

NOTICE OF FILING

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File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 612 443 008)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59
Rule 29.02(1)

Affidavit

No VID536 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**KEYSTONE ASSET MANAGEMENT LTD (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION) (ACN 612 443 008) and another**

Defendants

Affidavit of: **Jason Mark Tracy**
Address: Level 25, 20 Bond Street, Sydney NSW 2000
Occupation: Registered Liquidator
Date: 31 May 2026

I, **JASON MARK TRACY**, of Level 25, 20 Bond Street, Sydney, registered liquidator, affirm:

A INTRODUCTION

- 1 I am a chartered accountant, registered liquidator and a managing director of Alvarez & Marsal Australia (**A&M**).
- 2 I make this affidavit in further support of the interim distribution relief, which is set out in paragraphs 4 and 5 of the amended interlocutory process dated 12 December 2025 (**Amended IP**), which amended an initial interlocutory process filed on 7 November 2025 (**Initial IP**). There is also a proposed further amended interlocutory process (**Further Amended IP**) which we seek leave to file. That Further Amended IP contains the same paragraphs 4 and 5 as in the Amended IP, but also contains additional relief, and this affidavit is also in support of that relief.
- 3 I have affirmed eighteen other affidavits in this proceeding. I refer to my earlier affidavits, including my twelfth affidavit affirmed on 7 November 2025 in support of the Initial IP (**Twelfth Affidavit**) and my sixteenth affidavit affirmed on 29 January 2026 in support of paragraphs 4 and 5 of the Amended IP (**Sixteenth Affidavit**). I also refer to the non-confidential affidavit of Ross Blakeley sworn on 16 February 2026 filed on behalf of the

Visna Hemachandra

A handwritten signature in blue ink, appearing to read 'Jason Mark Tracy', written over a horizontal line.

Contradictors (**Blakeley Affidavit**) and Mr Blakeley's confidential affidavit sworn on 16 February 2026, both of which I have reviewed.

4 In this affidavit, I adopt the defined terms in my Twelfth Affidavit and Sixteenth Affidavit.

5 References in this affidavit to "the Receivers", "we", "us", "our" or "ourselves" are references to Glen Kanevsky, Lucica Palaghia and me as appointees under the orders made by this Court on 26 June 2024, 27 August 2024, 5 September 2024, 31 March 2025 as administrators and liquidators of Keystone from time to time.

6 Except where expressly stated, I make this affidavit from my own knowledge and experience, including based on my review of the books and records of Keystone, the Receivers' investigations of Keystone's affairs and information conveyed to me by our team and advisors. Where I depose to matters on the basis of information and belief, I believe those matters to be true.

7 In making this affidavit I do not intend to waive any privilege. To the extent that any part of this affidavit constitutes a waiver of privilege, I withdraw that part of the affidavit and we do not rely on it.

8 Produced and shown to me at the time of affirming this affidavit area:

(a) a bundle of documents which I refer to in this affidavit marked "**JMT-23**"; and

(b) a bundle of confidential documents which I refer to in this affidavit marked "**Confidential JMT-24**".

9 I request that "Confidential JMT-24" be treated as confidential and sealed on the Court file as it contains confidential information relating to correspondence exchanged between the CSLR, AFCA and NRFA regarding the CSLR's and AFCA's preliminary views on the treatment of Underlying Investors' claims (if successful), potential compensation mechanisms, which are yet to be resolved or finalised, and specific examples of investor hardship contained within AFCA complaints made against ETSL.

Visna Hemachandra



B DEEDS POLL FROM UNITHOLDERS IN QUALIFYING CLASSES

- 10 I refer to paragraphs 83 to 90 of my Twelfth Affidavit and paragraphs 16 to 18 of my Sixteenth Affidavit.
- 11 We have continued to engage with the unitholders in the Qualifying Classes, including the Macquarie Parties, ETSL, TTCL, HCNL, HSBC Bank Australia Limited (**HBAU**) and Praemium Australia Limited (**Praemium**) to finalise the Deeds Poll. I understand that HCNL holds its units in the SMF as sub-custodian for HBAU, which in turn holds the units as custodian for Praemium, and therefore my solicitors are liaising directly with the solicitors acting for Praemium.
- 12 Our negotiations are well progressed and we expect each of the unitholders in the Qualifying Classes will execute the Deeds Poll prior to the hearing listed for 15 June 2026. We do not intend to complete the proposed interim distribution unless and until we have executed Deeds Poll from each unitholder.

C KEYSTONE TAX LIABILITIES

- 13 I refer to paragraphs 115 to 118 of my Sixteenth Affidavit, where I gave evidence about Keystone's potential tax liabilities. In this section of my affidavit, I set out the Receivers' current position in relation to Keystone's tax position as relevant to the Interim Distribution.
- 14 My understanding of Keystone's tax position based on information provided by the Receivers' tax team is as follows:
- (a) Keystone has not finalised its tax returns (in its own capacity or as trustee for the SMF, ADPF, QPEF or CDPF) for the financial years (**FY**) as follows:
 - (i) in respect of SMF and ADPF, the year ending 30 June 2024 and 30 June 2025;
 - (ii) in respect of QPEF – no returns since inception; and
 - (iii) in respect of CDPF, the FY ending 30 June 2021, 30 June 2022, 30 June 2023, 30 June 2024 and 30 June 2025.
 - (b) Keystone is a trustee for tax purposes and is therefore responsible for the tax obligations arising in relation to the SMF, ADPF, QPEF and CDPF;

Visna Hemachandra



- (c) for the periods of our appointments as Receivers, Voluntary Administrators and Liquidators, we are also treated as trustees for tax purposes and responsible for the tax obligations of the SMF, ADPF, QPEF and CDPF;
- (d) the terms of the trust deed for the CDPF do not impose any additional reporting obligations on Keystone and so no relief is being sought in respect of the CDPF at this time;
- (e) the SMF, ADPF and QPEF are eligible to be treated as “Attribution Managed Investment Trusts” (**AMIT**) for tax purposes in accordance with the requirements of an AMIT in Division 276 of the *Income Tax Assessment Act 1997* (Cth) (**ITAA97**), provided Keystone has made the election for each trust to be treated as an AMIT. The income (including capital gains) of AMITs can be attributed to its members and so Keystone would not be the taxpayer for that attributed income;
- (f) an election to be treated as an AMIT cannot be revoked, meaning a trust that has elected to be an AMIT will continue to be an AMIT, provided it satisfies the eligibility requirements in Division 276 of the ITAA97. Keystone’s records for the pre-Receivership period show that it elected for the SMF to be treated as an AMIT in FY 2022;
- (g) where a trust is an AMIT, the trustee determines the amount of income to be attributed to members for tax purposes by issuing an “AMIT Member Annual statement” (**AMMA Statement**);
- (h) for the purposes of the Interim Distribution, as the SMF is treated as an AMIT in the relevant FYs, then Keystone will not have to retain any amounts against that income tax liability when determining the Interim Distribution Amount if all income in the SMF is attributed to the members in the AMIT statement such that the members are liable for any income tax in respect of the taxable income of the SMF;
- (i) attributing all the SMF’s income to its members should maximise the net proceeds received by members of the SMF following taxation at the member level. This is because by attributing all SMF income to members of an AMIT, instead of the income being taxed in Keystone’s hands:
 - (i) members can benefit from tax concessions that Keystone as trustee cannot, primarily the CGT discount; and

Visna Hemachandra



- (ii) members which are superannuation funds are likely to be taxed at substantially lower rates than the 47% rate applicable to Keystone as trustee;
 - (j) Keystone should still be treated as an AMIT for FYs 2024 and 2025 even though Keystone is late in meeting certain AMIT-related obligations under the tax law and the Constitution, including the requirement for an AMIT to issue AMMA Statements to unitholders within 3 months of the end of the financial year under clause 13.29 of the Constitution and the tax law; and
 - (k) Following the issuing of AMMA Statements attributing income in the SMF to unitholders for FYs 2024 and 2025, unitholders in the Qualifying Classes will need to amend their tax returns for those years, but unitholders in the ADPC Class will not.
- 15 In light of the above, if the Court makes the orders sought at paragraphs 4 and 5 of the Further Amended IP then the Receivers intend to cause Keystone to issue AMMA Statements for FYs 2024 and 2025 attributing all SMF income to its members.
- 16 The Receivers consider that there is sufficient confidence in relation to the SMF's eligibility to be treated as an AMIT, and Keystone's ability to issue AMMA Statements for FYs 2024 and 2025.
- 17 The Receivers have provided the unitholders in the Qualifying Classes with workbooks setting out the income the Receivers propose to attribute to them in AMMA Statements for FYs 2024 and 2025.
- 18 NRFA has written to the Macquarie Parties, ETSL, TTCL and Praemium seeking their confirmation on whether:
- (a) they support or have any concerns with the attribution of all SMF income in FYs 2024 and 2025; and
 - (b) while they will have to amend their previous year tax returns, their Underlying Investors will not need to do so.

Visna Hemachandra



Copies of NRFA's letters are at **tabs 1 to 6 of JMT-23**.

19 On 25 May 2026, NRFA received a response from Allens, solicitors acting for the Macquarie Parties, confirming that the Macquarie Parties agree that:

- (a) *“underlying members of the Macquarie Superannuation Plan who had previously invested in the Shield Master Fund should not need to amend previous year tax returns”*; and
- (b) *“there are seven underlying investors who invested in Shield through the Macquarie investor-directed portfolio service outside of the Macquarie Superannuation Plan. Those investors may need to prepare amended tax returns for previous years”*.

A copy of the response from Allens is at **tab 7 of JMT-23**.

20 On 29 May 2026, NRFA received an email from QE, the solicitors acting for TTCL, proposing, amongst other things, that the Receivers consider entering into a specific agreement with the ATO to deal with the tax related issues relating to the proposed interim distribution.

A copy of QE's email dated 29 May 2026 is at **tab 8 of JMT-23**.

21 We will provide an update to the Court by the time of the hearing on 15 June 2026.

D FURTHER CORRESPONDENCE REGARDING FREEZING ORDER

22 I refer to paragraph 89 of my Sixteenth Affidavit in relation to NRFA's correspondence to Corrs regarding Keystone's cross-undertaking for the All Assets Freezing Order. On 16 February 2026, we received a letter from Corrs which stated, amongst other things, that:

- (a) it is unreasonable to expect Corrs' clients to definitively quantify the full nature and extent of all losses that have arisen and may arise in the future given the wide range of the All Assets Freezing Order;
- (b) Corrs are instructed that their clients had planned to undertake four development projects and that those plans were being frustrated by the All Assets Freezing Order; and
- (c) their clients are unable to pay critical expenses due to the All Assets Freezing Order, including the care and maintenance of properties, due to actual or

Visna Hemachandra



apprehended refusals by the Receivers to consent to the use of exceptions under the All Assets Freezing Order.

A copy of Corrs' letter dated 16 February 2026 is at **tab 9 of JMT-23**.

23 On 3 March 2026, NRFA responded to Corrs' letter. Among other things, NRFA's letter:

- (a) requested evidence that the Filippini parties had lost opportunities to invest in profitable development projects, including documents such as building plans, feasibility studies, cost estimates and timetabling documents; and
- (b) resisted Corrs' statements that the Receivers had refused the use of exemptions under the All Assets Freezing Order and noted that no requests to use the exemptions had been made until recently before Corrs' letter and the Receivers were dealing with those requests in a reasonable manner.

A copy of NRFA's letter dated 3 March 2026 is at **tab 10 of JMT-23**.

24 Following NRFA's letter dated 3 March 2026, NRFA sent Corrs emails seeking a response to the letter dated 3 March 2026 on 30 March 2026 and 27 April 2026. On 11 May 2026, NRFA sent Corrs a letter stating that failing further information from the Filippini Parties by 15 May 2026, the Receivers' position in this application would be that:

- (a) the Filippini Parties' assertion that they have lost profitable development opportunities is unsubstantiated, including in light of evidence of their access to \$7,745,574 that could have been used to pursue such opportunities;
- (b) the Receivers are responding to requests to use the exceptions to the All Assets Freezing Order; and
- (c) generally, the Filippini Parties were unlikely to suffer direct and foreseeable losses resulting from the All Assets Freezing Order.

Visna Hemachandra



25 On 18 May 2026, NRFA received an email from Corrs stating that they did not expect to respond until the week commencing 25 May 2026. We have not received a response to date and will provide an update to the Court by the time of the hearing on 15 June 2026.

26 I refer to paragraph 92 of my Sixteenth Affidavit regarding NRFA's correspondence to Velocity Legal regarding the cross-undertaking we gave in relation to the Term Deposit Funds. Following that correspondence:

- (a) on 5 February 2026, Velocity Legal consented on behalf of its client to the Term Deposit Fund being transferred to an interest-bearing account and the Court made an order accordingly on 9 February 2026;
- (b) on 6 February 2026, NRFA received a response from Velocity Legal which said that it was for the Receivers to estimate potential claims on the cross-undertaking; and
- (c) on 13 February 2026, NRFA responded to Velocity saying that, in the absence of the identification of potential claims on the cross-undertaking, the Receivers did not intend to retain any funds in respect of liability on this cross-undertaking.

A copy of Velocity Legal's email dated 5 February 2026 is at **tab 11 of JMT-23**.

A copy of Velocity Legal's letter dated 6 February 2026 is at **tab 12 of JMT-23**.

A copy of the Court's order dated 9 February 2026 is at **tab 13 of JMT-23**.

A copy of NRFA's letter dated 13 February 2026 is at **tab 14 of JMT-23**.

27 Based on NRFA's correspondence with Velocity Legal regarding the Term Deposit Funds, we do not intend to retain any funds in respect of liability on that cross-undertaking.

E TRACING ANALYSIS WITH RESPECT TO THE CDPF

28 I refer to the Blakeley Affidavit and the Contradictors' submissions dated 16 February 2026. In those documents, the Contradictors contended that an Interim Distribution was premature in circumstances where:

- (a) the Receivers' investigations in respect of the CDPF were at an early stage; and
- (b) an analysis of the uses of CDPF funds was necessary to identify whether any CDPF assets were used for the benefit of the SMF's assets, which (so the

Visna Hemachandra



Contradictors' contended) might lead to claims on behalf of the CDPF payable from the SMF's assets.

- 29 At paragraph 10(b) of their submissions, the Contradictors submit that, if an interim distribution is made from the Bell Potter Proceeds now, then:
- (a) \$82,497,115.65 should be retained for any potential claim available to Falcon as unit holder in the CDPF, being:
 - (i) \$63,847,115.65 for the value of the CDPF units as at the date of Falcon's retirement as trustee on 13 April 2021; plus
 - (ii) \$18.65 million, being amounts paid by Falcon to Keystone pursuant to the Retirement Deed; or
 - (b) alternatively, just the \$18.65 million paid by Falcon to Keystone pursuant to the Retirement Deed.
- 30 The Contradictors' position regarding the potential comingling of SMF and CDPF assets appears to involve three key issues, being:
- (a) **Issue One:** Whether any funds from Falcon, the FGMF or the CDPF have been comingled with SMF unitholder funds and used by Keystone in its capacity as the responsible entity of the SMF to acquire the Bell Potter Securities;
 - (b) **Issue Two:** Whether there has been any comingling of CDPF property at all in the SMF and whether any funds from Falcon, the FGMF or the CDPF can be traced into assets of the SMF generally; and
 - (c) **Issue Three:** If it was found that funds from the SMF and CDPF were comingled at the ADPF level, whether these funds are subsequently comingled with funds used to acquire the Bell Potter Securities.
- 31 Since 16 February 2026, we have progressed our investigations into the CDPF and the uses of CDPF funds. This has included specifically considering each of the issues raised by the Contradictors. In summary, for the reasons explained below, based on our investigations, we consider that:
- (a) No funds should be retained in respect to Issue One (the direct use of CDPF Funds to acquire Bell Potter Securities);

Visna Hemachandra



- (b) As previously proposed, an amount of \$386,904.04 should be retained in respect to any potential claim in accordance with Issue Three (the indirect use of CDPF funds to acquire Bell Potter Securities); and
- (c) An amount of \$668,648.03 should be retained in respect to any potential claim in accordance with Issue Two (the use of CDPF funds for the benefit of the SMF).

32 In respect to Issue One, based on our investigations, we are confident that no CDPF funds were used directly to acquire Bell Potter Securities. I understand from paragraph 21(a) of the Blakeley Affidavit, that the Contradictors have reached a similar conclusion following their analysis.

33 With respect to Issue Three:

- (a) I refer to paragraph 130 of my Sixteenth Affidavit in which I depose to our sources and uses work in respect of the SMF in which we identified \$386,904.04 in ADPF redemptions which may have been used to fund the purchase of some of the Bell Potter Securities. This represents the maximum amount of comingling between SMF and ADPF assets which may give rise to some claim on behalf of the CDPF (given its interest in the ADPF assets); and
- (b) I understand from paragraphs 21(b) and 63(b) of the Blakeley Affidavit and paragraphs 86 to 90 of the confidential affidavit of Ross Blakeley affirmed on 16 February 2026 that the Contradictors do not challenge our view, and in fact, based on their tracing analysis, consider that the maximum amount of any claim in respect to Issue Three is \$114,012. Under our proposed retention of \$386,904.04, there would be sufficient funds retained to account for these funds.

34 Accordingly, the following paragraphs are focussed on the investigations we have undertaken in respect to Issue Two.

35 I understand that the potential comingling of CDPF and SMF assets the subject of Issue Two could, in the Contradictors' view, give rise to the following types of claims:

- (a) firstly, over the entire recorded value of the CDPF assets as at the date of Falcon's retirement as trustee (\$82,497,115.65), on the basis that the SMF has benefited from them; or
- (b) alternatively, over the \$18.65 million contributed by Falcon pursuant to the Retirement Deed on the basis that it may have been used by Keystone for SMF related expenses.

Visna Hemachandra



36 In considering this issue, we have investigated the nature of the CDPF's interests in the underlying assets and undertaken a tracing analysis of the \$18.65 million in Falcon funds.

E1 The nature of the CDPF's interest in the development properties

37 I have read paragraphs 42 to 110 of the Blakeley Affidavit and Mr Blakeley's investigations largely accord with the findings of our own investigations.

38 At paragraph 72 of this affidavit, Mr Blakeley refers to a Development Agreement and exhibits a copy of that agreement at pages 535 to 545 of RAB-1.

39 The version of the Development Agreement exhibited to the Blakeley Affidavit (**Blakeley Version**) is different from a Development Agreement forming part of the books and records of Keystone (**Keystone Version**). The Keystone version appears to have been initially attached to an email from Mr Chiodo to Mills Oakley and MWL Financial Group Pty Ltd (**MWL**) in 2019, and subsequently forwarded to MWL in 2022. Whilst both versions of the document have been executed, there are differences between the two versions including:

- (a) Recital C of the Keystone Version states, "*Chiodo agrees to hold all shares in project companies developed by the Fund on behalf of the Low Density Real Estate Development Fund. Beneficial ownership remains at all times with Falcon Capital, in its capacity as Trustee of the Fund.*" In the Blakeley Version, Recital C has been deleted and what is Recital D in the Keystone Version is Recital C in the Blakeley Version.
- (b) in respect of the purchase of the land for development, on page 2 of each version of the document:
 - (i) the Keystone Version states, "*Chiodo Corporation, via the Low Density Real Estate Development Fund will purchase all land and First Guardian will retain beneficial ownership of all properties for all projects.*"; and
 - (ii) the Blakeley Version states, "*First Guardian, via the Low Density Real Estate Development Fund will purchase all land and will hold the titles for all projects.*"
- (c) in respect of the shares in the development companies established to undertake the developments (previously defined and referred to in this proceeding as the SPVs):

Visna Hemachandra



- (i) the Keystone Version states, “*Shares in each project company will be held by Chiodo, on behalf of Falcon Capital Limited in its capacity as Trustee for the Fund. Beneficial ownership will at all times remain with Falcon Capital Limited.*”; and
- (ii) the Blakeley Version contains no such statement.

A copy of the covering email and the Keystone Version is at **tabs 15 to 16 of JMT-23**.

40 Based on my reading of the VID978 Discovered Version, the Development Agreement indicates that the CDPF’s investment into the developments was as equity, with the SPVs being the registered landowner and the shares in the SPVs were intended to be held on trust for the CDPF.

41 My conclusion that it appears to have been intended that the CDPF would be the beneficial owner of the shares in the SPVs is further supported by the following:

- (a) a share sale agreement for shares in 75 Port Douglas Road Pty Ltd, pursuant to which Falcon as trustee for the CDPF agreed to purchase the shares in this SPV from Falcon as trustee of the ADF.
- (b) the Retirement Deed referred to at paragraph 46 of the Blakeley Affidavit and exhibited at pages 370 to 380 of RAB-1 contains the following terms:
 - (i) at clause 4.1, “*On or before 15th July 2021, FGC shall transfer to KAM and/or nominee 50% of the total number of shares in AMBA for a total cost of \$1.00*”; and
 - (ii) at clause 5.3, “*The parties acknowledge Falcon holds its 49% shareholding of 75 Port Douglas Road Pty Ltd as trustee on behalf of CDPF.*”

A copy of 75 Port Douglas Share Sale Agreement is at **tab 17 of JMT-23**.

42 This is also consistent in the way the CDPF’s financials were reported, such as the balance sheet referred to at paragraph 106(a) of the Blakeley Affidavit and exhibited at page 1026 of RAB-1.

43 As per paragraph 75 of the Blakeley Affidavit, the registered shareholder for each of the SPVs varied between Falcon, Chiodo Corporation and Chiodo Corporation’s shareholder, Pure Development. In most, but not all, instances, the ASIC register identifies that the shareholder is not the beneficial owner of the shares. To date, we have

Visna Hemachandra



not identified any additional documents which would indicate that the CDPF, as beneficial owner of the SPV shares, agreed to transfer its interest in the SPV shares and I consider it therefore likely remains the beneficial owner of the shares.

E2 The intermingling of the CDPF and ADPF assets

44 As set out in previous evidence, and based on the above summary of our more recent investigations:

- (a) the nature of the ADPF's interest in the SPV developments was debt, as lender under the SPV Loan Agreements; and
- (b) the nature of the CDPF's interest in the SPV developments appears to have been as equity, as beneficial owner of the shares in the SPVs (including the landowning SPVs).

45 The inter-relationship between these two interests is illustrated by valuation documents shared between Frolov and Chiodo in finalising the FY22 CDPF accounts. For each development, the excel spreadsheet identifies for each SPV: the amount invested by the CDPF, the asset valuation, external financing, and ADPF financing. Only for Red Hill Terraces, which project was complete, is a "*fair value change of investment*" figure calculated, which is negative.

A copy of these valuation documents is at **tabs 18 to 19 of JMT-23**.

46 Based on our investigations, we have not identified any payments being made to the ADPF under the SPV Loan Agreements, or otherwise in respect of its interest in the SPV developments. Under the SPV Loan Agreements, principal and interest was not repayable until the developments were complete, and none of the developments completed (except for the Red Hill Terraces development, but no payments were made to either the CDPF or the ADPF following completion of that development).

47 In light of this relationship, we consider that there could not be any basis for the CDPF to have any claim against the ADPF or the SMF for the \$63,847,115.65 book value of the CDPF units as at the date of Falcon's retirement as trustee on 13 April 2021.

48 Since our appointment, some of the SPV developments have been realised. Where there are excess proceeds of sale after paying sale costs and any prior-ranking secured

Visna Hemachandra



creditors, we are holding those funds on trust pending any allocation between the ADPF and CDPF.

49 We consider that this approach adequately protects the CDPF and Falcon for any claim they may have in respect to the benefit the ADPF may have obtained from the CDPF funding of the SPV Developments.

E4 Tracing Analysis of the use of CDPF Funds following Falcon’s retirement

50 Since my Sixteenth Affidavit, we have spent considerable time analysing the uses of CDPF funds following Falcon’s retirement as trustee to determine whether any CDPF funds were used by Keystone for the benefit of the SMF. We consider that the CDPF and/or Falcon may have a claim to be indemnified from SMF scheme assets for any CDPF funds used by Keystone to pay SMF scheme related expenses (**SMF Scheme Related Expenses**).

51 The SMF Constitution gives Keystone a right of indemnity in respect of expenses incurred in connection with the SMF. The SMF Constitution is dated 28 April 2021, but clause 20.5(g) gives Keystone a right of indemnity in relation to certain expenses predating the establishment of the SMF, as follows:

“[...] the Responsible Entity must be paid or reimbursed on a full indemnity basis out of the Trust for all expenses and liabilities which they each incur in connection with the Trust or in performing their obligations or exercising their powers under this document including: [...]

(g) establishing the Trust and any restructuring of the Trust including costs of preparation of this document and any supplemental deed and the cost of legal, accounting, tax, financial and other services;”

Visna Hemachandra



52 Accordingly, it is possible that SMF Scheme Related Expenses for which Keystone may have a right of indemnity from SMF assets could have been incurred before 28 April 2021.

53 Below, I describe the methodology, limitations and results of the Receivers' tracing analysis to determine if any CDPF funds were used to pay SMF Scheme Related Expenses.

E1 Methodology and limitations of CDPF tracing analysis

54 Our investigations have identified that the total sum of \$18.65 million paid by Falcon under the Retirement Deed was paid into the following three bank accounts:

(a) \$5 million was paid into **CF Property Capital** Pty Ltd (later named **CF Capital Investments** Pty Ltd) bank account held with Westpac with account number ending in x4141 (**CF Account x4141**);

(b) \$13.65 million paid into two bank accounts held by Keystone as trustee of the CDPF with Westpac, being (**CDPF Bank Accounts**):

(i) account with number ending in x4094 with transactions from 8 July 2021 (**CDPF Account x4094**); and

(ii) account with number ending in x1067 with transactions from 15 July 2021 (**CDPF Account x1067**).

55 In addition to the \$13.65 million paid by Falcon under the Retirement Deed, we identified a further \$2,629,073.43 paid into the CDPF Bank Accounts after Falcon's retirement. We have included these additional inflows of funds in our tracing analysis and as such, we have traced outflows from the CDPF Bank Accounts totalling \$16,253,504.24 rather than \$13.65 million.

56 We have statements for each of the CDPF Bank Accounts and have identified the precise transactions comprising the Falcon contributions, together with the additional \$2,629,073.43 paid into the CDPF Bank Accounts. From those inflows totalling \$16,279,073.43 (including the cash in the CDPF Bank Accounts totalling \$25,569.19), the methodology for tracing outflows of \$16,253,504.24 included the following three methods.

57 Firstly, **account-to-account tracing**: this involves matching outflows from CDPF Bank Accounts to corresponding inflows to accounts known to us and for which we have bank statements or transaction listings (a **Known Account**) by date and amount. We have

Visna Hemachandra



statements and/or transaction listings for over 158 Known Accounts. Across these Known Accounts, there are 94,197 transactions, and as such, the account-to-account tracing process was extremely thorough.

A spreadsheet recording each of the 158 Known Accounts and the period for which we have statements for each account is at **tab 20 of JMT-23**.

- 58 Where inflows in a Known Account have been identified as CDPF-derived, we also sought to trace onwards the transfers of those funds through to other Known Accounts.
- 59 To determine whether outflows from Known Accounts can be traced to inflows sourced from CDPF funds, we have generally treated an outflow as matched to a relevant inflow where the outflow's value (or combined value with other outflows) equals an inflow amount made within a three-day window. However, in some cases we have modified this approach, for example by:
- (a) treating all inflows of funds to the CF Account x4141 as sourced from CDPF funds at times where the proportion of the account balance attributable to inflows from CDPF funds equalled or exceeded 96%;
 - (b) if the aggregate of two or more outflows matches an inflow exactly but the interval of time between them exceeded 3 days, nonetheless tracing the outflow to the inflow; and
 - (c) where a significant portion of an account balance is attributable to a single inflow, treating a subsequent outflow in a slightly lesser amount as matched to the inflow.
- 60 We consider this account-to-account tracing methodology is conservative and is likely to have increased the value of any potential CDPF claim rather than to have decreased the value of any potential CDPF claims. This belief is based on the nature of the transactions in these accounts, and the habits of the account holders to move money from accounts quickly and to transfer them in matching amounts.
- 61 Secondly, **documentary tracing**: if we have been unable to trace an outflow via account-to-account tracing, our staff have searched the general database of records held by us for any documents explaining the transaction, such as an invoice or a

Visna Hemachandra



remittance advice. The database contains over 300,000 documents produced to the Receivers including:

- (a) documents sourced from the mailboxes for Paul Chiodo's principal email address which were imaged by KWM for the period 22 February 2022 to 22 February 2024;
- (b) documents produced in response to ASIC notices and directions issued to Keystone, CF Capital and various of their officers which have been made available to the Receivers under paragraph 12 of the 27 August 2024 Orders;
- (c) documents provided to the Receivers by the liquidators appointed to CF Capital;
- (d) documents produced under subpoenas issued in this proceeding; and
- (e) documents discovered or produced under subpoenas in Federal Court of Australia proceeding no. VID978/2024.

62 The process in documentary tracing of searching for and reviewing potential explanatory documents is labour-intensive: staff usually search for the relevant numerical amount in the database and this may lead to a high number of false-positive identified documents that need to be reviewed to identify the document that explains the outflow, even where the search parameters are limited to the time period surrounding the relevant outflow. By way of an indication of the labour involved in this task, our staff have estimated that it takes approximately 30 minutes to review 90 documents in the database for this purpose.

63 Thirdly, **account transaction descriptions**: if we have been unable to trace amounts either via account-to-account tracing or documentary tracing, we have considered the transaction description. Our experience in conducting funds tracing in relation to the SMF, ADPF and CDPF is that account transaction descriptions are generally accurate. However, our team has seen instances where transactions were misdescribed. Consequently, we consider reliance on transaction descriptions to be less conclusive than account-to-account tracing or documentary tracing but nonetheless to be indicative evidence of how funds were used.

Visna Hemachandra



64 To date, we have been able to trace the CDPF funds using the above methodologies as follows (rounded to nearest %):

	CF Account x4141 (\$)	CF Account x4141 (%)	CDPF Bank Accounts (\$)	CDPF Bank Accounts (%)
Account-to-account tracing	\$3,917,939.69	78%	\$13,909,778.84	86%
Documentary tracing	\$435,452.01	9%	\$713,056.83	4%
Account transaction descriptions	\$646,608.30	13%	\$1,630,668.57	10%
TOTAL	\$5,000,000.00	100%	\$16,253,504.24	100%

65 While I consider that the Receivers' methodology is the most reasonable approach in the circumstances, I note the following limitations:

- (a) we do not hold some potentially important bank account statements which reduced the extent of account-to-account tracing. We are continuing to seek production of further bank statements to increase the proportion of funds that can be traced via account-to-account tracing;
- (b) the database of documents is most comprehensive in the period from 22 February 2022 to 22 February 2024, being the period covered by records from Paul Chiodo's email address mailboxes. The database is less comprehensive in the period prior to 22 February 2022, in which a significant portion of the relevant funds were transferred. Less comprehensive records reduce the effectiveness of documentary tracing; and
- (c) as set out above, relying on the account transaction descriptions is a less reliable approach and accordingly in our tracing analysis, we have referred to these transactions as **Unverified Outflows**.

66 Despite these limitations, we are reasonably satisfied that the amount we propose to retain is conservative and will adequately cover any potential claim the CDPF may have against the assets of the SMF. As we progress this tracing exercise following the receipt of further bank statements or documents, we would anticipate that the potential claim

Visna Hemachandra



value – i.e. the amount of CDPF payments that may have been received by Keystone – would decrease rather than increase (given the conservative approach we have taken).

E2 Results of CDPF tracing analysis

67 In respect to the \$5 million paid into CF Account x4141, we have traced those funds to the following ultimate uses:

Summary of final destinations		
	Amount (\$)	
Traced (account to account):		
Robert Filippini	1,345,108.00	26.9%
Chiodo (no outflow)	1,275,951.12	25.5%
SPV	1,131,880.57	22.6%
Nextform	100,000.00	2.0%
Keystone	65,000.00	1.3%
	3,917,939.69	78.4%
Traced to Relativity Source Documents:		
City Built	171,300.00	3.4%
Partial Evidence - Malana	100,000.00	2.0%
Other 3rd Party	57,906.30	1.2%
Legal Fees	53,882.71	1.1%
Partial Evidence - Other 3rd Party	33,300.00	0.7%
Interest Expenses	19,063.00	0.4%
	435,452.01	8.7%
Unverified Outflows (account transaction descriptions):		
Unknown - Malana	105,000.00	2.1%
Cash withdrawal	168,125.69	3.4%
Amounts not Traced - CF Property	150,418.49	3.0%
Unknown - Norwood Ponds	94,557.00	1.9%
Unknown - Port Douglas	87,815.35	1.8%
Payroll	27,127.77	0.5%
Unknown	9,300.00	0.2%
Unknown - Aberfeldie	3,465.00	0.1%
Other	799.00	0.0%
	646,608.30	12.9%
Total	5,000,000.00	

68 In respect to the \$16,279,073.43 paid into the CDPF Bank Accounts, we have traced \$16,253,504.24 of those funds (the difference of \$25,569.19 being cash at bank recovered by the Receivers) to the following ultimate uses:

Summary of final destinations		
	Amount (\$)	
Traced (account-to-account):		
Filippini	9,148,267.54	56.3%
Chiodo	2,893,651.42	17.8%
Keystone	603,648.03	3.7%
Nextform	263,000.00	1.6%
SPV	256,504.77	1.6%

Visna Hemachandra



Studio Mint	159,307.50	1.0%
ADPF	10,000.00	0.1%
Pure Development	10,000.00	0.1%
Intra-account transfers - CDPF	565,399.58	3.5%
	13,909,778.84	85.6%
Traced to Relativity Source Documents:		
Partial Evidence - Other 3rd Party	261,820.00	1.6%
Partial Evidence - Malana	210,000.00	1.3%
Partial Evidence - City Built	68,102.07	0.4%
Other 3rd Party	58,226.30	0.4%
City Built	53,068.00	0.3%
Legal Fees	50,658.56	0.3%
SPV/Construction	11,181.90	0.1%
	713,056.83	4.4%
Unverified Outflows (account transaction descriptions):		
Cash Withdrawal	743,326.35	4.6%
Other expenditure	332,072.70	2.0%
Port Douglas expenditure	277,073.00	1.7%
Legal fees	119,912.14	0.7%
Amount not Traced - CF Property	96,367.38	0.6%
Moonee Ponds expenditure	40,305.00	0.2%
Unmatched - Outflow from Chiodo	20,000.00	0.1%
Unknown - Malana	1,500.00	0.0%
Fees	112.00	0.0%
	1,630,668.57	10%
Total	16,253,504.24	

69 With respect to the categories identified in the above tables, we provide an explanation of each of the categories and our concluded view as to whether those outflows of funds may represent Scheme Related Expenses as follows:

- (a) **Filippini/City Built:** Based on our investigations, we are aware that Mr Filippini and City Built were the purported builders at the SPV Development Projects, as well as other building sites in the control of Mr Chiodo and/or Chiodo Corporation. Mr Filippini also claims to have provided security services at the development sites and to Mr Chiodo. We are not aware of Mr Filippini or City Built or any of their related entities providing services for the benefit of the SMF. As these costs did not flow back to the SMF and the SMF did not otherwise receive any benefit for the alleged services provided by Filippini or City Built, we have concluded that they are not SMF Scheme Related Expenses.
- (b) **Chiodo:** These are funds received by Chiodo Corporation or Mr Chiodo and which were not subsequently identified as having been transferred to another Known Account. As these costs did not flow back to the SMF or otherwise benefit the SMF, we have concluded that they are not SMF Scheme Related Expenses.

Visna Hemachandra



- (c) **SPV:** Funds received by the SPVs which were not identified as having been subsequently transferred to another Known Account. As these costs did not flow back to the SMF or otherwise benefit the SMF, we have concluded that they are not SMF Scheme Related Expenses.
- (d) **Nextform:** Nextform rendered invoices for building supplies for the developments. As these costs did not flow back to the SMF or otherwise benefit the SMF, we have concluded that they are not SMF Scheme Related Expenses.
- (e) **Studio Mint:** Studio Mint rendered invoices for building supplies for the developments. As these costs did not flow back to the SMF or otherwise benefit the SMF, we have concluded that they are not SMF Scheme Related Expenses
- (f) **ADPF:** Funds received by the ADPF bank account which were not identified as having been subsequently transferred to a Known Account. As these costs did not flow back to the SMF or otherwise benefit the SMF, we have concluded that they are not SMF Scheme Related Expenses.
- (g) **Pure Development:** Funds received by Pure Development, a Chiodo related entity, which were not identified as having been subsequently transferred to a Known Account. As these costs did not flow back to the SMF or otherwise benefit the SMF, we have concluded that they are not SMF Scheme Related Expenses.
- (h) **Malana:** Funds received by Malana which were not identified as having been subsequently transferred to a Known Account. As these costs did not flow back to the SMF or otherwise benefit the SMF, we have concluded that they are not SMF Scheme Related Expenses.
- (i) **Keystone:** Addressed further below (under the heading 'Keystone Operations Account').
- (j) **Legal Fees:** We have reviewed the legal invoices and/or the narration to determine if the invoice was issued by a firm providing services to the SMF. We are satisfied that none of these fees relate to SMF Scheme Related Expenses.
- (k) **Other third parties:** We have reviewed invoices issued by third parties to determine if services were provided to the SMF. We are satisfied that none of these third party fees relate to SMF Scheme Related Expenses.

70 Excel files containing the underlying workbooks have been confidentially shared with the Contradictors and will be confidentially provided to ASIC, MIML and ETSL on request.

Visna Hemachandra



Keystone Operations Account

- 71 As set out above, we traced a total of \$668,648.03 of the CDPF Funds paid to Keystone (being \$65,000 from the CF Property Capital Account and \$603,648.03 from the CDPF Bank Accounts). This was all ultimately transferred (directly and indirectly) into a bank account maintained by Westpac in Keystone's own name with account number ending x1976 (**Keystone Operations Account**).
- 72 We have obtained copies of the bank account statements for the Keystone Operations Account, which identify:
- (a) the account was opened on 12 May 2020;
 - (b) the first CDPF Funds (as identified from our tracing analysis) were paid into the account in June 2021; and
 - (c) the other main sources of funds into the account were from other related parties (include Chiodo Corporation, Malana, and CF Property).
- 73 The statements for the Keystone Operations Account include payments to entities that our investigations of the SMF show to be suppliers or service providers (including statutory bodies) to the SMF, including:
- (a) DLA Piper, which was listed as the legal advisor for the SMF in early documents;
 - (b) Certane, the custodian for the SMF's assets under a custodian agreement dated 18 March 2021;
 - (c) Boardroom Pty Ltd, which provided registry services for the SMF;
 - (d) Unity Fund Services Pty Ltd, which provided administrative and accounting services for the SMF under an agreement dated 23 June 2022;
 - (e) ASIC;
 - (f) APIR, which provides identifier numbers for unlisted financial products;
 - (g) SQM Research Pty Ltd, the rating agency which assessed the SMF;
 - (h) Owen & Peach Accounting, which is listed as tax accountant for the SMF in certain documents;
 - (i) Zimsen Partners, which provided accounting services with respect to Keystone, CF Capital, and the SMF;

Visna Hemachandra



- (j) Ariel and Associates, which provided compliance services to Keystone in its own capacity and in its capacity as Responsible Entity of the SMF;
- (k) Activam Group Pty Ltd, which provided investment consulting services with respect to the SMF;
- (l) Assured Support Pty Ltd, which provided which provided consulting services to Keystone;
- (m) BDO Audit Pty Ltd, which provided auditing services for both Keystone in its personal capacity and in respect to the SMF;
- (n) Brendan Cawley, who provided consultancy services to Keystone;
- (o) Philip Anthon, who provided consultancy services to Keystone;
- (p) FE fundinfo Pty Ltd, which assessed the performance of the SMF;
- (q) Samadhi 8 Pty Ltd, invoices were issued in respect to Maadhvi Patel who was a director of Keystone;
- (r) King & Wood Mallesons, which was listed as the legal advisor for the SMF in respect to ASIC's investigation;
- (s) FSA Audit Pty Ltd, which conducted independent valuations of the units in the ADPF; and
- (t) JDX Wealth Group Pty Ltd, which provided referral services to CF Capital in respect to the SMF.

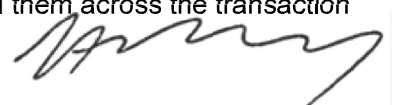
A spreadsheet summarising the bank account statements for the Keystone Operations Account is at **tab 21 of JMT-23**.

74 Whilst some of these expenses may have mixed purposes, we have concluded on a conservative basis for this exercise that expenses paid from the Keystone Operations Account are SMF Scheme Related Expenses. As such, we have treated the full \$668,648.03 of the CDPF Funds paid directly or indirectly into the Keystone Operations Account as falling within the scope of Issue Two.

Cross-check of SMF Scheme Related Expenses

75 In order to confirm the extent to which the Keystone Operations Account was the sole or main account used to pay the expenses of the SMF, our staff compiled a list of keywords based on known service providers to the SMF and searched them across the transaction

Visna Hemachandra



descriptions in the CDPF Bank Accounts and the Known Accounts and did not find any relevant matches.

A spreadsheet recording this enquiry and the results are at **tab 22 of JMT-23**.

- 76 We also identified Keystone financial records projecting future or recording historical SMF Scheme Related Expenses. We have compared the amounts of outflows from the Keystone Operations Account to these records and found that they were commensurate, supporting the view that the Keystone Operations Account was the main or sole account used to pay the expenses of the SMF.

A bundle of Keystone cash flow projections is at **tab 23 of JMT-23**.

A bundle of Keystone's audited financial statements is at **tabs 24 to 25 of JMT-23**.

- 77 Based on the above, we consider it is reasonable to conclude that:

- (a) the outflows from the Keystone Operations Account comprise the totality of the SMF's Scheme Related Expenses during the period of our analysis; and
- (b) the \$668,648.03 of CDPF Funds paid directly or indirectly into the Keystone Operations Account constitutes the entire CDPF funds used to pay SMF Scheme Related Expenses.

E6 Impact of CDPF tracing conclusions on Interim Distribution

- 78 The Contradictors state their position at paragraphs 79 and 80 of their submissions filed on 16 February 2026, which I extract for reference below:

*"[79] In circumstances where Keystone's establishment of the SMF and ADPF coincided with its assumption of its role as trustee of the CDPF and the making of various payments by Falcon to, or seemingly otherwise on behalf of, Keystone as trustee for the CDPF, there is a real prospect that Keystone as trustee for the CDPF – in prima facie breach of trust – may have applied the funds so advanced by Falcon **towards the acquisition or service of SMF assets, or in payment of SMF expenses** (insofar as this occurred outside of the bank accounts held by the SMF analysed by the Appointees in the Keystone Financial Position Report). This requires further investigation.*

[80] If further investigation revealed that funds advanced by Falcon were used by Keystone towards the acquisition or service of SMF assets, or in payment of

Visna Hemachandra



SMF expenses (insofar as this occurred outside of the bank accounts held by the SMF analysed by the Appointees in the Keystone Financial Position Report):

(a) Falcon would have a claim against Keystone ATF the CDPF and against Keystone ATF the SMF as a knowing recipient of funds of trust funds paid in breach of trust; and

(b) Keystone could avail itself of its right of indemnity from SMF assets to satisfy that claim (to which Falcon could be subrogated)."

