

DATED

2011

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**BETWEEN**

**THE CORPORATE TRUSTEES OF THE DIOCESE OF GRAFTON**

**BISHOP-IN-COUNCIL**

**BOARD OF MANAGEMENT OF GRAFTON DIOCESE INVESTMENT FUND**

**THE PERTH DIOCESAN TRUSTEES**

**THE SYNOD OF THE DIOCESE OF ADELAIDE OF THE ANGLICAN CHURCH OF AUSTRALIA**

**ST CUTHBERTS RETIREMENT LIVING COMPLEXES**

**THE INDEPENDENT OVERSIGHT COMMITTEE**

**AND**

**THE REGISTRAR**

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**OVERSIGHT ARRANGEMENTS DEED**

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**LAWYERS**

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## OVERSIGHT ARRANGEMENTS DEED

**THIS DEED** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2011

**BETWEEN THE CORPORATE TRUSTEES OF THE DIOCESE OF GRAFTON** of 50 Grafton Street, Grafton NSW 2460 ("**The Corporate Trustees**")

**AND BISHOP-IN-COUNCIL** of 50 Grafton Street, Grafton NSW 2460 ("**BIC**")

**AND BOARD OF MANAGEMENT OF GRAFTON DIOCESE INVESTMENT FUND** (as herein defined) of 50 Grafton Street, Grafton NSW 2460 ("**Board of Management**")

**AND THE PERTH DIOCESAN TRUSTEES** of Anglican Church Office, 2<sup>nd</sup> floor, Law Chambers, Cathedral Square, 565 Hay Street, Perth, Western Australia ("**Diocese of Perth**")

**AND THE SYNOD OF THE DIOCESE OF ADELAIDE OF THE ANGLICAN CHURCH OF AUSTRALIA** of 18 King William Road, North Adelaide SA 5006 ("**Diocese of Adelaide**")

**AND ST CUTHBERTS RETIREMENT LIVING COMPLEXES INC** of 20 Banks Street, Tweed Heads NSW 2485

**AND THE INDEPENDENT OVERSIGHT COMMITTEE** (as herein defined) of C/- The Registrar of 50 Grafton Street, Grafton NSW 2460 ("**Independent Oversight Committee**")

**AND THE REGISTRAR** (as herein defined) of 50 Grafton Street, Grafton NSW 2460

### Introduction

- A. The Corporate Trustees is a body corporate and was formed under the provisions of the Anglican Church of Australia Property Trust Act 1917 (NSW).
- B. The Corporate Trustees acts as the trustee for trust funds and property of bodies of the Diocese.
- C. The Corporate Trustees is the trustee of the Fund (as herein defined).

- D. The Board of Management has administrative and management functions in respect of the Fund under Ordinance 2008 (as herein defined).
- E. The BIC has the functions conferred under Ordinance 2008.
- F. The Corporate Trustees has sought the provision of a line of credit from the Credit Providers (as herein defined) for the purposes of meeting the liquidity requirements of the Fund.
- G. The Credit Providers at the request of The Corporate Trustees and the BIC have agreed to provide a line of credit to The Corporate Trustees for the purposes of enabling the liquidity requirements of the Fund to be met.
- H. The Corporate Trustees on the date of this Deed is granting security to the Credit Providers for the Line of Credit (as herein defined).
- I. Pursuant to the provisions of this Deed the Independent Oversight Committee is to be established for the purpose of assisting the parties to achieve the Objects and Purposes (as herein defined) and facilitate the making of decisions and arrangements to ensure the orderly and timely repayment, to the Credit Providers, of funds provided by the Credit Providers under the Line of Credit, on or before the Repayment Date (as herein defined).
- J. The Provisions of the Line of Credit (as herein defined) provide for determinations of the Independent Oversight Committee to constitute terms and conditions forming part of the Provisions of the Line of Credit.
- K. The parties have agreed that in order to achieve the Objects and Purposes (and to facilitate the orderly and timely repayment of funds provided by the Credit Providers pursuant to the Line of Credit) that a program for the orderly and timely disposal and/or mortgaging, of certain property held by the Corporate Trustees is to be implemented, on an as required basis in respect to the necessary recapitalisation of the fund.
- L. This Deed contains the respective covenants of the parties for the purpose of achieving the Objects and Purposes and facilitating the orderly and timely repayment of funds provided by the Credit Providers pursuant to the Line of Credit on or before the Repayment Date.
- M. The Registrar, or his acting Deputy as nominated by the Bishop of Grafton, is to assume obligations under this Deed to facilitate the arrangements under it

