

STAPLING AND ASSET MANAGEMENT DEED

Made on

2004

-
- BETWEEN **LEYSHON CORPORATION LIMITED ACN 090 257 480** as responsible entity of
LEYSHON PROPERTY TRUST NO. 3 ARSN 109 093 816 of Level 1,
295 Elizabeth Street, Brisbane, Queensland
- (‘**Leyshon Corporation**’)
- AND **LEYSHON DEVELOPMENTS NO. 3 LIMITED ACN 111 628 589** of Level 1,
295 Elizabeth Street, Brisbane, Queensland
- (‘**Leyshon Developments No. 3**’)
- AND **LEYSHON CORPORATION LIMITED ACN 090 257 480** of Level 1,
295 Elizabeth Street, Brisbane, Queensland

BACKGROUND

STAPLING PROVISIONS BACKGROUND

- A. The Trust Deed and the constitution of Leyshon Developments No. 3 provide for Stapling of the Shares and Units.
- B. The parties have agreed to set out the terms and conditions of the relationship between Leyshon Developments No. 3 and Leyshon Corporation as a responsible entity and manager of Leyshon Property Trust No. 3 in respect of the Stapling of Units and Shares.

ASSET MANAGEMENT PROVISIONS BACKGROUND

- C. Leyshon Corporation is the responsible entity and manager of Leyshon Property Trust No. 3.
- D. Leyshon Corporation as responsible entity and manager of Leyshon Property Trust No. 3 will manage the Projects of the Trust as Asset Manager pursuant to the terms of this Deed and the Trust Deed.
- E. Leyshon Developments No. 3 has decided to appoint Leyshon Corporation, in its own capacity and not in its capacity as responsible entity of the Trust, as Asset Manager to manage its Projects.
- F. Leyshon Corporation, in its own capacity and not in its capacity as responsible entity of the Trust, has agreed to manage the development of Company Projects on behalf of Leyshon Developments No. 3, pursuant to the terms of this Deed.
- G. Leyshon Developments No. 3 has entered into the Development Agreement with respect to the London Woolstore Project.

- H. Leyshon Developments No. 3 has decided to appoint Leyshon Corporation in its own capacity and not in its capacity as responsible entity of the Trust, as Asset Manager to manage the London Woolstore Project.
- I. Leyshon Corporation, in its own capacity and not in its capacity as responsible entity of the Trust, has agreed to manage the development of the London Woolstore Project on behalf of Leyshon Developments No. 3, pursuant to the terms of this Deed.
- J. The Asset Manager has agreed to source equity and debt funding for the Projects.

OPERATIVE PROVISIONS

1. DEFINITIONS

In this Deed, except to the extent the context otherwise requires:

‘**Approved Stock Exchange**’ means any prescribed financial market and relevant market operator as prescribed by the Law and determined by the Board for the purposes of listing the Stapled Securities;

‘**Approved Valuer**’ means a valuer, or, if that valuer is a company or firm, a person employed in the valuation by the company or firm, who:

- (a) is authorised to practise as a valuer by law;
- (b) has at least 5 years continuous experience in valuation of commercial properties;
- (c) is appointed and instructed in writing by the Asset Manager; and
- (d) is independent of the Asset Manager;

‘**Asset Manager**’ means:

- (a) Leyshon Corporation Limited ACN 090 257 480 in its own capacity, with respect to the management of the Projects; and
- (b) Leyshon Corporation Limited ACN 090 257 480 as responsible entity and manager of Leyshon Property Trust No. 3;

‘**Board**’ means the Directors of Leyshon Developments No. 3;

‘**Business Day**’ has the meaning given to that term in the Listing Rules;

‘**Completion Date**’ means the dates of settlement of the acquisition of any Projects;

‘**Company**’ means Leyshon Developments No. 3;

‘**Confidential Information**’ means all information, whether or not in a material form, relating to the subject matter of this Deed, including, but not limited to, information relating to Leyshon Developments No. 3, the Asset Manager, Leyshon Corporation and Leyshon Property Trust No. 3, the personnel, policies, clientele and/or business strategies of Leyshon Developments No. 3 or Leyshon Corporation or the Asset Manager, and the terms of this Deed but excluding information to the extent that it is publicly available, otherwise than as a result of a breach of this Deed;

‘**Cost Base**’ means the amount recorded in the Trust’s statement of financial position for the Trust Projects at the last time the Fee Internal Rate of Return calculation was made for the purpose of determining the Performance Fee;

‘**Debt Facility**’ means the finance facility provided by third party Financiers to assist with the acquisition of Projects by the Fund;

‘**Deed**’ means this Stapling and Asset Management Deed;

‘Development Agreement’ means the development agreement between Leyshon Developments No. 3 and Leyshon Properties Pty Ltd as trustee of London Woolstore Trust for the development of London Woolstore dated 8 November 2004 and includes any variations to the agreement that may be made from time to time;

‘Development Management Fee’ means the fee calculated in accordance with clause 13.10(c);

‘Development Plan’ means the work required to develop any and implement the scope of works and plans prepared by the Asset Manager in consultation with project consultants;

‘Directors’ means the directors of Leyshon Developments No. 3;

‘Equity Investors’ means together those parties who submit funds for investment in the Projects and become Shareholders and Unitholders;

‘Financiers’ means the provider of the Debt Facility;

‘Fund’ means the Leyshon Property Fund No. 3, being the Trust and Leyshon Developments No. 3;

‘Initial Amount Invested’ means the total sum raised from Equity Investors under the Offer Document;

‘Interim Distribution’ means distributions to Equity Investors which are additional to quarterly distributions;

‘Internal Rate of Return’ means the discount rate expressed as a percentage per annum that results in a net present value of zero for the Fund’s series of cashflows comprising the Total Funds Raised, the Returns, any future equity raised by the Fund, and for any Trust Projects, the difference between the current Market Value of the Trust Projects and the Cost Base of the Trust Projects;

‘Law’ means the *Corporations Act 2001* and the *Corporations Regulations 2001*;

‘Leyshon Corporation’ means Leyshon Corporation Limited ACN 090 257 480 as responsible entity of Leyshon Property Trust No. 3;

‘Leyshon Developments No. 3’ means Leyshon Developments No. 3 Limited ACN 111 628 589;

‘Leyshon Property Trust No. 3’ means Leyshon Property Trust No. 3 ARSN 109 093 816;

‘Listed’ in application to the Fund, means the Stapled Securities are listed for quotation on the official list of any Approved Stock Exchange;

‘Listing Rules’ means the Listing Rules and any other rules of an Approved Stock Exchange which are applicable while the Fund is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver by the Approved Stock Exchange, as relevant;

‘London Woolstore’ means the land and improvements located at Vernon Terrace, Teneriffe described as Lot 2 on SP 161319 and Volumetric Lot 100 on SP 160185;

‘London Woolstore Project’ means the residential, retail development and commercial property project at Vernon Terrace, Teneriffe, to be developed in accordance with the Development Agreement;

‘Market Value’ means the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion, to be determined by an independent registered valuer (with at least five years experience in valuation of comparable properties) as approved by the parties (if applicable) and where the parties cannot agree on a valuer (if applicable), an independent valuer appointed by the President of the Queensland Division of the Australian Property Institute;

‘Offer Document’ means the disclosure document to be issued by Leyshon Developments No. 3 and Leyshon Corporation dated on or about 8 November 2004;

‘Performance Fee’ means the fee payable to the Asset Manager pursuant to clause 14;

‘person’ and **‘persons’** include individuals, firms, partnerships, bodies corporate, associations and governments and governmental, semi-governmental and local authorities and agencies;

‘Project Expenses’ means in respect of any accounting period or financial year, the total of all costs, expenses, charges, fees and outgoings whatsoever properly incurred in that period or year on behalf of the parties in relation to the Projects and/or the management or administration thereof including but without limiting the generality of the foregoing:

- (a) all auditing and legal costs and expenses;
- (b) all other reasonable costs and expenses incurred in and about the administration of the Projects;
- (c) the cost of any valuation or feasibility or marketing project carried out; and
- (d) all proper costs, charges, fees, expenses and disbursements incurred by or on behalf of the parties in and about the acquisition, development, leasing and/or ultimate sale and/or the management, leasing and/or ultimate sale of the Projects including but without limiting the generality of the foregoing:
 - (i) all statutory (whether Federal State or Local Government) and other charges and imposts imposed or levied on or in respect of any of the Projects or any part thereof including all rates, taxes, levies, encroachment fees, fire brigade charges and all other charges and imposts of any kind whether now payable or at any future time becoming payable;
 - (ii) all insurance premiums properly payable or any part thereof and/or the ownership or occupation thereof and directors’ and officers’ liability cover;
 - (iii) all costs and charges for waste removal and cleaning;
 - (iv) all repairs and maintenance;
 - (v) all fees and charges for signs;
 - (vi) all charges for the installation and use of water, sewer, telephone, drainage, electricity, gas, oil and/or other like utility services;
 - (vii) all proper caretaking and/or security charges;
 - (viii) all costs and expenses of and incidental to the execution of the development works and/or any other works required or deemed necessary by the parties;
 - (ix) all costs, fees, charges and other moneys paid to any statutory or other authority in connection with the obtaining of any consent, approval, permit or authority required for the Projects in the manner herein contemplated;
 - (x) all professional and/or other fees, costs and other charges payable to any professional adviser, consultant, contractor, sub-contractor, supplier or tradesman in connection with the execution of the Projects or any other works on or to the Projects including the costs and expenses of any surveyor, engineer, quantity surveyor, architect, designer or other specialist consultant, builder, developer and/or construction manager;
 - (xi) all costs and disbursements of any solicitor, land broker or other professional consultant engaged by or on behalf of the parties in relation to the acquisition, development, leasing, ultimate sale and/or management of the Projects;
 - (xii) all goods and services tax, stamp duty, registration fees and other government fees and charges payable on or in respect of the acquisition, ownership, development management and leasing of the Projects;

- (xiii) all accrued interest or other charges of a like nature (including the costs incurred in providing money for the Projects as security, if required and proper legal costs in connection with any security given);
 - (xiv) the fees payable to the Asset Manager;
 - (xv) all costs associated with promotion, leasing and sale of the Projects including payment of any rental incentives generally in accordance with the Project Feasibility;
 - (xvi) all acquisition costs including costs associated with the acquisition, due diligence and the debt and equity raising for the Projects,
- less any costs, fees, charges, expenses, outgoings, input tax credits and disbursements recovered or reimbursed to the parties by any other person but not including any tax on return or capital gains;

‘Project Feasibility’ means the projected statements of financial position, financial performance and cashflow of the Projects, a copy of which is set out in Schedule 2, as varied in writing from time to time where appropriate and in particular for the inclusion of any Projects;

‘Projects’ means any projects of the Trust and Leyshon Developments No. 3;

‘Return’ means all payments to the Equity Investors including quarterly distributions, Interim Distributions and the distribution of the net proceeds from the sale of the Projects;

‘Share’ means an ordinary share in Leyshon Developments No. 3;

‘Shareholder’ means a shareholder of Leyshon Developments No. 3;

‘Special Resolution’ has the meaning prescribed to it under the Law;

‘Stapled’ means the joining together of a Share and a Unit so that individually, a Share or a Unit may not be transferred or otherwise dealt with without the other and which are quoted on an Approved Stock Exchange jointly as a Stapled Security or such other term as the Approved Stock Exchange permits;

‘Stapled Security’ means a Share and a Unit which are Stapled together and registered in the name of a person;

‘Stapled Security Register’ means the register of Stapled Security holders maintained under clause 5.1;

‘Stapling’ means the process of joining which results in each Share and Unit being and remaining Stapled to each other;

‘Stapling Commencement Date’ means the date of allotment of any Shares and Units;

‘Total Development Cost’ includes all costs of development including land acquisition, construction, consultants, town planning, interest, marketing, selling, financing, property taxes, rates and any other costs of development excluding the Development Management Fee;

‘Total Funds Raised’ means the amount of funds raised under the Offer Document, anticipated to be \$30 million;

‘Trust’ means Leyshon Property Trust No. 3;

‘Trust Deed’ means deed of trust of Leyshon Property Trust No. 3 Trust Deed;

‘Unit’ means an ordinary unit in Leyshon Property Trust No. 3;

‘Unitholder’ means a holder of a Unit; and

‘writing’ includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words in a permanent and visible form.

A. STAPLING PROVISIONS

2. CO-OPERATION AND CONSULTATION

- 2.1 Leyshon Corporation and Leyshon Developments No. 3 agree to make available to each other all information in their possession as may be necessary or desirable to fulfil their respective obligations under this Deed or any other document, Deed or arrangement relating to the Stapled Securities.
- 2.2 The primary form of financial reporting will be accounts for Leyshon Developments No. 3, Leyshon Property Trust No. 3 and the Fund.
- 2.3 Leyshon Corporation and Leyshon Developments No. 3 must make available to each other all information and provide all assistance necessary to enable the provision of all other reports, circulars or other information which are required to be provided or disclosed by Law or the Listing Rules or which it is reasonably desirable to provide to Equity Investors.
- 2.4 Leyshon Corporation and Leyshon Developments No. 3 must keep confidential any information obtained concerning the affairs or assets of each other and not disclose such information other than:
 - (a) with the prior written consent of the other parties (which consent shall not be unreasonably withheld or delayed);
 - (b) if it is required to do so by Law, by a regulatory or Governmental Agency or by the Approved Stock Exchange;
 - (c) if the information has come within the public domain, other than by a breach of this Deed; and
 - (d) to the party's bankers or professional advisers.
- 2.5 To the extent permitted by law, Leyshon Corporation and Leyshon Developments No. 3 must co-operate with each other in respect of all matters relating to the Stapled Securities and must do all things necessary to give effect to this Deed, including acting with a view to ensuring that they respectively:
 - (a) comply with their obligations under the Listing Rules;
 - (b) co-ordinate their disclosure to ASIC, the Approved Stock Exchange, any other applicable stock market or regulatory authority and Equity Investors;
 - (c) maintain the same auditor from time to time and agree on any change of auditor so that any change of auditor is implemented for Leyshon Corporation, Leyshon Developments No. 3, Leyshon Property Trust No. 3 and the Fund;
 - (d) where appropriate, adopt consistent accounting policies;
 - (e) where appropriate, adopt consistent valuation policies;
 - (f) take a consistent approach on proposed investments, and keep each other properly informed of their investment policies and any changes to those policies;
 - (g) hold Equity Investors' meetings concurrently or, where necessary, consecutively;
 - (h) agree on the terms and timing of all new issues, bonus and rights issues, placements and redemptions and buy-backs;
 - (i) consult before taking any action (or omitting any action) which may materially affect the value of the Stapled Securities;
 - (j) co-ordinate the announcement and payment of dividends, distributions and Return; and
 - (k) co-ordinate any Return re-investment plan; and

- (l) agree on terms of loans to each other.
- 2.6 Leyshon Corporation and Leyshon Developments No. 3 may agree with each other in relation to:
 - (a) reorganising or restructuring of the capital of the Leyshon Property Trust and Leyshon Developments No. 3; or
 - (b) changing the Stapling arrangements contemplated by this Deed in order to comply with any law, regulation or rule or to otherwise overcome the adverse effect of any law, regulation or rule; and
 - (c) any changes to this Deed which are reasonably required by any party as a consequence of any of the above matters.
- 2.7 Leyshon Corporation and Leyshon Developments No. 3 must not staple any other entity's securities to the Shares or Units unless that is approved by Special Resolutions of both Shareholders and Unitholders (and may do so if so authorised).