(emphasis added)

79 For the reasons addressed in paragraphs 32 and 33 above, and in paragraphs 128 to 132 of my Sixteenth Affidavit, I believe that the Receivers and the Contradictors are substantially in agreement that there was no application of CDPF derived funds "*towards the acquisition [...] of SMF assets*".

80 As to whether there was any application of CDPF derived funds "*towards the [...] service of SMF assets, or in payment of SMF expenses*", this issue is addressed by the CDPF tracing and SMF expenses analyses above, as well as the analysis regarding the sources and uses of SMF funds extracted in paragraphs 129 and 130 of my Sixteenth Affidavit.

81 The Receivers have considered whether CDPF funds could be characterised in any way as having been used to benefit the SMF, such as to give rise to a potential claim by Falcon and/or the CDPF against SMF assets, if they were used to benefit the ADPF Developments conducted by the SPVs.

82 For the reasons set out above, as well as in paragraphs 32 to 39 and 129 to 130 of my Sixteenth Affidavit, we consider that the use of CDPF funds in connection with the ADPF Developments would not and could not provide any foundation for Falcon to make a claim with potential recourse to SMF assets, in circumstances where:

- (a) the SMF did not have any beneficial interest in the ADPF's loans to the SPVs, the SPVs themselves, or their property. Rather, the relevant assets held by the SMF were the units in the ADPF in accordance with clause 2.1 of the ADPF Trust Deed, which provides:

"The beneficial interest in the Trust is divided into Units. Each Unitholder has a beneficial interest in the Trust as a whole but not in any specific part or assets of the Trust."

Visna Hemachandra



- (b) in those circumstances, the shares in the SPVs, and the assets of the SPVs, are not SMF assets and any receipts by the SPVs of CDPF derived funds were not receipts by the SMF;
- (c) whilst we cannot rule out the possibility that Falcon might be able to establish a knowing receipt claim against Keystone in its capacity as trustee of the ADPF — for example, if, subject to further investigations, Falcon could establish that the ADPF received a benefit via the direct or indirect receipt by the SPVs of CDPF-derived funds — we see no basis through which Falcon could establish any knowing receipt claim against Keystone in its capacity as trustee of the SMF, given that the sole source of funds that the SMF used to acquire the units in the ADPF was SMF investor funds; and
- (d) in any event, any returns received by us from the ADPF Developments will be held on trust pending any priority disputes as between the ADPF and the CDPF. Accordingly, the proposed Interim Distribution will not prejudice the CDPF or Falcon's rights to seek to establish a claim to the assets of the ADPF.


83 From our tracing analysis and other investigations, we have identified that \$668,648.03 of CDPF Funds were paid directly or indirectly into the Keystone Operations Account which appeared to be predominantly used to pay SMF Scheme Related Expenses. We consider the CDPF and/or Falcon may have a claim against SMF assets in this amount and therefore we will retain this amount for any such claims.

84 We consider this to be a conservative approach, firstly due to the conservative tracing principles applied and, secondly, because we anticipate the claim value will decrease as we obtain further documents and bank statements and continue to progress our tracing analysis. We also intend to retain \$8,000,000 rather than the \$12,000,000 referred to at paragraph 138 of my Sixteenth Affidavit as a contingency unrelated to any specified claims, which could also be available should the CDPF claim value unexpectedly increase. By this point in time, we have obtained more certainty around various matters and are able to have more confidence that all other potential liabilities have been identified and more precisely quantified.

E3 Relief from implied undertaking

85 The Receivers' CDPF tracing analysis and the summary tables included at paragraphs 67 and 68 **Error! Reference source not found.**of this affidavit rely, in part, on documents discovered by Paul Chiodo or produced under subpoena in proceeding VID978/2024. The analysis at paragraph 39 also relies upon a document discovered by Mr Chiodo in that same proceeding. We seek orders be made in proceeding

Visna Hemachandra



VID978/2024 to be excused from the implied undertaking (which limits the use of those documents to the that proceeding), to enable us to rely on those documents in this proceeding. We respectfully consider it is in the interests of justice for that relief to be provided because:

- (a) of the interconnected nature of the proceedings;
- (b) we consider that it would be open for us to issue subpoenas in this proceeding for the documents to be produced and we do not consider there would be a reasonable basis for those subpoenas to be contested;
- (c) it would be more burdensome on the parties who produced those documents to reproduce the same documents; and
- (d) it would increase the costs and cause delay, ultimately to the detriment of the underlying investors to have to issue subpoenas for the documents to be reproduced in this proceeding.

86 We intend to write to each of the parties who produced the documents on which we seek to rely to notify them of our request to be excused from the implied undertaking and enquire of their attitude to that request.

F Correspondence with the CSLR and AFCA

87 I refer to paragraph 123 of my Sixteenth Affidavit, which refers to a notification of the Interim Distribution given to AFCA and the CSLR on 23 January 2026.

88 AFCA operates an external dispute resolution scheme under the Corporations Act which financial services licensees must be members of under s 912A. The CSLR operates a scheme under Part 7.10B of the Corporations Act that pays compensation to complainants who have obtained AFCA determinations against members but have not been able to recover the amount awarded under the determination.

89 On 17 February 2026, NRFA received a letter from the CSLR indicating that the CSLR is developing a proposal that would potentially offer capped upfront compensation to Underlying Investors who obtain AFCA determinations that qualify for compensation by the CSLR (**CSLR Proposal**). Based on the CSLR's letter dated 17 February 2026, I understand the CSLR Proposal would represent a departure from the CSLR's normal practice where it pays compensation only after recipients of AFCA determinations have

Visna Hemachandra



exhausted other avenues to minimise or obtain compensation and received any relevant dividends and distributions.

A copy of CSLR's letter dated 17 February 2026 is at **tab 1 of Confidential JMT-24**.

90 By sections 1064(1) and 1065 of the Corporations Act, and particularly s 1065(2), AFCA determinations against Keystone as responsible entity of the SMF are not as such eligible for compensation by the CSLR. However, under s 1065(2)(b), AFCA determinations against financial advice firms who caused Underlying Investors to invest in the SMF are eligible for CSLR compensation.

91 AFCA's website discloses that it has received numerous complaints against financial advice firms who caused people to invest in the SMF or First Guardian Master Fund and AFCA has published "lead decisions" in relation to at least four such financial advice firms as guidance in order that other complaints against those firms proceed more efficiently.

An extract from AFCA's website is at **tab 2 of Confidential JMT-25**.

92 Since receiving the CSLR's letter, NRFA has exchanged letters with AFCA and the CSLR seeking further information regarding the CSLR's progress in developing the CSLR Proposal, the likelihood that the CSLR will proceed to offer compensation to Underlying Investors, and the likely timing of any upfront compensation offers.

A bundle of this correspondence is at **tabs 3 to 10 of Confidential JMT-24**.

93 Based on the above correspondence, I understand the main features and status of the CSLR's proposal is as follows:

(a) we are informed by ETSL's legal representatives that all Underlying Investors who invested through its platforms did so following advice from licensed financial advice firms. To the extent that those Underlying Investors may have complaints against financial advice firms that lead to AFCA determinations against those firms, they may be eligible for any upfront compensation offer by the CSLR;

An email from Quinn Emanuel (ETSL's lawyers) dated 20 May 2026 is at **tab 26 of JMT-23**.

(b) as of 8 April 2026, the CSLR expects to have funding to provide upfront compensation for claims received by it in FY 2026. For claims received in FY 2027, the extent to which the CSLR will be able to pay upfront compensation will

Visna Hemachandra



depend on the special levy determination for FY 2027, which requires a ministerial determination and is subject to a parliamentary disallowance process;

- (c) as of 5 May 2026, nine claims have been made to the CSLR following AFCA determinations relating to the SMF;
- (d) as of 8 May 2026, AFCA had:
 - (i) received 1,390 complaints from investors affected by the collapse of the SMF. 1,053 of these complaints are against financial advice firms, of which 980 remain open; and
 - (ii) issued 31 determinations in relation to investors affected by the collapse of the SMF awarding a total of \$5.6 million;
- (e) as of 12 May 2026, AFCA is at a preliminary stage of considering how the CSLR Proposal can be delivered in relation to Underlying Investors who invested in the SMF through platform/custodian arrangements and retain interests in the units. This appears to involve some complexity where AFCA seeks to document subrogation-type arrangements where distributions or dividends could be re-directed after any payment of upfront compensation;
- (f) as of 13 May 2026, AFCA was unable to provide a timeframe for its processing of SMF-related complaints. AFCA noted it was managing a significant number of complaints from other collapsed schemes and had taken measures including increasing its workforce to accelerate its handling of SMF-related complaints;
- (g) one of the financial advice firms which is subject to an AFCA lead decision, Interprac Financial Planning Pty Ltd (**Interprac**), has commenced two proceedings in this Court against AFCA, being proceedings VID212/2026 filed on 24 February 2026 and VID448/2026 filed on 7 May 2026 (**Interprac Proceedings**). We have obtained court documents for proceeding VID212/2026, in which Interprac criticises AFCA's lead decision against Interprac and the appropriateness of AFCA relying on that lead decision in determining other complaints against Interprac. On 8 May 2026, AFCA advised that proceeding VID448/2026 sought limited injunctive relief and AFCA was assessing the impact of the relief sought on its ongoing work on complaints against Interprac;

The concise statement in proceeding VID212/2026 is at **tab 27 of JMT-23**.

Visna Hemachandra



- (h) more broadly, the CSLR Proposal may be affected by the levy process, ministerial and/or regulatory directions, amendments to its legislative framework and policy settings, though the CSLR has said that not all these possibly relevant factors are necessarily likely to have an impact.

94 We consider that it remains appropriate for the Receivers to make an Interim Distribution despite there being potential for the CSLR to offer upfront compensation to Underlying Investors who obtain qualifying AFCA determinations. We base this view on the following:

- (a) the CSLR's proposal appears to be subject to funding for claims after FY 2026, and may be affected by other factors;
- (b) the CSLR remains in the preliminary stage of considering how upfront compensation will be implemented in respect of claimants who invested in the SMF through a platform and retain an interest in the units. By way of illustration, the affidavit of Mr Andre Kocis filed in this proceeding for ETSL on 25 July 2025 states that there were 2,889 members of its funds with interests in the SMF and these persons may be experiencing hardship;
- (c) payment of compensation to an Underlying Investor under the CSLR Proposal will be possible only after AFCA's determination of their complaint to AFCA, which appears to be progressing relatively slowly and could take some time;
- (d) based on the above, whilst not all the timing considerations that may affect the CSLR Proposal are known, it appears that it will be some time before the CSLR pays compensation on any significant scale;
- (e) given the extent to which the Receivers intend to retain funds when determining the Interim Distribution Amount, any potential prejudice to creditors in making an Interim Distribution will have been substantially mitigated;
- (f) making an Interim Distribution may assist to facilitate the CSLR Proposal where it may result in upfront compensation to Underlying Investors which would reduce Underlying Investors' losses from investing in the SMF and, accordingly, reduce the amount that the CSLR would be required to obtain through its levy process to fund upfront compensation to those Underlying Investors; and
- (g) the Macquarie Parties have informed the Receivers that:
 - (i) it paid \$321 million to Underlying Investors who invested in the SMF through Macquarie funds and platforms under the arrangements

Visna Hemachandra



described at paragraphs 36 to 37 of my Twelfth Affidavit, which actions were in the Underlying Investors' interest; and

- (ii) the Interim Distribution will partially offset this outlay to Underlying Investors and allow the Macquarie Group to achieve the return on equity it usually obtains on such funds rather than losing the opportunity to achieve those returns; and

A letter from Allens to NRFA dated 8 May 2026 outlining the Macquarie Parties' position is at **tab 28 of JMT-23**.

- (h) it generally is to be desired that Keystone returns funds to unitholders as soon as practicable.

G UPDATE TO RETENTION CALCULATIONS

95 I refer to paragraphs 60 to 65 of my Sixteenth Affidavit, which summarises the Receivers' "Retention Calculations" as to the amount to be withheld when making the Interim Distribution.

96 In light of the tracing of CDPF funds discussed at paragraphs 28 to 84 above, we intend to retain a further \$668,648.03 against any potential claim the CDPF and/or Falcon has for the use of CDPF funds to pay SMF Scheme Related Expenses.

97 The Retention Calculation varies from the calculation set out in my Sixteenth Affidavit as follows:

- (a) amounts that were forecast to be incurred (and were incurred and paid) in the period between my Sixteenth Affidavit and this affidavit have been removed from the retention calculation (although this will not change the proposed distribution amount so long as the amount incurred correlated with the amount forecast, given the Bell Potter Proceeds would have reduced by this same amount);
- (b) we have ceased reserving for PODs which we adjudicated on with either the full value or a portion of the value of the claims in the PODs having been rejected in circumstances in which the period for the creditors to appeal the POD adjudication decision have passed;
- (c) we have retained for one further POD which was received subsequently to my affidavit filed on 29 January 2026. The proof of debt claim form was for an amount of \$100,612 and we have reserved an amount for that claim including statutory interest that may be payable in connection with that proof of debt claim;

Visna Hemachandra



- (d) we have included an amount for the Contradictors' estimated costs in this application;
- (e) we have adjusted for any potential fines and penalties for late tax lodgements which relates to both pre and post appointment lodgements, in the amount of \$185,150. An amount of \$122,170 relates to potential fines and penalties for late lodgement of AMMA statements and an amount of \$62,980 relates to potential fines and penalties for late lodgement of income tax returns, annual investment income reports and Business Activity Statements. The amounts retained for those potential fines and penalties have been calculated on the basis that the Australian Taxation Office enforces those fines and penalties and that Keystone is not considered to be a Significant Global Entity (**SGE**); and
- (f) we have adjusted the estimate of our remuneration and expenses.

A copy of the further POD is at **tab 29 of JMT-23**.

98 An amended summary of our calculations is below.

Item	Amount
Invoiced NRFA fees and disbursements	\$210,035.61
Forecast custodian fees	\$440,000.00
Forecast NRFA fees and disbursements	\$14,354,473.76
Forecast receivership and liquidation remuneration and expenses	\$12,904,948.60
Adverse costs exposure in Filipini Proceeding	\$16,500,000.00
Cross-undertaking exposure arising from freezing orders obtained in Filipini Proceeding	\$Nil
Adverse costs exposure in Frolov Proceeding	\$3,000,000.00
Potential responsible entity management fees	\$11,911,938.19
Contradictor costs	\$428,183.36
Creditor claims	\$21,364,588.94
Contingency	\$8,000,000.00

Visna Hemachandra



Total reserved claims	\$89,114,168.45
Qualifying Class cash at bank (including Bell Potter Proceeds)	\$194,125,744.41
Proposed Interim Distribution amount	Up to \$105,011,575.96

A copy of a spreadsheet containing breakdowns of the above table is at **tab 30 of JMT-23**.

H RELIEF SOUGHT IN RELATION TO RELIEF FROM TAX OBLIGATIONS

99 Clause 13.29 of the Constitution includes the following obligation:

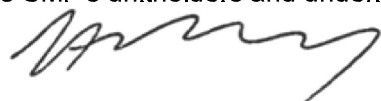
“... The AMMA Statement must be given to each Unitholder of the Trust no later than three months after the end of the Financial Year to which the AMMA Statement relates. ...”

100 As described above, if the Court makes the interim distribution orders sought at paragraphs 4 and 5 of the Further Amended IP then the Receivers intend to cause Keystone to issue AMMA Statements after the time period allowed by clause 13.29 for FYs 2024 and 2025 attributing all income to unitholders.

101 By paragraph 9 of the Further Amended IP, the Receivers seek an order under section 85 of the *Trustee Act 1925* (NSW) relieving Keystone from liability for this breach of clause 13.29. We consider that Keystone is acting honestly and reasonably in issuing AMMA Statements late, and ought fairly to be relieved from any liability, where:

- (a) the Receivers’ decision that the SMF should issue AMMA Statements before making an Interim Distribution arises from their desire to confirm the amount of the SMF’s tax liabilities and minimise the amount that they need to retain when making an Interim Distribution for the benefit of the SMF’s unitholders and Underlying Investors;
- (b) following our appointment as Receivers on 28 August 2024, we took control of Keystone’s funds which had been significantly mismanaged and we have been required to deal with a very significant array of issues in investigating Keystone’s affairs and seeking to recover property for the SMF’s unitholders and underlying

Visna Hemachandra



investors. In these circumstances, we acted reasonably in prioritising other matters over Keystone's tax affairs until it became necessary for the Interim Distribution;

- (c) the late issuing of AMMA Statements would cause an administrative task for the members of the Qualifying Classes of the SMF, as they would be required to amend their previous year tax returns to account for the additional income attributed to them in the AMMA Statements. Whilst the Receivers could avoid this by instead issuing AMMA Statements with nil income attributed to its members, making Keystone as trustee instead liable for tax on the income, this would reduce the overall proceeds received by the members of the SMF as Keystone as trustee is taxed at the highest marginal rate, and cannot access the tax concessions that members can, primarily the CGT discount. Consequently, attributing income to unitholders is likely to reduce the overall level of taxation on income in the Qualifying Classes which is to unitholders' benefit;
- (d) although there is the administrative burden of updating previous year tax returns, there is no significant prejudice from the late issuance of AMMA Statements where:
 - (i) for the Qualifying Classes, which have income in FYs 2024 and 2025, we understand that any amendments to tax lodgings for those years required by the attribution of additional income to unitholders will be handled by the institutional unitholders (that is, BSCL/MFL, ETSL, TTCL and HCNL/Praemium) rather than by Underlying Investors. We are seeking confirmation of this from the institutional unitholders;
 - (ii) for the ADPC Class of the SMF, where the units are directly held by individuals or SMSFs, there is no income in FYs 2024 and 2025. Consequently, the issuing of AMMA Statements for these units will not require any amendments to the tax lodgings of unitholders in this Class.
- (e) releasing Keystone from liability for the late issue of AMMA Statements will relieve the Receivers from considering whether there is any liability resulting from breaching clause 13.29.

102 If Keystone becomes liable for any fines or penalties for failing to provide the AMMA Statements within three months of the end of the financial year, we estimate that the

Visna Hemachandra



total fines and penalties would be approximately \$122,170. We would seek remission of any penalties levied.

- 103 There is a risk that the SMF is determined to be a SGE, being an entity that is part of a global group with annual global income of (including by reference to consolidated accounting statements) of A\$1 billion or more. Whilst the SMF does not alone meet the turnover thresholds, the question is whether it should be consolidated for accounting purposes with its major unitholders. We have been engaging with Macquarie and ETSL to finalise our position on this question.
- 104 If the SMF was determined to be an SGE, it would result in any fines and penalties being increased by a multiple of 500. Accordingly, we will only make the interim distribution once we are satisfied that any fines and penalties are not payable and/or the SMF is not an SGE.

I ONGOING HARDSHIP TO UNDERLYING INVESTORS

- 105 We remain of the view that the interim distribution should be made in order to alleviate the ongoing hardship being suffered by the Underlying Investors of the SMF. I understand that the number of underlying investors in ETSL, TTCL and Praemium and the size of their investments is as follows:
- (a) in respect of ETSL, based on the affidavit of Andrej Kocis affirmed on 25 July 2024 and filed in these proceedings:
- (i) at [7], as at 12 June 2024, there were approximately 2,815 members of NQ Super and Pension (**NQ Members**) and 74 members of Super Simplifier (**Super Simplifier Members**) with interests relating to the SMF; and
- (ii) at [8], as at 12 June 2024, the NQ Members had amounts invested in the Shield Fund totalling about \$140 million (based on unit values determined by Keystone as at 3 April 2024). As at the same date, the Super Simplifier Members had amounts invested in the SMF totalling about \$12 million (again, based on unit values determined by Keystone as at 3 April 2024):
- (b) in respect of TTCL, we wrote to Quinn Emmanuel Urquhart & Sullivan (**QE**), the solicitors acting for TTCL on 26 May 2026 to confirm the number of underlying investors with an interest in the SMF. On 29 May 2026, NRFA received an email from QE attaching specific examples of investor hardship and confirming that “TTCL was a former trustee and its holdings were moved into

Visna Hemachandra



ETSL. Accordingly, the number of members stated in the affidavit of Andrej Kocis dated 25 July 2024 includes both ETSL and TTCL.”

A copy of QE’s 29 May 2026 email and its attachment is at **tabs 11 to 12 of Confidential JMT-24.**

- (c) In respect of Praemium, we wrote to Nicholson Ryan Lawyers, the solicitors acting for Praemium on 7 April 2026 to confirm the number of underlying investors and their respective units held in the SMF. On 15 May 2026, Mr James Humphris of Nicholson Ryan Lawyers provided a Holdings Report which confirmed that between 30 June 2024 and 30 June 2025, there were 3 members holding a total of 891,704 units in the Growth class of the SMF.

Affirmed by JASON MARK TRACY
at Sydney
in the State of New South Wales
on 31 May 2026
Before me:

)
)
)
)
)



Signature of deponent

Visna Hemachandra

Signature of witness

Visna Imanthi Hemachandra
Level 38, Olderfleet, 477 Collins Street
Melbourne Victoria 3000
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

In accordance with section 27(1A) of the *Oaths and Affirmations Act 2018* (Vic), this affidavit was signed and sworn by the deponent by audio-visual link, and the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements.

Certificate identifying exhibit

No VID536 of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

KEYSTONE ASSET MANAGEMENT LTD (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 612 443 008) and another

Defendants

EXHIBIT "JMT-23"

This is the exhibit marked "JMT-23" now produced and shown to Jason Mark Tracy at the time of affirming his affidavit on 31 May 2026.

Visna Hemachandra

Visna Imanthi Hemachandra
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform
Law 2014 (Victoria)

22 May 2026

5 Please respond giving us your clients' confirmation of the above by 27 May 2026.

Other matters in your letters

6 We do not propose to respond in detail to the matters in your letters dated 8 and 19 May 2026, save to say as follows:

- (1) in relation to your remarks on the CSLR's proposal, we will put your letter before the Court and there will be some overlap between your clients' position and the Receivers' position. By way of update, since our last communication with you we have exchanged the attached further correspondence with AFCA and the CSLR, which we consider to be helpful;
- (2) our clients have and will continue to progress the interim distribution application and the receivership more generally with appropriate consideration and haste. As you are aware, the appointment is complicated, particularly given the manner in which the affairs were conducted and the state of the books and records. Our clients will continue to engage with you and update you as they have been through the regular stakeholder calls.

Yours faithfully

Norton Rose Fulbright

Kim MacKay / Natasha Toholka
Partners
Norton Rose Fulbright Australia

27 May 2026

By email: asialenard@quinnemanuel.com

Quinn Emanuel Urquhart & Sullivan
Level 15, 111 Elizabeth Street
Sydney NSW 2000

Attention: Asia Lenard

Norton Rose Fulbright Australia

ABN 32 720 868 049

Level 38, Olderfleet

477 Collins Street

MELBOURNE VIC 3000

AUSTRALIA

Tel +61 3 8686 6000

Fax +61 3 8686 6505

GPO Box 4592, Melbourne VIC 3001

DX 445 Melbourne

nortonrosefulbright.com

Direct line

+61 3 8686 6970

Email

natasha.toholka@nortonrosefulbright.com

Your reference:

Our reference:

4072730

Dear Ms Lenard

**ASIC v Keystone Asset Management Limited (receivers and managers appt) (in liq) (“Keystone”)
Federal Court of Australia proceeding VID536 of 2024 (“Proceeding”)**

1 We refer to:

- (1) the recent meetings between our respective clients in relation to taxation issues relevant to the Receivers’ interim distribution application; and
- (2) our client’s email to you dated 20 May 2026.

Tax matters

2 The taxation issues arising in Keystone’s responsible entity and trustee capacities and their implications for members are complex and the Receivers thank Equity Trustees Superannuation Limited ACN 055 641 757 (**ETSL**) for its engagement with this process.

3 The Receivers’ tax team has investigated Keystone’s tax position, and we set out below the Receivers’ understanding of its position in its own capacity and as trustee of various funds:

- (1) Keystone has not finalised its tax returns (in its own capacity or as trustee) for the financial years ended 30 June 2024 and 30 June 2025;
- (2) The late issuing of attribution managed investment trust member annual (**AMMA**) Statements would cause an administrative task for the members of the Qualifying Classes of the SMF, as they would be required to amend their previous year’s tax returns to account for the additional income attributed to them in the AMMA Statements;
- (3) While the Receivers could avoid this by instead issuing AMMA Statements with nil income attributed to its members, making Keystone as trustee instead liable for tax on the income, this would reduce the overall proceeds received by the members of the SMF, as Keystone as trustee will be required to pay the tax and Keystone as trustee is taxed at the highest marginal rate, and cannot access tax concessions that are available to its members;
- (4) Consequently, attributing income to unitholders is likely to reduce the overall level of taxation on income in the Qualifying Classes which is to unitholders’ benefit.

APAC-#316171053-v3

27 May 2026

- 4 For the Qualifying Classes, which have income in the financial years ended 30 June 2024 and 30 June 2025, we understand that any amendments to tax lodgings for those years required as a result of the attribution of additional income to unitholders, will be handled by the institutional unitholders, rather than by Underlying Investors.
- 5 We understand that our respective clients have briefly discussed the appropriate handling of certain matters for the purposes of the interim distribution application. We write to ask your client to provide their views on the above matters so that their position can be included in the evidence supporting the interim distribution application.
- 6 In particular, would you please confirm, to the extent possible, whether ETSL has any concerns with:
- (1) Keystone attributing all income (including capital gains) to members of the SMF in AMMA Statements for the financial years ended 30 June 2024 and 30 June 2025 and going forward;
 - (2) attributing all income to members – which will lower the overall level of taxation on members as Keystone as trustee is taxed at the highest marginal rate, and cannot access tax concessions that are available to its members; and
 - (3) amending previous tax returns in relation to its holdings in the SMF. The late issuance of AMMA Statements for the financial years ended 30 June 2024 and 30 June 2025 should not impose an obligation to amend previous year tax returns on underlying members of ETSL's funds and platforms who previously held interests in ETSL's SMF units.
- 7 We appreciate that you may need to seek tax advice before responding. We would be grateful if you would please provide your client's response at your earliest convenience and in any event, by no later than 2 June 2026.

Yours faithfully



Kim MacKay / Natasha Toholka
Partners
Norton Rose Fulbright Australia

27 May 2026

By email: asialenard@quinnemanuel.com

Quinn Emanuel Urquhart & Sullivan
Level 15, 111 Elizabeth Street
Sydney NSW 2000

Attention: Asia Lenard

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 38, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line

+61 3 8686 6970

Email

natasha.toholka@nortonrosefulbright.com

Your reference:

Our reference:

4072730

Dear Ms Lenard

**ASIC v Keystone Asset Management Limited (receivers and managers appt) (in liq) (“Keystone”)
Federal Court of Australia proceeding VID536 of 2024 (“Proceeding”)**

- 1 We refer to recent correspondence between NRF and Quinn Emanuel Urquhart & Sullivan, the solicitors acting for The Trust Company (PTAL) Limited ABN 28 008 412 913 (**TTCL**) in relation to the taxation issues relevant to the Receivers’ interim distribution application in the Proceeding.
- 2 We understand that TTCL is a unitholder in several investment classes (including Balanced, Growth and High Growth) of the Shield Master Fund (**SMF**).

Tax matters

- 3 The taxation issues arising in Keystone’s responsible entity and trustee capacities and their implications for members are complex and the Receivers are seeking TTCL’s engagement with this process.
- 4 We **enclose** a copy of the draft taxable income calculations for the balanced, growth and high growth investment classes of the Shield Master Fund (**SMF**) for the financial years ended 30 June 2024 and 30 June 2025, together with the class level attribution managed investment trust member annual (**AMMA**) statement for each of those financial years ended 30 June 2024 and 30 June 2025. Please note that the AMMA statement is at the investment class level only, investor level statements will be prepared and issued in due course.
- 5 The Receivers’ tax team has investigated Keystone’s tax position and we set out below the Receivers’ understanding of its position in its own capacity and as trustee of various funds:
 - (1) Keystone has not finalised its tax returns (in its own capacity or as trustee) for the financial years ended 30 June 2024 and 30 June 2025;
 - (2) The late issuing of AMMA Statements would cause an administrative task for the members of the Qualifying Classes of the SMF, as they would be required to amend their previous year’s tax returns to account for the additional income attributed to them in the AMMA Statements;
 - (3) While the Receivers could avoid this by instead issuing AMMA Statements with nil income attributed to its members, making Keystone as trustee instead liable for tax on the income, this would reduce the overall proceeds received by the members of the SMF, as Keystone

APAC-#316216180-v2

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27 May 2026

as trustee is taxed at the highest marginal rate, and cannot access the tax concessions that are available to its members;

- (4) Consequently, attributing income to unitholders is likely to reduce the overall level of taxation on income in the Qualifying Classes which is to unitholders' benefit.
- 6 For the Qualifying Classes, which have income in the financial years ended 30 June 2024 and 30 June 2025, we understand that any amendments to tax lodgings for those years required by the attribution of additional income to unitholders, will be handled by the institutional unitholders, rather than by Underlying Investors.
- 7 We write to ask for your client's views on the above matters, to the extent possible, so their position can be included in the evidence supporting the interim distribution application. In particular, would you please confirm whether your client has any concerns:
- (1) with Keystone attributing all income (including capital gains) to members of the SMF in AMMA Statements for the financial years ended 30 June 2024 and 30 June 2025 and going forward;
 - (2) attributing all income to members - which will lower the overall level of taxation on members as Keystone as trustee is taxed at the highest marginal rate, and cannot access tax concessions that are available to its members; and
 - (3) amending previous tax returns in relation to its holdings in the SMF. The late issuance of AMMA Statements for the financial years ended 30 June 2024 and 30 June 2025 should not impose an obligation to amend previous year tax returns on TTCL's underlying members who held interests in TTCL's SMF units.
- 8 We appreciate that you may need to seek tax advice before responding. We would be grateful if you could please provide us with your client's response at your earliest convenience and in any event, by no later than 2 June 2026.

Please contact the writer with any queries.

Yours faithfully



Kim MacKay / Natasha Toholka
Partners
Norton Rose Fulbright Australia

This is the slip-sheet of "Shield Master
Fund - Taxable Income Calculations - ex
Conservative and ADPC [Annexure to
TTCL letter]"

27 May 2026

By email: jamesh@nrlawyers.com.au

Praemium Australia Limited
C/-Nicholson Ryan Lawyers
Level 7, 420 Collins Street
Melbourne VIC 3000

Attention: James Humphris

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 38, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line

+61 3 8686 6970

Email

natasha.toholka@nortonrosefulbright.com

Your reference:

Our reference:

4072730

Dear Mr Humphris

**ASIC v Keystone Asset Management Limited (receivers and managers appt) (in liq) (“Keystone”)
Federal Court of Australia proceeding VID536 of 2024 (“Proceeding”)**

- 1 We refer to recent correspondence between NRF and Nicholson Ryan Lawyers, the solicitors acting for Praemium Australia Limited (**Praemium**) in relation to the foreshadowed taxation issues relevant to the Receivers’ interim distribution application in the Proceeding.
- 2 We understand that:
 - (1) HSBC is a unitholder in the Growth Investment class of the Shield Master Fund (**SMF**). HSBC holds these units as sub-custodian for HBAU, which holds its interest as custodian for Praemium.
 - (2) the proposed Interim Distribution would allow HSBC and HBAU to return funds to Praemium.

Tax matters

- 3 The taxation issues arising in Keystone’s responsible entity and trustee capacities and their implications for members are complex and the Receivers thank Praemium for its engagement with this process.
- 4 We **enclose** a copy of the draft taxable income calculations for the growth investment class of the Shield Master Fund (**SMF**) for the financial years ended 30 June 2024 and 30 June 2025, together with the draft investment class level attribution managed investment trust member annual (**AMMA**) statement for each of those financial years ended 30 June 2024 and 30 June 2025. Please note that the AMMA statement is at the class level only, investor level statements will be prepared and issued in due course.
- 5 The Receivers’ tax team has investigated Keystone’s tax position, and we set out below the Receivers’ understanding of its position in its own capacity and as trustee of various funds:
 - (1) Keystone has not finalised its tax returns (in its own capacity or as trustee) for the financial years ended 30 June 2024 and 30 June 2025;
 - (2) The late issuing of AMMA Statements would cause an administrative task for the members of the Qualifying Classes of the SMF, as they would be required to amend their previous

APAC-#316175585-v3

27 May 2026

year's tax returns to account for the additional income attributed to them in the AMMA Statements;

- (3) While the Receivers could avoid this by instead issuing AMMA Statements with nil income attributed to its members, making Keystone as trustee instead liable for tax on the income, this would reduce the overall proceeds received by the members of the SMF, as Keystone as trustee will be required to pay the tax and Keystone as trustee is taxed at the highest marginal rate, and cannot access tax concessions that are available to its members;
 - (4) Consequently, attributing income to unitholders is likely to reduce the overall level of taxation on income in the Qualifying Classes which is to unitholders' benefit.
- 6 For the Qualifying Classes, which have income in the financial years ended 30 June 2024 and 30 June 2025, we understand that any amendments to tax lodgings for those years required as a result of the attribution of additional income to unitholders, will be handled by the institutional unitholders, rather than by Underlying Investors.
- 7 We write to ask for your client's views on the above matters, to the extent possible, so its position can be included in the evidence supporting the interim distribution application. In particular, would you please confirm whether your client has any concerns with:
- (1) Keystone attributing all income (including capital gains) to members of the SMF in AMMA Statements for the financial years ended 30 June 2024 and 30 June 2025 and going forward;
 - (2) attributing all income to members – which will lower the overall level of taxation on members as Keystone as trustee is taxed at the highest marginal rate, and cannot access tax concessions that are available to its members; and
 - (3) amending previous tax returns in relation to its holdings in the SMF. The late issuance of AMMA Statements for the financial years ended 30 June 2024 and 30 June 2025 should not impose an obligation to amend previous year tax returns on underlying members of HSBC's funds and platforms who previously held interests in HSCB's SMF units.
- 8 We appreciate that you may need to seek tax advice before responding. We would be grateful if you would please provide your client's response at your earliest convenience and in any event, by no later than 2 June 2026.

Please contact the writer with any queries.

Yours faithfully



Kim MacKay / Natasha Toholka
Partners
Norton Rose Fulbright Australia

This is the slip-sheet of "Shield Master
Fund - Taxable Income Calculations -
Growth Class only [Annexure to Praemium
letter]"

Tab 7

From: Campbell, James <James.Campbell@allens.com.au>
Sent: Monday, 25 May 2026 4:25 PM
To: Visna Hemachandra; Thompson, Alice
Cc: Clark, Sam; Payten, Joe; Natasha Toholka; Kim MacKay; Thomas Kelly; Callum Dunlop
Subject: RE: VID536/2024 ASIC v KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPTD) (IN LIQ) [NRF-APAC.1077791.4072730.FID3487865]
Attachments: image004.png; image001.png
Follow Up Flag: Follow up
Flag Status: Flagged



Dear Colleagues

We refer to your letter dated 22 May 2026, which sought to confirm the consensus that has been reached about handling of tax-related matters.

We confirm that the points in paragraph 4 of your letter reflect Macquarie's position. For completeness, in relation to paragraph 4(3) of your letter:

- it is correct that underlying members of the Macquarie Superannuation Plan who had previously invested in the Shield Master Fund should not need to amend previous year tax returns;
- in addition, there are seven underlying investors who invested in Shield through the Macquarie investor-directed portfolio service outside of the Macquarie Superannuation Plan. Those investors may need to prepare amended tax returns for previous years.

Regards

James Campbell
Partner, **Allens**
DL [+61 2 9230 4751](tel:+61292304751) M [+61 400 365 649](tel:+61400365649)



From: Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>
Sent: Friday, 22 May 2026 3:59 PM
To: Campbell, James <James.Campbell@allens.com.au>; Thompson, Alice <Alice.Thompson@allens.com.au>
Cc: Clark, Sam <Sam.Clark@allens.com.au>; Payten, Joe <Joe.Payten@allens.com.au>; Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Kim MacKay <kim.mackay@nortonrosefulbright.com>; Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; Callum Dunlop <callum.dunlop@nortonrosefulbright.com>
Subject: RE: VID536/2024 ASIC v KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPTD) (IN LIQ) [Allens-DMS.FID2469559] [NRF-APAC.1077791.4072730.FID3487865]

CAUTION: External Email

Hi James and Alice

Please refer to the **attached** correspondence.

Kind regards

Visna

Visna Hemachandra | Associate

Pronouns: she/her

Norton Rose Fulbright Australia

Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia

Tel +61 3 8686 6205 | Fax +61 3 8686 6505

visna.hemachandra@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

nortonrosefulbright.com

From: Clark, Sam <Sam.Clark@allens.com.au>

Sent: Tuesday, 19 May 2026 10:31 AM

To: Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Kim MacKay <kim.mackay@nortonrosefulbright.com>; Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; Queenie Mok <queenie.mok@nortonrosefulbright.com>; Charlotte Batten <charlotte.batten@nortonrosefulbright.com>

Cc: Campbell, James <James.Campbell@allens.com.au>; Payten, Joe <Joe.Payten@allens.com.au>

Subject: VID536/2024 ASIC v KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPTD) (IN LIQ) [Allens-DMS.FID2469559]

Dear Colleagues

Please see attached correspondence.

Regards

Alice Thompson

Senior Overseas Practitioner (Admitted in England & Wales only), **Allens**

DL [+61 2 9230 4785](tel:+61292304785) **M** [+61 405 856 723](tel:+61405856723)

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Tab 8

From: Leopold Bailey <leopoldbailey@quinnemanuel.com>
Sent: Friday, 29 May 2026 9:54 AM
To: Visna Hemachandra; Asia Lenard
Cc: Natasha Toholka; Thomas Kelly; Kim MacKay; Callum Dunlop; qe-etsl
Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]



Dear Visna

Our client's tax adviser has raised the below and suggested that it may be worthwhile making a specific agreement with the ATO on tax consequences. Please let us know your position on this.

One point to note is that the Funds will have GIC imposed on them for 2024 and 2025 as a result of amending tax returns. Any GIC imposed will not be deductible to the Fund. Who will wear this cost? It may be possible to get the ATO to rescind this but less likely if Keystone liquidators have not already liaised with the ATO.

Some of the tax is offset by the cost base increase (and future capital loss arising on disposal).

I would also suggest that they approach the ATO to see if there is a way to pay the tax liability at the investor level rate (particular for the super fund investors to reduce the administration impact for both investors and the ATO) and agree any GIC (for investors) and/or penalty (for the trustee of SMF) exposure.

Kind regards

Leopold Bailey | Associate

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From: Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>
Sent: Wednesday, May 27, 2026 2:13 PM
To: Asia Lenard <asia.lenard@quinnemanuel.com>; Leopold Bailey <leopoldbailey@quinnemanuel.com>
Cc: Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; Kim MacKay <kim.mackay@nortonrosefulbright.com>; Callum Dunlop <callum.dunlop@nortonrosefulbright.com>; qe-etsl <qe-etsl@quinnemanuel.com>
Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]

[EXTERNAL EMAIL from visna.hemachandra@nortonrosefulbright.com]

Dear Asia and Leopold

Further to my previous email, please find **attached** correspondence in relation to TTCL, including draft taxable income calculations for the balanced, growth and high growth investment classes of the Shield Master Fund (**SMF**) for the financial years ended 30 June 2024 and 30 June 2025, together with the class level AMMA statement for each of those financial years.

We look forward to receiving details of the number of underlying investors and examples of hardship suffered (if available) as soon as possible, so that we can include this information in our evidence due to be filed this Friday.

Please let us know if you have any queries.

Kind regards
Visna

Visna Hemachandra | Associate
Pronouns: she/her
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6205 | Fax +61 3 8686 6505
visna.hemachandra@nortonrosefulbright.com

NORTON ROSE FULBRIGHT
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From: Visna Hemachandra
Sent: Wednesday, 27 May 2026 12:34 PM
To: 'Leopold Bailey' <leopoldbailey@quinnemanuel.com>; Asia Lenard <asialenard@quinnemanuel.com>
Cc: Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; Kim MacKay <kim.mackay@nortonrosefulbright.com>; Callum Dunlop <callum.dunlop@nortonrosefulbright.com>; 'qe-etsl' <qe-etsl@quinnemanuel.com>
Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]

Dear Asia and Leopold

Further to our discussion earlier today, please find **attached** correspondence in relation to ETSL for your attention. A similar letter in relation to TTCL will follow.

We look forward to receiving your response.

Kind regards
Visna

Visna Hemachandra | Associate
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visna.hemachandra@nortonrosefulbright.com

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From: Leopold Bailey <leopoldbailey@quinnemanuel.com>
Sent: Tuesday, 26 May 2026 2:43 PM
To: Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>; Asia Lenard <asialenard@quinnemanuel.com>
Cc: Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; Kim MacKay <kim.mackay@nortonrosefulbright.com>; Callum Dunlop <callum.dunlop@nortonrosefulbright.com>; qe-etsl <qe-etsl@quinnemanuel.com>
Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3487865]

Dear Visna

Thank you for your call earlier today.

We are available for a call with NRF and A&M tomorrow at 11.00 am. I will send a Teams invitation.

Separately, we are also enquiring about and will respond to the request in your email below.

Kind regards

Leopold Bailey | Associate

Quinn Emanuel Urquhart & Sullivan | Level 15, 111 Elizabeth Street, Sydney NSW 2000

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From: Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>

Sent: Tuesday, May 26, 2026 10:45 AM

To: Leopold Bailey <leopoldbailey@quinnemanuel.com>; Asia Lenard <asialenard@quinnemanuel.com>

Cc: Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; Kim MacKay <kim.mackay@nortonrosefulbright.com>; Callum Dunlop <callum.dunlop@nortonrosefulbright.com>; qe-etsl <qe-etsl@quinnemanuel.com>

Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3487865]

[EXTERNAL EMAIL from visna.hemachandra@nortonrosefulbright.com]

Dear Asia and Leopold

I am assisting on the interim distribution application. Apologies if you have previously provided this information, but we are seeking confirmation of the total number of underlying investors where ETSL or TTCL were the trustees. The information can be de-identified so that any personal information is deidentified.

Further, if you have any specific evidence of underlying investor hardship, please do let us know.

We require this information for the interim distribution application where the Contradictor alleges that there is no evidence of the number of underlying investors, nor particular examples of hardship suffered by such underlying investors.

If it assists to discuss, please give me a call.

Kind regards

Visna

Visna Hemachandra | Associate

Pronouns: she/her

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Tel +61 3 8686 6205 | Fax +61 3 8686 6505

visna.hemachandra@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

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From: Leopold Bailey <leopoldbailey@quinnemanuel.com>
Sent: Wednesday, 20 May 2026 11:23 AM
To: Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; qe-etsl <qe-etsl@quinnemanuel.com>; Asia Lenard <asialenard@quinnemanuel.com>
Cc: Kim MacKay <kim.mackay@nortonrosefulbright.com>; Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>
Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]

Dear Tom

In answer to your questions:

1. The data is complaints against ETSL only.
2. All investments were made on the advice of licensed advisers - the fund is not available except through an adviser.

We also **attach** an updated version of the AFCA complaints data which should be used in preference to the version attached to my email below, which was incomplete.

