

PRIMEWEST (PWG)
ASX RELEASE
17 NOVEMBER 2020

PRIMEWEST TO SUPPORT MIRA PROPOSAL TO ACQUIRE VITALHARVEST FREEHOLD TRUST

Primewest Group Limited ("**PWG**" or "**Primewest**") announces that its wholly owned subsidiary, the manager of Vitalharvest Freehold Trust ("**VTH**") has entered into a Facilitation Deed with Macquarie Agricultural Funds Management No. 2 Pty Limited as trustee for M2 Acquisition Trust ("**MAFML**") in support of the Macquarie Infrastructure and Real Assets ("**MIRA**") proposal to acquire all of the issued units in VTH for \$1.00 per unit by way of a trust scheme, or failing approval of the trust scheme the purchase of the assets of VTH for a cash consideration of \$300 million ("**the MIRA Proposal**").

The Facilitation Deed is conditional on the MIRA Proposal completing and at least 50% of VTH unitholders who are not associated with Primewest voting in favour of the trust scheme. In consideration for novating the management agreement for VTH to MAFML, Primewest will receive a fee of \$8.0m following the conditions being satisfied.

Primewest has also provided a voting intention statement in support of the MIRA Proposal, in the absence of a superior proposal, and provided a call option to MAFML over its 19.9% interest in VTH at an exercise price of \$1.00 per unit. The call option can only be exercised where a competing proposal to acquire more than 20% of the units in VTH, or otherwise acquire or merge with VTH, has been publicly announced within 7 months from the date the call option was granted.

David Schwartz, Managing Director of Primewest said "Having considered the feedback from Vitalharvest investors and the merits of the MIRA Proposal, Primewest's intention is to support the proposed transaction. Upon acquiring the manager of VTH, Primewest sought to reduce the variability in earnings associated with the current VTH leases. However, there was no certainty that this strategy was achievable in a suitable timeframe whilst the MIRA Proposal provides cash certainty to all investors at a material premium to the price of VTH units. As such, in the absence of a superior proposal, Primewest intends to vote in favour of the MIRA Proposal."

"Primewest continues to actively seek opportunities in the agricultural space and believes there is significant demand from investors to invest in the space. Primewest launched an unlisted Agricultural Fund in April 2020 and remains committed to investing in this sector."

Please refer to the attached Release from The Trust Company (RE Services) Limited in its capacity as responsible entity of Vitalharvest Freehold Trust (ASX:VTH)

This release is authorised by the Directors of Primewest Group Limited.

About Primewest

ASX listed Primewest (ASX:PWG) is an Australian property fund manager with over \$4.6 billion of assets under management across Australia and in the west coast of the USA. Established in 1995, PWG manages assets in the retail, industrial, commercial, residential, large format retail and agricultural property sectors with a focus to achieve maximum returns for holders of its stapled securities and investors in the underlying funds it manages.



ASX Announcement Vitalharvest Freehold Trust

17 November 2020

Vitalharvest Freehold Trust enters into scheme implementation deed with Macquarie Agriculture Fund

The Trust Company (RE Services) Limited ("**Responsible Entity**"), as responsible entity of Vitalharvest Freehold Trust ("**VTH**" or "**Trust**"), has entered into a scheme implementation deed with Macquarie Agricultural Funds Management Limited (ACN 122 169 368) ("**MAFM**") as trustee of Macquarie Agriculture Fund – Crop Australia 2 under which MAFM agrees to:

- acquire all of the issued units in the Trust at \$1.00 per unit by way of a trust scheme ("**Trust Scheme**"); or
- if the Trust Scheme is not approved by the requisite majority of unitholders (but unitholders approve a resolution under Listing Rule 11), the purchase of the assets of the Trust for a cash consideration of \$300 million ("**Asset Sale**"),

(the Trust Scheme and the Asset Sale together, the "**Transaction**").

Trust Scheme

Under the terms of the Trust Scheme, if implemented, VTH unitholders will be entitled to receive total cash consideration of \$1.00 per VTH unit. The cash consideration represents:

- a 27.4% premium to the undisturbed unit price of VTH units on Friday 6 November 2020 prior to the announcement by Macquarie Infrastructure and Real Assets ("**MIRA**") on Monday 9 November 2020 that an agricultural fund managed by it intended to seek the Responsible Entity's support for the Transaction¹; and
- an 11.8% premium to the Trust's current adjusted net asset value of \$0.894 per unit².

Asset Sale

VTH unitholders will also be asked to approve resolutions in connection with the Asset Sale, which will only proceed if the Trust Scheme is not approved by VTH unitholders by the requisite majority (but unitholders approve a resolution under ASX Listing Rule 11, which requires an ordinary resolution of unitholders to approve the sale of the Trust's main undertaking). Under the Asset Sale, MAFM would acquire the assets of the Trust for cash consideration of \$300 million.

As soon as practicable following completion of the Asset Sale, the Responsible Entity proposes to distribute the proceeds received from the Asset Sale (after meeting the outstanding liabilities of the Trust and provisioning for the estimated costs of winding down

¹ MIRA Media Release on Monday 9 November 2020

² 30 June 2020 Net Asset value reduced for the 1.5 cents per unit distribution paid on 30 September 2020.



the Trust) on a pro-rata basis to VTH unitholders, and to promptly wind up the Trust following that distribution.

If the Asset Sale is implemented, the Responsible Entity's expectation is that the distribution ultimately received by VTH unitholders should be equivalent to the consideration they would have received under the Trust Scheme.

VTH RE Board Recommendation

The VTH RE Board of Directors unanimously recommends that, in the absence of a superior proposal, VTH unitholders vote in favour of:

- the Trust Scheme, subject to the Independent Expert concluding (and continuing to conclude) that the Trust Scheme is fair and reasonable to, and in the best interests of, VTH unitholders; and
- the Asset Sale, subject to the Independent Expert concluding (and continuing to conclude) that the Asset Sale is fair and reasonable to, and in the best interests of, VTH unitholders (on the basis that it will only be implemented if the Trust Scheme is not approved by the requisite majority of unitholders).

Scheme Implementation Deed

A copy of the Scheme Implementation Deed, setting out the terms and conditions of the Trust Scheme and Asset Sale in full, is attached to this announcement. Electronic copies can also be downloaded for review on Vitalharvest's website (www.vitalharvest.com.au) and can be accessed on ASX's website (www.asx.com.au).

The Scheme Implementation Deed includes customary exclusivity provisions, including "no shop", "no talk" and a "notification and matching right" obligations. The "no talk" obligation is subject to a customary fiduciary carve-out.

The Scheme Implementation Deed also includes an obligation on the Responsible Entity to pay a break fee to MAFM in certain circumstances. For full details of the exclusivity regime and break fee, see the attached Scheme Implementation Deed.

Primewest support for the Transaction

The Responsible Entity notes that Primewest Management Ltd as responsible entity for Primewest Property Fund ("**Primewest**"), VTH's largest unitholder which holds, and can control the votes in relation to, 36,752,949 VTH units (representing approximately 19.87% of the total number of VTH units on issue), has indicated to the Responsible Entity that, subject to no superior proposal emerging, it intends to vote in favour of the Transaction.

The Responsible Entity has been informed by Primewest Agrichain Management Pty Ltd, the manager of the Trust ("**Manager**") and a wholly owned subsidiary of Primewest, and MAFM that they have also entered into a Facilitation Deed that will see the Manager novate the management agreement for the Trust to MAFM if the Trust Scheme is implemented, for a fee of \$8 million. The Facilitation Deed is conditional on the Trust Scheme being



implemented and at least 50% of VTH unitholders who are not associated with Primewest voting in favour of the Trust Scheme.

The Responsible Entity notes that, on the terms of the Transaction and Facilitation Deed, the consideration payable to unitholders under the Trust Scheme will not be reduced by any fees payable to the Manager under the Facilitation Deed, and the Responsible Entity understands that under the terms of the Facilitation Deed, the Manager will not be entitled to a termination fee on implementation of the Trust Scheme (previously estimated to be in the order of \$4.5 million).

Further details in relation to the Facilitation Deed will be set out in the explanatory memorandum sent to VTH unitholders in connection with the Transaction.

Independent Expert

The Responsible Entity will engage an independent expert to prepare an independent expert's report providing an independent assessment of whether each of the Trust Scheme and the Asset Sale is fair and reasonable to, and in the best interests of, VTH unitholders.

Timetable

The Responsible Entity expects to send an explanatory memorandum to unitholders in connection with the Transaction in December 2020, which will contain information relating to the Transaction, the meeting timing and details, and a copy of the Independent Expert's report.

Next Steps

VTH unitholders should read the explanatory memorandum in full once it is available and seek independent advice as necessary.

The Responsible Entity will keep unitholders updated in relation to the Transaction in accordance with its continuous disclosure obligations under the ASX Listing Rules.

Authorised for release by: The Board of The Trust Company (RE Services) Limited

ENDS



For any queries, please contact:

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About Vitalharvest Freehold Trust

Vitalharvest owns one of the largest aggregations of berry and citrus farms in Australia. These are located in prime growing locations in New South Wales, South Australia and Tasmania and are leased to Costa Group (ASX:CGC).

Vitalharvest provides investors with exposure to agricultural property assets whose earnings profile and underlying value are exposed to the growing global agricultural demand for healthy, nutritious food. These assets provide agricultural diversification by way of crop type, climatic region, water source and product end markets.

Vitalharvest is an agricultural real estate investment trust managed by Primewest Agrichain Management Pty Ltd (ACN 625 505 455) AR No. 001264243.

The Trust Company (RE Services) Limited (ABN 45 003 278 831) (Responsible Entity), part of Perpetual Limited (ASX:PPT), is the responsible entity for the Vitalharvest Freehold Trust ARSN 626 537 362.

About Macquarie Agricultural Funds Management Limited

MAFM operates within Macquarie Infrastructure and Real Assets (“MIRA”). MIRA is one of the world’s leading alternative asset managers. For more than two decades, MIRA has partnered with investors, governments and communities to operate, develop and enhance assets relied on by more than 100 million people each day.

For more than 10 years, MIRA has combined farming expertise, investment management discipline and a deep understanding of global commodities markets ‘in-house’, to become one of Australia’s largest diversified farmers and a major investor in Brazilian agriculture. MIRA’s Australian agriculture portfolio teams are based in Albury, Orange and Sydney.

MIRA is a part of Macquarie Asset Management, the asset management arm of Macquarie Group.

Vitalharvest Freehold Trust
Angel Place, 123 Pitt Street
Sydney NSW 2000
www.vitalharvest.com.au

Scheme Implementation Deed

Dated 17 November 2020

The Trust Company (RE Services) Limited (ACN 003 278 831) as
responsible entity of Vitalharvest Freehold Trust (ARSN 626 537 362)
("**VTH RE**")

Macquarie Agricultural Funds Management Limited (ACN 122 169 368)
as trustee of Macquarie Agriculture Fund – Crop Australia 2 ("**MAFM**")

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Scheme Implementation Deed

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Scheme Implementation Deed

Details

Parties		
VTH RE	Name	The Trust Company (RE Services) Limited as responsible entity of Vitalharvest Freehold Trust
	ABN	45 003 278 831
	Address	Level 18, Angel Place, 123 Pitt Street, Sydney NSW 2000
	Email	martin.farr@perpetual.com.au
	Attention	Martin Farr
	With a copy to:	Rebecca Maslen-Stannage Email: Rebecca.Maslen-Stannage@hsf.com
MAFM	Name	Macquarie Agricultural Funds Management Limited as trustee of Macquarie Agriculture Fund – Crop Australia 2
	ABN	26 122 169 368
	Address	Level 6, 50 Martin Place, Sydney NSW 2000
	Email	Elizabeth.OLeary@macquarie.com Colin.Rigg@macquarie.com
	Attention	Elizabeth O’Leary / Colin Rigg
	With a copy to:	Henrik Moritz Email: Henrik.Moritz@au.kwm.com
Business Day place (s)	Sydney, New South Wales	
Governing law	New South Wales	
Recitals	A	VTH is an Australian registered managed investment scheme (the responsible entity of which is VTH RE) which is listed on ASX.
	B	The parties propose that MAFM will acquire: (i) all of the VTH Units by means of the Scheme; or

- (ii) all of the Leasehold Trust Units and all of the Leasehold Trustee Shares by means of the Asset Sale, subject to the Scheme not being approved by the requisite majorities of VTH Unitholders.

C The parties have agreed to implement the Proposal on the terms and conditions of this deed.

Scheme Implementation Deed

General terms

1 Definitions and Interpretation

1.1 Definitions

Accounting Standards means:

- (a) Accounting Standards as that term is defined in the Corporations Act; and
- (b) to the extent not inconsistent with paragraph (a) generally accepted Australian accounting principles which are consistently applied.

Accounts Receivable means any accounts receivable owing to any Leasehold Trust Group Member that are not impaired in accordance with the Leasehold Trust Group's applicable accounting policies and which will be realised as cash within 3 months of Completion, but excluding any rent receivable under lease arrangements entered into by any Leasehold Trust Group Member as of the date of this agreement with respect to the Properties.

Affiliate means in respect of a person (**Primary Person**), a person:

- (a) Controlled directly or indirectly by the Primary Person;
- (b) Controlling directly or indirectly the Primary Person;
- (c) who is Controlled, directly or indirectly, by a person or persons who Control the Primary Person; or
- (d) directly or indirectly under the common Control of the Primary Person and another person or persons.

Alternative Transaction means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would mean a third party (either alone or together with any Associate) would:

- (a) acquire direct or indirect legal, beneficial or economic interests in, or control of, 20% or more of the VTH Units, or which would result in the disposal or transfer of, VTH or all or substantially all of its business and undertaking; or
- (b) otherwise directly or indirectly acquire or merge with VTH.

AMIT means an attribution managed investment trust for an income year within the meaning of section 276-10 of the Tax Act.

ASIC means the Australian Securities and Investments Commission.

ASIC Relief means an approval or consent referred to in clause 4.1(a).

Asset Sale Approval Condition means the condition in paragraph 3.1(d) of Schedule 3.

Asset Sale Conditions Precedent means each of the conditions set out in paragraph 3.1 of Schedule 3.

Asset Sale means the acquisition by MAFM of all of the Leasehold Trust Units from VTH RE and all of the Leasehold Trustee Shares from Vitalharvest Finance in accordance with this deed.

Asset Sale Resolution means a resolution for all purposes, including for the purposes of Listing Rule 11.2, to approve the Asset Sale.

Associate has the meaning set out in section 12 of the Corporations Act, as if subsection 12(1) of the Corporations Act included a reference to this deed and VTH was the designated body.

ASX means ASX Limited (ABN 98 008 624 691) and, where the context requires, the financial market that it operates.

ATO means the Australian Taxation Office.

Business Day means a business day as defined in the Listing Rules and which is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, Australia.

Claim means any claim, demand, legal proceedings or cause of action (including any claim, demand, legal proceedings or cause of action:

- (a) based in contract, including breach of warranty;
- (b) based in tort, including misrepresentation or negligence;
- (c) under common law or equity; or
- (d) under statute, including the Australian Consumer Law (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**)) or Part VI of the CCA, or like provision in any state or territory legislation),

in any way relating to this deed or the Proposal, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.

Completion means completion of the sale and purchase of the Leasehold Trust Units and the Leasehold Trustee Shares in accordance with paragraph 4 of Schedule 3 and **Complete** has a corresponding meaning.

Completion Amount means the amount equal to:

- (a) \$300 million;
- (b) less the Estimated Completion Adjustment Amount;
- (c) less the Adjustment Escrow Amount.

Completion Date means the date that is 5 Business Days after the date on which the last Asset Sale Condition Precedent is satisfied.

Condition Precedent means each of the Scheme Conditions Precedent and the Asset Sale Conditions Precedent.

Confidentiality Agreement means the confidentiality agreement between VTH RE and MAFCA dated 6 July 2020.

Consideration means, in the case of the Asset Sale, the Purchase Price and the Share Purchase Price and, in the case of the Scheme, the Scheme Consideration.

Control means with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise, and for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person, and, in respect of MAFM, will also include any fund, account, client, limited partnership or other collective investment vehicle or other person which is managed or advised by an Affiliate of MAFM.

Corporations Act means the *Corporations Act 2001* (Cth), as modified or varied by ASIC.

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

Court means the NSW Supreme Court or such other court of competent jurisdiction under the *Trustee Act 1925* (NSW) as agreed to in writing by MAFM and VTH RE.

Custodian means Perpetual Corporate Trust Limited (ACN 000 341 533).

Deed Poll means a deed poll in the form of Annexure B (or in such other form as may be agreed to by VTH RE and MAFM).

Data Room means the online data room operated by Ansarada in relation to the Proposal.

Disclosure Materials means the documents and information contained in the Data Room made available by VTH RE to MAFM and its Related Persons as at 7.00pm on the day before the date of this document, comprising the material described in the due diligence index contained in Schedule 5.

Distributable Income means an estimate of the 'distributable income' of Leasehold Trust (as defined in the Leasehold Trust Constitution) for the period from 1 July 2020 to the Completion Date, as determined by VTH RE acting reasonably and in a manner consistent with the way the Leasehold Trustee has determined that amount in prior corresponding periods, but excluding any amount that is a Monetary Liability.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of them.

Effective Date means the date on which the Scheme becomes Effective.

Effective means, when used in relation to the Scheme, the VTH Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA, or any agreement to create any of them or allow them to exist.

End Date means 12 months after the date of this deed, or such other later date as agreed in writing by the parties.

Estimated Completion Adjustment Amount means the aggregate of the:

- (a) Estimated Monetary Liabilities; *plus*
- (b) Leasehold Trust Distribution; *minus*
- (c) Estimated Liquid Assets,

provided that if this results in a negative number, the Estimated Completion Adjustment Amount will equal zero.

Estimated Distributable Income means VTH RE's estimate of Distributable Income as at Completion, as set out in the Pre-Completion Certificate.

Estimated Liquid Assets means VTH RE's estimate of Liquid Assets as at Completion, as set out in the Pre-Completion Certificate.

Estimated Monetary Liabilities means VTH RE's estimate of Monetary Liabilities as at Completion, as set out in the Pre-Completion Certificate.

Excess Manager Payment means:

$$\frac{A}{B}$$

Where:

A = any Early Termination Fee paid or payable under the Management Agreement between the VTH RE and Primewest Agrichain Management Pty Ltd as amended from time to time plus any other amount paid or payable by VTH RE to Primewest Agrichain Management Pty Ltd that arises as a result of the termination of the management agreement, but only to the extent the total amount paid or payable is in excess of \$4.5 million

B = the total number of Scheme Units

Excluded Unitholder means any VTH Unitholder who is a member of the MAFM Group or any VTH Unitholder who holds any VTH Units on behalf of, or for the benefit of, any member of the MAFM Group and does not hold VTH Units on behalf of, or for the benefit of, any other person.

Exclusivity Period means the period from and including the date of this deed to the earlier of:

- (a) the date of termination of this deed;
- (b) the End Date; and
- (c) the Implementation Date.

Fairly Disclosed in relation to a matter means disclosed to MAFM or any of its Related Persons, to a sufficient extent, and in sufficient detail, so as to enable a reasonable bidder (or one of its Related Persons) experienced in transactions similar to the Scheme or the Asset Sale and experienced in a business similar to any business conducted by the MAFM Group, to identify the nature and scope of the relevant matter, event or circumstance (including, in each case, that the potential financial effect of the relevant matter, event or circumstance was reasonably ascertainable from the information disclosed).

FFO means funds from operations determined on the basis described in the annual report for VTH for the financial year ended 30 June 2020.

Final Completion Adjustment Amount means the aggregate of the:

- (a) Actual Monetary Liabilities; *minus*
- (b) Actual Liquid Assets,

provided that if this results in a negative number, the Final Completion Adjustment Amount will equal zero.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee;
- (d) declared but unpaid distribution;
- (e) finance or capital lease;
- (f) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or
- (g) obligation to deliver goods or provide services paid for in advance by any financier.

First Court Date means the first day on which an application is made to the Court to seek the First Judicial Advice or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

First Judicial Advice means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that:

- (a) VTH RE would be justified in convening the Meeting for the purposes of considering the Scheme Resolutions and the Asset Sale Resolution;
- (h) subject to VTH Unitholders passing the Scheme Resolutions by the requisite majorities, VTH RE would be justified in proceeding on the basis that amending the VTH Constitution as set out in the VTH Supplemental Deed would be within the powers of alteration conferred by the VTH Constitution and section 601GC of the Corporations Act;
- (i) if the Scheme Resolutions are not passed by the requisite majorities, but the Asset Sale Resolution is passed by the requisite majority, VTH RE would be justified in proceeding with the Asset Sale; and
- (j) VTH RE would be justified in seeking that its costs in pursuing the Proposal be met from the assets of VTH.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the

Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.

GST has the meaning given in the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Implementation Date means:

- (a) in relation to the Scheme, if the Scheme Approval Condition is satisfied and the Scheme becomes Effective, the fifth Business Day after the Record Date, or such other date after the Record Date as the parties agree in writing; or
- (b) in relation to the Asset Sale, if the Asset Sale Approval Condition is satisfied, the Completion Date.