## OPERATIVE PARTS

### Definitions

1. As used in this Deed, unless the context otherwise requires the following terms shall have the meanings specified below:

**"Advisory Group"** means The General Synod Diocesan Financial Advisory Group formed by the Anglican Church of Australia;

**"Appointing Entity"** means each of:

- (a) Diocese of Perth
- (b) Diocese of Adelaide
- (c) St Cuthbert's Retirement Living Complexes Inc
- (d) the Advisory Group; and
- (e) The Corporate Trustees

**"BIC"** means the Bishop-in-Council as defined in Ordinance 2008;

**"Board of Management"** means the board of management of the Grafton Diocese Investment Fund established pursuant to Ordinance 2008;

**"Chairman"** has the meaning set out in **clause 10**; and

**"Credit Providers"** means each, and all, of Diocese of Perth and Diocese of Adelaide;

**"Diocese"** means the Diocese of Grafton, a member Diocese of the Anglican Church of Australia;

**"Finance Documents"** means such documents as The Corporate Trustees and the Credit Providers enter into, from time to time, containing the terms and conditions upon which the Line of Credit is provided and securing the Line of Credit;

**"Fund"** means the Grafton Diocesan Investment Fund;

**"Group to Benefit"** has the meaning set out in **clause 2(a)(iii)**.

**"Line of Credit"** means the line of credit provided by the Credit Providers to The Corporate Trustees for the purposes of the Fund pursuant to the Finance Documents;

**"Nominated Expenses"** has the meaning set out in **clause 15**;

"**Ordinance 2008**" means the Diocesan Governance Ordinance 2008 in respect of the Diocese;

"**Objects and Purposes**" has the meaning set out in **clause 2(a)**;

"**Independent Oversight Committee**" means the committee being established under this Deed;

"**Provisions of the Line of Credit**" means the terms and conditions upon which the Line of Credit is provided;

"**Registrar**" means the person who is the Registrar, from time to time, of the Anglican Diocese of Grafton;

"**Repayment Date**" means the third (3<sup>rd</sup>) anniversary of the date of this Deed;

"**Resolutions**" means Ordinary Resolutions and Mandatory Resolutions as respectively defined in **clause 13**.

"**Schedule 1 Notice**" is a notice in the form set out in **Schedule 1** to this Deed.

"**Schedule 2 Notice**" is a notice in the form set out in **Schedule 2** to this Deed.

## **Operational Covenants**

2. It is agreed:

- (a) by all of the parties to this Deed that the objects and purposes of this Deed and the Finance Documents, so far as possible, include:
  - (i) ensuring the liquidity requirements of the Fund are met by the provision of a line of credit by the Credit Providers to The Corporate Trustees;
  - (ii) ensuring that adequate security is provided to the Line of Credit Providers for the funds provided by the Line of Credit Providers to The Corporate Trustees;
  - (iii) ensuring that The Corporate Trustees, the Bishop-in-Council, the Board of Management and the Diocese (the "**Group to Benefit**") obtain appropriate and timely advice from the Independent Oversight Committee for the purpose of enabling the Group to Benefit to consider, and implement, the orderly mortgaging and/or realising of real property within the sphere and control of the Group to Benefit (and any of them) to raise funds for the purposes set out in **subclause (d)**;