Kind regards

Leopold Bailey | Associate

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From: Thomas Kelly <thomas.kelly@nortonrosefulbright.com>

Sent: Tuesday, May 19, 2026 8:47 PM

To: Leopold Bailey <leopoldbailey@quinnemanuel.com>; qe-etsl <qe-etsl@quinnemanuel.com>; Asia Lenard <asialenard@quinnemanuel.com>

Cc: Kim MacKay <kim.mackay@nortonrosefulbright.com>; Natasha Toholka

<natasha.toholka@nortonrosefulbright.com>; Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>

Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]

[EXTERNAL EMAIL from thomas.kelly@nortonrosefulbright.com]

Dear Leopold

Thank you for sending us the below. Are you able to clarify the below for us please?

1. Does the data provided below relate to AFCA complaints against ETSL, against financial advice firms, or both?
2. Is ETSL able to inform us of the extent to which members of its funds/platforms who invested in the SMF did so on the advice of a financial advice form (whether or not the members have subsequently made a complaint to AFCA)?

Regards

Tom

Thomas Kelly | Special Counsel
Norton Rose Fulbright Australia
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thomas.kelly@nortonrosefulbright.com

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From: Leopold Bailey <leopoldbailey@quinnemanuel.com>
Sent: Tuesday, 19 May 2026 1:06 PM
To: Thomas Kelly <thomas.kelly@nortonrosefulbright.com>; qe-etsl <qe-etsl@quinnemanuel.com>; Asia Lenard <asialenard@quinnemanuel.com>
Cc: Kim MacKay <kim.mackay@nortonrosefulbright.com>; Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>
Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]

Dear Thomas

We refer to your email below and the letter from Norton Rose dated 8 May 2026.

In response to paragraph 6 of your letter, we **attach** a spreadsheet setting out the AFCA claims data requested. For privacy reasons, we have removed personal information relating to investors from columns F, G and H, and we ask that all information in the spreadsheet be kept confidential and only distributed as necessary for the interim distribution application. Please let us know if the spreadsheet is sufficient for your client's purposes.

We are considering and will revert in relation to the CSLR proposal referred to in paragraph 5 of your letter.

Kind regards

Leopold Bailey | **Associate**
Quinn Emanuel Urquhart & Sullivan | Level 15, 111 Elizabeth Street, Sydney NSW 2000
Direct +61 2 9146 3541 | Mobile +61 426 299 631 | leopoldbailey@quinnemanuel.com | www.quinnemanuel.com

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From: Thomas Kelly <thomas.kelly@nortonrosefulbright.com>
Sent: Friday, May 8, 2026 3:54 PM
To: qe-etsl <qe-etsl@quinnemanuel.com>; Asia Lenard <asialenard@quinnemanuel.com>
Cc: Kim MacKay <kim.mackay@nortonrosefulbright.com>; Natasha Toholka <natasha.toholka@nortonrosefulbright.com>; Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>
Subject: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]

[EXTERNAL EMAIL from thomas.kelly@nortonrosefulbright.com]

Dear Asia

Please see the attached letter.

Regards

Thomas Kelly | Special Counsel
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16 February 2026

By email

kim.mackay@nortonrosefulbright.com

Kim MacKay

Partner

Norton Rose Fulbright

Dear Ms MacKay

VID978/2024 | Keystone Asset Management Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) v Robert Filippini & Ors — Proposed interim distribution

1 We refer to your letter dated 23 January 2026. We adopt the definitions set out in your letter unless otherwise stated herein.

Additional background

2 This letter responds to your client's proposal to 'make an interim distribution to qualifying unitholders in the SMF from available assets'. We understand from the material enclosed with your letter that this proposal involves:

- (a) realising approximately \$196 million in listed equities held by Keystone in its capacity as responsible entity of the SMF with Bell Potter Securities Limited, which comprise certain scheme property of the SMF (**Bell Potter Securities**); and
- (b) making an interim distribution of up to 75% of the proceeds from realising the Bell Potter Securities to members of the SMF (**Interim Distribution**).

3 The following background matters are relevant:

- (a) The effect of the Freezing Orders, as varied on several occasions, is to restrain our clients' ability to deal with assets up to the value of \$158 million.
- (b) On 18 September 2024 at a hearing before Moshinsky J:
 - (i) Our clients took issue with 'the fact that a freezing order of this magnitude was made *without* an undertaking as to damages' and submitted that 'absent the provision of a valuable undertaking as to damages ... the freezing orders should be set aside or left to lapse'.¹
 - (ii) In response to our client's submissions, your client proffered the Undertaking. In doing so, your client's senior counsel accepted that:

¹ See the Filippini Respondents' Outline of Submissions dated 18 September 2024 at paragraphs [5] to [11] (VID536/2024).

- (A) 'with the benefit of time and reflection, we think it's appropriate that we offer it [the Undertaking] in this case';² and
- (B) '[t]he first defendant is here in this proceeding, seeking to recover trust property, and therefore Mr Tracy and Ms Palaghia are acting appropriately, in our submission, in proffering the undertaking as to damages, it being the price of obtaining the freezing order so as to allow the company to recover the trust property'.³
- (iii) In making submissions as to the adequacy of the Undertaking, our clients' senior counsel reserved our clients' position and submitted that '[w]e also note, in some of the material, that there was a report that's to be published, I think, on 28 September that may, in fact, speak to the assets of Keystone and that that may be relevant to that issue; we don't know yet'.⁴
- (c) By letter dated 30 September 2024, your client stated that '[t]he applicant considers that the respondents are sufficiently protected from any harm having regard to Deloitte's reports dated 27 July and 25 September 2024 and in light of the carve-outs for business expenses in the existing orders'.
- (d) Importantly, the two Deloitte reports identified that the SMF held assets including approximately \$174–177 million in Bell Potter Securities.⁵

Adequacy of the Undertaking

- 4 The Interim Distribution, along with your client's detailed summary of the extensive list of Keystone's creditors,⁶ negatively impacts our clients' assessment of the adequacy of the Undertaking. Our clients cannot be certain as to whether any money will be available to meet your client's liabilities pursuant to the Undertaking, in the event that our clients seek to claim under it.⁷ To date, our clients have not challenged the adequacy of the Undertaking or sought security for costs, given that the Undertaking was secured by \$174–177 million in Bell Potter Securities. However, the Interim Distribution will significantly reduce the SMF's available assets by nearly \$150 million. This raises legitimate and serious concerns that the Undertaking is inadequate to support the Freezing Orders.

Claims on the Undertaking

- 5 With respect, we do not agree that it is 'unlikely that there would be claims under the Undertaking' in circumstances where all of our clients' assets in Australia are subject to the Freezing Orders.
- 6 First, it is unreasonable to expect our clients to definitively quantify the full nature and extent of all losses that both have arisen and may arise well into the future. This is especially so where:
- (a) Several of our clients' assets have been the subject of the Freezing Orders for more than 16 months. No trial date has been set for the proceeding and as you are aware, the

² See the 18 September 2024 hearing transcript at P-3 (VID536/2024).

³ See the 18 September 2024 hearing transcript at P-5 and P-6 (VID536/2024). Your client's senior counsel then went on to clarify that the undertaking was not proffered personally by Mr Tracy and Ms Palaghia.

⁴ See the 18 September 2024 hearing transcript at P-10 (VID536/2024).

⁵ See the Deloitte report titled 'Report on the financial position of the Shield Master Fund and the Advantage Diversified Property Fund' dated 27 July 2024 at page 12; and Deloitte report titled 'Receivers and Mangers' Report' dated 25 September 2024 at page 7.

⁶ See the Twelfth Affidavit of Mr Jason Tracy dated 7 November 2025 at [59] to [96] (ie, under the heading titled 'Creditors of Keystone').

⁷ See the Twelfth Affidavit of Mr Jason Tracy dated 7 November 2025 at [97] to [116] (ie, under the heading titled 'Risk of prejudice to creditors resulting from Interim Distribution').

hearing and determination of this matter may not occur for some considerable period — possibly many years in circumstances where a stay is granted. Definitively laying out all potential claims in such circumstances is an impossible task.

- (b) On the face of the material your client has presented, it appears there has been a considerable delay of several months in bringing the Interim Distribution to our clients' attention. Our client has been given a comparatively short window to consider your client's application, raise concerns and respond to your inquiries.
- 7 Second, we are concerned by your assertion that that it is 'unlikely that there would be claims under the Undertaking' in the context of an extremely wide-ranging Freezing Order which contains no carve outs for legal, personal or living expenses. Further, there are only limited carve-outs for addressing business and property management expenses, which require our client to engage in processes to gain your client's consent — which to date has not been forthcoming — and necessitates substantial expenditure on legal costs.
- 8 The Undertaking needs to be looked at from the perspective not only of what it has secured to date, but what it is required to secure well into the future.
- 9 Against that background, we make the following comments regarding claims which may arise in future, to which the Undertaking may respond. The following refer to our clients collectively in a context where the Freezing Orders do not identify or differentiate the value of what is frozen for any particular individual or entity:
- (a) **Amounts frozen collectively and not against each individual:** Our clients previously requested that your client clarify, by reference to each party, the amount that it claims against them in the proceeding. As the Freezing Orders stand, our clients are viewed collectively rather than as separate and distinct. One reason for this request was to potentially ameliorate the risk that the assets of any respondent or party subject to the Freezing Orders may exceed the amount that your client has claimed against that party in the proceeding. Your client has elected not to engage on this, despite indicating to the Court that:⁸

MS FOLEY: For example, in the proposed orders which the Filipino parties have put forward, your Honour will see that there is a formulation which seeks to identify specific limited relevant amounts for each respondent.

HIS HONOUR: Yes.

MS FOLEY: That's one issue that we have concerns about. And we need to properly understand the material that we now have available to us and analyse that material in order to see whether we could agree to that. We think, at the moment, we can't, but we might have an alternative proposal to put forward, and we need time to really consider that and then discuss that with the Filipino parties.

To the extent that amounts have been frozen in excess of the 'relevant amounts' for a respondent, then claims may be made on the Undertaking for losses that the individual respondent has or will suffer because of their inability to access funds unnecessarily captured and restrained by the Freezing Orders.

- (b) **Inability to invest and develop:** We are instructed that our clients have planned and wanted to undertake the following developments, which include improvements, capital development and associated investment associated with their properties. Undertaking these developments and associated investment has been curtailed, frustrated (including with permits lapsing and/or at risk of lapsing) and prevented by the unavailability of funds to undertake these activities. This includes because of the position adopted by your client

⁸ See the 1 September 2025 hearing transcript at P-8 (VID978/2024).

regarding the non-applicability of exemptions in the Freezing Orders for expenses relating to these types of activities, and/or because there is no relevant exemption:

- (i) 393 Chapel Street, South Yarra VIC 3141 — development of a mixed-used building containing a commercial ground floor commercial tenancy and four residential apartments;
 - (ii) 389–393 Swan Street, Richmond VIC 3121 — development of a ten storey mixed use building;
 - (iii) 27 The Promenade, Surfers Paradise QLD 4217 — development of a four storey house with basement; and
 - (iv) 143 Canterbury Road, Toorak VIC 3142 — development of a five-storey house with two basement levels.
- (c) **Inability to pay certain critical expenses, such as amounts payable to the ATO:** Our clients have and/or will incur expenses or liabilities over the course of the litigation, including income and other taxation liabilities. Based on your client's previous position in relation to similar expenses, we apprehend your client will maintain there is no relevant carveout permitting them to be paid.⁹ Our clients would then be unable to meet these substantial expenses and liabilities. If that occurs, then our clients would be exposed to interest, penalties and the threat of litigation in respect of any unpaid amounts.
- (d) **Inability to properly maintain and protect properties:** Our clients have and will suffer a loss in the value (or return on value) of real properties, given your client has refused to approve expenses necessary to care and maintain for the properties.¹⁰ For example, if ongoing maintenance and substantial body corporate fees are not paid then properties will go into default.
- 10 On any view the Interim Distribution fundamentally alters the Undertaking and significantly prejudices affected parties such as our clients.

Summary of our clients' position

- 11 The matters set out in this letter must be brought to the Court's attention.
- 12 While our clients appreciate the unique interests of investors and their desire to access to the funds, if the Interim Distribution is made, then the Freezing Orders cannot remain in their current form and need to be varied to ameliorate the type of prejudice identified in this letter. For example, and without limitation, our clients must be permitted to pay tax liabilities (such as to ATO or SRO) as and when they fall due, from monies the subject of the Freezing Orders.
- 13 Given the magnitude of assets that are subject to the Freezing Orders and the substantial prejudice that our clients may suffer by reason of the Interim Distribution, our clients have no option but to record their opposition to the Interim Distribution unless appropriate amendments to the Freezing Orders can be agreed.

⁹ For example, in response to the Expenses Claim, your client refused to approve two R&D Trust ATO expenses totalling \$1,459 and \$307 by stating that each expense '[d]oes not fall within the business expense exception'.

¹⁰ See for example NRF's response to the document titled 'Business and property expenses - Claim No. 1' dated 10 September 2025 (**Expenses Claim**).

- 14 If your client's application is ultimately successful and appropriate amendments to the Freezing Orders are not agreed or made, then we expect to receive instructions to approach the Court to vary the Freezing Orders.

Yours faithfully

A handwritten signature in black ink that reads "Corrs Chambers Westgarth". The signature is written in a cursive, flowing style.

Joseph Barbaro

Partner

+61 3 9672 3052

joseph.barbaro@corrs.com.au

- (1) **Intermingling of frozen funds:** The Receivers have not agreed to your clients' request to identify, by reference to each party, the amount that it claims against them in the proceeding for the reasons articulated by Justice Moshinsky at paragraphs 42 to 45 of his reasons in support of the Freezing Order.¹ There is no basis for your clients to now seek to reagitate this issue in light of his Honour's findings.

 - (2) **Inability to invest and develop:** Any opportunity of your clients to develop or further invest in properties which are subject to the Freezing Orders (which is not admitted) has not been lost but rather delayed (that is, in the event that the Receivers are unsuccessful in their claim in proceeding VID978/2024 such as to entitle your client to claim on the Undertaking). To enable the Receivers to consider your clients' asserted intention to invest in and develop the identified properties, please confirm whether your clients have commenced taking any of the steps referred to in paragraph 9(b) of your letter; and if so, please provide details of the steps taken, including any building plans, feasibility studies, cost estimates, timetabling documents and any further materials which evidence the proposed plans and identify the potential expected returns for each of the investments.

 - (3) **Approval of bona fide business and property management expenses:** Various paragraphs in your letter refer to the refusal of our clients to provide consent or approval for an exemption to the Freezing Order. Following the Freezing Order was made on 11 September 2025, your clients had not made any request for payment of business expenses from frozen funds by 23 December 2025. At that time, we wrote to you and invited your clients to submit property management expenses to be paid out of the frozen funds. Since that time, we note the following:
 - (a) Our clients received an email from Mr Nello Tranficante on 29 January 2026 in relation to future amounts which may become payable by your clients to the ATO. We have separately responded to you in writing requesting information and documents in order to consider this request and await your response.

 - (b) We have recently been informed by Strata Management Group that your clients have not been paying property management fees relating to the property at 4 The Esplanade, in Surfers Paradise. We invite your clients to seek our clients' consent for the payment of these fees out of the frozen funds. In doing so, please provide a copy of the property management agreement for this property and the invoices from Strata Management Group or other agent. Please also confirm whether the property is being rented out and, if so, provide copies of the rental agreement and bank account statements evidencing that the rent is being paid into the frozen accounts.

 - (c) We have also been informed by Amity Property Group, that owners corporation fees remain outstanding by your clients in respect of the property at Unit 4801 of 1 Almeida Crescent, in South Yarra. We understand this is in respect of fees from as early as September 2025 and are in the approximate amount of \$40,000. As above, we invite your clients to seek our clients' consent for the payment of these fees out of the frozen funds. Please provide a copy of the management agreement for this property and the invoices from Amity Property Group or other agent. Please also confirm whether the property is being rented out and, if so, provide copies of the rental agreement and bank account statements evidencing that the rent is being paid into the frozen accounts.

 - (d) On 24 February 2026, our clients received an email from Dimitra Filippini seeking approval to pay an invoice for lawn mowing at the Isle of Capri property. Our clients are currently considering that request and will respond separately.
- 5.2 Should your clients have any further requests for the release of funds for payments in the ordinary and proper course of business or for property management expenses, they should notify the

¹ *Keystone Asset Management Limited (Receivers and Managers appointed) (in liquidation) v Filippini (No 2)* [2025] FCA 1138.

Receivers. In the circumstances, there is no basis to assert that any loss or damage arising from the non-payment of legitimate business or property expenses is attributable to the Receivers' conduct.

Our clients' rights are reserved generally.

Yours faithfully



Kim MacKay
Partner
Norton Rose Fulbright Australia

Tab 11

From: Seamus Ryan <seamus.ryan@velocitylegal.com.au>
Sent: Thursday, 5 February 2026 3:37 PM
To: Mollie Coffey
Cc: Keystone Litigation Team; Sascha Kenny; Amy Debelak; Kim MacKay; Bronwyn Ng; Callum Dunlop; Leo Crnogorčević
Subject: RE: VID978/2024 - Keystone Asset Management Limited (Receivers and Managers Appointed) (in Liquidation) v Robert Filippini & Ors [NRF-APAC.1077791.4072730.FID3487865]
Attachments: 2026.01.27 - minute of proposed consent order (Funds in Court)(314724814.1).docx



Dear Mollie,

Our clients consent to the funds being transferred to an interest-bearing account held by the Court and to the below proposed communication being sent to the Court.

Regards,

Seamus Ryan | Director
Velocity Legal

Top Specialist Firm (2025) - Australasian Lawyer
Top Boutique Firm (2024) - Australasian Lawyer

Level 33, 80 Collins Street, North Tower, Melbourne VIC 3000
Level 10, 580 George Street, Sydney NSW 2000

Mobile +61 404 832 471
Email seamus.ryan@velocitylegal.com.au

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Liability limited by a scheme approved under professional standards legislation.
Beware of cyber security risks. Payment details must always be confirmed with us over the phone.*

From: Mollie Coffey <mollie.coffey@nortonrosefulbright.com>
Sent: Tuesday, 27 January 2026 3:39 PM
To: Keystone Litigation Team <keystone.litigation.team@corrs.com.au>; Seamus Ryan <seamus.ryan@velocitylegal.com.au>; Sascha Kenny <sascha.kenny@velocitylegal.com.au>; Amy Debelak <amy.debelak@velocitylegal.com.au>
Cc: Kim MacKay <kim.mackay@nortonrosefulbright.com>; Bronwyn Ng <bronwyn.ng@nortonrosefulbright.com>; Callum Dunlop <callum.dunlop@nortonrosefulbright.com>
Subject: VID978/2024 - Keystone Asset Management Limited (Receivers and Managers Appointed) (in Liquidation) v Robert Filippini & Ors [NRF-APAC.1077791.4072730.FID3487865]

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear all

We refer to the order of Justice Moshinsky made on 18 September 2025 which required the eighth and ninth respondent to make payment of the sum of \$514,641.10 into Court (**attached**).

As stated in the **attached** communications from the Court, the funds are currently held by the Litigants' Fund which is not an interest-bearing account. Accordingly, we seek your consent for the **attached** minute of proposed consent order and below communication to be provided to the Court.

Please let us know should you have any questions.

Regards
Mollie

#####

Dear Associate

We refer to the sum of \$514,641.10 which is currently held by the Litigant's Fund pursuant to the order made by Justice Moshinsky on 18 September 2025.

The parties have agreed to the attached minute of proposed consent order which has the effect of the funds held by the Litigant's Fund being moved to an interest-bearing account.

We would be grateful if you could please confirm if his Honour is minded to make the proposed order on the papers.

The solicitors for the respondents are copied into this communication and consent to it being sent.

Yours sincerely,

Mollie Coffey | Senior Associate
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6068 | Mob +61 409 806 628 | Fax +61 3 8686 6505
mollie.coffey@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

nortonrosefulbright.com

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Velocity Legal Pty Ltd
ACN 614 742 246

Director Seamus Ryan | 0404 832 471 | seamus.ryan@velocitylegal.com.au

Contact Natalie Rossi | 0466 052613 | natalie.rossi@velocitylegal.com.au

Reference ID: 41273

Melbourne
Level 43, 80 Collins Street,
North Tower, Melbourne VIC 3000

Sydney
Level 10, 580 George Street
Sydney NSW 2000

6 February 2026

Kim MacKay
Norton Rose Fullbright Australia
GPO Box 4592
MELBOURNE VIC 3001

Tab 12

By email: kim.mackay@nortonrosefulbright.com
natasha.toholka@nortonrosefulbright.com
mollie.coffey@nortonrosefulbright.com
Michael.gu@nortonrosefulbright.com

Dear Ms MacKay,

**KEYSTONE ASSET MANAGEMENT LTD (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS APPOINTED) (ACN 612 443 008) (KEYSTONE)
FEDERAL COURT PROCEEDING VID536/2024 (ASIC PROCEEDING)
FEDERAL COURT PROCEEDING VID978/2024 (FILIPPINI PROCEEDING)**

We refer to your letter on 28 January 2026.

We have separately responded to you regarding the transfer of funds subject to the freezing order to an interest bearing account.

With respect to the undertaking given by your clients, we are instructed our clients do not consider that claims made by them to be unlikely in the event Keystone is unsuccessful in the Filippini Proceeding and that it is a matter for your clients to determine what, if any, amounts they should make provision for when making an interim distribution.

Yours faithfully,


Seamus Ryan
Director

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Page 1



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID978/2024

KEYSTONE ASSET MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 612 443 008)

Applicant

ROBERT FILIPPINI and others named in the schedule
Respondents

ORDER

JUDGE: Justice Moshinsky

DATE OF ORDER: 9 February 2026

WHERE MADE: Melbourne

THE COURT NOTES THAT:

- A. In accordance with paragraph 1 of the orders dated 18 September 2025, the Court has received payment of \$514,641.10 from Velocity Legal for the payment of security for the eighth and ninth respondents (**Cash Security**).

THE COURT ORDERS BY CONSENT THAT:

1. Pursuant to r 2.42(2)(a) of the *Federal Court Rules 2011*, the Cash Security in the amount of \$514,641.10 be transferred to an interest-bearing account held by the Court.
2. Costs be reserved.

Date orders authenticated: 9 February 2026


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: VID978/2024

Federal Court of Australia
District Registry: Victoria Registry
Division: General

Second Respondent	CITY BUILT PTY LIMITED (ACN 600 821 270)
Third Respondent	FORCE 1 SECURITY PTY LIMITED (ACN 611 488 263)
Fourth Respondent	FORCE 1 CONSTRUCTIONS QUEENSLAND PTY LIMITED (ACN 622 799 311)
Fifth Respondent	DIMITRA FILIPPINI IN HER CAPACITY AS TRUSTEE OF THE A & M TRUST AND THE R & D TRUST
Sixth Respondent	ANTONIO FILIPPINI
Seventh Respondent	MATILDA ANN FILIPPINI
Eighth Respondent	PAUL ANTHONY CHIDO
Ninth Respondent	CHIDO CORPORATION PTY LIMITED (ACN 611 404 909)

13 February 2026

By email: seamus.ryan@velocitylegal.com.au

Seamus Ryan
Velocity Legal
North Tower, Level 43
80 Collins Street
Melbourne VIC 3000

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 38, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com

Direct line

+61 3 8686 6065

Email

kim.mackay@nortonrosefulbright.com

Your reference:

Our reference:

4072730

Dear Mr Ryan

Federal Court of Australia proceedings VID536/2024 and VID978/2024: Application to make an interim distribution

- 1 We refer to your letter dated 6 February 2026.
- 2 We note the statement in *European Bank Ltd v Evans* (2010) 240 CLR 432 at [29] regarding when damages will be recoverable on a cross-undertaking, including the question of whether the kind of loss is foreseeable at the time the undertaking was given.
- 3 Our letter 28 January 2026 gave notice that our clients did not foresee any claims being made under the relevant cross-undertaking. Your letter in response does not identify any such claims. Consequently, we consider that your letter supports our clients' view that it is not necessary to retain any amounts in respect of liability on the cross-undertaking, and they will seek directions to make an interim distribution on the basis that they will not do so.

Yours faithfully

Norton Rose Fulbright Australia

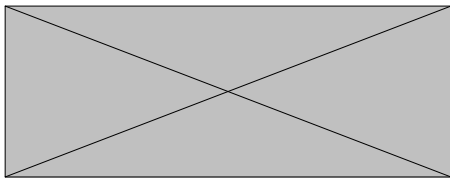
Kim MacKay / Natasha Toholka
Partners
Norton Rose Fulbright Australia

APAC-#314728305-v1

Tab 15

From: Paul Chiodo[paul@chiodocorp.com.au]
Sent: Fri 08/04/2022 11:15:33 AM (UTC+10:00)
To: Louie Kortesis[LKortesis@mwl.com.au]; Paula Crotty[PCrotty@mwl.com.au]
Subject: Fwd: Chiodo Corporation Group Land Tax Information
Attachment: image001.jpg
Attachment: Chiodo Diversified Property Development Fund PDS.pdf
Attachment: Chiodo-Fund - Funds Agreement 3469-9635-1245 v.4.pdf
Attachment: Chiodo-Fund - Shareholders' Agreement 3443-3512-9357 v.3.pdf
Attachment: 201905131458.pdf
Attachment: 20101702.PDF

Regards



PAUL CHIODO | Director

03 9078 8784 | +61 (0) 450 452 121
paul@chiodocorp.com.au
chiodocorp.com.au
Suite 704/ 434 St. Kilda Road, Melbourne 3004

----- Forwarded message -----

From: Paul Chiodo <paul@chiodocorp.com.au>
Date: Sat, Nov 23, 2019 at 9:34 AM
Subject: Chiodo Corporation Group Land Tax Information
To: <mraulings@millsoakley.com.au>
Cc: <ncrowle@millsoakley.com.au>, <LKortesis@mwl.com.au>

Hi Marina,

Super apology for this delay response.

See attached all contract in place between myself and the fund as discussed in our meeting.

I will send you the land tax invoices I have on file in a separate email.

Regards



PAUL CHIODO | Director

03 9078 8784 | +61 (0) 450 452 121

paul@chiodocorp.com.au

chiodocorp.com.au

Suite 704/ 434 St. Kilda Road, Melbourne 3004

THIS DEVELOPMENT AGREEMENT ("Agreement") is made the day of 2016

BETWEEN:

**FIRST GUARDIAN CAPITAL LTD as representative of the CHIODO INVESTMENT
PLATFORM &
FIRST GUARDIAN LOW DENSITY REAL ESTATE DEVELOPMENT FUND**
of Level 13, 350 Collins Street, Melbourne 3000

("First Guardian")

- AND -

CHIODO CORPORATION PTY LTD
of 704/434 St.Kilda Road, Melbourne 3004

("Chiodo and Developer")

BACKGROUND

- A. First Guardian is the investment manager of the "Low Density Real Estate Development Fund".
- B. Chiodo is the exclusive Developer that will develop property projects for the Low Density Fund and any other fund relating to the Chiodo Investment Platform.
- C. Chiodo agrees to hold all shares in project companies developed by the Fund on behalf of the Low Density Real Estate Development Fund. Beneficial ownership remains at all times with Falcon Capital, in its capacity as Trustee for the Fund.
- D. PPS provides the client base of investors that will invest into the platform fund.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made as of August 18, 2016, by First Guardian Capital, located at level 13, 350 Collins Street, Melbourne 3000 and between Chido Corporation Pty Ltd and or Nominee (" the Developer") located at 704/434 St.Kilda Road, Melbourne 3004.

First Guardian along with Chido Corporation desires to develop a portfolio of properties on a high quality, cost-efficient basis, for the "Low Density Fund" development to be marketed to domestic and international purchasers (the "Project").

The Developer is a development company with substantial expertise and experience in the development of Property.

Chido Corporation, via the Low Density Real Estate Development Fund will purchase all land and First Guardian will retain beneficial ownership of all properties for all projects.

Shares in each project company will be held by Chido, on behalf of Falcon Capital Limited in its capacity as Trustee for the Fund. Beneficial ownership will at all times remain with Falcon Capital Limited.

First Guardian desires to retain the Developer on an exclusive basis to develop the Property and market the same for sale, on the terms and conditions set forth in this Agreement.

First Guardian grants the Developer the right to act as Director of all project companies in which the Fund invests.

NOW, THEREFORE, First Guardian and Developer, in consideration of the foregoing and the mutual covenants set forth herein, hereby agree as follows:

Responsibilities of the Developer

The Developer shall devote all such time, effort, resources and skill as may be necessary for the efficient development and marketing of the Project. Such responsibilities shall include but shall not be limited to the following:

- **Feasibility Development Analysis, Development Plan & Pre Development Stage**
 - Create and develop a financial model and plan for the development
 - Create the required company structures to facilitate the development
 - Create a development program
 - Undertake market research of similar apartments
 - Prepare apartment sales schedule
 - Review construction costs with Builders
 - Liaise with Services Infrastructure Authorities

- Review any Traffic Issues
- Review Environmental obligation required for this development
- Review of town planning legislation

- **Design Development, Tender, Sales & Finance Stage**
 - Engage all relevant consultants required to complete the design for tendering such as Structural engineer, Services engineer, Building Surveyor, Acoustic Engineer, interior designer and other necessary parties
 - Manage the entire design process to ensure that the design documents are within budget.
 - Procure approvals from all relevant services infrastructure authorities.
 - Prepare all tender documents
 - Prepare all legal construction contracts
 - Prepare all Contract of Sale contracts for the Purchaser signing.
 - Prepare Plan of Subdivision.
 - Prepare required body corporate budget
 - Prepare all information for the finance package
 - Negotiating with Banks or brokers for finance
 - Prepare all legal documentation required for finance

- **Procurement of all Marketing & Advertising Requirements Stage**
 - Engage all marketing consultants.
 - Establish development main and sub branding.
 - Manage all works to development all required marketing materials, websites, live building model and development signage.
 - Manage design of the display suite.
 - Manage all construction works to build the display suite.
 - Allocate advertising spaces to market the development.
 - Manage the public relations campaign with positive press articles.
 - Prepare a selling strategy with all selling agents both overseas and local.
 - Prepare investment packages to investment groups and to local investors.
 - Seek out a present to local investment groups.
 - Manage sale agents and monitor sale progress.
 - Manage the entire selling process throughout the development.
 - Undertake all necessary works to achieve presale targets, construction budget,

- **Construction Stage**
 - Engage Builder and other relevant trades.
 - Manage all works undertaken by the Builder.
 - Review all Variations and extension of time claims.
 - Participate in all PCG meetings.
 - Undertake site inspections.
 - Manage all Builder's queries.
 - Undertake defect inspections.
 - Manage and administrate the Construction Contract.
 - Review Builders monthly progress claims with the quantity surveyor.

- **Handover Stage**
 - Finalise final plan of subdivision for registration.
 - Obtain the Certificate of compliance.
 - Register of all titles.

- Manage all legal requirements to ensure successful settlement of apartments.
- Finalise all legal contracts and company structuring requirements to conclude development.
- **Administration Duties**
 - Shall create, maintain and deliver all accounts, records and reports pertaining to the Agreement.
 - Shall provide Project Management services via Pure Development and Project Management Pty Ltd, calculated at 1.5% of the Project Gross Realised Value.
 - Shall enter into all Contracts (except the Land Contract of Sale) to facilitate all Projects.
 - Shall enter into all Finance Contracts to facilitate all Projects including signing of guarantees as required.
 - Provide all drawdown payment requests and distribute all payments to relevant consultants, contractors and others where required.

Responsibilities of First Guardian

- Ensure that the Low Density Real Estate Development Fund has the required funds available to support the Projects in line with the Feasibility, Development Plan and other resolutions passed by First Guardian and the Developer in line with this Agreement.
- To Purchase the Land for all Projects.
- To provide approvals in a timely manner.
- To transfer all draw down payment requests as directed by the Developer.
- To act in the best interest for the Development at all times.
- To provide the final distributions to the Investors of the Fund and the Developer.

Developer's Fee

The Developer's Fee under this Agreement is 50% of the Project Net Profit, payable at the end of the Project, as defined as full settlement of the developed properties. The Project Net Profit is exclusive of any Platform or Fund related fees relating to Investors in the Fund. The Developer's Fee will be secured against properties of the project and charges over the related project companies until the entire fee has been distributed to the Developer. The Developer's Fee is payable at the end of the Project.

Selection of Consultants, Contractor, Suppliers, Subcontractors and Agents

It's the Developers responsibility to appoint all Consultants, Contractors, Suppliers and Subcontractors and any other companies to deliver the Project. The Developer is to use due care in appointing all third parties and to ensuring that all external services provides have the required skill, experience and capacity to meet the Project needs. The Developer will either tender these

services unless otherwise determined by the Developer. FG Capital will be informed of each external services provider prior to the Developer engaging into a Contract with them. FG Capital will have 7 days to provide a view on the external service providers prior to the Developer formally engaging these external service providers. Should FG Capital have any concern with any external service providers post engagement by the Developer, FG Capital may audit these external services providers and request any relevant information from them including the Developer.

Acknowledgment by First Guardian of Consultants

First Guardian acknowledge that the selected Project Management consultant for all Projects of this Agreement are freed as follows and this clause avoids argument by any party to his Agreement of a conflict of interest and or the fees charges by these nominated consultants are unreasonable:

- (i) Development and Project Manager-Pure Developments & Project Management Pty Ltd
1.5%+GST of Gross Realised Value for the duration of each Project.

Developer's Resources

Except as otherwise specifically provided in this Agreement, Developer shall perform its services hereunder using its own personnel and other resources for the compensation described hereof and for no other compensation or reimbursement. In performing its services hereunder, Developer shall at all times maintain sufficient in-house staff and facilities of appropriately high quality to accomplish the purposes of this Agreement. Developer may delegate the performance of one or more of the above services to a corporation which is an Affiliate (hereinafter defined) of Developer, provided, however, any fees, charges or reimbursements payable to such Affiliate shall constitute Project Costs only to the extent that they would have constituted Project Costs if Developer were directly performing such responsibilities. For purposes of this Agreement, an "Affiliate" is any corporation, partnership or sole proprietorship in which Developer owns, directly or indirectly, a twenty-five percent or greater beneficial interest.

Delegation

Developer may delegate appropriate portions of its obligations hereunder to architects, engineers, expeditors, market researchers and consultants, and sales agents and brokers if and to the extent provided for in the Development Plan or otherwise with Owner's prior written approval.

Subcontracts

All Subcontracts shall be entered into by and for the account of Developer and not as agent for Owner, and shall explicitly so state. Developer shall include in its Subcontracts a provision

making Owner a third party beneficiary thereof, and shall, upon Owner's request, assign all Subcontracts to Owner for its benefit, effective upon termination of this Agreement.

Timing of Development

First Guardian acknowledges that the outline of Development Plan represents the collaborative effort of First Guardian and Developer and that First Guardian intends to proceed with the Project if it is reasonably convinced that the Development Plan can be executed in a sufficiently profitable manner. However, Developer acknowledges that First Guardian has not yet committed itself to the development of any Project, but has elected to defer that decision until the Development Plan has been completed and First Guardian has had an opportunity to review the Development Plan.

Books and Accounts

Developer shall maintain complete and accurate accounts and records reflecting all of the assets, liabilities, expenditures, revenues, operations, transactions and financial condition of the Project. Such books and accounts shall be kept in accordance with generally accepted accounting principles consistently applied. First Guardian shall be entitled at any time on reasonable prior notice to inspect, audit and copy such books and accounts.

Financial Reports

Developer will prepare and furnish to First Guardian, not less frequently than quarterly setting forth the financial condition and results of operations for such period.

Cash Flow Projections

At least 30 days prior to the expiration of each calendar quarter, Developer shall provide First Guardian with cash flow projections for the next ensuing quarter.

Accounting and Tax Procedures

All decisions as to accounting principles and elections, whether for book or tax purposes (such decisions permissibly being different for each purpose), shall be made by First Guardian after consultation with Developer.

Deposit of Funds

All funds, monies and receipts relating to the Project are and shall be the sole property of Developer and shall be deposited and held in accounts with such banks or other institutions as Developer may select in its sole discretion.

Quarterly Activity Reports

Developer shall provide to First Guardian quarterly activity reports setting forth the major items completed since the prior such report, the items anticipated to be completed prior to the next report, the scheduled dates of their completion, estimated revised dates, if necessary, and any circumstances discovered by Developer which may have a material impact on the Project or the Development Plan and which have not previously been called to First Guardian attention in writing.

Notice of Hearings

Developer shall provide First Guardian with a notice of all public hearings involving the Project, in sufficient time to enable a representative of First Guardian to appear at such hearing if so desired.

Additional Reports

Developer shall furnish Owner such additional reports on the operations or condition of the Project as may reasonably be requested from time to time by Owner.

Indemnity

To the fullest extent permitted by law, Developer shall indemnify and hold harmless First Guardian, its officers, directors, shareholders, employees and agents from and against all loss, cost, liability, claims and expenses, including but not limited to attorneys' fees and disbursements, arising out of or resulting from the actions or omissions of Developer, any Subcontractor, or any officer, employee or agent of them which are negligent, wrongful or in breach of this Agreement.

Developer's Insurance Coverage

At all times during the term of this Agreement the Developer shall obtain and maintain in full force and effect the following insurance coverages:

A. Liability Insurance

Comprehensive General Liability Insurance, with Broad Form Endorsement, on an "occurrence" basis, with limits not less than \$5,000,000.00 (with aggregate limits applying separately to the Project), in form and with additional endorsements reasonably required by First Guardian, including, without limitation, cross-liability endorsement, First Guardian and contractors protective liability endorsement, contractual liability endorsement covering Developer's indemnities in favor of First Guardian contained herein. Said coverage may be supplied through an umbrella policy provided that there is no reduction in coverage to limits below those required herein. Said coverage shall name First Guardian, its directors, officers, agents and employees as insured, and shall be primary with respect to any insurance or self-insurance maintained by them.

B. Subcontractors' Insurance

Developer shall require all of its Subcontractors to maintain insurance coverage. Developer shall be responsible for ongoing compliance by its Subcontractors with such requirements and shall provide evidence that such coverages are in place to First Guardian upon First Guardian request.

Owner's Property Insurance

First Guardian shall purchase and maintain property insurance in the amount of the estimated Cost of the Work under the Agreement. Owner's property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage. Developer shall bear losses to its insurable interests not covered because of deductibles under Owner's property insurance coverage.

General and Administrative Costs and Expenses

It is the intent of the parties to this Agreement that Developer, through its officers and employees, shall, except as otherwise specifically provided, devote its own time, effort and skill to accomplish the purposes of this Agreement. Developer will provide the use of its personnel, resources, organization and facilities for the benefit of the Project. In so doing, Developer will incur certain administrative and overhead expenses, the exact amount of which is difficult to ascertain. Regardless of the amount actually so expended by Developer, Developer shall be compensated for its general and administrative costs and expenses solely by payment to it of a fee (the "G&A Fee") for each Phase of the Project (other than the Planning Phase, for which no fees or other compensation shall be payable).

Project Costs

First Guardian shall invest through the Fund, such sums as are necessary to pay the Project Costs set forth in the Development Plan. Owner shall reimburse Developer for Project Costs expended by Developer, or shall make funds available to Developer for disbursement for Project Costs in accordance with the Development Plan.

Project Financing

Any Project finance will be taken out by the Developer for the Project from a lender or lenders of its choice.

Developer's Authority; No Agency

Developer shall be authorised to take such actions as it deems necessary to perform its services hereunder if and to the extent consistent with the Development Plan, Developer shall have the authority to represent First Guardian and act as its agent in obtaining building and development permits, financing, sales contracts, authority agreements and in acknowledging receipt of deposits from buyers of residential properties.

Standard of Performance

In the performance of its services hereunder, Developer shall conduct its activities in a manner which is in conformance with (i) the standard of care and quality heretofore applied by Developer in its activities, (ii) all applicable laws and regulations, and (iii) the highest business standards and ethics.

Major Decisions

As used in this Agreement, the term "Major Decisions" shall mean those decisions relating to the Project or the Property which would have a material or significant effect, or which would involve or risk deviation from the Development Plan. Major decisions require the prior written approval of Owner. By way of illustration but not limitation, the following are Major Decisions:

- i. changes in or deviation from the Development Plan;
- ii. changes in or deviation from the Construction Contract or any Subcontract;
- iii. changes in contracts or incurring new obligations not contained in the latest Development Plan, involving One Hundred Thousand Dollars (\$100,000) or more;
- iv. borrowing of money in conjunction with the Property or the Project.

Notices

Any notice or communication required or permitted by this Agreement shall be given in writing. Notices shall be served personally, by email or by post, and shall be deemed delivered upon

delivery to the sender of the return receipt. Either party may by written notification to the other party change its address for the sending of notices.

Disclosure of Contracts with Related Entities

Prior to entering into any contract, agreement, sale, purchase or understanding between Developer and an Affiliate for goods or services on behalf of the Development, Developer shall notify First Guardian of such fact. First Guardian shall have the unfettered right to reject or terminate any Subcontract with an Affiliate if First Guardian reasonably determines that such Affiliate is not performing or is unlikely to perform adequately and at a cost substantially equivalent to the cost that would be incurred in an arm's-length transaction.

Assignment; Successors and Assigns

This Agreement shall not be assigned by Developer without the prior written consent of First Guardian, which may be given or withheld in First Guardian sole discretion, it being understood that Owner is relying on the particular skill and expertise of Developer in entering into this Agreement.

No Third Party Beneficiaries

No person other than the parties to this Agreement and their permitted assignees may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

Governing Law

This Agreement shall be governed by and construed in accordance with the laws.

Exclusivity

First Guardian grants the Developer exclusivity to this Agreement and to undertake all Development works relating to the Platform which includes the Low Density Real Estate Development Fund and any other Fund created for investment through the Chiodo Property Investment Platform.

Entire Agreement

Signatures

This Agreement shall be signed:

**EXECUTED BY FIRST GUARDIAN)
CAPITAL LTD** being signed by those)
persons who are authorised to sign)
for the company:)

Director.....

Full Name SIMON SELIMAJ

Usual Address 501/26

Queens Rd Melb. 3004


Director/Secretary.....

Full Name David Anderson

Usual Address 2/105 Crown st

Richmond 3121

**EXECUTED BY CHIDO CORPORATION)
PTY LTD** being signed by those persons)
who are authorised to sign for the company:)

Director.....

Full Name PAUL CHIDO

Usual Address 704/434

ST-KILDA ROAD MELBOURNE 3004

Director/Secretary.....

Full Name

Usual Address

.....



