



**ADDISONS**

## **Deed of Company Arrangement**

**Afar Retail EF Pty Ltd**  
(Administrators Appointed) ACN 105 772 978

**Jonathon Sherwood Keenan and Peter Paul Krejci**

**Afar Holdings Pty Ltd**  
ACN 002 668 313

**Joseph Shalala**

**Peter Shalala**

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## **Deed of Company Arrangement**

**Date 20 December 2024**

### **Parties**

1. Afar Retail EF Pty Ltd (Administrators Appointed) ACN 105 772 978 C/- BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 (the Company)
2. Jonathon Sherwood Keenan and Peter Paul Krejci C/- BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 (the Administrators)
3. Afar Holdings Pty Ltd C/- Kelly Partners (South West Sydney) Suite1-8 Kellicar Lane, Macarthur square, 200 Gilchrist Drive, Campbelltown NSW 2560 (Holdings)
4. Joseph Shalala, C/- Mangioni Biggs + Co, Level 5, 179 Elizabeth Street, Sydney NSW 2000 (Joseph or Director)
5. Peter Shalala, C/- Mangioni Biggs + Co, Level 5, 179 Elizabeth Street, Sydney NSW 2000 (Peter or Director)

### **Background**

- A. On the Appointment Date, the Administrators were appointed joint and several administrators of the Company under Section 436A(1) of the Corporations Act.
- B. At the Resumed Second Meeting of the creditors of the Company, held in accordance with Section 439A of the Corporations Act on the Meeting Date, the creditors of the Company resolved that they enter into a Deed of Company Arrangement.
- C. This Deed is the instrument which sets out the terms of the Deed of Company Arrangement.
- D. The Administrators have consented to act as Deed Administrators and such consent is evidenced by his execution of this Deed.
- E. Claims of Creditors are to be dealt with as provided for in this Deed.

### **Agreed terms**

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#### **1. Definitions and interpretation**

##### **1.1 Definitions**

In this Deed, the following words, phrases or expressions shall have the following meanings:

**Administrators** means Jonathon Sherwood Keenan and Peter Paul Krejci in their capacity as administrators of the Company or any replacement Administrator and/or Administrators appointed pursuant to the provisions of the Corporations Act.

**Administration** means the administration of the Company under Part 5.3A of the Corporations Act in the period between the Appointment Date and the Commencement Date.

**Administrators Disbursements** means all disbursements (both internal and external) reasonably incurred by the Administrators or the Deed Administrators and, where required, approved by resolution of the Creditors or order of the Court:

(a) in their capacity as administrators of the Company; or

(b) in their capacity as Deed Administrators,

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including but not limited to any Required Payments and amounts connected with any action, suit, proceeding, account, claim or demand made on the Administrators or the Company by any person arising out of the appointment of the Administrators as administrator of the Company or as Deed Administrators under this Deed, acting as administrators of the Company or as Deed Administrators under this Deed or any application to set aside this Deed including without limitation, all legal costs incurred by the Administrators or the Deed Administrators in respect of the foregoing.

**Administrators Remuneration** means the remuneration of the Administrators or Deed Administrators, their partners, directors, and staff or other fees to which the Administrators or Deed Administrators are lawfully entitled, with respect to acting:

- (a) in their capacity as administrators of the Company; or
- (b) in their capacity as Deed Administrators under this Deed,

calculated at the hourly rates charged from time to time by BRI Ferrier.

**Admitted Claim** means a Claim of a Participating Creditor in the amount it is admitted to participate in the Deed.

**Appointment Date** means the appointment of the Administrators on 1 October 2024.

**Arrangement Period** means the period commencing on the Commencement Date and ending upon Effectuation.

**ASIC** means the Australian Securities & Investments Commission.

**Associated Entity** has the same meaning as in section 50AAA of the Corporations Act.

**Business** means the business and undertaking of the Company and which was carried on by it at or before the Appointment Date.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or a bank holiday in New South Wales.

**Claim** means a debt payable by or a claim or cause of action against the Company, whether present or future, certain or contingent, ascertained or sounding only in damages and whether a penalty or fine, being debts, claims or causes of action the circumstances giving rise to which occurred before the Appointment Date and would have been provable against the Company if it had gone into liquidation on that date, including any claim made by Westfield or its Related Entities in relation to any Leases or Stores entered into by the Company (whether actual or implied).

