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Your Reference: Family Trust Update – Appointor,
Trustee and Deed Update
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
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Thursday, 17 February 20

Diaz Holdings Pty Ltd ACN
153 Queensland Drive
Broadbeach QLD 4218
Australia

Dear Trustee,

Build this legal document at

<https://www.legalconsolidated.com.au/>

*[family-trust-update-appointor-
trustee-deed/](#) – telephone us, we can
help you complete the questions.*

Adj Professor, Dr Brett Davies – Partner

Updating the Jimmy Dees Family Trust

Attached to this letter is the Family Trust Appointor, Trustee and Deed Update for the above trust.

How to print your document

When you are satisfied that the minutes and the document is according to your instructions, please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document
(However, do not staple the covering letter to the document.)

We only act for some of the Appointors

We confirm that we only act for the Outgoing Appointors if any. If there are no Outgoing Appointors, then we only act for the Remaining Appointors. And if there are also no Remaining Appointors then we only act for the New Appointors.

We act for no other persons. All other persons need to seek their own independent legal advice.

We do not act for Backup Appointors

To put the matter beyond doubt, we do not act for:

- the Backup Appointors
- the current, past and future Trustees of the Family Trust
- the Beneficiaries

It is open for Appointors to change their Trustee and Backup Appointors. This is at any time. And this can often be done without the permission or knowledge of the Trustee and Backup Appointors. This is like a Will maker changing their Will.

Power to amend your Family Trust deed

We confirm that we have not reviewed or otherwise updated the Trust Deed or any variation of the Trust Deed. You need to check that that attached Deed of Variation is permitted under the Trust Deed or any variations of the Trust Deed.

If the Trust Deed or any variations do not allow the Family Trust to be so amended, then this attached Deed of Variation does not operate.

You should ensure that your Family Trust Deed remains up-to-date and have it reviewed each year by your lawyer and accountant.

Updating your Wills and Power of Attorneys

We suggest that the Appointors consider reviewing and, if required, also updating their:

- **3-Generation Testamentary Trust Wills** (if you already have a Legal Consolidated Will then you can update it for free, as often as you wish)
- **Enduring Power of Attorney**
- **Medical/lifestyle Power of Attorney**
- **Loan Agreements** between family members
- **Deed of Gifts and Deeds of Debt Forgiveness** – for any money that the family trust owes to beneficiaries (Unpaid Present Entitlements)

And when you have a company as trustee then consider updating or preparing:

- **Power of Attorney for a company**
- **Shareholders Agreement**
- **Division 7A Loan Agreement**

Please telephone the law firm and we can explain why they are important and help you prepare those documents.

Updating the controller of your Family Trust and succession planning

This attached Deed of Variation seeks to update the trustee, controllers of the trust (often called Appointors) and the Trust Deed itself.

As to the Appointors, this is important for Estate Planning and control of the Trust.

Why change the Appointor and Backup Appointor

The Guardian, Appointor, Principal, Nominator and all other controlling positions as referred to in the Trust Deed update and change for many reasons.

A person may wish to retire as controllers of the Family Trust. Perhaps a person wants to add a spouse as an additional Appointor and Guardian. The Appointor, Guardian, Principal, Nominator and any other controlling position as referred to in the Trust Deed Update seeks to:

- remove Appointors and Guardians
- remove any dead Appointors and Guardians
- confirm any remaining and new Appointors and Guardians

Dead Appointors?

What if the current Appointor is already dead?

For example, Mum and Dad are the Appointors. Mum dies. Dad continues as the Appointor. Dad is happy to control the Family Trust by himself. Nothing in the Trust Deed, any variations or Mum's Will states anything different.

Therefore, all Dad is doing in the Appointor Update is formally removing Mum as Appointor. Mum's executor or next of kin signs on Mum's behalf. The Family Trust may have a system or procedure for dealing with dead Appointors.

As stated above you need to check to make sure that the Trust Deed and any variations of the Trust Deed allows this to happen.

Dead Appointor's estate being challenged?

If the outgoing Appointor is dead before this attached Deed of Variation is signed and their estate is or will potentially be challenged, then speak with the Probate and litigation lawyers before you sign this attached Deed of Variation.

Appointor subject to a Family Law matter?

If there is a potential of a family law matter dispute, then speak to your family lawyer before you sign or seek to rely on this attached Deed of Variation.

This is for a number of reasons as the family lawyer will mention. Not least of which the Family Court may have the power to render void this Deed of Variation.

Trustee vs Appointor

Who is in charge of a Family Trust? Is it the Trustee that 'owns' the assets?

No, the Appointor is god. The Appointor bosses the Trustee. The Trustee looks like it is in control, as it has the assets in its name. However, the Trustee takes its marching orders from the Appointor.

Can the Appointor control the corporate trustee of the Family Trust?

From time to time, the trustee of a family trust is either a:

- **human** - called a 'human trustee'
- **company** - called a 'corporate trustee'

The Appointor is god. The Appointor can usually sack the trustee. So, the most important part of control and succession planning, in a Family Trust, is the Appointor.

But it is useful if the current Appointor 'controls' the trustee as well. This may not always be possible because of:

1. asset protection
2. family law
3. the trustee of the family trust is a human - and you cannot control a human. You can own the shares in the corporate trust, but you cannot own shares in a human
4. even if the trustee is a company and you own the shares in the company, a company can be replaced at any time, by the current Appointor. This is generally for no (stamp) duty and no Capital Gains Tax

Should the Backup Appointor control the Trustee of the Family Trust when the Appointor dies?

It is also useful if, when the Appointor dies the "Backup Appointor" controls the trustee as well. Again, this is often not possible because of the four reasons above.

Specific Gifts in a Will are not usually a good idea, as it dates the Will. However, the 'last to die' Appointor can gift, in their Will, the shares in the corporate trustee to the designated Backup Appointor.

Another approach is for the 'last to die' Appointor to leave a signed, but undated, transfer form for the shares to the designated Backup Appointor. Your accountant can prepare this blank share transfer for you.

Can the Appointor change the Corporate Trustee at any time?

Having the shares in the corporate trustee going to the Backup Appointors gives the impression that the Backup Appointors are guaranteed control of the Family Trust. But that is certainly not the case.

The current Appointors are free to change their mind. This is as to the control of the Family Trust. The current Appointors can change the Appointor, the Backup Appointor and the Trustee. Therefore, the shares in the current corporate trustee of the Family Trust may be of little value.

We only act for the Appointors, as stated above.

The Backup Appointors need to seek their own independent legal advice.

Can the current Appointors secretly change the Backup Appointors in their Family Trust?

Current Appointors can rewrite their Wills and POAs as often as they wish. They can, for example, cut out children and loved ones from their Wills.

Similarly, Mum and Dad, as the current Appointors, can build another Deed of Variation of their Family Trust and change the Backup Appointors. The Appointors can:

- **Change the Backup Appointors:** While the Appointor or Appointors are alive and of sound mind, they can change the succession planning of their Family Trust as often as they wish. This is no different to them changing their minds in a Will.
- **Change Trustee:** While not so important, similarly, the Appointor can change the trustee of their Family Trust, as often as they wish. There is often no (stamp) duty or CGT when a trustee of a Family Trust is changed.
- **Vest the Family Trust:** The Appointors can direct the Trustee of the Family Trust to merely vest all the assets of the trust to one of the beneficiaries. In which case the Family Trust has no assets, anyway.