Share Sale Agreement

Falcon Capital Limited ACN 119 204 554 as trustee for the Chiodo Diversified Property Fund (**Buyer**)

Falcon Capital Limited ACN 119 204 554 as trustee for the First Guardian Australian Development Fund (**Seller**)

75 Port Douglas Road Pty Ltd ACN 630 681 926 (**Company**)

Chiodo Corporation Pty Ltd ACN 611 404 909 (**Lead Developer**)

CF Property Capital Pty Ltd ACN 633 394 751 (**Investment Manager**)

Adam Fletcher and Nasser Daniel Mashni, for and on behalf of the certain of the ADF Unit Holders (**Seed Representative**)

Each of the persons listed as ADF Unit Holders in Schedule 1 (**ADF Unit Holders**)

Contact - Joshua Hunt, Partner, josh.hunt@hopgoodganim.com.au

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Table of Contents



1.	Definitions and interpretation	1
1.1	Reference Schedule	1
1.2	Definitions	2
1.3	Interpretation	7
1.4	Business Days	8
1.5	Parties	8
2.	Conditions Precedent	9
2.1	Conditions Precedent	9
3.	Sale and purchase of Shares	10
3.1	Agreement	10
3.2	Free of Encumbrances	10
3.3	Rights and Title	10
3.4	Completion	10
4.	Parties' Obligations	10
4.1	Lead Developer Obligations	10
4.2	Buyer and Investment Manager Obligations	10
4.3	Seller's Obligations	11
4.4	Breach of Obligations	11
5.	Confidentiality	11
5.1	Public announcement	11
5.2	Obligations of confidentiality	11
5.3	Exceptions to Obligations of confidentiality	11
5.4	Security of Confidential Information	12
5.5	Return of Confidential Information	12
5.6	Privacy	12
6.	Completion	12
6.1	Time and place	12
6.2	Project Buyer	13
6.3	Completion Amount	13
6.4	Buyer's Obligations at Completion	14
6.5	Sellers Obligations at Completion	14
7.	Default Completion	15
7.1	Time and place	15
7.2	Buyer's Obligations at Default Completion	15
7.3	Seller's Obligations at Default Completion	16
7.4	Uplift Fee	16
8.	Parties default	16
8.1	Default	16
8.2	Indemnity	16
8.3	Interest	16
9.	Warranties	17
9.1	Warranties	17
9.2	Indemnities	17
10.	GST	18
10.1	GST exclusive amounts	18
10.2	Financial services	18
10.3	GST amount	18
10.4	Tax invoice	18
10.5	Payments other than for taxable supplies	18
11.	Dispute resolution	18
11.1	Parties to notify	18
11.2	Parties to confer	18
11.3	Referral to determination	18
11.4	Expert not arbitrator	19
11.5	Procedure	19
11.6	Privilege	19
11.7	Performance to continue	19

Table of Contents



12.	Notices	19
12.1	Form	19
12.2	Manner	19
12.3	Time	19
12.4	Initial details	20
12.5	Changes	20
13.	Miscellaneous.....	20
	Schedule 1 - Notice Details	1
	Schedule 2 - Shares	1
	Schedule 3 - Unit Holders & Entitlements	1
	Schedule 4 - Profit Share Agreement.....	1
	Schedule 5 - Cashflow Report.....	1
	Schedule 6 - Seller's Warranties	2
	Schedule 7 - Material Contract	4
	Schedule 8 - Buyer's Warranties	5
	Signing page.....	6
	Annexure A - Havana Project Documentation	10

Share Sale Agreement



Date

Parties

Falcon Capital Limited ACN 119 204 554 as trustee for the Chiodo Diversified Property Fund (**Buyer**)

Falcon Capital Limited ACN 119 204 554 as trustee for the First Guardian Australian Development Fun (**Seller**)

75 Port Douglas Road Pty Ltd ACN 630 681 926 (**Company**)

Chiodo Corporation Pty Ltd ACN 611 404 909 (**Lead Developer**)

CF Property Capital Pty Ltd ACN 633 394 751 as investment manager of LDF (**Investment Manager**)

Adam Fletcher and Nasser Daniel Mashni (**Seed Representative**)

Each of the persons listed in Schedule 3 (**ADF Unit Holders**)

Background

- A. The Seller is the legal owner of the Shares, held on trust for the ADF Unit Holders.
- B. The ADF Unit Holders are the beneficial owners of the Shares and certain of them have appointed the Seed Representative as their representative for the purposes of this agreement.
- C. The Company has a contract to purchase the Land with the registered owner of the Land, the subject of the Havana Project.
- D. The Lead Developer is responsible for the Havana Project and must achieve the best possible outcome for the Havana Project and the parties.
- E. The Seller has agreed to sell the Shares to the Buyer on the provisions of this agreement.

It is agreed

1. Definitions and interpretation

1.1 Reference Schedule

Where a term used in this agreement appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

Completion Date	On or before 24 September 2019.
Default Completion	The date which is 14 clear days from the Agreement Date.

Share Sale Agreement



Date	
Default Valuation Date	24 February 2020.
Purchase Price	Means the: (a) Completion Amount; or (b) Default Completion Amount and Uplift Fee, as the context requires.
Completion Amount	The enterprise value of the Havana Project as determined by the Havana Project Valuation, plus GST, on satisfaction of the Project Buyer Endeavour pursuant to clause 6.3(a).
Default Completion Amount	\$6,005,000 plus GST.
Uplift Fee	The difference between the Default Completion Amount and the Default Valuation, plus GST, as provided in clause 7.4(b)(1).

1.2 Definitions

In this agreement:

ADF means the First Guardian Australian Development Fund.

ADI has the meaning given to it in section 5 of the *Banking Act 1959* (Cth).

Agreement Date means the date on which this agreement is signed by the last of the parties.

Assets means the assets of the Company, including the Land, Development Approval and Intellectual Property.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, filing, licence, lodgement, notarisation, permit or waiver, however it is described including any condition attaching to it and any renewal or amendment of it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Body acts in any way within a specified period, the expiry of that period without that action being taken.

Authorised Officer means, in relation to a corporation which is a party:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this agreement and notified to the others.

Bank means an ADI holding a consent under the *Banking Act 1959* (Cth) to call itself a bank.

Bank Accounts means the bank accounts of the Company.

Share Sale Agreement



Bank Cheque means a cheque drawn by a Bank on itself.

Benefiting Party has the meaning given in clause 2.1.

Board means the board of directors of the Company.

Books has the meaning given in section 9 of the Corporations Act.

Business means the business carried on by the Company at the Agreement Date.

Business Day means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne.

Buyer's Warranties means the warranties set out in Schedule 8.

Cashflow Report means the cashflow report and budget set out in Schedule 5.

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this agreement.

Completion means completion of the sale and purchase of the Shares in accordance with clause 6 of this agreement.

Constitution means the constitution of the Company.

Condition Date has the meaning given in clause 2.1.

Condition Precedent has the meaning given in clause 2.1.

Confidential Information means:

- (a) all information (including commercially sensitive information and technical know-how and information of a party or a Related Body Corporate of a party directly or indirectly disclosed or made available by or on behalf of a party to another party;
- (b) all notes and other records prepared by a party based on or incorporating the information referred to in paragraph (a); and
- (c) all copies of the information and those parts of the notes and other records referred to in paragraphs (a) and (b).

Controller has the meaning given to it in section 9 of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Share Sale Agreement



Default Completion means the completion of the sale and purchase of the Shares in accordance with clause 7 of this agreement.

Default Valuation has the meaning given to that term in clause 7.4(a).

Development Approval means approval for the development of the Land for the Havana Project.

Duty means a duty imposed by or under the *Duties Act 2001* (Qld) or any similar legislation in other states and territories in Australia.

Encumbrance means, in relation to any property:

- (a) a Security Interest over the property;
- (b) a writ of execution or monetary claim affecting the property;
- (c) an estate, interest, claim or arrangement affecting the property;
- (d) a contract of sale or option to purchase or acquire the property;
- (e) an agreement to grant, create, allow or register any of these,

whether the Encumbrance is registered or unregistered, statutory, legal or equitable.

Expert means a suitably qualified independent person appointed in accordance with this agreement.

External Administrator means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Government Body means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

GST has the same meaning given to that term in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Havana Project means the development of the Land as documented in the:

- (a) Havana Project Report;
- (b) Havana Investor document;
- (c) Profit Share Agreement dated 7 March 2019 between First Guardian Capital Pty Ltd and investors introduced by Seed Equity Group Pty Ltd; and
- (d) LDF Purchase Agreement,

Share Sale Agreement



set out in Annexure A and includes any other documentation referenced at Annexure A.

Havana Project Sale means the sale of the rights to operate on the Land and the rights to progress the Havana Project to the Project Buyer.

Havana Project Valuation means the average enterprise value of the Havana Project obtained using the valuation value of the Havana Project as determined by:

- (a) two reputable and suitably qualified valuers selected by the Seed Representative; and
 - (b) a reputable and suitably qualified valuer selected by the Project Buyer;
- or
- (c) in the event there is no Project Buyer, three reputable and suitably qualified valuers selected by the Seed Representative,
- plus GST.

Immediately Available Funds means:

- (a) cash;
- (b) Bank Cheque; or
- (c) electronic transfers of cleared funds into the Seller's Bank Account or a bank account nominated by the Seller.

Intellectual Property means any trade mark, trade secret, design, copyright, patent, process, format, computer software, confidential information, logo, emblem, know-how, system, manual all registrable rights of any nature whether registrable under State legislation or Commonwealth legislation, all moral rights including rights of paternity and integrity, and waivers of such rights by others or other rights owned, supplied or used at any time by the Company in connection with the Assets, the Business and includes any material, electronic or other embodiment of those rights.

Insolvency Event means:

- (a) in relation to any corporation:
 - (1) its Liquidation;
 - (2) an External Administrator is appointed in respect of the corporation or any of its property;
 - (3) the corporation ceases or threatens to cease to carry on its business;
 - (4) the corporation being deemed to be, or stating that it is, unable to pay its debts when they fall due;
 - (5) any other ground for Liquidation or the appointment of an External Administrator occurs in relation to the corporation;
 - (6) the corporation resolves to enter into Liquidation; or
 - (7) an application being made which is not dismissed or withdrawn within ten Business Days for an order, resolution being passed or proposed, a meeting

Share Sale Agreement



being convened or any other action being taken to cause or consider anything described in paragraphs (1) to (6) (inclusive) above;

- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the Corporations Act; and
- (c) in relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the law of any relevant jurisdiction.

Land means the property at 71-85 Port Douglas Road, Port Douglas Queensland 4877.

LDF means the Chiodo Diversified Property Fund, formerly named the Low Density Real Estate Development Fund.

Liquidation means:

- (a) a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, bankruptcy or other analogous proceeding; or
- (b) an arrangement, assignment, composition or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under part 5.3A of the Corporations Act).

Obligation means any commitment, covenant, duty, obligation or undertaking whether arising by operation of law, in equity or by statute and whether expressed or implied.

Profit Share Partners means:

- (a) Vivilex Limited;
- (b) The trustee for AK and F Super Fund, as nominee for K and F Consultants Pty Ltd ACN 623 076 826 ;
- (c) Fleco Pty Ltd ACN 150 137 250;
- (d) Gin and Soda Pty Ltd ACN 617 026 927; and
- (e) Weatherby Fine Art Pty Ltd ACN 166 576 736.

Project Buyer means any buyer party to the Havana Project Sale.

Project Buyer Endeavour has the meaning given to that term in clause 6.2(b).

Records means originals and copies (whether in machine readable or printed form) of all registers, books, reports, correspondence, files, records, accounts, documents and other material in the possession or control of the Company.

Related Body Corporate has the meaning given in section 9 of the Corporations Act.

Rights means all accretions and rights attaching to or arising from the Shares from the date of execution of this agreement to the Completion Date including, without limiting the generality of the foregoing, all rights to receive dividends and to receive or subscribe for shares, notes or options declared, paid or issued by the Company, and including any rights arising before the Completion Date as a result of ownership of the Shares with respect to taking up shares or other securities in other company or entity.

Securities has the meaning given in section 9 of the Corporations Act.

Share Sale Agreement



Security Interest means:

- (c) an interest in or right:
 - (1) reserved over property (including any retention of title to property or any right to set off or withhold payment of any deposit or other money);
 - (2) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right; or
 - (3) by way of security for the payment of a debt or other monetary Obligation or the performance of or compliance with any other Obligation;
- (d) any instrument or transaction which reserves, constitutes or evidences the interests and rights referred to in paragraph (c); and
- (e) any other interest which constitutes a security interest as that term is defined in the *Personal Property Securities Act 2009* (Cth).

Seller Completion Obligations has the meaning given to that term in clause 6.5.

Seller's Bank Account means the bank account of the Seller or a list of bank accounts provided or nominated by any Seed Representative.

Seller's Warranties means the warranties set out in Schedule 6.

Shares means the shares in the Company set out in Schedule 2.

Tax means any tax, levy, impost, Duty or withholding which is levied or imposed (including but not limited to any income tax, stamp duty, withholding tax, capital gains tax, fringe benefits tax, goods and services tax, recoupment tax, sales tax, payroll tax, withholding tax municipal rates or land tax) together with any interest and penalties, taxes, duties and imposts levied under the Tax Act or any other Act or Regulation of the Commonwealth of Australia or any State.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) the *Income Tax Assessment Act 1997* (Cth) and any other legislation under which taxes are assessed or imposed.

Transaction Documents means this agreement, the Cashflow Report and any other document or agreement required to enforce the obligations of the Parties under this agreement.

Varied Completion Date has the meaning given to that term in clause 6.2(d).

Warranties means the Seller's Warranties and the Buyer's Warranties, as the case may be.

1.3 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
 - (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;

Share Sale Agreement



- (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
 - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Melbourne time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
 - (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
 - (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

1.4 Business Days

- (a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

1.5 Parties

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, Obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, Obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

Share Sale Agreement



2. Conditions Precedent

2.1 Conditions Precedent

- (a) This agreement is subject to satisfaction or waiver of each condition specified in the table below (**Condition Precedent**) on or before the date set out next to that Condition Precedent (**Condition Date**):

	Condition Precedent	Benefiting Party	Condition Date
A	No Buyer Breach There has been no breach of a Buyer Warranty or other Obligation under this agreement	Seller	Completion Date
B	Trustee Declaration The Seller has executed a declaration confirming that it holds the Shares on trust for the ADF Unit Holders.	Seed Representative, ADF Unit Holders	Completion Date
C	Profit Share Agreement The Profit Share Partners have executed a profit share agreement substantially in the form disclosed in Schedule 4.	Seed Representative, ADF Unit Holders	Completion Date
D	Board Directors Appointment of two persons nominated by the Seed Representative to the board of the Company.	Seed Representative, ADF Unit Holders	Completion Date

- (b) A Condition Precedent is for the benefit of each party specified as having the benefit of that Condition Precedent in the table in clause 2.1(a) (**Benefiting Party**).
- (c) A Condition Precedent may be waived by the corresponding Benefiting Party, in its sole discretion, by giving notice in writing to each other party on or before the corresponding Condition Date.
- (d) To effect a waiver of a Condition Precedent for the benefit of more than one Benefiting Party, each Benefiting Party to the corresponding Condition Precedent must waive the Condition Precedent in accordance with subclause 2.1(c).
- (e) If a Condition Precedent is not:
- (1) satisfied by its corresponding Condition Date; or
 - (2) waived by the corresponding Benefiting Party for that Condition Precedent by its corresponding Condition Date,
- any party may terminate this agreement by notice in writing to each other party.
- (f) The parties must use reasonable endeavours (other than waiver) to ensure that each Condition Precedent is satisfied by its corresponding Condition Date and to keep each other informed of any circumstances which may result in a Condition Precedent not being satisfied in accordance with its terms.

Share Sale Agreement



3. Sale and purchase of Shares

3.1 Agreement

The Seller agrees to sell and the Buyer agrees to purchase the Shares for the Purchase Price.

3.2 Free of Encumbrances

The Shares are sold free of all Encumbrances.

3.3 Rights and Title

Rights and Title in the Shares passes to the Buyer on payment of the Purchase Price.

3.4 Completion

Sale and purchase of the Shares will only be taken to have occurred when:

- (a) all of the Obligations of the Seller under clause 6.5 or 7.3, as the context requires, are complied with or are waived in writing by the Buyer; and
- (b) all of the Obligations of the Buyer and Investment Manager under clauses 6.4 or 7.2, as the context requires, are complied with or are waived in writing by the Seed Representative.

4. Parties' Obligations

4.1 Lead Developer Obligations

On and from the Agreement Date, the Lead Developer must:

- (a) use its best endeavours to obtain the best possible price for the Havana Project Sale;
- (b) use its best endeavours to obtain a Project Buyer for the Havana Project Sale;
- (c) use its best endeavours to complete the Havana Project Sale;
- (d) provide regular and frequent updates to the parties on the progress of the Havana Project and the Havana Project Sale;
- (e) respond to and satisfy all information requests from the Seed Representative regarding the progress of the Havana Project and Havana Project Sale within 2 Business Days of receiving such request; and
- (f) comply with all other Obligations as provided for under this agreement.

4.2 Buyer and Investment Manager Obligations

On and from the Agreement Date, the Buyer and Investment Manager must:

- (a) use its best endeavours to obtain the best price possible for the Havana Project Sale and complete the Havana Project Sale;
- (b) carry on the Business in the ordinary and normal course as it had been conducted prior to the Agreement Date, and with a view to maximising the short term and the long term financial performance of the Business;

Share Sale Agreement



- (c) provide regular and frequent updates to the ADF Unit Holders and Seed Representative on the progress of the Havana Project and the Havana Project Sale;
- (d) respond to all information requests from the Seller, Seed Representative or any ADF Unit Holder regarding the Havana Project and Havana Project Sale within 2 Business Days of receiving such request;
- (e) promptly distribute or pay all amounts due to the ADF Unit Holders under this agreement as and when they fall due; and
- (f) comply with all other Obligations as provided for under this agreement.

4.3 Seller's Obligations

On and from the Agreement Date, the Seller must respond to all reasonable requests of assistance from the Buyer regarding the Havana Project or the Havana Project Sale.

4.4 Breach of Obligations

The Parties acknowledge and agree that failure of the Buyer, Investment Manager, Seller or Lead Developer to comply with their obligations under clause 4.1, clause 4.2 or clause 4.3 respectively shall constitute a breach of this agreement.

5. Confidentiality

5.1 Public announcement

No press release or other announcements relating to this agreement may be made without prior consultation between the parties, and the parties must co-operate as to the timing and contents of any such announcement.

5.2 Obligations of confidentiality

Except as permitted by clause 5.3, a party in receipt of Confidential Information (**Recipient**) must not:

- (a) disclose Confidential Information directly or indirectly in any form to anyone else; or
- (b) use or make a copy of any Confidential Information except to:
 - (1) acquire or check information in connection with this agreement and the transactions contemplated by it; or
 - (2) perform any of its Obligations under this agreement or in relation to any of the transactions contemplated by it.

5.3 Exceptions to Obligations of confidentiality

The Obligations in clause 5.1 do not apply to a Recipient if:

- (a) the party supplying the Confidential Information (**Discloser**) has first agreed in writing to the particular disclosure, use, or copying; or
- (b) disclosure of any Confidential Information is required to comply with any applicable law or requirement of any Government Body or regulatory body (including any relevant stock exchange):

Share Sale Agreement



- (1) the Recipient promptly gives not less than two Business Days' notice of its intended disclosure to, and consults with, the Discloser to the extent practicable, with a view to reaching agreement as to any such disclosure as soon as is reasonably practicable and in any event within a further two Business Days; and
- (2) the Recipient only makes disclosure as agreed or failing agreement only makes disclosure as proposed in its initial notice (but only to the extent that it is required to do so) any applicable law or requirement of any Government Agency or regulatory body (including any relevant stock exchange) and uses its reasonable endeavours to minimise any such disclosure and to ensure that any Confidential Information so disclosed will be treated as confidential.

5.4 Security of Confidential Information

The Recipient must use reasonable endeavours to:

- (a) keep effective control of Confidential Information;
- (b) ensure that Confidential Information is secure from theft, loss, damage or unauthorised access or alteration; and
- (c) ensure that persons other than the Recipient do not disclose, use or copy Confidential Information except as permitted by this clause 4.

5.5 Return of Confidential Information

If Completion does not occur on or before the Completion Date, a Recipient must immediately:

- (a) deliver to the Discloser (or if in electronic form, erase or destroy and deliver evidence of erasure or destruction) all documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control; and
- (b) ensure that any person who receives the Confidential Information by the Recipient's authority returns the Confidential Information to the Discloser in any form in which it is held (or if it is in electronic form, erases or destroys it and gives evidence of its erasure or destruction to the Discloser).

5.6 Privacy

The parties must each assist each other to comply with its Obligations under the *Privacy Act 1988* (Cth) in relation to Confidential Information.

6. Completion

6.1 Time and place

Completion must take place:

- (a) on the Completion Date; and
- (b) at the offices of the Seed Representative's lawyers or at another location as agreed between the parties in writing.

Share Sale Agreement



6.2 Project Buyer

- (a) The sale and purchase of the Shares pursuant to this clause 6 is subject to and conditional on fulfilment of the Project Buyer Endeavour.
- (b) The Lead Developer must use its best endeavours to secure a Project Buyer for the Havana Project Sale by or before 10 September 2019 (**Project Buyer Endeavour**).
- (c) The Lead Developer shall:
 - (1) keep the parties reasonably informed in a timely manner of the Lead Developer's efforts to satisfy the Project Buyer Endeavour;
 - (2) consult with the parties in relation to the Lead Developer's efforts to satisfy the Project Buyer Endeavour; and
 - (3) notify the parties immediately after it becomes aware that the Project Buyer Endeavour has either been satisfied or has not been satisfied.
- (d) In the event the Project Buyer Endeavour is satisfied prior to 10 September 2019, the Seed Representative may determine to vary or amend the Completion Date (**Varied Completion Date**).
- (e) The Seed Representative must keep the parties informed of any Varied Completion Date pursuant to clause 6.2(d).
- (f) The remainder of this clause 6 will continue to apply to any Varied Completion Date.

6.3 Completion Amount

- (a) On satisfaction of the Project Buyer Endeavour, the Seed Representative must procure a Havana Project Valuation (**Completion Amount**).
- (b) On receipt of the Completion Amount, the Seed Representative must immediately issue the parties a notice to which discloses:
 - (1) the Completion Amount; and
 - (2) the valuation reports used to inform the Completion Amount.
- (c) If the Project Buyer Endeavour is not satisfied or waived by the Seed Representative by 10 September 2019, then:
 - (1) the parties acknowledge and agree that the sale and purchase of the Shares will not complete pursuant to this clause 6; and
 - (2) the sale and purchase of the Shares will complete by way of Default Completion pursuant to clause 7.

Share Sale Agreement



6.4 Buyer's Obligations at Completion

On the Completion Date, the Buyer and Investment Manager must:

- (a) Distribute or pay to the ADF Unit Holders the Completion Amount in Immediately Available Funds in accordance with the table in Schedule 3: and
- (b) deliver to the Seller:
 - (1) evidence of the passing of such resolutions by the board of directors of the Buyer as the Seller may require, authorising the execution, delivery and performance of this agreement;
 - (2) copies of any Authorisations obtained by the Buyer under or for the purposes of this agreement; and
 - (3) such other documents as shall be reasonably requested by the Seller in order to carry out the transactions contemplated by this agreement, duly executed by the Buyer.

6.5 Sellers Obligations at Completion

On the Completion Date, the Seller must:

- (a) deliver to the Buyer or its Solicitors duly executed transfers of the Shares in favour of the Buyer or its nominee to enable the Buyer to have the transfers stamped if required;
- (b) cause the transfer of the Shares to be approved by the directors of the Company for the registration by the Company, in the name of the Buyer or its nominee;
- (c) provide evidence, satisfactory to the Buyer, that all Encumbrances over the Shares are discharged on and from the Completion Date and deliver to the Buyer all documents necessary to reflect such discharges;
- (d) execute any transfer or other document reasonably required under this agreement to give effect to its terms;
- (e) deliver to the Buyer or its Solicitors the original share certificates for the Shares for cancellation by the Company;
- (f) deliver to the Buyer or its Solicitors:
 - (1) the Certificate of Incorporation of the Company; and
 - (2) an up to date copy of the Constitution of the Company;
- (g) deliver to the Buyer or its Solicitors all of the Books and Records of the Company;
- (h) deliver to the Buyer or its Solicitors copies of all Authorisations obtained by the Seller under this agreement;
- (i) deliver to the Buyer or its Solicitors evidence of the passing of such resolutions of the Company required by the Buyer under this agreement to enable Completion to take place;
- (j) subject to receiving a duly completed and signed consent to act as director from the relevant nominee, cause the nominee of the Buyer to be appointed to the Board of Directors of the Company;

Share Sale Agreement



- (k) subject to the appointment referred to in paragraph 6.5(l) being effected, cause all other directors of the Company to resign as of Completion;
- (l) cause the Buyer or its nominee to be appointed to the Board of Directors of the Company;
- (m) deliver to the Buyer:
 - (1) an up to date list of the names of all signatories on all Bank Accounts; and
 - (2) all necessary banking or other authorities required by any Bank or other financier of the Company (duly completed by the Seller) to facilitate the immediate appointment of nominees of the Buyer to operate upon any of the Bank Accounts in place of the Seller or its nominees; and
- (n) deliver or cause to be delivered to the Buyer such other documents as shall reasonably be requested by the Buyer in order to effectively carry out the transactions contemplated by this agreement, duly executed by the Seller,

(the **Seller Completion Obligations**).

7. Default Completion

7.1 Time and place

Default Completion must take place:

- (a) on the Default Completion Date; and
- (b) at the offices of the Seed Representative's lawyers or at another location as agreed between the parties in writing.

7.2 Buyer's Obligations at Default Completion

On the Default Completion Date, the Buyer and Investment Manager must:

- (a) Distribute or pay to the ADF Unit Holders the Default Completion Amount in Immediately Available Funds in accordance with the table in Schedule 3: and
- (b) deliver to the Seller:
 - (1) evidence of the passing of such resolutions by the board of directors of the Buyer as the Seller may require, authorising the execution, delivery and performance of this agreement;
 - (2) copies of any Authorisations obtained by the Buyer under or for the purposes of this agreement; and
 - (3) such other documents as shall be reasonably requested by the Seller in order to carry out the transactions contemplated by this agreement, duly executed by the Buyer.

Share Sale Agreement



7.3 Seller's Obligations at Default Completion

On the Default Completion Date, the Seller must fulfil the Seller Completion Obligations.

7.4 Uplift Fee

- (a) On the Default Valuation Date, the Seed Representative must procure a Havana Project Valuation (**Default Valuation**).
- (b) On receipt of the Default Valuation, the Seed Representative must immediately:
 - (1) calculate the difference between the Default Valuation and the Default Completion Amount (**Uplift Fee**); and
 - (2) issue a notice to the parties which discloses:
 - (A) the Default Valuation;
 - (B) the valuation reports used to inform the Default Valuation;
 - (C) the Uplift Fee; and
 - (D) the calculations used to determine the Uplift Fee.
- (c) The Buyer must distribute or pay the ADF Unit Holders the Uplift Fee in Immediately Available Funds within 2 Business Days of receiving the notice pursuant to clause 7.4(b)(2) in accordance with the table in Schedule 3.

8. Parties default

8.1 Default

If the Buyer, Seller, Lead Developer or Investment Manager fails to comply with any provision of this agreement then (in addition to any other remedy available) then the Seed Representative may:

- (a) without notice to the Buyer, Seller, Lead Developer or Investment Manager, terminate this agreement and exercise all rights on behalf of the ADF Unit Holders as the beneficial owner of the Shares; and
- (b) sue the Buyer, Seller, Lead Developer or Investment Manager for breach of contract.

8.2 Indemnity

The Buyer, Seller, Lead Developer and Investment Manager must indemnify the Seed Representative and ADF Unit Holders and keep the Seed Representative and ADF Unit Holders indemnified against any Claim against the Seed Representative or ADF Unit Holders as a result of the Buyer, Seller, Lead Developer or Investment Manager's default under this agreement.

8.3 Interest

- (a) If the Buyer or Investment Manager is late in payment of any part of the Purchase Price to the ADF Unit Holders because of default on the part of the Buyer, Investment Manager or Seller as the case may be, the Buyer, Investment Manager or Seller will pay to the ADF Unit Holders a sum for liquidated damages equivalent to interest at the

Share Sale Agreement



rate of 15% per annum on the outstanding money from the due date for payment until full payment has been made.

- (b) Any interest payable to the ADF Unit Holders pursuant to this clause will be tendered to the ADF Unit Holders upon Completion in accordance with their respective percentage entitlements as set out in Schedule 3 and the Seed Representative may treat a failure to tender such money as a default entitling it to terminate this agreement.
- (c) Any exercise by the Seed Representative of its rights under this clause is without prejudice to any other rights of the Seed Representative.

9. Warranties

9.1 Warranties

- (a) The Seller gives to the parties the Seller's Warranties at the Agreement Date and immediately prior to Completion.
- (b) The Buyer and Investment Manager gives to the parties the Buyer's Warranties at the Agreement Date and immediately prior to Completion.
- (c) The Lead Developer warrants to each of the parties to this agreement, as an inducement to enter into this agreement and immediately prior to Completion, that there is no other contract for the sale of the Land or the Company other than the one between the Company and owner of the Land.
- (d) The Buyer warrants to each of the parties to this agreement, as an inducement to enter into this agreement and immediately prior to Completion, that there is no other contract for the sale of the Land or the Company other than the one between the Company and owner of the Land.
- (e) The Seller warrants to each of the parties to this agreement, as an inducement to enter into this agreement and immediately prior to Completion, that there is no other contract for the sale of the Land or the Company other than the one between the Company and owner of the Land.
- (f) The Company warrants to each of the parties to this agreement, as an inducement to enter into this agreement and immediately prior to Completion, that there is no other contract for the sale of the Land or the Company other than the one between the Company and owner of the Land.

9.2 Indemnities

- (a) The Seller agrees with the Seed Representative to indemnify and keep indemnified the ADF Unit Holders from and against all and any Claims suffered or incurred by the ADF Unit Holders as a result of any breach of the Seller's Warranties.
- (b) The Buyer and Investment Manager agree with the Seed Representative to indemnify and keep indemnified the ADF Unit Holders from and against all and any Claims suffered or incurred by the ADF Unit Holders as a result of any breach of the Buyer's Warranties.
- (c) The Buyer, Seller, Lead Developer and Investment Manager agree with the Seed Representative to indemnify and keep indemnified each of the Seed Representatives from and against all and any Claims suffered or incurred by any Seed Representative whatsoever.

Share Sale Agreement



10. GST

10.1 GST exclusive amounts

Unless expressly stated to the contrary, all amounts under this agreement are exclusive of GST.

10.2 Financial services

The Seller and the Buyer acknowledge that the sale and purchase of the Shares constitutes a financial supply and should not constitute a taxable supply under the GST Law.

10.3 GST amount

Any amount to be paid to a party (**Supplier**) by the other party (**Recipient**) under this agreement which is consideration for a taxable supply made by the Supplier must be increased by the amount of GST which the Supplier is obliged to pay in respect of that taxable supply pursuant to the GST Law, the intention being that the Recipient must reimburse the Supplier the amount of GST in addition to the consideration otherwise expressed in this agreement as payable for that taxable supply.

10.4 Tax invoice

Contemporaneously with the receipt of the GST under clause 10.3, the Supplier must provide to the Recipient a tax invoice in respect of the relevant taxable supply.

10.5 Payments other than for taxable supplies

Any amount to be paid by a party (**Reimbursing Party**) to the other party (**Reimbursed Party**) under this agreement which is not consideration for a taxable supply made by the Reimbursed Party to the Reimbursing Party must be reduced by the amount of any input tax credit to which the Reimbursed Party is entitled in respect of the creditable acquisition for which reimbursement is being sought, the intention being that the Reimbursing Party only reimburses the Reimbursed Party for the net cost of the acquisition.

11. Dispute resolution

11.1 Parties to notify

If a dispute or difference between the parties arises out of, or in connection with, this agreement, each party must notify the other party, in writing, of the issues in dispute immediately.

11.2 Parties to confer

Within seven days of a party receiving a notice referred to in clause 11.1, the parties must confer at least once to resolve the issues in dispute, with or without the assistance of a mediator.

11.3 Referral to determination

If the dispute has not been resolved within 14 days of service of the notice referred to in clause 11.1, either party may refer the dispute to an Expert appointed by agreement between the parties for determination which the parties agree will be final.

Share Sale Agreement



11.4 Expert not arbitrator

In adjudicating the dispute, the Expert must act as an expert and not as an arbitrator.

11.5 Procedure

The procedure to be followed by the Expert will be in accordance with the Expert Determination Rules of the Resolution Institute.

11.6 Privilege

All discussions and correspondence between the parties of and incidental to any dispute or difference between them are be privileged.

11.7 Performance to continue

Despite the existence of a dispute or difference between the parties arising out of, or in connection with, this agreement, the parties must continue to perform this agreement.

12. Notices

12.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 12.4 or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an Authorised Officer of the sender.

12.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail; or
- (d) sent by electronic mail to the party's electronic mail address.

12.3 Time

If a notice is sent or delivered in the manner provided in clause 12.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
 - (1) in Australia to an Australian address, the fourth Business Day after posting; or

Share Sale Agreement



(2) in any other case, on the tenth Business Day after posting; or

- (c) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

12.4 Initial details

The addresses and numbers for service are initially those set out in Schedule 1.

12.5 Changes

A party may from time to time change its address or numbers for service by notice to each other party.

13. Miscellaneous

13.1 Governing law

This agreement is governed by and construed in accordance with the laws of Western Australia.

13.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 13.2(a).

13.3 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

13.4 Merger

If the liability of a party to pay money under this agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this agreement and that fixed by or payable under that deed, judgment, order or other thing.

13.5 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this agreement is excluded to the extent permitted by law.

Share Sale Agreement



13.6 No assignment

A party must not assign, transfer or novate all or any part of its rights or Obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party.

13.7 Remedies cumulative

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

13.8 Indemnities

Subject to any other provision of this agreement, the indemnities in this agreement are continuing Obligations, independent from the other Obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

13.9 Severability

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

13.10 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

13.11 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

13.12 Taxes

The Buyer must:

- (a) pay all Taxes which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this agreement or any payment or receipt or of any transaction contemplated by this agreement; and
- (b) indemnify the Seller against any liabilities resulting from any delay or omission by the Buyer to pay any Taxes.

13.13 Time

- (a) Time is of the essence of each Obligation under this agreement except:
 - (1) regarding any agreement between the parties on a time of day for Completion; and
 - (2) where otherwise expressly excluded.

Share Sale Agreement



- (b) For any Obligation in relation to which time is of the essence of this agreement:
 - (1) any agreement to vary the time requirement applicable to it must be in writing; and
 - (2) if the parties agree to vary the time requirement, the time requirement so varied is of the essence of this agreement.

13.14 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

13.15 Waiver

- (a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

13.16 Counterparts

This agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this agreement may deliver it to, or exchange it with, another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party.

13.17 Whole agreement

This agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of this agreement; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

13.18 Consents

A consent required under this agreement from a party may not be unreasonably withheld, unless this agreement expressly provides otherwise.

13.19 No representation or reliance

Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements or inducements expressly set out in this agreement.

Share Sale Agreement



Schedule 1 - Notice Details

Party	Attention	Address	Electronic Mail
Buyer	David Anderson	Unit 501, 26 Queens Road, Melbourne VIC 3004	david@firstguardiancapital.com
Seller	David Anderson	26 Queens Road, Melbourne VIC 3004	david@firstguardiancapital.com
Company	David Anderson	Suite 4 Level 13, 350 Collins Street Melbourne VIC 3000	david@firstguardiancapital.com
Lead Developer	Paul Chiodo	704/434 St. Kilda Road, Melbourne VIC 3004	paul@chiodocorp.com.au
Investment Manager	Ilya Frolov	Suite 4 Level 13, 350 Collins Street Melbourne VIC 3000	ilya@chiodocorp.com.au
Seed Representative	Adam Fletcher Nasser Mashni	10/100 Hay Street Subiaco WA 6008 347 Riversdale Rd Hawthorn east VIC 3123	adam@kandfconsultants.com.au nasser@yarracq.com.au
ADF UNIT HOLDERS			
Chiodo Corporation Pty Ltd	Paul Chiodo	704/434 St. Kilda Road, Melbourne VIC 3004	paul@chiodocorp.com.au
Seed Equity Group Pty Ltd	Craig Wilkinson	140, 100 Hay Street, Subiaco WA 6008	craig@seedequitygroup.com

Share Sale Agreement



Kuspira Superannuation Fund	Michael Kuspira	Unit 1 45 Barton Reservoir, VIC 3073	michael.kuspira@iinet.net.au
Slotar Investment Trust	Sean Slotar	Unit 4B 151 Herdsman Parade Wembley, WA 6014	slotar@iinet.net.au
Slotar Superannuation Fund	Sean Slotar	Unit 4B 151 Herdsman Parade Wembley, WA 6014	slotar@iinet.net.au
Nameo Pty Ltd ACN 155 839 197	Nader El Sayed	91 Gwentyfred Road, Kensington WA 6151	nader@multiplant.com.au
Jat Auto Holdings Pty Ltd ACN 159 249 224	Jaysen Taylor	152 Ardross Street, Mount Pleasant WA 6153	jaysen@365plant.com.au
Sacadama Super Pty Ltd atf Sacadama Super Fund ACN 630 131 734	Casey Keeley	10/100 Hay Street, Subiaco WA 6008	caseyakeeley@hotmail.com
Robaile Pty Ltd ACN 125 963 377	Robert De Francesch	1/100 Hay Street, Subiaco WA 6008	robert@defrancesch.com.au
Robert Monastra	Robert Monastra	1/100 Hay Street, Subiaco WA 6008	rmonastra@defrancesch.com.au
Wivi Superannuation Fund	Christopher Marks	148 Humphries Road, Mount Eliza VIC 3930	chris.marks75@outlook.com

Share Sale Agreement



Schedule 2 - Shares

Class	Number	Present Registered Holder
ORD	100	Falcon Capital Limited ATF the First Guardian Australian Development Fund (E Class Havana Units)

Share Sale Agreement



Schedule 3 - Unit Holders & Entitlements

No.	Name	Unit Classes	Number of Units	Completion Entitlement	Amount	Default Amount	Completion Entitlement	Uplift Entitlement	Fee
1	Chiodo Corporation Pty Ltd ACN 611 404 909	E	150,000			\$651,923.08			
2	First Guardian Capital Pty Ltd ACN 073 622 741	E	50,000			\$217,307.69			
3	Seed Equity Group Pty Ltd ACN 616 128 057	E	100,000			\$434,615.38			
ADF Unit Holders									
4	Kuspira Superannuation Fund	E	70,000			\$140,000			
5	Slotar Investment Trust	E	50,000			\$100,000			
6	Slotar Superannuation Fund	E	200,000			\$400,000			
7	Nameo Pty Ltd ACN 155 839 197	E	100,000			\$200,000			
8	Jat Auto Holdings Pty Ltd ACN 159 249 224	E	100,000			\$200,000			
9	Sacadama Super Pty Ltd aff Sacadama Super Fund ACN 630 131 734	E	26,740			\$53,480			
10	Roballe Pty Ltd ACN 125 963 377	E	50,000			\$100,000			
11	Robert Monasta	E	50,000			\$100,000			
12	Wivi Superannuation Fund	E	200,000			\$400,000			
13	Seed Equity Group Pty Ltd ACN 616 128 057	E	3,260			\$6,520			
BACK END PROFIT DISTRIBUTION									
	Seed Equity Group Pty Ltd ACN 616 128 057 on behalf of the Profit Share	-				\$2,911,153.85			

Share Sale Agreement



Partners					
First Guardian Capital	-			\$50,000	

Share Sale Agreement



Schedule 4 - Profit Share Agreement



Profit Distribution Agreement

Havana Project

Seed Equity Group Pty Ltd ACN 616 128 057 (**Seed**)

First Guardian Capital Pty Ltd ACN 073 622 741 (**FGC**)

The entities listed in Schedule 1 (**Profit Share Partners**)

Contact - Joshua Hunt, Partner, josh.hunt@hopgoodganim.com.au

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Table of Contents



1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Capitalised Terms	3
1.3	Interpretation	3
1.4	Business Days	3
1.5	Parties	4
2.	Release of Liability under Original Agreement.....	4
3.	Profit Distribution	4
3.1	Acknowledgment.....	4
3.2	Distribution	4
3.3	Term.....	4
4.	Obligations	5
4.1	Information Obligations	5
4.2	Receipt of Profit	5
5.	Parties Default.....	5
5.1	Default.....	5
5.2	Interest	5
6.	Warranties	5
6.1	Warranties.....	5
6.2	Acknowledgements	6
7.	GST	6
7.1	GST exclusive amounts	6
7.2	GST amount.....	7
7.3	Tax invoice.....	7
7.4	Payments other than for taxable supplies.....	7
8.	Dispute Resolution	7
8.1	Parties to notify	7
8.2	Parties to confer	7
8.3	Referral to determination	7
8.4	Expert not arbitrator	7
8.5	Procedure	7
8.6	Privilege	7
8.7	Performance to continue.....	8
9.	Notices	8
9.1	Form.....	8
9.2	Manner	8
9.3	Time	8
9.4	Initial details	9
9.5	Changes.....	9
10.	Miscellaneous.....	9
10.1	Governing law	9
10.2	Jurisdiction	9
10.3	Exercise rights	9
10.4	Merger.....	10
10.5	Moratorium legislation.....	10
10.6	No assignment.....	10
10.7	Remedies cumulative.....	10
10.8	Severability	10
10.9	Further assurance	10
10.10	Costs	10
10.11	Taxes	10
10.12	Time	10
10.13	Variation.....	11
10.14	Waiver.....	11
10.15	Counterparts	11

Table of Contents



10.16 Whole agreement.....11

Profit Distribution Agreement



Date

Parties

Seed Equity Group Pty Ltd ACN 616 128 057 (**Seed**)

First Guardian Capital Pty Ltd ACN 073 622 741 (**FGC**)

Those entities listed in Schedule 1 (**Profit Share Partners**)

Background

- A. Seed and the Profit Share Partners are party to the Original Agreement.
- B. The parties have contributed and assisted in the development of the Havana Project.
- C. The parties have agreed to enter this agreement to record the profit sharing arrangements in relation to the Havana Project as reflected in the Original Agreement.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this agreement:

ADI has the meaning given to it in section 5 of the *Banking Act 1959* (Cth).

Agreement Date means the date on which this agreement is signed by the last of the parties.

Authorised Officer means, in relation to a corporation which is a party:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this deed and notified to the others.

Bank means an ADI holding a consent under the *Banking Act 1959* (Cth) to call itself a bank.

Bank Cheque means a cheque drawn by a Bank on itself.

Business Day means:

Profit Distribution Agreement



- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth.

Expert means a suitably qualified independent person appointed in accordance with this agreement.

Government Body means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

Immediately Available Funds means:

- (a) cash;
- (b) Bank Cheque; or
- (c) electronic transfers of cleared funds into the recipient's bank account.

Latest Date means the date that is 14 days after FGC receives or is entitled to receive, the Profit.

Original Agreement means the profit distribution agreement dated 8 March 2019 between the parties, set out in Schedule 2.

Profit means proceeds due to Seed and FGC from the completion of the Share Sale Agreement.

Share Sale Agreement means the sale agreement for the shares in 75 Port Douglas Road Pty Ltd ACN 630 681 926 between:

- (a) Falcon Capital Limited ACN 119 204 554 as trustee for the Chiodo Diversified Property Fund;
- (b) Falcon Capital Limited ACN 119 204 554 as trustee for the First Guardian Australian Development Fund;
- (c) 75 Port Douglas Road Pty Ltd ACN 630 681 926;
- (d) Chiodo Corporation Pty Ltd ACN 611 404 909;
- (e) CF Property Capital Pty Ltd ACN 633 394 751;
- (f) Seed Equity Group Pty Ltd ACN 623 076 826, for and on behalf of the unit holders in the First Guardian Australian Development Fund; and
- (g) unit holders in the First Guardian Australian Development Fund.

Profit Distribution Agreement



Tax means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

1.2 Capitalised Terms

Capitalised terms not otherwise defined in this agreement have the meaning given to them in the Share Sale Agreement.

1.3 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
- (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
 - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and
 - (9) a time is a reference to Perth time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

1.4 Business Days

- (a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.