- (iv) ensuring the funds provided under the Line of Credit are repaid by the Repayment Date;
- (v) ensuring the long term viability of the Fund;
- (vi) ensuring the Group to Benefit obtains appropriate and timely advice from the Independent Oversight Committee for the purpose of enabling the Group to Benefit to consider, and implement:
  - (A) steps to determine the terms upon which the Corporate Trustees lends the funds of the Fund and to manage, in a prudent and commercial manner, the loans the Corporate Trustees makes out of the Fund; and
  - (B) steps to determine, in a prudent and commercial manner, the terms upon which the Corporate Trustees accepts deposits into the Fund,

(the "**Objects and Purposes**");

- (b) by all of the parties to this Deed that they will seek to do all things which may reasonably be done to ensure, so far as possible, the Objects and Purposes are achieved and to that end the parties agree to honour the spirit of the Resolutions of the Group to Benefit and to use their reasonable endeavours to implement them;
- (c) by all of the parties to this Deed that the Independent Oversight Committee shall have power:
  - (i) to co-opt other persons to attend and speak (but not vote) at meetings of the Independent Oversight Committee; and
  - (ii) to engage professional consultants to advise on any particular matter that the Independent Oversight Committee considers appropriate for the purposes of achieving the Objects and Purposes, provided it obtains the consent of the Corporate Trustees to it doing so;
- (d) by the Corporate Trustees that it shall not unreasonably refuse its consent to the Independent Oversight Committee engaging professional consultants to advise on any particular matter that the Independent Oversight Committee considers appropriate for the purposes of achieving the Objects and Purposes and where it gives its consent it shall meet the reasonable expenses of any such professional consultant who is engaged by the Independent Oversight Committee; and

- (e) by the Independent Oversight Committee, for the purpose of its role under this Deed, that it shall, so far as possible, use its best endeavours to consult appropriately with the parties to this Deed who will be affected by any proposed resolutions of the Independent Oversight Committee.
3. The Independent Oversight Committee is constituted pursuant to this Deed by the implementation of, and upon the terms of, **clauses 4 to 7** hereof.
4. Without limiting any other provision of this Deed the Independent Oversight Committee:
- (a) Will do such things as may be possible for the purpose of determining issues, providing advice and taking actions consistent with, and to achieve, the Objects and Purposes;
- (b) Will review all outstanding loans made by the Fund and advise on the restructuring of these loans, so as to ensure all principal and interest can be recovered in a timely manner. The implementation of such recommendations, after consultation with the Corporate Trustees, is the responsibility of the Corporate Trustees.
- (c) Will make recommendations to the Diocese with respect to the injection of capital by way of receiving gifts to the Fund or by way of realising proceeds from the sale of properties, in a timely fashion to address any deficiencies in the capacity of specific debtors of the Fund to repay their debts in respect to both capital and interest in a timely manner, and in any event within seven (7) years of the date of this Deed, unless the parties to this Deed agree otherwise.
- (d) Will recommend best practice operating procedures for the Fund to be considered by the Corporate Trustees and proposed for ratification to the Synod of the Diocese within the three (3) years of this Deed.

### **Constitution and Membership of Independent Oversight Committee**

5. (a) Subject to any casual vacancies, the Independent Oversight Committee is to consist of up to nine (9) voting persons comprising:
- (i) Up to three (3) persons appointed by the Diocesan Financial Advisory Group;
- (ii) Up to two (2) persons appointed by the Diocese of Perth;
- (iii) Up to two (2) persons appointed by the Diocese of Adelaide;

- (iv) Up to two (2) persons appointed by the Diocese of Grafton [including St. Cuthbert's];
  - (v) The Bishop of Grafton [who shall not have an entitlement to vote];
  - (vi) The Registrar of Grafton [who shall not have an entitlement vote]
- (b) Each person appointed must have significant experience and expertise in relation to legal or accounting or financial or property or independent school management matters.
  - (c) Each Appointing Entity may exercise its right of appointment by nominating the member or members of the Independent Oversight Committee it is entitled to appoint by nominating persons with the appropriate experience and expertise (as required under **clause 5(b)**) by giving a properly completed **Schedule 1 Notice** to the Registrar.
  - (d) Each Appointing Entity may, by a **Schedule 1 Notice** given to the Registrar, also remove any person it has appointed and by such notice appoint a replacement for the person removed.
  - (e) No person may act as, or be, a member of the Independent Oversight Committee, unless the Registrar holds a **Schedule 1 Notice** properly completed and signed in respect of that person.
  - (f) The Registrar shall keep and maintain a register which records the persons who, from time to time, are the members of the Independent Oversight Committee.
  - (g) The Independent Oversight Committee shall comprise the persons who, from time to time, are listed in the said register.