And Appointors do change their trustees. This is he particularly the case if the wrong child or loved one now or will have control of the corporate trustee of the Family Trust in the future.

Just as you do not know when a parent has changed their Will, a child cannot know if their parents have changed the succession planning of their Family Trust.

Why update the trust rules?

As to the updating the rules of your Trust, we make the following comments:

Legal documents need to be maintained on a regular basis. This is because there are constant changes to legislation, trust law, tax law and case law.

As an introductory point on the importance of having an appropriately updated Trust Deed, Chapter 31 of the CCH Australian Master Tax Guide states that:

"The law of Trusts, the provisions of [the Tax Act] and the Trust loss measures are complex. A lack of appreciation of the problems and an inadequately drafted Trust Deed can give rise to serious problems, sometimes long after the establishment of the Trust. Forward planning is particularly important, e.g. by identifying a class of beneficiaries that is appropriate not only for the Settlor(s) but also for their successors, and by including in the Trust Deed mechanisms to minimise or resolve any disputes that may occur. Resettling the Trust or amending the Trust Deed may have undesirable stamp duty consequences (although rectification of the Trust Deed is possible, to give effect to the true intention of the parties, e.g. *Carlenka 95 ATC 4620*)."

We have sought to update your Family Trust for the following:

- (a) The general "Streaming provisions"
- (b) Franking credits
- (c) Attribution relating to distributing capital gain to beneficiaries
- (d) The ongoing extension of the Capital Gains Tax regime since 1985
- (e) The majority of Appointors being able to take all the proceeds of the Trust over the minority
- (f) The ability to indemnify out of Trust assets
- (g) Further powers of Amending the Trust Deed
- (h) Asset Preservation
- (i) Bamford Decision including defining 'income' in regards to the ATO's latest views
- (j) Loss Recoupment

We have not updated your Family Trust for any other purposes such as Trust losses, foreign beneficiaries, foreigner land tax and stamp duty surcharges, pension entitlements or transfer (stamp) duty exemptions. If you require us to consider other matters, then please let us know.

The Streaming Provisions

Since November 1992, the Commissioner of Taxation has issued rulings for the 'streaming' of income. 'Streaming' allows you to avoid unnecessary capital and income tax being payable by the Trustee and beneficiaries of the Trust for example. Whether the allocation of say a franked dividend income to one beneficiary to the exclusion of another is effective for tax purposes depends on the terms of the Trust instrument.

The fully updated streaming now in your Family Trust provides support so that income distributed to a beneficiary retains the character it had when it was first derived by the Trustee.

You, as the Trustee, may now place different classes of income into separate income accounts. Thus, it is possible to trace the source of each Trust distribution to a particular beneficiary or to a particular class of beneficiary.

Unless the Trustee clearly reflects what it has actually done in accumulating the Trust Income and in distributing it to particular beneficiaries, it will be most difficult to establish, after the event, what class of income was distributed to particular beneficiaries.

This has significant advantages for Family Trusts. However, the Commissioner has stated that the Trustee must be validly empowered to selectively allocate those components of Trust income to particular beneficiaries and exercise that discretion. That is, the Trust Deed itself must contain the ability to stream income.

Here is one example:

Your Trust sells a rental property and realises a capital gain. This capital gain is received into the Trust and is included in the net income of the Trust for that financial year. Your new streaming provisions in your Trust allow that amount to be treated as a capital gain in the hands of a particular beneficiary you nominate from the Trust. Now, if fully franked dividends were also part of the Trust's income, you can ensure that the dividends are not 'mixed' with the capital gains tax income.

Your advisers may suggest that the dividend (or foreign tax credit) be utilised by a resident individual beneficiary with high marginal tax rates. In contrast, net capital gains can be best utilised by another beneficiary with carry-forward capital losses, low income beneficiaries with carry-forward revenue losses and minor beneficiaries able to receive excepted Trust income.

In effect your new streaming allows you to distribute one type of income to one beneficiary and another type of income to a different beneficiary.

Franking Credits

At times your Trust may include gross income from franked dividends. A resident beneficiary in your Family Trust (other than a Trustee of another Trust estate) is entitled to a franking rebate if:

1. a share of net the Trust income is included in the assessable income of the beneficiary; and
2. some or that entire share of net Trust income is attributable to a franked dividend included in the assessable income of the Trust estate.

Notwithstanding wide discretionary powers being conferred on a Trustee, a Trustee's discretion to selectively allocate dividend income to a beneficiary to the exclusion of another may be fettered by the terms of the Trust or by Trust law operative in the relevant jurisdiction. You don't want that. Therefore, we have inserted a clause in your Trust Deed which expressly empowers you to selectively allocate particular types of income to beneficiaries.

Your accountant may suggest that you distribute that part of the net income to those beneficiaries who are able to take the greatest advantage of franking, foreign tax and any other non-refundable tax credits and rebates available to the Trust. Those beneficiaries who have made a loss or are at a low tax rate (especially if lower than the company tax rate) may derive little benefit from these credits.

Attribution to distribute capital gain to beneficiaries

When the Trust derives a net capital gain in the net income of the Trust, then the Trustee needs the power to distribute that part of the net income to certain beneficiaries. The beneficiaries are treated by the Commissioner of Taxation as having accrued a capital gain. It may be that one beneficiary has carried forward capital losses and another has carried-forward revenue losses. In this case there are tax advantages in distributing the net capital gain to the beneficiary who has suffered the prior capital losses.

For some Family Trusts the Commissioner may take the view that either:

1. both beneficiaries are treated as having been presently entitled to a proportionate amount of the net capital gain and other net Trust income; or
2. the net capital gain loses its character and therefore no part of the Trust distribution is characterised as being a net capital gain.

Both outcomes are generally unfavourable.

You now have the power to attribute.

Ongoing extension of the Capital Gains Tax regime

Your Deed of Variation allows you to account separately and keep separate any funds received from different sources. Your Trust Deed is amended to allow the Trustee to account separately and keep separate any funds received from different sources. For example, sources may include:

- capital gains
- any dividend income (of all natures)
- income having an allowance for depreciation (inclusive of depreciation of buildings and plant and equipment)
- income from Superannuation investments or annuities
- income from deceased estates and Trusts (including testamentary Trusts) whether trading, investment or otherwise
- franked distributions
- trading income (including credit sales)
- interest
- primary production income
- income from personal exertion
- rents and other property income
- royalties
- foreign source income

Majority of Appointors take all trust assets over minority

Over the life of your Family Trust the Trust you may have, for example, 3 or more Appointors at one time. If this is the case, then there is opportunity for a majority of

Appointors to give themselves all the proceeds of the Family Trust. This leaves the minority with nothing.

The attached Deed of Variation seeks to amend the Family Trust so that the Appointors act, at all times, unanimously.

