

**Trust Deed for the Port
Phillip Housing Trust**

**City of Port Phillip (“Governor”)
and
Port Phillip Housing Association
Limited (“Trustee”)**

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Trust Deed for the Port Phillip Housing Trust

Date:

Parties:

Port Phillip City Council, St. Kilda Town Hall, Corner Brighton Road and Carlisle Street, St. Kilda 3182 (“**Governor**”)

Port Phillip Housing Association Limited (ACN 116 093 004) having its registered office at Suite 6, 22-28 Fitzroy Street, St Kilda 3182 (“**Trustee**”)

Recitals:

- A. The Governor desires to establish a trust fund (“**Trust Fund**”) to be called the Port Phillip Housing Trust for public charitable purposes.
- B. The Governor has therefore paid to the Trustee as an original endowment the sum of \$400,000 to be held by the Trustee on the trusts declared in this deed.
- C. The Governor contemplates making further gifts to the Trust Fund.
- D. Other persons will be invited to make gifts to the Trust Fund.

Operative provisions:

Counterpart Declaration Of Trust
Exempt Section 38-3
Doc ID 2043005, 28 Dec 2005
SRO Victoria Data, PSE1

1 Interpretation

- 1.1 The following words have these meanings in this deed unless the contrary intention appears.

Approved Institution means an organisation which has objects similar to those of the Trust and which has been approved by the Commissioner of Taxation as a public benevolent institution for the purposes of the Tax Act.

Corporations Act means the Corporations Act 2001 (Cwlth)

Deed means this deed including all amendments, additions, deletions or replacements lawfully made to this Deed.

Director means a director of the Trustee.

Director of Housing means the Director of the Office of Housing which forms part of the Victorian Department of Human Services.

Eligible Resident means a person who has significant links to the City of Port Phillip and meets the criteria (as amended from time to time) of the Director of Housing for eligibility for affordable housing.

Housing Act means the Housing Act 1983 (Vic).

Registrar means the Registrar of Housing Agencies established under the Housing Act.

Tax Act means the Income Tax Assessment Act 1997.

Trust means the Port Phillip Housing Trust established by this Deed.

Trustee means Port Phillip Housing Association Limited or any other company which for the time being is trustee of the Trust Fund.

Trust Fund includes the moneys, investments and property for the time being subject to the trusts of this Deed and the charitable purposes and means of achieving those purposes established by this Deed.

- 1.2 In this Deed unless the contrary intention appears:
- (a) a reference to a clause or schedule is a reference to a clause of or schedule to this Deed and references to this Deed include any recital or schedule;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (c) the singular includes the plural and vice versa;
 - (d) the word person includes a firm, a body corporate, an unincorporated association or an authority; and
 - (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns.
- 1.3 Headings are inserted for convenience and do not affect the interpretation of this Deed.

2 Control of Trust Fund

- 2.1 The power of removing a trustee of the Trust Fund and of appointing a new trustee, if the necessity arises, is vested in the Governor.
- 2.2 The Trustee may resign as trustee of the Trust by notice in writing to the Governor not less than 6 months before the date of effect of its resignation.
- 2.3 When appointing a new Trustee, the Governor must:
- (a) consult with the Registrar and the Director of Housing prior to making that appointment; and
 - (b) appoint as a new trustee only a corporation which is registered as a housing agency under the Housing Act.
- 2.4 The Governor appoints the Trustee subject to the Port Phillip Housing Association Limited becoming registered as a housing agency under the Housing Act.

3 Purposes of Trust Fund

- 3.1 The Governor has, upon the execution of this Deed, transferred to the Trustee the sum of \$400,000 and directs that the Trustee is to, and the Trustee hereby declares that it will:
- (a) act as Trustee of the Trust; and
 - (b) hold the Trust Fund as a trust for public charitable purposes which shall be known as the Port Phillip Housing Trust, more particularly described in clause 3.2.
- 3.2 Subject to clause 11, the Trust Fund is established and must be maintained in perpetuity exclusively for public charitable purposes being the purpose of providing affordable housing in the City of Port Phillip to Eligible Residents.
- 3.3 Without derogating from the generality of clause 3.2, the specific purposes of the Trust Fund are to
- (a) solicit donations, gifts, bequests and other forms of financial assistance to or for the benefit of the purposes of the Trust Fund;
 - (b) acquire:
 - (i) land and existing buildings in the City of Port Phillip and refurbish for housing;
 - (ii) land in the City of Port Phillip and construct housing on it; and
 - (c) make that housing available to Eligible Residents at such rent or rents (if any) as the Trustee determines from time to time, but in any event at rents that are below the market rate prevailing from time to time.
- 3.4 The Trustee may apply capital as well as income of the Trust Fund for the purposes referred to in clauses 3.2 and 3.3.