Independent Expert means the independent expert in respect of the Proposal appointed by VTH RE.

Independent Expert's Report means the report to be issued by the Independent Expert in connection with the Proposal, setting out the Independent Expert's opinion whether or not the Scheme and Asset Sale are each fair and reasonable to, and in the best interests of, VTH Unitholders and the reasons for holding that opinion.

Insolvency Event means, in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or
- (f) the entity being deregistered as a company or otherwise dissolved.

Intellectual Property Rights means all registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, inventions, discoveries and domain names and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Judicial Advices means:

- (a) the First Judicial Advice; and
- (b) the Second Judicial Advice.

Leasehold Trust means the Vitalharvest Leasehold Trust (ABN 64 668 461 398).

Leasehold Trust Assets means the assets of the Leasehold Trust Group.

Leasehold Trust Constitution means the constitution establishing the Vitalharvest Leasehold Trust as amended from time to time.

Leasehold Trust Distribution has the meaning given in paragraph 6.3 of Schedule 3.

Leasehold Trust Group means the Leasehold Trust, the Leasehold Trustee and each of their Subsidiaries and **Leasehold Trust Group Member** means any one of them.

Leasehold Trustee Shares means the shares in Leasehold Trustee.

Leasehold Trust Units means the units in the Leasehold Trust.

Leasehold Trustee means Vitalharvest Pty Ltd (ACN 140 954 874).

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred.

Listing Rules means the official listing rules of ASX.

Liquid Assets means:

- (a) Cash; and
- (b) Accounts Receivable.

Loss means all damage, loss, Cost and expense (including legal costs on a full indemnity basis and expenses of whatsoever nature or description).

MAFCA means Macquarie Agricultural Funds Management Limited (ACN 122 169 368) as trustee for Macquarie Agriculture Fund – Crop Australia 2.

MAFM Group means MAFM and each of its Related Bodies Corporate but only to the extent that those Related Bodies Corporate are directly or indirectly owned or Controlled by MAFCA, and a reference to a **MAFM Group Member** or a **member of the MAFM Group** is to any member of the MAFM Group.

MAFM Indemnified Parties means MAFM and its Related Bodies Corporate and their respective directors, officers and employees.

MAFM Information means information regarding the MAFM Group (other than any VTH Information contained in that information), provided by MAFM to VTH RE in writing for inclusion in the Scheme Booklet, being:

- (a) information about MAFM, other MAFM Group Members, the businesses of the MAFM Group, MAFM's interests and dealings in VTH Units, MAFM's intentions for VTH, and funding for the Proposal; and
- (b) any other information required under the Corporations Act, Corporations Regulations or the Listing Rules to enable the Scheme Booklet to be prepared that the parties agree is 'MAFM Information' and that is identified in the Scheme Booklet as such.

For the avoidance of doubt, the MAFM Information excludes the VTH Information, the Independent Expert's Report and any description of the taxation effect of the Proposal on VTH Unitholders prepared by an external adviser to VTH RE.

MAFML2 means Macquarie Agricultural Funds Management No. 2 Pty Limited as trustee for M2 Acquisition Trust (ABN 52 712 569 900).

MAFM Related Party means any Affiliate of MAFM.

MAFM Representations and Warranties means the representations and warranties of MAFM set out in Schedule 1.

Manager means Primewest Agrichain Management Pty Ltd (ACN 625 505 455).

Material Adverse Change means any event, occurrence or matter which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, occurrences or matters:

- (a) a diminution in the consolidated net assets of the VTH Group by an amount that is equal to or more than 3% of the value of the consolidated net assets of the VTH Group as at 30 June 2020; or
- (b) a reduction in the FFO of the VTH Group by an amount that is equal to or more than 5%, as compared to what the FFO of the VTH Group could reasonably be expected to have been from 1 July 2020 to 31 December 2020 or 30 June 2021 (as relevant) but for the relevant events, occurrences or matters,

in each case other than an event, occurrence or matter:

- (c) which occurs as a result of natural variability of the rent payable under the variable rent payment structure under the terms of the leases to which VTH Group is a party;
- (d) required or expressly contemplated by this deed or the transactions contemplated by it;
- (e) Fairly Disclosed in the Disclosure Materials;
- (f) agreed to in writing by MAFM;
- (g) Fairly Disclosed by VTH RE in an announcement made by VTH RE to ASX, or a publicly available document lodged by it with ASIC or disclosed to MAFM prior to the date of this deed;
- (h) arising as a result of any generally applicable change in law or governmental policy applicable to Australian business generally;
- (i) arising from changes in economic or business conditions (including interest rates) applicable to Australian business generally; or
- (j) resulting from a change in generally accepted accounting principles or the interpretation of them.

Material Contract means any agreement, contract, deed or other arrangement, constitution, by-laws, articles of association (or similar), right or instrument (each of the foregoing things or matters being a **Right**) which:

- (a) involves, or would reasonably be likely to involve, the provision of financial accommodation to any member of the VTH Group;
- (b) imposes, or would reasonably be likely to impose, obligations or liabilities on any party of at least \$1 million per annum or \$3 million over the life of the Right;

- (c) contributes, or would reasonably be likely to contribute \$1 million per annum of consolidated EBITDA of the VTH Group;
- (d) requires payment by a VTH Group Member of an amount in excess of \$3 million on implementation of the Proposal; or
- (e) is otherwise material to VTH in the context of the businesses of the VTH Group taken as a whole, including:
 - (i) the document titled 'Water Management Agreement' dated 8 April 2015 between the Leasehold Trustee, Kingston Vineyards Pty Ltd and Kangara Community Water Pty Ltd;
 - (ii) the document titled 'AX Water Manager Agreement' dated 16 April 2015 between Kangara Community Water Pty Ltd and AgriExchange Pty Ltd;
 - (iii) the document titled 'Tamar Tree Farms Share Farm Agreement No 229' dated 28 August 2002 originally between Wesley Vale Engineering Proprietary Limited trading as Tamar Tree Farms and Kathleen Marie Macros as assigned and novated to the Leasehold Trustee and the Trust Company (Australia) Limited in its capacity as trustee of the Tasmanian Forest Operating Sub Trust; and
 - (iv) the document titled 'Royalty Agreement for the Purchase of Timber' to which the Leasehold Trustee is a party.

Meeting means the meeting of the VTH Unitholders convened by VTH RE to consider the Scheme Resolutions and if necessary, the Asset Sale Resolution, and includes any adjournment or further adjournments of that meeting.

Meeting Date means the date on which the Meeting is held.

Monetary Liabilities means all Liabilities of any Leasehold Trust Group Member, including amounts owing to any other member of the VTH Group (whensoever or howsoever arising). For the avoidance of any doubt, Monetary Liabilities shall be presented as an absolute number and will not include any distribution payable or accrued in connection with the Leasehold Trust Distribution under paragraph 6.3 of Schedule 3.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Pre-Completion Certificate has the meaning given to that term in paragraph 6.2 of Schedule 3.

Proposal means the acquisition by MAFM of either:

- (a) the VTH Units through implementation of the Scheme; or
- (b) the Leasehold Trust Units and the Leasehold Trustee Shares, through completion of the Asset Sale,

in accordance with the terms of this deed.

Property means the freehold properties owned by the Leasehold Trustee.

Proposed Recommendation means:

"The VTH RE Board of Directors unanimously recommends that VTH Unitholders vote in favour of:

- *the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is fair and reasonable to, and in the best interests of, VTH Unitholders; and*
- *the Asset Sale, in the absence of a superior proposal, subject to the Independent Expert concluding (and continuing to conclude) that the Asset Sale is fair and reasonable to, and in the best interests of, VTH Unitholders (on the basis that it will only be implemented if the Scheme Approval Condition is not satisfied)."*

Purchase Price means the Completion Amount minus the Final Completion Adjustment Payment, and as may be further adjusted in accordance with the terms of this deed.

Record Date means 7.00pm on the third Business Day after the Effective Date, or such other Business Day after the Effective Date as may be agreed to in writing by MAFM and VTH RE.

Regulator's Draft means the draft of the Scheme Booklet in a form which is provided to ASIC for review for the purposes of Regulatory Guide 74.

Reimbursement Fee means \$1.85 million.

Related Bodies Corporate has the meaning set out in section 50 of the Corporations Act, except that references to 'subsidiary' have the meaning given to 'Subsidiary' in this deed.

Related Person means in respect of a party or its Related Bodies Corporate, each director, officer, employee, adviser, agent or representative of that party or Related Body Corporate.

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act.

Representative of a person or entity means any director, officer, employee, advisor, consultant, agent or other representative of or to such person or entity acting in that capacity (and, in the case of an entity which is a body corporate, includes any Related Body Corporate of such entity and any director, officer, employee, advisor, consultant, agent or other representative of or to any such Related Body Corporate).

Scheme means an arrangement under which MAFM acquires all of the VTH Units from VTH Unitholders in the manner contemplated by this deed and facilitated by amendments to the VTH Constitution, subject to the requisite approvals of the VTH Unitholders.

Scheme Approval Condition means the Scheme Condition Precedent in clause 4.1(b).

Scheme Booklet means the scheme booklet to be prepared by VTH RE in respect of the Proposal in accordance with the terms of this deed (including clause 6.2(a)) to be despatched to the VTH Unitholders and which must include or be accompanied by:

- (a) a copy of the VTH Supplemental Deed;
- (b) an explanatory statement in respect of the Proposal complying with the requirements of the Corporations Act and the Listing Rules, as well as applicable regulatory guides, including ASIC Regulatory Guide 74, Takeovers Panel Guidance Note 15 and ASX Guidance Note 12;

- (c) the Independent Expert's Report;
- (d) a copy or summary of this deed;
- (e) a copy of the executed Deed Poll;
- (f) notice of meeting; and
- (g) a proxy form.

Scheme Condition Precedent means each of the conditions set out in clause 4.1.

Scheme Consideration means the consideration to be provided by MAFM to each Scheme Participant as at the Record Date for the transfer to MAFM of each Scheme Unit being \$1.00 for each Scheme Unit held by a Scheme Participant less the Excess Manager Payment.

Scheme Participants means each person who is registered in the VTH Register as at the Record Date as a holder of VTH Units (other than an Excluded Unitholder).

Scheme Resolutions means the resolutions to approve the Scheme including:

- (a) a resolution for the purposes of section 601GC(1) of the Corporations Act to approve amendments to the VTH Constitution as set out in the VTH Supplemental Deed; and
- (b) a resolution for the purposes of item 7 of section 611 of the Corporations Act to approve the acquisition of all the Scheme Units by MAFM.

Scheme Unit means VTH Units as at the Record Date.

Second Court Date means the first day on which an application is made to the court for the Second Judicial Advice or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.

Second Judicial Advice means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that:

- (a) either:
 - (i) the VTH Unitholders having approved the Scheme Resolutions by the requisite majorities, VTH RE would be justified in implementing the Scheme Resolutions, giving effect to the provisions of the VTH Constitution (as amended by the VTH Supplemental Deed) and in doing all things and taking all necessary steps to put the Scheme into effect; or
 - (ii) the VTH Unitholders having failed to approve the Scheme Resolutions by the requisite majorities, but having approved the Asset Sale Resolution by the requisite majority, VTH RE would be justified in implementing the Asset Sale Resolution and in doing all things and taking all necessary steps to put the Asset Sale into effect; and

in either case, VTH RE would be justified in seeking that its costs in pursuing the Proposal be met from the assets of VTH.

Security Interest has the meaning given in section 51A of the Corporations Act.

Share Purchase Price means \$1.

Subsidiary has the meaning given in Division 6 of Part 1.2 of the Corporations Act, provided that an entity will also be taken to be a Subsidiary of another entity if it is Controlled by that entity and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the Accounting Standards to be consolidated with that entity.

Superior Proposal means a bona fide written proposal of the kind referred to in the definition of "Alternative Transaction" that the VTH RE Board, acting in good faith, and after taking advice from its legal advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Alternative Transaction, including its conditions; and
- (b) more favourable to VTH Unitholders than the Proposal, taking into account all aspects of the Alternative Transaction, including the identity, reputation and financial condition of the person or entity making such proposal, legal, regulatory and financial matters.

Tax means any tax, levy, charge, excise, GST, impost, rates, Duty, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any fiscal Government Agency and includes any interest, fine, penalty, charge, fee, expenses or other statutory charges or any other such amount imposed by any fiscal Government Agency on or in respect of any of the above.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

Tax Authority means any Government Agency responsible for Tax, wherever situated.

Tax Law means any law relating to or imposing a Tax.

Tax Return means any return relating to Tax including any document which must be lodged with a Government Agency administering a Tax or which a taxpayer must prepare and retain under a Tax Law (such as an activity statement, amended return, schedule or election and any attachment).

Third Party means a person other than MAFM, its Related Bodies Corporate and its other Associates.

Third Party Claim means a Claim that VTH RE or certain other persons may have against a third party in the following circumstances:

- (a) if MAFM has or is reasonably likely to have a Claim against VTH RE under this deed; and
- (b) if VTH RE were to be held liable in respect of the Claim mentioned in (a) above (the "**MAFM Claim**"), then it (in its capacity as responsible entity of VTH) or any trustees that it owns or controls in its capacity as responsible entity of VTH, would be able to Claim for recovery of, or

contribution to, the relevant MAFM Claim (the claim against the third party being the Third Party Claim).

Timetable means the indicative timetable for the implementation of the Transaction set out in Annexure A.

Transaction Costs means:

- (b) all internal costs of VTH RE and any third party out of pocket costs and expenses without any limitation (inclusive of GST) reasonably incurred by VTH RE after the date of this deed in connection with the implementation of the Proposal, the return of proceeds to VTH Unitholders or any termination, wind-up or delisting of VTH. For the avoidance of doubt, internal costs of VTH RE includes the time in attendance costs of the personnel of VTH RE and its Related Bodies Corporate in taking actions directed by MAFM or otherwise required to implement the Proposal); and
- (c) any Early Termination Fee as that term is defined under the Management Agreement between VTH RE and Primewest Agrichain Management Pty Limited dated 29 June 2018 (as amended from time to time).

Transaction Cost Cap means \$6 million (inclusive of GST) plus the total amount of any incremental costs incurred by VTH RE pursuant to clause 15.4(b)(ii).

Trust Property means all of the scheme property of VTH, including all of VTH RE's rights, property and undertaking which are the subject of VTH:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

Vitalharvest Finance means Vitalharvest Finance Pty Ltd (ACN 626 149 326).

VTH Constitution means the constitution establishing VTH as amended from time to time.

VTH Group means VTH and each of its Subsidiaries, and a reference to a **VTH Group Member** or a **member of the VTH Group** is to VTH or any of its Subsidiaries.

VTH Indemnified Parties means VTH RE, its Subsidiaries and their respective directors, officers and employees.

VTH Information means information regarding the VTH Group prepared by VTH RE for inclusion in the Scheme Booklet that comprises the entirety of the Scheme Booklet and explains the effect of the Proposal and sets out the information prescribed by the Corporations Act, the Listing Rules and applicable regulatory guidance, and any other information that is material to the making of a decision by VTH Unitholders whether or not to vote in favour of the Proposal, being information that is within the knowledge of each of the VTH RE Board Members, including following reasonable inquiry of the Manager, but which does not include the MAFM Information, the Independent Expert's Report or any description of the taxation effect of the Proposal on VTH Unitholders prepared by an external adviser to VTH RE.

VTH means the Vitalharvest Freehold Trust (ARSN 626 537 362).

VTH Prescribed Occurrence means other than as:

- (a) required or expressly contemplated by this deed, the Proposal, or the transactions contemplated by them;
- (b) Fairly Disclosed in the Disclosure Materials;
- (c) agreed to in writing by MAFM; or
- (d) Fairly Disclosed by VTH RE in an announcement made by VTH RE to ASX, or a publicly available document lodged by it with ASIC, each prior to the date of this deed,

the occurrence of any of the following:

- (a) a member of the VTH Group (where applicable, through its responsible entity) converting all or any of its shares or units (as applicable) into a larger or smaller number of shares or units;
- (b) a member of the VTH Group resolving to reduce its capital;
- (c) a member of the VTH Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the VTH Group issuing securities, or granting a performance right or an option over its securities, or agreeing to make such an issue or grant such a right or an option;
- (e) a member of the VTH Group issuing or agreeing to issue securities convertible into shares;
- (f) a member of the VTH Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (g) a member of the VTH Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due;
- (h) a member of the VTH Group making a revaluation of assets unless required to do so by applicable law, the Accounting Standards or by the Independent Expert as part of the preparation of the Independent Expert's Report;
- (i) a member of the VTH Group amalgamating, merging or consolidating with any other entity; or
- (j) an Insolvency Event occurs in relation to a member of the VTH Group.

VTH RE Board means the board of directors of VTH RE or a committee of the board and a **VTH RE Board Member** means any director of VTH RE comprising part of the VTH RE Board.

VTH Register means the unit register of VTH.

VTH Registry means Computershare Investor Services Pty Limited ABN 48 078 279 277.

VTH Regulated Event means other than as:

- (a) required or expressly contemplated by this deed or the transactions contemplated by it;
- (b) Fairly Disclosed in the Disclosure Materials;
- (c) agreed to in writing by MAFM; or
- (d) Fairly Disclosed by VTH RE in an announcement made by VTH RE to ASX, or a publicly available document lodged by it with ASIC, each prior to the date of this deed,

the occurrence of any of the following:

- (e) a VTH Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares or units (as applicable);
- (f) other than the Leasehold Trust Distribution, any VTH Group Member announcing, making, declaring, resolving to pay or paying any dividend, distribution or share of its profits or assets or returning or agreeing to return any capital to its shareholders or unitholders (whether in cash or in specie);
- (g) a change to the constitution, trust deed or other constitution document of any VTH Group Member, except as is necessary to implement the Proposal;
- (h) a member of the VTH Group acquiring, leasing, licensing or disposing of, or agreeing, offering, or proposing to acquire, lease, license or dispose of, any:
 - (ii) real property or water asset; or
 - (iii) any individual asset (other than a real property or water asset) valued at \$3 million or more, or assets (other than real property or water assets) in aggregate valued at \$3 million (in each case, other than in the ordinary course of business);
- (i) a member of the VTH Group entering into any commitments for capital expenditure of more than \$1 million (individually or other than in the ordinary course of business in aggregate);
- (j) a member of the VTH Group deferring any capital expenditure that was budgeted to be spent where the amount deferred exceeds \$2 million in aggregate;
- (k) a member of the VTH Group incurring any additional external debt (including drawdowns of existing banking facilities) or issuing or procuring the issue of new Guarantees other than in connection with budgeted capital expenditure or in the ordinary course of business;
- (l) a member of the VTH Group making available any loan or other financial accommodation to any entity;
- (m) a member of the VTH Group entering into a contract or commitment materially restraining a member of the VTH Group from competing with any person or conducting activities in any market;
- (n) a member of the VTH Group entering into, varying, terminating, waiving any right under or failing to enforce the terms of, or doing anything or

omitting to do anything which might result in the variation or termination of, or impact the ability to enforce, any Material Contract to which a VTH Group Member is a party, except as is necessary to implement the Proposal;

- (o) VTH RE agreeing to any amendments to the management agreement between the VTH RE and the Manager dated 29 June 2018 (as amended from time to time);
- (p) the VTH RE appointing, engaging or otherwise contracting with any third party to perform any services in relation to the management and administration of VTH (other than in the ordinary course of business);
- (q) a member of the VTH Group consenting to the assignment of or any other dealing with (including any proposed change of control of a tenant entity), or the surrender of, any lease of any real property owned by a VTH Group Member;
- (r) a member of the VTH Group granting security over or declaring itself the trustee of any asset;
- (s) a member of the VTH Group entering into any contract or commitment in respect of Financial Indebtedness other than in the ordinary course of business, other than any payment required by law;
- (t) a member of the VTH Group entering into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (u) a member of the VTH Group entering into, or resolving to enter into, a transaction with any related party of VTH (including a related party which is a member of the VTH Group), as defined in section 228 of the Corporations Act, or the Manager (in each case, except as is necessary to implement the Proposal);
- (v) a member of the VTH Group entering into or materially altering, varying or amending any employment, consulting, severance or similar agreement or arrangement with one or more of its officers, directors or other executives, or accelerating or otherwise materially increasing compensation or benefits for any of the above, in each case other than pursuant to contractual arrangements in effect on the date of this deed and which are contained in the Disclosure Materials;
- (w) a member of the VTH Group waiving any material Third Party or related party default where the financial impact on the VTH Group will be in excess of \$3 million (individually or in aggregate);
- (x) a member of the VTH Group accepting as a compromise of a matter less than the full compensation due to a member of the VTH Group where the financial impact of the compromise on the VTH Group is more than \$3 million (individually or in aggregate);
- (y) any of the following occurs:
 - (i) VTH RE ceases to be the responsible entity of VTH;
 - (ii) VTH Unitholders resolve to remove or replace VTH RE as responsible entity of VTH;

- (iii) a meeting being convened to consider a resolution for the removal, retirement or replacement of VTH RE as responsible entity of VTH;
- (iv) an order is made by any court, or any application being made in any court, for the appointment of a temporary responsible entity of VTH in accordance with the Corporations Act;
- (v) VTH RE effects or facilitates a termination of VTH; or
- (vi) VTH RE effects or facilitates the resettlement of any of the Trust Property,
- (z) a member of the VTH Group making any material tax elections or changing any material tax methodologies applied by them in the 12 months prior to the date of this deed, other than any change in methodology required by a change in law;
- (aa) a member of the VTH Group settling or compromising any Tax liability, unless that settlement or compromise is required by law, is supported by an opinion of counsel or is in the ordinary course of business and is consistent with the VTH Group's past practices;
- (bb) a member of the VTH Group failing to pay any Tax when due and payable;
- (cc) a member of the VTH Group changing its residency for Tax purposes;
- (dd) a member of the VTH Group changing any accounting policy applied by them to report their financial position or financial performance other than any change in policy required by a change in law or Accounting Standards;
- (ee) a member of the VTH Group settling any claim or action, which could reasonably be expected to give rise to a liability for the VTH Group in excess of \$3 million;
- (ff) a member of the VTH Group receiving notice of any new material investigation, prosecution, penalty, arbitration, litigation or dispute threatened, that is not already Fairly Disclosed, against a member of the VTH Group which could reasonably be expected to give rise to a liability for the VTH Group in excess of \$3 million (**Material Proceedings**) and for the avoidance of doubt which are not frivolous or vexatious. Material Proceedings do not include any liability relating to an investigation, prosecution, arbitration, litigation or dispute to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a member of the VTH Group; or
- (gg) a member of the VTH Group authorising, agreeing to do, or making any representation or warranty regarding doing, authorising or agreeing to do any of the matters in (e) to (ff) above.