### **Casual Vacancies**

- 6. For the purposes of this Deed, any member of the Independent Oversight Committee shall cease to be a member of the Independent Oversight Committee if the member:
  - (a) dies;
  - (b) becomes bankrupt;
  - (c) resigns office by notice in writing to the Registrar;
  - (d) is removed from office under **clause 7**;



- (e) becomes a mentally incapacitated person; or
- (f) is absent without the consent of the Independent Oversight Committee from three (3) or more successive meetings of the Independent Oversight Committee.

### **Removal of Member of the Independent Oversight Committee**

7. The Independent Oversight Committee may by a resolution remove any member of the Independent Oversight Committee from the Independent Oversight Committee provided the resolution to remove is passed by all of the members of the Independent Oversight Committee apart from the person the subject of the resolution.

### **Appointment of Replacement Members**

8. Where a member of the Independent Oversight Committee ceases to be a member pursuant to **clause 6** or **clause 7** the Appointing Entity who appointed that person, may by way of a **Schedule 1 Notice** given to the Registrar, appoint a replacement for that person and no other Appointing Entity may appoint a replacement for that person.

### **Meetings and Quorum**

9. (a) The Independent Oversight Committee must meet at least once in every period of two (2) calendar months at such place and time as the Independent Oversight Committee may determine.
- (b) Additional meetings of the Independent Oversight Committee may be convened by the Chairman or the Registrar.
- (c) Written notice of a meeting of the Independent Oversight Committee must be given by the Registrar to each member of the Independent Oversight Committee at least ten (10) days (or such other period as may be unanimously agreed upon by the members of the Independent Oversight Committee) before the time appointed for the holding of the meeting.
- (d) A quorum for a meeting of the Independent Oversight Committee shall consist of not less than five (5) of the members of the Independent Oversight Committee who are entitled to vote at the relevant time of whom:
- (i) two (2) must be appointees of the Credit Providers; and
  - (ii) two (2) must be appointees of the Advisory Group.

## Chairman

10. The members of the Independent Oversight Committee may from time to time appoint from among its members, a Chairman of the Independent Oversight Committee (the "**Chairman**").
11. At a meeting of the Independent Oversight Committee the Chairman is to preside. If the Chairman is absent or unwilling to act, one of the remaining members of the Independent Oversight Committee as is chosen by the members present at the meeting is to preside.

## Invitees

12. Any party to this Deed may request the Registrar to convene a meeting of the Independent Oversight Committee for the purpose of that party having its nominees attend the meeting convened in accordance with the request. If such a request is made the Registrar must convene a meeting of the Independent Oversight Committee to be held within the calendar month following the calendar month in which the request is made. The nominees of the party who made the request may attend and speak at the meeting so convened. The Independent Oversight Committee may invite any other persons it determines are appropriate to attend and speak at meetings of the Independent Oversight Committee. None of the persons who attend on behalf of a party requesting a meeting, nor persons invited to attend a meeting by the Independent Oversight Committee, shall have a right to vote.