4 Investments

- 4.1 The Trust Fund may be invested solely in or on any investments or securities authorised by the law for the time being of the Commonwealth of Australia or any Australian State or Territory for the investment of trust money with power to vary or transpose those investments or securities from time to time and at any time.
- 4.2 Except for any investment or security in accordance with clause 4.1 no part of the capital or income of the Trust Fund may be lent to or deposited with any person.

5 Powers of the Trustee

- 5.1 In addition to the powers conferred on the Trustee by law or which are otherwise conferred on it by this Deed, the Trustee has, subject always to clause 4, the following powers and discretions
- (a) to accumulate any unpaid or unapplied income of the Trust Fund by investing it and the resulting income and by holding the accumulations in augmentation of and on the same trusts and conditions as are applicable to capital;
 - (b) to exercise all rights and privileges and perform all duties in respect of any shares or other assets forming part of the Trust Fund;
 - (c) if at any time the Trust Fund comprises real property or any interest in real property, to manage use and let it or any part of it, to erect, pull down, rebuild and repair buildings and erections, to carry out improvements of any nature, to make allowances to and arrangement with tenants, to grant or acquire easements or other rights, to partition or subdivide or join in the partition or subdivision of it, and generally to deal with that property or interest or to join in dealing with it as if beneficially entitled to it without being responsible for loss;
 - (d) to retain any property donated to the Trust Fund without considering the question of sale, calling in or conversion for as long as the Trustee thinks fit;
 - (e) to institute and prosecute legal proceedings of any kind and in any court to enforce a contract entered into by the Trustee and to recover damages for breach of such a contract;
 - (f) to cancel, terminate or accept surrenders of leases, to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of a property, to sue for and recover rent and damages for breach of a lease, to sue and prosecute trespassers or other persons for damage to any part of the property and to settle, abandon, compromise and release any such actions or suits when expedient;
 - (g) to repair, renovate, decorate and maintain chattels personal or land including fittings, fixtures, furnishings, furniture and equipment and grounds and outhouses;
 - (h) to employ, engage or appoint any secretary, manager, solicitor, accountant or agent or any other person, including any Director or member of the Trustee or any firm or company in which that Director or member is a partner or director, to transact any business required to be done under the trusts established by this Deed, including the receipt or payment of money and the acquisition of property of any kind on behalf of the Trustee, and the Trustee may decide the amount of the remuneration and expenses to be paid to any such person and is entitled to be reimbursed from the Trust Fund in respect of that remuneration;

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- (i) to acquire any investment to form part of the Trust Fund on terms that require the investment to be paid for by more than one instalment or that the instalments or the residue of purchase money bear interest as the Trustee thinks fit;
 - (j) to borrow, raise or concur in raising any money which the Trustee thinks expedient for any purpose in relation to the execution of the trusts and powers conferred on the Trustee by this Deed with or without security or by mortgaging or charging with or without power of sale any part of the Trust Fund;
 - (k) where the Trustee is satisfied that it is consistent with the objects of the Trust, to merge or mix the Trust Fund or any part of it with any other trust fund, trust moneys or trust property or to join with any other trustee or person to form a common or merged fund to be invested in any investment permitted by this Deed whether or not the common or merged fund is under the control of or stands in the name of the Trustee;
 - (l) to pay out of the capital or income of the Trust Fund the costs of and incidental to the establishment of the Trust Fund and all expenses and outgoings that may be incurred in relation to the trusts of this Trust Deed including all administration expenses (which include, without limitation, the cost of obtaining insurance for the Directors in respect of their role as Directors);
 - (m) to solicit donations, gifts, bequests and other forms of financial assistance to, or for the benefit of, the purposes of the Trust;
 - (n) to take and act on the opinion of any counsel practising in the Supreme Court of any Australian State or Territory whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts of this Deed without being liable to any one in respect of any act done or not done by it in accordance with that opinion, but this clause does not oblige the Trustee to act in accordance with any such opinion nor prohibit the Trustee from applying to any court as it thinks fit;
 - (o) to enter into any agreement or arrangement with any other party in relation to the development of housing to meet the purposes of the Trust;
 - (p) to open any account or accounts with any bank or financial institution and to operate the account in all usual ways;
 - (q) to do any act or thing which in the opinion of the Trustee is necessary for the proper and efficient management and development of any property forming part of the Trust Fund; and

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- (r) to carry out any of the foregoing powers by or through an agent and to appoint and authorise the agent to carry out all or any of the foregoing powers.

5.2 Subject to the Corporations Act, the Trustee, and any person acting as a director of the Trustee from time to time, may act to further the objects of the Trust notwithstanding any conflict of interest or duty.