Trustee Power to Indemnify

The Trustee's ability to act is governed by each state's legislation (under Trustees Acts) and by the terms of the Trust Deed. The Trustee has now been given stronger powers to guarantee and indemnify the performance of contracts and debts and obligations of all kinds to any person and to mortgage or charge the Trust's property in support of any guarantee and indemnity.

The power to guarantee allows the Trustee to become personally liable for the specific amount of the contract or debt and obligations. The power to indemnify allows the Trustee to become personally liable for any loss or legal costs that the other party may suffer from the contract or debt and obligations.

Banks usually require that Family Trusts provide for both powers before they will loan money to a Family Trust.

Your Family Trust fully allows the Trustee to guarantee the performance of contracts and debts and obligations.

Definition of Net Income

A Trust distribution often allows you to pay less tax. You normally distribute to the family Beneficiaries that are on the lowest tax rates. If you fail to distribute, then the Trustee (as the tax payer) pays the tax at the highest marginal tax rate.

You distribute Trust income to the pool of potential beneficiaries. If you don't distribute any part of the Trust income, then the Trustee is assessed on that part of the 'net income' at the highest marginal tax rate.

As the court in *Bamford v Commissioner of Taxation* [2009] FCAFC 66 said:

"The only purpose of the concept of "income of the Trust estate" in section 97(1) is to determine the extent of the apportionment as between the beneficiaries and the Trustee. It is not, in itself, a metric by which tax is imposed."

There is a difference between 'Trust income' within the taxation legislation. Net income of the Trust estate is the taxable income of the Trust. A beneficiary is entitled to the Trust income. But they are taxed, instead, on the net income.

Your Deed of Variation allows you to:

1. define Trust income appropriately; and
2. make valid distributions.

Loss Recoupment

The Trustee has the power to determine not to recoup carried forward capital losses, to have distributable income, which can be applied to various beneficiaries. If you did not have that power, there could be a situation arising where there is no income of the Trust estate to distribute. According to the ATO, the Trustee is assessed on the capital gain. To

make matters worse a corporate Trustee is taxed on the grossed up capital gain, without recourse to the tax legislation.

Other matters - Asset Preservation

While you have not sought any advice on asset protection, people often ask the question 'if I go bankrupt are the assets in the Family Trust lost?' This question is complex and needs us to meet together to work out an answer. Asset protection cannot be done in isolation. It is a wider issue that needs careful planning.

However, I am happy to make one generic comment. The person that suffers the burden of holding directorships and risky assets, like a trading business, often won't hold assets in their own name. Let's call that person the husband (man of straw). The wife (woman of substance) holds the shares, all of the family home and other assets in her name. If a person follows this strategy then, in the Family Trust, the husband holds the position of Trustee (or is sole director of the corporate Trustee) and the wife holds the position of Appointor. The Appointor is god and can sack the Trustee at whim. If the Trustee goes feral or bankrupt, then the Appointor merely sacks the Trustee. This is simplistic and is generic advice only.

What if the wife runs away with the assets? It doesn't much matter to the Family Court that the assets are currently under the wife's control. The Family Court divides the assets according to what is equitable under the Family Act. This is often 50/50 if you have been together for over 10 years and there are no children or the children no longer live at home. Let me know if you need your legal rights explained further.

Any Stamp Duty or CGT?

Stamp Duty is payable when assets are transferred from one person to another person. Capital Gains Tax is payable when you 'dispose' of an asset. However, by changing the Appointors, Trustees and updating the Family Trust Deed you generally do neither. The class of beneficiaries remains the same. There is no change to the object or purpose of the Family Trust.

There is generally no stamp duty or CGT payable in Australia. But check with your local conveyancing lawyer.

Banks only look at original trust deeds. They do not look at certified copies of trust deeds

We refer to the enclosed Minute regarding you needing to hold and retain, forever, original trust deeds. If you do not retain original signed trust deeds, you will not be able to open bank accounts or borrow money.

Copies are not good enough. Certified copies are not good enough. Ensure that both you and your accountant retain all original trust deeds and variations of the trust deed. They are precious and usually impossible to replace.

Removing Appointors

Appointors are the people in control of the Family Trust; they tell the Trustees what to do. When an Appointor is removed, they give up a lot of rights.

Most Trust Deeds do not (and should not) have methods of sacking the Appointors. It is not that type of Trust relationship or document. Generally, the Appointor has to resign or

die to be removed – and even then, the Trust Deed may have an order of succession. If you are in a conflict situation you need to apply to the court (typically the Supreme Court) for intervention.

What happens if the Trustee is dead or of unsound mind?

If a Trustee has died (or the Corporate Trustee company is wound up) then that person can no longer be a Trustee.

If the Trustee is dead, then the Executor or legal personal representative may be allowed to sign on the Trustee's behalf. Alternatively, if there is a power in the Family Trust to do so, then the Appointor or one of the Appointors can sign on the outgoing Trustee's behalf.

If the Trustee is of unsound mind, then the person holding the Power of Attorney or Administration Order may be able to sign for the Trustee.

Again, check with the Family Trust Deed and any variations of the Family Trust Deed. If it is not possible to so change the Trustee, then the Appointors may need to apply to the Court for help.

Do the Appointors have mental capacity to sign the Deed of Variation?

The attached Deed of Variation can be attacked. This is by arguing that some or all the parties that signed the Deed of Variation lacked mental capacity.

To sign a Deed, or enter into any legal agreement, you need to be of sound mind.

To reduce the chance of someone arguing that you lacked mental capacity get a doctor's note. This is to say you are of sound mind. And keep all such doctor notes with your Deed of Variation.

The Trustee also needs to get a doctor's certificate. And where the trustee of the Family Trust is a company, then the director needs to get a doctor's certificate. This is to confirm that the director is of sound mind.

To put the matter beyond doubt every human that signs the attached Deed of Variation needs to have a doctor's certificate to say they are of sound mind.

The doctor's note should be obtained on or around the date that the attached Deed of Variation is signed.

Are the Appointors tricked or coerced into signing the Deed of Variation?

Another way to render the Deed of Variation of no effect is to argue that the Appointors did not sign the Deed freely. There is no free will.

The person making the attack argues duress, undue influence or elder abuse. Duress is when you are forced to do something against your own will.

In *Mercanti v Mercanti* [2016] WASCA 206 the Court stated for a change of Appointor:

“... the power to appoint a new Appointor may be susceptible to the operation of the doctrine of undue influence.

For present purposes, the principles of undue influence, including in relation to the relationship between parent and child, are sufficiently stated in *Permanent Mortgages Pty Ltd v Vandenberg*.

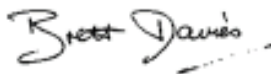
Relevantly, at trial, the appellants' case was one of presumed undue influence, said to arise from an antecedent relationship between Michael and Tyrone, the nature of which was that Tyrone was in a position to exercise dominion, power or ascendancy over Michael in relation to matters concerning the family business and the affairs of the trust.

The signing of the attached Deed of Variation should be treated to the same high standard that is given to the signing of a Will. For example, the people potentially benefiting should not be anywhere near the Appointors when they sign. In particular, the Backup Appointor (including their spouse and related parties) should not be in the vicinity of the Deed of Variation when it is being signed.

