part of it and upon such renunciation and release such power shall be deemed to be at an end and no longer exercisable by the Trustees to the extent of such renunciation and release.

27.38 To appoint attorneys

To appoint any person to act as the Trustees' attorney at any time for any period anywhere in the world for all or any of the purposes of the trust.

27.39 Charges for Trustees' professional and other services

Any Trustee who is engaged in a profession, business or trade shall be entitled to make and receive all charges fees commissions and emoluments for business whether of an ordinary professional business trade or any other character done by that Trustee in relation to the administration of the Trusts herein set out as that Trustee would have been entitled to make or receive if not being a Trustee hereunder and that Trustee had been employed by the Trustees for any such business and that Trustee may act as manager or supervisor of or be employed in any business or businesses in which the property from time to time forming part of the Trust may be employed and shall be entitled to charge and be paid reasonable remuneration for such management supervision or employment or any other such services performed in the administration of such business in the same way and to the same extent if that Trustee had not been a Trustee of this Deed but had been so employed by the Trustees.

27.40 To appoint custodian trustee

To appoint or incorporate a custodian trustee or employ any custodian trustee for such period the trustees think fit and on any appointment, incorporation or employment the following provisions apply:

- (a) The Trust Fund or any part of it may be vested in the custodian trustee as if the custodian trustee was sole trustee.
- (b) The management of the Trust Fund and the exercise of all powers, authorities and discretions exercisable by the Trustees under this deed shall remain vested in the Trustees.
- (c) The function of the custodian trustee is to get in and hold those parts of the trust property as the trustees direct the custodian trustee to hold, invest its funds and dispose of those trust assets held by the custodian trustee in accordance with any direction given in writing by the Trustees. The custodian trustee must execute all documents and perform all acts the Trustees in writing direct.
- (d) For the purposes of sub-clause (c) of this clause a direction given by the majority of the Trustees shall be deemed to be given by all the Trustees.
- (e) The custodian trustee shall not be liable for acting on any direction given under sub-clause (c) of this clause, but if the custodian trustee is of the opinion that any direction given by the Trustees conflicts with the trusts or the law or exposes the custodian trustee to any liability or is otherwise objectionable the custodian trustee may apply to the Court for directions. Any order of the Court giving directions will bind both the custodian trustee and the Trustees.
- (f) The custodian trustee shall not be liable for any act or default on the part of any of the Trustees.
- (g) All proceedings concerning the Trust Fund may be brought or defended in the name of the custodian trustee at the written direction of the Trustees and the custodian trustee shall not be liable for the costs of the proceedings.
- (h) Any person dealing with the custodian trustee shall not be concerned to enquire as to the concurrence or otherwise of the Trustees or be affected by notice of the fact that the Trustees have not concurred.
- (i) The power of appointing new trustees when exercisable by the Trustees must be exercised by the Trustees alone and the custodian trustee shall not have the same power as any other trustee of applying to the Court for the appointment of a new trustee.

27.41 Incidental powers

To do all other things as may be incidental to the exercise of the powers, rights, discretions and authorities conferred on the Trustees.

IN WITNESS this Deed is duly executed.

THE common seal of)
 EASTLAND ENERGY LIMITED)
 was affixed in the presence of:)

“R S Briant”
 Director

“D J McLean”
 Director

THE common seal of)
GISBORNE DISTRICT COUNCIL)
was affixed in the presence of:)

“W J Clarke”
..... Mayor/Councillor

“RDR Elliott”
..... Principal Officer

SIGNED by the Trustees in)
the presence of:)

“K H Lynch”
..... Trustee

“I N Collins”
..... Trustee

“J Pollock”
..... Trustee

“I J Miller”
..... Trustee

“G K Musgrave”
..... Trustee

“JK Williams”
..... Trustee