## Voting and Decisions

13.
  - (a) Except for any Mandatory Resolution all matters arising for decision at a meeting of the Independent Oversight Committee are to be determined by a majority of the votes of members of the Independent Oversight Committee present at the meeting who are entitled to vote.
  - (b) Each member present at a meeting of the Independent Oversight Committee who is entitled to vote is entitled to one (1) vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
  - (c) Subject to **clause 9(d)** the Independent Oversight Committee may act despite any vacancy on the Independent Oversight Committee.
  - (d) The Independent Oversight Committee may at any time pass a Mandatory Resolution. A "**Mandatory Resolution**" is a resolution:

- (i) of which not less than ten (10) days' notice of the meeting of the Independent Oversight Committee at which the resolution is to be put, is given (the "**Mandatory Resolution Meeting Notice**");
  - (ii) of which the nature, intent and basic terms of it are set out in the Mandatory Resolution Meeting Notice;
  - (iii) which is approved by greater than fifty percent (>50%) of the members of the Independent Oversight Committee who have an entitlement to vote; and
  - (iv) is expressly stated to be a Mandatory Resolution.
- (e) Any resolution of the Independent Oversight Committee which is not expressly stated to be a Mandatory Resolution is an "**Ordinary Resolution**".
- (f) Where a Mandatory Resolution is in terms that its provisions are to form part of the Provisions of the Line of Credit:
  - (i) the terms of the Mandatory Resolution must be consistent with the Objects and Purposes; and
  - (ii) a Mandatory Resolution shall have effect, and shall only have effect, and form part of the Provisions of the Line of Credit, from the date which is ten (10) days after a notice containing it, signed by the Chairman of the relevant meeting, is received by the Registrar.
- (g) Despite any other provision of this Deed a Mandatory Resolution:
  - (i) shall have no force or effect if its carrying into effect obliges any party to commit a breach of trust or act beyond that party's powers; and
  - (ii) shall not be effective unless a notice containing the Mandatory Resolution signed by the Chairman of the relevant meeting is received by the Registrar.
- (h) Any act or thing done or suffered, or purporting to have been done or suffered, by the Independent Oversight Committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Independent Oversight Committee.

## **Alternates**

14. Any member of the Independent Oversight Committee ("**Appointing Member**"), by a Schedule 2 Notice given to the Registrar, may appoint a person to represent the Appointing Member at any meeting of the Independent Oversight Committee. When that power of appointment is exercised it shall operate for the meeting or meetings specified in the notice. Subject to this clause, the person so appointed ("**Appointed Alternate**") shall have all of the rights of the Appointed Member at the said meeting or meetings and the Appointing Member may not attend any meeting or meetings specified in the notice. Any Appointed Alternate shall not have the power to appoint under this clause and may not attend any meeting of the Independent Oversight Committee unless the Registrar holds a **Schedule 1 Notice** with Section 2 of it completed and signed by the Appointed Alternate.

### **Expenses**

15. The Corporate Trustees shall reimburse the Nominated Expenses of each member of the Independent Oversight Committee upon proof of the relevant expenses having been incurred. The "**Nominated Expenses**" are all reasonable expenses in respect of travel, accommodation, food and beverages incurred in attending any meeting of the Independent Oversight Committee.

### **Covenant not to Sue and Indemnity**

16. (a) Subject to **subclause (c)**, the parties to this Deed covenant not to sue any member of the Independent Oversight Committee in respect of any claim based on negligence or breach of contract or other duty.
- (b) Subject to **subclause (c)**, the Corporate Trustees indemnifies every person who is at any time a member of the Independent Oversight Committee against any liability for damages, and for any costs and expenses incurred by that person in defending any proceedings in connection with any proceedings, arising out of the person's actions or omissions as a member of the Independent Oversight Committee.
- (c) Nothing in this **clause 16** will operate to bar any claim based on fraud or breach of trust or lack of good faith or any other action of omission which would, on the balance of probabilities, constitute a crime nor operate as an indemnity in respect of any damages or liability for costs and expenses incurred by a member of the Independent Oversight Committee in respect of any claim against that person based on fraud or breach of trust or lack of good faith or any other action of omission which would, on the balance of probabilities, constitute a crime.

### **Insurance**

17. The Corporate Trustees will obtain and maintain insurance in respect of every person who is at any time a member of the Independent Oversight Committee against any liability for damages, and for any costs and expenses incurred by that person in defending any proceedings in connection with any proceedings, arising out of the person's actions or omissions as a member of the Independent Oversight Committee.