3. DEALINGS IN STAPLED SECURITIES

- 3.1 On and from the Stapling Commencement Date:
 - (a) each Share and Unit must be Stapled to one another;
 - (b) Leyshon Developments No. 3 must not issue a Share unless a Unit is issued at the same time and to the same person;
 - (c) Leyshon Property Trust No. 3 must not issue a Unit unless a Share is issued at the same time and to the same person;
 - (d) Leyshon Developments No. 3 must not issue any right or option to acquire any Share unless Leyshon Corporation issues a corresponding right or option to acquire Units in Leyshon Property Trust No. 3;
 - (e) Leyshon Corporation must not issue any right or option to acquire any Unit in Leyshon Property Trust No. 3 unless Leyshon Developments No. 3 issues a corresponding right or option to acquire Shares;
 - (f) Leyshon Developments No. 3 may not without the prior written consent of Leyshon Corporation issue any other class of share in Leyshon Developments No. 3 or any right or option to acquire any such share; and
 - (g) Leyshon Corporation may not without the prior written consent of Leyshon Developments No. 3 issue any class of Unit in Leyshon Property Trust No. 3 or any right or option to acquire any such unit.
- 3.2 A Share and a Unit must be Stapled to one another immediately after the later of:
 - (a) the date of issue of the relevant Unit; and
 - (b) the date of issue of the corresponding Share.
- 3.3 On and from the Stapling Commencement Date, Leyshon Developments No. 3 and Leyshon Corporation must not:
 - (a) do any act, matter or thing (including registering any transfer of any Share or Unit); or
 - (b) refrain from doing any act, matter or thing,

if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Share or Unit no longer being Stapled as a Stapled Security other than in accordance with clause 6.
- 3.4 On and from the Stapling Commencement Date, Leyshon Corporation must not:

- (a) offer any Units for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Shares;
 - (b) issue or sell any Units to any person unless an identical number of Shares are also issued or sold to the same person at the same time;
 - (c) cancel, buy-back or redeem any Units unless at the same time there is a corresponding cancellation, buy-back or redemption of Shares; and
 - (d) register any transfer of Units to any person unless an identical number of Shares are also transferred to the same person at the same time.
- 3.5 On and from the Stapling Commencement Date, Leyshon Developments No. 3 must not:
- (a) offer any Shares for subscription or sale unless the offer is made at the same time and to the same person for an identical number of Units;
 - (b) issue or sell any Shares to any person unless an identical number of Units are also issued or sold to the same person at the same time;
 - (c) cancel, buy-back or redeem any Shares unless at the same time there is a corresponding cancellation, buy-back or redemption of the Units to which they are Stapled; and
 - (d) register any transfer of any Share unless there is a matching transfer of the Units to which it is Stapled.
- 3.6 A party to this Deed is not obliged to effect a buy-back, cancellation, redemption, transfer or issue or other call production in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.
- 3.7 If either a Share or a Unit is to be sold pursuant to forfeiture as a consequence of non-payment of a call, Leyshon Developments No. 3 and Leyshon Corporation will, to the maximum extent permitted by Law and the Listing Rules, ensure that the Share and/or Unit to which it is Stapled is also sold so that the Share or Unit is sold as part of a Stapled Security.
- 3.8 Unless and until Stapled Securities are Unstapled in accordance with this Deed, the parties must use reasonable endeavours to ensure that each Stapled Security which is quoted on an Approved Stock Exchange continues to be quoted and jointly quoted as a Stapled Security.
- 3.9 Leyshon Developments No. 3 and Leyshon Corporation must procure that joint certificates or joint holding statements are issued to each holder of Stapled Securities.
- 3.10 Nothing contained or implied in this Deed is to be construed as creating an association, joint venture or partnership among the parties for any purpose or authorising the sharing of the benefit of any assets (and any profits therefore) of Leyshon Developments No. 3 and Leyshon Corporation as a result of the Stapling.
4. ALLOCATION
- 4.1 Leyshon Corporation and Leyshon Developments No. 3 must agree what part of the amount payable for the issue, redemption or buy-back of a Stapled Security is to represent the issue, redemption or buy-back price of each of the Units and the Shares.
- 4.2 The allocation of this amount must be determined on the basis of fair value by agreement between Leyshon Corporation and Leyshon Developments No. 3 prior to the issue, redemption or buy-back of the Stapled Security. However, where the Stapled Security is being issued pursuant to the exercise of one or more options issued on or before the Stapling Commencement Date the issue price of the Share and each of the Units shall be determined in accordance with any relevant provisions of the terms of the option or options and as Leyshon Corporation and Leyshon Developments No. 3 have agreed.
- 4.3 Where an option to acquire a Stapled Security is issued after the Stapling Commencement Date, the allocation of the issue price of the Stapled Security must be determined on the basis of fair

value by agreement between Leyshon Corporation and Leyshon Developments No. 3 either prior to the issue of the option or, if not agreed at that time, at the time of exercise of the option.

- 4.4 The proportion determined under clause 4.1 must be consistent for each Unit and Share issued, redeemed or bought-back to or from each Equity Investor at the same time.
- 4.5 If the parties are unable to reach agreement under clause 4.1 within four Business Days after any of them notifies the others that an agreement must be reached, a suitably experienced independent accountant nominated by one of the parties and reasonably approved by the other must be instructed.
- 4.6 The accountant must be instructed within seven days to determine what part of the amount payable is to represent the price of each of the Units and the Shares based on fair value as determined by the accountant having regard to the respective net tangible asset backing of each of the Units and the Shares immediately prior to the issue, redemption or buy-back of the Stapled Security and any other factors which the accountant believes should be taken into account. The accountant's decision is, in the absence of manifest error, binding on the parties.

5. REGISTERS

- 5.1 The Directors will maintain or cause to be maintained a Stapled Security Register of holders of Stapled Securities which records the name of the Shareholders, the number of Shares held and the number of Units held by the members to which each Shareholder's Shares are Stapled and any additional information required by the Listing Rules or determined from time to time by the Directors.
- 5.2 Prior to the date that the Stapled Securities are Unstapled, the Stapled Security Register will be deemed to be separate to the register of the members of Leyshon Corporation.
- 5.3 Leyshon Developments No. 3 and Leyshon Corporation must ensure that the Leyshon Developments No. 3 register and the Leyshon Property Trust No. 3 register, if kept separately, are entirely consistent with one another.

6. UNSTAPLING

- 6.1 From the Stapling Commencement Date all Shares and Units will remain Stapled to each other for so long as the Stapled Securities remain on issue, unless otherwise determined by Special Resolutions of the Shareholders and the Unitholders or unless Stapling becomes unlawful or prohibited by the Listing Rules. On and from such date as may be determined under the previous sentence:
 - (a) Leyshon Corporation and Leyshon Developments No. 3 must procure that the Units and the Shares are Unstapled; and
 - (b) except in relation to the ongoing obligations under clauses 2.4(d) and 6.2 and the acknowledgements and covenants in clause 9 of this Deed ceases to be of any force or effect.
- 6.2 If the Shares and Units are no longer Stapled to one another:
 - (a) Leyshon Developments No. 3 must promptly:
 - (i) repay any outstanding amount under any loan given to Leyshon Developments No. 3 or its controlled entities by either of Leyshon Corporation prior to Unstapling, unless Leyshon Corporation otherwise agrees;
 - (ii) pay, or procure payment of, any outstanding amounts which the relevant parties have agreed is the responsibility of Leyshon Developments No. 3 to repay unless such parties otherwise agree; and

- (iii) obtain a release from Leyshon Corporation from any guarantee given by Leyshon Corporation to any person in respect of any liability of Leyshon Developments No. 3; and
- (b) Leyshon Corporation must promptly:
 - (i) repay any outstanding amount under any loan given to Leyshon Corporation by Leyshon Developments No. 3 prior to Unstapling, unless Leyshon Developments No. 3 otherwise agrees;
 - (ii) pay, or procure payment of, any outstanding amounts which the relevant parties have agreed is the responsibility of Leyshon Corporation to repay unless such parties otherwise agree; and
 - (iii) obtain a release from Leyshon Developments No. 3 from any guarantee given by Leyshon Developments No. 3 to any person in respect of any liability of Leyshon Corporation.

7. DUTIES IN RELATION TO STAPLING

While Stapling applies, notwithstanding any other provision of this Deed, or any rule of law or equity to the contrary, in exercising any power or discretion, Leyshon Corporation and Leyshon Developments No. 3 may, subject to the Law and any relief granted thereunder, have regard to the interests of the holders of Stapled Securities as a whole and not only to the interests of the Unitholders or the Shareholders considered separately.

8. RETIREMENT OF LEYSHON CORPORATION

If Leyshon Corporation retires as responsible entity of Leyshon Property Trust No. 3:

- (a) Leyshon Corporation must use its best endeavours to procure that any new responsible entity appointed under the Trust's Deed executes a deed in a form acceptable to Leyshon Developments No. 3 and an undertaking that the new responsible entity will be bound by all of the obligations of Leyshon Corporation under this Deed; and
- (b) upon the new responsible entity assuming the obligations of Leyshon Corporation under this Deed the previous responsible entity shall be discharged and released from its obligations under this Deed other than in relation to any negligence, default or breach of this Deed by it while it was still the responsible entity of Leyshon Property Trust No. 3.