This reduces the argument that the Backup Appointor brought illegitimate pressure to force the signing of the Deed of Variation.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
National Taxation Partner
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS



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Your Reference: Family Trust Update – Appointor,
Trustee and Deed Update
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
Email: brett@legalconsolidated.com

Thursday, 17 February 2022

Diaz Holdings Pty Ltd ACN 323 123 124
153 Queensland Drive
Broadbeach QLD 4218
Australia

Trust Opinion Certificate

The Jimmy Dees Family Trust – Legal Opinion to Lending Institution

This Trust Opinion Certificate relates solely to the above Deed of Variation:

Diaz Holdings Pty Ltd ACN 323 123 124
153 Queensland Drive, Broadbeach QLD 4218, Australia
(Trustee)
Trustee of the Jimmy Dees Family Trust (Trust).

We confirm that:

- a) The Trustee is empowered to grant security and guarantees over the assets from time to time of the Trust and so bind the Trust assets. Specifically, as per the Deed of Variation under the Trustee Powers:

borrow and raise money from any person, on a full or non-recourse basis, with or without security, mortgage or charge, including via an overdraft

provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations

mortgage, lien, pledge, charge, guarantee or otherwise provide the Trust Fund for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the trust or not

give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust Fund as may be required to secure the payment or the performance of any contractual obligation under or in connection with any transaction

However, Legal Consolidated Barristers & Solicitors, its agents and assigns, expressly state that they are giving no person, including the client, any advice as to the obligations and role of a guarantor or similar positions.

- b) The terms of the Deed of Variation do not restrict the right of a lender to have recourse to the assets of the Trust to satisfy any liability to the lender properly incurred by the Trustee as Trustee of the Trust.

- c) The Trust document authorises the Trustee (and while a company, its directors) to enter into transactions despite any conflict of interest and duty that may arise on the part of the Trustee. In particular we note at the end of the Trustee powers in the Deed of Variation:

notwithstanding anything to the contrary, the Trustee may enter into any relationship (legal or otherwise) irrespective of whether there is a direct or personal interest, with any person, including related parties (even if the Trustee is a sole trustee) to do all things (including all things set out in this clause) in such manner, on any terms (favourable, unfavourable or otherwise), whether there is a conflict or not, as the Trustee thinks fit.

- d) The terms of the Deed of Variation do not restrict the right of the Trustee to be fully indemnified out of the assets of the Trust to satisfy any liabilities incurred by the Trustee arising out of transactions.
- e) The Trustee is empowered to open and operate bank accounts.
- f) The Trustee is empowered to enter into contracts personally with the Trust.
- g) The Trustee must act in the Beneficiaries' best interests at all times.
- h) The Deed of Variation does not seek to effect a re-settlement of the Jimmy Dees Family Trust Trust.

The Trustee is advised by this letter to seek written advice from a Financial Adviser and Accountant as to whether any transaction contemplated is beneficial to the Beneficiaries to the Trust.

We cannot comment on any papers, correspondence or documents (such as the original Trust Deed and any other variations to the Trust Deed, if any, from time to time). We can only comment on this attached Deed of Variation. We have not reviewed any other documents. We have not reviewed the Trust Deed nor any amendments to the Trust Deed. We have not reviewed the Trust Deed nor any amendments as to the powers to amend such documents.

This letter is only to be relied on by the lender that is lending the initial moneys (if any) and on the basis that the lender has actually cited the original and then retained a signed stamped (if dutiable) complete copy of the Trust Deed and any variations and this Deed of Variation.

This letter is based on the assumption that the Trust Deed, any variations and this Deed of Variation and signatures in the Trust Deed are genuine. And the Trust Deed and any variations authorise, allow and permit the Deed of Variation to be in full force and effect.

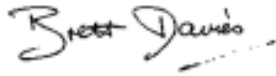
This matter is now closed.

The file has been closed.

We are instructed by our client that any correspondence from the lender, or any other persons, to be immediately sent back to the lender or such persons without further recourse to our client or the lender.

The lawyer signing this letter is from the law firm Legal Consolidated Barristers & Solicitors, is a Barrister of the High Court Australia and holds a current unrestricted practising certificate from the Legal Practice Board.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
National Taxation Partner
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

This is a sample of the document you are building on our law firm's website.

Depending how you answer the questions the document and our letter may be different.

We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.

*Dr Brett Davies
Partner
Legal Consolidated Barristers & Solicitors*

Resolution by the Trustees

Held at

On day of20.....

Diaz Holdings Pty Ltd ACN 323 123 124
153 Queensland Drive, Broadbeach QLD 4218, Australia

(Trustee)

Trustee of the Jimmy Dees Family Trust (Trust).

Quorum: It was noted that a quorum was present at the meeting.

Notice of Meeting: It was noted that all Trustees received notice of this meeting and they all consent to the meeting being held and waive any requirement for any specified period of the notice of the meeting. It was resolved unanimously that the meeting is validly constituted regardless of any failure to give notice as required under any rules, constitutions or the *Corporations Act*.

Person chairing the meeting: It was resolved that the person signing these minutes be the person chairing the meeting.

Upon tabling the fully executed Deed of Variation (in duplicate) that varies the Jimmy Dees Family Trust Trust IT WAS RESOLVED that:

1. the Trustee adopts the duly executed Deed of Variation to amend the Jimmy Dees Family Trust Trust
2. acknowledges that the law firm that prepared the Deed of Variation only acts for some of the Appointors, as set out in the covering letter to the Deed of Variation
3. the law firm does not act for the Trustee or the Backup Appointors (both of which need to get their own independent legal advice)
4. the law firm that prepared the Deed of Variation has not given advice or review on whether the Trust Deed or any variation allows for this Deed of Variation
5. authority is given to allow the Deed of Variation to be provided to any relevant lending institutions, as required
6. the Deed of Variation be lodged for stamp duty, if required
7. because of its value and that banks will not open bank accounts or provide loans if the bank does not cite original Deeds, the two duly executed Deeds of Variation were protected and stored as follows:
 - a. one Deed of Variation to the accountant
 - b. and the other Deed of Variation is to be kept by the Trustee of the Jimmy Dees Family Trust Trust in the secretary folder
8. the Trustee conducts an audit to ensure that it has original Deeds of the following:
 - a. the Trust Deed that established the Trust
 - b. any subsequent Deeds of Variation
9. the Appointors unanimously consent to the Deed of Variation being so executed and adopted

Closure: There being no further business the meeting was declared closed.

Signed as a true and correct record of the meeting immediately after the meeting.

.....Person chairing the meeting

Each Appointor signs below:

Jimmy Sergio Diaz: _____

Melissa Mary Diaz: _____

Each Trustee signs below:

Jimmy Sergio Diaz: _____

Melissa Mary Diaz: _____

Diaz Holdings Pty Ltd ACN 323 123 124:

Build the legal document at <https://www.legalconsolidated.com.au/family-trust-update-appointor-trustee-deed/> – telephone us. We can help you answer the questions.