### **Registrar**

18. The Registrar is authorised to do those things the Registrar is to do under this Deed, and is authorised to carry out and give effect to the provisions of this Deed. The Registrar shall attend meetings of the Independent Oversight Committee and prepare and retain copies of the minutes of meetings of the Independent Oversight Committee. The Registrar must give a copy of any Mandatory Resolution signed by the Chairman to the Corporate Trustees within five (5) days after it is received by the Registrar.

### **Electronic Meetings of the Oversight Committee**

19. (a) A meeting of the Independent Oversight Committee may be conducted by the contemporaneous linking together by an instantaneous communication device of such of the members of the Independent Oversight Committee who wish to participate in the said meeting and a meeting held in that manner shall be deemed to constitute a meeting of the Independent Oversight Committee and the provisions of this Deed as to meetings of the Independent Oversight Committee shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:
  - (i) all the members of the Independent Oversight Committee shall be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting; and
  - (ii) each of the members of the Independent Oversight Committee taking part in the meeting by an instantaneous communication device must be able to hear each of the other members taking part at the commencement of the meeting.
- (b) For the purpose of this clause "instantaneous communication device" shall include telephone, video link, computer and any other audio and/or visual device which permits instantaneous communication.

## Circulating Resolutions

20. (a) If all the members of the Independent Oversight Committee entitled to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the members of the Independent Oversight Committee in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Independent Oversight Committee held on the day on which the document was signed or, if the members sign the document on different days, on the day on which, and at the time at which, the document was signed by the last of the members to sign.
- (b) For the purposes of the clause a copy of any document referred to in **subclause (a)** may be sent to the Registrar by email.

## No Abrogation of Powers

21. Except to the extent that a party to this Deed is bound by a Mandatory Resolution nothing in this Deed shall abrogate the powers of a party to this Deed.

## Notices

22. (a) Notices to, or documents to be given to, the Registrar may be given:
- (i) by hand to the Registrar personally;
  - (ii) by mail to the Registrar, care of 50 Victoria Street, Grafton 2460; or by
  - (iii) email to "registrargrafton@nor.com.au".
- (b) Any notice to be given under this Deed:
- (ii) will be effectively signed on behalf of any other party if it is executed by that party or any of its officers or its attorney; and
  - (iii) may be given by being delivered personally or by being left at or posted to the address of the party to be served as set out in this Deed or by email to the Registrar.
- (c) Each party may from time to time change its particulars for service by notice to each other party.
- (d) A notice:
- (i) if personally delivered will be given upon delivery;

- (ii) if posted in Australia will be deemed to be given three (3) days after posting; and
- (iii) if given by email shall only be deemed to be given where the sender of the email receives and produces a printed document generated by the sender's computer showing the successful transmission of the email.

### **Further Assurances**

23. Each party hereby covenants and agrees with each other party that whenever requested so to do by any other party it will sign, execute and deliver all such further documents, forms and authorisations and shall do all such further acts, matters and things which that party may reasonably do for the purpose of giving full effect to this Deed and its provisions.

### **Disputes**

24. If a dispute arises under this Deed, any party may invoke the procedure set out in this clause by giving written notice to the other parties to this Deed of the elements of the dispute and the outcome sought and where such a notice is given ("**Dispute Notice**") the parties shall promptly, and in any event within seven (7) days, enter into discussions concerning the dispute in an attempt to resolve the dispute provided that if the dispute is not resolved as a result of such discussions within fourteen (14) days of the giving of the Dispute Notice, any party may require the dispute to be resolved in accordance with the following provisions of this clause:
- (a) By giving written notice to the other parties to this Deed that they require the dispute to be resolved in accordance with this clause ("**Referral Notice**"). Where a party gives a Referral Notice it must at the same time give a copy of the Referral Notice to the General Secretary of the Anglican Church (the "**General Secretary**") and advise the General Secretary of the referral of the dispute to the General Secretary.
  - (b) Each party must submit details of the dispute and the outcome they seek in writing to the General Secretary and to all other parties to this Deed.
  - (c) The parties will use their best endeavours to ensure such dispute is resolved promptly by the General Secretary.
  - (d) The General Secretary will act as an expert and not as an arbitrator and the decision of the General Secretary will be final and binding on the parties.