9. LIMITATION OF LIABILITY OF LEYSHON CORPORATION

- 9.1 Leyshon Corporation enters into Section A of this Deed, being clauses 2 to 9, only in its capacity as responsible entity of the Leyshon Property Trust No. 3 and in no other capacity. A liability arising under or in connection with Section A of this Deed is limited and can be enforced against Leyshon Corporation only to the extent to which it can be satisfied out of property of Leyshon Property Trust No. 3 and for which Leyshon Corporation is actually indemnified for the liability. This limitation of Leyshon Corporation's liability applies despite any other provisions of this Deed and extends to all liabilities and obligations of Leyshon Corporation in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed, any other document in connection with it, or Leyshon Property Trust No. 3.
- 9.2 The other parties may not sue Leyshon Corporation in any capacity other than as responsible entity for Leyshon Property Trust No. 3, including seeking the appointment of a receiver, a liquidator, an administrator or similar person to Leyshon Corporation or prove in any liquidation, administration or arrangement of or affecting Leyshon Corporation (except in relation to property of Leyshon Property Trust No. 3).

- 9.3 The limitation of liability provisions shall not apply to any obligation or liability of Leyshon Corporation to the extent that it is not satisfied because, under this Deed or any other document in connection with it, or by operation of law, there is a reduction in the extent of Leyshon Corporation's indemnification out of the assets of Leyshon Property Trust No. 3 as a result of Leyshon Corporation's fraud, negligence or breach of trust.
- 9.4 It is also acknowledged that a breach of an obligation imposed on, or a representation or warranty given by Leyshon Corporation under or in connection with this Deed or any other document in connection with it will not be considered a breach of trust by Leyshon Corporation unless Leyshon Corporation has acted with negligence, or without good faith, in relation to the breach.

9A CAPITAL RAISING AND TAKEOVER

9A.1 Definitions for 9A

- (a) For the purposes of clauses 9A.2 and 9A.3 and unless a contrary intention appears, the following expressions will have the following meaning:
- (i) **'Bidder'** means Leyshon Corporation and the Company;
 - (ii) **'Bidder's Statement'** means the bidder's statement issued (as amended) by the Bidder in respect of the Takeover and dated on or about 19 July 2006;
 - (iii) **'Blue Tower Trust'** means the Blue Tower Trust ARSN 109 093 852;
 - (iv) **'Blue Tower Trust Unitholders'** means unitholders of the Blue Tower Trust;
 - (v) **'BSX'** means Bendigo Stock Exchange Limited ACN 087 708 898;
 - (vi) **'Capital Raising'** means the Entitlement Issue, the Priority Issue and the Public Issue approved by Stapled Security Holders at an extraordinary general meeting of the Trust and the Company on or about 4 September 2006;
 - (vii) **'Entitlement Issue'** means the 'two for one' issue of 70 million Stapled Securities at an issue price of \$1.06 per Stapled Security to Original Investors approved by Stapled Security Holders at an extraordinary general meeting of the Trust and the Company on or about 4 September 2006;
 - (viii) **'Non-accepting Blue Tower Trust Unitholders'** means Blue Tower Trust Unitholders, if any, who do not accept the Takeover Offer made to them during the Takeover Offer Acceptance Period;
 - (ix) **'Original Investors'** means all of the holders of Stapled Securities on the record date for the Entitlement Issue;
 - (x) **'Priority Issue'** means the priority issue of Shortfall Stapled Securities to Blue Tower Trust Unitholders' approved by Stapled Security Holders at an extraordinary general meeting of the Trust and the Company on or about 4 September 2006;
 - (xi) **'Public Issue'** means the issue of Shortfall Stapled Securities to the public approved by Stapled Security Holders at an extraordinary general meeting of the Trust and the Company on or about 4 September 2006;
 - (xii) **'Shortfall Stapled Securities'** means Stapled Securities that are not taken up by Original Investors under the Entitlement Issue;
 - (xiii) **'Stapled Security Holders'** means holders of Stapled Securities;
 - (xiv) **'Takeover'** means at least 90% of the units of the Blue Tower Trust having been transferred to the Bidder (or its nominated custodian) by way of an off market takeover in accordance with the Bidder's Statement';
 - (xv) **'Takeover Acceptance'** means acceptances of the Takeover Offer sufficient to enable the Takeover;
 - (xvi) **'Takeover Actions'** means the Takeover Stapled Security Issue and the Takeover;

- (xvii) **'Takeover Offer'** means the Bidder's offer for the Trust to acquire all of units of Blue Tower Trust, as set out in the Bidder's Statement;
- (xviii) **'Takeover Offer Acceptance Period'** means the period during which Blue Tower Trust Unitholders can accept the Takeover Offer, being the offer period described in the Bidder's Statement, unless it is withdrawn or extended pursuant to the Law;
- (xix) **'Takeover Stapled Security Issue'** means the issue of Stapled Securities for the Takeover comprising the:
 - (A) Takeover Unit Issue; and the
 - (B) Takeover Share Issue;
- (xx) **'Takeover Share Issue'** means the issue of Shares pursuant to the Takeover;
- (xxi) **'Takeover Unit Issue'** means the issue of Units pursuant to the Takeover.

9A.2 Capital Raising

Despite clause 4 of this Deed:

- (a) Stapled Securities issued for the Capital Raising will be issued for \$1.06 per Stapled Security; and
- (b) Units in the Trust issued for the Capital Raising will be issued for \$1.05 per Unit; and
- (c) Shares in the Company issued for the Capital Raising will be issued for \$0.01 per Share.

9A.3 Takeover

- (a) If:
 - (i) Takeover Acceptance has occurred; and
 - (ii) the Takeover Offer Acceptance Period has been closed,
 then the parties acknowledge and agree that Leyshon Corporation and the Company:
 - (i) will effect the Takeover Actions;
 - (ii) will ensure that the Takeover Actions are effected in a manner that ensures that the Bidder's obligations under the Bidder's Statement are complied with;
 - (iii) may do anything that Leyshon Corporation and the Board considers reasonably necessary to effect the Takeover in accordance with the Bidder's Statement; and
 - (iv) may effect compulsory acquisition of units in Blue Tower Trust held by Non-accepting Blue Tower Trust Unitholders if deemed necessary.
- (b) Despite clause 4 and 9A.2 of this Deed:
 - (i) Stapled Securities issued for the Takeover Stapled Securities Issue will be issued for \$1.0591 per Stapled Security;
 - (ii) Units in the Trust issued for the Takeover Unit Issue will be issued for \$1.0591 per Unit; and
 - (iii) Shares in the Company issued for the Takeover Share Issue will be issued for no price i.e. \$0.

For avoidance of doubt, the Manager will not be deemed to have breached clauses 4, 9A.2 or any other provision of this Deed when issuing Stapled Securities in connection with the Takeover Actions.

- (c) In the event there are Non-accepting Blue Tower Trust Unitholders then the Stapled Securities under the Takeover Stapled Security Issue to which the Non-accepting Blue Tower Trust Unitholders would otherwise be entitled had they accepted the Takeover Offer, will be issued to the trustee of the Blue Tower Trust (or its nominated custodian) to be held on trust for the Non-accepting Blue Tower Trust Unitholders.

- (d) The Stapled Securities referred to in subclause (c) will be quoted but will not trade on BSX until they have been transferred to the Non-accepting Blue Tower Trust Unitholders whose units in the Blue Tower Trust are subsequently compulsorily acquired by the Bidder.
- (e) Despite any provision of this Deed to the contrary, no part of the Stapling Provisions of this Deed (Part A) will operate in a way that prevents or restricts Leyshon Corporation's or the Company's ability to effect the Takeover.

B. ASSET MANAGEMENT PROVISIONS

10. ASSET MANAGEMENT

- 10.1 The acquisition and commencement of the Projects is conditional on satisfaction of the following conditions:
- (a) Leyshon Corporation and Leyshon Developments No. 3 receiving applications for approximately \$25 million in equity pursuant to the Offer Document, all of which is to be available prior to the Completion Date;
 - (b) the Asset Manager securing a Debt Facility for the Projects on terms acceptable to the Asset Manager;
 - (c) the Financier obtaining or otherwise being provided with a formal valuation, if required, of the Projects on terms, and to a value, acceptable to the Asset Manager and the Financier;
 - (d) the Asset Manager and its advisers conducting and being satisfied with the results of due diligence enquiries in relation to the Projects; and
 - (e) Leyshon Corporation arranging insurance for the Projects in the names of itself, the Asset Manager and the Financier to take effect from the date on which risk passes under the contract for the acquisition of the Projects for no less than the coverage required by the Financier.