On our law firm's website, you:

1. Retain legal professional privilege
2. Receive legal advice
3. Get a signed letter on our law firm's letterhead with the legal document
4. We take responsibility for the legal document

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Adj Professor, Dr Brett Davies – Partner



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39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

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Deed of Variation of Family Trust to Update the Jimmy Dees Family Trust Appointor, Trustee and Deed Update

This Deed of Variation is made by:

Outgoing Trustee:

Jimmy Sergio Diaz
120 Old Pittwater Place, Brookvale NSW 2100, Australia

Melissa Mary Diaz
120 South Street, Cocoroc VIC 3030, Australia

New Trustee:

Diaz Holdings Pty Ltd ACN 323 123 124
153 Queensland Drive, Broadbeach QLD 4218, Australia

Outgoing Appointor:

Jimmy Sergio Diaz
120 Old Pittwater Place, Brookvale NSW 2100, Australia

Remaining Appointor:

Melissa Mary Diaz
120 South Street, Cocoroc VIC 3030, Australia

Just like your car, a Family Trust Deed needs updating and servicing. As well as updating your Trustees and Appointors we also update:

- *Streaming – franking credits, Attribution and separate accounts to reduce CGT & income tax*
- *Bamford’s Case – definition of Net Income – satisfies ATO*

1. Background

The Trustee seeks to vary the Trust Deed from the date of this Deed of Variation or as otherwise stated by minute and there is consent to do so by the Appointors.

2. Operative

2.1 The Jimmy Dees Family Trust was created by a deed dated 16 February 2017 as settled by the Settlor being Mike David Dacic, together with any amending deeds (Trust Deed).

2.2 The funds in the Jimmy Dees Family Trust are not vested.

2.3 All parties to this Deed of Variation have been given a copy of the Trust Deed and any updates and other deeds of variations, if any.

2.4 All parties to this Deed of Variation have been provided with a signed copy of this Deed of Variation.

2.5 The parties have examined the Trust Deed (or sought legal advice) and are satisfied that there is power to revoke, add to and vary the terms of the trusts constituted by the Trust Deed.

2.6 The Appointors, Appointers, Guardians, Principals, Nominators and all other similar controlling positions as referred to in the Trust Deed have examined the Trust Deed (or sought legal advice) and are satisfied that there is power to revoke, add to and vary the terms of the trusts constituted by the Trust Deed.

2.7 The persons acting in the capacity of trustee have examined the Trust Deed (or sought legal advice) and are satisfied that there is power to revoke, add to and vary the terms of the trusts constituted by the Trust Deed.

2.8 The law firm preparing this Deed of Variation has not reviewed the Trust Deed or any variations of the Trust Deed as to whether such deeds contain sufficient power to allow for this Deed of Variation.

2.9 The law firm preparing this Deed of Variation as set out in the letter enclosing this Deed of Variation other persons. To put the matter beyond doubt the any trustees, Backup Appointors or beneficiaries.

Outgoing Trustee:

The following resign or are removed from the position of controlling positions:

Jimmy Sergio Diaz
120 Old Pittwater Place, Brookvale NSW 2100, Australia

Melissa Mary Diaz
120 South Street, Cocoroc VIC 3030, Australia

(Outgoing Trustee)

Where an Outgoing Trustee is unable to sign because of death or incapacity then their legal representative, legal personal representative or another Trustee signs on their behalf under the authority of the Trust Deed.

New Trustee:

The following be appointed to the position of Trustee.

Diaz Holdings Pty Ltd ACN 323 123 124
153 Queensland Drive, Broadbeach QLD 4218, Australia

(New Trustee)

The New Trustees accept the appointment.

Outgoing Appointor:

The following cease to hold the position of Appointor.

Jimmy Sergio Diaz
120 Old Pittwater Place, Brookvale NSW 2100, Australia

(Outgoing Appointor)

Where an Outgoing Appointor is unable to sign because of death or incapacity then their legal representative, legal personal representative or another Appointor or person signs on their behalf or under authority of the Trust Deed.

Remaining Appointor:

The following confirm that they will continue to hold the position of Appointor.

Melissa Mary Diaz
120 South Street, Cocoroc VIC 3030, Australia

- *Loss Recoupment – retain and stream losses to particular beneficiaries*
- *Appointors to act unanimously – so two Appointors can't take the assets over the 3rd Appointor*
- *Bank loans to the Family Trust – the required bank clauses and Indemnity rights*
- *Bank loan Compliance Certificate on our law firm's letterhead*

(Remaining Appointor)

Backup Appointor:

When all other Appointors, Guardians, Principals, Nominators and all other similar controlling positions as referred to in the Trust Deed have died, are unable to act, become insolvent, bankrupt or lose capacity in any other way then the following will be appointed to the position of Appointor, Guardian, Principal, Nominator and any other controlling position as referred to in the Trust Deed:

Tim Diaz
4 Glen Drive, West Leederville WA 6007, Australia

Simone Diaz
23 Glen Place, Burnside SA 5066, Australia

(Backup Appointor)

3. Dictionary

Appointor being:

Melissa Mary Diaz
120 South Street, Cocoroc VIC 3030, Australia

and persons appointed as appointor under the Trust Deed and all other similar references and other terms used for persons who control the Trust, the Trustee, direct distribution of the Trust Income and include Appointor, Principal, and Guardian, Nominator and Decided

Backup Appointor being:

Tim Diaz
4 Glen Drive, West Leederville WA 6007, Australia

Simone Diaz
23 Glen Place, Burnside SA 5066, Australia

Beneficiary as defined in the Trust Deed under the word 'Beneficiary' such as 'general beneficiary'

Categories a category, character, type, class, part, item or source, including (but not limited to) the categories: Net Capital Gains, Net Capital Losses; gains, profits or any losses of capital or of a capital nature treated as assessable income or allowable deductions under the Tax Act for the Trust Income for any Financial Year; gains and profits or any losses of capital or of a capital nature that are not treated as assessable income or allowable deductions for taxation purposes for the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account that are or are treated as assessable income or allowable deductions for taxation purposes in relation to the Trust Income for any Financial Year; any income, receipts, gains or profits or any losses, disbursements or outgoings of income or on income account whether treated as assessable income or

*Build this Family Trust
Update to:*

- *change your Trustees (if relevant)*
- *change Appointors & Guardians (if relevant)*
- *fully updates your Trust Deed (rules)*

allowable deductions for taxation purposes for any Financial Year; any income, receipts, gains or profits that are exempt or otherwise not liable to tax under the Tax Act or any other act or regulation; Franked Dividends; Unfranked Dividends; any foreign income, foreign income tax credit, other tax credit, interest; any royalties, minors and others with proceeds from deceased estates, superannuation funds and life insurance and additional categories set out in any minutes

Plus, categories mentioned in any Australian Taxation Office ruling at the time; and any combination or part of the above

Default Beneficiaries as that term or similar terms such as 'default beneficiaries', 'specified beneficiaries' is used or defined in the Trust Deed

Insolvency Event is where the person or company responsible for the Trust for over \$250,000, goes into liquidation, insolvent under section 9 *Corporations Act 2001* (Cth), is declared bankrupt, or is unable to pay his, her or its debts as and when they fall due