**Commencement Date** means the date of this Deed.

**Conditions** means the condition in clause 3 of this Deed.

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

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

**Court** means a Court within the meaning of section 58AA of the Corporations Act and which has jurisdiction in connection with Part 5.3A of the Corporations Act and this Deed.

**Creditors** means any persons having a Claim against the Company.

**Deed** means this Deed of Company Arrangement and any annexures to it.

**Deed Administrators** means Jonathon Sherwood Keenan and Peter Paul Krejci in their capacity as deed administrators of the Deed of Company Arrangement or any replacement Deed Administrator and/or Deed Administrators appointed pursuant to the provisions of the Corporations Act.

**Deed Administrator's Account** means:

Account name: Afar Retail EF Pty Ltd  
(Subject to Deed of Company Arrangement)

BSB: 082 057

Account number: 530271473

Bank: National Australia Bank

**Deed Fund** means the assets and funds set out in clause 6.

**Effectuation** means the time when the events set out in clause 13.2(a) of this Deed have all occurred.

**Employee Creditors** means a Participating Creditor of the Company whose Claim would, in the event of a winding up of the Company which commenced on the Appointment Date, be payable in priority to other unsecured Claims in accordance with sections 556(1)(c) and (e) to (h), section 560 or section 561 of the Corporations Act.

**Employee Superannuation Entitlements** means superannuation entitlements accrued by Continuing Employees of the Company as at the Appointment Date as determined by the Deed Administrators in accordance with this Deed.

**Enforcement Process** has the meaning given to that phrase in section 9 of the Corporations Act.

**Excluded Assets** means any guarantees held by Westfield or its Related Entities in respect of the Leases or Stores and any other assets of the Company not included within the Deed Fund.

**GST** meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

**Holdings Contribution** means the \$300,000 required by clause 7 of this Deed.

**Indemnity Funds** means the balance of the \$140,000 funds that were paid by Peter and Joseph, that remain held by the Administrators as at the Commencement Date, subject to the Administrator's remuneration, costs and expenses.

**Insured Claim** means a Claim to which an insurance policy responds under a contract of insurance that is of the type described in section 562 of the Corporations Act.

**Insured Creditors** means a Participating Creditor whose Claim is an Insured Claim.

**Leases or Stores** means the terms governing the Company's occupation of the following premises:

1. shop 1088 and 1099, Westfield Tuggerah;
2. shop 2010, Westfield Liverpool;
3. shops 355 and 357, Westfield Liverpool;
4. shop 092/93, Westfield Penrith;

5. shop 121, Westfield Burwood;
6. shops 91 and 92, Westfield Mt Druitt.

**Meeting Date** means 16 December 2024.

**Member** has the same meaning as in section 231 of the Corporations Act and to the extent not already included in that definition, includes a "contributory", as that word is defined in section 9 of the Corporations Act.

**Non-Participating Creditor** means any creditor that is a Related Entity of the Company (including the Peter and Joseph and any of their Related Entities)

**Officers** has the same meaning as in section 9 of the Corporations Act.

**Participating Creditors** means Creditors which are not Non-Participating Creditors.

**PPSR** means Personal Property Securities Register.

**Practice Rules** means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

**Practice Schedule** means the *Insolvency Practice Schedule (Corporations)* that is Schedule 2 to the Corporations Act.

**Prescribed Provisions** means the regulations contained in Schedule 8A of the Corporations Regulations.

**Property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a chose in action as at Commencement Date.

**Related Entity** has the same meaning as in section 9 of the Corporations Act.

**Required Payments** means any debt or other monetary obligation due and payable (now or in the future) and incurred by the Administrators or the Company during the administration of the Company under Part 5.3A of the Corporations Act and for which the Administrators are personally liable.

**Superannuation Contribution** has the same meaning as in section 556 of the Corporations Act.

**Superannuation Guarantee Charge** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Termination Date** means, unless this Deed is terminated earlier by operation of clause 13.1 of this Deed, the date when this Deed terminates upon Effectuation.