For the avoidance of doubt, to the extent relevant, each of the above events apply to the transactions between (i) VTH Group Members and other VTH Group Members or (ii) VTH Group Members and third parties.

VTH RE Representations and Warranties means:

- (a) where used in clause 4.1(i), the representations and warranties of VTH RE set out in Schedule 2, as each is qualified by clause 7.5; or

- (b) elsewhere, the representations and warranties of VTH RE set out in paragraph 1 of Schedule 2 and, if and only if the Asset Sale Conditions Precedent are satisfied, in paragraphs 2 to 10 of Schedule 2, as each is qualified by clause 7.5.

VTH Supplemental Deed means a deed poll under which VTH RE will amend the VTH Constitution to effect the Scheme consistently with this document and on terms which are reasonably satisfactory to MAFM and VTH RE.

VTH Unit means a fully paid ordinary unit in VTH.

VTH Unitholder means each person who is registered in the VTH Register as a holder of VTH Unit.

1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, annexure or exhibit is a reference to a clause of, and a party, schedule, annexure or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;

- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (r) a reference to liquidation or insolvency includes appointment of an administrator, a reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, bankruptcy, or a scheme, compromise or arrangement with creditors (other than solely with holders of securities or derivatives), or any similar procedure or, where applicable, changes in the constitution of any partnership or third party, or death;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (t) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (u) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (v) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (w) a reference to something being “reasonably likely” (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

1.3 Deed components

This deed includes any schedule.

1.4 Interpretation of inclusive expressions

Specifying anything in this deed after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included.

1.5 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Agreement to proceed with the Proposal

- (a) VTH RE agrees to propose the Scheme and the Asset Sale on and subject to the terms and conditions of this deed.
- (b) MAFM agrees to assist VTH RE to propose the Scheme and the Asset Sale on and subject to the terms and conditions of this deed.
- (c) VTH RE and MAFM agree to implement the Proposal on and subject to the terms and conditions of this deed.
- (d) VTH RE and MAFM agree that nothing in this deed can have operation where it is inconsistent with applicable laws and regulations.

3 MAFM nomination

- (a) MAFM nominates MAFML2, to perform its obligations under clauses 2(b) and 2(c).
- (b) MAFM warrants that:
 - (i) MAFM and MAFML2 will both enter into the Deed Poll;
 - (ii) MAFM will continue to be bound by this deed as if it was still the acquiring entity; and
 - (iii) MAFM will ensure that MAFML2 completes the acquisition in accordance with this deed and the Deed Poll.
- (c) MAFM unconditionally and irrevocably:
 - (i) guarantees to VTH RE the due and punctual performance by MAFML2 of MAFML2 under this deed, the Deed Poll and the Corporations Act; and
 - (ii) indemnifies VTH RE, on demand, against all losses incurred by VTH RE arising from any default or delay in the performance of such obligations.
- (d) The obligation of MAFM under clause 3(c) is a principal and continuing obligation and remains in full force and effect until all obligations of MAFML2 have been fully discharged.
- (e) The liability of MAFM under clause 3(c) is not affected by anything which, but for this clause 3(e), might operate to release or exonerate MAFM in whole or in part from its obligations.

4 Scheme Conditions Precedent and pre-implementation steps

4.1 Scheme Conditions Precedent

Subject to this clause 4, the Scheme will not become Effective, and the respective obligations of the parties to implement the Scheme are not binding, until each of the following Scheme Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 4.

- (a) **(ASIC Relief)** ASIC issues or provides such consents, waivers and approvals or does such other acts that are necessary to implement the Scheme and none of those consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date.
- (b) **(Scheme Approval Condition)** VTH Unitholders approve the Scheme Resolutions at the Meeting by the requisite majorities under section 601GC(1) and item 7 of section 611 of the Corporations Act.
- (c) **(Independent Expert)** the Independent Expert:
 - (i) issues an Independent Expert's Report which concludes that the Scheme is fair and reasonable to, and in the best interests of, VTH Unitholders before the time when the Scheme Booklet is despatched; and
 - (ii) does not change its conclusion or withdraw its Independent Expert's Report before the Meeting.
- (d) **(Court approval)** the Court grants the Second Judicial Advice;
- (e) **(Restraints)** there is not in effect any temporary, preliminary or final restraining order, injunction or other order that would prevent, make illegal or delay the Scheme made by a court of competent jurisdiction or Government Agency at 8.00am on the Second Court Date.
- (f) **(No VTH Prescribed Occurrence)** no VTH Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (g) **(No VTH Regulated Event)** no VTH Regulated Event occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (h) **(No Material Adverse Change)** no Material Adverse Change of VTH occurs, becomes known to MAFM or is announced between (and including) the date of this deed and 8.00am on the Second Court Date.
- (i) **(VTH RE Representations and Warranties)** the VTH RE Representations and Warranties are accurate and not misleading at all times between (and including) the date of this deed and 8.00am on the Second Court Date.
- (j) **(MAFM Representations and Warranties)** the MAFM Representations and Warranties are accurate and not misleading at all times between (and including) the date of this deed and 8.00am on the Second Court Date.
- (k) **(Third party consent)** the South Australian Minister for Agriculture, Food and Fisheries ("**SA Minister**") gives its written approval to the Proposal for the purposes of the 3IP Deed of Grant dated 17 December 2014 (as amended from time to time) between Leasehold Trustee and the SA Minister before 8.00am on the Second Court Date.

4.2 Satisfaction of conditions

- (a) VTH RE must, to the extent it is within its power to do so, use all reasonable endeavours to procure that each of the Scheme Conditions Precedent in clauses 4.1(a), 4.1(c), 4.1(d), 4.1(f), 4.1(g), 4.1(h) and 4.1(i) is satisfied as soon as practicable after the date of this deed and

continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.

- (b) MAFM must, to the extent it is within its power to do so, use all reasonable endeavours to procure that the Scheme Condition Precedent in clause 4.1(j) is satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.
- (c) Each party must, to the extent it is within its respective power to do so, use all reasonable endeavours to procure that:
 - (i) the Scheme Condition Precedent in 4.1(k) is satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied; and
 - (ii) there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Scheme Conditions Precedent in clause 4.1 being or remaining satisfied.
- (d) For the avoidance of doubt, VTH RE will not be in breach of its obligations under clause 4.2(a) or clause 4.2(c) to the extent that it takes an action or omits to take an action in response to an Alternative Transaction as permitted by clause 11.
- (e) Without limiting this clause 4.2 and except to the extent prohibited by law or a Government Agency, VTH RE must:
 - (i) promptly apply for the ASIC Relief and provide to MAFM a copy of that application;
 - (ii) take all steps reasonably required as part of the ASIC Relief process, including responding to requests for information from ASIC at the earliest practicable time; and
 - (iii) if requested in writing, keep MAFM reasonably informed of progress in relation to the ASIC Relief (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, ASIC in relation to the ASIC Relief) and provide MAFM with all information reasonably requested in connection with the progress of the ASIC Relief.

4.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 4.1(a) and 4.1(b) and paragraph 3.1 of Schedule 3 cannot be waived.
- (b) The Scheme Conditions Precedent in clauses 4.1(f), 4.1(g), 4.1(h), 4.1(i) and 4.1(k) are for the sole benefit of MAFM and may only be waived by MAFM (in its absolute discretion) in writing.
- (c) The Scheme Conditions Precedent in clauses 4.1(c), 4.1(d) and 4.1(j) are for the sole benefit of VTH RE and may only be waived by VTH RE (in its absolute discretion) in writing.
- (d) The Scheme Condition Precedent in clause 4.1(e) is for the benefit of both parties and may only be waived by written agreement between

MAFM and VTH RE (in each case in their respective absolute discretion).

- (e) If a party waives the breach or non-satisfaction of any of the Scheme Conditions Precedent in clause 4.1, that waiver does not prevent that party from suing the other party for any breach of this deed that resulted in the breach or non-satisfaction of the relevant Condition Precedent.
- (f) Waiver of a breach or non-satisfaction in respect of a Scheme Condition Precedent does not constitute:
 - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
 - (ii) a waiver of breach or non-satisfaction of that Scheme Condition Precedent resulting from any other event.

4.4 Termination on failure of Condition Precedent

(a) If:

- (i) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied such that neither the Scheme nor the Asset Sale are capable of being implemented;
- (ii) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent, or such Condition Precedent is otherwise not satisfied by that time and date, in either case such that neither the Scheme nor the Asset Sale are capable of being implemented; or
- (iii) it becomes more likely than not that the Proposal will not become Effective on or before the End Date,

the parties must consult reasonably and in good faith to:

- (iv) consider and determine whether the Proposal may proceed by way of alternative means or methods (including, for the avoidance of doubt and to the extent relevant, by the adoption of an alternative transaction structure or the provision of an alternative form of consideration on terms no less favourable to the parties) with a view to reaching agreement on the relevant alternative means or methods;
- (v) consider changing and, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, change, the date of the Meeting to another date agreed to in writing by MAFM and VTH RE (being a date no later than five Business Days before the End Date); or
- (vi) consider extending and, if agreed, extend, the relevant date or End Date,

respectively.

- (b) Subject to clause 4.4(c), if the parties are unable to reach agreement under clause 4.4(a):
 - (i) in the case of an event or occurrence contemplated by clause 4.4(a)(i), within five Business Days after the date on which the notice under clause 4.4(a)(ii) is given; or
 - (ii) in the case of the circumstances contemplated by clauses 4.4(a)(ii) or 4.4(a)(iii), by the End Date,

then, unless:

- (iii) the relevant Condition Precedent has been waived in accordance with clause 4.3; or
- (iv) the party entitled to waive the relevant Condition Precedent in accordance with clause 4.3 confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant Condition Precedent from being satisfied,

either party may terminate this deed without any liability to the other party because of that termination.

- (c) A party may not terminate this deed pursuant to clause 4.4(b) if:
 - (i) the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Schemes to become Effective, arises out of a breach of clause 4.2 or 4.5 by that party, although in such circumstances the other party may still terminate this deed; or
 - (ii) the relevant Condition Precedent is stated in clause 4.3 to be for the sole benefit of the other party.

4.5 Certain notices relating to Conditions Precedent

- (a) If a party becomes aware of:
 - (i) the satisfaction of a Condition Precedent or of any material progress towards such satisfaction; or
 - (ii) the happening of an event or occurrence that will, or would reasonably be likely to, prevent a Condition Precedent being satisfied before the time and date specified for its satisfaction (or being satisfied, if no such time and date is specified),

it must advise the other party in writing, as soon as possible.

- (b) VTH RE and MAFM (as the case may be) must promptly advise each other, in writing, of any fact, matter, change, event or circumstance causing, or which, so far as can reasonably be foreseen, would cause:
 - (i) a representation or warranty provided in this deed by the relevant party to be false;
 - (ii) a breach or non-satisfaction of any of the Conditions Precedent; or

- (iii) a material breach of this deed by the relevant party.

5 Transaction steps

5.1 Proposal

VTH RE must, subject to the terms of this deed, propose the Scheme and the Asset Sale to VTH Unitholders.

5.2 No amendment to the Proposal without consent

VTH RE must not consent to any modification of, or amendment to, the Scheme or the Asset Sale without the prior written consent of MAFM.

5.3 Scheme Consideration

Subject to the terms of the Scheme, MAFM undertakes and warrants to VTH RE that, in consideration of the transfer to MAFM of each Scheme Unit held by a Scheme Participant under the terms of the Scheme, on the Implementation Date, MAFM will:

- (a) accept that transfer; and
- (b) provide, or procure the provision, to each Scheme Participant the Scheme Consideration for each Scheme Unit in accordance with the terms of this deed and the Scheme.

6 Implementation

6.1 Timetable

- (a) Subject to clause 6.1(b), the parties must each use all reasonable endeavours to:
 - (i) comply with their respective obligation under this clause 6; and
 - (ii) take all necessary steps and exercise all rights necessary to implement the Proposal,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 6.1(a) to the extent that such failure is due to circumstances and matters outside the party's control (including, for the avoidance of doubt, any delays caused by a Government Agency).
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not able to be achieved due to matters outside of a party's control (including, for the avoidance of doubt, any delays caused by a Government Agency), the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

6.2 VTH RE's obligations

Subject to any change of recommendation by the VTH RE Board that is permitted by clause 6.7(b), VTH RE must take all necessary steps to implement the Proposal as soon as is reasonably practicable and, without limiting the foregoing, (i) use all reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (and must consult with MAFM on a regular basis about its progress in that regard), (ii) do any acts it is authorised and able to do on behalf of VTH Unitholders, and (iii) do each of the following:

- (a) **(preparation of Scheme Booklet)** subject to clauses 6.3(a) and 6.3(b), prepare and despatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act), the Listing Rules and applicable regulatory guidance;
- (b) **(directors' recommendation)** include in the Scheme Booklet a statement by the VTH RE Board:
 - (i) unanimously recommending that VTH Unitholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude that the Scheme is fair and reasonable to, and in the best interests of, VTH Unitholders; and
 - (ii) unanimously recommending that VTH Unitholders vote in favour of the Asset Sale, in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude that the Asset Sale is fair and reasonable to, and in the best interests of, VTH Unitholders,

in each case unless there has been a change of recommendation permitted by clause 6.7;

- (c) **(promote Proposal)** participate in efforts reasonably requested by MAFM to promote the merits of the Proposal;
- (d) **(Court direction)** apply to the Court for the Judicial Advices;
- (e) **(ASIC Relief)** apply to ASIC for ASIC Relief to implement the Scheme;
- (f) **(Meeting)** convene the Meeting and:
 - (i) put the Scheme Resolutions to the VTH Unitholders; and
 - (ii) if the Scheme Approval Condition is not satisfied, put the Asset Sale Resolution to VTH Unitholders;
- (g) **(proxy reports)** keep MAFM reasonably informed on the status of proxy forms received for the Meeting, including over the period commencing 10 Business Days before the Meeting and ending on the deadline for receipt of proxy forms;
- (h) **(Court approval)** if the Scheme Resolutions are passed by the requisite majorities under sections 601GC(1) and item 7 of Section 611 of the Corporations Act, and it can reasonably be expected that all of the Conditions Precedent (other than the Condition Precedent in clause 4.1(e)) will be satisfied or waived in accordance with this deed before 8.00am on the Second Court Date, apply to the Court for the Second Judicial Advice;

- (i) **(certificate)** at the hearing on the Second Court Date provide to the Court a certificate (signed for and on behalf of VTH RE) in the form of a deed (substantially in the form set out in Annexure C) confirming whether or not the Conditions Precedent in clause 4.1 (other than the Condition Precedent in clause 4.1(b)) and paragraphs 3.1(a) and 3.1(b) of Schedule 3 have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by VTH RE to MAFM by 4.00pm on the date that is two Business Days prior to the Second Court Date;
- (j) **(execution and lodgement of VTH Supplemental Deed)** if the Court grants the Second Judicial Advice, as soon as practicable thereafter, and in any event by no later than 4.00pm on the first Business Day after the later of the Second Court Date and the date on which all of the Scheme Conditions Precedent are satisfied or waived in accordance with this agreement, execute the VTH Supplemental Deed and lodge with ASIC a copy of the executed VTH Supplemental Deed;
- (k) **(Scheme Consideration)** if the Scheme becomes Effective, finalise and close the VTH Register as at the Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (l) **(transfer and registration)** if the Scheme become Effective and subject to MAFM having provided the Scheme Consideration in accordance with the Scheme and Deed Poll:
 - (i) execute, on behalf of Scheme Participants, instruments of transfer of the Scheme Units to MAFM; and
 - (ii) register all transfers of the Scheme Units to MAFM on the Implementation Date;
- (m) **(consultation with MAFM in relation to Scheme Booklet)** consult with MAFM as to the content and presentation of the Scheme Booklet including:
 - (i) providing to MAFM drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling MAFM to review and comment on those draft documents. In relation to the Independent Expert's Report, MAFM's review is to be limited to a factual accuracy review;
 - (ii) considering comments made by MAFM in good faith when producing a revised draft of the Scheme Booklet;
 - (iii) providing to MAFM a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised; and
 - (iv) obtaining written consent from MAFM for the form and content in which the MAFM Information appears in the Scheme Booklet.
- (n) **(information)** provide all necessary information, and use reasonable endeavours to procure that the VTH Registry provides all necessary information, in each case in a form reasonably requested by MAFM, about the Scheme and VTH Unitholders to MAFM and the MAFM Related Parties, which MAFM reasonably requires in order to:

- (i) understand the legal and beneficial ownership of VTH Units, and canvass (subject to VTH RE's prior written consent) agreement to the Proposal by VTH Unitholders, (including the results of directions by VTH RE to VTH Unitholders under Part 6C.2 of the Corporations Act); and
- (ii) facilitate the provision by, or on behalf of, MAFM of the Scheme Consideration.

VTH RE must comply with any reasonable request of MAFM for VTH RE to give directions to VTH Unitholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in paragraphs (i) or (ii) above;

- (o) **(ASIC and ASX review)** keep MAFM reasonably informed of matters raised by ASIC or ASX in relation to the Scheme Booklet or the Proposal, and consider in good faith any issues raised, or suggestions made, by MAFM in relation to any such matters;
- (p) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates to it);
- (q) **(listing)** subject to clause 6.2(s), not do anything to cause VTH Units to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Scheme unless MAFM has agreed in writing;
- (r) **(update Scheme Booklet)** until the date of the Meeting, promptly update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement. VTH RE must consult with MAFM as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 6.2(m);
- (s) **(suspension of trading)** if the Scheme becomes Effective, apply to ASX to suspend trading in VTH Units with effect from the close of trading on the Effective Date;
- (t) **(unitholder support)** unless there has been a change of recommendation as permitted under clause 6.7, promote to the VTH Unitholders the merits of the Proposal, including soliciting proxy votes in favour of the Scheme and Asset Sale;
- (u) **(accuracy of VTH Information)** confirm in writing to MAFM that, to the best of the VTH RE's knowledge, the VTH Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (v) **(implementation of Asset Sale)** if the Asset Sale Conditions Precedent are satisfied, perform its obligations under Schedule 3; and

- (w) **(compliance with laws)** do everything reasonably within its power to ensure that the Proposal is effected in accordance with all applicable laws and regulations.