Financial Year 1 July in a year to 30 June in the next year or 30 June after the date of the Trust Deed; and 1 July until the date of the Trust Deed or before 30 June of the next year or otherwise as the Trust Deed may provide (Appointor)

Tax Act *Income Taxation Assessment Act 1936* (Cth) and *Income Tax Assessment Act 1997* (Cth), as applicable

Trust Income unless the Trustee otherwise determines otherwise, the income of the trust as defined in section 95(1) *Income Tax Assessment Act 1936* (Cth)

Trust Fund includes the settled sum, additional property, undistributed Trust Income, accretions and additions to the Trust Fund from any source and any accumulations of Trust Income

Trustee being:

Diaz Holdings Pty Ltd ACN 323 123 124
153 Queensland Drive, Broadbeach QLD 4218, Australia

Vesting Day the date that the Jimmy Dees Family Trust vests as set out in the Trust Deed

4. Failure to distribute Trust Income or capital

Where the Trustee fails to distribute any:

- 4.1 Trust Income by 30 June in a Financial Year; or
- 4.2 unapplied and undistributed income before the Vesting Day

then such income and capital are held by the Trustee in trust for the Default Beneficiaries who are alive. If more than one, then equally as tenants in common. If they are all dead then such income and capital is held for the next of kin of the Default Beneficiaries equally as tenants in common.

Why update Trustee?

- Trustee retires
- Appointors sacks a Trustee
- Go from a corporate Trustee to a human trustee
- Go from human to a corporate Trustee (company as trustee)
- Want a single Trustee only
- Trustee dead, gone bankrupt or insolvent

5. Trustee Powers

Only exercisable with the Appointor's prior approval or direction, but otherwise, with absolute discretion, the Trustee has all the maximum possible powers of both a natural person and of a Trustee, as though the Trustee was both the legal and beneficial owner of the Trust Fund, including dealing as principal, agent or otherwise, as such power includes:

Change Beneficiaries

5.1 add, remove, redefine, exclude and change Beneficiaries and classes of Beneficiaries

5.2 receive a request from a Beneficiary for that Beneficiary to be added and either accept or reject such requests under any

Distribute

5.3 distribute any part of the Trust Income in any form to any Beneficiary of the Trust Fund and any other capital, asset or right, to a Beneficiary, to add or to exclude a Beneficiary

5.4 distribute any part of the Trust Fund for a Beneficiary for the maintenance, education, advancement or benefit of that Beneficiary

5.5 distribute to a Beneficiaries' parent, guardian or other person without being responsible for what that person does

5.6 not be responsible for what is done with any part of the Trust Fund

5.7 make an in specie distribution

5.8 redefine the definition of Trust Income before or after 30 June

5.9 accumulate Trust Income and treat it as trust fund capital

5.10 at any time before 30 June in a Financial Year, decide that a distribution of income for that year is to be made solely from income that the Trustee regards as a particular class of income

5.11 decide when a Beneficiary becomes entitled to the income or capital Categories of that entitlement

5.12 distinguish between income of a particular nature or character or from a particular source (whether referred to in the Tax Act or not) and deal with income of a particular nature or from a particular source in one manner and income of any other nature or character or from any other source in a different manner and classify and create a separate account for any type of income including into any Categories

5.13 distribute an amount to a Beneficiary by setting the amount aside in a separate account in the books in the name of the Beneficiary and that amount may be held on a separate trust for such Beneficiary if so determined by the Trustee, as an amount owed to the beneficiary as an interest free debt at call to determine that the Trust Income for a Financial Year, whether, and to what extent, a receipt or outgoing is on account of income or capital or to hold the money as an unpaid present entitlement

5.14 separately allocate all or part of the Trust Income or capital whether distributed or accumulated

Why update Appointor?

Appointors change for many reasons. People may wish to retire as an Appointor.

Perhaps you would like to add your spouse as an additional Appointor.

Build this document:

<https://www.legalconsolidated.com.au/family-trust-update-appointor-trustee-deed/>

Vary the Trust Deed

5.15 vary the Trust Deed and this Deed of Variation at any time, in any way, including revoking all the trusts it establishes and changing vesting dates, however, such amendments do not benefit the Settlor or affect a Beneficiary's beneficial entitlement already set aside

Jurisdiction

5.16 declare the law of the jurisdiction that governs the Trust Deed, from time to time, and while no declaration is made in the Jimmy Dees Family Trust Deed then the Settlor's State as it appears in the Settlor's address in the Trust Deed

Terminate Trust Deed earlier than the Vesting Day

5.17 terminate the Trust Deed before the Vesting Day

Dealings with the Trust Fund

5.18 invest in anything, whether or not authorised by the Trust Deed, in any funds including; life, life endowment, term, trauma or other insurance policies, funds, deposits and loans (with or without security), hire purchase agreements, personal property (whether income earning or otherwise), real estate, shares (unlisted or listed on any stock market), stocks, bonds, debentures, and other securities, options, hedging contracts, derivatives, interest rate swaps to hedge interest rate exposure, futures contracts, foreign currency transactions, warrants and other financial instruments

5.19 advance or lend money to any person, with or without security, on commercial or non-commercial terms and at any interest rate

5.20 borrow and raise money from any person, on a commercial or non-commercial basis, with or without security, mortgage or charge, including via an overdraft

5.21 provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations

5.22 mortgage, lien, pledge, charge, guarantee or otherwise provide the Trust Fund for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the Trust or not and the trustee is fully indemnified from the Trust Fund.

5.23 give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust Fund as may be required to secure the payment or the performance of any contractual obligation under or in connection with any transaction

5.24 deposit securities or documents of title to any real property and chattels with a bank, trust, company, investment broker or like institution in any part of the world

5.25 purchase, acquire, sell, transfer, hire, lease, dispose of, manage, divide, encumber or otherwise deal with any chose in action, real or personal property and any Trust Fund

5.26 enter into any contract, arrangement or agreement with any person (including a Beneficiary or Trustee) for the sale, letting or other dealing with the Trust Fund, or to provide any goods or services by or from that person or Beneficiary

This Deed of Variation:

- *allows the current Appointors and Guardians to retire or removed if dead*
- *confirms those current Appointors who remain as Appointors appoints any new Appointors*