6 Indemnity of Trustee

The Trustee is indemnified against all liabilities incurred by it through any act or omission in the exercise or bona fide intended or purported exercise of the powers, duties and discretions under this Deed and has a lien on the Trust Fund for that indemnity. The Trustee is not liable for any act or default done or omitted to be done in the exercise or bona fide intended or purported exercise of those powers, duties and discretions or for any loss or expenses incurred by the Trust Fund through the insufficiency or deficiency of any security in or on which any of the moneys of the Trust Fund are invested or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited or for any other loss, damage or misfortune whatever except where due to the Trustee's own dishonesty or wilfully or knowingly being a party to a breach of trust. References in this clause to the Trustee include Directors and delegates appointed by it under this Deed.

7 Accounts and audit

7.1 The Trustee must:

- (a) cause proper accounts to be kept by the person appointed by the Trustee for the purpose with respect to all sums of money received and expended by the Trust Fund, the matters in respect of which the receipt and expenditure takes place and the assets and liabilities of the Trust Fund; and
- (b) cause a balance sheet and statement of income and expenditure to be drawn up as at 30 June each year and make available to the person appointed by the Trustee for that purpose such documents and information as that person requires to fulfil this task; and
- (c) maintain an asset register of all property owned by the Trust and an asset management plan extending for a minimum of 20 years for all properties owned by the Trust.

7.2 The accounts are to be subject to annual audit.

7.3 The accounts must be kept at the place which the Trustee determines and be open to inspection by any Director.

8 Bank Account

The Trustee must open a bank account or bank accounts at such financial institutions as it determines, and will determine who will be entitled to operate such account or accounts.

9 Reports

- 9.1 At least once each year, the Trustee must ensure that:
- (a) the Director of Housing;
 - (b) the Governor; and
 - (c) any person who has, in the period of 12 months since a report was last provided under this clause (or, for the first year of operation of the Trust, since the commencement of operation of the Trust), given an amount equal to or more than \$10,000 to the Trust,
- is given:
- (d) the financial report for the Trust;
 - (e) information about the projects being undertaken by the Trust and the status of those projects; and
 - (f) any other information relating to the effectiveness of the Trust in meeting the purposes set out in clause 3.
- 9.2 On or about the day on which the Trust has been in operation for:
- (a) 3 years; and
 - (b) 5 years,
- the Governor may appoint a date, time and place for a meeting with the Trustee (“**Review Meeting**”).
- 9.3 The Trustee must provide the Governor with all such information as the Governor may request in connection with the operation of the Trust and its effectiveness in meeting its purposes for the purposes of the Review Meeting.
- 9.4 If, at the end of the Review Meeting or such later date as the Governor specifies to the Trustee, the Governor is not satisfied that the purposes of the Trust are being met, the Governor may, in its absolute discretion, determine to appoint a new trustee in accordance with clause 2.2.

10 Power of alteration

- 10.1 The Trustee may by deed alter, amend, add to, delete or replace any of the trusts, powers and provisions of this Trust Deed, including this clause, in any manner provided that:

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- (a) no part of the Trust Fund becomes subject to any trusts other than trusts for the purposes presently described in clause 3.2 and 3.3; and
 - (b) counsel referred to in clause 5(n) certifies that in counsel's opinion the alterations, amendments, additions, deletions or replacements are within this power; and
 - (c) the Governor gives its consent in writing to the alterations, amendments, additions, deletion or replacements; and
 - (d) the Registrar is consulted prior to the making of any alterations, amendments, additions, deletion or replacements.
- 10.2 The Trustee must notify the Commissioner of Taxation, the Registrar and the Director of Housing of any alteration to this Deed.

11 Winding up of Trust Fund

- 11.1 If at any time the Trustee concludes that the continuation of the Trust Fund is impracticable, or the purposes for which it was established have ceased to exist, or there are insufficient moneys in the Trust Fund to carry out those purposes, and there remains after satisfaction of all the debts and liabilities incurred by the Trustee in carrying out the trusts of this Deed any property, the property must be given or transferred to an Approved Institution to be determined by the Governor at or before the time of dissolution or, failing such a determination, by a court of competent jurisdiction in the matter.
- 11.2 The Governor must consult with the Registrar prior to giving or transferring property to an Approved Institution under this clause 11.

12 Governing law

This Deed is governed by the law in force in Victoria.

EXECUTED as a deed

Execution Page

THE COMMON SEAL of the COUNCIL
OF THE **PORT PHILLIP CITY**
COUNCIL was affixed in the presence of)
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[Handwritten signature]

Executive Director Corporate Management

Date *09/12/05*



THE COMMON SEAL of **PORT**
PHILLIP HOUSING ASSOCIATION
LIMITED is affixed in accordance with its)
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)
Constitution in the presence of:

[Handwritten signature]

Signature of authorised person

Company Secretary
Office held

KAREN BARNETT
Name of authorised person (block letters)

[Handwritten signature]

Signature of authorised person

DIRECTOR
Office held

CARY SPIVAK
Name of authorised person (block letters)