6.3 MAFM's obligations

MAFM must take all necessary steps to implement the Proposal as soon as is reasonably practicable and, without limiting the foregoing, must (i) use all reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with VTH RE on a regular basis about its progress in that regard), and (ii) do each of the following:

- (a) **(MAFM Information)** prepare and promptly provide to VTH RE the MAFM Information for inclusion in the Scheme Booklet, including all information regarding the MAFM Group and the Consideration required by all applicable laws (including the Corporations Act), the Listing Rules and applicable regulatory guidance, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **(review of Scheme Booklet)** review the drafts of the Scheme Booklet prepared by VTH RE and provide comments promptly on those drafts in good faith;
- (c) **(Independent Expert's Report)** subject to the Independent Expert entering into arrangements with MAFM including in relation to confidentiality in a form reasonably acceptable to MAFM, provide any assistance or information reasonably requested by VTH RE or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **(Deed Poll)** by no later than 2 Business Days prior to the First Court Date, execute and deliver to VTH RE the Deed Poll;
- (e) **(accuracy of MAFM Information)** confirm in writing to VTH RE that the MAFM Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (f) **(unit transfer)** if the Scheme becomes Effective:
 - (i) accept a transfer of the Scheme Units as contemplated by clause 5.3; and
 - (ii) execute instruments of transfer in respect of the Scheme Units;
- (g) **(Scheme Consideration)** if the Scheme become Effective, procure the provision of, the Scheme Consideration in the manner and amount contemplated by clause 5 and the terms of the Scheme and the Deed Poll;
- (h) **(certificate)** before the commencement of the hearing on the Second Court Date provide to VTH RE for provision to the Court at that hearing a certificate (signed for and on behalf of MAFM) in the form of a deed (substantially in the form set out in Annexure C) confirming whether or not the Conditions Precedent in clause 4.1 (other than the Condition Precedent in clause 4.1(b)) and paragraph 3.1(a) and 3.1(b) of Schedule 3 have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by MAFM to VTH RE by 4.00 pm on the date that is two Business Days prior to the Second Court Date;

- (i) **(update MAFM Information)** until the date of the Meeting, promptly provide to VTH RE any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the MAFM Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (j) **(implementation of Asset Sale)** if the Asset Sale Conditions Precedent are satisfied, perform its obligations under Schedule 3;
- (k) **(Excluded Unitholder)** if any MAFM Group Member acquires any VTH Units after the date of this deed where permitted by the Confidentiality Agreement, notify VTH RE in writing of that acquisition and the relevant MAFM Group Member (and thereafter that entity will not be a 'Scheme Participant' for the purposes of this deed and will be excluded from the operation of the Scheme); and
- (l) **(compliance with laws)** do everything reasonably within its power to ensure that the Proposal is effected in accordance with all applicable laws and regulations.

6.4 Conduct of business

- (a) Subject to clause 6.4(b), from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of VTH RE under this deed, VTH RE must:
 - (i) use reasonable endeavours to conduct its businesses and operations, and to cause each other VTH Group Member to conduct its respective business and operations, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12 month period prior to the date of this deed;
 - (ii) use reasonable endeavours, and procure that each other member of the VTH Group uses reasonable endeavours, to:
 - (A) preserve and maintain the value of the business and assets of the VTH Group;
 - (B) keep available the services of the directors, officers and key employees (as applicable) of each member of the VTH Group; and
 - (C) maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any member of the VTH Group;
 - (iii) maintain and if necessary, renew, and procure that each other member of the VTH Group maintains, and if necessary, renews:
 - (A) each of their respective insurance policies and promptly notifies MAFM if any renewal proposal is not accepted by the insurer or if the insurer requests a material adjustment to any policy in effect or under negotiation on and from the Implementation Date; and

- (B) each of the licences, permits, consents, authorisations and approvals necessary to conduct the VTH Group's business and promptly notifies MAFM if any renewal proposal is not accepted by the relevant government agency or industry body or if any relevant government agency or industry body notifies a VTH Group Member of an intention not to renew a licence, permit, consent, authorisation or approval necessary to its business;
 - (iv) take all steps reasonably within its power to ensure that, between (and including) the date of this deed and the Implementation Date, no VTH Prescribed Occurrence or VTH Regulated Event occurs and there is no occurrence within their control that would constitute or be likely to constitute a Material Adverse Change (and VTH RE must take all steps reasonably within its power to ensure such events do not occur);
 - (v) keep MAFM reasonably informed of material developments concerning the conduct of the VTH Group's business;
 - (vi) not enter into any line of business or other activities, in each case which is material, in which the VTH Group is not engaged as of the date of this deed; and
 - (vii) provide regular reports on the financial affairs of the VTH Group in the form which is ordinarily used by the VTH RE, including the provision in a timely manner to MAFM of the VTH Group's monthly management accounts, any weekly updates prepared by the VTH Group or the Manager and any other information reasonably requested by MAFM as is necessary or desirable to implement the Proposal.
- (b) Nothing in clause 6.4(a) restricts the ability of VTH RE to take any action:
- (i) which is required or expressly permitted by this deed or the Scheme, including for the avoidance of doubt actions to give effect to a Superior Proposal;
 - (ii) which has been agreed to in writing by MAFM (which agreement must not be unreasonably withheld or delayed other than in relation to clause 6.4(a)(iv));
 - (iii) which is required by any applicable law or by a Government Agency (except where the requirement arises as a result of an action by a VTH Group Member);
 - (iv) which is Fairly Disclosed in the Disclosure Materials as being an action that the VTH Group may carry out between (and including) the date of this deed and the Implementation Date;
 - (v) that VTH RE Fairly Disclosed in an announcement made by VTH RE to ASX, or a publicly available document lodged by it with ASIC prior to the date of this deed; or
 - (vi) which is undertaken in response to an Alternative Transaction as permitted by clause 11.

- (c) From the date of this deed until the Meeting Date unless MAFM agrees otherwise in writing, VTH RE will promptly notify MAFM of anything of which it becomes aware that:
 - (i) causes:
 - (A) a representation or warranty provided in this deed by VTH RE to be false;
 - (B) a breach or non-satisfaction of any of the Conditions Precedent; or
 - (C) a material breach of this deed by VTH RE; or
 - (ii) has given rise to or is reasonably likely to give rise to the occurrence of a Material Adverse Change.
- (d) As soon as practicable after the date of this deed, VTH RE and MAFM must seek to identify any change of control, unilateral termination rights or similar provisions in leases and Material Contracts to which any one or more VTH Group Member is a party that may be triggered or exercised by the implementation of the Proposal. In respect of those leases and contracts:
 - (i) VTH RE and MAFM must, each acting reasonably, agree a proposed course of action and then VTH RE must initiate contact with the relevant counterparties to request that they provide any consents or confirmations required or appropriate. No MAFM Group Member or any Related Person of any MAMFL Group Member may contact any counterparties without VTH RE or without VTH RE's prior written consent (which is not to be unreasonably withheld, conditioned or delayed);
 - (ii) VTH RE must cooperate with, and provide reasonable assistance to, MAFM to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires VTH RE or MAFM to incur material expense); and
 - (iii) MAFM must use all reasonable endeavours to comply with any requirements of the counterparties that are required under the relevant agreements to be complied with by an assignee, transferee or new controller of VTH RE or the other relevant VTH Group Member.
- (e) Subject to VTH RE complying with this clause 6.4, a failure by a VTH Group Member to obtain any third party consent or confirmation will not constitute a breach of this deed by VTH RE and will, together with any resulting consequences, be disregarded when assessing the operation of any other part of this deed.

6.5 Post-transaction planning

- (a) VTH RE must provide MAFM with reasonable access to information (subject to any existing confidentiality obligations owed to third parties or any other applicable legal restriction), its premises and senior personnel of VTH RE and the VTH Group, and use reasonable endeavours to provide MAFM with reasonable access to senior personnel of the

Manager, as reasonably requested by MAFM and agreed by VTH RE at mutually convenient times for the sole purpose of:

- (i) preparation, collation and provision of the MAFM Information;
 - (ii) implementation of the Proposal;
 - (iii) facilitating MAFM to develop plans for VTH RE's operations following implementation of the Proposal; or
 - (iv) any other purpose agreed between the parties in writing, provided that:
 - (A) information will be made available via the Data Room;
 - (B) nothing in this clause will require VTH RE to provide information concerning VTH RE's directors' and management's consideration of the Proposal or any Alternative Transaction; and
 - (C) it does not, in the reasonable opinion of VTH RE, result in unreasonable disruptions to the VTH Group's business or require VTH to make further disclosure to any other entity or Government Agency or of information that is subject to legal professional privilege, provided that VTH shall take reasonable steps to provide such information to MAFM to the maximum extent possible without affecting legal professional privilege (including by adopting methods used by MAFM and VTH RE prior to entry into of this deed).
- (b) MAFM acknowledges that their investigations under this clause 6.5(a) will be subject to the Confidentiality Agreement and all applicable laws and requirements of any Government Agency.

6.6 Financing

- (a) VTH RE agrees to provide reasonable assistance upon request to MAFM to assist it to satisfy any conditions precedent under its debt financing arrangements for the Proposal to the extent same is within its control, provided that:
 - (i) neither VTH RE nor any VTH Group Member will be required to incur any liability in connection with any debt financing prior to the Effective Date or the Completion Date (as applicable) for which it is not indemnified by MAFM;
 - (ii) MAFM must indemnify and hold harmless each VTH Indemnified Party from and against any and all losses, damages, Claims, costs or expenses suffered or incurred by any of them in connection with any debt financing by any MAFM Group Member and any information utilised in connection therewith, in each case other than to the extent any of the foregoing arises from the wilful misconduct of, or fraud by, that VTH Indemnified Party;

- (iii) nothing in this clause shall require cooperation to the extent that it would:
 - (A) cause any Condition Precedent to not be satisfied or otherwise cause a breach of this deed; or
 - (B) require a VTH Group Member to take any action that would reasonably be expected to conflict with or violate the VTH Group Member constituent documents or any law or any contractual obligation; and
- (iv) no VTH Indemnified Party will be required to execute prior to the implementation of the Scheme or Completion of the Asset Sale (as applicable) any agreements, including any credit or other agreements, pledge or security documents or other certificates, legal opinions or documents in connection with the any debt financing.
- (b) MAFM must pay on demand all third party costs incurred by VTH RE in connection with any cooperation provided under this clause 6.6 (including advisors' fees and expenses).

6.7 VTH RE Board recommendation

- (a) VTH RE must use all reasonable endeavours to procure that:
 - (i) subject to clause 6.7(b), the VTH RE Board Members unanimously recommend, in a form to the effect of the Proposed Recommendation, that VTH Unitholders:
 - (A) vote in favour of the Scheme at the Meeting, in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, in the Independent Expert's Report that the Scheme is fair and reasonable to, and in the best interests of, VTH Unitholders; and
 - (B) vote in favour of the Asset Sale at the Meeting, in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, in the Independent Expert's Report that the Asset Sale is fair and reasonable to, and in the best interests of, VTH Unitholders (and on the basis that it will only be implemented if the Scheme Approval Condition is not satisfied); and
 - (ii) the Scheme Booklet includes a statement by the VTH RE Board to the effect of clause 6.7(a).
- (b) VTH RE must use all reasonable endeavours to procure that the VTH RE Board collectively, and the VTH RE Board Members individually, do not change, withdraw or modify its, his or her recommendation from the Proposed Recommendation to vote in favour of:
 - (i) the Proposal, unless VTH RE has received a Superior Proposal;
 - (ii) the Scheme, unless the Independent Expert provides a report to VTH RE (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) that concludes that the Scheme

is not fair and reasonable to, or not in the best interests of, VTH Unitholders; or

- (iii) the Asset Sale, unless the Independent Expert provides a report to VTH RE (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) that concludes that the Asset Sale is not fair and reasonable to, or not in the best interests of, VTH Unitholders,

and, in each case, unless the VTH RE Board has determined, after receiving advice from its legal advisers, that the VTH RE Board, by virtue of the directors' duties of the VTH RE Board Members, is required to change, withdraw or modify its recommendation, and VTH RE is not in breach of its obligations under clause 11.

- (c) For the purposes of this deed, including clauses 6.7(b), 9.1(b) and 13.1(b)(ii), customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of:
 - (i) the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, in the Independent Expert's Report that the Scheme is fair and reasonable to, and in the best interests of, VTH Unitholders; and
 - (ii) the Asset Sale, in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, in the Independent Expert's Report that the Asset Sale is fair and reasonable to, and in the best interests of, VTH Unitholders; or
 - (iii) a recommendation in the form of the Proposed Recommendation,

will not be regarded as a failure to make, or a change, withdrawal or modification of, a recommendation in favour of the Proposal.

6.8 Scheme Booklet content and responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
 - (i) MAFM is responsible for the MAFM Information contained in the Scheme Booklet; and
 - (ii) VTH RE is responsible for the VTH Information contained in the Scheme Booklet.
- (b) If after a reasonable period of consultation, VTH RE and MAFM are unable to agree on the form or content of the Scheme Booklet:
 - (i) where the determination relates to MAFM Information, MAFM will make the final determination as to the form and content of the MAFM Information, acting reasonably, provided that if VTH RE disagrees with such final form and content, the MAFM Information must include a statement to that effect; and
 - (ii) in any other case, VTH RE will make the final determination as to the form and content of the Scheme Booklet, acting

reasonably, provided that if MAFM disagrees with such final form and content, VTH RE must include a statement to that effect in the Scheme Booklet.

6.9 Conduct of Court proceedings

- (a) VTH RE and MAFM are entitled to separate legal representation at all Court proceedings affecting the Proposal.
- (b) This deed does not give VTH RE or MAFM any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) VTH RE and MAFM must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain the Judicial Advices as contemplated by this deed.

6.10 Novation and termination of management agreement

- (a) At any time following the Scheme becoming Effective, MAFML2 may request that VTH RE agrees to the novation of the management agreement between VTH RE and the Manager, and if MAFML2 so requests, VTH RE agrees that it will enter into a novation deed or other instrument to give effect to that novation, provided that MAFML2 indemnifies and holds harmless VTH RE for any cost, risk or other liability arising in connection with the novation.
- (b) At any time following the Implementation Date, MAFML2 may request that VTE RE agrees to the termination of the management agreement without notice, and, if MAFML2 so requests, VTH RE agrees that it will enter into a termination deed or other instrument to give effect to that termination, provided that any such termination must be on the terms that neither party shall have any further liability to the other under the management agreement (including for any accrued obligations), and that MAFML2 indemnifies and holds harmless VTH RE for any cost, risk or other liability arising in connection with the termination.

7 Representations and warranties

7.1 MAFM's representations and warranties

MAFM represents and warrants to VTH RE (in its own right and separately as trustee or nominee for each of the other VTH Indemnified Parties) each of the MAFM Representations and Warranties.

7.2 MAFM's indemnity

MAFM agrees with VTH RE (in its own right and separately as trustee or nominee for each of the other VTH Indemnified Parties) to indemnify VTH RE and each of the VTH Indemnified Parties against any Claim, action, damage, Loss, Liability, cost, expense or payment of whatever nature and however arising that VTH RE or any of the other VTH Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the MAFML Representations and Warranties.

7.3 VTH RE's representations and warranties

VTH RE represents and warrants to MAFM (in MAFM's own right and separately as trustee or nominee for each of the other MAFM Indemnified Parties) each of the VTH RE Representations and Warranties.

7.4 VTH RE's indemnity

VTH RE agrees with MAFM (in MAFM's own right and separately as trustee or nominee for each MAFM Indemnified Party) to indemnify MAFM and each of the MAFM Indemnified Parties from any Claim, action, damage, Loss, Liability, cost, expense or payment of whatever nature and however arising that MAFM or any of the other MAFM Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the VTH RE Representations and Warranties.

7.5 Qualifications on VTH RE's representations, warranties and indemnities

The VTH RE Representations and Warranties made or given in clause 7.3 and the indemnity in clause 7.4 are each subject to:

- (a) matters that:
 - (i) have been Fairly Disclosed in the Disclosure Materials;
 - (ii) have been Fairly Disclosed in an announcement by VTH RE to ASX, or a publicly available document lodged by it with ASIC, prior to the date of this deed; or
 - (iii) are required or expressly permitted by this deed or the Scheme.

7.6 Survival of representations and warranties

Each representation and warranty in clauses 7.1 and 7.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that Liability under it is not confined to breaches that are discovered before the date of termination of this deed.

7.7 Survival of indemnities

Each indemnity in this deed:

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

7.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 7.1 or 7.3 is given at the date of this deed, the date of despatch of the Scheme Booklet, on

the date of the Meeting and, if the Asset Sale Conditions Precedent are satisfied, on the Completion Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

7.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.
- (c) Each party acknowledges and confirms that clauses 7.9(a) and 7.9(b) do not prejudice any rights a party may have in relation to information which has been announced by the other party to ASX or lodged by it with ASIC, or that is contained in the Disclosure Materials.

8 Releases

8.1 VTH RE and VTH RE directors and officers

- (a) MAFM:
 - (i) releases its rights; and
 - (ii) agrees with VTH RE that it will not make, and that after the Implementation Date it will procure that each VTH Group Member does not make, any Claim,

against any VTH Indemnified Party (other than VTH RE and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
 - (iii) any breach of any representations and warranties of VTH RE or any other member of the VTH Group in this deed or any breach of any covenant given by VTH RE in this deed;
 - (iv) any disclosures containing any statement which is false or misleading whether in content or by omission; or
 - (v) any failure to provide information,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the VTH Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 8.1(a) limits MAFM's rights to terminate this deed under clause 13.
- (b) Clause 8.1(a) is subject to any Corporations Act restriction and will be read down accordingly.

- (c) VTH RE receives and holds the benefit of this clause 8.1 to the extent it relates to each VTH Indemnified Party as trustee for each of them.

8.2 Release of VTH RE

- (a) Subject to clause 8.2(b) and to the Scheme becoming Implemented or Completion occurring under the Asset Sale, MAFM on its own behalf and on behalf of each of its Related Bodies Corporate:

- (i) releases its rights; and
- (ii) agrees with VTH RE that it will not make, and that after the Implementation Date it will procure that each VTH Group Member does not make, any Claim,

against VTH RE and its Related Bodies Corporate as at the date of this deed and from time to time in connection with:

- (iii) any breach of any representations and warranties of VTH RE (including under any indemnity) or any other member of the VTH Group in this deed or any breach of any covenant given by VTH RE in this deed;
- (iv) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (v) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise.

- (b) Clause 8.2(a):

- (i) is subject to any Corporations Act restriction and will be read down accordingly;
- (ii) does not apply in the case of the wilful misconduct, wilful concealment or fraud of the VTH RE or its Related Bodies Corporate, or any wilful misconduct, wilful concealment or fraud by any director, officer or any senior manager of the VTH RE or its Related Bodies Corporate; or
- (iii) does not apply to the extent required to permit or facilitate a Third Party Claim in accordance with, and subject to the terms of, clause 8.3.

For the avoidance of doubt, each of (i), (ii) and (iii) above are independent of each other.

8.3 Third Party Claim

- (a) If VTH RE becomes aware of circumstances that it considers, acting reasonably, would give rise to a right to make a Third Party Claim, then VTH RE must notify MAFM of that Claim as soon as reasonably practicable.
- (b) MAFM may require VTH RE to make or commence a Third Party Claim by giving written notice to VTH RE.
- (c) If MAFM gives VTH RE notice under clause 8.3(b), then:

- (i) VTH RE must (at the cost of MAFM) take all action reasonably directed by MAFM in relation to the initiation and conduct of the Third Party Claim, including using professional advisers nominated by MAFM or approved by MAFM for this purpose;
- (ii) VTH RE must:
 - (A) exercise its rights so as to allow MAFM to attend and participate at any relevant meetings, negotiations, any hearing or other meetings in relation to the Third Party Claim;
 - (B) give MAFM copies of all documents, information and other material in relation to the Third Party Claim (at the cost of MAFM), provided that MAFM acknowledges that VTH RE is not required to disclose any documents, information and other material if the disclosure will result in waiver of any legal professional privilege;
 - (C) provide all other reasonable assistance which MAFM requires in relation to that Third Party Claim (at the cost of MAFM);
 - (D) not make any admission or undertakings on behalf of themselves or any other third party without MAFM's prior written consent;
 - (E) not enter into any settlement or compromise of a Third Party Claim without the prior written consent of MAFM (provided that, where a Third Party Claim would materially impact on VTH RE's reputation, MAFM must not unreasonably withhold its consent to a settlement or compromise which, in the reasonable opinion of the VTH RE, is necessary in order to protect the reputation of VTH RE);
 - (F) act in good faith; and
 - (G) liaise with MAFM in relation to the conduct of the Third Party Claim; and
- (iii) VTH RE must pay any amount recovered by it under any Third Party Claim to MAFM (provided that VTH RE is entitled to set off any amounts owing to it from MAFM under clause 8.3(d) against any amounts which VTH RE is required to pay to MAFM under this clause 8.3(c)(iii)).
- (d) MAFM agrees to indemnify VTH RE against any Claim, action, damage, Loss, Liability, cost, expense or payment other than a loss of opportunity but otherwise of whatever nature and however arising that VTH RE suffers, incurs or is liable for arising out of any MAFM Claim, any Third Party Claim, and otherwise arising as a result of VTH RE's compliance with clause 8.3(c) (including the time costs of the personnel of VTH RE and its Related Bodies Corporate in taking actions directed by MAFM or otherwise to ensure that VTH RE complies with clause 8.3(c)).
- (e) VTH RE's maximum liability to MAFM or any of its Related Bodies Corporate under or in connection with a MAFM Claim or a Third Party Claim is limited to the aggregate amount that VTH RE actually recovers from a Third Party in connection with the relevant MAFM Claim or Third Party Claim, less any amount set off in accordance with clause 8.3(c)(iii).