- 5.27 pay any person (including a Beneficiary and Trustee) for administering the Trust Fund and including paying such persons their usual rate if they are providing professional services
- 5.28 pay out of the Trust Fund any outgoings, costs, charges, taxes, duties and expenses of the trust whether related to the trust or not, and allocate such to any income or capital Categories
- 5.29 exercise all rights and perform all duties of holding shares, stock or debentures in any company
- 5.30 establish, purchase, acquire, promote or conduct any company, business, undertaking or scheme, either in the Trustee's own capacity or in its capacity as trustee (or both), and either solely or with any person and to sell, transfer, dispose of or wind-up any such company, business, undertaking or scheme
- 5.31 employ any person (including a Beneficiary or Trustee) or to do anything (whether in connection with matters under this deed or otherwise remuneration or otherwise
- 5.32 appropriate, wholly or partly, any asset of The Trust Fund and any person may have in the assets of the trust or any benefit determined by the deed apply for the benefit of, a Beneficiary
- 5.33 open and operate bank accounts, to draw, make, accept, execute, issue or otherwise deal with all forms of negotiable or other instruments and to enter into any bill facilities or other form of banking facilities
- 5.34 give receipts, including for money received
- 5.35 underwrite shares, securities or other obligations
- 5.36 grant options (including put and call) including for any or all of the above
- 5.37 become a director, or appoint any person as a director, of any company and be independently paid for such a position
- 5.38 receive any chose in action, real or personal property by gift or by will as additions to the Trust Fund
- 5.39 grant, cancel or redeem an annuity
- 5.40 divide the assets in their own particular form, without first realising those assets, between the Trust Fund and any other trusts established
- 5.41 take any action to protect the Trust Fund
- 5.42 enter into, manage and vary any arrangement relating to currency exchange, interest rates, interest rate caps, collars, floors or swaps, any currency forward rate agreement and any other financial risk management agreement, derivative and hedge
- 5.43 mix the Trust Fund with any other money, funds or property, including other trusts' money, funds or property and join with any other person or the Trustee in its personal capacity or as Trustee or any other Trust Fund or both of them in making common investments
- 5.44 make any election required or permitted at law
- 5.45 appoint attorneys and managers and delegate the exercise of all or any of the powers or discretionary authorities
- 5.46 register the Trust Fund in the name of a nominee and not be concerned that a Trust Fund is not registered in the Trustee's name
- 5.47 grant a power of attorney for fee, remuneration and reward on any terms

*Trustee vs Appointor
Who is in charge?
The Appointor bosses the Trustee. The Trustee takes orders from the Appointor. The Appointor can sack the Trustee on a whim, for no reason at all.*

5.48 take or not take legal proceedings against a co-trustee for an alleged breach of trust

5.49 for the Trustee to receive remuneration in any form including fees, salary, commission or other remuneration, payable out of the Trust Fund's capital or income

5.50 if the Trustee is engaged in a profession or business, charge usual rates for any work done by the Trustee in their capacity as a professional, partner or employee of the Trustee

5.51 add additional powers by way of minutes (provided that they are then exercisable with the Appointor's prior approval or direction)

even though and irrespective of the fact that the Trustee or a director, associate, Beneficiary or relative of the Trustee has or may have an interest in the method or result of exercising the power or discretion conferred directly or indirectly from its exercise;

notwithstanding anything to the contrary, the Trustee may enter into any agreement (legal or otherwise) irrespective of whether there is a direct or personal interest of any person, including related parties (even if the Trustee is a sole trustee) (including all things set out in this clause) in such manner, and on such terms (whether favourable or unfavourable or otherwise), whether there is a conflict or not, as to the exercise of such powers can be exercised orally, in writing, by action or by any other means.

*Can the appointor be a company?
It is becoming more common to set up a company as a dedicated Appointor of a family trust.*

6. Powers augment the Trust Deed powers

The above Trustee powers are in augmentation and do not reduce the Trustee's powers set out in the Trust Deed.

7. Trustee

7.1 The Appointor may replace, add, remove or appoint a Trustee at any time without justification or reason, verbally, in writing, by deed, by minute, by will or any other method, with or without any notification to any outgoing Trustee with no requirement to provide indemnities or similar to any outgoing Trustee.

7.2 Each Trustee irrevocably appoints and provides a non-renounceable:

7.2.1 power of attorney, even if dead or no longer in existence; and

7.2.2 permission and right to sign and execute

for the Appointor or its agent to execute any documents, deeds or attend to any matters to allow the removal of the Trustee or any other similar matters to which the Appointor desires.

7.3 A Trustee may resign as trustee. However, unless there is a remaining trustee, or the Appointor deems otherwise, the resignation is effective when a new trustee is appointed.

7.4 The Trustee's appointment automatically terminates if the Trustee is of unsound mind, becomes bankrupt, is wound up or makes an arrangement, composition with creditors or suffers an Insolvency Event.

7.5 Upon ceasing to be a Trustee, the Trustee hands back the books, accounts, titles and signs the transfers of ownership.

7.6 No person dealing with the Trustee need be concerned to inquire into the adequacy of the powers of the Trustee for any dealing or the exercise by the Trustee of any of the Trustee's powers, authorities and discretions.

7.7 No security given is invalid because of an error or omission whether of law or fact on the part of the Trustee or its legal adviser or any breach of duty or trust whatsoever.

8. Appointor

8.1 Where there is more than one Appointor they act unanimously in all matters and at all times.

8.2 The Appointor may appoint and amend (including additional, replacement or back up Appointor on any terms made, including the fettering of such an Appointor's powers

Can the appointor be a company?

8.3 If a sole surviving Appointor dies or ceases to exist then the Default Beneficiaries become the Appointors.

To follow this strategy you and your spouse remain as Appointors. Your company is the Back-up Appointor.

8.4 If a human Appointor suffers an Insolvency event or then that person ceases to be an Appointor. Except that if the Appointor loses mental capacity then the Appointor's legal personal representative, as Appointor, in a fiduciary capacity, for so long as that individual Appointor dies.

Build Family Trust - Appointor, Trustee and Deed Update:

8.5 If a company is an Appointor and enters into a Insolvency Event (except for the purposes of amalgamation or reconstruction) or a controller or receiver and manager appointed to any part of the Insolvency Event or ceases to exist then that Appointor ceases to be an Appointor.

<https://www.legalconsolidated.com.au/family-trust-update-appointor-trustee-deed/>

8.6 The Appointor may unilaterally amend, in any way, the terms of the

8.7 Appointor's declarations, directions, authorities and retained verbally, electronically or in any other way that the deed requires.

9. Beneficiaries of the Jimmy Dees Family Trust

9.1 No Beneficiary has any interest, claim, right, estate or title in any part of the Trust Fund, Trust Income or any of its income.

9.2 Neither a Beneficiary nor any other person may challenge an exercise of a power or a failure to exercise it or require a reason for its exercise or non-exercise.

9.3 No person, including a Beneficiary, may require, and the Trustee is not obliged to give, any account, report or information on the Trust Fund including any entitlement of any Beneficiary, except as required by law.

9.4 The Trustee is not liable to the Beneficiaries for any loss.

9.5 No Beneficiary is under any obligation to personally indemnify the Trustee or a creditor of the trust or any sub-trust established under this deed for any liability, loss, damage or expense either incurred or suffered in connection with the trust. The Trustee is unable to exercise against a beneficiary any right by way of subrogation or indemnity.

10. No Partnership

The Trust Deed does not create the relationship of partners, or of principal and agent, between the Trustee and the Beneficiaries nor as between each other.

11. Severing to reduce tax and stamp duty

11.1 The Trust Deed and this Deed of Variation is interpreted to give effect to the provisions of the Taxes, and any clause nonetheless fails to reduce Taxes or is illegal, it is severed, as required, from the Trust Deed or Deed of Variation to the extent of its illegality or in the furtherance of the reduction of the Taxes.