- (e) If a dispute is referred to the General Secretary in accordance with this clause, the referral will be on the following basis:
  - (i) the parties must provide the General Secretary with any information or material reasonably requested by the General Secretary.
  - (ii) if the parties cannot agree on a basis for the sharing of the costs in respect of the resolution of the dispute between themselves, the responsibilities for the costs will be as determined by the General Secretary.
- (f) no party will be entitled to commence or maintain any action in relation to any dispute out of this Deed until it has been referred and determined as provided in this clause.
- (g) the General Secretary may engage other consultants if necessary and the fees of any other consultants that the General Secretary may engage will be payable as directed by the General Secretary.
- (h) nothing in this clause will prejudice the right of a party to seek urgent injunctive or declaratory relief in respect of a dispute arising out of this Deed.

The parties to this Deed acknowledge and agree:

- (i) that the General Secretary, in his capacity in that role, has been involved in meetings and conversation in respect of matters within the Diocese, that have given rise to the need for this Deed. All parties by signing this Deed waive any right to dispute the right of the General Secretary to act in relation to the resolution of the dispute, arising from any of the actions of the General Secretary in his role as General Secretary in respect to the matters associated with the establishment of this Deed; and
- (ii) The General Secretary, in the case of the General Secretary's unavailability or having a conflict of interest, in the discretion of the General Secretary, may appoint another person ("**General Secretary's Appointee**") to determine the dispute (being a person who in the opinion of the General Secretary has the appropriate skills to determine the dispute) and the General Secretary's Appointee as and when appointed shall have the right to exercise the rights and powers of the General Secretary conferred under this Deed (apart from this power to appoint) and upon such an appointment being made a reference in this clause 24



to the General Secretary shall be deemed to be a reference to the General Secretary's Appointee.

### **Confidentiality**

25. The parties to this Deed and each person who acknowledges themselves to be bound by the provision of this Deed covenant that they will not disclose the terms of this Deed or the matters described in it or the matters referred to in it or matters arising out of its implementation, to any other person or persons whether directly or indirectly, other than:
- (a) with the prior consent of the other parties to this Deed; or
  - (b) to implement the terms of this Deed; or
  - (c) to implement Resolutions of the Independent Oversight Committee (and for that purpose unless a Resolution of the Independent Oversight Committee is expressed to be confidential the terms and effect of any Resolutions shall not be subject to this confidentiality provision); or
  - (d) to obtain legal or financial or other advice; or
  - (e) to comply with any law.

### **Governing Law**

26. This Deed is governed by and construed in accordance with the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of its courts.

### **Interpretation**

27. In this Deed unless the context otherwise indicates:
- (a) references to any party to this Deed shall include the legal personal representatives, executors, administrators, successors and permitted assigns of that party;
  - (b) words importing the singular shall include the plural and vice versa;
  - (c) words importing a gender shall include other genders;
  - (d) references to a person shall be construed as references to an individual, firm, partnership, joint venture, body corporate, association (whether incorporated or not), ministerial corporation, government and governmental, semi-governmental and local authority or agency;

- (e) references to any document (including this Deed) are references to that document as amended, consolidated or supplemented from time to time;
- (f) references to a recital, a paragraph, a clause, a schedule or other annexure shall be construed as references to a recital, paragraph or clause of, or a schedule or annexure to, this Deed and references to this Deed shall include its schedules and any annexures;
- (g) headings included in this Deed are for convenience only and shall be disregarded in the construction of this Deed;
- (h) where any word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
- (i) references to any statute, ordinance or other law shall include all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
- (j) "\$" or "dollars" is a reference to the lawful currency of Australia;
- (k) a provision of or a right created under this Deed may not be waived or varied except in writing signed by the party or parties to be bound;
- (l) this Deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument;
- (m) every covenant or agreement or undertaking expressed or implied by which more persons than one covenant, promise or agree to undertake to perform an obligation in terms of this Deed shall bind such persons jointly and each of them severally; and
- (n) a reference to a covenant or agreement or undertaking expressed or implied in favour of more persons than one shall be construed as a reference to each such persons to be benefited jointly and each of them severally.