11. ASSET MANAGEMENT – GENERAL OBLIGATIONS

- 11.1 In consideration of each party entering into this Deed and of the mutual confidence of the parties in one another, each of them covenants with the other in accordance with this Deed.
- 11.2 Each party must, as applicable:
- (a) be just and faithful and provide full information to the other in relation to the Projects;
 - (b) do or cause to be done all things necessary or desirable to carry out this Deed;
 - (c) exercise all powers as are available to it, do all such acts, matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of this Deed; and
 - (d) not unreasonably delay any action, approval, direction, determination or decision required under this Deed.

12. EQUITY RAISING

Leyshon Developments No. 3 and Leyshon Corporation agree to raise approximately \$30 million from Equity Investors, to partially fund the Projects, and the London Woolstore Project.

13. OBLIGATIONS OF ASSET MANAGER

- 13.1 The planning, direction, execution and carrying out of the Projects including the coordination of all consultants shall be managed by the Asset Manager generally in accordance with the Project Feasibility.
- 13.2 The Asset Manager will be solely responsible for the relationship with the Equity Investors and must use its best endeavours to make any necessary contact with the Equity Investors.
- 13.3 The Asset Manager agrees to negotiate with third party financiers to obtain the Debt Facility to partially fund the Projects.

- 13.4 The Asset Manager may execute leases for any Project on behalf of the Equity Investors provided that the face rentals and incentives are generally in accordance with the Project Feasibility for the relevant floor of the building.
- 13.5 The Asset Manager may incur costs in the performance of its duties only to the extent those costs are:
- (a) allowed for in the Project Feasibility and only to the maximum amount provided for in the Project Feasibility including any contingencies; or
 - (b) additionally up to \$10,000 per month in incidentals provided that these costs are directly attributable to the Projects and invoices are presented prior to these expenses being reimbursed.
- 13.6 The Asset Manager must use its reasonable endeavours with respect to the Projects as appropriate:
- (a) arrange for the acquisition;
 - (b) cause the development of the property to be completed in accordance with the Development Plan and Project Feasibility;
 - (c) engage, on behalf of the Equity Investors, contractors to carry out the construction of the development of the property in accordance with the Development Plan and Project Feasibility;
 - (d) prepare and obtain all necessary applications for development approvals and building approvals;
 - (e) manage and direct the consultants and contractor in the design and development;
 - (f) engage external consultants and manage/co-ordinate, design and document all aspects of the Project;
 - (g) report progress with respect to the Project to the Equity Investors on a half yearly basis;
 - (h) manage the Debt Facility and funds invested by the Equity Investors;
 - (i) collect and bank all monies received in relation to the leases and pay all expenses and outgoings and thereafter distribute these monies pursuant to this Deed; and
 - (j) prepare and maintain all accounting and taxation records and reports;
 - (k) promote, advertise and use its best endeavours to lease or sell;
 - (l) represent the parties in negotiations with current and prospective tenants of the Projects and any matter directly relating thereto;
 - (m) report progress on the promotion, sales and leasing to the Equity Investors;
 - (n) arrange for the appointment of and thereafter co-ordinate an external property manager (at the expense of the Project) to manage and collect all rentals from tenants;
 - (o) the sale of the residential apartments and the retail shopping centre; and
 - (p) when determined appropriate arrange for the ultimate sale of the Project, co-ordinate selling efforts and any consultants engaged for such purpose, represent the parties in negotiations with prospective purchasers of the Project and any matter directly related thereto.
- 13.7 The Asset Manager must use its reasonable endeavours to with respect to Projects of the Trust as appropriate:
- (a) arrange for acquisition;
 - (b) engage external consultants and manage/co-ordinate all aspects of the Project;

- (c) report progress with respect to the Project to the Equity Investors on a half yearly basis;
 - (d) manage the Debt Facility and funds invested by the Equity Investors;
 - (e) collect and bank all monies received in relation to any leases and to pay all expenses and outgoings and thereafter distribute these monies pursuant to this Deed; and
 - (f) prepare and maintain all accounting and taxation records and reports;
 - (g) promote, advertise and use its best endeavours to lease;
 - (h) represent the parties in negotiations with current and prospective tenants and any matter directly relating thereto;
 - (i) arrange for the appointment of and thereafter co-ordinate an external property manager (at the expense of the Project) to manage and collect all rentals from tenants; and
 - (j) when determined appropriate arrange for the ultimate sale, co-ordinate selling efforts and any consultants engaged for such purpose, represent the parties in negotiations with prospective purchasers and any matter directly related thereto.
- 13.8 Following the end of each calendar half year and by no later than the following 15 March or 15 September as the case may be, the Asset Manager must provide a written report to Leyshon Developments No. 3 and the Equity Investors in a format acceptable to Leyshon Developments No. 3 and Leyshon Corporation which compares actual financial results to the date of the report to the results of the corresponding period for the prior year.
- 13.9 The Asset Manager's half yearly report must address in detail progress of each Project with respect to:
- (a) the Development Plan;
 - (b) the leasing program;
 - (c) the residential apartment sales program; and
 - (d) management accounts.
- 13.10 In consideration for carrying out its obligations under this Deed, the Asset Manager in its relevant capacity will receive:
- (a) an acquisition fee of 2% of the purchase price of each Project purchased by the Trust payable upon settlement of the purchase of the property;
 - (b) an asset management fee of 0.5% per annum of each Trust Project's current Market Value payable in monthly instalments in arrears, commencing on the date of settlement of the purchase of each Trust Project; and
 - (c) a development management fee of 5% of the Total Development Cost of each Project, payable in monthly instalments in arrears based on estimated Total Development Cost of each Project and spread equally over the term of each Project.
- 13.11 If any amounts payable under clause 13.10(b) and 13.10(c) remain unpaid upon the completion and/or sale of any Project or termination of this Deed, they shall be paid upon the date of settlement of the sale of the Project or the date of termination of this Deed, whichever is the earlier.
- 13.12 The Asset Manager will not be liable for acts or defaults of any of the consultants or contractors engaged in respect of the Projects.
- 13.13 Leyshon Developments No. 3 must on the Completion Date reimburse the Asset Manager for any Project Expenses that have been incurred and paid by the Asset Manager with respect to any Project prior to the Completion Date.

14. PERFORMANCE FEE

14.1 The performance fee in 14.1(d) and (e) is payable to the Asset Manager when either:

- (a) each time that an Interim Distribution is paid to Equity Investors; or
- (b) on termination of the Asset Manager; or
- (c) on the execution of a contract to sell a Project of the Trust,

and is calculated as follows:

- (d) in the event that the Internal Rate of Return exceeds 15% and is less than 20%, then the Asset Manager will receive a performance fee equal to 50% of any amount resulting in the Internal Rate of Return being greater than 15%; and
- (e) in the event that the Internal Rate of Return exceeds 20% the Asset Manager will receive a performance fee equal to 75% of any amount resulting in the Internal Rate of Return being greater than 20%.

14.2 The parties acknowledge that, pursuant to the terms of the Trust Deed, the performance fee in section 14.1(d) and 14.1(e) may be:

- (a) paid in part by Leyshon Corporation and in part by Leyshon Developments No. 3; or
- (b) paid in full by Leyshon Corporation; or
- (c) paid in full by Leyshon Developments No. 3.

14.3 Leyshon Developments No. 3 and Leyshon Corporation are to agree on the proportion of the Performance Fee to be paid by each of them having regard to the level of services performed by the Asset Manager.

14.4 The parties acknowledge that the performance fee in clause 14.1 is the same as the performance fee payable pursuant to the Trust Deed and the inclusion of the obligation to pay the fee in this Deed does not create another liability to satisfy payment of the fee.

15. OWNERSHIP OF LAND

15.1 The rights, powers and privileges of the Asset Manager will rest in contract only and will not create or be deemed to create any estate or interest in any Project.

15.2 The Asset Manager will not seek to grant any encumbrance over any Project without the written consent of Leyshon Developments No. 3 and Leyshon Corporation. For the avoidance of doubt, for the purpose of this Deed, a lease or licence in respect of part of any Project is not an encumbrance over any Project.