11.2 The Trust Deed and this Deed of Variation are read down or severed, as required, and vesting restricted, as required, to the extent that they contravene any provision of the taxation law or Taxes, from time to time, are contravened to the extent of their contravention to avoid an unfavourable taxation position.

11.3 For land ownership registration requirements, including the requirement that the Trustee, then all powers in the Trust Deed and this Deed of Variation are read down or severed, as required, and vesting restricted, as required, to the extent that they contravene any provision of the taxation law or Taxes, from time to time, are contravened to the extent of their contravention to avoid an unfavourable taxation position.

The wonderful thing about trusts is that they suffer very little meddling by the government. You are free to put into your trust deed pretty much anything you want. (That is why it is important to have a specialist law firm, like [Legal Consolidated](#), prepare your trust deeds.)

12. What isn't varied?

All the other terms contained and implied in the Trust Deed remain in full force and effect.

13. Do we use the definitions in the Jimmy Dees Family Trust Deed?

Unless the context otherwise requires, the expressions and expressions of similar import contained in this Deed of Variation have the same meanings as in the Trust Deed. This Deed of Variation does not alter the rights or entitlements of any classes of the Beneficiaries.

14. Deed of Variation versus the Jimmy Dees Family Trust Deed?

This Deed of Variation is supplemental to the Trust Deed within the meaning of the applicable Property Law Act. If any of the terms of the Trust Deed are inconsistent with the terms of this Deed of Variation, then the terms of this Deed of Variation prevail.

HOWEVER, this Deed of Variation in no way constitutes a resettlement of the Trust Deed or any part of the Trust Fund. If anything in this Deed of Variation would otherwise establish a resettlement of the Jimmy Dees Family Trust then the applicable words are read down so as not to constitute a resettlement.

15. When does the Jimmy Dees Family Trust Deed of Variation take effect?

Unless otherwise stated in any minutes, this Deed of Variation takes effect on the date of this Deed of Variation.

16. Decision making in more than one place and Notices

16.1 This Deed of Variation may be executed in different locations by signing identical documents and all counterparts together constitute the Deed of Variation.

16.2 Meetings and decision making can be conducted in more than one place via telephone, the Internet or other means.

16.3 Notices may be provided via the post or email.

17. Interpreting the Deed of Variation

In this Deed of Variation unless the context indicates a contrary intention:

17.1 headings are for convenience only and do not affect interpretation

17.2 a reference to a 'person' includes a reference to: an individual; body corporate (wherever incorporated); body politic; association of persons (whether incorporated or unincorporated) partnership; trust; person in the capacity as a trustee; person in the capacity as the Personal Representative of a deceased estate and superannuation fund

17.3 the plural includes the singular and vice versa and a reference to any gender includes every other gender

17.4 a reference to the Deed of Variation includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time

17.5 a reference to any party to this Deed of Variation includes successors or permitted assigns

17.6 a reference to laws in this Deed of Variation refers to those laws as amended or replaced as consistent with the overall purpose of the Deed of Variation and does not lead to an anomaly

17.7 a reference to any statute, or any subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them and a reference to a statute includes all subordinate legislation and instruments made under that statute

18. Further augmentation of Powers

18.1 The Trust Deed is so amended in all respects so that this Deed of Variation can take full effect.

18.2 The parties to the Deed of Variation irrevocably warrant and confirm that the Trust Deed is so amended as to allow this Deed of Variation to take full effect.

18.3 Further, the Trust Deed is amended so much so that the Appointor has the power to remove the trustee or trustees and appoint a new trustee or trustees.

18.4 The Trustee irrevocably consents and agrees to be bound by the terms of this Deed of Variation.

18.5 The Trustee irrevocably consents and agrees that at any time the Appointor can remove the Trustee.

18.6 Irrespective of the powers in the Trust Deed and in this Deed of Variation the Trustee consents, as a party to this Deed of Variation, to resign at the direction of the Appointor.

18.7 The parties to the Deed of Variation warrant and irrevocably confirm that:

18.7.1 the Deed of Variation is in full effect and operational.

18.7.2 the Appointor has the power under the Trust deed to remove the Trustee, trustee or trustees and appoint a new trustee or trustees.

19. Further augmentation of Trustee Powers

Only exercisable with the Appointor's prior approval or direction, but otherwise, with absolute discretion, the Trustee has all the maximum possible powers of both a natural person and of a Trustee, as though the Trustee was both the legal and beneficial owner of the Trust Fund, including dealing as principal, agent or otherwise, and such power includes to:

Vary the Trust Deed

19.1 vary the Trust Deed and this Deed of Variation at any time, in any way, including revoking all the trusts it establishes and changing vesting dates, however, such amendments do not benefit the Settlor or affect a Beneficiary's beneficial entitlement already set aside

19.2 may at any time and from time to time by deeds revocable or irrevocable revoke add to or vary all or any of the trusts, terms and conditions hereinbefore contained or the trusts terms and conditions contained in any variation or alteration or addition made thereto from time to time and may in like manner declare any new or other trusts terms and conditions concerning the trust assets or any part or parts thereof the trusts whereof shall have been so revoked added to or varied

19.3 at any time and from time to time, by deeds revocable or irrevocable revoke, add to or vary all or any of the trusts terms and conditions; the trusts terms and conditions contained in any variation or alteration or addition made thereto from time to and in like manner declare any new or other trusts terms and conditions concerning the Trust Deed and assets in the trust or any part or parts thereof the trusts whereof shall have been so revoked added to or varied

20. Trustee provides Power of Attorney

20.1 The Trustee and during such times there are more than one trustee, then each trustee singularly, irrevocable provides and gives the Appointor a power of attorney to the extent that the Appointor can sign on the Trustee's behalf for the resignation of the Trustee and all such related matters.

20.2 By signing this Deed of Variation each Trustee irrevocably appoints and provides a non-renounceable:

20.2.1 power of attorney, even if dead or no longer in existence; and

20.2.2 permission and right to sign and execute for the Appointor or its agent to execute any documents, deeds or attend to any matters to allow the removal of the Trustee or any other similar matters to which the Appointor desires.

20.3 This in no way fetters or limits the Appointor's power to remove the Trustee, for any reason, and without the need to give any reason, and to do so without notice to the Trustee.

Executed as a Deed on 20

SIGNED, SEALED AND DELIVERED by
Jimmy Sergio Diaz

Jimmy Sergio Diaz

(Signature of witness)

(Name of witness)

SIGNED, SEALED AND DELIVERED by
Melissa Mary Diaz

Melissa Mary Diaz

(Signature of witness)

(Name of witness)

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EXECUTED for and on behalf of
Diaz Holdings Pty Ltd
ACN 323 123 124

by authority of its Directors in
accordance with section 127
Corporations Act 2001 (Cth)

Signature of Director or Secretary

Signature of Director (if a 2nd)

SIGNED, SEALED AND DELIVERED by
Jimmy Sergio Diaz

Jimmy Sergio Diaz

(Signature of witness)

(Name of witness)

SIGNED, SEALED AND DELIVERED by
Melissa Mary Diaz

Melissa Mary Diaz

(Signature of witness)

(Name of witness)