Profit Distribution Agreement



- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

1.5 Parties

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

2. Release of Liability under Original Agreement

- (a) The parties acknowledge and agree that on and from the Agreement Date the Original Agreement shall be terminated and all parties shall be discharged from all further liability and obligations thereunder.
- (b) Notwithstanding the provisions of clause 2(a) the parties shall remain liable in respect of all obligations and liabilities accrued prior to the date of this agreement.

3. Profit Distribution

3.1 Acknowledgment

The parties acknowledge and agree that:

- (a) in accordance with the terms of the Original Agreement, the Profit Share Partners are entitled to profits from the Havana Project; and
- (b) in accordance with the terms of the Share Sale Agreement, Seed and FGC, as ADF Unit Holders are entitled to receive the Profit on behalf of the Profit Share Partners.

3.2 Distribution

Seed and FGC agree and covenant with the parties to this Agreement to distribute the Profit to the Profit Share Partners in Immediately Available Funds in accordance with their respective percentage entitlements as set out in column 5 of the table in Schedule 1 on or by the Latest Date. If a Profit Share Partner elects to receive its distribution from FGC directly then FGC agrees with that Profit Share Partner that it will follow the directions of the Profit Share Partner as to how its Profit will be paid.

3.3 Term

This agreement will remain in force from the Agreement Date until:

- (a) mutual agreement between the parties to terminate this agreement; or
- (b) the Profit is distributed amongst the Profit Share Partners in accordance with the terms of this Agreement,

whichever occurs first.

Profit Distribution Agreement



4. Obligations

4.1 Information Obligations

On and from the Agreement Date, Seed and FGC must:

- (a) provide weekly updates to the Profit Share Partners on the progress of the Havana Project and the Havana Project Sale; and
- (b) respond to and satisfy all information requests from the Profit Share Partners regarding the progress of the Havana Project and Havana Project Sale within 3 Business Days.

4.2 Receipt of Profit

On receiving the Profit, Seed and FGC must immediately issue a notice to the Profit Share Partners disclosing:

- (a) the total Profit amount;
- (b) the amount of the Profit due to each of the Profit Share Partners; and
- (c) the calculations used to determine the amount of the Profit due to each of the Profit Share Partners.

5. Parties Default

5.1 Default

If Seed or FGC fail to comply with any provision of this agreement then (in addition to any other remedy available) the Profit Share Partners may sue Seed or FGC for breach of contract.

5.2 Interest

- (a) If Seed or FGC is late in payment of any part of the Profit to the Profit Share Partners because of default on the part of Seed or FGC as the case may be, Seed and FGC will pay to the Profit Share Partners a sum for liquidated damages equivalent to interest at the rate of 15% per annum on the outstanding money from the due date for payment until full payment has been made.
- (b) Any interest payable to the Profit Share Partners pursuant to this clause must be tendered to the Profit Share Partners in accordance with their respective percentage entitlements as set out in column 5 of the table in Schedule 1.
- (c) Any exercise by any Profit Share Partner of its rights under this clause is without prejudice to any other rights of the Profit Share Partners.

6. Warranties

6.1 Warranties

Each party represents and warrants to the others that:

- (a) if it is a company, it is a company duly registered and validly existing under the laws of the country of its registration;

Profit Distribution Agreement



- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated in this agreement;
- (c) if it is a company, it has taken all necessary corporate action to authorise the entry into and performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) this document is its valid and binding obligation;
- (e) neither the execution or performance by it of this agreement nor any transaction contemplated under this agreement will violate in any respect any provision of:
 - (1) if it is a company, its constituent documents; or
 - (2) any other document, agreement or other arrangement binding on it or its assets;
- (f) if it is a trustee:
 - (1) it has power and lawful authority to enter into and perform this agreement as trustee of the relevant trust and this agreement constitutes a valid, legal and binding agreement on the trust enforceable in accordance with its terms;
 - (2) it enters into this agreement as part of the property administration of the trust and for the benefit of the beneficiaries of the trust;
 - (3) it, and any other person expressed in this agreement to be a trustee of the trust, are the sole trustees of the trust; and
 - (4) entering into this agreement does not constitute a conflict of interest or duty on the part of the trustee nor a breach of trust.

6.2 Acknowledgements

Each party acknowledges that:

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

7. GST

7.1 GST exclusive amounts

Unless expressly stated to the contrary, all amounts under this agreement are exclusive of GST.

Profit Distribution Agreement



7.2 GST amount

Any amount to be paid to a party (**Supplier**) by the other party (**Recipient**) under this agreement which is consideration for a taxable supply made by the Supplier must be increased by the amount of GST which the Supplier is obliged to pay in respect of that taxable supply pursuant to the GST Law, the intention being that the Recipient must reimburse the Supplier the amount of GST in addition to the consideration otherwise expressed in this agreement as payable for that taxable supply.

7.3 Tax invoice

Contemporaneously with the receipt of the GST under clause 7.2, the Supplier must provide to the Recipient a tax invoice in respect of the relevant taxable supply.

7.4 Payments other than for taxable supplies

Any amount to be paid by a party (**Reimbursing Party**) to the other party (**Reimbursed Party**) under this agreement which is not consideration for a taxable supply made by the Reimbursed Party to the Reimbursing Party must be reduced by the amount of any input tax credit to which the Reimbursed Party is entitled in respect of the creditable acquisition for which reimbursement is being sought, the intention being that the Reimbursing Party only reimburses the Reimbursed Party for the net cost of the acquisition.

8. Dispute Resolution

8.1 Parties to notify

If a dispute or difference between the parties arises out of, or in connection with, this agreement, each party must notify the other party, in writing, of the issues in dispute immediately.

8.2 Parties to confer

Within seven days of a party receiving a notice referred to in clause 8.1, the parties must confer at least once to resolve the issues in dispute, with or without the assistance of a mediator.

8.3 Referral to determination

If the dispute has not been resolved within 14 days of service of the notice referred to in clause 8.1, either party may refer the dispute to an Expert appointed by agreement between the parties for determination which the parties agree will be final.

8.4 Expert not arbitrator

In adjudicating the dispute, the Expert must act as an expert and not as an arbitrator.

8.5 Procedure

The procedure to be followed by the Expert will be in accordance with the Expert Determination Rules of the Resolution Institute.

8.6 Privilege

All discussions and correspondence between the parties of and incidental to any dispute or difference between them are be privileged.

Profit Distribution Agreement



8.7 Performance to continue

Despite the existence of a dispute or difference between the parties arising out of, or in connection with, this agreement, the parties must continue to perform this agreement.

9. Notices

9.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 9.4 or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an Authorised Officer of the sender.

9.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail; or
- (d) sent by electronic mail to the party's electronic mail address.

9.3 Time

If a notice is sent or delivered in the manner provided in clause 9.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
 - (1) in Australia to an Australian address, the fourth Business Day after posting; or
 - (2) in any other case, on the tenth Business Day after posting; or
- (c) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

Profit Distribution Agreement



9.4 Initial details

The addresses and numbers for service are initially:

Seed

Address: 10, 100 Hay Street, Subiaco WA 6008

Email: craig@seedequitygroup.com

Attention: Craig Wilkinson

FGC

Address: Suite 4 Level 13, 350 Collins Street, Melbourne VIC 3000

Email: david@firstguardiancapital.com

Attention: David Anderson

Profit Share Partners

Those listed in Schedule 1 below.

9.5 Changes

A party may from time to time change its address or numbers for service by notice to each other party.

10. Miscellaneous

10.1 Governing law

This agreement is governed by and construed in accordance with the laws of Western Australia.

10.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 10.2(a).

10.3 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

Profit Distribution Agreement



10.4 Merger

If the liability of a party to pay money under this agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this agreement and that fixed by or payable under that deed, judgment, order or other thing.

10.5 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this agreement is excluded to the extent permitted by law.

10.6 No assignment

A party must not assign, transfer or novate all or any part of its rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party.

10.7 Remedies cumulative

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

10.8 Severability

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

10.9 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

10.10 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

10.11 Taxes

Seed and FGC must:

- (a) pay all Taxes which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this agreement or any payment or receipt or of any transaction contemplated by this agreement; and
- (b) indemnify the Profit Share Partners against any liabilities resulting from any delay or omission by Seed and Chiodo to pay any Taxes.

10.12 Time

- (a) Time is of the essence of this agreement.

Profit Distribution Agreement



- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this agreement.
- (c) An agreement to vary a time requirement must be in writing.

10.13 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

10.14 Waiver

- (a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

10.15 Counterparts

This agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this agreement may deliver it to, or exchange it with, another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party.

10.16 Whole agreement

This agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of this agreement; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

Profit Distribution Agreement



Schedule 1 - Profit Share Partners

Party	Attention	Address	Electronic Mail	Percentage Entitlement of Profit
Vivilex Limited	Mark Leslie Merry	RM 815 8/F, Star House 3 Salisbury Road TST KLN Hong Kong	mark@mfaustralia.com.au	23.7%
The trustee for AK and F Super Fund ABN 82 187 250 426, as nominee for K and F Consultants Pty Ltd	Adam Fletcher	20A West Coast Drive Marmion WA 6020	adam@kandfconsultants.com.au	23.7%
Fleco Pty Ltd	Nasser Daniel Mashni	347 Riverdale Road Hawthorn East VIC 3123	nasser@yarracq.com.au	25.76%
Gin and Soda Pty Ltd	Peter Aleksander	6/291 West Coast Highway Scarborough WA 6019	peter@fundcapital.net.au	3.44%
Weatherby Fine Art Pty Ltd	Darren Weatherby-Blythe	50 Colin Street West Perth WA 6005	darrenonthetee@hotmail.co.uk	8.59%
Chiodo Corporation Pty Ltd	Paul Chiodo	704/434 St. Kilda Road, Melbourne VIC 3004	paul@chiodocorp.com.au	8.63%

Profit Distribution Agreement



Schedule 2 - Original Agreement



THIS PROFIT DISTRIBUTION AGREEMENT ("Agreement") is made the 8th day of MARCH 2019

BETWEEN:

SEED EQUITY GROUP PTY LTD
of 10, 100 Hay Street, Subiaco, WA 6008

(Equity Marketers)

- AND -

CHIDO CORPORATION PTY LTD
of 704/434 St.Kilda Road, Melbourne, VIC 3004

("Chido and Developer")

- AND -

VIVILEX LIMITED
of RM 815 8/F, Star House, 3 Salisbury Road, TST KLN Hong Kong

(Real Estate Advisor)

- AND -

K AND F CONSULTANTS PTY LTD AFT THE ADAM FLETCHER FAMILY TRUST
of 20A West Coast Drive, Marmion, WA 6020

(Real Estate Advisor)

- AND -

FLEGG PTY LTD
of 347 Riversdale Road, Hawthorn East VIC 3123

(Marketers)

- AND -

GIN AND SODA PTY LTD
of 6/291 West Coast Highway, Scarborough, WA 6019

(Real Estate Advisor)

- AND -

WEATHERBY FINE ART PTY.LTD
of 50 Colin Street, West Perth, WA 6005

(Real Estate Advisor)



BACKGROUND

- A. The parties agree to work together to Development the Project known as "Port Douglas Hotel".
- B. The parties agree to deliver the Project in line with the Project Report.
- C. The parties have agreed the amount of equity to be raised.
- D. The parties have agreed to the Profit distribution.
- E. The parties acknowledge that the settlement date for this Property is 24th October 2019.

EQUITY & PROFIT DISTRIBUTION AGREEMENT

The parties acknowledge that the Project's equity and profit distribution is noted below:

	PRO-RATA		Profit
PD Hotel Project	\$ 1,170,000.00	100.00%	\$ 5,085,000.00
Chiodo	\$ 150,000.00	12.82%	\$ 651,923.08
FGC	\$ 50,000.00	4.27%	\$ 217,307.69
Seed Equity Group	\$ 100,000.00	8.55%	\$ 434,615.38
Seed Investors	\$ 870,000.00	74.36%	\$ 3,781,153.85
ADF FGC Management Fee	\$ -	0.00%	\$ 50,000.00

Seed Investors will provide a total of \$870,000 from its investor base for the Port Douglas Hotel Project

The following Seed Investors \$3,781,153.85 profit allocations in the above table will be distributed in the following way at the conclusion of the Project:

- Seed Investors: \$870,000.00
- Seed Equity Group: \$180,000.00
- Fleco Pty Ltd: \$750,000.00
- Vivilex Limited: \$690,000.00
- K and F Consultants Pty Ltd: \$690,000.00
- Gin and Soda Pty Ltd: \$100,000.00
- Weatherby Fine Art Pty Ltd: \$250,000.00
- Chiodo Corporation: \$251,153.85



The above information is based on a \$13,000,000 sales price within the Low Density Fund. Any movement in sale price beyond \$13,000,000 will be applied on a pro-rata basis. Please refer to the attachment to this agreement of profit distribution on sale price greater than \$13,000,000 as information.

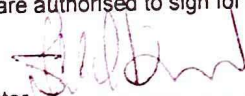
Entire Agreement

This Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

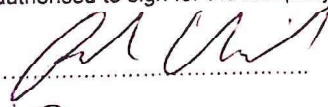
Signatures

This Agreement shall be signed:

**EXECUTED BY SEED EQUITY GROUP)
PTY LTD being signed by those persons)
who are authorised to sign for the company:)**

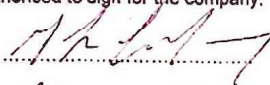
Director.....  Director/Secretary.....
Full Name Chris Wilkinson Full Name
Usual Address 14 DENVER Rise Usual Address
HIGH Wycombe 6058 WA
.....

**EXECUTED BY CHIDO CORPORATION)
PTY LTD being signed by those persons)
who are authorised to sign for the company:)**


Director.....  Director/Secretary.....
Full Name Paul Chiodo Full Name
Usual Address 704/434 Usual Address
ST-KILDA ROAD, MELBOURNE 3007
.....



EXECUTED BY VIVILEX LIMITED)
being signed by those persons)
who are authorised to sign for the company:)

Signature  (Director)
Full Name MARK LESLIE MERRY
Usual Address 217 FOOTB. ST. BRIMTON 3186

EXECUTED BY K AND F CONSULTANTS)
PTY LTD AFT THE ADAM FLETCHER)
FAMILY TRUST being signed by those persons)
who are authorised to sign for the company:)

Director  Director/Secretary.....
Full Name Adam Nicholas Ian Fletcher Full Name
Usual Address 20A West Coast Drive, Marmion, WA 6020 Usual Address

EXECUTED BY FLECO PTY LTD)
being signed by those persons)
who are authorised to sign for the company:)

Director  Director/Secretary.....
Full Name Nasser Danial MASHNI Full Name
Usual Address 347 Riversdale Rd Hawthorn East VIC 3123 Usual Address



EXECUTED BY GIN AND SODA PTY LTD)
being signed by those persons)
who are authorised to sign for the company:)

Director 

Director/Secretary.....

Full Name Peter Aleksander

Full Name

Usual Address 6/291 West

Usual Address

Coast Hwy Scarborough
Perth WA 6019

EXECUTED BY WEATHERBY FINE)
ART PTY LTD being signed by those persons)
who are authorised to sign for the company:)

Director 

Director/Secretary.....

Full Name DARREN WEATHERBY-BYRNE

Full Name

Usual Address 2/31 SERRAN ST

Usual Address

SUNBISH BEACH QLD 4567

Profit Distribution Agreement



Signing page

Executed by Seed Equity Group Pty Ltd ACN
616 128 057

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Executed by First Guardian Capital Pty Ltd
ACN 073 622 741

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Executed by Chiodo Corporation Pty Ltd ACN
611 404 909

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Executed by Vivilex Limited

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Profit Distribution Agreement



Executed by K and F Consultants Pty Ltd ACN 623 076 826

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Executed by Fleco Pty Ltd ACN 150 137 250

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Executed by Gin and Soda Pty Ltd ACN 317 026 927

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Executed by Weatherby Fine Art Pty Ltd ACN 166 576 736

Director/Sole Director/Sole Director and Secretary

Director/Secretary (if applicable)

Print full name of Director/Sole Director

Print full name of Director/Secretary

Share Sale Agreement



Schedule 5 - Cashflow Report



seed equity group

CHi|O|D|O
corporation

Date 8th March 2019

RE: Cashflow

This document confirms the raise required for all Project under the Low Density Fund. Please refer to the cash flow/draw down schedule attachment dated 7/3/2019.

The items below sets out the operational process of cash flow finalisation and future reporting. These are as follows:

1. This cash flow is a look forward to future equity requirements based on the current status of each project. It is not a review of performance to date.
2. The proposed overall equity cash flow is a best estimate at this point and has been put together by Chiodo Corporation which claims it is accurate and has been put together with all information currently available to them.
3. The equity cash flow will be re-forecast by the last working day of each month based on actual costs to date for that month;
4. Proof of payment to be provided in the form of tax invoices and related payment receipts to FGC to show all costs for the month and to inform the re-forecast provided.
5. The monthly re-forecast is to include a revised feasibility for each project to show costs to date and to show clearly any deviation from the approved budget/feasibility.
6. Funds will be provided to Chiodo Corporation within the first two working days of each month in line with the monthly re-forecast of that month.
7. Chiodo will provide a full reconciliation for auditing purpose by an independent auditor at the conclusion of each project in order for Chiodo and FGC to verify the total Project profit.
8. All costs and equity requirement include GST where applicable. GST will be reconciled at the end of each Project as part of the independent audit process.

Regards

Paul Chiodo

David Anderson

Sean Niven

Share Sale Agreement



Schedule 6 - Seller's Warranties

1. Standing

- (a) The Company is a corporation duly organised, validly existing and in good standing under the laws of Victoria and the Commonwealth of Australia.
- (b) No Insolvency Event has occurred in relation to the Seller, or the Company.
- (c) The Seller has not received notice of any application or action or any threatened application or action which may result in an Insolvency Event occurring with respect to the Seller, the Company or any of the subsidiaries and, as far as the Seller is aware, no such applications have been issued or threatened.

2. Rights attaching to Shares

- (a) The Shares have been validly issued by the Company.
- (b) The Shares are fully paid.
- (c) The Shares are held on trust for the ADF Unit Holders.
- (d) No voting trusts, powers of attorney or proxies or other agreements or understandings exist with respect to the voting of the Company's Securities.
- (e) No options, warrants or other rights (including, without limitation pre-emptive rights) exist to purchase or subscribe for any of the Company's Securities.

3. Title to the Shares, consents and binding effect

- (a) The Seller is now, and will at the Completion Date be, the sole legal and beneficial owner of the Shares free and clear of any and all Encumbrances.
- (b) The Seller now has and will at the Completion Date the full right, power and authority to sell, transfer, assign and deliver to the Buyer the Shares and the sale, transfer, assignment and delivery of the Shares under this agreement will transfer to the Buyer full and legal title of the Shares free and clear of all Encumbrance.

4. Tax matters

- (a) The Company and its subsidiaries have paid or adequately provided for, and undertake to pay, all Taxes including Taxes required to be paid by the Company for each tax period ending on, and as of, and prior to the Completion Date, and the Company is not in default in payment of any Taxes, and has duly filed all tax reports and returns required to be filed by it.
- (b) The Company has not received any notice of any Tax deficiency outstanding, proposed or assessed.
- (c) There are no Encumbrances on, pending against or, to the best knowledge of the Seller, following diligent inquiry, threatened against the Company or any of its assets arising pursuant to the Tax Act or any other law making provision for Taxes.

5. Material Contracts

- (a) The Company is not a party to any presently existing material contract except as set out in Schedule 7.

Share Sale Agreement



- (b) All of the material contract are valid and in full force and effect and all the material contracts will continue to be valid and in full force and effect upon Completion without any modifications.
- (c) There are no existing or claimed defaults by any party to a material contract and no event, act or omission has occurred which (with or without notice, lapse of time or the happening or occurrence of any other event) would result in a default under any material contract.
- (d) The Company has performed in all respects all of the Obligations required to be performed by it under the material contract.
- (e) Except in the usual conduct of its Business, the Company has not made any offer in relation to the Business (such as a tender or quotation) which is still outstanding and capable of giving rise to a contract merely by the unilateral act of a third party.

Share Sale Agreement



Schedule 7 - Material Contract

Contract for Houses and Residential Land

Fifteenth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

The Seller and Buyer agree to sell and buy the Property under this contract.

REFERENCE SCHEDULE

Contract Date: 24 December 2018

SELLER'S AGENT

NAME:			
ABN:		LICENCE NO:	
ADDRESS:			
SUBURB:	STATE	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:

SELLER

NAME:	Oakstand Fund No. 7 Pty Ltd ACN 119 393 010 as trustee under Instrument ABN: 70129475		
ADDRESS:	c/- Hickey Lawyers		
SUBURB:	STATE:	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:

NAME:			
ADDRESS:			
SUBURB:	STATE:	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:

SELLER'S SOLICITOR

■ or any other solicitor notified to the Buyer

NAME:	Hickey Lawyers		
REF:	375701-3	CONTACT:	Dan Marino
ADDRESS:	PO Box 5559		
SUBURB:	Gold Coast Mall Centre	STATE:	QLD POSTCODE: 0726
PHONE:	MOBILE:	FAX:	EMAIL:
07 5556 7400	0412 333 647		marinod@hickeylawyers.com.au

INITIALS (Note: Initials not required if signed with Electronic Signature)

BUYER

NAME:	75 PORT DOUGLAS ROAD PTY LTD			ABN:	A.C.N. 630 681 926	
ADDRESS:	704, 434 St Kilda Road					
SUBURB:	Melbourne	STATE:	VIC	POSTCODE:	3004	
PHONE:	MOBILE:	FAX:	EMAIL:			
NAME:					ABN:	
ADDRESS:						
SUBURB:		STATE:		POSTCODE:		
PHONE:	MOBILE:	FAX:	EMAIL:			

BUYER'S AGENT (if applicable)

NAME:						
ABN:				LICENCE NO:		
ADDRESS:						
SUBURB:		STATE:		POSTCODE:		
PHONE:	MOBILE:	FAX:	EMAIL:			

BUYER'S SOLICITOR

or any other solicitor notified to the Seller

NAME:	Dorsia Legal				
REF:	CONTACT:	Chris Lilley			
ADDRESS:	PO Box 3145				
SUBURB:	Burnley North	STATE:	VIC	POSTCODE:	3121
PHONE:	MOBILE:	FAX:	EMAIL:		
03 9427 0552		03 9427 0607	chris.lilley@dorsialegal.com.au		

PROPERTY

Land:	ADDRESS:	71-85 Port Douglas Road				
	SUBURB:	Port Douglas	STATE:	QLD	POSTCODE:	4877
		<input type="checkbox"/> Built On	<input checked="" type="checkbox"/> Vacant			
Description:	Lot 1					
	On: SP150465					
Title Reference	50420880					
Area:	<input type="checkbox"/> more or less	Land sold as:	<input checked="" type="checkbox"/> Freehold	<input type="checkbox"/> Leasehold	<input type="checkbox"/> if neither is selected, the land is treated as being Freehold	
Present Use:	Vacant land					
Local Government	Douglas					

INITIALS (Note: Initials not required if signed with Electronic Signature)

Excluded Fixtures: Nil

Included Chattels: Nil

PRICE

Deposit Holder: Hickey Lawyers

Deposit Holder's Trust Account: Hickey Lawyers Trust Account

Bank: Commonwealth Bank of Australia

BSB: 064 430 Account No: 10559695

Purchase Price: \$ 7,100,000.00 (plus GST) ■ Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

Deposit: \$ 355,000.00 Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below.

Default Interest Rate: % ■ If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply

FINANCE

Finance Amount: \$ Not applicable ■ Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply.

Financier:

Finance Date:

BUILDING AND/OR PEST INSPECTION DATE

Inspection Date: Not applicable ■ If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 4.1 does not apply.

MATTERS AFFECTING PROPERTY

Title Encumbrances:

Is the Property sold subject to any Encumbrances? No Yes, listed below.

■ **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

Tenancies:

TENANTS NAME: Not Applicable ■ If the property is sold with vacant possession from settlement, insert 'Nil'. Otherwise complete details from Residential Tenancy Agreement.

TERM AND OPTIONS:

STARTING DATE OF TERM:	ENDING DATE OF TERM:	RENT:	BOND:
		\$	\$

INITIALS (Note: Initials not required if signed with Electronic Signature)

Managing Agent:

AGENCY NAME:			
PROPERTY MANAGER:			
ADDRESS:			
SUBURB:		STATE:	POSTCODE
PHONE:	FAX:	MOBILE:	EMAIL:

POOL SAFETY

Q1. Is there a pool on the Land or on an adjacent land used in association with the Land?

- Yes
 No Clause 4.2 of this contract does not apply

■ **WARNING TO SELLER:** Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.

Q2. If the answer to Q1 is Yes, is there a Compliance or Exemption Certificate for the pool at the time of contract?

- Yes Clause 5.3(1)(f) applies
 No Clause 4.2 applies (except for auction and some other excluded sales)

■ **WARNING TO BUYER:** If there is no Compliance or Exemption Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a Pool Safety Certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.

Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?

- Yes
 No

■ If there is a pool on the Land and Q2 is not completed then clause 4.2 applies.
 ■ Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.

POOL SAFETY INSPECTOR

Pool Safety Inspector:

Pool Safety Inspection Date:

	■ The Pool Safety Inspector must be licensed under the Building Act 1975 and Building Regulation 2006. ■ Clause 4.2(2) applies except where this contract is formed on a sale by auction and some other excluded sales.
--	--

ELECTRICAL SAFETY SWITCH AND SMOKE ALARM

This section must be completed unless the Land is vacant

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:
(select whichever is applicable)

- Installed in the residence
 Not installed in the residence

■ **WARNING:** By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:
(select whichever is applicable)

- Installed in the residence
 Not installed in the residence

■ **WARNING:** Failure to install a Compliant Smoke Alarm is an offence under the Fire and Emergency Services Act 1990.

INITIALS (Note: Initials not required if signed with Electronic Signature)

NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

The Seller gives notice to the Buyer in accordance with Section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* that the Land:
(select whichever is applicable)

- is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land or
- is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

■ **WARNING:** Failure to comply with s83 *Neighbourhood Disputes (Dividing Fences and Trees Act) 2011* by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

GST WITHHOLDING OBLIGATIONS

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?
(select whichever is applicable)

Yes

No

[Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST, for the purposes of building a house on the Land and selling it in the ordinary course of its business.]

The Seller gives notice to the Buyer in accordance with section 14-255(1)(a) of the Withholding Law that:
(select whichever is applicable)

<input type="checkbox"/>	the Buyer is not required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property
<input checked="" type="checkbox"/>	the Buyer is required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. Under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to settlement

■ **WARNING:** the Buyer warrants in clause 2.5(6) that this information is true and correct

■ **WARNING:** All sellers of residential premises or potential residential land are required to complete this notice. Section 14-250 of the Withholding Law applies to the sale of 'new residential premises' or 'potential residential land' (subject to some exceptions) and requires an amount to be withheld from the Purchase Price and paid to the ATO. The Seller should seek legal advice if unsure about completing this section.

INITIALS (Note: Initials not required if signed with Electronic Signature)

The REIQ Terms of Contract for Houses and Residential Land (Pages 7-14) (Fifteenth Edition) contain the Terms of this Contract.

SPECIAL CONDITIONS

See Annexure A and B attached

SETTLEMENT

SETTLEMENT DATE:	Ten (10) months from Contract Date	■ or the next Business Day if that is not a Business Day in the Place for Settlement.
PLACE FOR SETTLEMENT:	Gold Coast	■ If Brisbane is inserted, this is a reference to Brisbane CBD.

SIGNATURES

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling-off period. It is recommended the Buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.

BUYER: <u>RAE CHOO</u> BUYER: <u>[Signature]</u> <small>By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.</small>	WITNESS: <u>DAVID ANDERSON</u> WITNESS: <u>JOE SCARF</u> WITNESS: <u>[Signature]</u> <small>[Note: No witness is required if the Buyer signs using an Electronic Signature]</small>
---	--

SELLER: _____ WITNESS: _____

SELLER: _____ <small>By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.</small>	WITNESS: _____ <small>[Note: No witness is required if the Seller signs using an Electronic Signature]</small>
---	---

DEPOSIT HOLDER: _____

■ Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.

INITIALS (Note: Initials not required if signed with Electronic Signature)

The REIQ Terms of Contract for Houses and Residential Land (Pages 7-14) (Fifteenth Edition) contain the Terms of this Contract.

SPECIAL CONDITIONS

See Annexure A and B attached

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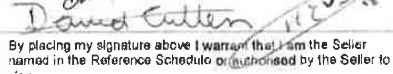
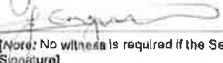
BUYER: _____ WITNESS: _____

BUYER: _____ WITNESS: _____

By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

[Note: No witness is required if the Buyer signs using an Electronic Signature]

SELLER:  _____ WITNESS:  _____

SELLER:  _____ WITNESS:  _____

By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

[Note: No witness is required if the Seller signs using an Electronic Signature]

DEPOSIT HOLDER: _____ ■ *Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract.*

INITIALS (Note: Initials not required if signed with Electronic Signature)

ANNEXURE 'A'
SPECIAL CONDITIONS

1. DEFINITIONS

In these Special Conditions, unless inconsistent with the context or subject matter:

"Standard Condition(s)" means the REIQ Standard Conditions for Houses and Residential Land (Pages 7-14) (Fifteenth Edition) as approved by the Real Estate Institute of Queensland and the Queensland Law Society.

2. SPECIAL CONDITIONS TO PREVAIL

In the event of any inconsistency between the Special Conditions and the Standard Conditions, the Special Conditions will prevail and the Standard Conditions will not apply to the extent of any inconsistency.

3. AMENDMENTS TO STANDARD CONDITIONS

- 3.1 Clauses 2.1, 3, 4, 7.4(1)(d), 7.4(2), 7.4(3), 7.4(4), 7.5(2)-(4) inclusive, 7.6(2), 7.6(3), 7.6(4), 7.7(1), 7.7(2), 8.4(3) and 8.5 of the Standard Conditions are deleted.
- 3.2 Clause 1.1(2)(z) of the Standard Conditions is amended by deleting "but excludes" and replacing with "and includes".
- 3.3 Clause 2.6(4) of the Standard Conditions is amended by replacing the first sentence of that Clause with the words "Land Tax must be adjusted on the assessment that the Officer of State Revenue would issue for the land tax year current at the Settlement Date is the Seller was a corporation resident in Queensland and the land the was the Seller's only land".
- 3.4 Clause 7.6(1)(a) of the Standard Conditions is amended by deleting the words "by the Seller" and replacing those words with "by the Buyer" and inserting the words "provided this contract settles" at the end of the clause.

4. LAND SOLD "AS IS WHERE IS"

- 4.1 The Buyer acknowledges and agrees that the Land is sold in an *as is* condition, subject to all faults and defects whether or not they are apparent.
- 4.2 Without limiting special condition 4.1, the Buyer warrants that it has satisfied itself:
- (i) that the property offered for sale and inspected is identical to the Land;
 - (ii) whether or not the boundaries, description or area of the Land are correctly described in this Contract;
 - (iii) as to Encumbrances or encroachments affecting the Land;
 - (iv) about the condition, state of repair, suitability, quality, sufficiency, viability, profitability or potential of the Land and any latent or patent defect in the Land;
 - (v) as to the value of the Land and the neighbourhood in which the Land is situated;
 - (vi) about the presence of any sewer, manhole or vent on the Land and whether any rainwater down pipe is connected to the sewer;
 - (vii) about any environmental hazard or contamination affecting the Land;
 - (viii) as to the zoning and planning restrictions (including all planning approvals, permits and consents) on or in respect of the Land and the use to which the Land may be put and the development potential of the Land;
 - (ix) whether or not any requisitions, directions or recommendations delivered by any Authority in respect of the Land have been complied with;
 - (x) whether or not any notices of resumption or intended resumption affecting the Land have been delivered;

- (xi) whether or not any consents, approvals, permits or licences desirable or required to be held for the present use of the Land have been granted by any Authority;
- (xii) as to the rights and privileges pertaining to the Land;
- (xiii) as to any agreements or arrangements with the owners or occupiers of adjoining or nearby property, including the means of access to and egress from the Land and the terms of all easements and licenses benefiting or affecting the Land;
- (xiv) as to any Services connected or provided to the Land;
- (xv) as to any building, engineering, architectural or other plans or documents in relation to the Land which the Buyer or any representative of the Buyer may have seen or been shown before signing this Contract; and
- (xvi) as to the possible and/or potential flooding of the Land.

4.3 The Buyer agrees that:

- (a) in entering this contract the Buyer has relied entirely upon its own prior searches, judgment inquiries and inspection of the subject Land and is purchasing the Land in its present state and condition together with any defects, whether apparent or latent, and the Buyer will make no objection, requisition or claim for compensation in respect of same;
- (b) it has carried out its own searches to ascertain the use to which the Land may be put;
- (c) it does not rely upon any representation, oral or written, or any arrangement or conduct on the part of the Seller, as adding to or amending this Contract;
- (d) it does not rely upon any promise, representation warranty or undertaking made by the Seller, the auctioneer, the marketing agents, or any of its employees, or any other person on behalf of the Seller, except those that are expressly contained in this Contract;
- (e) no representation, oral, written or by conduct, nor any arrangement, promise warranty or undertaking, other than as expressly contained in this contract, has in any material way induced the Buyer to enter into this Contract;
- (f) the Seller makes no (nor has it made any) representation or warranty that the Land may be lawfully used for any particular purpose.

5. GST

5.1 Preliminary

Words or expressions used in this special condition that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.

5.2 GST Exclusive

- (a) Unless otherwise stated, any amount specified in this contract as the consideration payable for any taxable supply excludes any GST payable in respect of that supply.
- (b) If the Seller makes a taxable supply under this contract then the Buyer must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply as follows:
 - (i) in relation to the supply of the Property, on the earlier of settlement and the date on which a taxable supply of the Property occurs; and
 - (ii) in relation to any other supply, at the time the consideration for that supply is payable.

5.3 Tax Invoice

- (a) Each party agrees to do all things, including providing valid tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this contract.
- (b) The right of a supplier to recover any amount in respect of GST under this Contract on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient within the time period within which the recipient is otherwise entitled to the relevant input tax credit.

5.4 Reimbursement of Expenses

If a third party makes a taxable supply and this contract requires a party to this contract (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

5.5 Adjustment Event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this contract, the amount paid or payable by the Recipient pursuant to special condition 5.2 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

5.6 Non Merger

This special condition does not merge on settlement of this contract and will continue to apply after expiration or termination of this contract.

6. TRUST

- 6.1 If the Buyer has entered into and executed this Contract as Trustee of a Trust then it has done so on its own behalf and as trustee of the Trust and the Buyer and its successors as such trustee from time to time will be liable under the terms and conditions of the Contract as such trustee to the intent that all assets from time to time both present and future of the Trust, whether by reason of original settlement or any accretion there or any purchase, gift or other transfer or acquisition however occurring, will be available to satisfy the liabilities of the Buyer hereunder and the Buyer's right of indemnity out of same is hereby charged with the payment of the Purchase Price PROVIDED HOWEVER that nothing in this clause will release the Buyer from any liability hereunder in its personal capacity AND the Buyer warrants as follows:
- (a) That all of the powers and discretions conferred by the deed establishing the Trust are at the date of this hereof capable of being validly exercised by the Buyer as trustee thereof and that the same has not been varied or revoked and that the Trust is a valid and subsisting Trust as at the date hereof;
 - (b) That the Buyer is the sole Trustee of the Trust and as such has full and unfettered power pursuant to the terms of the deed establishing the Trust to enter into this Contract and that this Contract is being executed and entered into as part of the due and proper administration of the Trust and for the benefits of the beneficiaries under the Trust; and
 - (c) No restrictions on the Buyers rights of indemnity out of or lien over the assets of the Trust exists or will be created or permitted to exist and the said right will have priority over the rights of the beneficiaries to the assets of the Trust.
- 6.2 The Buyer must not permit and it will be an event of default under this Contract if there occurs without the Seller's prior written consent:
- (a) Any resettlement, apportionment or distribution of the capital of the Trust;
 - (b) Any retirement or replacement of the Trustee or any appointment of a new Trustee of the Trust;
 - (c) Any amendment of the deed establishing the Trust;

- (d) Any further encumbrance or charging whatsoever of the assets of the Trust;
- (e) Any termination of the Trust or variation of the vesting date; or
- (f) If the Trust is a Unit Trust, there is any transfer of or dealing with the units.
- (g) If any of the events mentioned in special condition 6.2 occur then the Buyer must inform the Seller immediately.

7. RELEASE OF DEPOSIT

- 7.1 Upon payment of the Deposit to the Deposit Holder, the Buyer and Seller agree and acknowledge that:-
- (a) the Deposit Holder is immediately authorised to release the Deposit to the Seller; and
 - (c) the Deposit once paid is deemed non refundable, except in circumstances of the Contract being lawfully terminated due to a default by the Seller.

8. GUARANTEE AND INDEMNITY

8.1 Buyer to Procure Execution

- (a) If the Buyer is a corporation (other than a company listed on a public stock exchange) the Buyer must cause:-
 - (i) the Directors of that corporation; or
 - (ii) if the parent company of the Buyer is listed on a public stock exchange, that parent company,
 to guarantee the obligations of the Buyer under this contract by duly completing and signing the guarantee and indemnity annexed to this Contract as Annexure "B" contemporaneously with execution of this Contract.

8.2 Buyer's Default

If the guarantee and indemnity is not executed and delivered as required by this clause:

- (a) the Buyer will be in breach of a fundamental and essential condition of this Contract; and
- (jj) the Seller shall be entitled to enforce all remedies available under this Contract and at law for such breach.

9. CONFIDENTIALITY

- 9.1 The Seller and Buyer shall keep the details of and relating to this Contract (including any information obtained by the Buyer during the pre contract negotiation phase) confidential and shall not disclose to any third party the details of this Contract, except:
- (a) to any agent named in the Contract;
 - (b) where both parties consent to such disclosure;
 - (c) to any bankers or financiers;
 - (d) where the information is in the public domain (not due to the default of a party who has or wishes to disclose such information);
 - (e) to any consultant or adviser engaged by either party in relation to the Contract;
 - (f) to the lawyers or any consultants or advisers ("Advisers") engaged by either party in relation to this Contract (subject to that party ensuring that the Adviser maintains confidentiality); or

- (g) if required by law.
- 9.2 Prior to disclosing any information relating to this Contract to a third party, the party making the disclosure must make the third party aware of the confidential nature of the information and ensure that the third party keeps such information confidential.
- 9.3 Neither party will make press or other announcements or releases relating to this Contract without the prior approval of the other to the form and manner of the announcement or release. Both parties agree to act reasonably and liaise with each other for the purposes of agreeing upon a form of joint media release to announce the benefit of the transaction to both parties.
- 9.4 This special condition continues to be binding and effective notwithstanding termination or settlement of this Contract.

10. NO REPRESENTATIONS OR WARRANTIES

- 10.1 To the maximum extent permitted by law, the Seller makes no statements or representations nor gives any warranties about the quality or condition of the Property nor does it make or give any other representations or warranties except those contained in this Contract.

11. ACCESS

- 11.1 The Seller will permit the Buyer and its authorised officers, agents and consultants to have access to the Property subject to the provision to the Seller of its public liability insurance policy which is first approved by the Seller (acting reasonably) at the cost and expense of the Buyer. The Buyer will be permitted to:
- (a) inspect all records relating to the Property held by any relevant Authority maintaining such records and the Seller, if requested by the Buyer, must sign an appropriate authority to allow such inspection;
 - (b) after giving not less than 24 hours' notice to the Seller (which notice need not be in writing), enter upon the Property for the purpose of carrying out any inspections, tests, surveys and reports about the Property.
- 11.2 The Buyer must cause as little inconvenience as possible to the Seller and any neighbours to the Property.
- 11.3 The Buyer and its authorised officers, agents and consultants will access the Land at their own risk and the Buyer indemnifies the Seller against any claim or action in connection with anything done on the Land by the Buyer or its officers, agents and consultants in the exercise of the rights conferred by this special condition. The Buyer must promptly make good at its cost any damage caused to the Land.

12. ASSIGNMENT ON SETTLEMENT

- 12.1 On completion, the Seller assigns to the Buyer all its right, title and interest in or otherwise connected to any applications, development approvals or permits relating to the property ("Documents").
- 12.2 After receipt by the Seller of the Deposit, the Seller agrees to provide to the Buyer, within a reasonable time period, copies of any of the Documents it has in its possession.

13. ENTIRE AGREEMENT

The terms herein contained constitute the entire and only agreement between the parties hereto in relation to the property hereby sold and merges all prior discussions and negotiations between them and neither of the parties shall be bound by any warranties or representations with respect to the subject matter of this Contract except as set forth herein.

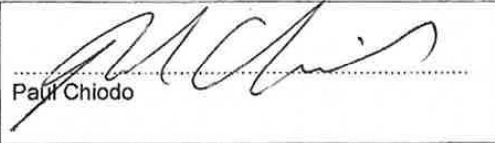
14. SIGNING IN COUNTERPARTS AND ELECTRONIC EXCHANGE

- 14.1 This Deed may be signed in any number of counterparts. The parties consent to the formation of this Deed by facsimile or electronic communication pursuant to the *Electronic Transactions (Queensland) Act 2001*.
- 14.2 Exchange may be effected by a party or its solicitor delivering the original signed counterpart or by facsimile or electronic communication to the other party or its solicitor.
- 14.3 This contract may consist of one or more counterpart copies. All counterparts will, when taken together, constitute the one document.

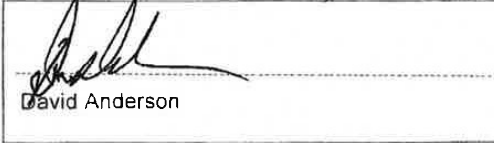
ANNEXURE 'B'
DEED OF GUARANTEE & INDEMNITY

Definition

In this Guarantee and Indemnity, "Guarantor" means the following individuals:-



Paul Chiodo



David Anderson

1. **Consideration**
The Guarantor has requested the Seller to enter into the Contract with the Buyer and the Seller does so in consideration of the Guarantor giving this guarantee and indemnity by signing this Deed.
2. **Guarantee**
The Guarantor guarantees to the Seller prompt performance of all of the obligations of the Buyer contained or implied in the Contract. If the obligation is to pay money, the Seller may recover the money from the Guarantor as a liquidated debt.
3. **Indemnity**
In addition to the Guarantor's liability under clause 2 of this Deed, the Guarantor indemnifies the Seller against losses incurred because the Buyer is not bound by some or all of its obligations under the Contract.
4. **Matters Not Affecting Guarantor's Liability**
The Guarantor's liability under Items 3 and 4 of this Deed is not affected by:
 - (a) the granting of time, forbearance or other concession by the Seller to the Buyer or any Guarantor;
 - (b) an absolute or partial release of the Buyer or any Guarantor or a compromise with the Buyer or any Guarantor;
 - (c) a variation of the Contract;
 - (d) an assignment of the Contract by the Buyer;
 - (e) the termination of the Contract;
 - (f) the fact that the Contract is wholly or partially void, voidable or unenforceable;
 - (g) the non-execution of this Deed by 1 or more of the persons named as Guarantor or the unenforceability of the guarantee or indemnity against 1 or more of the Guarantors; or
 - (f) the exercise or purported exercise by the Seller of its rights under the Contract.
5. **Payment Later Avoided**
The Guarantor's liability is not discharged by a payment to the Seller which is later avoided by law. If that happens, the Seller, the Buyer and the Guarantor will be restored to their respective rights and obligations as if the payment had not been made.
6. **Indemnity on Disclaimer**
If a liquidator or trustee in bankruptcy disclaims the Contract, the Guarantor indemnifies the Seller against any resulting loss.
7. **Guarantor Not to Prove in Liquidation or Bankruptcy**
Until the Seller has received all money payable to it by the Buyer:
 - a) the Guarantor must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors; and


b) the Guarantor must hold any claim it has and any dividend it receives on trust for the Seller.