8.4 MAFM and MAFM directors and officers

- (a) VTH RE releases its rights, and agrees with MAFM that it will not make a Claim against any MAFM Indemnified Party (other than MAFM and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
- (i) any breach of any representations, covenants and warranties of MAFM or any other member of the MAFM Group in this deed or any breach of any covenant given by MAFM in this deed;
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission; or
 - (iii) any failure to provide information,
- whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the MAFM Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 8.4(a) limits VTH RE's rights to terminate this deed under clause 13.
- (b) Clause 8.4(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) MAFM receives and holds the benefit of this clause 8.4 to the extent it relates to each MAFM Indemnified Party as trustee for each of them.

8.5 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and being implemented, MAFM undertakes in favour of VTH RE and each other VTH Indemnified Party that it will:
- (i) for a period of seven years from the Implementation Date, ensure that the constitution of VTH and each other VTH Group Member continues to contain rules which are no less favourable overall to the VTH Indemnified Parties than the rules contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a VTH Group Member; and
 - (ii) procure that VTH RE and each other VTH Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained in the form as entered into pursuant to and in accordance with VTH RE's existing policies immediately prior to the date of this deed for a period of seven years from the retirement date of each director and officer and without limiting the foregoing, not take any action or make any omission which would prejudice or adversely affect any such directors' and officers' run-off insurance cover taken out pursuant to and in accordance with VTH RE's existing policies immediately prior to the date of this deed.

- (b) Each party acknowledges that, notwithstanding any other provision of this deed, VTH RE may, prior to the Implementation Date, enter into an arrangement to secure directors and officers run-off insurance for up to such seven year period (**D&O Policy**) provided that:
 - (i) the scope of cover of the D&O Policy will be on the same or substantially the same terms as the existing insurance policies in place for directors or officers of VTH RE at the date of this deed; and
 - (ii) VTH RE will use reasonable endeavours to obtain the most attractive commercial terms for the D&O Policy from a reputable insurer.
- (c) The undertakings contained in clause 8.5(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) VTH RE receives and holds the benefit of clause 8.5(a), to the extent it relates to the other VTH Indemnified Parties, as trustee for each of them.

9 Public announcement

9.1 Announcement of the Proposal

- (a) Immediately after the execution of this deed, VTH RE must issue a public announcement in a form previously agreed with MAFM in writing.
- (b) The announcement must include a unanimous recommendation by the VTH RE Board to VTH Unitholders that, in the absence of a Superior Proposal, and:
 - (i) subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is fair and reasonable to, and in the best interests of, VTH Unitholders, VTH Unitholders vote in favour of the Scheme; and
 - (ii) subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Asset Sale is fair and reasonable to, and in the best interests of, VTH Unitholders and the Scheme Approval Condition not being satisfied, VTH Unitholders vote in favour of the Asset Sale.

9.2 Public announcements

Subject to clause 9.3, no public announcement or public disclosure of the Proposal or any other transaction the subject of this deed or the Scheme may be made other than in a form approved by each party in writing (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable. For the avoidance of doubt, this clause 9.2 does not apply to any announcement or disclosure relating to an Alternative Transaction.

9.3 Required disclosure

Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Proposal or any other transaction the subject of this deed or the Scheme, it may do so despite clause 9.2 but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party prior to making the relevant disclosure.

10 Confidentiality

VTH RE and MAFM acknowledge and agree that VTH RE and MAFCA continue to be bound by the Confidentiality Agreement after the date of this deed. The rights and obligations of VTH RE and MAFCA under the Confidentiality Agreement survive termination of this deed.

11 Exclusivity

11.1 Exclusivity Period

Subject to VTH RE's compliance with its obligations under this deed, the Exclusivity Period will terminate immediately should the VTH RE Board notify MAFM that it has determined an Alternative Transaction is a Superior Proposal and elect to pursue such Alternative Transaction, following VTH RE's compliance with its obligations in clause 11.6.

11.2 No existing discussion

- (a) VTH RE represents and warrants that, other than the discussions with MAFM and its Representatives in respect of the Proposal, upon signing this deed neither VTH RE nor any Representative of VTH RE is in negotiations or discussions in respect of any Alternative Transaction with any person.
- (b) Before or as soon as practicable following the date of this deed, VTH RE must use reasonable endeavours to exercise any rights it has that enable it to require that any Third Party to whom it has disclosed information in the 18 months preceding the date of this deed in connection with a potential Alternative Transaction, return or destroy that information.

11.3 No-shop and no-talk

During the Exclusivity Period, VTH RE agrees not to directly or indirectly, and agrees not to permit any of its Representatives to (and shall procure that they do not):

- (a) solicit, encourage, initiate or invite any enquiries, offers, expressions of interest, proposals or discussions from any person (other than from MAFM) in relation to an Alternative Transaction or communicate to any person an intention to do any of the foregoing;
- (b) subject to clause 11.4, participate in any discussions or negotiations in relation to an Alternative Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to an Alternative Transaction, even if that person's Alternative Transaction was not directly or indirectly solicited, invited, encouraged or initiated by VTH RE or any of its Representatives or even if the person has publicly announced the Alternative Transaction;
- (c) subject to clause 11.4, provide or otherwise enable access to any confidential information to any third party in connection with the formulation, development or finalisation of an actual, proposed or potential Alternative Transaction or otherwise cooperate with or assist or participate in any effort to initiate an Alternative Transaction, other than by MAFM; or

- (d) subject to clause 11.4, continue or recommence any existing discussions and negotiations with all persons other than MAFM in respect of any Alternative Transaction,

but nothing in this clause 11.3 prevents VTH RE from making normal presentations to, or responding to enquiries from, brokers, proxy advisers, portfolio investors and analysts in the ordinary course of business or fulfilling its continuous disclosure obligations.

11.4 Exceptions

Nothing in clause 11.3 (save for clause 11.3(a)) prevents VTH RE or any of its Representatives from taking any action (or not taking any action) in relation to a proposal from a third party in respect of an actual, proposed or potential Alternative Transaction if:

- (a) the proposed Alternative Transaction did not result from a breach of clause 11.3(a);
- (b) the VTH RE Board acting in good faith determines that the Alternative Transaction would be or would be reasonably likely to result in a Superior Proposal; and
- (c) compliance with those clauses would, in the opinion of the VTH RE Board, formed in good faith after receiving advice from its legal advisers, constitute or would reasonably be likely to constitute a breach of any of the fiduciary or statutory duties of the directors of VTH RE,

provided that VTH RE must comply with any obligations which are triggered with respect to the actual, proposed or potential Alternative Transaction under clause 11.5.

11.5 Notice of unsolicited approach

VTH RE will, as soon as reasonably practicable following the VTH RE Board's receipt of a proposal from a third party in respect of an actual, proposed or potential Alternative Transaction (and in any event within 48 hours of VTH RE receiving any such proposal), notify MAFM that VTH RE has received the proposal and provide reasonable details of the proposal, including details of the person making the proposal (and if different, details of the proposed bidder or acquirer) and its material terms and conditions (including price). If VTH RE determines that the Alternative Transaction would be or would be reasonably likely to result in a Superior Proposal, VTH RE must notify MAFM of that determination as soon as it is reasonably practicable to do so.

11.6 Matching right

Without limiting clause 11.3 and VTH RE's obligations under this deed generally, during the Exclusivity Period, VTH RE must not:

- (a) enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, VTH RE or both proposes or propose to undertake or give effect to an Alternative Transaction; or

- (b) terminate the Exclusivity Period as contemplated by clause 11.1;

unless:

- (c) VTH RE has received a proposal from a third party in respect of an actual, proposed or potential Alternative Transaction and the VTH RE

Board acting in good faith and in order to satisfy what the members of the VTH RE Board consider to be their statutory or fiduciary duties (having received advice from VTH RE's legal advisers) determines that the Alternative Transaction would be or would reasonably likely to result in a Superior Proposal;

- (d) VTH RE has complied with clause 11.5 in respect of the proposal and provided any details of any material change to the proposal from the details that were provided pursuant to a notice given under clause 11.5;
- (e) the VTH RE Board has provided MAFM with at least five Business Days after the date of the provision of the information referred to in clause 11.5 above and the date on which VTH RE has notified MAFM it determined that the Alternative Transaction would be or would be reasonably likely to result in a Superior Proposal to provide a matching or superior proposal to the terms of the competing proposal (including any subsequent modification of same); and
- (f) MAFM has not provided a further proposal that the VTH RE Board, acting in good faith determines will or is likely to provide an equivalent or superior outcome for VTH RE or the VTH Unitholders than the Alternative Transaction.

12 Reimbursement Fee

12.1 Background to Reimbursement Fee

- (a) MAFM and VTH RE acknowledge that if they enter into this deed and the Proposal is subsequently not implemented, MAFM will incur significant costs, including those set out in clause 12.4.
- (b) In these circumstances, MAFM has requested that provision be made for the payments outlined in clause 12.2, without which MAFM would not have entered into this deed or otherwise agreed to implement the Proposal.
- (c) The VTH RE Board believes, having taken advice from its external legal advisers, that the implementation of the Proposal will provide benefits to VTH and the VTH Unitholders and that it is appropriate for VTH RE to agree to the payments referred to in clause 12.2 in order to secure MAFM's participation in the Proposal.

12.2 Reimbursement Fee triggers

Subject to this clause 12, VTH RE must pay the Reimbursement Fee to MAFM or its nominee if:

- (a) during the Exclusivity Period, any of the VTH RE Board Members withdraws, adversely revises, adversely modifies or adversely qualifies his or her support of the Proposal or his or her recommendation that VTH Unitholders vote in favour of the Proposal or fails to recommend that VTH Unitholders vote in favour of the Proposal in the manner described in clause 6.7(a), unless:
 - (i) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, that report) that the Proposal (or any part of it) is not fair and reasonable to, and not in the best interests of, VTH Unitholders (except where that conclusion is due wholly or partly to the

existence, announcement or publication of an Alternative Transaction); or

- (ii) VTH RE is entitled to terminate this deed pursuant to clause 13.1(a)(i) or clause 13.2(b), and has given the appropriate termination notice to MAFM;
- (b) during the Exclusivity Period, one or more of the VTH RE Board Members recommends that VTH Unitholders accept or vote in favour of, or otherwise supports or endorses, an Alternative Transaction of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period;
- (c) within 12 months of the earlier to occur of the End Date and the date this document is validly terminated in accordance with its terms, any Third Party or any Associate of that Third Party:
 - (i) completes an Alternative Transaction;
 - (ii) enters into an agreement, arrangement or understanding with VTH RE, with another member of the VTH Group or with the board of directors of any of the foregoing entities; or
 - (iii) without limiting clause 12.2(c)(i) or 12.2(c)(ii), acquires (either alone or in aggregate) a Relevant Interest in more than 50% of the VTH Units or the Leasehold Units under a transaction that is or has become wholly unconditional or otherwise acquires (either alone or in aggregate) Control of VTH or Leasehold Trust or all or substantially all of VTH's business and undertakings; and
- (d) MAFM has terminated this deed pursuant to:
 - (i) clause 13.2(a); or
 - (ii) clause 13.1(a)(i) or 13.1(b)(i), provided the matter which gave rise to the termination right was within the reasonable control of VTH RE.

12.3 Payment of Reimbursement Fee

- (a) A demand by MAFM for payment of the Reimbursement Fee under clause 12.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of MAFM into which VTH RE is to pay the Reimbursement Fee.
- (b) VTH RE must pay the Reimbursement Fee into the account nominated by MAFM, without set-off or withholding, within five Business Days after receiving a demand for payment where MAFM is entitled under clause 12.2 to the Reimbursement Fee.

12.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse MAFM for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Proposal (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Proposal or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Proposal; and
- (d) out of pocket expenses incurred by MAFM and MAFM's employees, advisers and agents in planning and implementing the Proposal,

and the parties agree that:

- (e) the costs actually incurred by MAFM will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs,

and VTH RE represents and warrants that it has received written legal advice from its legal advisers in relation to the operation of this clause 12.

12.5 Compliance with law

- (a) This clause 12 does not impose an obligation on VTH RE to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
 - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (ii) is determined to be unenforceable or unlawful by a court,provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted and MAFM will refund to VTH RE within five Business Days any amount in excess of its obligation under this clause that VTH RE has already paid to MAFM when that declaration or determination is made. For the avoidance of doubt, any part of the Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by VTH RE.
- (b) No party is permitted to make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 12.5(a).

12.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to MAFM under clause 12.2 and is actually paid to MAFM, MAFM cannot make any Claim against VTH RE for payment of any subsequent Reimbursement Fee.

12.7 Other Claims

- (a) Despite anything to the contrary in this deed, if VTH RE pays the Reimbursement Fee to MAFM under this deed, VTH RE has no further liability to MAFM under this deed including for any Claim.
- (b) Nothing in clause 12.7(a) in any way prevents either party (in its own right or as trustee for another person, as the case may be under this deed) from seeking orders from a court of competent jurisdiction for the specific performance by the other party of its obligations under this deed.

13 Termination

13.1 Termination

- (a) Either party may terminate this deed by written notice to the other party:
 - (i) other than in respect of a breach of either a MAFM Representation and Warranty or a VTH RE Representation and Warranty (which are dealt with in clause 13.2), at any time before 8.00am on the Second Court Date, if the other party has materially breached this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given;
 - (ii) at any time before 8.00am on the Second Court Date if the Court or another Government Agency (including any other court) has taken any action permanently restraining or otherwise prohibiting or preventing both the Scheme and the Asset Sale, or has refused to do anything necessary to permit either the Scheme or the Asset Sale to be implemented by the End Date, and the action or refusal has become final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of an appeal or review succeeding by the End Date provided that the party purporting to terminate this deed has complied with its obligations in clause 4.4 to the extent applicable;
 - (iii) in accordance with and pursuant to: clause 4.4; or
 - (iv) if neither the Effective Date nor the Completion Date has occurred, or will occur, on or before the End Date.
- (b) MAFM may terminate this deed by written notice to VTH RE at any time before 8.00am on the Second Court Date if:
 - (i) after the date of this deed, a VTH Prescribed Occurrence or VTH Regulated Event occurs and MAFM has given written notice to VTH RE setting out the relevant circumstances and stating an intention to terminate this deed, and VTH RE has failed to remedy the breach within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given; or

- (ii) a VTH RE Board Member:
 - (A) fails to recommend the Scheme or the Asset Sale;
 - (B) withdraws, adversely revises, adversely modifies or adversely qualifies his or her support of the Scheme or the Asset Sale or his or her recommendation that VTH Unitholders vote in favour of the Scheme or the Asset Sale (other than as permitted by clause 6.7(b)); or
 - (C) makes a public statement indicating that he or she no longer recommends the Scheme or the Asset Sale or recommends, supports or endorses another transaction (including any Alternative Transaction but excluding a statement that no action should be taken by VTH Unitholders pending assessment of an Alternative Transaction by the VTH RE Board).
- (c) VTH RE may terminate this deed by written notice to MAFM at any time before 8.00am on the Second Court Date, if the VTH RE Board or a majority of the VTH RE Board has changed, withdrawn or modified its recommendation of the Scheme as permitted under clause 6.7 and, if applicable, VTH RE has paid the Reimbursement Fee to MAFM.

13.2 Termination for breach of representations and warranties

- (a) MAFM may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of a VTH Representation and Warranty only if:
 - (i) MAFM has given written notice to VTH RE setting out the relevant circumstances and stating an intention to terminate;
 - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 13.2(a)(i); and
 - (iii) the relevant breach is material in the context of the Proposal taken as a whole.
- (b) VTH RE may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a MAFM Representation and Warranty only if:
 - (i) VTH RE has given written notice to MAFM setting out the relevant circumstances and stating an intention to terminate;
 - (ii) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 13.2(b)(i); and
 - (iii) the relevant breach is material in the context of the Proposal taken as a whole.

13.3 Termination by agreement

This deed is terminable if agreed to in writing by MAFM and VTH RE.

13.4 Effect of termination

If this deed is terminated by either party under clauses 13.1, 13.2 or 13.3:

- (a) each party will be released from its obligations under this deed, except that this clause 13.4, and clauses 1, 7.5 to 7.9, 8.1, 8.4, 10, 14, 16, 17 and 18 (except clause 18.9), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Proposal.

13.5 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating the deed.

13.6 No other termination

Neither party may terminate or rescind this deed except as permitted under clauses 4.4, 13.1, 13.2 or 13.3.

13.7 Termination of Asset Sale

- (a) Notwithstanding any other provision of this deed, if:
 - (i) the Independent Expert concludes that the Asset Sale is not fair and reasonable to, or not in the best interests of, VTH Unitholders; or
 - (ii) if VTH RE and MAFM agree in writing that the Asset Sale is to be withdrawn,the VTH RE may by notice in writing to MAFM terminate the Asset Sale.
- (b) If VTH RE terminates the Asset Sale under clause 13.7(a) but this deed has not otherwise been terminated:
 - (i) the obligations of the parties in this deed to implement the Asset Sale will no longer apply;
 - (ii) the parties will continue to enjoy the rights and be bound by the obligations in this deed in connection with the implementation of the Scheme; and
 - (iii) the provisions of this deed will be taken to be amended accordingly, and the parties will continue to perform their obligations under and comply with this deed as amended by this clause 13.7(b).

14 Trustee limitation of liability

14.1 Capacity

Each party acknowledges that:

- (a) VTH RE is entering into this deed as responsible entity of Vitalharvest Freehold Trust and not in any other capacity; and
- (b) MAFM is entering into this deed as trustee of the Macquarie Agriculture Fund – Crop Australia 2 and not in any other capacity.

14.2 MAFM's liability

- (a) A liability arising under or in connection with this deed is limited to and can be enforced against MAFM only to the extent to which it can be satisfied out of property of the Macquarie Agriculture Fund – Crop Australia 2 out of which MAFM is actually indemnified for the liability. MAFM agrees to exercise its right of indemnity to the extent required to satisfy its obligations or a Claim against it under this deed. This limitation of MAFM's liability applies despite any other provision of this deed and extends to all liabilities and obligations of MAFM in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) A party to this deed may not sue MAFM, and MAFM is not liable to any party or any other person, in any capacity other than trustee of the Macquarie Agriculture Fund – Crop Australia 2, including seeking the appointment of a receiver (except in relation to property of the Macquarie Agriculture Fund – Crop Australia 2), a liquidator, an administrator or any similar person to MAFM or prove in any liquidation, administration or arrangement of or affecting MAFM (except in relation to property of the Macquarie Agriculture Fund – Crop Australia 2).
- (c) VTH RE waives its rights and releases MAFM from any personal liability in respect of any loss VTH RE may suffer as a consequence of a failure of MAFM to perform its obligations under this deed which cannot be paid or satisfied out of any property held by MAFM as trustee of the Macquarie Agriculture Fund – Crop Australia 2.
- (d) The provisions of this clause 14.2 shall, subject to clause 14.2(e), not apply to any obligation or liability of MAFM to the extent that it is not satisfied because under the Macquarie Agriculture Fund – Crop Australia 2 constitution or by operation of law there is a reduction in the extent of MAFM's indemnification out of the assets of the Macquarie Agriculture Fund – Crop Australia 2 as a result of MAFM's failure to properly perform its duties as trustee. For these purposes it is agreed that the trustee cannot be regarded as having failed to properly perform its duties as trustee to the extent to which any failure by MAFM to satisfy its obligations or breach of representation or warranty under this agreement has been caused or contributed to by a failure of another party to this deed to fulfil its obligations under this deed or any other act or omission of any other party to this deed or person.
- (e) Nothing in clause 14.2(d) shall make MAFM liable to any claim for an amount greater than the amount which a party to this agreement would have been able to claim and recover from the assets of the Macquarie Agriculture Fund – Crop Australia 2 in relation to the relevant liability if MAFM's right of indemnification out of the assets of the Macquarie Agriculture Fund – Crop Australia 2 has not been prejudiced by MAFM's failure to properly perform its duties.
- (f) MAFM is not obliged to do anything or refrain from doing anything under this deed (including incur any liability) unless MAFM's liability is limited in the same manner as set out in paragraphs (a) to (e) inclusive of this clause 14.2.

14.3 VTH RE's liability

- (a) A liability arising under or in connection with this deed is limited to and can be enforced against VTH RE only to the extent to which it can be satisfied out of property of VTH out of which VTH RE is actually indemnified for the liability. VTH RE agrees to exercise its right of indemnity to the extent required to satisfy its obligations or a Claim against it under this deed. This limitation of VTH RE's liability applies despite any other provision of this deed and extends to all liabilities and obligations of VTH RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) A party to this deed may not sue VTH RE, and VTH RE is not liable to any party or any other person, in any capacity other than as responsible entity of VTH, including seeking the appointment of a receiver (except in relation to property of VTH), a liquidator, an administrator or any similar person to VTH RE, or prove in any liquidation, administration or arrangement of or affecting VTH RE (except in relation to the property of VTH).
- (c) MAFM waives its rights and releases VTH RE from any personal liability in respect of any loss MAFM may suffer as a consequence of a failure of VTH RE to perform its obligations under this deed which cannot be paid or satisfied out of any property held by VTH RE as responsible entity of VTH.
- (d) The provisions of this clause 14.3 shall, subject to paragraph 14.3(e), not apply to any obligation or liability of VTH RE to the extent that it is not satisfied because under the VTH Constitution or by operation of law there is a reduction in the extent of VTH RE's indemnification out of the assets of VTH, as a result of the VTH RE's failure to properly perform its duties as responsible entity. For these purposes, it is agreed that VTH RE cannot be regarded as having failed to properly perform its duties as responsible entity to the extent to which any failure by VTH RE to satisfy its obligations or breach of representation or warranty under this agreement has been caused or contributed to by a failure of another party to this deed to fulfil its obligations under this deed or any other act or omission of any other party to this deed or person.
- (e) Nothing in clause 14.3(d) shall make VTH RE liable to any claim for an amount greater than the amount which a party to this agreement would have been able to claim and recover from the assets of VTH in relation to the relevant liability if VTH RE's right of indemnification out of the assets of VTH has not been prejudiced by VTH RE's failure to properly perform its duties.
- (f) VTH RE is not obliged to do anything or refrain from doing anything under this deed (including incur any liability) unless VTH RE's liability is limited in the same manner as set out in paragraphs (a) to (e) inclusive of this clause 14.3.