16. POWERS OF THE PARTIES

16.1 The Asset Manager shall have full power to make decisions, where appropriate, on:

- (a) the preparation and planning of all capital raising for the Projects;
- (b) which Financiers or banks will be used to provide the Debt Facility for the Projects;
- (c) the planning, timing and co-ordination of the raising of approximately \$30 million from the Equity Investors;
- (d) the Equity Investors from whom to seek investment in the Projects;
- (e) the appointment of experts to assist the Asset Manager;
- (f) the style/type of information to be provided to potential Equity Investors;
- (g) the structuring of the capital raising to raise funds to acquire Projects;

- (h) management and leasing of Projects;
 - (i) development of Projects;
 - (j) sale of residential apartments or any other aspect or part of a Project;
 - (k) when determined appropriate, the ultimate sale of Projects and at Market Value; and
 - (l) payment of Returns pursuant to clause 17.
- 16.2 Subject to clause 16.3, Trust Projects may not be sold at a price below Market Value.
- 16.3 The ultimate sale of Trust Projects below Market Value must be approved by the holders of 50% or more of the holders of Units in Leyshon Property Trust No. 3.

17. RETURN AND OTHER CASH DISTRIBUTIONS

- 17.1 Subject to sufficient cash being deemed to be available as determined under this clause and the Financier's approval being obtained, the quarterly Return will be paid quarterly in arrears by the last Business Day of the month following the end of each calendar.
- 17.2 Subject to Leyshon Developments No. 3 and/or Leyshon Corporation being required by the Financiers to withhold money, for the purposes of this clause, the Company and Leyshon Corporation have the discretion for deeming whether sufficient cash is available for the payment of any Return.
- 17.3 In the event that the quarterly Return for any quarter is not paid in full, the unpaid amount of the quarterly Return will be paid in subsequent quarters to the maximum extent possible.
- 17.4 The character of the quarterly Returns paid by the Trust under this clause will be determined at the end of each income year so that the cash distributions paid during that year will be taken to be:
- (a) firstly, payment of profits that have been taxable income in any income year and which have not been paid in a prior income year;
 - (b) secondly, payment of profits that have been in excess of taxable income and which were unpaid at the commencement of the income year; and
 - (c) thirdly, partial capital repayments of the Initial Amount Invested by the Equity Investors.
- 17.5 In addition to the quarterly Returns Equity Investors may from time to time be paid Interim Distributions.

18. RETURNS ON TERMINATION OF FUND

- 18.1 The parties agree that the proceeds of the ultimate sale of the Projects, upon termination of the Fund will be distributed in the following order:
- (a) firstly, in payment of any amounts due and payable to discharge any mortgages or encumbrances which affect the title of the Projects and which secure borrowings (if any);
 - (b) secondly, in payment of Project Expenses including outstanding fees payable to the Asset Manager and the costs of sale;
 - (c) thirdly, the remainder to the Equity Investors.

19. OPTION TO TERMINATE FUND AND ACQUIRE

- 19.1 Leyshon Corporation and Leyshon Developments No. 3 agree that they will convene meetings of their Shareholders and Unitholders, no later than every 5 years from the date of the first allotment of Stapled Securities, to consider and vote on a Special Resolution to terminate the Trust and wind up the Company, with such meetings to be held in succession.

- 19.2 The parties agree that in the event that either or both of the Trust and the Company are terminated or wound up, as appropriate, as a result of a resolution in clause 19.1, the Shares and Units will be unstapled and clause 6.1 will be satisfied.
- 19.3 If there are any Projects underway at the time of termination of the Trust or winding up of the Company, Leyshon Corporation Limited, in its own capacity and not in its capacity as responsible entity of the Trust, or its nominees will have the right to purchase the Project/s at their Market Value as assessed and agreed by 2 independent valuers. In the event that the two independent valuers fail to reach agreement, a third independent valuer will be appointed to determine the Market Value, taking into account the evidence utilised by the 2 original valuers and any such other matters considered relevant.
20. GST
- 20.1 An expression or word used in this clause which has a particular meaning in the 'GST law' (as defined in the GST Act), or in any applicable legislative determinations, has the same meaning, unless the context otherwise requires.
- 20.2 A reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member, and a reference to an input tax credit entitlement of a party includes any corresponding input tax credit entitlement of the representative member of any GST group of which that party is a member.
- 20.3 Unless GST is expressly included, the consideration expressed to be payable or to be provided under any clause in this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 20.4 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable or provided for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and subject to receipt of an effective tax invoice, is payable at the same time.
- 20.5 If for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a taxable supply (taking into account any decreasing or increasing adjustments in relation to the taxable supply) varies from the GST payable by the recipient under clause 20.4:
- (a) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate;
 - (b) the refund, credit or further amount (as the case may be) will be calculated by the supplier in accordance with the GST law; and
 - (c) 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. 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.
- 20.6 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.
- 20.7 If a payment to a party under this Agreement is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 20.5.

- 20.8 Despite any other provision in this Agreement, this clause 20 will survive the termination of this Agreement, surrender or termination of any related agreement.

21. POWERS OF ATTORNEY

The parties agree that to enable the Asset Manager to fulfil its obligations under this Deed, Leyshon Developments No. 3 will appoint the directors of the Asset Manager and the Asset Manager's manager of property development, for so long as they remain a director of the Asset Manager or manager of property development of the Asset Manager and Leyshon Corporation Limited is the Asset Manager, as their attorneys to approve and sign documents with respect to all aspects of the management of the Projects.

22. UNDERTAKINGS OF THE PARTIES

- 22.1 Each party will duly perform and observe all of the terms and conditions to be performed and observed on its part under this Deed and will arrange for its directors, servants and agents to ensure that it does so perform and observe this Deed.
- 22.2 Each party will exercise all of its rights and powers and generally use its best endeavours to ensure that it carries on business so as to give full effect to the intentions of this Deed.
- 22.3 Each party will ensure that during the term of this Deed that no material arrangement, contract or agreement will be entered into by it which would have a material effect and result in a material deterioration in the Project Feasibility and in the performance or completion of the Projects to be undertaken pursuant to this Deed, without the prior approval of the other parties.
- 22.4 No party is obliged to do anything with this Deed if to do so would constitute an event of default or potential event of default under the terms of the Debt Facility.
- 22.5 Other than as contemplated in this Deed a party cannot without the prior approval of the other parties:
- (a) draw, accept or sign a cheque, bill of exchange or promissory note or contract a debt on account of the Projects or of the other parties except in the approved course of the Projects;
 - (b) assign, mortgage, transfer or charge its share in the assets or liabilities of the Projects or introduce any other person as a participant;
 - (c) compromise or compound or (except upon payment in full) release or discharge any debt due or owing to the parties in relation to the Projects;
 - (d) employ any money or property of the Projects or engage its credit except upon the account or for the benefit of the Projects;
 - (e) knowingly do or suffer to be done anything whereby the money or property of the Projects may be taken in execution.
- 22.6 A party which breaches any of the provisions of clause 22.5 will indemnify the other parties from all losses and expenses suffered by the others as a result of the breach.

23. PROJECT EXPENSES

- 23.1 All parties must keep accurate records of all expenditure that is referable to the Projects.
- 23.2 The Asset Manager and Leyshon Developments No. 3 are entitled at regular intervals during the course of the Projects and, in any case before any distribution to Equity Investors or the Asset Manager, to be reimbursed for any Project Expenses reasonably incurred in performance of their responsibilities and obligations under this Deed.

- 23.3 Each of Leyshon Corporation and Leyshon Developments No. 3 must establish an account in its own name through which as far as practicable will pass all Project income and Project Expenses.
- 23.4 All cheques drawn from the respective account referred to in clause 23.3 must be signed jointly by two representatives appointed by Leyshon Corporation and Leyshon Developments No. 3 respectively.

C. GENERAL PROVISIONS

24. EXECUTION OF DOCUMENTS

Each party agrees to execute any contracts or other documentation necessary to give effect to this Deed.

25. PUBLICITY

Except for announcements to be made by the Fund to fulfil its obligations under the Listing Rules or with respect to the acquisition, promotion, leasing, development and ultimate sale of the Projects, no public announcement or communication relating to the Projects or the terms of this Deed may be made or authorised by or on behalf of any party without the prior written approval of the Asset Manager.

26. TERMINATION

26.1 The asset management provisions contained in Part B of this Deed will terminate by mutual agreement of all parties or where there is an event of default as provided in clause 27.

26.2 Termination pursuant to clause 26.1 will be without prejudice to any accrued rights of the parties, in particular the Asset Manager's right to the Performance Fee will survive the termination of this Deed. If this Deed is terminated as a result of the default of the Asset Manager, then Leyshon Developments No. 3 may continue with the performance of the obligations of the Asset Manager and the reasonable costs and expenses incurred by Leyshon Developments No. 3 in performing obligations of the Asset Manager, together with any damages arising out of the default of the Asset Manager, will be deducted from the Performance Fee.