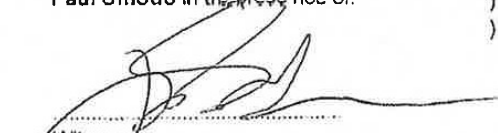
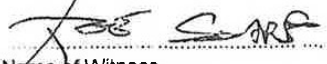
8. Guarantee to Continue on Assignment of Rights

If the Seller assigns its rights under the Contract, the benefit of the guarantee and indemnity in this Guarantee extends to the assignee and continues concurrently for the benefit of the Seller regardless of the assignment unless the Seller releases the Guarantor in writing.

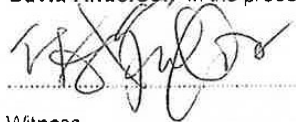
EXECUTED by the Guarantor as a DEED

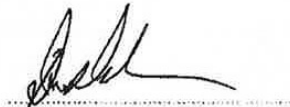
SIGNED SEALED AND DELIVERED by)
Paul Chiodo in the presence of:)


Signature


Witness

Name of Witness

David Anderson in the presence of:)


Witness


Signature

FU XIAO
Name of Witness

TERMS OF CONTRACT

FOR HOUSES AND RESIDENTIAL LAND

1. DEFINITIONS

1.1 In this contract:

- (1) terms in bold in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
- (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2013*;
- (b) **"ATO"** means the Australian Taxation Office;
- (c) **"ATO Clearance Certificate"** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
- (d) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clause 2.6;
- (e) **"Bank"** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*;
- (f) **"Bond"** means a bond under the Residential Tenancies and Rooming Accommodation Act 2008;
- (g) **"Building Inspector"** means a person licensed to carry out completed residential building inspections under the *Queensland Building and Construction Commission Regulations 2003*;
- (h) **"Business Day"** means a day other than:
- (i) a Saturday or Sunday;
- (ii) a public holiday in the Place for Settlement; and
- (iii) a day in the period 27 to 31 December (inclusive);
- (i) **"CGT Withholding Amount"** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;
- (j) **"Compliance or Exemption Certificate"** means:
- (i) a Pool Safety Certificate; or
- (ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the *Building Act 1975*; or
- (iii) an exemption from compliance on the grounds of impracticality under section 245B of the *Building Act 1975*;
- (k) **"Compliant Smoke Alarm"** means a smoke alarm complying with the requirements for smoke alarms in domestic dwellings under the *Fire and Emergency Services Act 1990*;
- (l) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
- (m) **"Court"** includes any tribunal established under statute.
- (n) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
- (o) **"Encumbrances"** includes:
- (i) unregistered encumbrances;
- (ii) statutory encumbrances; and
- (iii) Security Interests.
- (p) **"Essential Term"** includes, in the case of breach by:
- (i) the Buyer: clauses 2.2, 2.5(1), 2.5(5), 5.1 and 6.1; and
- (ii) the Seller: clauses 2.5(5), 5.1, 5.3(1)(a)-(d), 5.3(1)(e)(i) & (ii), 5.3(1)(f), 5.5 and 6.1;
- but nothing in this definition precludes a Court from finding other terms to be essential.
- (q) **"Financial Institution"** means a Bank, building society or credit union;
- (r) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulations 2013*;
- (s) **"GST"** means the goods and services tax under the GST Act;
- (t) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- (u) **"GST Withholding Amount"** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation.
- (v) **"Improvements"** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
- (w) **"Keys"** means keys, codes or devices in the Seller's possession or control for all locks or security systems on the Property or necessary to access the Property;
- (x) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
- (y) **"Notice of nonconformity"** means a Form 26 under the *Building Regulation 2006* advising how the pool does not comply with the relevant pool safety standard;
- (z) **"Outgoings"** means rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax;
- (aa) **"Pest Inspector"** means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulations 2003*;
- (bb) **"Pool Safety Certificate"** has the meaning in section 231C(a) of the *Building Act 1975*;
- (cc) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
- (i) the Inspection Date for the Building and/or Pest Inspection; or
- (ii) 2 Business Days before the Settlement Date
- (dd) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
- (ee) **"Pool Safety Inspector"** means a person authorised to give a Pool Safety Certificate;
- (ff) **"PPSR"** means the Personal Property Securities Register established under *Personal Property Securities Act 2009 (Cth)*;
- (gg) **"Property"** means:
- (i) the Land;
- (ii) the Improvements; and
- (iii) the Included Chattels;
- (hh) **"Rent"** means any periodic amount payable under the Tenancies;
- (ii) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
- (iii) **"Security Interests"** means all security interests registered on the PPSR over Included Chattels and Improvements;
- (kk) **"Transfer Documents"** means:
- (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
- (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;

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- (ll) "Transport Infrastructure" has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (mm) "Withholding Law" means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

2. PURCHASE PRICE

2.1 GST

- (1) Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.
- (2) If a party is required to make any other payment or reimbursement under this contract, that payment or reimbursement will be reduced by the amount of any input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled.

2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
 - (a) does not pay the Deposit when required;
 - (b) pays the Deposit by a post-dated cheque; or
 - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

2.3 Investment of Deposit

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
 - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
 - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
 - (a) If this contract settles, the Seller;
 - (b) if this contract is terminated without default by the Buyer, the Buyer; and
 - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller or the Seller's Solicitor directs.
- (2) Despite any other provision of this contract, a reference to a "bank cheque" in clause 2.5:
 - (a) includes a cheque drawn by a building society or credit union on itself;
 - (b) does not include a cheque drawn by a building society or credit union on a Bank;

and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.
- (3) If both the following apply:
 - (a) the sale is not an excluded transaction under s14-215 of the Withholding Law; and
 - (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
 - (i) an ATO Clearance Certificate; or
 - (ii) a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
 - (d) the Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
 - (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
 - (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.
- (4) For clause 2.5(3) and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:
- (a) the Property includes items in addition to the Land and Improvements; and
 - (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer, in which case the market value of the Land and Improvements will be as stated in the valuation.
- (5) If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
 - (b) prior to settlement the Buyer must lodge with the ATO:
 - (i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and
 - (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
 - (c) on or before settlement, the Buyer must give the Seller copies of:
 - (i) the Form 1;
 - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
 - (iii) confirmation from the ATO that the Form 2 has been lodged; and
 - (iv) a completed ATO payment slip for the Withholding Amount;
 - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
 - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- (6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(5) and 2.6(14), Outgoings for periods including the Settlement Date must be adjusted:
 - (a) for those paid, on the amount paid;
 - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
 - (c) for those not assessed:
 - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or

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- (ii) if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
- the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
 - if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date. If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue.
- (5) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (6) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (7) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (8) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
- (9) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (10) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(7), 2.6(8) and 2.6(9).
- (11) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (12) The cost of Bank cheques payable at settlement:
- to the Seller or its mortgagee are the responsibility of the Buyer; and
 - to parties other than the Seller or its mortgagee are the responsibility of the Seller.
- (13) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
- (14) Upon written request by the Buyer, the Seller will, prior to Settlement, give the Buyer a written statement, supported by reasonable evidence, of –
- all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and
 - any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.6.
- if the Seller becomes aware of a change to the information provided the Seller will as soon as practicable provide the updated information to the Buyer.

3. FINANCE

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
- approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
 - the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

4. BUILDING AND PEST INSPECTION REPORTS AND POOL SAFETY

4.1 Building and Pest Inspection

- This contract is conditional upon the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- The Buyer must give notice to the Seller that:
 - a satisfactory Inspector's report under clause 4.1(1) has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
 - clause 4.1(1) has been either satisfied or waived by the Buyer.
- If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.1(2) by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- The Seller's right under clause 4.1(4) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.1(2).

4.2 Pool Safety

- This clause 4.2 applies if:
 - the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
 - this contract is not a contract of a type referred to in section 160(1)(b) of the *Property Occupations Act 2014*.
- This contract is conditional upon:
 - the issue of a Pool Safety Certificate; or
 - a Pool Safety Inspector issuing a Notice of nonconformity stating the works required before a Pool Safety Certificate can be issued, by the Pool Safety Inspection Date.
- The Buyer is responsible for arranging an inspection by a Pool Safety Inspector at the Buyer's cost. The Seller authorises:
 - the Buyer to arrange the inspection; and
 - the Pool Safety Inspector to advise the Buyer of the results of the inspection and to give the Buyer a copy of any notice issued.
- If a Pool Safety Certificate has not issued by the Pool Safety Inspection Date, the Buyer may give notice to the Seller that the Buyer:
 - terminates this contract; or
 - waives the benefit of this clause 4.2;
 The Buyer must act reasonably.
- The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2(4) by 5pm on the Pool Safety Inspection Date.
- The Seller's right under clause 4.2(5) is subject to the Buyer's continuing right to give written notice to the Seller of termination or waiver pursuant to clause 4.2(4).

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- (7) The right of a party to terminate under this clause 4.2, ceases upon receipt by that party of a copy of a current Pool Safety Certificate.
- (8) If the Buyer terminates this contract under clause 4.2(4)(a), and the Seller has not obtained a copy of the Notice of nonconformity issued by the Pool Safety Inspector, the Seller may request a copy and the Buyer must provide this to the Seller without delay.

5. SETTLEMENT

5.1 Time and Date

- (1) Settlement must occur between 9am and 4pm AEST on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
- any instrument of title for the Land required to register the transfer to the Buyer; and
 - unstamped Transfer Documents capable of immediate registration after stamping; and
 - any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2; and
 - if requested by the Buyer not less than 2 clear Business Days before the Settlement Date, the Keys; and
 - if there are Tenancies:
 - the Seller's copy of any Tenancy agreements;
 - a notice to each tenant advising of the sale in the form required by law; and
 - any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and
 - if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Compliance or Exemption Certificate, if not already provided to the Buyer.
- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(d), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

5.4 Assignment of Covenants and Warranties

- At settlement, the Seller assigns to the Buyer the benefit of all:
- covenants by the tenants under the Tenancies;
 - guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
 - manufacturers' warranties regarding the Included Chattels; and
 - builders' warranties on the Improvements; to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before settlement.

- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

6. TIME

6.1 Time of the Essence

Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

6.2 Suspension of Time

- (1) This clause 6.2 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster but does not apply where the inability is attributable to:
- damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
 - termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- (2) Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Natural Disaster on its ability to perform its Settlement Obligations.
- (4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Natural Disaster, the Affected Party must give the other party a notice of that fact, promptly.
- (5) When the Suspension Period ends, whether notice under clause 6.2(4) has been given or not, either party may give the other party a Notice to Settle.
- (6) A Notice to Settle must be in writing and state:
- that the Suspension Period has ended;
 - a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date; and
 - that time is of the essence.
- (7) When Notice to Settle is given, time is again of the essence of the contract.
- (8) In this clause 6.2:
- "Affected Party" means a party referred to in clause 6.2(1);
 - "Natural Disaster" means a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
 - "Settlement Obligations" means, in the case of the Buyer, its obligations under clauses 2.5(1) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (e) and 5.5;
 - "Suspension Period" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster.

7. MATTERS AFFECTING THE PROPERTY

7.1 Title

The Land is sold subject to:

- any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- the Conditions of the Crown Lease (if leasehold).

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7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

7.4 Seller's Warranties

- (1) The Seller warrants that, except as disclosed in this contract at settlement:
 - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
 - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
 - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
 - (d) there will be no unsatisfied judgment, order (except for an order referred to in clause 7.6(1)(b)) or writ affecting the Property.
- (2) The Seller warrants that, except as disclosed in this contract at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3)(a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
 - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
 - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3), the Buyer may:
 - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
 - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If the Seller breaches a warranty in clause 7.4(1) or clause 7.4(2), the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
 - (a) an error in the boundaries or area of the Land;
 - (b) an encroachment by structures onto or from the Land; or
 - (c) a mistake or omission in describing the Property or the Seller's title to it;
 which is:
 - (d) immaterial; or
 - (e) material, but the Buyer elects to complete this contract; the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

7.6 Requirements of Authorities

- (1) Subject to clause 7.6(5), any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:
 - (a) if issued before the Contract Date, by the Seller before the Settlement Date;
 - (b) if issued on or after the Contract Date, by the Buyer.

- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* that affects the Property.
- (5) Clause 7.6(1) does not apply to orders disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

7.7 Property Adversely Affected

- (1) If at the Contract Date:
 - (a) the Present Use is not lawful under the relevant town planning scheme;
 - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
 - (c) access or any service to the Land passes unlawfully through other land;
 - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
 - (e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or omission in the Seller's title under clause 7.5(2)(c);
 - (f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
 - (g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
 - (h) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*,
 and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

7.8 Dividing Fences

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT**8.1 Risk**

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement; and
- (4) once to value the Property before settlement.

8.3 Seller's Obligations After Contract Date

- (1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or

INITIALS (Note: Initials not required if signed with Electronic Signature)

- Tenancies that may significantly alter them or result in later expense for the Buyer.
- (2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.
 - (3) Without limiting clause 8.3(1), the Seller must not without the prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer to perform.
- 8.4 Information Regarding the Property**
Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:
- (1) copies of all documents relating to any unregistered interests in the Property;
 - (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
 - (3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR; and
 - (4) further copies or details if those previously given cease to be complete and accurate.
- 8.5 Possession Before Settlement**
If possession is given before settlement:
- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
 - (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
 - (a) create a relationship of landlord and tenant; or
 - (b) waive the Buyer's rights under this contract;
 - (3) the Buyer must insure the Property to the Seller's satisfaction; and
 - (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.
- 9. PARTIES' DEFAULT**
- 9.1 Seller and Buyer May Affirm or Terminate**
Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.
- 9.2 If Seller Affirms**
If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:
- (1) damages;
 - (2) specific performance; or
 - (3) damages and specific performance.
- 9.3 If Buyer Affirms**
If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:
- (1) damages;
 - (2) specific performance; or
 - (3) damages and specific performance.
- 9.4 If Seller Terminates**
If the Seller terminates this contract under clause 9.1, it may do all or any of the following:
- (1) resume possession of the Property;
 - (2) forfeit the Deposit and any interest earned;
 - (3) sue the Buyer for damages;
 - (4) resell the Property.
- 9.5 If Buyer Terminates**
If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:
- (1) recover the Deposit and any interest earned;
 - (2) sue the Seller for damages.
- 9.6 Seller's Resale**
- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
 - (a) any deficiency in price on a resale; and
 - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale;

provided the resale settles within 2 years of termination of this contract.
 - (2) Any profit on a resale belongs to the Seller.

9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

9.9 Interest on Late Payments

- (1) The Buyer must pay interest at the Default Rate:
 - (a) on any amount payable under this contract which is not paid when due; and
 - (b) on any judgement for money payable under this contract.
- (2) Interest continues to accrue:
 - (a) under clause 9.9(1)(a), from the date it is due until paid; and
 - (b) under clause 9.9(1)(b), from the date of judgement until paid.
- (3) Any amount payable under clause 9.9(1)(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.
- (4) Nothing in this clause affects any other rights of the Seller under this contract or at law.

10. GENERAL**10.1 Seller's Agent**

The Seller's Agent is appointed as the Seller's agent to introduce a buyer.

10.2 Foreign Buyer Approval

The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

10.3 Duty

The Buyer must pay all duty on this contract.

10.4 Notices

- (1) Notices under this contract must be in writing.
- (2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.
- (3) Notices under this contract or required to be given by law may be given by:
 - (a) delivering or posting to the other party or its solicitor; or
 - (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
 - (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).
- (4) Subject to clause 10.4(5), a notice given after this contract is entered into in accordance with clause 10.4(3) will be treated as given:
 - (a) 5 Business Days after posting;
 - (b) if sent by facsimile, at the time indicated on a clear transmission report; and
 - (c) if sent by email, at the time it is sent.
- (5) Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.
- (6) If two or more notices are treated as given at the same time under clause 10.4(5), they will be treated as given in the order in which they were sent or delivered.
- (7) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.
- (8) For the purposes of clause 10.4(3)(c) and clause 12.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

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10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

10.9 Interpretation**(1) Plurals and Genders**

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
 - (b) one gender includes each other gender;
 - (c) a person includes a body corporate; and
 - (d) a party includes the party's executors, administrators, successors and permitted assigns.
- (2) Parties**
- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
 - (b) A party that is a trustee is bound both personally and in its capacity as a trustee.
- (3) Statutes and Regulations**
Reference to statutes includes all statutes amending, consolidating or replacing them.
- (4) Inconsistencies**
If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.
- (5) Headings**
Headings are for convenience only and do not form part of this contract or affect its interpretation.

10.10 Counterparts

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

11. ELECTRONIC SETTLEMENT**11.1 Application of Clause**

- (1) Clause 11 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement and overrides any other provision of this contract to the extent of any inconsistency.
- (2) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 11.1(1).
- (3) Clause 11 (except clause 11.5(2)) ceases to apply if either party gives notice under clause 11.5 that settlement will not be an Electronic Settlement.

11.2 Completion of Electronic Workspace

- (1) The parties must:
 - (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
 - (b) do everything else required in the Electronic Workspace to enable settlement to occur on the Settlement Date.
- (2) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- (3) If any part of the Purchase Price is to be paid to discharge an Outgoing:
 - (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;

- (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.

- (4) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
 - (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
 - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 11.2(4)(a);
 - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;
 - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

11.3 Electronic Settlement

- (1) Clauses 5.1(2) and 5.2 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.5(1) and 2.5(3)(f).
- (3) The Seller and Buyer will be taken to have complied with:
 - (a) clause 2.5(3)(c),(e) and (f); and
 - (b) clause 2.5(5)(d) and (e),
 (as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- (4) The Seller will be taken to have complied with clauses 5.3(1)(b) and (c) if, at settlement, the Electronic Workspace contains Transfer Documents and (if applicable) releases of the Encumbrances (other than releases of Encumbrances referred to in clause 11.3(5)) for Electronic Lodgement in the Land Registry.
- (5) The Seller will be taken to have complied with clause 5.3(1)(c), (d), (e) and (f) if the Seller's Solicitor:
 - (a) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(d)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
 - (b) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
 - (c) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- (6) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (7) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

11.4 Computer System Unavailable

- (1) If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or PEXA is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.
- (2) A party is not required to settle if Electronic Lodgement is not available. If the parties agree to Financial Settlement without Electronic Lodgement, settlement is deemed to occur at the time of Financial Settlement.

11.5 Withdrawal from Electronic Settlement

- (1) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- (2) A notice under clause 11.5(1) may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
 - (a) the transaction is not a Qualifying Conveyancing Transaction; or

INITIALS (Note: Initials not required if signed with Electronic Signature)

- (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to PEXA; or
 - (c) the Buyer's or Seller's Financial Institution is unable to settle using PEXA.
- (3) If clause 11.5(2) applies:
- (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
 - (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

11.6 Costs

Each party must pay its own fees and charges of using PEXA for Electronic Settlement.

11.7 Definitions for clause 11

In clause 11:

"Digitally Sign" and "Digital Signature" have the meaning in the ECNL.

"ECNL" means the Electronic Conveyancing National Law (Queensland).

"Electronic Conveyancing Documents" has the meaning in the *Land Title Act 1994*.

"Electronic Lodgement" means lodgement of a document in the Land Registry in accordance with the ECNL.

"Electronic Settlement" means settlement facilitated by PEXA.

"Electronic Workspace" means a shared electronic workspace within PEXA that allows the Buyer and Seller to affect Electronic Lodgement and Financial Settlement.

"Financial Settlement" means the exchange of value between Financial Institutions in accordance with the Financial Settlement Schedule.

"Financial Settlement Schedule" means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

"PEXA" means the system operated by Property Exchange Australia Ltd for settlement of conveyancing transactions and lodgement of Land Registry documents.

"Qualifying Conveyancing Transaction" means a transaction that is not excluded for Electronic Settlement by the rules issued by PEXA, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

12. ELECTRONIC CONTRACT AND DISCLOSURE

12.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

12.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

INITIALS (Note: Initials not required if signed with Electronic Signature)

Share Sale Agreement



Schedule 8 - Buyer's Warranties

1. The Buyer is a duly incorporated company incorporated under the provisions of the Corporations Act.
2. The Buyer is duly authorised to enter into Transaction Documents and empowered to do so.
3. The execution and delivery of the Transaction Documents by the Buyer and the consummation by the Buyer of the transactions contemplated by this agreement have been duly authorised by the board of directors of the Buyer.
4. No other corporate act or proceeding on the part of the Buyer or its members is necessary to authorise this agreement and the Transaction Documents or the transactions contemplated by them.
5. This agreement constitutes a valid and binding agreement of the Buyer enforceable in accordance with its terms.
6. Neither the execution and delivery of this agreement or of the Transaction Documents to be executed by the Buyer pursuant to this agreement nor the consummation by the Buyer of the transactions contemplated by them will conflict with or constitute a default under any term or provision of the constitution of the Buyer or of any agreement, arrangement, commitment, understanding or restriction of any kind or character to which the Buyer is a party or by which the Buyer is bound.
7. There are no claims, actions, suits, proceedings or investigations pending or threatened by or against the Buyer with respect to the transactions contemplated by this agreement, at law or in equity or before any Government Body and the Buyer does not know or have any reason to know of any basis for such claim, action, suit, proceeding or investigation.
8. The Buyer has the financial capacity to pay the Purchase Price and meet all of its Obligations under this Agreement.

Share Sale Agreement



Signing page

Executed by Falcon Capital Limited as trustee
for the Chiodo Diversified Property Fund ACN
119 204 554

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by Falcon Capital Limited as trustee
for the First Guardian Australian Development
Fund ACN 119 204 554

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by 75 Port Douglas Road Pty Ltd
ACN 630 681 926

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by Chiodo Corporation Pty Ltd ACN
611 404 909

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Share Sale Agreement



Executed by CF Property Capital Pty Ltd ACN
633 394 751

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Signed by Adam Fletcher

Signature of Witness

Adam Fletcher

Print full name of Witness

Signed by Nasser Daniel Mashni

Signature of Witness

Nasser Daniel Mashni

Print full name of Witness

Executed by Seed Equity Group Pty Ltd

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by Kuspira Superannuation Fund

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Share Sale Agreement



Executed by Slotar Investment Trust

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by Slotar Superannuation Fund

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by Nameo Pty Ltd ACN 155 839 197

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by Jat Auto Holdings Pty Ltd ACN 159 249 224

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Executed by Sacadama Pty Ltd atf Sacadama Super Fund

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Share Sale Agreement



Executed by Robalie Pty Ltd ACN 125 963 377

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Signed by Robert Monastra

Signature of Witness

Robert Monastra

Print full name of Witness

Executed by Wivi Superannuation Fund

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Share Sale Agreement



Annexure A - Havana Project Documentation

Havana Project Report



71 - 85 PORT DOUGLAS ROAD, PORT DOUGLAS

2.067Ha Site







71-85 Port Douglas Road, Port Douglas is situated at eastern end of Port Douglas Rd, adjacent to Mirage Country Club and neighbouring QT Resort Port Douglas.

The 2.067Ha* property currently has a development approval for a quality resort project.

A brief overview of the approval can be seen below:

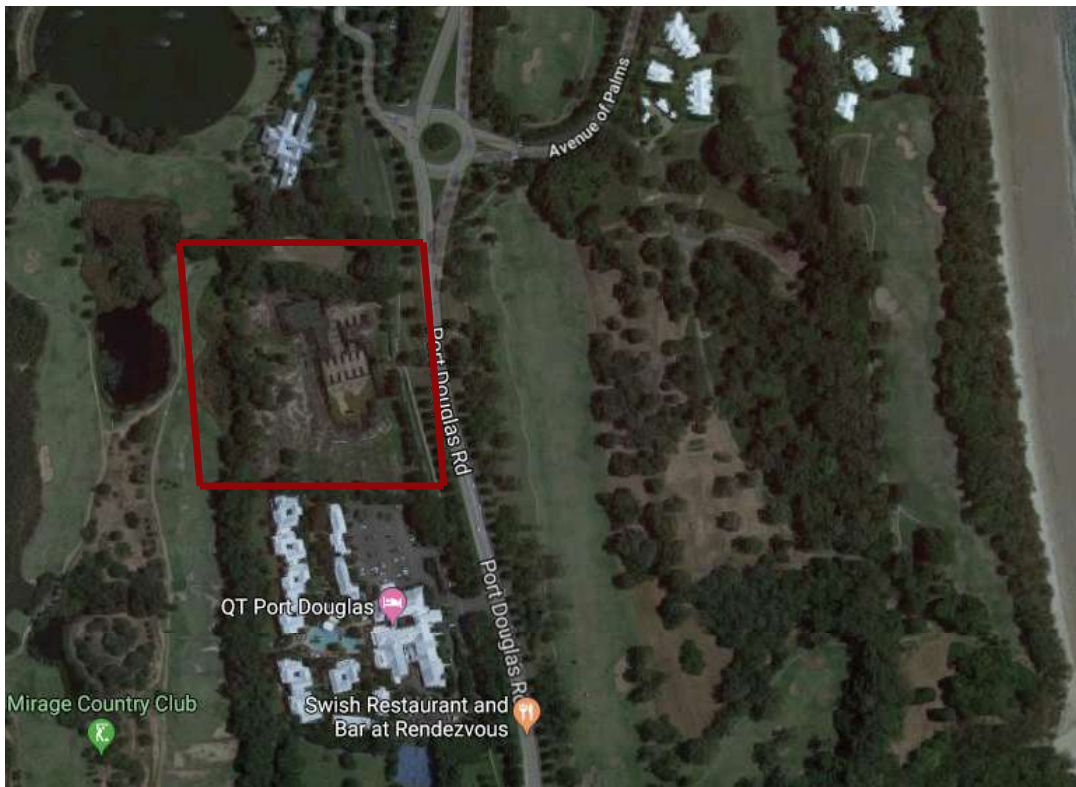
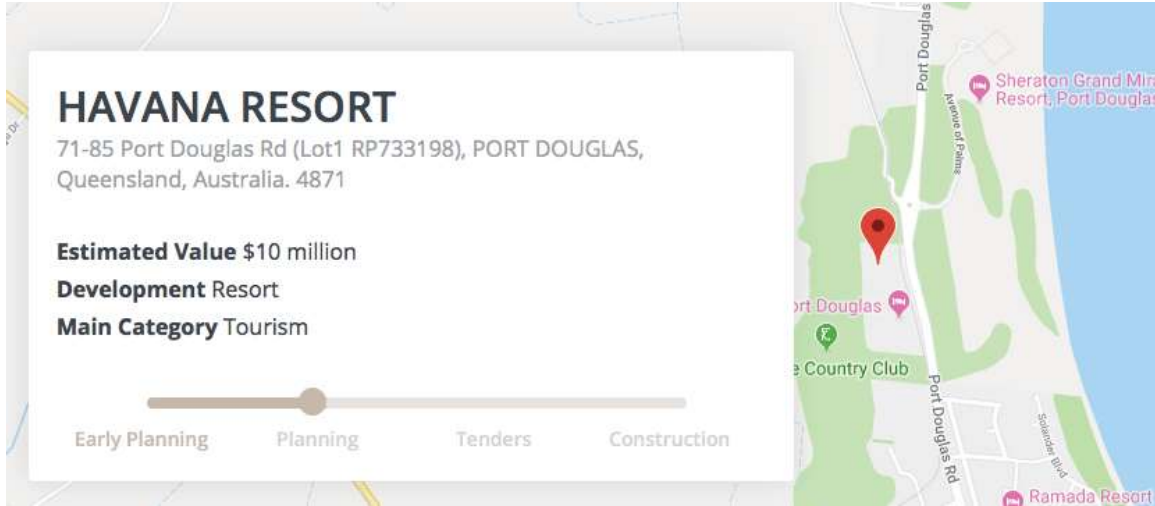
- 206 mixed dwellings and twin key dwellings - 253 keys;
- Associated resort facilities; or
- 206 residential apartments- 5 x 3 bedroom apartments, 27 x 2 bedroom apartments, 47 x dual key 2 bedroom apartments, and 127 x 1 bedroom apartments.

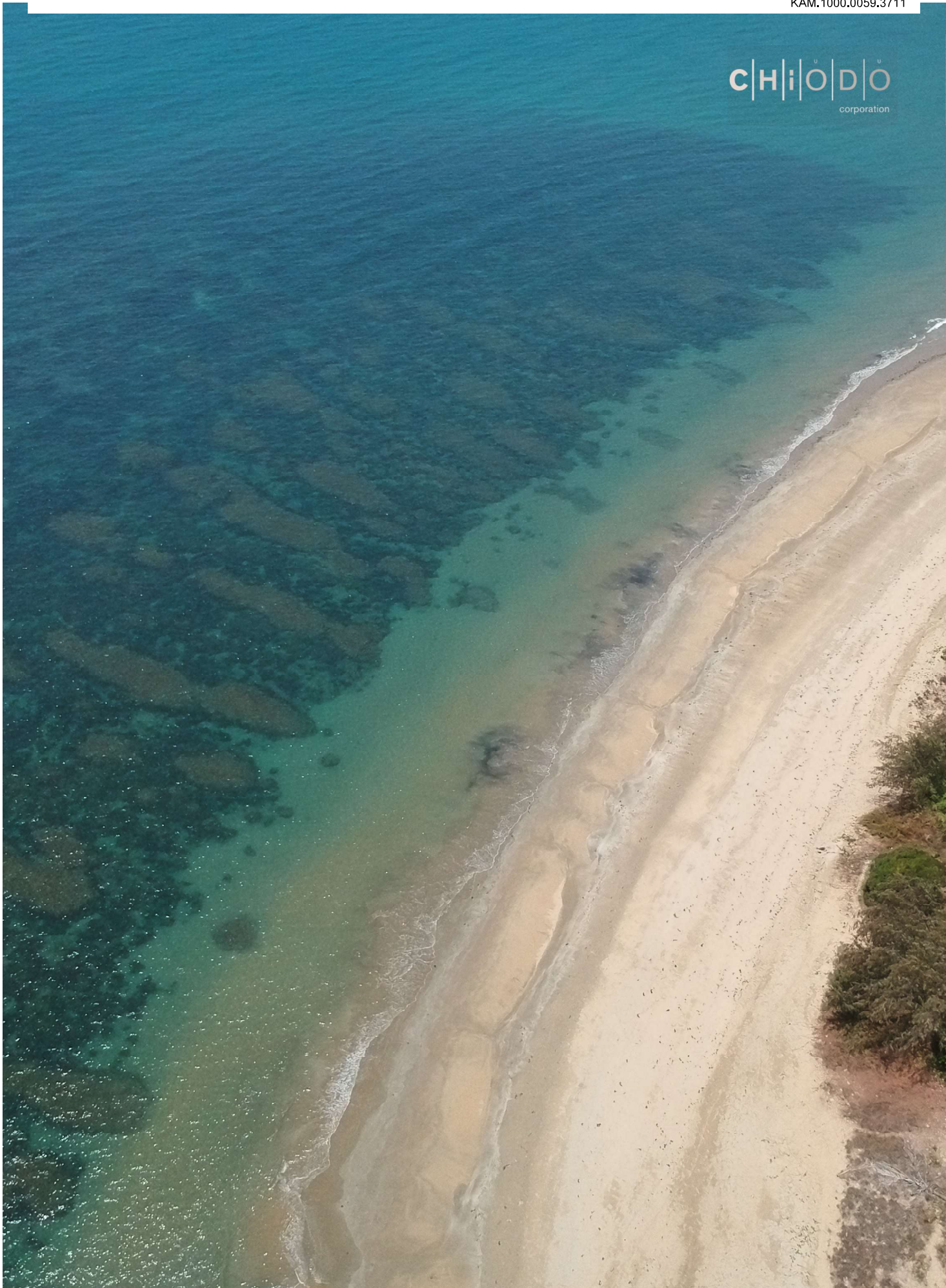
Development approval for a 253 key, fully strata titled 5 star resort with associated auxiliary facilities; including day spa, conference rooms, restaurants, cafes, pools, gym and kids club.

Hotel Interests: Hilton, Avallo, Delaware North, Meriton, Four Seasons



Core Logic Valuation: \$10M AS IS













1. EXECUTIVE SUMMARY

The Development Report has been created for the Australia Development Fund (ADF) to undertake a Purchase of the subject property for the purpose to update and improve the current development approval to secure a hotel tenant/operator and for the property to be settled within the Low Density Fund. This development is being undertaken exclusively by Chiodo Corporation, SEED and First Guardian Capital.

The current development approval still has another 4 years before it expires. The development approval is 10 years old and is outdated in room yield, size and mix of rooms and the entire look and façade needs to be amended to suite the hotel resort current design guidelines. Our proposed amendments are all within the "Code Assessable" parameters which means no advertising and a smooth process for design amendments approval.

The owners bought the site over 10 years ago for \$7.090M + GST and have struggled after numerous attempts to get the project off the ground. They started construction over 10 years ago and the GFC impacted the continuation of construction and the works were aborted. These works will eventually be demolished. They are under extreme pressure with other projects and now need to off load these sites. We have approached them at the best time for a purchase.

The hotel Groups circling Port Douglas are Hilton, Hyatt, Intercontinental, Marriot and other top line brands and this site has been on their radar once the Development Approval has been updated that is more in line with their design guidelines.

The strategy is to secure the land on terms in order to all the engagement the required consultants to update the Development Approval with the Council and then to finalise and hotel/resort tenant. Once this is secure, we will package deal for the Low Density fund to procure for full development. This strategy will land about a \$5.0M value uplift from the current \$7.1M current purchase price.

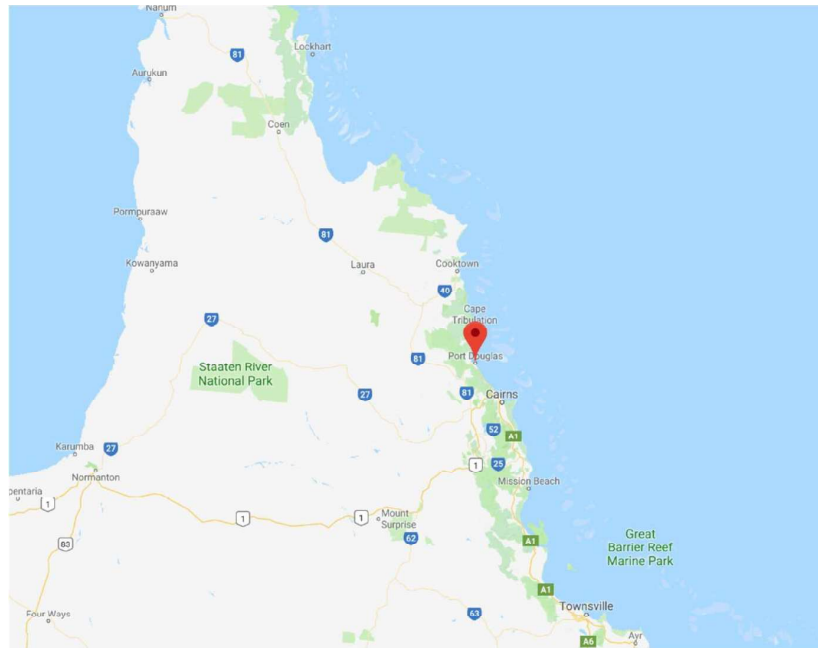
The other strategy is that we are purchasing the land \$2.9M below its valuation of \$10.0M and by adding the \$1.0M expenses to achieve our strategic objection is approximately 100% return to the investors of the \$1.0M injection.

As part of the sale we will acquire all Intellectual Property including all reports and cad files.

Valuation confirms that the land "as is" at \$10,000,000 however once the DA is updated and tenant secured the value in the development will significantly increase to approximately \$15.0M.

The exit strategy is to sell the land into the Low Density Fund for full development with a current DA to a Hotel group or to a developer with a Hotel group as a tenant agreement in place. This is an active market for Hotel groups.

2. LOCATION



Port Douglas is a town on the Coral Sea in the tropical far north of Queensland, Australia. It's known for its beach resorts and as a base for visits to both the Great Barrier Reef, the world's largest reef system, and Daintree National Park, home to biodiverse rainforest. In town, Macrossan Street is lined with boutique shops and restaurants. Curving south is popular Four Mile Beach



Port Douglas is approximately 70 km (40 mi) north of Cairns. Its permanent population was 3,205 at the time of the 2016 census.[2] The town's population can often double, however, with the influx of tourists during the peak tourism season May–September. The town is named in honour of former Premier of Queensland, John Douglas. Port Douglas developed quickly based on the mining industry. Other parts of the area were established with timber cutting occurring in the area surrounding the Daintree River and with settlement starting to occur on lots around the Mossman River by 1880. Previous names for the town included Terrigal, Island Point, Port Owen and Salisbury. The town is situated adjacent to two World Heritage areas, the Great Barrier Reef and the Daintree Rainforest.

Port Douglas was No. 3 on Australian Traveller magazine's list of 100 Best Towns in Australia.

3. FEASIBILITY

Land Purchase Price		\$ 7,100,000.00	excluding GST	
Deposit	5%	\$ 355,000.00		
Balance owed on land		\$ 6,745,000.00		
EXPENSES				
Brokerage		\$ 150,000.00		
Development Design, Approval and Tenant Secure Costs		\$ 350,000.00		
Council Lodgement Fees		\$ 25,000.00		
Project Management Costs	1.50%	\$ 106,500.00		
Legals - Contract of Sales		\$ 10,000.00		
Company Setup		\$ 3,000.00		
Graphic Design for Presentation		\$ 45,000.00		
FGC Management Fee		\$ 50,000.00		
Contingency		\$ 125,000.00		
Total Expenses (Incl Deposit)		\$ 1,170,000.00		
LAND VALUE AFTER UPDATED DA (excl GST)		\$ 13,000,000.00	\$14,000,000.00	\$15,000,000.00
PROFIT		\$ 5,085,000.00	\$6,085,000.00	\$7,085,000.00
CASH		\$ 1,170,000.00	\$ 1,170,000.00	\$ 1,170,000.00
RETURN ON CASH		435%	520%	606%

The raising structure for this development will be one single tranche to secure the development by finalising the deposit, the new Development Approval and to secure a Hotel Tenant and end buyer being the Low Density Fund.

Please refer to the table below on the profit distribution:

	PRO-RATA		Profit
PD Hotel Project	\$1,170,000.00	100.00%	\$ 5,085,000.00
Chiodo	\$ 150,000.00	12.82%	\$ 651,923.08
FGC	\$ 50,000.00	4.27%	\$ 217,307.69
Seed Equity Group	\$ 100,000.00	8.55%	\$ 434,615.38
Seed Investors	\$ 870,000.00	74.36%	\$ 3,781,153.85
ADF FGC Management Fee	\$ -	0.00%	\$ 50,000.00



4. DEVELOPMENT APPROVAL ADVICE

We have had preliminary planning advice from Gilvear Planning Pty Ltd that has provided us planning parameters who was part of the original application to ensure that meets the current design compliance guidelines of the Hotel/Resort tenants will be approved.

We have also had meeting with Carr Design the previous Architects as he agrees that our changes will need to occur to attract the main hotel/resort tenant players.

5. PROGRAMME

The programme of this process will be as follows:

- | | |
|---|-----------------|
| • Redesign Development Approval and submit to council | 8 Weeks |
| • Council Review Application & Secure Hotel Tenant | 10 Weeks |
| • Issue of Development Approval | 2 Weeks |
| • TOTAL | 20 Weeks |

This Development Application doesn't require any advertising process as the proposed zoning and scheme is compliant with the overlay and within the Port Douglas Shire planning jurisdiction to approve. Once we have approval, we will then create a graphical presentation to secure a hotel tenant.

6. TRANSACTION OF PROPERTY

With negotiation with the Vendor(s) and its representatives including our own legal advice, we have agreed to the following arrangements:

- | | |
|-------------------|-------------------|
| • Purchase Price: | \$7,100,000 + GST |
| • Deposit (5%): | \$355,000 |
| • Settlement: | 10 months |

7. VALUATION

We engaged Northern Property Valuers to undertake a valuation of the land and will be available upon request. Northern Property Valuers confirmed a \$10.0M valuation of the current land.



8. DEVELOPER'S STRATEGY

The Developer will lead this development and will control the full invested funds to be sent to the Developer on day 1 to adequately deliver the Project in line with this Project Investment Report. The Developer will report to the Investors on a weekly basis on Project and financial status.

9. EXIT STRETEGY

The exit strategy is to sell the land with a current updated DA and with a Hotel operator secured into the existing Low Density Fund for full development.



PORT DOUGLAS HOTEL - CASH FLOW

	0	1	2	3	4	5	6	7	8	9	10
	December	January	February	March	April	May	June	July	August	September	October
Land Purchase Price											
Deposit	\$ 7,100,000.00										
5%	\$ 355,000.00										
Balance owed on land	\$ 6,745,000.00										
EXPENSES											
Brokerage	\$ 150,000.00			\$100,000.00							
Development Design, Approval and Tenant Secure Costs	\$ 350,000.00			\$ 45,000.00	\$ 85,000.00	\$ 95,000.00	\$ 100,000.00	\$ 25,000.00			
Council Lodgement Fees	\$ 25,000.00						\$ 25,000.00				
Project Management Costs	\$ 106,500.00	\$ 13,312.50	\$ 13,312.50	\$ 13,312.50	\$ 13,312.50	\$ 13,312.50	\$ 13,312.50	\$ 13,312.50			
Legals - Contract of Sales	\$ 10,000.00								\$ 10,000.00		
Company Setup	\$ 3,000.00										
Graphic Design for Presentation	\$ 45,000.00			\$ 15,000.00	\$ 15,000.00	\$ 15,000.00					
Contingency	\$ 125,500.00			\$100,000.00	\$ 5,100.00	\$ 5,100.00	\$ 5,100.00	\$ 5,100.00	\$ 5,100.00		
Total Expenses (Incl Deposit)	\$ 1,170,000.00	\$ 13,312.50	\$ 13,312.50	\$ 273,312.50	\$ 118,412.50	\$ 128,412.50	\$ 143,412.50	\$ 43,412.50	\$ 15,100.00	\$ -	\$ -
	\$ 421,312.50	\$ 434,625.00	\$ 447,937.50	\$ 721,250.00	\$ 839,662.50	\$ 968,075.00	\$ 1,111,487.50	\$ 1,154,900.00	\$ 1,170,000.00	\$ 1,170,000.00	\$ 1,170,000.00

Havana Investor Document



AGREEMENT

THIS PROFIT SHARE AGREEMENT ("Agreement"), is made as of 7th of March 2019, between First Guardian Capital Pty Ltd, Seed Equity Group Pty Ltd and investors introduced by Seed Equity Group ("Investors") for the Havana Port Douglas Project ("Project") of 71-85 Port Douglas Road, Port Douglas Qld 4877.

This agreement and all fee entitlements mentioned herein are based on investment amounts raised by Seed Equity Group and invested in the First Guardian Australian Development Fund.