15 Duty, costs and expenses

15.1 Attribution of taxable income

MAFM must procure that:

- (a) if the Scheme is Implemented and VTH is an AMIT in relation to the income year of VTH ending 30 June 2021, the responsible entity of VTH

does not attribute an Attribution Amount (as defined in the VTH Constitution) or any other amount of taxable income (as calculated under Tax Law) of VTH in respect of that income year to any of the Scheme Participants; and

- (b) if the Asset Sale is Implemented and Leasehold Trust is an AMIT in relation to the income year of Leasehold Trust ending 30 June 2021, Leasehold Trustee will attribute to VTH an amount of taxable income (as calculated under Tax Law) in respect of that income year that:
 - (i) reflects the amount of the Distributable Income that is distributed to VTH; and
 - (ii) is fair and reasonable in accordance with the Leasehold Trust Constitution.

15.2 Stamp duty

- (a) MAFM:
 - (i) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed, the Scheme or the Asset Sale or the steps to be taken under this deed, the Scheme or the Asset Sale; and
 - (ii) indemnifies VTH RE against any liability arising from its failure to comply with clause 15.2(a)(i).
- (b) VTH RE will provide all information reasonably requested by MAFM to enable it to calculate the stamp duty which will be payable under clause 15.2(a)(i).

15.3 Cost reimbursement

- (a) If the Asset Sale Completes, MAFM agrees to pay to VTH RE (or as otherwise directed by VTH RE) the aggregate Transaction Costs paid or payable. The obligation to pay Transaction Costs under this clause 15.3(a) only applies to the extent that VTH RE reasonably considers it is required to enable VTH RE to distribute an aggregate amount of \$1.00 per unit to VTH Unitholders (pre any tax liability which will or may arise for VTH Unitholders, including any capital gains tax or any amount required to be withheld by VTH RE) following the Completion of the Asset Sale. VTH RE must provide MAFM with documentation supporting its view.
- (b) VTH RE may deliver to MAFM invoices in respect of Transaction Costs. Invoices delivered by VTH RE to MAFM must clearly itemise the relevant Transaction Costs and provide reasonable details of third party invoices or receipts. MAFM must pay any such invoices within 5 Business Days of the date of receipt.
- (c) However, in no circumstance will MAFM be required to pay any amount (in aggregate) under this clause 15.3 in excess of the Transaction Cost Cap. MAFM's liability to pay an amount arising under an invoice it receives in accordance with this clause 15.3 will be reduced if and only to the extent that payment of the amount payable pursuant to that invoice, when taken together with all other invoices on which MAFM has made a payment in accordance with this clause 15.3, would lead to MAFM making an aggregate payment that exceeds the Transaction Cost Cap.

15.4 Reasonable endeavours

- (a) VTH RE agrees that it will use all reasonable endeavours to minimise the amount of any Transaction Costs that may be payable by MAFM in accordance with clause 15.3, including (to the extent permitted by law and subject to clause 15.4(b)) by taking any actions in implementing the Asset Sale that the MAFM may reasonably request.
- (b) Where MAFM requests that VTH RE take any particular action in implementing the Asset Sale, VTH RE shall not be obliged to take any such action unless and until:
 - (i) MAFM confirms to VTH RE, before VTH RE taking such action, that any cost or liability incurred by VTH RE as a result of such action will be reimbursable in accordance with clause 15.3; and
 - (ii) if VTH RE reasonably forms the view that to take the action requested by MAFM in accordance with clause 15.4(a) would increase the Transaction Costs beyond what VTH RE reasonably considers the Transaction Costs would have been but for the request, MAFM agrees to pay those incremental costs as Transaction Costs and for the Transaction Costs Cap to be increased by the amount of any such incremental costs.

15.5 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Proposal.

15.6 Withholding tax

- (a) In relation to the Scheme, if MAFM is required by Subdivision 14-D of Schedule 1 of the Taxation Administration Act 1953 (Cth) (Subdivision 14-D) to pay amounts to the ATO in respect of the acquisition of VTH Units from certain Scheme Participants, MAFM is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Participants and remit such amounts to the ATO. The aggregate sum payable to Scheme Participants shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Participants shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Participants.
- (b) In relation to the Asset Sale, VTH RE:
 - (i) represents and warrants that it is an Australian Resident (as that term is defined in the Tax Act) on the date of this deed; and
 - (ii) if the Asset Sale Conditions Precedent are satisfied, repeats the representation and warranty in clause 15.6(b)(i) on and in respect of the Completion Date.
- (c) VTH RE agrees that MAFM may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance that MAFM reasonably requires in making that approach. MAFM agrees:
 - (i) to provide VTH RE a reasonable opportunity to review the form and content of all materials to be provided to the ATO,

to take into account VTH RE's reasonable comments on those documents and more generally in relation to MAFM's engagement with the ATO in connection with the application of Subdivision 14-D to the Scheme; and

- (ii) not to contact any VTH Unitholder in connection with the application of Subdivision 14-D to the Scheme without VTH RE's prior written consent.
- (d) The parties agree to consult in good faith as to the application of Subdivision 14-D to the Scheme, including taking into account any clarification provided by the ATO following the process mentioned in clause 15.6(c). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this deed, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Participants.

16 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 16(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable (excluding any Excess GST) on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 16(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply and excluding any Excess GST) varies from the Additional Amount payable by the Recipient under clause 16(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as applicable;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within seven days after receiving such notification, as applicable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing

to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.

- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) In this clause 16:
 - (i) any term starting with a capital letter that is not defined in this clause 16 has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) (**GST Act**);
 - (ii) a reference to GST payable by or input tax credit of a party includes the corresponding GST payable by or input tax credit of the representative member of the GST group of which that party is a member; and
 - (iii) the term '**Excess GST**' has the meaning given to that term in section 142-10 of the GST Act.

17 Notices

17.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to the person referred to in the Details (or if the recipient has notified otherwise, then addressed to the person last notified).

17.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address

By pre paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By email to the nominated email address	<p>The first to occur of:</p> <p>(a) the sender receiving an automated message confirming delivery; or</p> <p>(b) two hours after the time that the email was sent (as recorded on the device from which the email was sent) provided that the sender does not, within the period, receive an automated message that the email has not been delivered.</p>

17.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 17.2).

18 General

18.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales, Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

18.2 Service of process

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 17.

18.3 No merger

The rights and obligations of the parties do not merge on completion of the Proposal. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Proposal.

18.4 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 18.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 18.4(a) would materially affect the nature or effect of the parties' obligations under this deed.

18.5 Waiver

- (a) No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (b) The meanings of the terms used in this clause 18.5 are set out below.
 - (i) **conduct** includes delay in the exercise of a right.
 - (ii) **right** means any right arising under or in connection with this deed and includes the right to rely on this clause.
 - (iii) **waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

18.6 Variation

A variation of any term of this deed must be in writing and signed by the parties.

18.7 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 18.7(a) by a party shall be deemed to be a material breach for the purposes of clause 13.1(a)(i).
- (c) Clause 18.7(b) does not affect the construction of any other part of this deed.

18.8 No third party beneficiary

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person, other than the MAFM Indemnified Parties and the VTH Indemnified Parties, in each case to the extent set forth in clause 6.10 and clause 8, any third party beneficiary rights.

18.9 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

18.10 Entire agreement

This deed (including the documents in the Annexures to it) state all the express terms agreed by the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings and agreements in respect of their subject matter.

18.11 Counterparts

This deed may be executed in any number of counterparts.

18.12 Relationship of the parties

Nothing in this deed:

- (a) gives a party authority to bind any other party in any way; and
- (b) imposes any fiduciary duties on a party in relation to any other party.

18.13 Remedies cumulative

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

18.14 Exercise of rights

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

EXECUTED as a deed

Scheme Implementation Deed

Schedule 1 MAFM Representations and Warranties

MAFM represents and warrants to VTH RE (in its own right and separately as trustee or nominee for each of the other VTH Indemnified Parties) that:

- (a) **(MAFM Information)** the MAFM Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to VTH Unitholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having being formed on a reasonable basis), including by way of omission from that statement;
- (b) **(basis of MAFM Information)** the MAFM Information:
 - (i) will be provided to VTH RE in good faith and on the understanding that VTH RE will rely on that information for the purposes of preparing the Scheme Booklet and determining to proceed with the Proposal; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and applicable regulatory guidance,

and all information provided by MAFM to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (c) **(new information)** it will, as a continuing obligation, provide to VTH RE all further or new information which arises after the Scheme Booklet has been despatched to VTH Unitholders (other than Excluded Unitholders) until the date of the Meeting which is necessary to ensure that the MAFM Information is not misleading or deceptive (including by way of omission);
- (d) **(validly existing)**
 - (i) MAFM is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) Macquarie Agriculture Fund – Crop Australia 2 (“**MAFCA**”) is duly established, is validly subsisting and has not been terminated;
 - (iii) MAFM is the (and is the only) trustee of MAFCA, has been validly appointed and remains as trustee of MAFCA;
 - (iv) as far as MAFM is aware, no action has been taken to terminate MAFCA;
 - (v) MAFM has not exercised its powers to release, abandon or restrict any power conferred on it by the trust deed for Macquarie Agriculture Fund – Crop Australia 2;

- (vi) MAFM is not in default under MAFCA; and
 - (vii) subject to law and the trust deed for Macquarie Agriculture Fund – Crop Australia 2, MAFM has the right to be fully indemnified out of the property of MAFCA in respect of the obligations incurred by it as trustee under this deed, and as far as MAFM is aware there is nothing that would prevent MAFM from being fully indemnified out of that trust property for any obligations under or in connection with this deed or any of the transactions contemplated by the deed that it incurs in its capacity as trustee of MAFM;
- (e) **(authority)** the execution and delivery of this deed has been properly authorised by all necessary corporate action of MAFM;
- (f) **(power)** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **(no default)** this deed does not conflict with or result in the breach of or a default under:
- (i) any provision of MAFM's constitutional documents; or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject,
- and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (h) **(deed binding)** this deed is a valid and binding obligation of MAFM, enforceable in accordance with its terms;
- (i) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed, under the Deed Poll or under the Scheme; and
- (j) **(availability of funding)** by 8:00am on the Second Court Date, MAFM will have available to it on an unconditional basis (other than conditions relating to the approval of the Court, the Scheme becoming Effective, Completion occurring, and other conditions within the control of MAFM) sufficient cash amounts (whether from internal cash resources or external funding arrangements or a combination thereof) to satisfy MAFM's obligation to pay the Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

Scheme Implementation Deed

Schedule 2 VTH RE Representations and Warranties

VTH RE represents and warrants to MAFM (in MAFM's own right and separately as trustee or nominee for each of the other MAFM Indemnified Parties) that:

1 VTH representations and warranties

- (a) **(VTH Information)** the VTH Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to VTH Unitholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **(basis of VTH Information)** the VTH Information:
 - (i) will be prepared and included in the Scheme Booklet in good faith and on the understanding that MAFM will rely on that information for the purpose of determining to proceed with the Proposal; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and applicable regulatory guidance,and all information provided by VTH RE to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **(new information)** it will, as a continuing obligation (but in respect of the MAFM Information, only to the extent that MAFM provides VTH RE with updates to the MAFM Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has been despatched to VTH Unitholders (other than Excluded Unitholders) until the date of the Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission);
- (d) **(validly existing etc):**
 - (i) VTH RE is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) VTH is duly established, is validly subsisting, has not been terminated and is a registered managed investment scheme;
 - (iii) VTH RE is the (and is the only) trustee and responsible entity of VTH, has been validly appointed and remains as responsible entity of VTH;
 - (iv) as far as VTH RE is aware, no action has been taken to either:

- (A) terminate VTH; or
- (B) wind up VTH whether under Chapter 5C of the Corporations Act or otherwise,

other than any frivolous or vexatious application, or any application that is set aside within 14 days or, if earlier, by the Second Court Date;

- (v) VTH RE has not exercised its powers under the VTH constitution to release, abandon or restrict any power conferred on it by the VTH constitution;
- (vi) VTH RE is not in default under the VTH constitution; and
- (vii) subject to law and the VTH constitution, VTH RE has the right to be fully indemnified out of the Trust Property in respect of the obligations incurred by it as responsible entity of VTH under the documents to which it is a party, and as far as VTH RE is aware there is nothing that would prevent VTH RE from being fully indemnified out of the Trust Property for any obligations under or in connection with this deed or any of the transactions contemplated by the deed that it incurs in its capacity as responsible entity of VTH;
- (e) **(authority)** the execution and delivery of this deed has been properly authorised by all necessary corporate action of VTH RE;
- (f) **(power)** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **(no default)** the execution, delivery and performance of this deed does not and will not (with or without lapse of time, the giving of notice or both) contravene, conflict with or result in the breach of or a default under:
 - (i) any provision of the constitutions of any VTH Group Member; or
 - (ii) any writ, order or injunction, judgment, law, rule, approval, authorisation, consent, exemption or regulation to which it is party or subject or by which it or any other VTH Group Member is bound,

and it is not otherwise bound by any agreement, undertaking or instrument that would prevent or restrict it from entering into, delivering or performing this deed;
- (h) **(deed binding)** this deed is a valid and binding obligation of VTH RE, enforceable in accordance with its terms;
- (i) **(entry and performance)** the execution, delivery and performance by VTH RE of its obligations under this deed is:
 - (i) part of the proper administration of VTH by VTH RE and this deed does not conflict with the operation or terms of VTH; and
 - (ii) a proper exercise of its fiduciary duties as trustee of VTH;
- (j) **(capital structure)** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 4 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still

outstanding and may convert into VTH Units and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any VTH Units, options, warrants, performance rights or other securities or instruments in VTH;

- (k) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it or another VTH Group Member, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (l) **(continuous disclosure)** VTH RE has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for the Proposal, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (m) **(compliance)** as far as VTH RE is aware, each member of the VTH Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the VTH Group as it has been conducted in the 12 months prior to the date of this deed; and
- (n) **(Disclosure Materials)** it has collated and prepared all of the Disclosure Materials in good faith for the purposes of a due diligence process.

2 Leasehold Trust and Leasehold Trust Units

- (a) **(establishment)** the Leasehold Trust has been duly established;
- (b) **(sole trustee)** the Leasehold Trustee:
 - (i) is the only trustee of the Leasehold Trust; and
 - (ii) has been validly appointed as the trustee of the Leasehold Trust and no action has been taken or is proposed to remove it as trustee of the Leasehold Trust;
- (c) **(power)** the Leasehold Trustee has not exercised its powers as trustee under the Leasehold Trust Constitution to release, abandon or restrict any power conferred on it by the Leasehold Trust Constitution;
- (d) **(Leasehold Trust Constitution)** a true copy of the Leasehold Trust Constitution has been included in the Disclosure Materials and discloses all the terms of the Leasehold Trust;
- (e) **(Leasehold Trust Assets)** there are no Encumbrances over any of the Leasehold Trust Assets and no agreement, arrangement or obligation to create any Encumbrance over the any of the Leasehold Trust Assets;
- (f) **(unit register)** the unit register maintained by the Leasehold Trustee in respect of the Leasehold Trust is accurate and up to date;
- (g) **(no default)** neither VTH RE nor the Leasehold Trustee are in default under the terms of the Leasehold Trust Deed (including in relation to its accounting and financial reporting obligations) in a manner that has or may cause the unitholders in the Leasehold Trust to suffer Liability;

- (h) **(no termination)** no action has been taken or proposed to terminate the Leasehold Trust;
- (i) **(Leasehold Trust Units)**
 - (i) the Leasehold Trust has one class of units on issue, being ordinary units. The Leasehold Trust has never issued any other classes of units;
 - (ii) the Custodian is the registered holder of the Leasehold Trust Units and holds the Leasehold Trust Units for and on behalf of VTH RE;
 - (iii) the Leasehold Units represent all of the units issued by the Leasehold Trust;
 - (iv) the Leasehold Units will be fully paid on Completion;
 - (v) there are no options, rights of pre-emption, rights of first refusal or last refusal or other rights or entitlements over the Leasehold Trust Units and no person has a right or entitlement to be issued Leasehold Trust Units;
 - (vi) the Leasehold Trust Units have been validly allotted and are fully paid and no moneys are owing in respect of them;
 - (vii) on the Completion Date, there will be no Encumbrances over the Leasehold Trust Units and no agreement, arrangement or obligation to create any Encumbrance over the Leasehold Trust Units;
 - (viii) VTH RE has obtained (or will have obtained by Completion) all consents (if any are necessary) to enable it to transfer the Leasehold Trust Units to MAFM; and
 - (ix) there is no restriction on the transfer of the Leasehold Trust Units to MAFM on the terms of this deed.

3 Vitalharvest Finance and Leasehold Trustee Shares

- (a) **(validly existing)**: Vitalharvest Finance is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(Leasehold Trustee Shares)**:
 - (i) the Custodian is the sole registered owner of the Leasehold Trustee Shares;
 - (ii) Vitalharvest Finance is the sole beneficial owner of the Leasehold Trustee Shares;
 - (iii) the Leasehold Trustee Shares represent all of the shares issued by Leasehold Trustee;
 - (iv) there are no options, rights of pre-emption, rights of first refusal or last refusal or other rights or entitlements over the Leasehold Trustee Shares and no person has a right or entitlement to be issued Leasehold Trustee Shares;

- (v) the Leasehold Trustee Shares have been validly allotted and are fully paid and no moneys are owing in respect of them;
- (vi) there are no Encumbrances over the Leasehold Trustee Shares;
- (vii) Vitalharvest Finance has obtained (or will have obtained at Completion) all consents (if any are necessary) to enable it to transfer the Leasehold Trustee Shares to MAFM; and
- (viii) there is no restriction on the transfer of the Leasehold Trustee Shares to MAFM on the terms of this deed.

4 Assets

- (a) **(Employees)** The Leasehold Trustee does not have any employees; and
- (b) **(Intellectual Property Rights)** the Leasehold Trustee owns or has a lawful right to use all material Intellectual Property Rights currently used in connection with the business of the VTH Group.

5 Financial information

- (a) All financial information included in the Disclosure Materials reflects fairly and accurately in all material respects the financial position of the Leasehold Trust (on a consolidated basis) at the relevant time and give a fair view of the assets, liabilities, financial position and state of affairs of the Leasehold Trust (on a consolidated basis) at the relevant time and the financial performance (profits and losses, and cash flows) of the Leasehold Trust (on a consolidated basis) over the relevant periods;
- (b) between 30 June 2020 and the date of this deed, there has been no material change in the financial position (assets and liabilities) or financial performance (profits and losses and cash flows) of the Leasehold Trust; and
- (c) the Leasehold Trust Group has sufficient Liquid Assets to satisfy the Monetary Liabilities and make a distribution of Distributable Income of the Leasehold Trust Group as at Completion.

6 Land and property

- (a) The Leasehold Trustee:
 - (i) is the sole legal and beneficial owner of the Properties and has good and marketable title to the Properties and the Water Assets;
 - (ii) holds the interest in the Properties and Water Assets free of all Encumbrances;
 - (iii) has in its possession all documents of title to the Properties and the Water Assets;
 - (iv) has complied with the terms of each covenant and easement registered on the title of a Property or Water Asset and there are no disputes in respect of any such covenant or easement; and

- (v) has not granted an option to purchase, first right of refusal or any other pre-emptive right in respect of any of the Properties or the Water Assets and no third party is in the process of acquiring such rights; and
- (b) VTH RE is not aware of any threatened proceeding, investigation or claim affecting any of the Properties or Water Assets before a court, authority, commission or arbitrator in which a decision against it is likely.