26.3 In the event that the Asset Manager is removed as Asset Manager without consenting (for any reason other than negligence or fraud), in consideration of the work performed by the Asset Manager in managing the Projects, prior to its removal, the Asset Manager will be paid a fee of 2% of the Market Value of the Projects this fee is payable immediately prior to the Manager's removal as Asset Manager of the Projects.

27. DEFAULT

27.1 An event of default occurs in relation to a party if:

- (a) the party breaches, any provision of this Deed which would have a material effect and result in a material deterioration in the Project Feasibility:
 - (i) does not remedy that breach within 30 Business Days after receiving a notice of that breach from another party requesting the breach to be remedied; or
 - (ii) the breach is incapable of being remedied; or
- (b) the party has:
 - (i) a receiver appointed over its assets or undertaking or any part of them;
 - (ii) an execution of any judgment debt obtained against it, levied upon any of its assets in any amount in excess of \$500,000 and that execution or process is not discharged or withdrawn within 60 Business Days of the date of issue;
 - (iii) ceased to pay its debts or suspended payment generally or would cease or threaten to cease to carry on its business or become insolvent or become or be unable to pay its debts within the meaning of the Law, as and when they become due;
 - (iv) an official manager, trustee, voluntary administrator, liquidator or provisional liquidator appointed for all or any part of its assets or undertaking;

- (v) entered into or resolved to enter into an arrangement, composition or compromise with or assignment for the benefit of its creditors generally or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation; or
- (c) the party being a trust is terminated or its beneficiaries otherwise become presently entitled to the trust assets, without the prior consent of the other parties which consent will not be unreasonably withheld.

28. RESOLUTION OF DISPUTES

- 28.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Deed (**‘Dispute’**) unless it has complied with this clause.
- 28.2 A party claiming that a Dispute has arisen must notify each other party to the Dispute giving details of the Dispute in writing.
- 28.3 During the 5 Business Days period after a notice is given under clause 28.2 (or longer period unanimously agreed in writing by the parties to the Dispute) (**‘Initial Period’**) each party to the Dispute (**‘Disputant’**) must use its best efforts to resolve the Dispute.
- 28.4 If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred at the request of any Disputant, to the respective chief operating officers of the Disputants who shall have 5 Business Days after the Initial Period (or longer period unanimously agreed in writing by the parties to the Dispute) (**‘Second Period’**) during which to use their best efforts to resolve the Dispute.
- 28.5 After the Second Period, a Disputant which has complied with clauses 28.1 to 28.4 may terminate the dispute resolution process by giving notice to each other Disputant.
- 28.6 In the event that a Dispute cannot be resolved under clauses 28.1 to 28.5, it will be referred to the President for the time being of the Queensland Law Society who will appoint a party to act as mediator, the decision of the mediator will not be final and binding unless otherwise agreed by the parties and if the Dispute remains unresolved the parties are at liberty to seek to resolve the issue in the courts or otherwise.

29. ASSIGNMENT

No party may assign nor purport to assign this Deed or any right under this Deed without the prior written consent of the other party.

30. GENERAL

- 30.1 If any provision of this Deed is or becomes illegal, invalid, unenforceable or void in any respect then that provision is to be ignored, read down or severed so as to uphold the legality, validity and enforceability of the remaining provisions of this Deed.
- 30.2 Any costs and stamp duty associated with this Deed will be a Projects Expense.
- 30.3 In the event of a conflict or inconsistency between this Deed and the Offer Document, the provisions of this Deed will prevail.

31. SUBORDINATION

- 31.1 Nothing in this Deed shall be taken to amend the Trust Deed.

- 31.2 If there is any inconsistency between the obligations of Leyshon Corporation under this Deed and the Trust Deed, the provisions of the Trust Deed of Leyshon Property Trust No. 3 apply to the extent of the inconsistency.
- 31.3 Nothing in this Deed shall be taken to amend or alter the constitution of Leyshon Developments No. 3.
- 31.4 If there is any inconsistency between the obligations of Leyshon Developments No. 3 under this Deed and the constitution of Leyshon Developments No. 3, the provisions of the constitution of Leyshon Developments No. 3 apply to the extent of the inconsistency.

32. CONFIDENTIALITY

- 32.1 The parties acknowledge that the relationship created by this Deed is of a fiduciary nature and neither party shall divulge any information in relation to the Development to any third party save as follows:
- (a) to the extent that such information is required to be furnished by law the Listing Rules or Offer Document dated 8 November 2004 and issued by Leyshon Corporation and Leyshon Developments No. 3 or in legal proceedings or in arbitration; and
 - (b) to the extent that such information is furnished to a company related to either of the parties within the meaning of the Corporations Act or similar legislation and their officers and shareholders.
- 32.2 If either party is required by law to disclose any Confidential Information to a third party (including, but not limited to, a government authority):
- (a) before doing so, the party required by law to disclose the Confidential Information must notify the other party; and
 - (b) subject to the law, the party required by law to disclose the Confidential Information must not do so until the other party has had a reasonable opportunity to take any steps considered reasonably necessary to protect the confidentiality of that information.
- 32.3 If either party becomes aware of an unauthorised use of the Confidential Information, then they must:
- (a) immediately notify the other party of any suspected or actual unauthorised use or disclosure of all or any part of the Confidential Information of which it becomes aware;
 - (b) promptly provide, at the cost of Leyshon Developments No. 3, all assistance reasonably requested by Leyshon Developments No. 3 relating to any proceedings Leyshon Developments No. 3 may take against any person for unauthorised use or disclosure of the Confidential Information;
 - (c) cooperate with Leyshon Developments No. 3 in preventing unauthorised use or disclosure of the Confidential Information; and
 - (d) not start any proceedings in the name of Leyshon Developments No. 3 against any person for unauthorised use or disclosure of the Confidential Information without prior written approval of Leyshon Developments No. 3.

33. MUTUAL COVENANTS

Each of the parties covenants and agrees as follows:

- (a) to be just and faithful to the other in all matters relating to this Deed and the Projects ;
- (b) subject to clause 33(a) to inform the other of all material matters and things affecting the Projects or likely to affect the Projects of which they become aware;

- (c) to punctually pay and discharge their respective present and future debts and engagements in respect of the Projects ;
- (d) to comply with all laws, regulations and other statutory obligations in respect of the Projects .

34. NOTICES

- 34.1 Notices must be given in English and be in writing.
- 34.2 Notices must be given to the address as set out in this Deed in Schedule 1 or any other address a party provides.
- 34.3 Notices can be given by hand delivery, posting or by facsimile.
- 34.4 Notices given after 5.00pm local time on a Business Day are deemed to be given on the next Business Day.
- 34.5 Notices given by post are deemed to be given on the second day after the notice is posted.
- 34.6 Notices given by facsimile transmission are deemed to be given when an acknowledgment of transmission report is received on the sending machine indicating that the facsimile transmission has been sent and received.
- 34.7 Notices or documents given by a party's solicitor are taken to have been given with the authority of the party.

35. WARRANTIES

Each party warrants that:

- (a) it has the power to execute and deliver this Deed;
- (b) it has the power to perform all obligations under this Deed; and
- (c) in performing its obligations under this Deed, each party will use its best endeavours to ensure that its directors, officers, employees, agents and contractors and subcontractors will conduct themselves so as not to adversely affect the image or reputation of the other party.

36. COUNTERPARTS

This Deed is validly executed if executed in one or more counterparts. All counterparts, taken together, constitute one instrument.

37. NO MERGER

The covenants, conditions, provisions and warranties contained in this Deed do not merge or terminate upon completion of the transactions contemplated in this Deed but to the extent that they have not been fulfilled and satisfied or are capable of having effect, remain in full force and effect.

38. ENTIRE AGREEMENT

This Deed constitutes the entire agreement of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it. Any statement made in negotiations for this Deed which is not set out in this Deed does not form part of the agreement between the parties.

39. AMENDMENTS IN WRITING

No amendments to this Deed has any force unless it is in writing and signed by all of the parties to this Deed.

40. GOVERNING LAW AND JURISDICTION

40.1 This Deed is governed by the laws of Queensland and the Commonwealth of Australia.

40.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and shall not:

(a) object to an action being brought in the Queensland Registry of a court of that State or Federal Court; or

(b) assert that any action has been brought in an inconvenient forum;

and each party undertakes to refrain from:

(c) bringing an action in any other court or tribunal whether within Australia or otherwise; and

(d) seeking pursuant to the *Jurisdiction of Courts (Cross-vesting) Act 1987 Qld* (as amended) or otherwise to transfer any action to another State or Territory,

in relation to any dispute which arises directly or indirectly from this Deed.