First Guardian, Seed Equity Group and Investors agree that:

- Seed will raise AUD \$870,000 out of the \$1,170,000 required for the Project, to be invested in the Australian Development Fund;
- This amount will be raised entirely from investors directly introduced by Seed Equity Group;
- The investors will receive E class units in the First Guardian Capital Australian Development Fund;
- First Guardian Capital Australian Development Fund E class Units will receive a net return of maximum 100% of their individual investment upon settlement of the Project into the First Guardian Capital Low Density Real Estate Development Fund;
- Excess returns above the 100% ROI for First Guardian Capital Australian Development Fund E class shares will be paid directly to Seed Equity Group by First Guardian Capital through the Australian Development Fund.

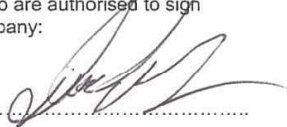

ES 7/3/19



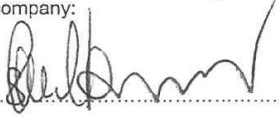
Signatures


This Agreement shall be signed:

EXECUTED BY FIRST GUARDIAN
CAPITAL PTY LTD being signed by those
persons who are authorised to sign
for the company:)
)
)

Director.....  Director/Secretary..... 
Full Name DAVID ANDERSON Full Name SIMON SELMAN

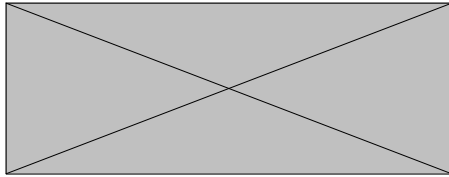
SIGNED BY SEED EQUITY
GROUP PTY LTD being signed by those
persons who are authorised to sign
for the company:)
)

Director.....  Director/Secretary.....
Full Name CRAIG WILKISON Full Name

SIGNED BY  7/3/2019
Investor: NAMEO Pty Ltd (ACN 137 723 418)
Full Name: NADER EL SAIED
DIRECTOR

From: Paul Chiodo <Paul@chiodocorp.com.au>
Sent: Fri 11/11/2022 12:24:25 PM (UTC+11:00)
To: Ilya Frolov <ilya@cfcapital.com.au>
Subject: Re: CDPF vals
Attachment: image001.jpg
Attachment: CDPF_val (1) - PC.xlsx

See attached
Regards



PAUL CHIODO | Director

03 9078 8784 | +61 (0) 450 452 121
Paul@chiodocorp.com.au
chiodocorp.com.au
Suite 704/ 434 St. Kilda Road, Melbourne 3004

On Thu, Nov 10, 2022 at 12:58 PM Ilya Frolov <ilya@cfcapital.com.au> wrote:

we need this for 30th June 2022 accounts for CDPF

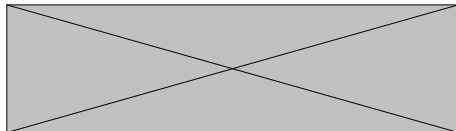
On Mon, 7 Nov 2022 at 11:08, Ilya Frolov <ilya@cfcapital.com.au> wrote:

----- Forwarded message -----

From: Ilya Frolov <ilya@cfcapital.com.au>
Date: Mon, 17 Oct 2022 at 16:55
Subject: CDPF vals
To: Paul Chiodo <Paul@chiodocorp.com.au>

can you put some numbers towards this as of 30th June 2022

--



Ilya Frolov

Executive Director at CF Capital
Investments

A Level 3, 424 St Kilda Road,

Melbourne, Victoria, 3004, Australia

M +61 413 17 44 99

E ilya@cfcapital.com.au

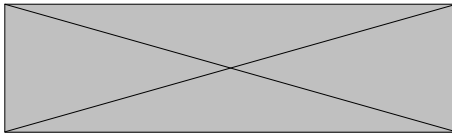
W www.cfcapital.com.au/



CF CAPITAL INVESTMENTS PTY LTD ACN 633 394 751. CORPORATE AUTHORISED REPRESENTATIVE 001 286 471 OF KEYSTONE ASSET MANAGEMENT LIMITED AFSL 491477.

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--



Ilya Frolov

Executive Director at CF Capital Investments

A Level 3, 424 St Kilda Road,
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E ilya@cfcapital.com.au

W www.cfcapital.com.au/

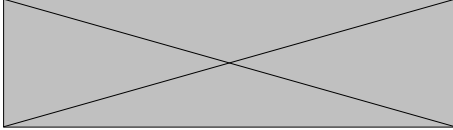


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--



Ilya Frolov

Executive Director at CF Capital
Investments

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W www.cfcapital.com.au/



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Tab 19

Percent completion (construction phase only)	Percent of Total Development Profit recognised
25%	10%
50%	30%
75%	65%
100%	100%

75 Port Douglas Road Pty Ltd	
Investment (CDPF)	\$ 22,438,533
Last Valuation (Asset)	#REF!
Costs as Assets (Direct / Indirect)	
External Financing	\$ 4,200,000
Financing (ADPF)	\$ 18,964,679
Construction Completed	0%
Percentage of Total Development Profit Recognised	0%
Total Development Profit	
Total Development Profit Recognised	0%
Fair Value change of the investment	
33 Davidson Port Douglas Pty Ltd	
Investment (CDPF)	\$ 5,643,660
Last Valuation (Asset)	#REF!
Costs as Assets (Direct / Indirect)	
External Financing	
Financing (ADPF)	\$ 419,952
Construction Completed	95%
Percentage of Total Development Profit Recognised	65%
Total Development Profit	#REF!
Total Development Profit Recognised	#REF!
Fair Value change of the investment	
Augustine Terrace Glenroy Pty Ltd	
Investment (CDPF)	\$ 3,366,692
Last Valuation (Asset)	#REF!
Costs as Assets (Direct / Indirect)	
External Financing	
Financing (ADPF)	\$ 19,436
Construction Completed	20%
Percentage of Total Development Profit Recognised	10%
Total Development Profit	#REF!
Total Development Profit Recognised	#REF!
Fair Value change of the investment	
Nicholson Street Benteleigh Pty Ltd	
Investment (CDPF)	\$ 5,004,144
Last Valuation (Asset)	#REF!
Costs as Assets (Direct / Indirect)	
External Financing	\$ 5,000,000
Financing (ADPF)	\$ 1,212,061
Construction Completed	35%
Percentage of Total Development Profit Recognised	30%
Total Development Profit	#REF!
Total Development Profit Recognised	#REF!
Fair Value change of the investment	
Norwood Ponds (Land) Pty Ltd	
Investment (CDPF)	\$ 18,256,115
Last Valuation (Asset)	#REF!
Costs as Assets (Direct / Indirect)	
External Financing	\$ 7,900,000
Financing (ADPF)	\$ 8,835,650
Construction Completed	70%
Percentage of Total Development Profit Recognised	30%
Total Development Profit	#REF!
Total Development Profit Recognised	#REF!
Fair Value change of the investment	
Red Hill Terrace (Land) Pty Ltd	
Investment (CDPF)	\$ 2,454,889
Last Valuation (Asset)	#REF!
Costs as Assets (Direct / Indirect)	
External Financing	\$ 6,000,000
Financing (ADPF)	\$ 59,536
Construction Completed	100%
Percentage of Total Development Profit Recognised	100%
Total Development Profit	#REF!
Total Development Profit Recognised	#REF!
Fair Value change of the investment	
Warrigal Road Ashburton Pty Ltd	
Investment (CDPF)	\$ 13,874,816
Last Valuation (Asset)	#REF!
Costs (direct and indirect) as Assets	
External Financing	\$ 4,800,000
Financing (ADPF)	\$ 403,000
Construction Completed	35%
Percentage of Total Development Profit Recognised	10%
Total Development Profit	#REF!
Total Development Profit Recognised	#REF!
Fair Value change of the investment	

This is the slip-sheet of "20260519 List of
Txns with Doc IDs"

This is the slip-sheet of "20260514
Keystone x1976 transaction listing"

This is the slip-sheet of "20260519
Shield Providers Keyword Searches"

Reporting Triggers & Requirements

Must not enter transactions with clients that give rise to liabilities
If certified must continue to certify monthly
7(a) if adjusted liabilities >\$1m <=\$100m; then AFSL <5.5% of adj liab
7(b) if adjusted liabilities > \$100m;

NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Signed by Director:



Dated:
28/12/2021

Keystone Asset Management Ltd

58 612 443 008

Financial Statements

For the Year Ended 30 June 2021

Keystone Asset Management Ltd

58 612 443 008

Contents

For the Year Ended 30 June 2021

	Page
Financial Statements	
Directors' Report	1
Auditor's Independence Declaration	4
Statement of Profit or Loss and Other Comprehensive Income	5
Statement of Financial Position	6
Statement of Changes in Equity	7
Statement of Cash Flows	8
Notes to the Financial Statements	9
Directors' Declaration	18
Independent Auditor's Report	19

Keystone Asset Management Ltd

58 612 443 008

Directors' Report 30 June 2021

The directors present their report on Keystone Asset Management Ltd for the financial year ended 30 June 2021.

1. General information

Directors

The names of the directors in office at any time during, or since the end of, the year are:

Names	Position	Appointed/Resigned
Ilya Frolov	Director/Secretary	Appointed - 27/04/2020
Paul Chiodo	Director	Appointed - 27/04/2020
Mark Yorston	Director	Appointed - 27/04/2020

Directors have been in office since the start of the financial year to the date of this report unless otherwise stated.

Principal activities

The principal activity of Keystone Asset Management Ltd during the financial year was own managed investment schemes.

No significant changes in the nature of the Company's activity occurred during the financial year.

2. Operating results and review of operations for the year

Operating results

The loss of the Company after providing for income tax amounted to \$ (233,483) (2020: \$ (25,366)).

Dividends paid or recommended

No dividends were paid or declared since the start of the financial year. No recommendation for payment of dividends has been made.

3. Other items

Significant changes in state of affairs

There have been no significant changes in the state of affairs of the Company during the year.

Events after the reporting date

No matters or circumstances have arisen since the end of the financial year which significantly affected or may significantly affect the operations of the Company, the results of those operations or the state of affairs of the Company in future financial years.

Future developments

The Company expects to maintain the present status and level of operations.

Directors' Report

30 June 2021

Environmental issues

The Company's operations are not regulated by any significant environmental regulations under a law of the Commonwealth or of a state or territory of Australia.

Auditors independence declaration

The lead auditors independence declaration for the year ended 30 June 2021 has been received and can be found on page of the financial report.

Information on directors

Ilya Frolov	Executive Director
Qualifications	BEng(Mech), MA(Comms), Exec MBA
Experience	Ilya is the Executive Director of KAM & CF Property Capital, with over twenty-five years of financial, TMT and construction sector experience as an investment director, developer and funds operations. He is jointly responsible for the management of KAMs fund daily operations and is responsible for setting and implementing the firm's business strategy. Ilya gained his extensive experience as a funds manager as the managing partner at Oxygen Ventures, one of Australia's leading venture capital firm, and in the financial sector as a hedge fund product developer with Churchill Capital. Running his own property development-architectural firm for the past 10 years, Ilya's experience within the real estate sector provides the perfect balance of finance and property.
Interest in Shares and Options	None
Interest in Contract	None
Special Responsibilities	Member of the Compliance Committee
Paul Chiodo	Director
Qualifications	M.Bus (Property)
Experience	Paul is the director of KAM. He has over 15 years of experience in creating and delivering a diverse range of large and complex projects to suit the needs for specific clients. His rare combination of experience in acquisition, feasibility financial modelling, town planning, design development, marketing/sales and construction management make him a valuable asset to any project. Paul has a proven track record in low and medium density residential, commercial office, retail and industrial projects. Paul is an expert at complex stakeholder management as well as deriving specific project strategies to best suit the project. Paul has the ability to manage all third parties' inputs to ensure the successful delivery of the project. Paul has managed and developed over \$1 billion worth of property within Victoria.
Interest in Shares and Options	None
Interest in Contract	None
Special Responsibilities	None

Keystone Asset Management Ltd

58 612 443 008

Directors' Report

30 June 2021

Information on directors

Mark Yorston	Non-Executive Chairman
Qualifications	BEC, LLB
Experience	ADMISSIONS: Victoria Federal Courts of Australia, New South Wales Immediate past Chair of the Litigation Section of the Law Institute of Victoria Chartered Tax Advisor with the Taxation Institute of Australia Fellow of Australian Institute of Company Directors Ambassador for White Ribbon Campaign - http://www.whiteribbon.org.au Represents LIV on Supreme Court Rules Committee, County Court Commercial List Users Group & Federal Court Users Group
Interest in Shares and Options	None
Interest in Contract	None
Special Responsibilities	None

Meetings of directors

During the financial year, 4 meetings of directors (including committees of directors) were held. Attendances by each director during the year were as follows:

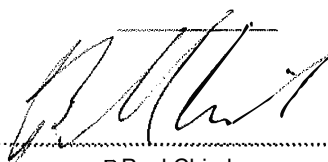
	Directors' Meetings	
	Number eligible to attend	Number attended
Ilya Frolov	4	4
Paul Chiodo	4	4
Mark Yorston	4	4

Indemnification and insurance of officers and auditors

No indemnities have been given or insurance premiums paid, during or since the end of the financial year, for any person who is or has been an officer or auditor of Keystone Asset Management Ltd.

Signed in accordance with a resolution of the Board of Directors:

Director: 
Ilya Frolov

Director: 
Paul Chiodo

Dated: 26 October 2021



Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

DECLARATION OF INDEPENDENCE BY C R JENKINS TO THE DIRECTORS OF KEYSTONE ASSET MANAGEMENT LTD

As lead auditor of Keystone Asset Management Ltd for the year ended 30 June 2021, I declare that, to the best of my knowledge and belief, there have been:

1. No contraventions of the auditor independence requirements of the *Corporations Act 2001* in relation to the audit; and
2. No contraventions of any applicable code of professional conduct in relation to the audit.

C R Jenkins
Director

BDO Audit Pty Ltd

Brisbane, 26 October 2021

Keystone Asset Management Ltd

58 612 443 008

Statement of Profit or Loss and Other Comprehensive Income For the Year Ended 30 June 2021

	Note	2021	2020
		\$	\$
Sales revenue	3	-	26,000
Finance income	4	558	961
Marketing expenses		(63,390)	(16,000)
Administrative expenses		(62,842)	(20,762)
Other expenses		(106,247)	(14,582)
Finance expenses	4	(1,561)	(983)
Profit before income tax		(233,482)	(25,366)
Income tax expense		-	-
Profit from continuing operations		(233,482)	(25,366)
Total comprehensive income for the year		(233,482)	(25,366)

The accompanying notes form part of these financial statements.

Keystone Asset Management Ltd

58 612 443 008

Statement of Financial Position As At 30 June 2021

	Note	2021 \$	2020 \$
ASSETS			
CURRENT ASSETS			
Cash and cash equivalents	5	305,569	3,533
Other assets	6	34,009	25,971
TOTAL CURRENT ASSETS		<u>339,578</u>	<u>29,504</u>
NON-CURRENT ASSETS			
TOTAL ASSETS		<u><u>339,578</u></u>	<u><u>29,504</u></u>
LIABILITIES			
CURRENT LIABILITIES			
Trade and other payables	7	14,380	11,375
Other financial liabilities	9	32,700	25,273
TOTAL CURRENT LIABILITIES		<u>47,080</u>	<u>36,648</u>
NON-CURRENT LIABILITIES			
Borrowings	8	65,124	20,000
TOTAL NON-CURRENT LIABILITIES		<u>65,124</u>	<u>20,000</u>
TOTAL LIABILITIES		<u>112,204</u>	<u>56,648</u>
NET ASSETS		<u><u>227,374</u></u>	<u><u>(27,144)</u></u>
EQUITY			
Issued capital	10	571,585	83,585
Retained earnings		(344,211)	(110,729)
TOTAL EQUITY		<u><u>227,374</u></u>	<u><u>(27,144)</u></u>

The accompanying notes form part of these financial statements.

Keystone Asset Management Ltd

58 612 443 008

Statement of Changes in Equity For the Year Ended 30 June 2021

2021

Note	Ordinary Shares	Retained Earnings	Total
	\$	\$	\$
Balance at 1 July 2020	83,585	(110,729)	(27,145)
Profit attributable to members	-	(233,482)	(249,602)
Transactions with owners in their capacity as owners			
Issue of shares	488,000	-	488,000
Balance at 30 June 2021	571,585	(344,211)	227,374

2020

Note	Ordinary Shares	Retained Earnings	Total
	\$	\$	\$
Balance at 1 July 2019	240,002	(85,363)	154,639
Profit attributable to members	-	(25,366)	(25,366)
Transactions with owners in their capacity as owners			
Return of Capital during the year	(156,417)	-	(156,417)
Balance at 30 June 2020	83,585	(110,729)	(27,144)

The accompanying notes form part of these financial statements.

7

Keystone Asset Management Ltd

58 612 443 008

Statement of Cash Flows For the Year Ended 30 June 2021

	Note	2021 \$	2020 \$
CASH FLOWS FROM OPERATING ACTIVITIES:			
Receipts from customers		-	26,000
Payments to suppliers and employees		(221,390)	(67,158)
Interest received		558	961
Interest paid		(1,561)	(983)
Net cash provided by/(used in) operating activities	13	<u>(222,393)</u>	<u>(41,180)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issue of shares		488,000	-
Proceeds from Shareholders' loan accounts		45,124	20,000
Proceeds from borrowings		7,427	19,973
Share buy-back payment		-	(156,418)
Net cash provided by/(used in) financing activities		<u>540,551</u>	<u>(116,445)</u>
Net increase/(decrease) in cash and cash equivalents held		302,036	(157,625)
Cash and cash equivalents at beginning of year		3,533	161,158
Cash and cash equivalents at end of financial year	5	<u>305,569</u>	<u>3,533</u>

The accompanying notes form part of these financial statements.

8

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements For the Year Ended 30 June 2021

The financial report covers Keystone Asset Management Ltd as an individual entity. Keystone Asset Management Ltd is a for-profit proprietary Company, incorporated and domiciled in Australia.

The functional and presentation currency of Keystone Asset Management Ltd is Australian dollars.

Comparatives are consistent with prior years, unless otherwise stated.

1 Basis of Preparation

The general purpose financial statements have been prepared in accordance with Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') and the Corporations Act 2001, as appropriate for profit oriented entities. The financial statements also comply with International Financial Reporting Standards as issued by the International Accounting Standards Board ('IASB').

The financial statements have been prepared on a going concern basis, which contemplates continuity of normal business activities and the realisation of asset and settlement of liabilities in the ordinary course of business.

2 Summary of Significant Accounting Policies

(a) Revenue and other income

Revenue is recognised when the amount of the revenue can be measured reliably, it is probable that economic benefits associated with the transaction will flow to the Company and specific criteria relating to the type of revenue as noted below, has been satisfied.

Revenue is measured at the fair value of the consideration received or receivable and is presented net of returns, discounts and rebates.

Rendering of services

Revenue in relation to rendering of services is recognised depending on whether the outcome of the services can be estimated reliably. If the outcome can be estimated reliably then the stage of completion of the services is used to determine the appropriate level of revenue to be recognised in the period.

If the outcome cannot be reliably estimated then revenue is recognised to the extent of expenses recognised that are recoverable.

Other income

Other income is recognised on an accruals basis when the Company is entitled to it.

Notes to the Financial Statements

For the Year Ended 30 June 2021

2 Summary of Significant Accounting Policies

(b) Income Tax

The tax expense recognised in the statement of profit or loss and other comprehensive income comprises current income tax expense plus deferred tax expense.

Current tax is the amount of income taxes payable (recoverable) in respect of the taxable profit (loss) for the year and is measured at the amount expected to be paid to (recovered from) the taxation authorities, using the tax rates and laws that have been enacted or substantively enacted by the end of the reporting period. Current tax liabilities (assets) are measured at the amounts expected to be paid to (recovered from) the relevant taxation authority.

(c) Goods and services tax (GST)

Revenue, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO).

Receivables and payable are stated inclusive of GST.

Cash flows in the statement of cash flows are included on a gross basis and the GST component of cash flows arising from investing and financing activities which is recoverable from, or payable to, the taxation authority is classified as operating cash flows.

(d) Financial instruments

Financial instruments are recognised initially on the date that the Company becomes party to the contractual provisions of the instrument.

On initial recognition, all financial instruments are measured at fair value plus transaction costs (except for instruments measured at fair value through profit or loss where transaction costs are expensed as incurred).

Financial liabilities

The Company measures all financial liabilities initially at fair value less transaction costs, subsequently financial liabilities are measured at amortised cost using the effective interest rate method.

The financial liabilities of the Company comprise trade payables, bank and other loans and lease liabilities.

(e) Cash and cash equivalents

Cash and cash equivalents comprises cash on hand, demand deposits and short-term investments which are readily convertible to known amounts of cash and which are subject to an insignificant risk of change in value.

(f) Share capital

Ordinary shares are classified as equity. Incremental costs directly attributable to the issue of ordinary shares and share options which vest immediately are recognised as a deduction from equity, net of any tax effects.

Notes to the Financial Statements
For the Year Ended 30 June 2021

2 Summary of Significant Accounting Policies

(g) New, revised or amending Accounting Standards and Interpretations adopted

The company has adopted all of the new, revised or amending Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') that are mandatory for the current reporting period.

Any new, revised or amending Accounting Standards or Interpretations that are not yet mandatory have not been early adopted.

(h) Significant accounting judgements, estimates and assumptions

The carrying amounts of certain assets and liabilities are often determined based on estimates and assumptions of future events. There are no key estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of the Company's assets and liabilities within the next annual reporting period.

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements For the Year Ended 30 June 2021

3 Revenue and Other Income

Revenue from continuing operations

	2021	2020
	\$	\$
Revenue from other sources		
- provision of services	-	26,000
Total Revenue	-	26,000

4 Finance Income and Expenses

Finance income

	2021	2020
	\$	\$
Interest income		
- Assets measured at amortised cost	558	961
Dividend income		

Finance expenses

	2021	2020
	\$	\$
Other finance expenses	1,561	983

5 Cash and Cash Equivalents

	2021	2020
	\$	\$
Cash at bank and in hand	145,569	3,533
Short-term deposits	160,000	-
	305,569	3,533

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements For the Year Ended 30 June 2021

6 Other non-financial assets

	2021	2020
	\$	\$
CURRENT		
Prepayments	34,009	25,971

7 Trade and Other Payables

	2021	2020
Note	\$	\$
CURRENT		
Trade payables	28,150	-
GST payable	(13,769)	(4,208)
Accrued expenses	-	15,583
	<u>14,381</u>	<u>11,375</u>

8 Borrowings

	2021	2020
	\$	\$
NON-CURRENT		
Unsecured liabilities:		
Related party payables	65,124	20,000
	<u>65,124</u>	<u>20,000</u>
Total non-current borrowings	<u>65,124</u>	<u>20,000</u>

The related party loan is at call and interest free.

9 Other Financial Liabilities

	2021	2020
	\$	\$
CURRENT		
Other financial liabilities	32,700	25,273

Notes to the Financial Statements
For the Year Ended 30 June 2021

10 Issued Capital

			2021	2020
			\$	\$
Ordinary shares			571,585	83,584
Movements during the year	2021	2020	2021	2020
	Number	Number	\$	\$
Balance at beginning of the year	83,585	240,002	83,585	240,002
Return of capital during the year	-	(156,417)	-	(156,417)
Conversion of debt to equity during the year	488,000	-	488,000	-
Balance at end of year	571,585	83,585	571,585	83,585

11 Auditors' Remuneration

	2021	2020
	\$	\$
Remuneration of the auditor [BDO Audit Pty Ltd], for:		
- auditing of financial statements	14,500	10,724
Total	14,500	10,724

12 Contingencies

In the opinion of the Directors, the Company did not have any contingencies at 30 June 2021 (30 June 2020: None).

13 Cash Flow Information

(a) Reconciliation of result for the year to cashflows from operating activities

	2021	2020
	\$	\$
Reconciliation of net income to net cash provided by operating activities:		
Profit/(loss) for the year	(233,482)	(25,366)
Cash flows excluded from profit attributable to operating activities		
Non-cash flows in profit:		
Changes in assets and liabilities:		
- (increase)/decrease in prepayments	(8,038)	(25,971)
- increase/(decrease) in trade and other payables	19,127	10,157
Cashflows from operations	(222,393)	(41,180)

Notes to the Financial Statements
For the Year Ended 30 June 2021**14 Events Occurring After the Reporting Date**

The financial report was authorised for issue on 26 October 2021 by the Board of Directors.

No matters or circumstances have arisen since the end of the financial year which significantly affected or may significantly affect the operations of the Company, the results of those operations, or the state of affairs of the Company in future financial years.

15 Financial Risk Management

The Company's financial instruments consist mainly of deposits with the bank, accounts receivable and payable and loans.

The totals for each category of financial instruments, measured in accordance with AASB 9 as detailed in the accounting policies to these financial statements, are as follows:

	2021	2020
	\$	\$
<i>Financial Assets</i>		
Cash and cash equivalents	305,569	3,533
Other assets	34,009	25,971
Total financial assets	<u>339,578</u>	<u>29,504</u>
<i>Financial Liabilities</i>		
Trade and other payables – due within 3 months	14,380	11,376
Other financial liabilities – due within 12 months	32,700	25,273
Borrowings – due within 12 to 24 months	65,124	20,000
Total financial liabilities	<u>112,204</u>	<u>56,649</u>

Financial Risk Management Policies

The Board of Directors has the responsibility for, amongst other issues, monitoring and managing financial risk exposures of the Company. They review the effectiveness of internal controls relating to price risk, financing risk and interest rate risk. The overall risk management strategy seeks to minimise potential adverse effects on financial performance by reviewing credit risk policies and future cash flow requirements.

Notes to the Financial Statements

For the Year Ended 30 June 2021

Note 15 Financial Risk Management (cont)

Specific Financial Risk Exposures and Management

The main risks the Company is exposed to through its financial instruments are liquidity risk and market risk consisting of interest rate risk and pricing risk.

(a) Liquidity risk

Liquidity risk arises from the possibility that the Company might encounter difficulty in settling its debts or otherwise meeting its obligations related to financial liabilities. The Company manages this risk through the following mechanisms:

- prepared forward looking cash flow analysis in relation to its operational, investing and financing activities;
- maintaining a reputable credit profile;
- managing credit risk related to financial assets.

(b) Market Risk

i. Price risk

Price risk relates to the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in the market prices largely due to demand and supply factors for commodities. The company is not exposed to price risk.

ii. Interest Rate Risk

Exposure to interest rate risk arises on financial liabilities recognised at the end of the reporting period whereby a future change in interest rate will affect future cash flows. Interest rate risk is managed by using fixed rate debt, no sensitivity analysis was therefore deemed necessary.

iii. Foreign exchange risk

The company is not exposed to foreign exchange risk.

Fair Value Estimation

All fair values of financial assets and financial liabilities are assumed to approximate their fair values due to their short-term nature.

Notes to the Financial Statements

For the Year Ended 30 June 2021

16 Capital Management Policies and Procedures

Management controls the capital of the Company in order to maintain a good debt to equity ratio, provide the shareholders with adequate returns and to ensure that it can fund its operations and continue as a going concern.

- The Company's capital management objectives aim to:
- Ensure that the Company complies with its AFSL requirements;
- Ensure sufficient capital resources to support the Company's operational requirements;
- Continue to support the Company's credit worthiness; and
- Safeguard the Company's ability to continue as a going concern.

Management effectively manages the Company's capital by assessing its financial risks and adjusting its capital structure in response to changes in these risks and in the market. These responses include the management of debt level, distributions to shareholders and share issues.

There have been no changes in the strategy adopted by management to control the capital of the group since the prior year.

The registered office and principal place of business of the company is:

Keystone Asset Management Ltd
Level 14
10 Queens Road
MELBOURNE VIC 3004

Keystone Asset Management Ltd

58 612 443 008

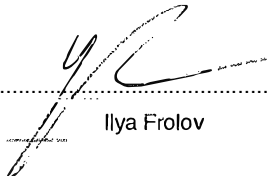
Directors' Declaration

In the directors' opinion:

- the attached financial statements and notes thereto comply with the Corporations Act 2001, the Accounting Standards, the Corporations Regulations 2001 and other mandatory professional reporting requirements;
- the attached financial statements and notes thereto comply with International Financial Reporting Standards as issued by the International Accounting Standards Board as described in note 1 to the financial statements;
- the attached financial statements and notes thereto give a true and fair view of the company's financial position as at 30 June 2021 and of its performance for the financial year ended on that date; and
- there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

Signed in accordance with a resolution of directors made pursuant to section 295(5)(a) of the Corporations Act 2001.

On behalf of the directors

Director

Ilya Frolov

Director

Paul Chiodo

Dated: 26 October 2021

INDEPENDENT AUDITOR'S REPORT

To the members of Keystone Asset Management Ltd

Report on the Audit of the Financial Report

Opinion

We have audited the financial report of Keystone Asset Management Ltd (the Company), which comprises the statement of financial position as at 30 June 2021, the statement of profit or loss and other comprehensive income, the statement of changes in equity and the statement of cash flows for the year then ended, and notes to the financial report, including a summary of significant accounting policies, and the directors' declaration.

In our opinion the accompanying financial report of Keystone Asset Management Ltd, is in accordance with the *Corporations Act 2001*, including:

- (i) Giving a true and fair view of the Company's financial position as at 30 June 2021 and of its financial performance for the year ended on that date; and
- (ii) Complying with Australian Accounting Standards and the *Corporations Regulations 2001*.

Basis for opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the Financial Report* section of our report. We are independent of the Company in accordance with the *Corporations Act 2001* and the ethical requirements of the Accounting Professional and Ethical Standards Board's *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

We confirm that the independence declaration required by the *Corporations Act 2001*, which has been given to the directors of the Company, would be in the same terms if given to the directors as at the time of this auditor's report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Other information

The directors are responsible for the other information. The other information obtained at the date of this auditor's report is information included in the Directors report, but does not include the financial report and our auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed on the other information obtained prior to the date of this auditor's report, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of the directors for the Financial Report

The directors of the Company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards and the *Corporations Act 2001* and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Auditor's responsibilities for the audit of the Financial Report

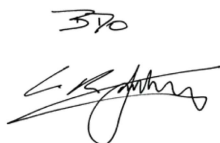
Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website (<http://www.auasb.gov.au/Home.aspx>) at:

http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf

This description forms part of our auditor's report.

BDO Audit Pty Ltd



C R Jenkins
Director

Brisbane, 26 October 2021

Keystone Asset Management Ltd

58 612 443 008

Financial Statements

For the Year Ended 30 June 2022

Keystone Asset Management Ltd

58 612 443 008

Contents

For the Year Ended 30 June 2022

	Page
Financial Statements	
Directors' Report	1
Auditor's Independence Declaration	4
Statement of Profit or Loss and Other Comprehensive Income	5
Statement of Financial Position	6
Statement of Changes in Equity	7
Statement of Cash Flows	8
Notes to the Financial Statements	9
Directors' Declaration	21
Independent auditor's report	22

Keystone Asset Management Ltd

58 612 443 008

Directors' Report

30 June 2022

The directors present their report on Keystone Asset Management Ltd for the financial year ended 30 June 2022.

1. General information

Directors

The names of the directors in office at any time during, or since the end of, the year are:

Names	Position	Appointed/Resigned
Ilya Frolov	Director/Secretary	Appointed - 27/04/2020
Paul Chiodo	Director	Appointed - 27/04/2020
Mark Yorston	Director	Appointed - 27/04/2020

Directors have been in office since the start of the financial year to the date of this report unless otherwise stated.

Principal activities

The principal activity of Keystone Asset Management Ltd during the financial year was own managed investment schemes.

No significant changes in the nature of the Company's activity occurred during the financial year.

2. Operating results and review of operations for the year

Operating results

The loss of the Company after providing for income tax amounted to \$ (145,898) (2021: \$ (233,482)).

Dividends paid or recommended

No dividends were paid or declared since the start of the financial year. No recommendation for payment of dividends has been made.

3. Other items

Significant changes in state of affairs

There have been no significant changes in the state of affairs of the Company during the year.

Events after the reporting date

No matters or circumstances have arisen since the end of the financial year which significantly affected or may significantly affect the operations of the Company, the results of those operations or the state of affairs of the Company in future financial years.

Future developments

The Company expects to maintain the present status and level of operations.

Keystone Asset Management Ltd

58 612 443 008

Directors' Report

30 June 2022

Environmental issues

The Company's operations are not regulated by any significant environmental regulations under a law of the Commonwealth or of a state or territory of Australia.

Auditors independence declaration

The lead auditors independence declaration for the year ended 30 June 2022 has been received and can be found on page of the financial report.

Information on directors

Ilya Frolov	Executive Director
Qualifications	BEng(Mech), MA(Comms), Exec MBA
Experience	Ilya is the Executive Director of KAM & CF Property Capital, with over twenty-five years of financial, TMT and construction sector experience as an investment director, developer and funds operations. He is jointly responsible for the management of KAMs fund daily operations and is responsible for setting and implementing the firm's business strategy. Ilya gained his extensive experience as a funds manager as the managing partner at Oxygen Ventures, one of Australia's leading venture capital firm, and in the financial sector as a hedge fund product developer with Churchill Capital. Running his own property development-architectural firm for the past 10 years, Ilya's experience within the real estate sector provides the perfect balance of finance and property.
Interest in Shares and Options	None
Interest in Contract	None
Special Responsibilities	Member of the Compliance Committee
Paul Chiodo	Director
Qualifications	M.Bus (Property)
Experience	Paul is the director of KAM. He has over 15 years of experience in creating and delivering a diverse range of large and complex projects to suit the needs for specific clients. His rare combination of experience in acquisition, feasibility financial modelling, town planning, design development, marketing/sales and construction management make him a valuable asset to any project. Paul has a proven track record in low and medium density residential, commercial office, retail and industrial projects. Paul is an expert at complex stakeholder management as well as deriving specific project strategies to best suit the project. Paul has the ability to manage all third parties' inputs to ensure the successful delivery of the project. Paul has managed and developed over \$1 billion worth of property within Victoria.
Interest in Shares and Options	None
Interest in Contract	None
Special Responsibilities	None

Keystone Asset Management Ltd

58 612 443 008

Directors' Report 30 June 2022

Mark Yorston	Non-Executive Chairman
Qualifications	BEC, LLB
Experience	ADMISSIONS: Victoria Federal Courts of Australia, New South Wales Immediate past Chair of the Litigation Section of the Law Institute of Victoria Chartered Tax Advisor with the Taxation Institute of Australia Fellow of Australian Institute of Company Directors Ambassador for White Ribbon Campaign - http://www.whiteribbon.org.au Represents LIV on Supreme Court Rules Committee, County Court Commercial List Users Group & Federal Court Users Group
Interest in Shares and Options	None
Interest in Contract	None
Special Responsibilities	None

Meetings of directors

During the financial year, 5 meetings of directors (including committees of directors) were held. Attendances by each director during the year were as follows:

Directors' Meetings	
Number eligible to attend	Number attended
Ilya Frolov	5
Paul Chiodo	5
Mark Yorston	5

Indemnification and insurance of officers and auditors

No indemnities have been given or insurance premiums paid, during or since the end of the financial year, for any person who is or has been an officer or auditor of Keystone Asset Management Ltd.

Signed in accordance with a resolution of the Board of Directors:

Director:
Ilya Frolov

Director:
Paul Chiodo

Dated 22 November 2022

Keystone Asset Management Ltd

58 612 443 008

Auditor's Independence Declaration



Tel: +61 7 3237 5999
Fax: +61 7 3221 9227
www.bdo.com.au

Level 10, 12 Creek St
Brisbane QLD 4000
GPO Box 457 Brisbane QLD 4001
Australia

DECLARATION OF INDEPENDENCE BY C R JENKINS TO THE DIRECTORS OF KEYSTONE ASSET MANAGEMENT LTD

As lead auditor of Keystone Asset Management Ltd for the year ended 30 June 2022, I declare that, to the best of my knowledge and belief, there have been:

1. No contraventions of the auditor independence requirements of the *Corporations Act 2001* in relation to the audit; and
2. No contraventions of any applicable code of professional conduct in relation to the audit.

A handwritten signature in black ink, appearing to read 'C R Jenkins', written over a horizontal line.

C R Jenkins
Director

BDO Audit Pty Ltd

Brisbane, 22 November 2022

Keystone Asset Management Ltd

58 612 443 008

Statement of Profit or Loss and other Comprehensive Income
F30 June 2022

		2022	2021
	Note	\$	\$
Revenue	3	243,252	-
Finance income	4	635	558
Marketing expenses		(82,532)	(63,390)
Administrative expenses		(178,982)	(62,842)
Other expenses		(126,675)	(106,247)
Finance expenses	4	(1,596)	(1,561)
Profit/(losses) before income tax		(145,898)	(233,482)
Income tax expense	22	-	-
Profit/(losses) from continuing operations		(145,898)	(233,482)
Total comprehensive income for the year		(145,898)	(233,482)

Keystone Asset Management Ltd

58 612 443 008

**Statement of Financial Position
As At 30 June 2022**

	2022	2021
Note	\$	\$
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	5 188,131	305,569
Trade and other receivables	6 267,577	-
Other assets	8 53,876	34,009
TOTAL CURRENT ASSETS	509,584	339,578
NON-CURRENT ASSETS		
Loans and advances	7 121,685	-
TOTAL NON-CURRENT ASSETS	121,685	-
TOTAL ASSETS	631,269	339,578
LIABILITIES		
CURRENT LIABILITIES		
Trade and other payables	9 35,865	14,380
Other financial liabilities	11 64,131	32,700
TOTAL CURRENT LIABILITIES	99,996	47,080
NON-CURRENT LIABILITIES		
Borrowings	10 -	65,124
TOTAL NON-CURRENT LIABILITIES	-	65,124
TOTAL LIABILITIES	99,996	112,204
NET ASSETS	531,273	227,374
EQUITY		
Issued capital	12 1,021,382	571,585
Accumulated losses	(490,109)	(344,211)
TOTAL EQUITY	531,273	227,374

The accompanying notes form part of these financial statements.

6

Keystone Asset Management Ltd

58 612 443 008

Statement of Changes in Equity
For the Year Ended 30 June 2022

2022

	Ordinary Shares	Accumulated losses\$	Total \$
Note	\$	\$	\$
Balance at 1 July 2021	571,585	(344,211)	227,374
Profit attributable to members	-	(145,898)	(145,898)
Transactions with owners in their capacity as owners			
Issue of shares	449,797	-	449,797
Balance at 30 June 2022	<u>1,021,382</u>	<u>(490,109)</u>	<u>531,273</u>

2021

	Ordinary Shares	Accumulated losses\$	Total \$
Note	\$	\$	\$
Balance at 1 July 2020	83,585	(110,729)	(27,144)
Profit attributable to members of the parent entity	-	(233,482)	(233,482)
Transactions with owners in their capacity as owners			
Issue of shares	488,000	-	488,000
Balance at 30 June 2021	<u>571,585</u>	<u>(344,211)</u>	<u>227,374</u>

The accompanying notes form part of these financial statements.

7

Keystone Asset Management Ltd

58 612 443 008

Statement of Cash Flows For the Year Ended 30 June 2022

	2022	2021
Note	\$	\$
CASH FLOWS FROM OPERATING ACTIVITIES:		
Payments to suppliers and employees	(410,896)	(237,512)
Interest received	635	558
Interest paid	(1,596)	(1,561)
Net cash provided by/(used in) operating activities	<u>(411,857)</u>	<u>(222,393)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Loans to related parties - payments made	<u>(121,685)</u>	-
Net cash provided by/(used in) investing activities	<u>(121,685)</u>	-
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issue of shares	449,797	488,000
Proceeds from Shareholders' loan accounts	-	45,124
Proceeds/ (repayment from borrowings)	<u>(33,693)</u>	<u>7,427</u>
Net cash provided by/(used in) financing activities	<u>418,366</u>	<u>540,551</u>
Net increase/(decrease) in cash and cash equivalents held	(117,438)	302,036
Cash and cash equivalents at beginning of year	<u>305,569</u>	<u>3,533</u>
Cash and cash equivalents at end of financial year	<u>188,131</u>	<u>305,569</u>

The accompanying notes form part of these financial statements.

8

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements

For the Year Ended 30 June 2022

The financial report covers Keystone Asset Management Ltd as an individual entity. Keystone Asset Management Ltd is a for-profit proprietary Company, incorporated and domiciled in Australia.

The functional and presentation currency of Keystone Asset Management Ltd is Australian dollars.

Comparatives are consistent with prior years, unless otherwise stated.

1 Basis of Preparation

The general purpose financial statements have been prepared in accordance with Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') and the Corporations Act 2001, as appropriate for profit oriented entities. The financial statements also comply with International Financial Reporting Standards as issued by the International Accounting Standards Board ('IASB').

The financial statements have been prepared on a going concern basis, which contemplates continuity of normal business activities and the realisation of asset and settlement of liabilities in the ordinary course of business.

2 Summary of Significant Accounting Policies

(a) Revenue and other income

Revenue recognition

The Responsible Entity recognises revenue from the transfer of goods and services over time or at a point in time depending on the revenue stream. The summary below presents information about the disaggregation of key revenue items.

Trustee fees

The company provides trustee services to a wholesale fund and the fees charged is between 1% to 1.1% based on total assets of the fund.

Interest income

Interest income is recognised as interest accrues using the effective interest method.

Revenue is measured at the fair value of the consideration received or receivable and is presented net of returns, discounts and rebates.

Rendering of services

Revenue in relation to rendering of services is recognised depending on whether the outcome of the services can be estimated reliably. If the outcome can be estimated reliably then the stage of completion of the services is used to determine the appropriate level of revenue to be recognised in the period.

If the outcome cannot be reliably estimated then revenue is recognised to the extent of expenses recognised that are recoverable

The accompanying notes form part of these financial statements.

Notes to the Financial Statements For the Year Ended 30 June 2022

Other income

Other income is recognised on an accruals basis when the Company is entitled to it.

(b) Income Tax

The income tax expense or benefit for the period is the tax payable on that period's taxable income based on the applicable income tax rate for each jurisdiction, adjusted by changes in deferred tax assets and liabilities attributable to temporary differences, unused tax losses and the adjustment recognised for prior periods, where applicable.

Current tax assets and liabilities for the current and prior periods are measured at the amount expected to be recovered from or paid to the taxation authorities. The tax rates and tax laws used to compute the amount are those that are enacted or substantively enacted by the balance date.

Deferred tax assets and liabilities are recognised for temporary differences at the tax rates expected to apply when the assets are recovered or liabilities are settled, based on those tax rates that are enacted or substantively enacted, except for:

- When the deferred income tax asset or liability arises from the initial recognition of goodwill or an asset or liability in a transaction that is not a business combination and that, at the time of the transaction, affects neither the accounting nor taxable profits; or
- When the taxable temporary difference is associated with investments in subsidiaries, associates or interests in joint ventures, and the timing of the reversal can be controlled and it is probable that the temporary difference will not reverse in the foreseeable future.

Deferred tax assets are recognised for deductible temporary differences and unused tax losses only if it is probable that future taxable amounts will be available to utilise those temporary differences and losses.

The carrying amount of recognised and unrecognised deferred tax assets are reviewed each reporting date.

Deferred tax assets recognised are reduced to the extent that it is no longer probable that future taxable profits will be available for the carrying amount to be recovered. Previously unrecognised deferred tax assets are recognised to the extent that it is probable that there are future taxable profits available to recover the asset.