7 Tax

- (a) The Leasehold Trustee (in its personal capacity and as trustee of the Leasehold Trust) has paid in a timely manner all Tax which the Leasehold Trust Group is liable to pay;
- (b) the Leasehold Trustee (in its personal capacity and as trustee of the Leasehold Trust) and each other Leasehold Trust Group Member has filed, lodged or submitted all Tax Returns and information regarding Tax and Tax matters as and when required by Tax Law or requested by any Tax Authority;
- (c) the Leasehold Trustee (in its personal capacity and as trustee of the Leasehold Trust) and each other Leasehold Trust Group Member has complied with all obligations to register for the purposes of any Tax Law and has disclosed all land and other property holdings as required by any Tax Law;
- (d) the Leasehold Trustee (in its personal capacity and as trustee of the Leasehold Trust) and each other Leasehold Trust Group Member is not engaged in or the subject of any:
 - (i) dispute with any Tax Authority; or
 - (ii) audit, investigation or review of any of its Tax Returns or business activities by any Tax Authority,
 and as far as VTH RE is aware, no such dispute, audit, investigation or review is pending, threatened or anticipated;
- (e) the Leasehold Trustee (in its personal capacity and as trustee of the Leasehold Trust) and each other Leasehold Trust Group Member has:
 - (iii) complied with all of its obligations under any Tax Laws to deduct or withhold Tax from amounts paid by or on behalf of the Leasehold Trustee (in its personal capacity and as trustee of the Leasehold Trust) or each other Leasehold Trust Group Member (as applicable); and
 - (iv) properly accounted for any Tax deducted or withheld to any Tax Authority (other than amounts which have yet to become payable);
- (f) all Duty lodgements required to be made in respect of the Leasehold Trust Group or the business of the Leasehold Trust Group have been made; and
- (g) all documents and transactions entered into by the Leasehold Trustee (in its personal capacity and as trustee of the Leasehold Trust) and each other Leasehold Trust Group Member which are required to be stamped have been stamped.

8 Insurance

There are no outstanding claims under any of the policies insuring the Leasehold Trustee and the assets of the Leasehold Trustee.

9 Litigation

- (a) The Leasehold Trustee is not engaged in any prosecution, litigation or arbitration proceedings and VTH RE is not aware of any material threatened litigation or circumstances which are likely to give rise to material prosecution, litigation or arbitration;
- (b) there are no unsatisfied or outstanding judgments, orders or awards affecting VTH RE or the Leasehold Trustee;
- (c) VTH RE has no knowledge of any current arbitration or litigation between the Leasehold Trustee or Leasehold Trust and any owners or occupants of neighbouring properties relating to any of the Properties or Government Agency relating to any of the Properties for which VTH RE have received originating process;
- (d) so far as VTH RE is aware, neither the Leasehold Trustee nor Leasehold Trust have received written notice that any owners or occupants of neighbouring properties relating to any of the Properties or Government Agency relating to any of the Properties intends to commence proceedings against the Leasehold Trustee or Leasehold Trust; and
- (e) so far as VTH RE is aware, neither Leasehold Trustee nor Leasehold Trust have received or given written notice of a dispute between the Leasehold Trustee or Leasehold Trust and any owners or occupants of neighbouring properties relating to the Land or Government Agency relating to any of the Properties.

10 Disclosure Material

To the best of the VTH RE's knowledge, information and belief:

- (a) the Disclosure Material is not misleading or deceptive; and
- (c) the VTH RE has not wilfully withheld or omitted from the Disclosure Material any information in its possession that would be material to a reasonable purchaser's decision to purchase the Properties and/or the Leasehold Trust Units.

Scheme Implementation Deed

Schedule 3 Asset Sale Terms

1 Definitions

Words and phrases not otherwise defined in this Schedule have the meaning given to them in clause 1.1 of this deed. References to paragraphs are to paragraphs in this Schedule.

Unless the contrary intention appears, in this Schedule:

Actual Liquid Assets means Liquid Assets as at Completion, as determined in accordance with paragraph 5. For the avoidance of any doubt, the Liquid Assets as at Completion will not include any Cash paid or payable to the unitholder of the Leasehold Trust in connection with the Leasehold Trust Distribution under paragraph 6.3.

Actual Monetary Liabilities means Monetary Liabilities as at Completion, as determined in accordance with paragraph 5.

Adjustment Certificate has the meaning given in paragraph 5.2.

Adjustment Escrow Agent means the escrow agent to be appointed by MAFM and VTH RE on or before Completion to hold the Adjustment Escrow Amount in accordance with the Adjustment Escrow Agreement.

Adjustment Escrow Agreement means the agreement for the escrow of the Adjustment Escrow Amount with the Adjustment Escrow Agent, to be entered into between MAFM, VTH RE and the Adjustment Escrow Agent on or before Completion.

Adjustment Escrow Amount means \$10,000,000.

Adjustment Payment Date means the date that is 10 Business Days after the Final Adjustment Certificate Determination Date.

Cash means the aggregate amount of all cash and cash equivalents (as recorded in the reconciled general ledger) credited to an account with a bank and repayable on demand (or within 30 days of demand) without condition attributable to any Leasehold Trust Group Member, excluding all Trapped Cash.

Estimated Excess Liquid Asset Amount means the aggregate of the:

- (a) Estimated Liquid Assets; *minus*
- (b) Estimated Monetary Liabilities,

provided that if this results in a negative number, the Estimated Excess Liquid Asset Amount will equal zero.

Final Adjustment Certificate means the Adjustment Certificate that is final and binding on the parties in accordance with paragraph 6.18.

Final Adjustment Certificate Determination Date means the date that:

- (a) the Adjustment Certificate accepted by VTH RE under paragraph 5.6(a);

- (b) if the Adjustment Certificate is neither accepted nor disputed by VTH RE under paragraph 5.6, is the Business Day following the final day of the Review Period;
- (c) VTH RE and MAFM agree the Adjustment Certificate under paragraph 5.7(a); or
- (d) the Independent Expert makes its determination under paragraph 5.10 (unless the Independent Expert makes a corrected determination under paragraph 5.15, in which case it is the date of the corrected determination).

Final Completion Adjustment Payment means the Final Completion Adjustment Amount less the Estimated Completion Adjustment Amount.

Independent Expert means the person agreed or determined as an Independent Expert in accordance with paragraph 5.9.

PPS Register means the Personal Property Securities Register established under the PPSA.

Records means originals and copies, in any form, of all books, files, reports, records, correspondence, documents, manuals and other material of or relating to or used in connection with the Leasehold Trust Group.

Specified Encumbrance means any leases, caveats, easements and restrictive covenants that are registered on the title of the Properties as at the date of this deed, including:

- (c) Caveat No. E6412;
- (d) Encumbrance No. 12780224;
- (e) Lease No. AG696236 (as varied);
- (f) Lease No. AP445878;
- (g) Lease No. AI687331 (as varied);
- (h) Lease No. AI694100 (as varied);
- (i) Lease No. AG696158 (as varied);
- (j) Lease No. AG696067 (as varied);
- (k) Lease No. 11864243;
- (l) Lease No. 9759033;
- (m) Lease No. 12864806;
- (n) Lease No. 11864241;
- (o) Lease No. 4983702;
- (p) Lease No. 11864245;
- (q) Lease No. D50228 (as varied);
- (r) Lease No. E1574 (as varied);

- (s) Lease No. E1575 (as varied); and
- (t) Lease No. E1577.

Trapped Cash means, in respect of a person, any cash which:

- (a) is not capable of being lawfully spent or distributed by the person outside the jurisdiction in which it is situated without deduction or withholding or additional cost (other than the costs of transfer from a bank account incurred in the ordinary course);
- (b) is held by an agent of the person pursuant to a regulatory or contractual requirement;
- (c) is held as collateral by a person in respect of obligations of the person, including as a rent or lease deposit or guarantee; or
- (d) is held by the person for clients or customers of the person.

2 Sale and purchase of Leasehold Trust Units and Leasehold Trustee Shares

2.1 Sale and purchase

- (a) VTH RE must sell the Leasehold Trust Units to MAFM and MAFM must purchase the Leasehold Trust Units from VTH RE, on the terms and conditions of this deed.
- (b) VTH RE must procure Vitalharvest Finance to sell the Leasehold Trustee Shares to MAFM and MAFM must purchase the Leasehold Trustee Shares from Vitalharvest Finance, on the terms and conditions of this deed.

2.2 Free from Encumbrance

The Leasehold Trust Units and Leasehold Trustee Shares must be transferred to MAFM free from any Encumbrance and with all rights, including any rights to distributions, attaching or accruing to them on and from Completion.

2.3 Consideration for sale of Leasehold Trust Units

- (a) The consideration for the sale of the Leasehold Trust Units is the payment by MAFM of the Purchase Price.
- (b) The Purchase Price will be paid as follows:
 - (i) the Completion Amount is payable by MAFM to VTH RE on Completion in accordance with paragraph 4.1(a);
 - (ii) the Adjustment Escrow Amount is payable by MAFM to the Adjustment Escrow Agent on Completion in accordance with paragraph 4.1(b);
 - (iii) the Final Completion Adjustment Payment, if any, is payable in accordance with paragraph 5.19; and
 - (iv) any other adjustments to the Purchase Price are payable in accordance with this deed.

2.4 Consideration for sale of Leasehold Trustee Shares

- (a) The consideration for the sale of the Leasehold Trustee Shares is the payment by MAFM of the Share Purchase Price.
- (b) The VTH RE must accept payment of the Share Purchase Price as agent for Vitalharvest Finance.

2.5 Title and risk

Title to and risk in the Leasehold Trust Units and Leasehold Trustee Shares passes to MAFM on Completion.

3 Conditions precedent to the Sale

3.1 Conditions

Completion is conditional on the following Conditions Precedent being satisfied:

- (a) **Scheme Conditions Precedent satisfied:** satisfaction or waiver of each of the Scheme Conditions Precedent, other than:
 - (i) the approval of the Scheme by the requisite majorities of unitholders under section 601GC(1) and item 7 of section 611 of the Corporations Act; and
 - (ii) the restraint condition precedent set out in clause 4.1(e);
- (b) **Restraints:** there is not in effect any temporary, preliminary or final restraining order, injunction or other order that would prevent, make illegal or delay the sale of the Leasehold Trust Units made by a court of competent jurisdiction or Government Agency;
- (c) **Scheme not approved:** a meeting of VTH Unitholders is convened in accordance with clause 6.2(f) to consider and vote on the Scheme and VTH Unitholders do not approve the Scheme by the requisite majorities under section 601GC(1) and item 7 of section 611 of the Corporations Act; and
- (d) **Unitholder approval:** VTH Unitholders approve the sale of the Leasehold Trust Units by the requisite majority under Listing Rule 11.2 at a meeting convened by VTH RE in accordance with clause 6.2(f).

4 Completion

4.1 Buyer's obligations

On Completion, MAFM must:

- (a) pay the Completion Amount to VTH RE;
- (b) pay to the Adjustment Escrow Agent the Adjustment Escrow Amount to be held by the Adjustment Escrow Agent in accordance with the Adjustment Escrow Agreement;
- (c) pay the Share Purchase Price to VTH RE as agent for Vitalharvest Finance;

- (d) deliver to VTH RE a counterpart of the Adjustment Escrow Agreement in agreed form executed by MAFM; and
- (e) deliver to VTH RE duly executed instruments of transfer of the Leasehold Trust Units and the Leasehold Trustee Shares signed by MAFM in registrable form (other than payment of stamp duty if required).

4.2 Seller's obligations

On Completion, VTH RE must:

- (a) deliver to MAFM:
 - (i) duly executed instruments of transfer of:
 - (A) the Leasehold Trust Units, signed by VTH RE and the Custodian;
 - (B) the Leasehold Trustee Shares, signed by Vitalharvest Finance and the Custodian,

in each case in favour of MAFM in registrable form (other than payment of stamp duty if required);
 - (ii) a copy of a resolution of the Leasehold Trustee authorising the registration of the transfer of the Leasehold Trust Units and Leasehold Trustee Shares to MAFM with effect from Completion;
 - (iii) a counterpart of the Adjustment Escrow Agreement in agreed form executed by VTH RE;
 - (iv) releases and discharges in respect of all Encumbrances over any of the Leasehold Trust Units or any of the Leasehold Trustee Shares, including (where relevant) an undertaking to remove all registrations in relation to such Encumbrances from the PPS Register within 10 Business Days of Completion, duly executed by the relevant holders of those Encumbrances and in a form acceptable to MAFM (acting reasonably); and
 - (v) releases and discharges in respect of all Encumbrances over any of the Leasehold Trust Assets or the Leasehold Trustee Shares (other than any Specified Encumbrances), including (where relevant):
 - (A) an undertaking to remove all registrations in relation to such Encumbrances from the PPS Register within 10 Business Days of Completion; and
 - (B) all applicable forms (in registrable form) to update any relevant land titles register,

in each case, duly executed by the relevant holders of those Encumbrances and in a form acceptable to MAFM (acting reasonably); and
- (b) take all actions within its power (including amending any documents or replacing directors of interposed entities) which are necessary to:
 - (i) cause the appointment to the board of directors of Leasehold Trustee of those persons nominated by MAFM; and

- (ii) ensure that all directors on the board of directors of Leasehold Trustee, other than the MAFM nominees and any other directors specified by MAFM resign or are otherwise removed,

provided that VTH RE is not required to take any action under paragraphs 4.1(b)(i) or 4.1(b)(ii) which would cause any VTH Group Member to be in breach of any applicable law or regulation.

4.3 Simultaneous actions at Completion

In respect of Completion:

- (a) the obligations of the parties under paragraphs 4.1 and 4.2 are interdependent; and
- (b) unless otherwise stated, all actions required to be performed by a party at Completion are taken to have occurred simultaneously on the Completion Date.

5 Adjustments to Purchase Price

5.1 Adjustment Principle

The parties acknowledge MAFM is paying the Purchase Price for the Leasehold Trust Units on the basis that the Leasehold Trust will have sufficient cash and other liquid assets available to match liabilities and have agreed to adjust the Purchase Price in accordance with this paragraph 5 in accordance with this principle.

5.2 Preparation of Adjustment Certificate

Within 30 Business Days after the Completion Date, MAFM must deliver a notice to VTH RE ("**Adjustment Certificate**") setting out:

- (a) Actual Monetary Liabilities;
- (b) Actual Liquid Assets; and
- (c) the Final Completion Adjustment Amount,

together with any supporting working papers.

5.3 Buyer access to information

VTH RE must:

- (a) permit MAFM and its Representatives to have access to and take extracts from the books, correspondence, accounts or other Records relating to the Leasehold Trust Group in VTH RE's possession or control as MAFM reasonably requests in relation to the preparation of, and agreement to, the Adjustment Certificate and in relation to any dispute regarding the Adjustment Certificate; and
- (b) provide or procure the provision of all information and assistance that may reasonably be requested by MAFM and its Representatives in relation to the preparation of, and agreement to, the Adjustment Certificate and in relation to any dispute regarding the Adjustment Certificate.

5.4 Seller access to information

MAFM must, and following Completion must ensure that the Leasehold Trust Group Members:

- (a) permit VTH RE and its Representatives to have access to and take extracts from the books, correspondence, accounts or other Records relating to the leasehold Trust Group in MAFM's or Leasehold Trust Group Members' possession or control as VTH RE reasonably requests in relation to the review of, and agreement to, the Adjustment Certificate and in relation to any dispute regarding the Adjustment Certificate; and
- (b) provide or procure the provision of all information and assistance that may reasonably be requested by VTH RE and its Representatives in relation to the review of, and agreement to, the Adjustment Certificate in relation to any dispute regarding the Adjustment Certificate.

5.5 Provision of working papers and "no-reliance" letters

If any adviser requires the provision of a signed "no-reliance" letter or comparable document relating to the use and disclosure of information prior to delivering any relevant working papers under paragraph 5.3 or paragraph 5.4, VTH RE or MAFM (as applicable) must first sign and deliver that letter or document before receiving the relevant working papers.

5.6 Review of Adjustment Certificate

Within 20 Business Days after MAFM provides a draft of the Adjustment Certificate and supporting working papers to VTH RE ("**Review Period**") under paragraph 5.1 VTH RE may:

- (a) accept the Adjustment Certificate by notice given to MAFM during the Review Period, in which case the Adjustment Certificate will constitute the Final Adjustment Certificate; or
- (b) dispute the correctness of the Adjustment Certificate by issuing a notice ("**Dispute Notice**") to MAFM during the Review Period. A Dispute Notice must set out in reasonable detail the:
 - (i) matters in respect of which VTH RE disagrees with the Adjustment Certificate ("**Disputed Items**") delivered by MAFM under paragraph 5.1;
 - (ii) basis on which VTH RE disagrees with the Disputed Items, and for each Disputed Item, referencing the relevant provisions of this deed; and
 - (iii) proposed amendments to the Adjustment Certificate proposed by VTH RE to resolve the Disputed Items,

provided that, if VTH RE neither accepts the Adjustment Certificate nor issues a Dispute Notice, in each case within the Review Period in accordance with this paragraph 5.6, the Adjustment Certificate delivered under paragraph 5.1 will constitute the Final Adjustment Certificate.

5.7 Dispute Notice

If VTH RE issues a Dispute Notice:

- (a) MAFM and VTH RE must negotiate in good faith to resolve the Disputed Items within 10 Business Days after the issue of a Dispute Notice (or

such longer period as MAFM and Seller agree in writing) and, if agreed in writing, the agreed Adjustment Certificate will constitute the Final Adjustment Certificate; and

- (b) the Adjustment Certificate delivered by MAFM under paragraph 5.1 is final and conclusive of all matters specified in it which are not Disputed Items.

5.8 Referral to Independent Expert

If the Disputed Items are not resolved and the form and content of the Adjustment Certificate are not agreed in writing within the period set out in section 5.7(a), either MAFM or VTH RE may refer the unresolved Disputed Items to an Independent Expert appointed in accordance with paragraph 5.9.

5.9 Selection of Independent Expert

The Independent Expert must be:

- (a) an accountant (at “Partner” or comparable senior level) drawn from 1 of the “Big Four” accounting firms who is independent of the Leasehold Trust Group, the MAFM Group and VTH Group in relation to this deed and agreed in writing by VTH RE and MAFM; or
- (b) failing agreement within 5 Business Days after MAFM or VTH RE requests referral of the unresolved Disputed Items to an Independent Expert, by:
 - (i) the person nominated by the Resolution Institute in accordance with the Resolution Institute’s expert determination rules. If a person is nominated by the Resolution Institute, MAFM and VTH RE agree to do all things reasonably necessary to effect that nomination (including signing the person’s engagement letter, agreeing to indemnify the person and agreeing to pay the fees and expenses of the person) as soon as reasonably practicable and that person will be the “Independent Expert” for the purposes of this paragraph 5; or
 - (ii) if a person is not nominated for any reason in accordance with paragraph 5.9(b)(i) within 20 Business Days after the Resolution Institute has received a written request from either VTH RE or MAFM, the person nominated by a Judge of the Supreme Court of New South Wales at the request of either VTH RE or MAFM. If a person is nominated by the Supreme Court of New South Wales, MAFM and VTH RE agree to do all things reasonably necessary to effect that nomination (including signing the person’s engagement letter, agreeing to indemnify the person and agreeing to pay the fees and expenses of the person) as soon as reasonably practicable and that person will be the “Independent Expert” for the purposes of this paragraph 5.

5.10 Independent Expert to determine unresolved Disputed Items

MAFM and VTH RE must direct the Independent Expert to determine any unresolved Disputed Items as soon as reasonably practicable, but in any event within 20 Business Days of its appointment, by:

- (a) considering only the unresolved Disputed Items. If the Independent Expert purports to make any determination with respect to anything other than the unresolved Disputed Items, that determination must be disregarded by the parties;

- (b) ensuring that each of its determinations of a value are within the range for such items claimed by VTH RE and MAFM. To the extent that the Independent Expert's determination assigns a value outside of this range, the value for such items claimed by either VTH RE or MAFM that is closest to the Independent Expert's determination will be used instead;
- (c) having regard to any written submissions made to the Independent Expert by MAFM, VTH RE or their respective Representatives. Unless otherwise agreed in writing by the Independent Expert, MAFM and VTH RE, all submissions must be provided in writing to the Independent Expert within 10 Business Days of the appointment of the Independent Expert or any other later date agreed in writing between the Independent Expert, MAFM and VTH RE;
- (d) making any enquiries or inspections as the Independent Expert considers in its absolute discretion to be necessary or otherwise appropriate. Without limiting this paragraph 5.10(d), each of VTH RE and MAFM must respond to any request by the Independent Expert within 5 Business Days after receipt of the relevant request or any other later date agreed in writing between the Independent Expert, MAFM and VTH RE;
- (e) providing a written report of its determination (including reasons for the determination) and a copy of the Final Adjustment Certificate, amended if necessary, to reflect its determination, to MAFM and VTH RE and that Final Adjustment Certificate will constitute the Final Adjustment Certificate; and
- (f) setting out the allocation of the Independent Expert's costs in accordance with paragraph 5.17.

5.11 Independent Expert to determine procedures

Other than as set out in paragraph 5.10, the Independent Expert will determine the procedures for settlement of the unresolved Disputed Items and will be entitled to seek (and, if MAFM and VTH RE so agree in writing, the Independent Expert must seek) the advice of a reputable independent legal adviser in relation to the interpretation of the relevant provisions of this deed.