41. FURTHER ASSURANCES

Each party must do all things and execute all further documents necessary to give full effect to this Deed and refrain from doing anything that might hinder the performance of this Deed.

42. NO WAIVER

42.1 The failure of a party at any time to require full or partial performance of any provision of this Deed does not affect in any way the full right of that party to require that performance subsequently.

42.2 The waiver by any party of a breach of a provision of this Deed is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.

42.3 Any waiver of a breach of this Deed must be in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

43. SEPARATE DEBTS

Each of the parties shall punctually pay and discharge their separate debts and obligations and shall at all times ensure that the other party is fully indemnified from any claims arising therefrom.

44. COSTS AND DUTY

44.1 Each party shall bear its own costs of and incidental to this Deed, but any stamp duty assessed on it will be a Project Expense.

44.2 No modification or amendment of any of the provisions of this Deed shall be binding upon any of the parties unless the same has been made in writing and duly executed by all of the parties.

45. SEVERANCE

If any of the provisions of this Deed should be judged invalid, unlawful or unenforceable for any reason whatsoever, such invalidity or unenforceability or illegality will not affect the operation and construction or interpretation of any other provision of this Deed with the intent that the invalid or unenforceable or illegal provision as the case may be will be treated for all intents and purposes as severed from this Deed.

46. EFFECT OF WAIVER

46.1 The waiver by either of the parties of a breach or default by another party of any of the provisions of this Deed shall not be construed as a waiver of any succeeding breach or default of the same or any other provisions of this Deed and shall not impair the exercise of any rights accruing to it under this Deed thereafter.

46.2 Subject to any express condition herein contained to the contrary, no delay or omission on the part of either party to exercise or avail itself of any rights accruing to it under this Deed shall operate as a waiver of any breach or default by the other party or any of the said provisions.

47. INURING BENEFIT

This Deed inures for the benefit of and is binding upon the parties and their successors and permitted assigns who become such in accordance with the terms of this Deed.

48. INTERPRETATION

In this Deed, except to the extent the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to a party to this Deed;
- (c) a reference to a party to this Deed or any other document or agreement includes its successors and permitted assigns;
- (d) a reference to an item in the Background, clause, schedule, annexure or appendix is a reference to an item in the Background, clause of or schedule, annexure or appendix to this Deed and references to this Deed include its schedules and any annexures;
- (e) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a document or agreement including this Deed includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) in the interpretation of this Deed, headings are to be disregarded; and
- (h) the Background forms part of this Deed.

SCHEDULE 1

Notices – Clause 34

Leyshon Corporation:

Level 1
295 Elizabeth Street
BRISBANE QLD 4000
Fax: 07 3003 0122
Attention: Geoff McMahon

Leyshon Developments No. 3:

Level 1
295 Elizabeth Street
BRISBANE QLD 4000
Fax: 07 3003 0122
Attention: Geoff McMahon

Asset Manager:

Level 1
295 Elizabeth Street
BRISBANE QLD 4000
Fax: 07 3003 0122
Attention: Christina Little

SCHEDULE 2

Project Feasibility

Leyshon Property Fund No. 3

(Consolidated)

Forecast Profit & Loss

	2004-05	2005-06
Gross Profit		
Sales of Land and Property	6,200,000	41,432,099
Cost of Sales	5,696,830	38,069,620
Gross Profit	503,170	3,362,479
Other Income		
Rental Income	1,514,708	2,258,080
Management Rights	0	467,901
Interest	90,336	319,817
Outgoings Recovered	0	0
Profit on Ultimate Sale of Investment Property	0	0
Other	0	0
Total Other Income	1,605,044	3,045,798
Total Income	2,108,213	6,408,277
Total Expenses	1,263,717	1,404,270
Profit/(Loss) Before Taxation	844,497	5,004,007
Tax Expense	192,653	1,295,931
Profit/(Loss) After Taxation	651,844	3,708,077

Leyshon Property Fund No. 3
(Consolidated)
Forecast Expenses

	2004-05	2005-06
Interest	609,265	1,124,796
Loan Costs	0	0
Selling Costs	0	0
Legal Costs	0	0
LCL Management Fees	66,952	129,473
LCL Performance Fees	0	0
Audit Fees	0	0
Insurance	0	0
Listing Fees	0	0
Depreciation & Amortisation	0	0
Gree Fees	0	0
Land Tax	0	0
Selling & Marketing Costs	0	0
Leasing Fees	0	0
Professional Fees	0	0
Property Management Fees	0	0
Equity Raising Costs	500,000	0
Non Recovered Outgoings	0	0
Repairs & Maintenance	0	0
Other Expenses	87,500	150,000
Total Expenses	1,263,717	1,404,270

Leyshon Property Fund No. 3
(Consolidated)
Forecast Cash Flow

	2004-05	2005-06
Inflows		
Investors' Equity	30,000,001	14,079,501
Bank Loan	48,567,020	14,168,230
Sales of Land and Property	6,200,000	41,432,099
Total Other Income	1,787,856	3,130,173
Other	0	0
Total Inflows	86,554,877	72,810,003
Outflows		
Property Costs	26,574,860	0
Development Costs	49,286,540	24,127,398
Expenses	1,446,529	1,488,645
Non Recovered Outgoings	0	0
Bank Loan Repayments	6,212,000	24,192,882
Distributions to Investors	700,000	2,400,000
Taxation	0	1,413,399
Other	0	14,079,501
Total Outflows	84,219,930	67,701,825
Net Cash Flow	2,334,947	5,108,178
Opening Balance	0	2,334,947
Closing Balance	2,334,947	7,443,125

Leyshon Property Fund No. 3
(Consolidated)
Forecast Balance Sheet

	2004-05	2005-06
Investors' Funds		
Issued & Paid Up Equity	29,300,001	26,900,001
Retained Profits	0	651,844
Profit Current Year	651,844	3,708,077
Total Investors' Funds	29,951,844	31,259,921
Assets		
Cash	2,334,947	7,443,125
Debtors & Receivables	0	0
Prepayments	0	0
Property Investments	26,574,860	26,574,860
Property Development Inventory	44,444,421	31,239,777
Borrowing & Formation Expenses	0	0
Acc. Amort'n Borrowing & Formation Expenses	0	0
Other	0	0
Total Assets	73,354,228	65,257,762
Liabilities		
Bank Loan	43,209,731	33,922,657
Creditors & Accruals	0	0
Provision for Income Tax	192,653	75,184
Other	0	0
Total Liabilities	43,402,383	33,997,841
Net Assets	29,951,844	31,259,921
	0	0

EXECUTED as a deed in Queensland.

SIGNED SEALED AND DELIVERED)
for and on behalf of)
LEYSHON CORPORATION LIMITED)
ACN 090 257 480 by authority of the directors)
in the presence of:)

▲ _____
Director

▲ _____
Director/Secretary

▲ _____
Full name of director

▲ _____
Full name of director/secretary

SIGNED SEALED AND DELIVERED)
for and on behalf of)
LEYSHON CORPORATION LIMITED)
ACN 090 257 480 as Responsible Entity of)
LEYSHON PROPERTY TRUST NO. 3)
ARSN 109 093 816 by authority of the directors)
in the presence of:)

▲ _____
Director

▲ _____
Director/Secretary

▲ _____
Full name of director

▲ _____
Full name of director/secretary

SIGNED SEALED AND DELIVERED)
for and on behalf of)
LEYSHON DEVELOPMENTS NO. 3 LIMITED)
ACN 111 628 589 by authority)
of the directors in the presence of:)

▲ _____
Director

▲ _____
Director/Secretary

▲ _____
Full name of director

▲ _____
Full name of director/secretary

STAPLING AND ASSET MANAGEMENT DEED

Consolidated Version

(Consolidated as at 4 September 2006) and incorporates:

- Amendment dated 4 September 2006)

LEYSHON CORPORATION LIMITED ACN 090 257 480

and

LEYSHON DEVELOPMENTS No. 3 LIMITED ACN 111 628 589

and

LEYSHON CORPORATION LIMITED ACN 090 257 480 AS RESPONSIBLE ENTITY OF
LEYSHON PROPERTY TRUST No. 3 ARSN 109 093 816

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