Deferred tax assets and liabilities are offset only where there is a legally enforceable right to offset current tax assets against current tax liabilities and deferred tax assets against deferred tax liabilities; and they relate to the same taxable authority on either the same taxable entity or different taxable entity's which intend to settle simultaneously.

The accompanying notes form part of these financial statements.

10

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements

For the Year Ended 30 June 2022

(c) Goods and services tax (GST)

Revenue, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO).

Receivables and payable are stated inclusive of GST.

Cash flows in the statement of cash flows are included on a gross basis and the GST component of cash flows arising from investing and financing activities which is recoverable from, or payable to, the taxation authority is classified as operating cash flows.

(d) Financial instruments

Trade and other receivables

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less loss allowances.

Trade receivables are amounts due from customers for goods sold or services performed in the ordinary course of business. They are generally due for settlement within 30 days and therefore are all classified as current. Trade receivables are recognised initially at the amount of consideration that is unconditional unless they contain significant financing components, when they are recognised at fair value. The entity holds trade receivables with the objective of collecting the contracted cash flows, which represent payments of principal and interest, and measures them at amortised cost using the effective interest method.

The entity recognises a loss allowance for expected credit losses on trade receivables measured at amortised cost. The credit losses are updated at each reporting date to reflect changes in credit risk since initial recognition. For trade receivables, the entity applies the simplified approach permitted by AASB 9, which requires expected lifetime credit losses to be recognised from initial recognition of the receivables. The expected credit losses on these financial assets are estimated using a provision matrix based on the entity's historical credit loss experience adjusted for factors that are specific to the debtors, general economic conditions and an assessment of the current and forecast direction of conditions at the reporting date, including time value of money where appropriate.

The entity impairs secured loan receivables when there is information indicating that the debtor is in severe financial difficulty, there is breach of loan to valuation covenants and there is no realistic prospect of recovery.

Financial assets at amortised cost

Loans receivable

Loans receivable are initially recognised at fair value, and subsequently at amortised cost, using the effective interest rate method less any allowance under the ECL model.

All loans and receivables with maturities greater than 12 months after balance date are classified as non-current assets.

Trade and other payables

These amounts represent liabilities for goods and services provided to the consolidated entity prior to the end of the financial period and which are unpaid. Due to their short-term nature they are measured at amortised cost and are not discounted. The amounts are unsecured and are usually paid within 30 days of recognition.

Borrowings

Loans and borrowings are initially recognised at the fair value of the consideration received, net of transaction costs. They are subsequently measured at amortised cost using the effective interest method.

The accompanying notes form part of these financial statements.

11

Notes to the Financial Statements

For the Year Ended 30 June 2022

(e) Cash and cash equivalents

Cash and cash equivalents comprises cash on hand, demand deposits and short-term investments which are readily convertible to known amounts of cash and which are subject to an insignificant risk of change in value.

(f) Share capital

Ordinary shares are classified as equity. Incremental costs directly attributable to the issue of ordinary shares and share options which vest immediately are recognised as a deduction from equity, net of any tax effects.

(g) New, revised or amending Accounting Standards and Interpretations adopted

The company has adopted all of the new, revised or amending Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') that are mandatory for the current reporting period.

Any new, revised or amending Accounting Standards or Interpretations that are not yet mandatory have not been early adopted.

(g) Significant accounting judgements, estimates and assumptions

The preparation of the financial statements requires management to make judgements, estimates and assumptions that affect the reported amounts in the financial statements. Management continually evaluates its judgements and estimates in relation to assets, liabilities, contingent liabilities, revenue and expenses. Management bases its judgements, estimates and assumptions on historical experience and on other various factors, including expectations of future events, management believes to be reasonable under the circumstances. The resulting accounting judgements and estimates will seldom equal the related actual results. The judgements, estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities (refer to the respective notes) within the next financial year are discussed below.

Recoverability of loans and receivables

Lifetime ECLs are the ECLs that result from all possible default events over the expected life of loan and other receivables and are a probability-weighted estimate of credit losses. Credit losses are measured at the present value of all cash shortfalls (i.e. the difference between the cash flows due to the entity in accordance with the contract and the cash flows that the entity expects to receive).

The entity analyses the current observable data as a means of estimating lifetime ECL. The current observable data may include:

- conditions specific to the asset to which the receivable relates; and
- financial difficulties of a counterparty, or probability that a counterparty will default on payment. Debts that are known to be uncollectable are provided for or written off when identified.

The accompanying notes form part of these financial statements.

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements
For the Year Ended 30 June 2022

Revenue from continuing operations		2022	2021
		\$	\$
Revenue from other sources			
- provision of services		<u>243,252</u>	-
Total Revenue		<u><u>243,252</u></u>	-
4 Finance Income and Expenses			
Finance income			
		2022	2021
		\$	\$
Interest income			
- Assets measured at amortised cost		635	558
Dividend income			
Finance expenses			
		2022	2021
		\$	\$
Other finance expenses		1,596	1,561
5 Cash and Cash Equivalents			
		2022	2021
		\$	\$
Cash at bank and in hand		28,131	145,569
Short-term deposits		160,000	160,000
		<u>188,131</u>	<u>305,569</u>
6 Trade and Other Receivables			
		2022	2021
		\$	\$
CURRENT			
Trade receivables		<u>267,577</u>	-
		<u>267,577</u>	-

Customers with balances past due but without provision for impairment of receivables amount to \$Nil as at 30 June 2022 (2021: \$Nil).

The company did not consider a credit risk on the aggregate balances after reviewing credit terms of customers based on recent collection practices.

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements For the Year Ended 30 June 2022

	2022	2021
	\$	\$
NON-CURRENT		
Loans to members	121,685	-
	<u>121,685</u>	<u>-</u>

The Company has provided a loan where the nature of the relationship between the Lender and Borrower means the Loan is of a kind to which Division 7A of Part III of the Tax Act applies. The loan has a term of 7 years. Interest is calculated on the daily outstanding balance and debited to the loan on 30 June in each income year. The borrower must make annual repayments in each income year.

The company did not consider a credit risk on the loan balance based on the borrower complying with the term and conditions of the loan.

8 Other non-financial assets

	2022	2021
	\$	\$
CURRENT		
Prepayments	53,876	34,009
	<u>53,876</u>	<u>34,009</u>

9 Trade and Other Payables

	2022	2021
	\$	\$
CURRENT		
Trade payables	44,836	28,150
GST payable	(8,971)	(13,769)
	<u>35,865</u>	<u>14,381</u>

Trade and other payables are unsecured, non-interest bearing and are normally settled within 30 days. The carrying value of trade and other payables is considered a reasonable approximation of fair value due to the short-term nature of the balances.

	2022	2021
	\$	\$
NON-CURRENT		
Unsecured liabilities:		
Related party payables	-	65,124
	<u>-</u>	<u>65,124</u>

The related party loan payable is unsecured and interest free.

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements

For the Year Ended 30 June 2022

11 Other Financial Liabilities

	2022	2021
	\$	\$
CURRENT		
Other financial liabilities	64,131	32,700

	2022	2021
	\$	\$
Ordinary shares	1,021,382	571,585

Loans provided by the related party of \$449,797 during the year was converted to equity at \$1 per share resulting in issue of 449,797 shares.

14 Auditors' Remuneration

	2022	2021
	\$	\$
Remuneration of the auditor		
- auditing of financial statements	20,000	14,500

15 Contingencies

In the opinion of the Directors, the Company did not have any contingencies at 30 June 2022 (30 June 2021: None).

16 (a) Reconciliation of result for the year to cashflows from operating activities

Reconciliation of net income to net cash provided by operating activities:		
	2022	2021
	\$	\$
Net profit/ (loss) attributable to members of the company	(145,897)	(233,482)
Cash flows excluded from profit attributable to operating activities		
Non-cash flows in profit:		
Changes in assets and liabilities:		
- (increase)/decrease in trade and other receivables	(243,252)	-
- (increase)/decrease in prepayments	(19,868)	(8,038)
- increase/(decrease) in trade and other payables	(2,840)	19,127
Cashflows from operations	(411,857)	(222,393)

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements For the Year Ended 30 June 2022

17 Events Occurring After the Reporting Date

The financial report was authorised for issue on 04 November 2022 by the board of directors.

No matters or circumstances have arisen since the end of the financial year which significantly affected or may

18 Financial Risk Management

The Company's financial instruments consist mainly of deposits with the bank, accounts receivable and payable and loans.

The totals for each category of financial instruments, measured in accordance with AASB 9 as detailed in the accounting policies to these financial statements, are as follows:

	2022 \$	2021 \$
<i>Financial Assets</i>		
Cash and cash equivalents	188,131	305,569
Trade and Other Receivables	267,577	-
Other assets	53,876	34,009
Total financial assets	<u>509,584</u>	<u>339,578</u>
<i>Financial Liabilities</i>		
Trade and other payables – due within 3 months	35,865	14,380
Other financial liabilities – due within 12 months	64,131	32,700
Borrowings – due within 12 to 24 months	-	65,124
Total financial liabilities	<u>99,996</u>	<u>112,204</u>

Financial Risk Management Policies

The Board of Directors has the responsibility for, amongst other issues, monitoring and managing financial risk exposures of the Company. They review the effectiveness of internal controls relating to price risk, financing risk and interest rate risk. The overall risk management strategy seeks to minimise potential adverse effects on financial performance by reviewing credit risk policies and future cash flow requirements.

Specific Financial Risk Exposures and Management

The main risks the Company is exposed to through its financial instruments are liquidity risk and market risk consisting of interest rate risk and pricing risk.

(a) Liquidity risk

Liquidity risk arises from the possibility that the Company might encounter difficulty in settling its debts or otherwise meeting its obligations related to financial liabilities. The Company manages this risk through the following mechanisms:

- prepared forward looking cash flow analysis in relation to its operational, investing and financing activities;
- maintaining a reputable credit profile;
- managing credit risk related to financial assets.

Notes to the Financial Statements For the Year Ended 30 June 2022

(b) **Market Risk**

i. **Price risk**

Price risk relates to the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in the market prices largely due to demand and supply factors for commodities. The company is not exposed to price risk.

Note 18 Financial Risk Management (cont)

ii. **Interest Rate Risk**

Exposure to interest rate risk arises on financial liabilities recognised at the end of the reporting period whereby a future change in interest rate will affect future cash flows. Interest rate risk is managed by using fixed rate debt, no sensitivity analysis was therefore deemed necessary.

iii. **Foreign exchange risk**

The company is not exposed to foreign exchange risk.

Fair Value Estimation

All fair values of financial assets and financial liabilities are assumed to approximate their fair values due to their short-term nature.

19 Capital Management Policies and Procedures

Management controls the capital of the Company in order to maintain a good debt to equity ratio, provide the shareholders with adequate returns and to ensure that it can fund its operations and continue as a going concern.

- The Company's capital management objectives aim to:
- Ensure that the Company complies with its AFSL requirements;
- Ensure sufficient capital resources to support the Company's operational requirements;
- Continue to support the Company's credit worthiness; and
- Safeguard the Company's ability to continue as a going concern.

Management effectively manages the Company's capital by assessing its financial risks and adjusting its capital structure in response to changes in these risks and in the market. These responses include the management of debt level, distributions to shareholders and share issues. There have been no changes in the strategy adopted by management to control the capital of the Company since the prior year.

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements For the Year Ended 30 June 2022

Note 20. Reconciliation of liabilities arising from financing activities

	2021	Cash inflows	Cash outflows	Non-cash charges	2022
	\$	\$	\$	\$	\$
Loans and advances	-	449,797	-	(449,797)*	-
Borrowings	97,824	449,797	33,693	-	64,131
	<u>97,824</u>	<u>899,594</u>	<u>33,693</u>	<u>(449,797)</u>	<u>64,131</u>
	2020	Cash inflows	Cash outflows	Non cash charges	2021
Loans and advances	-	488,000	-	(488,000)*	-
Borrowings	45,273	52,551	-	-	97,824
	<u>45,273</u>	<u>540,551</u>	<u>-</u>	<u>(488,000)</u>	<u>97,824</u>

*Converted to equity

NOTE 21: KEY MANAGEMENT PERSONNEL & RELATED PARTIES

Directors

The following persons were directors of keystone Asset Management Ltd during the financial year:

Paul Chiodo
Mark Yorston

Directors Fees

No Directors Fees were paid during the financial year.

Related Parties

Malana Management Pty Ltd is the director related entity and the company is a trustee of Chiodo Diversified Property Fund.

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements For the Year Ended 30 June 2022

Transactions with related parties

The following transactions occurred with related parties:

	2022	2021
	\$	\$
<i>Loans to/from related parties</i>		
Loans from Malana Management Pty Ltd	64,131	97,824
Loans to Malana Management Pty Ltd	121,685	-
<i>Revenue through transaction and Trustee fees</i>		
Trustee fees	243,252	-

Terms and conditions

All transactions were made on normal commercial terms and conditions and at market rates.

22. INCOME TAX EXPENSE

a. The components of income tax comprises: -	2022	2021
	\$	\$
Current tax	-	-
Deferred tax - recognition of temporary differences	(36,474)	(60,705)
Tax rate change		
Derecognition of deferred tax asset/liability	36,474	60,705
	<hr/>	<hr/>
	-	-
b. The prima facie tax on profit differs from the income tax provided in the financial statements as follows:		
Prima facie tax on profit/(loss) at 25% (2021: 26%)	(36,474)	(60,705)
Tax effect of amounts which are not deductible/(taxable):		
Derecognition of deferred tax asset/liability	36,474	60,705
	<hr/>	<hr/>
Income tax (benefit)/ expense	-	-

Keystone Asset Management Ltd

58 612 443 008

Notes to the Financial Statements
For the Year Ended 30 June 2022

22 Statutory Information

The registered office and principal place of business of the company is:

Keystone Asset Management Ltd

Unit 704

434 St Kilda Road

MELBOURNE VIC 3004

Keystone Asset Management Ltd

58 612 443 008

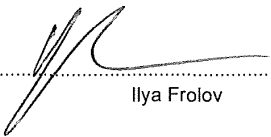
Directors' Declaration

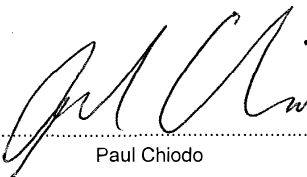
In the directors' opinion:

- the attached financial statements and notes thereto comply with the Corporations Act 2001, the Accounting Standards, the Corporations Regulations 2001 and other mandatory professional reporting requirements;
- the attached financial statements and notes thereto comply with International Financial Reporting Standards as issued by the International Accounting Standards Board as described in note 1 to the financial statements;
- the attached financial statements and notes thereto give a true and fair view of the company's financial position as at 30 June 2022 and of its performance for the financial year ended on that date; and
- there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

Signed in accordance with a resolution of directors made pursuant to section 295(5)(a) of the Corporations Act 2001.

On behalf of the directors

Director

Ilya Frolov

Director

Paul Chiodo

Dated 22 November 2022

INDEPENDENT AUDITOR'S REPORT

To the members of Keystone Asset Management Limited

Report on the Audit of the Financial Report

Opinion

We have audited the financial report of Keystone Asset Management Limited (the Company), which comprises the statement of financial position as at 30 June 2022, the statement of profit or loss and other comprehensive income, the statement of changes in equity and the statement of cash flows for the year then ended, and notes to the financial report, including a summary of significant accounting policies, and the directors' declaration.

In our opinion the accompanying financial report of Keystone Asset Management Limited, is in accordance with the *Corporations Act 2001*, including:

- (i) Giving a true and fair view of the Company's financial position as at 30 June 2022 and of its financial performance for the year ended on that date; and
- (ii) Complying with Australian Accounting Standards and the *Corporations Regulations 2001*.

Basis for opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's responsibilities for the audit of the Financial Report* section of our report. We are independent of the Company in accordance with the *Corporations Act 2001* and the ethical requirements of the Accounting Professional and Ethical Standards Board's *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

We confirm that the independence declaration required by the *Corporations Act 2001*, which has been given to the directors of the Company, would be in the same terms if given to the directors as at the time of this auditor's report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Other information

The directors are responsible for the other information. The other information obtained at the date of this auditor's report is information included in the Director's report, but does not include the financial report and our auditor's report thereon.

Our opinion on the financial report does not cover the other information and accordingly we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work we have performed on the other information obtained prior to the date of this auditor's report, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Responsibilities of the directors for the Financial Report

The directors of the Company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards and the *Corporations Act 2001* and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Company or to cease operations, or has no realistic alternative but to do so.

Auditor's responsibilities for the audit of the Financial Report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website (<http://www.auasb.gov.au/Home.aspx>) at:

http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf

This description forms part of our auditor's report.

BDO Audit Pty Ltd



C R Jenkins

Director

Brisbane, 22 November 2022

Tab 26

From: Leopold Bailey <leopoldbailey@quinnemanuel.com>
Sent: Wednesday, 20 May 2026 11:23 AM
To: Thomas Kelly; qe-etsl; Asia Lenard
Cc: Kim MacKay; Natasha Toholka; Visna Hemachandra
Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]
Attachments: 20260520 AFCA complaints datav2.xlsx

Follow Up Flag: Follow up
Flag Status: Flagged

 External email >

 First time sender >

Dear Tom

In answer to your questions:

1. The data is complaints against ETSL only.
2. All investments were made on the advice of licensed advisers - the fund is not available except through an adviser.

We also **attach** an updated version of the AFCA complaints data which should be used in preference to the version attached to my email below, which was incomplete.

Kind regards

Leopold Bailey | Associate

Quinn Emanuel Urquhart & Sullivan | Level 15, 111 Elizabeth Street, Sydney NSW 2000

Direct +61 2 9146 3541 | Mobile +61 426 299 631 | leopoldbailey@quinnemanuel.com | www.quinnemanuel.com

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From: Thomas Kelly <thomas.kelly@nortonrosefulbright.com>

Sent: Tuesday, May 19, 2026 8:47 PM

To: Leopold Bailey <leopoldbailey@quinnemanuel.com>; qe-etsl <qe-etsl@quinnemanuel.com>; Asia Lenard <asialenard@quinnemanuel.com>

Cc: Kim MacKay <kim.mackay@nortonrosefulbright.com>; Natasha Toholka

<natasha.toholka@nortonrosefulbright.com>; Visna Hemachandra <visna.hemachandra@nortonrosefulbright.com>

Subject: RE: Shield Master Fund - proposed interim distribution [NRF-APAC.1077791.4072730.FID3455425]

[EXTERNAL EMAIL from thomas.kelly@nortonrosefulbright.com]

Dear Leopold

Thank you for sending us the below. Are you able to clarify the below for us please?

1. Does the data provided below relate to AFCA complaints against ETSL, against financial advice firms, or both?
2. Is ETSL able to inform us of the extent to which members of its funds/platforms who invested in the SMF did so on the advice of a financial advice form (whether or not the members have subsequently made a complaint to AFCA)?

Regards

Tom

Thomas Kelly | Special Counsel
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6443 | Mob +61 429 836 553 | Fax +61 3 8686 6505
thomas.kelly@nortonrosefulbright.com

NORTON ROSE FULBRIGHT
nortonrosefulbright.com

NOTICE OF FILING

Details of Filing

Document Lodged: Concise Statement
Court of Filing FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 24/02/2026 5:37:13 PM AEDT
Date Accepted for Filing: 3/03/2026 5:56:14 PM AEDT
File Number: VID212/2026
File Title: INTERPRAC FINANCIAL PLANNING PTY LTD ACN 076 093 680 v
AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY LIMITED ACN
620 494 340
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form NCF1

CONCISE STATEMENT

No. of

Federal Court of Australia
 District Registry: Victoria
 Division: General

INTERPRAC FINANCIAL PLANNING PTY LTD (ACN 076 093 680)
 Plaintiff

AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY LIMITED (ACN 620 494 340)
 Defendant

A. IMPORTANT FACTS GIVING RISE TO THE CLAIMInterprac

1. The Plaintiff (**Interprac**) is a financial services licensee and provides services to financial advisers wishing to provide financial product advice to persons. Those financial advisers are required under section 911A of the *Corporations Act 2001* (Cth) (**Act**) to either hold an Australian Financial Services Licence (**AFSL**) themselves, or to be authorised as a representative of another person that holds an AFSL. Interprac provides licensing services to such financial advisers by appointing them as its Authorised Representatives under section 916A of the Act, thereby enabling them to provide financial product advice and other financial services under Interprac's AFSL without the requirement to obtain their own AFSL.

AFCA

2. The Defendant (**AFCA**) is the operator of the external dispute resolution scheme authorised by the Minister pursuant to section 1050 of the Act. Interprac is required to be a member of the AFCA scheme to maintain its AFSL by reason of section 912A(2)(c) of the Act.
3. Interprac became a member of AFCA on 14 September 2018. On becoming a member of AFCA, Interprac and AFCA entered into a contractual relationship on the terms contained within the AFCA Complaint Resolution Scheme Rules (**AFCA Rules**) as varied from time to time. The AFCA Rules are determined and approved by Australian Security and Investment Commission (**ASIC**) pursuant to the Act.
4. The AFCA Rules require AFCA to, in dealing with complaints:
 - a. Consider complaints submitted to it in a way that is independent, impartial and fair under Rule A.2.1(c);
 - b. To do what is fair in all the circumstances under Rule A.2.1(d);
 - c. Consider whether when forming an AFCA Panel, they will be able to determine the complaint fairly under Rule A.13.2; and
 - d. Act in a way which is fair in all the circumstances having regards to, amongst other things, legal principles under Rule A.14.2.

Filed on behalf of the Plaintiff	InterPrac Financial Planning Pty Ltd		
Prepared by	Catherine Ballantyne, Solicitor		
Law firm	Hunt & Hunt Lawyers		
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Email	cballantyne@huntvic.com.au		
Address for service	Level 5, 114 William Street Melbourne VIC 3000		

5. Section 1051 of the Act establishes the statutory mandatory requirements that AFCA must follow in operating the scheme, including resolving complaints in a way that is fair as provided for by section 1051(4)(b). Section 1052 of the Act requires AFCA to follow the mandatory requirements set out in Section 1051 of the Act.

Shield Master Fund

6. The Shield Master Fund (**Shield**) is a registered managed investment scheme within the meaning of the Act. The Responsible Entity for Shield is Keystone Asset Management Ltd (ACN 612 443 008), holder of AFSL number 491477 (**Keystone**).
7. In February 2024, ASIC made interim stop orders in respect of Shield preventing any new investment into it. ASIC held concerns about potential breaches of financial services laws including misleading conduct, disclosure failures and conflicts of interest failures.
8. In mid-2024, Shield collapsed and on 27 August 2024, the Federal Court of Australia appointed receivers and managers of the property of Keystone in respect of Shield. On 5 September 2024, the Court appointed administrators for Keystone. On 22 November 2024, the liquidator for Keystone published a Significant Event Notice in which it provided a preliminary estimate of the value of the realisable assets of Shield. This estimated net assets of Shield to be between \$205 – \$238 million as at 31 May 2024. On 2 December 2024, Keystone was wound up. On 10 April 2025 Shield was terminated.
9. Approximately 5,800 people had invested into Shield and were impacted. On 1 December 2025, the receivers for Keystone applied to the Court for an interim distribution to Shield investors.
10. The collapse of Shield has been widely reported on in the media and by ASIC, and is interconnected with the similar collapse of the First Guardian managed funds.

Ferras Merhi

11. At all relevant times, Mr Ferras Merhi was an Authorised Representative of Interprac authorised to provide financial product advice to retail clients.
12. On 30 June 2022, Mr Merhi provided financial product advice (**Advice**) to a retail client (**Complainant**) in which he recommended that the Complainant establish an account in the Macquarie Superannuation Plan (**MSP**), a superannuation platform through which people can invest their superannuation monies into various investments including cash, managed funds and term deposits. The trustee for the MSP is Macquarie Investment Management Limited (ACN 002 867 003) (**MIML**).
13. One of the available investments on the MSP investment menu during 2022 was Shield.
14. As part of his Advice, Mr Merhi also recommended that once the Complainant open an account in the MSP, they then rollover their existing superannuation monies into the MSP and invest most of those monies into Shield.

Investment Selection

15. As part of its risk controls, Interprac restricted its Authorised Representatives to recommending financial products that were on its Approved Product List (**APL**) or otherwise approved by Interprac.
16. Managed funds were taken to be included on the APL if they received a 3.5 / 5 star rating from an independent investment research agencies including SQM Research Pty Ltd (ACN 122 592 036) holder of AFSL number 421913 (**SQM**).

17. On 6 October 2021, SQM had reviewed Shield and published a report in which a rating of 3.75 / 5 being 'Favourable' was given with the following description:

'SQM Research concludes the Fund has a moderate potential to outperform over the medium-to-long term. Past performance has tended to be reasonable. Management is experienced and displays investment-grade quality. There are no corporate governance concerns, or they are of a minor nature'

18. As a result of the SQM rating of Shield, it was taken to be included on Interprac's APL. Interprac's Authorised Representatives had access to and routinely used SQM's research reports on which to base their recommendations.

Investment Loss & Complaint

19. Following the collapse of Shield, people invested into Shield lost access to their investments as Keystone was put into receivership and administration.
20. In December 2024, the Complainant lodged a complaint (12-24-169714) with AFCA against Interprac in relation to the financial advice provided to them by Mr Merhi (**Complaint**).
21. On 24 December 2025, AFCA issued its determination of the Complaint, finding that the Advice was not in the best interests of the Complainant and Mr Merhi had breached his best interests duty in section 961B of the Act in providing the Advice.
22. AFCA consequently determined that Interprac, as Mr Merhi's licensee, was solely responsible to compensate the Complainant for the money, referable to lost investment earnings (**Lost Investment Earnings**), they lost in Shield (**Determination**).

Enforcement Action

23. Following the collapse of Shield, ASIC has taken enforcement action against multiple other parties for their involvement in, or otherwise brought into focus by the collapse. These include:
- a. Proceedings against Mr Merhi alleging a multitude of contraventions of the Act and the ASIC Act including the making of false or misleading representations and engaging in unconscionable conduct;
 - b. Proceedings against MIML alleging it failed to act honestly, efficiently and fairly;
 - c. Proceedings against SQM alleging it issued misleading or deceptive research reports about Shield.
24. MIML has admitted that it contravened sections 912A(1)(a) and 912A(5A) of the Act (**MIML's Admission**). On 24 September 2025, MIML provided a court-enforceable undertaking to ensure Macquarie pays to affected members 100% of the amounts they invested in Shield less any amounts withdrawn.

B. THE RELIEF SOUGHT FROM THE COURT

25. Interprac seeks declarations that AFCA has:
- a. Contravened Section 1052 of the Act by failing to comply with Section 1051(4)(b) of the Act by failing to afford fairness in all the circumstances to the Plaintiff in determining the Complaint; and
 - b. Contravened rules A.2.1(c), A.2.1(d), A.13.2 and/or A.14.2 of the AFCA Rules by failing to afford fairness in all the circumstances in determining the Complaint.

26. Interprac does not seek to disturb the Determination to the extent that it requires Interprac to pay compensation to the Complainant in the amount of \$118,931.15, which has been paid. It does not seek repayment of the amount paid from the Complainant. Interprac seeks relief directed to AFCA's process, including AFCA's use of the Determination as a Lead Decision to determine other complaints arising from the collapse of Shield and First Guardian.

C. THE PRIMARY LEGAL GROUNDS UPON WHICH RELIEF IS SOUGHT

27. ASIC's enforcement actions and MIML's admission, therefore, suggest that each of MIML, SQM and Mr Mehri contributed to the circumstances that led to the collapse of Shield and the Complainant's Lost Investment Earnings.
28. In addition to the foregoing parties, the circumstances outlined above also suggest that the following entities could have contributed to the collapse of Shield, thereby causing the Complainant's Lost Investment Earnings.
 - a. Keystone and its directors for potential mismanagement and misconduct in operating Shield;
 - b. Omni, the 'lead generator' that engaged the Complainant and advised them that they should rollover their superannuation benefits;
29. In the premises, fairness required that AFCA either:
 - a. join all parties within its jurisdiction who may bear responsibility for the Complainant's loss, and to assess the relative responsibility of those parties for the Complainant's Lost Investment Earnings; or
 - b. decline to deal with the Complaint on the basis that AFCA could not fairly determine liability or loss in circumstances where significant alleged wrongdoers were beyond its jurisdiction.
30. AFCA's jurisdiction and power to join other parties to a complaint is limited under the AFCA Rules only to parties that are members of the AFCA scheme. From the relevant parties, this means only MIML, Keystone and Interprac, whereas SQM, Mr Mehri and Omni are excluded from the scheme.
31. The effect of those limitations is that it is not possible for AFCA to join all the relevant parties to the Complaint, or to apportion responsibility between all of the alleged wrongdoers.
32. Therefore, because fairness required the apportionment of liability across the liable parties, and AFCA is prevented on jurisdictional grounds from being able to do so, it is not possible for AFCA to fairly deal with the Complaint, and further all such complaints flowing from the collapse of Shield in a way that was fair in all the circumstances. That position is exacerbated by AFCA's decision not to join either of MIML or Keystone, which do fall within its jurisdiction and which AFCA had a discretion to join to the Complaint.
33. In those circumstances, AFCA ought to have recognised that its jurisdictional limitations prevented it from fairly determining the Complaint and exercised its discretion under Rule C.2.2(a) of the AFCA Rules to exclude the Complaint on the basis that dealing with it was inappropriate, given the multiplicity of responsible parties and the inability to bring them all before AFCA.
34. Instead, AFCA failed to join the parties within its jurisdiction, failed to recognise that its jurisdictional limitations caused unfairness, and failed to exercise its discretion to exclude the Complaint. By doing so, AFCA breached the AFCA Rules, breached its obligations under the Act and breached its contractual obligations to Interprac.
35. The apportionment issue is supplemented by two further issues:

- a. Keystone is in liquidation and an estimated \$205 - \$238 million will be recovered for distribution to impacted investors. This means that the loss to any investor is currently unquantifiable and any attempt at its quantification is flawed;
 - b. Once an amount is recovered and distributed to investors, that amount will flow into those investors' superannuation accounts and become preserved and inaccessible;
 - c. Any monies paid today in compensation may result in complainants being over-compensated, to the detriment of the parties paying that compensation; and
 - d. Because the recovered monies from Keystone will have entered the superannuation system and become preserved, it will not be possible for any parties paying compensation today, such as Interprac to be reimbursed for any over-compensation that has been paid.
36. AFCA has, in the Determination, failed to take into account this issue of unquantifiability of loss, the risk of over-compensation, and the inability for repayment, and instead assumed a full and complete loss of all monies invested into Shield. This gives rise to a real risk of double recovery in favour of the Complainant and other complainants, at the expense of Interprac and other compensating parties.
37. This approach by AFCA is, in all the circumstances, unfair and constitutes a breach of the AFCA Rules, a contravention of AFCA's obligations under the Act and a breach of its contractual obligations owed to Interprac. AFCA has further made its Determination of the Complaint as a "Lead Decision", namely a decision that will be applied to future similar complaints as a "template" and by which decision makers within AFCA will speedily determine those other complaints, such that the unfairness identified above will be repeated across future complaints against Interprac relating to Shield or First Guardian.

D. ALLEGED DETRIMENT

38. There is the immediate detriment to Interprac of the compensation AFCA has determined it pay to the Complainant in the amount of \$118,931.15, being the total Lost Investment Earnings, which it has paid. Interprac does not seek to recover that amount.
39. The detriment that will flow from AFCA's determination of the Complaint which Interprac is concerned with, is the treatment of all future complaints stemming from the collapses of the Shield and First Guardian funds by reason of AFCA's 'Lead Decision'.
40. With ASIC's urging of Shield and First Guardian investors to lodge complaints with AFCA, it is expected that Interprac will be the subject of over 800 such complaints. With the application of the 'template' created by the lead decision in this Complaint, the lack of fairness afforded to Interprac, and the breaches by AFCA of the AFCA Rules, Act and contractual obligations to Interprac will be magnified and have disastrous financial and reputational impacts on Interprac.

This Concise Statement was prepared by C Baranyai and K Li and settled by W EM Lye of Counsel.

Certificate of lawyer

I, Catherine Ballantyne, Solicitor for the Plaintiff, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 24 February 2026



Signed by Catherine Ballantyne
Solicitor for the Plaintiff

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8 May 2026

Natasha Toholka, Kim MacKay and Thomas Kelly
Norton Rose Fulbright Australia
Level 38, Olderfleet
477 Collins Street
Melbourne VIC 3000

Dear Colleagues

**ASIC v Keystone Asset Management Limited (receivers and managers appt) (in liq)
("Keystone") Federal Court of Australia proceeding VID536 of 2024 ("Proceeding") –
Compensation Scheme of Last Resort ("CSLR")**

- 1 We refer to your letter to us dated 4 May 2026 in relation to the possible implications of CSLR payments to Shield Master Fund (**Shield**) investors on the proposed interim distribution to unitholders of Shield.
- 2 For the reasons outlined in this letter:
 - (a) We consider that there is both a contractual requirement and a pressing rationale for the interim distribution to be made to Shield unitholders as soon as possible.
 - (b) At least in relation to units held by Macquarie Group entities, the requirement and rationale are entirely unaffected by CSLR's position.
 - (c) We do not believe that CSLR's position otherwise affects the requirement or rationale. Indeed, proceeding with the interim distribution as soon as possible is likely to reduce the level of complexity in CSLR ultimately paying compensation where authorised to do so.

Requirement and rationale for interim distribution to be made as soon as possible

- 3 As outlined in our previous correspondence, we consider that the Constitution of Shield requires the Receivers to, as soon as reasonably practicable after termination of the trust (which occurred over a year ago):¹
 - (a) sell and realise the scheme property (which has now occurred in respect of funds previously invested with Bell Potter);² and
 - (b) distribute proceeds to unitholders (subject to retaining funds for potential contingent expenses and liabilities).³
- 4 Keystone's application for Court approval of the interim distribution is consistent with that requirement. It is also founded, in part, on alleviating hardship to underlying investors in Shield.
- 5 We consider that there is a further rationale for prioritising the interim distribution in respect of the Macquarie Group entities that are unitholders in Shield:

¹ Clause 21.2

² Clause 21.6(b)

³ Clause 21.6(d)

- (a) As you are aware, in September 2025, Macquarie Group entities committed to paying **'Affected Investors'** (being persons who invested in Shield through Macquarie Wrap platforms) the **'Net Capital Amount'** (being the amount deducted from the Affected Investor's cash hub in order to give effect from an investment direction, by the Affected Investor, to invest in Shield, less any amounts redeemed from Shield).⁴
- (b) As a result, Macquarie Group entities have paid Affected Investors approximately \$321 million, which comprised:
 - (i) a cash for asset swap amount, under which Macquarie made a cash payment to Affected Investors in return for acquiring beneficial ownership of Shield units; plus
 - (ii) an ex gratia payment so that the total amount paid was equal to the Net Capital Amount.
- (c) As Macquarie Group entities are now the legal and beneficial owners of Shield units, the interim distribution will partially offset the amounts outlaid by Macquarie to pay Affected Investors the Net Capital Amount.
- (d) As outlined in our previous correspondence, Macquarie suffers significant losses while the proceeds of Shield scheme property remain undistributed. Specifically, Macquarie Group's annualised return on equity for the financial years 2022 to 2025 has ranged from 10.8% to 18.7%, which significantly exceeds the returns that will be available while the proceeds are invested in an ordinary bank account.
- (e) There was a strong public interest in prioritising the prompt return of capital to Affected Investors by Macquarie.⁵ Correspondingly, there is a strong public interest in encouraging other parties in like circumstances to voluntarily undertake to prioritise the prompt return of capital.⁶
- (f) Therefore, prioritising the interim distribution is the right thing to do by Macquarie, having advanced the Net Capital Amount to Affected Investors and suffering losses while available proceeds are not distributed. It is also in the public interest so as not to discourage other parties in like circumstances from similarly prioritising the prompt return of capital to underlying investors.

6 We agree with your observation that the Shield Constitution requires that distributions be made to all unitholders, in proportion to the number of units they hold in a class and does not permit distribution on any other basis.

7 Therefore the reasons for prioritising the interim distribution to alleviate hardship and the reasons in paragraph 5 both support making the interim distribution as soon as possible.

Rationale in relation to Macquarie unitholders is unaffected by CSLR position

8 Affected Investors may (notwithstanding that Macquarie has paid them their Net Capital Amount), seek compensation from financial firms that provided personal financial advice recommending that they invest in Shield.

9 AFCA has published a lead decision which considers the approach to liability and compensation in that scenario. Specifically, the AFCA panel determined that:⁷

- (a) The relevant financial firm (Interprac Financial Planning Pty Ltd) did not identify the Affected Investor's situation or needs, nor make reasonable inquiries into the Affected Investor's relevant circumstances and therefore gave advice that was inappropriate and not in the

⁴ Court Enforceable Undertaking dated 25 September 2025: <https://download.asic.gov.au/media/r0jaspj0/031925498-ceu-macquarie-investment-management.pdf>

⁵ *ASIC v MIML* [2026] FCA 303 [26(c)].

⁶ See eg *ASIC v MIML* [2026] FCA 303 [26(f)].

⁷ <https://my.afca.org.au/search/publisheddecisions/kb-article/?id=3dab7e9d-b9ff-f011-8406-6045bde55054>

Affected Investor's best interests. The relevant financial firm also gave factually incorrect and unreasonable information about Shield.

- (b) The relevant financial firm therefore caused *all* of the losses suffered by the Affected Investor.
 - (c) However, as Macquarie had already paid the Affected Investor the Net Capital Amount, the amount of loss that the financial firm was required to pay under the AFCA determination was calculated by reference to the investment returns that would have been earned in the Affected Investor's previous fund, plus interest. That is, the amount paid by Macquarie through the cash for asset swap and ex gratia payment reduced the amount of compensation otherwise payable by the financial firm under the AFCA determination.
- 10 Affected Investors will only be eligible to apply to CSLR if (amongst other things) they have an AFCA determination in their favour.⁸ The purpose of the lead decision is to enable consistent decision-making across AFCA complaints. Therefore, it can be expected that AFCA will adopt the approach outlined above in determining complaints by other Affected Investors.
- 11 The effect of the lead decision is that AFCA determinations which lead to claims to the CSLR will already be reduced by the Net Capital Amount paid by Macquarie.
- 12 The effect of Macquarie acquiring the beneficial interest in Shield units from Affected Investors and paying them the Net Capital Amount is therefore that:
- (a) Affected Investors will no longer receive any distributions from Shield and therefore questions about whether there need to be any payment directions or rights of subrogation in favour of CSLR in respect of those distributions will not arise.
 - (b) Relatedly, Macquarie payments of the Net Capital Amount to investors will have reduced the amount of compensation claims that may ultimately be made to CSLR before the claims reach CSLR.
 - (c) The timing of any additional CSLR payments to Affected Investors is therefore irrelevant to the rationale for making the interim distribution to Macquarie unitholders as soon as possible (as outlined above).

Rationale for other unitholders is also unaffected

- 13 Naturally, Macquarie welcomes steps by AFCA and CSLR to act in a coordinated way to facilitate underlying investors in Shield having a no-cost avenue for:
- (a) complaining about the financial advice that caused them to invest in Shield;
 - (b) recovering their losses from the financial advice licensees where possible; and
 - (c) where that is not possible, having recourse to the CSLR.
- 14 We also welcome indications that CSLR is considering approaches to minimise delays in resolving claims that make their way to CSLR.
- 15 Notwithstanding those indications, it is likely to take many months and potentially years for CSLR payments to reach any material portion of underlying investors, if they reach investors at all.
- 16 By way of illustration, looking at just one of the financial advice licensees that recommended investing in Shield, Interprac Financial Planning Pty Ltd (*Interprac*):
- (a) Financial advisers operating under Interprac's AFSL recommended 3,803 retail clients invest in Shield (of which approximately 2,400 invested through the Macquarie Wrap) and a further 4,362 retail clients invest in the First Guardian Master Fund (ie a total of 8,165 clients).⁹

⁸ Corporations Act sections 1064 and 1065.

⁹ ASIC v Interprac Financial Planning Pty Ltd VID1481/2025 Statement of Claim [24]

- (b) On 26 February 2026 Interprac's parent company, issued a Half Year Financial Report to the ASX which stated: *AFCA has received approximately 800 complaints from individuals exposed to the Shield and First Guardian investments. At the time of the sign-off to the accounts only one complaint has resulted in a Final Determination which Interprac Financial Planning has paid.* This indicates that less than 10% of the Interprac clients entitled to seek compensation through AFCA have lodged a complaint initiating that process and only one complaint had proceeded to a final determination (which we infer was the lead decision outlined above).
 - (c) On 24 February 2026 Interprac commenced proceedings in the Federal Court (VID212/2026) against AFCA seeking declarations that would prevent AFCA from determining complaints consistently with the lead decision outlined above. The current case management orders require a statement of claim to be filed by 12 June 2026 and provide for potential joinder of parties. These proceedings are likely to delay determination of complaints by AFCA in accordance with the lead decision.
 - (d) Consistently with this position, the correspondence from CSLR attached to you letter suggests that only a handful of complaints have reached the stage where there is an AFCA determination eligible to lodged with CSLR that has in fact been lodged with CSLR.
 - (e) The correspondence also indicates that there are significant uncertainties about the timeline to payments even once claims are lodged with CSLR, including that future claims will need to await an allocation of funding for FY2027 before they could be paid.
- 17 For the reasons outlined above, CSLR's position in relation to timing of payments will not affect the 90% of Interprac clients who are yet to lodge a complaint with AFCA and, having regard to the proceedings that Interprac has commenced against AFCA, together with uncertainties about CSLR funding allocation, will not assist the 10% that have lodged complaints within the foreseeable future. Therefore the imperative to make the interim distribution so as to alleviate immediate hardship to certain underlying investors who are approaching retirement age and will require access to their superannuation is not relevantly affected by the correspondence from CSLR.
- 18 Indeed, it is apparent from the correspondence that making the interim distribution as soon as possible will significantly simplify the situation for investors that have lodged AFCA complaints (and who have not received the Net Capital Amount from Macquarie). This is because the interim distribution amount can be factored into AFCA loss calculations, reducing the level of uncertainty in the amounts that would be the subject of a CSLR claim in due course.

Yours sincerely



James Campbell

Partner

Allens

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FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

To the Joint and Several Liquidators of Keystone Asset Management Limited (Receivers and Managers Appointed) (In Liquidation) ACN 612 443 008 (the "Company")

1. This is to state that the Company was on 28 August 2024, and still is, justly and truly indebted to:

My End Game Pty Ltd. ATF MY END GAME SUPERANUATION FUND full name, ABN

and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for 100,612.00 dollars and 0 cents

Particulars of the debt are:

Date	Consideration <small>(state how the debt arose)</small>	Amount	Remarks <small>(include details of voucher substantiating payment)</small>
<u>16/Nov/22</u>		<u>\$ 100,612.00</u>	<u>Shared Masterfund ' Advantage Diversified Property Class.</u>

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following:

I have placed full redemption request 02 29/11/23 however no money received in my SMSF bank account.

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount \$	Due Date

3. Signed by (select option):

I am the creditor personally.

I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: Keith Wilton

Dated: 28/01/26

Name: Keith Wilton

Occupation: Operations Manager

Address: 8 Coombell Ave, Colebee, 2761, NSW.

RECEIVE REPORTS BY EMAIL

Do you wish to receive all future reports and correspondence from our office via email?

Yes No

Email: Keith.w@atlanticplumbing.au

This is the slip sheet of
"Calculations for Interim
Distribution Application -
26 May 2026"