5.12 Submissions to Independent Expert

All submissions and responses given to the Independent Expert under paragraph 5.10(c) and all other communications between a party and the Independent Expert must be in writing and must be copied to the other party (unless otherwise agreed in writing between VTH RE and MAFM).

5.13 Response to submissions

MAFM and VTH RE may each give a written response to the submissions of the other party, given under paragraph 5.10(c), to the Independent Expert no later than 5 Business Days after receipt of the other party's submissions or any other date agreed in writing between the Independent Expert, MAFM and VTH RE.

5.14 Provision of information to Independent Expert

MAFM and VTH RE must ensure that all records, working papers and other information within their respective possession or control, or (in the case of MAFM) within the possession or under the control of the Leasehold Trust Group, in each case that relate to the Leasehold Trust Group and which are reasonably requested by the Independent Expert for the purposes of settling any Disputed Items are made available to the Independent Expert. If any adviser requires the

provision of a signed “no-reliance” letter or comparable document relating to use and disclosure of information prior to delivering any relevant working papers or other information under this paragraph 5.14, MAFM or Seller or relevant MAFM Group Member (as applicable) must first sign and deliver that letter or document before receiving the relevant working papers or other information.

5.15 Determination of Independent Expert

In making its determination, the Independent Expert will act as an expert and not as an arbitrator. Subject to paragraph 5.10(a), the determination of the Independent Expert as to the unresolved Disputed Items will be final and binding on the parties, except in the case of manifest error, in which case the relevant part of the determination will be void and the matter must be remitted to the Independent Expert for correction.

5.16 Costs

Except as contemplated in paragraph 5.17, each party must pay its own costs in complying with this paragraph 5, including the costs of its respective Representatives.

5.17 Costs of Independent Expert

The fees and expenses of the Independent Expert must be paid by the party against whom the determination of the Independent Expert is made and the parties must instruct the Independent Expert to make a decision on this matter. If the Independent Expert is, for any reason whatsoever, unable or unwilling to make a decision on the matter and so certifies to MAFM and VTH RE, the cost of the Independent Expert must be shared and paid by MAFM (as to 50%) and VTH RE (as to 50%).

5.18 Final and binding

The Final Adjustment Certificate will be final and binding on the parties on the Final Adjustment Certificate Determination Date.

5.19 Purchase Price adjustments following Adjustment Certificate process

On the Adjustment Payment Date, if the Final Completion Adjustment Payment is:

- (a) a positive number, VTH RE must pay to MAFM an amount equal to the Final Completion Adjustment Payment; or
- (b) a negative number, MAFM must pay to VTH RE an amount equal to the Final Completion Adjustment Payment.

5.20 Payment of adjustments

- (a) The Final Completion Adjustment Payment is payable by MAFM or by VTH RE (as applicable) in cash only.
- (b) No interest will accrue on the Final Completion Adjustment Payment between the Completion Date and the Adjustment Payment Date.

5.21 Adjustment Escrow

- (a) If paragraph 5.19(a) applies, and the Adjustment Escrow Amount exceeds the Final Completion Adjustment Payment, the Adjustment

Escrow Amount is payable by the Adjustment Escrow Agent firstly to MAFM in satisfaction of VTH RE's obligation to pay the amount of the Final Completion Adjustment Payment to MAFM, with the balance being payable by the Adjustment Escrow Agent to VTH RE.

- (b) If paragraph 5.19(a) applies, and the Adjustment Escrow Amount is less than the Final Completion Adjustment Payment (such shortfall being the **"VTH RE Adjustment Escrow Shortfall Amount"**) then:
 - (i) the Adjustment Escrow Amount is payable by the Adjustment Escrow Agent to MAFM; and
 - (ii) the VTH RE Adjustment Escrow Shortfall Amount is payable by VTH RE to MAFM.
- (c) If paragraph 5.19(b) applies and the Adjustment Escrow Amount exceeds the Final Completion Adjustment Payment, the Adjustment Escrow Amount is payable by the Adjustment Escrow Agent to VTH RE.
- (d) If paragraph 5.19(b) applies, and the Adjustment Escrow Amount is less than the Final Completion Adjustment Payment (such shortfall being the **"MAFM Adjustment Escrow Shortfall Amount"**) then:
 - (i) the Adjustment Escrow Amount is payable by the Adjustment Escrow Agent to VTH RE; and
 - (ii) the MAFM Adjustment Escrow Shortfall Amount is payable by MAFM to VTH RE.

6 Completion preparations

6.1 Indebtedness owed by a Leasehold Trust Group Member

On or before Completion, VTH RE must procure that any indebtedness (including in relation to any financial derivatives) owed by any Leasehold Trust Group Member to any other person (other than another Leasehold Trust Group Member) is repaid in full, together with all interest accrued up to Completion.

6.2 Pre-Completion Certificate from Seller

- (a) VTH RE must deliver a notice to MAFM (**"Pre-Completion Certificate"**) no later than 10 Business Days before Completion setting out:
 - (i) Estimated Monetary Liabilities;
 - (ii) Estimated Distributable Income;
 - (iii) Estimated Liquid Assets;
 - (iv) Estimated Excess Liquid Asset Amount; and
 - (v) the Estimated Completion Adjustment Amount.
- (b) Each estimated amount set out in the Pre-Completion Certificate must represent VTH RE's genuine and reasonable estimate and be accompanied by reasonable supporting materials.

6.3 Leasehold Trust Distribution

VTH RE must procure that the Leasehold Trustee immediately prior to the Completion Date, makes a distribution of the following amount to the unitholder of the Leasehold Trust (such amount, being the "**Leasehold Trust Distribution**"):

- (a) if the Estimated Excess Liquid Asset Amount is greater than or equal to the Estimated Distributable Income, an amount at least equal to the Estimated Distributable Income, but not exceeding the Estimated Excess Liquid Asset Amount (as determined by VTH RE); or
- (b) if the Estimated Distributable Income is greater than the Estimated Excess Liquid Asset Amount, an amount equal to the Estimated Distributable Income.

7 Limitations on liability for Claims

7.1 Seller's knowledge and awareness

- (a) Where a VTH Representation and Warranty or confirmation given by VTH RE under this deed is qualified by "knowledge" or "awareness", including phrases such as "to the best of VTH RE's knowledge and belief", "to the best of VTH RE's knowledge" or other words to that effect, "knowledge" and "awareness" for these purposes means the actual knowledge of Martin Farr or any VTH RE Board Member as at the date the relevant warranty is given.
- (b) Despite anything in paragraph 7.1(a), MAFM cannot make a Claim against any person named in paragraph 7.1(a).

Scheme Implementation Deed

Schedule 4 VTH details

VTH's capital structure as at the date of this deed

Security	Total number on issue
VTH Units	185,000,000

Schedule 5 Disclosure Materials

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Documents displayed: All

● - Never viewed or changed since last viewed

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03.33.24	142. Vitalharvest - Stamp duty notice of assessment docs SIGNED	Document
03.33.25	143. Vitalharvest SA CRE Application letters and forms	Document
03.33.26	144. Corporate Reconstruction Exemption NSW OSR (rhondaarnott-00017509)	Document
03.33.27	145. Vitalharvest - Application for Corporate Reconstruction Exemptions (Tas)...	Document
03.33.28	146. Vitalharvest Trust IPO - Stamp duty advice (Draft in clean 12.04.18)	Document
03.33.29	151. Vitalharvest - Vitalharvest Board resolutions - 1 Aug 2018 fully executed	Document
04	043. Vitalharvest - Management sign off certificates - VH and CAM	Document
05	054. Vitalharvest - Explanatory Statement to ASIC - 29 June 2018 - EXECUTED	Document
06	056. Vitalharvest - Appendix 1A - ASX Listing Application and Agreement(Execut	Document
07	062. Deed Poll - undertaking by RE in favour of ASX 31 July 2018	Document
08	063. Deed Poll – Undertaking to ASX – Vitalharvest	Document
10	083. Vitalharvest Deed of Assignment - Tripartite Agreement (Citrus) - Executed	Document
11	084. Deed of Covenant - Berry Properties - 1 August 2018	Document
12	085. Deed of Covenant - Citrus Properties - 1 August 2018	Document
13	086. Deed of Covenant - Grower Deed - 1 August 2018	Document
14	087. Deed of Covenant - Tripartite Agreement - Berry Properties - 1 August 201	Document
15	088. Deed of Covenant - Tripartite Agreement - Citrus Properties - 1 August 201	Document

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Number	Document	Type
16	091. Contract for sale - NSW - executed 2 August 2018	Document
17	092. Contract for Sale - South Australia - executed 2 August 2018	Document
18	093. Contract for Sale - Tasmania - executed 2 August 2018	Document
19	095. Ancillary Real Estate Asset Transfer Agreement - executed 2 August 2018	Document
20	098. Vitalharvest - NSW Water Transfer 2 Aug 2018 fully executed 1_4	Document
21	102. Deed Poll of Accession - Water Management Agreement - 2 August 2018	Document
22	104. Encumbrance 2 Aug 2018 fully executed	Document
23	112. Transfer of Water Rights (Department) - SA - 2 August 2018	Document
24	113. Transfer of Water Rights (Renmark IT) SA - 2 August 2018	Document
25	114. Transfer of Water Rights (Sale of Water Share) - SA Goulburn Murray - 2 Aug	Document
26	115. Transfer of Crown Licences - SA - 2 August 2018	Document
27	117. SA - Letter to SA Minister for Environment and Water – Heritage Agreement	Document
28	118. Tas transfer - WAL 6736 - signed 2 August 2018	Document
29	119. Tas transfer - WAL 8745 - signed 2 August 2018	Document
30	148. Vitalharvest Finance Pty Ltd - Resolution - Tax consolidated group - 1 Aug	Document
31	152. CAM - Completion Minutes - Restructure - signed EW (rhondaarnott-...	Document
32	153. Vitalharvest - Vitalharvest Finance Board resolutions - 1 Aug 2018 fully exe	Document
33	154. Vitalharvest - Finance Trustee Board resolutions - 1 Aug 2018 fully execute	Document
34	155. Vitalharvest - Property Trustee Board resolutions - 1 Aug 2018 fully execut	Document
03.34	Board Minutes	Folder
04	2018.10.25 meeting Beans paper	Document
05	2018.10.25 TTCRESL Minutes extract - Beans	Document
06	2019.02.20 TTCRESL Minutes extract - Beans	Document
07	2019.02.25 meeting Beans paper	Document
08	2019.02.27 meeting Beans paper 1	Document
09	2019.02.27 meeting Beans paper 2	Document
10	2019.02.27 TTCRESL Minutes extract - Beans	Document
11	2019.08.29 Beans paper 3	Document
12	2019.08.29 meeting Beans paper 1	Document
13	2019.08.29 meeting Beans paper 2	Document
14	2019.08.29 meeting Beans paper 3	Document
15	2019.08.29 meeting Beans paper 4	Document
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17	2019.10.30 TTCRESL Minutes extract - Beans	Document
18	2019.11.27 TTCRESL Minutes extract - Beans	Document
19	2019.12.18 meeting Beans paper	Document
20	2019.12.18 TTCRESL Minutes extract - Beans	Document
21	2020.02.26 meeting Beans paper 1	Document
22	2020.02.26 meeting Beans paper 2	Document
23	2020.02.26 meeting Beans paper 3	Document
24	2020.02.26 TTCRESL Minutes extract - Beans	Document
25	Unit Register	Main Folder
25.01	VTH Significant_Movements_Report as at 7 Sep 2020	Document
25.02	VTH_RegisterList_20200922	Document

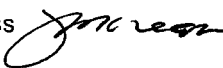
Scheme Implementation Deed

Signing page

DATED: 17 NOVEMBER 2020

VTH RE

SIGNED, SEALED AND DELIVERED
by Vanessa Milosev and
ANITA SOETANTO as attorneys
for **THE TRUST COMPANY (RE
SERVICES) LIMITED** in its capacity as
responsible entity of **Vitalharvest
Freehold Trust** under power of
attorney in the presence of:

Signature of witness 

Name of witness (block letters)

Myra Crease
Client Service Officer



Senior Custody Manager

By executing this document the
attorney states that the attorney has
received no notice of revocation of the
power of attorney DATED 16 SEPTEMBER 2014



Assistant Manager

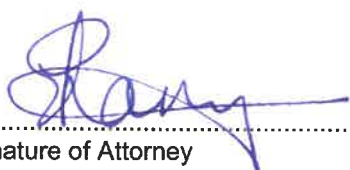
By executing this document the
attorney states that the attorney has
received no notice of revocation of the
power of attorney DATED 16 SEPTEMBER 2014

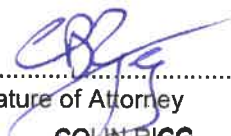
MAFM

SIGNED, SEALED AND DELIVERED)
for and on behalf of **MACQUARIE**)
AGRICULTURAL FUNDS)
MANAGEMENT LIMITED in its capacity)
as trustee of **Macquarie Agriculture**)
Fund – Crop Australia 2 by its)
attorneys under power of attorney dated)
22 February 2019, each of whom state)
that they have received no notice of)
revocation of the power of attorney, in)
the presence of:


.....
Signature of witness

Rhea Diacopoulos
.....
Name of witness (block letters)


.....
Signature of Attorney
ELIZABETH O'LEARY
.....
Name of Attorney (block letters)


.....
Signature of Attorney
COLIN RIGG
.....
Name of Attorney (block letters)

Annexure A Timetable

Event	Date
Scheme Booklet provided to ASIC in draft	X
Despatch of Scheme Booklet	X + 3 weeks
Meeting Date	Z (X + 6 weeks)
Effective Date	Z + 1 BD
Record Date (if applicable)	Z + 3 BDs
Implementation Date	Asset Sale: Z + 5 BDs Scheme: Z + 8 BDs

Annexure B Scheme Deed Poll

Scheme Deed Poll

Dated

Macquarie Agricultural Funds Management Limited (ACN 122 169 368) as trustee of
Macquarie Agriculture Fund – Crop Australia 2 (“**MAFM**”)

King & Wood Mallesons

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

www.kwm.com

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Scheme Deed Poll

Details

Parties		
By:		
MAFM	Name	Macquarie Agricultural Funds Management Limited as trustee of Macquarie Agriculture Fund – Crop Australia 2
	ABN	26 122 169 368
	Address	Level 6, 50 Martin Place, Sydney NSW 2000
	Email	Elizabeth.OLeary@macquarie.com Colin.Rigg@macquarie.com
	Attention	Elizabeth O'Leary / Colin Rigg
	With a copy to:	Henrik Moritz Email: Henrik.Moritz@au.kwm.com
In favour of:		
Each Scheme Participant	Each VTH Unitholder as at the Record Date (other than the Excluded Unitholders)	
Business Day place (s)	Sydney, New South Wales	
Governing law	New South Wales	
Recitals	A	MAFM and VTH RE entered into the Implementation Deed.
	B	In the Implementation Deed, MAFM agreed to make this deed poll.

Scheme Deed Poll

General terms

1 Definitions and interpretation

1.2 Definitions

- (a) The meanings of the terms used in this deed poll are set out below.

Implementation Deed means the scheme implementation deed entered into between MAFM and VTH RE dated [insert date].

Trust Account means the trust account nominated by MAFM, the details of which must be notified in writing to VTH RE at least 5 Business Days before the Implementation Date.

- (b) Unless the context otherwise requires, terms defined in the Implementation Deed have the same meaning when used in this deed poll.

1.3 Interpretation

Clause 1.2 ("Interpretation") of the Implementation Deed applies to the interpretation of this deed poll, except that references to 'this deed' are to be read as references to 'this deed poll'.

1.4 Nature of deed poll

MAFM acknowledges that this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it.

2 Conditions to obligations

2.1 Conditions

This deed poll and the obligations of MAFM under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of MAFM under this deed poll to the Scheme Participants will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
(b) the Scheme is not Effective on or before the End Date,

unless MAFM and VTH RE otherwise agree in writing.

2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) MAFM is released from their obligations to further perform this deed poll except those obligations under clause 6.1; and
- (b) each Scheme Participant retains the rights they have against MAFM in respect of any breach of this deed poll which occurred before it was terminated.

3 Scheme obligations

3.1 Undertaking to pay and issue Scheme Consideration

Subject to clause 2 and the terms of the Scheme, MAFM undertakes in favour of each Scheme Participant to:

- (a) do all things that it is required to do under the Implementation Deed;
- (b) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Implementation Deed; and
- (c) deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Participants under the Scheme into the Trust Account as trustee for the Scheme Participants, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to MAFM's account,

each in accordance with the terms of the Scheme.

3.2 General warranties

MAFM represents and warrants in favour of each Scheme Participant, in respect of itself, that:

- (a) it is validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

4 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) MAFM has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

5 MAFM limitation of liability

- (a) A liability arising under or in connection with this document is limited to and can be enforced against MAFM only to the extent to which it can be satisfied from the property of the Macquarie Agriculture Fund – Crop Australia 2 out of which MAFM is actually indemnified for the liability. This limitation of liability applies despite any other provision of this document and extends to all liabilities and obligations of MAFM in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (b) VTH RE may not sue MAFM in any capacity other than trustee of the Macquarie Agriculture Fund – Crop Australia 2, including seeking the appointment of a receiver (except in relation to property of the Macquarie Agriculture Fund – Crop Australia 2), a liquidator, an administrator or any similar person to MAFM or prove in any liquidation, administration or arrangement of or affecting MAFM (except in relation to property of the Macquarie Agriculture Fund – Crop Australia 2).
- (c) The limitation in this clause 5 shall not apply to any obligation or liability of MAFM to the extent that it is not satisfied because under the Macquarie Agriculture Fund – Crop Australia 2 constitution or by operation of law there is a reduction in the extent of MAFM's indemnification out of the assets of the Macquarie Agriculture Fund – Crop Australia 2 as a result of MAFM's fraud or breach of trust.

6 General

6.1 Stamp duty

MAFM:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under or in connection with the Scheme and this deed poll; and
- (b) indemnifies each Scheme Participant against any liability arising from failure to comply with clause 6.1(a).

6.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in New South Wales.
- (b) MAFM irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. MAFM irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

6.3 Waiver

- (a) MAFM may not rely on the words or conduct of any Scheme Participant as a waiver of any right unless the waiver is in writing and signed by the Scheme Participant granting the waiver.
- (b) No Scheme Participant may rely on words or conduct of MAFM as a waiver of any right unless the waiver is in writing and signed by MAFM.
- (c) The meanings of the terms used in this clause 6.3 are set out below.

conduct includes delay in the exercise of a right.

right means any right arising under or in connection with this deed poll and includes the right to rely on this clause.

waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

6.4 Variation

A provision of this deed poll may not be varied unless the variation is agreed to by VTH RE in which event MAFM will enter into a further deed poll in favour of the Scheme Participants giving effect to the variation.

6.5 Cumulative rights

The rights, powers and remedies of MAFM and the Scheme Participants under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

6.6 Assignment

- (a) The rights created by this deed poll are personal to MAFM and each Scheme Participant and must not be dealt with at law or in equity without the prior written consent of MAFM.
- (b) Any purported dealing in contravention of clause 6.6(a) is invalid.

6.7 Further action

MAFM must, at its own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

EXECUTED as a deed

Signing page

DATED: _____

EXECUTED by **MACQUARIE**
AGRICULTURAL FUNDS
MANAGEMENT LIMITED in its
capacity as trustee of **Macquarie**
Agriculture Fund – Crop Australia 2
in accordance with section 127(1) of
the *Corporations Act 2001* (Cth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

Annexure C Condition Precedent Certificate

The Trust Company (RE Services) Limited (ACN 003 278 831) as responsible entity of Vitalharvest Freehold Trust (ARSN 626 537 362) ("**VTH RE**") and Macquarie Agricultural Funds Management Limited (ACN 122 169 368) as trustee of Macquarie Agriculture Fund – Crop Australia 2 ("**MAFM**") certify, confirm and agree that each of the conditions precedent in clause 4.1 (other than the condition in clause 4.1(c)) and paragraphs 3.1(a) and 3.1(b) of Schedule 3 of the scheme implementation deed dated [*insert date*] between VTH RE and MAFM (**SID**) has been satisfied or is hereby waived by the relevant party (or parties) to the SID in accordance with the terms of the SID.

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Dated:

Executed as a deed

**EXECUTED by MACQUARIE
AGRICULTURAL FUNDS
MANAGEMENT LIMITED** in its
capacity as trustee of **Macquarie
Agriculture Fund – Crop Australia 2**
in accordance with section 127(1) of
the *Corporations Act 2001* (Cth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

**SIGNED, SEALED AND DELIVERED
by**

_____ and

_____ as attorneys

for **THE TRUST COMPANY (RE
SERVICES) LIMITED** in its capacity as
responsible entity of **Vitalharvest
Freehold Trust** under power of
attorney in the presence of:

Signature of witness

Name of witness (block letters)

By executing this document the
attorney states that the attorney has
received no notice of revocation of the
power of attorney

By executing this document the
attorney states that the attorney has
received no notice of revocation of the
power of attorney