**EXECUTED AS A DEED**

**IN WITNESS WHEREOF** the parties hereto have hereto set their hands and seals on the day and year hereinbefore specified.

*[EXECUTION BLOCKS TO BE ADDED]*

The Common Seal of **THE CORPORATE** )  
**TRUSTEES OF THE DIOCESE OF** )  
**GRAFTON** was affixed in the presence of )  
two (2) of its members: )

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

The Common Seal of **THE PERTH** )  
**DIOCESAN TRUSTEES** was hereunto )  
affixed by its authority: )

\_\_\_\_\_  
Archbishop/Administrator

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Secretary

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) named below pursuant to the authority specified.

Corporation: The Synod of the Diocese of Adelaide of the Anglican Church of Australia

.....  
Signature of authorised person

.....  
Signature of authorised person

.....  
Name of authorised person

.....  
Name of authorised person

.....  
Office Held

.....  
Office Held

**Signed by Bishop in Council of the Anglican Diocese of Grafton in the presence of two (2) of its members:**

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

**Signed by Board of Management of the Grafton Diocese Investment Fund in the presence of two (2) of its members:**

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

**Signed by Board of Management of St Cuthbert's Retirement Living Complex in the presence of two (2) of its members:**

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

**Signed by Independent Oversight Committee in the presence of two (2) of its members:**

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

**Signed by the Registrar of the Anglican Diocese of Grafton in the presence of two (2) witnesses:**

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Signed by Member: \_\_\_\_\_

Name of Member: \_\_\_\_\_

**SCHEDULE 1**

**SCHEDULE 1 NOTICE**

*[Notice of Appointment/Removal of Member of Independent Oversight Committee ("**Committee**")]*

To the Registrar  
Diocese of Grafton  
50 Victoria Street  
GRAFTON NSW 2046

registrargrafton@nor.com.au

SECTION 1<sup>1</sup>

..... ("**Notifier**") hereby gives notice  
pursuant to the Oversight Arrangements Deed dated # that the Notifier hereby appoints/removes<sup>2</sup>  
..... [**name of nominee**] as a member of  
the Committee.

SECTION 2<sup>3</sup>

For the purpose of the appointment of a nominee or any Appointed Alternate (each a "**relevant person**") this notice records:

- (a) the address of the relevant person is: .....
- .....
- (b) the email address of the relevant person is: .....
- (c) the relevant person consents to his/her appointment and acknowledges he/she is bound by the provisions of this Deed.

.....  
Signature of relevant person

SECTION 3<sup>4</sup>

Date: .....

Signed on behalf of the Notifier: .....

<sup>1</sup> Section 1 to be completed in all circumstances.

<sup>2</sup> Delete as applicable.

<sup>3</sup> Section 2 is only to be completed, and must be signed, by a person who is a nominee or Alternate Person.

<sup>4</sup> Section 3 must always be signed and dated.

**SCHEDULE 2**

**SCHEDULE 2 NOTICE**

*[Notice of Appointment of Appointed Alternate]*

To the Registrar  
Diocese of Grafton  
50 Victoria Street  
GRAFTON NSW 2046

registrargrafton@nor.com.au

.....

(name of person giving notice) hereby gives notice that as a member of the Independent Oversight Committee I appoint .....

Name of Appointed Alternate

to be my alternate at meetings of the Independent Oversight Committee held in the period from

..... to .....

(beginning of period)

(end of period)

I attach a Schedule 1 Notice with Section 2 completed in respect of, and signed by, the Appointed Alternate.

Signed: ..... Date: .....

(by person giving notice)