**Westfield** means Scentre Shopping Centre Management Pty Ltd, the lessors identified on the Leases, or the owners of the Stores, by themselves, their related or nominated entities or otherwise

## 1.2 Interpretation

In this Deed the headings are used for convenience only and do not affect the interpretation of this Deed and unless the context requires otherwise:

- (a) the singular number includes the plural number and the masculine gender includes the feminine gender and the neutral gender and vice versa;

- (b) covenants binding or benefiting more than one party shall respectively bind or benefit each of them severally and every two or more of them jointly;
- (c) headings shall not form part of this Deed nor be used in its interpretation;
- (d) all amounts are in Australian dollars unless otherwise stated;
- (e) the reference to a person shall include a reference to a corporation or to any other entity, including the Crown, and vice versa;
- (f) the reference to a party includes a reference to that party's successors and assigns;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney;
- (j) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaced it or which substantially succeeds to its powers or functions;
- (k) no provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision; and
- (l) if doubt arises as to the meaning of any term in this Deed, the meaning ascribed to that term in the Corporations Act or the Corporations Regulations as at the date of this Deed is to apply.

#### 1.3 Inconsistency with Act or Regulations

If there is any inconsistency between the provisions of this Deed and the Corporations Act or Regulations, this Deed prevails to the extent permitted by law.

#### 1.4 Business Days

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, that act, matter or thing will be done on the immediately succeeding Business Day.

#### 1.5 Prescribed Provisions

The Prescribed Provisions are not incorporated into this Deed except to the extent specifically set out in this Deed.

#### 1.6 Purpose and objects

The purposes and objects of this Deed are to provide for the business, property and affairs of the Company to be administered in a way that maximises the chances of the Company, or as much as possible, its business continuing in existence, or if this is not possible provides

the best return for Creditors and a return that is better than would result from an immediate winding up of the Company.

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## **2. Operation**

### **2.1 Commencement Date**

This Deed will commence and take effect on the Commencement Date.

### **2.2 Persons bound by this Deed**

This Deed binds:

- (a) in accordance with section 444D of the Corporations Act, every Creditor;
- (b) in accordance with section 444G of the Corporations Act:
  - (i) the Company;
  - (ii) the Officers of the Company;
  - (iii) the Members of the Company; and
  - (iv) the Non-Participating Creditors;
  - (v) the Deed Administrators.
- (c) This Deed otherwise has a binding effect as a deed of company arrangement in accordance with the Corporations Act.

### **2.3 Directors covenants, warranties and obligations**

The covenants, warranties and obligations provided, or owed, by the Director to the Company or the Deed Administrators in this Deed are given by them by way of deed, and binding upon them as such, and accordingly, are enforceable at law.

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## **3. Conditions**

### **3.1 Simultaneously with the execution of this Deed, Holdings will direct Mangioni Biggs & Co to transfer the sum of \$100,000 from its trust account to the Deed Administrators' Account.**

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## **4. Administrators**

### **4.1 Administrators to administer Deed**

This Deed is administered by the Deed Administrators who are hereby appointed as administrators of this Deed. The Deed Administrators, by their execution of this Deed, consent to be appointed as Deed Administrators, without prejudice to any rights which may have arisen by virtue of their appointment, if at all, as administrators of the Company.

### **4.2 Deed Administrators remuneration and costs**

In consideration for consenting to be appointed as administrators of this Deed, the Deed Administrators are entitled to be remunerated for acting as the Administrators and Deed Administrators from the Deed Fund on the basis that such remuneration has been approved by the Creditors of the Company or the Court under Division 60 of the Practice Schedule (as applicable).

### **4.3 Powers of the Deed Administrators**

For the purpose only of administering this Deed, the Deed Administrators:

- (a) will have those powers set out in provision 2 of the Prescribed Provisions;
- (b) have full access to the Company's books, records and bank accounts (including a right to inspect and audit the same); and
- (c) will be entitled to do anything necessarily incidental or ancillary to exercising a power set out in this Deed.

#### 4.4 Limitation of Deed Administrators liability and indemnity

- (a) To the fullest extent permitted by law, the Deed Administrators will not, in the performance of their functions and duties and the exercise of their powers under this Deed, be personally liable for:
  - (i) any debt, liability or other obligation which the Deed Administrators may incur on behalf of the Company under this Deed; or
  - (ii) any loss or damage caused by any act, default or omission by the Deed Administrators or on their behalf in the performance of their powers, functions and duties under this Deed (unless due to the gross or wilful negligence of, or fraud or other breach of duty by, the Deed Administrators).
- (b) The Deed Administrators are entitled to an indemnity out of all property of the Company that would otherwise be available for the Creditors of the Company, in priority to all other Creditor claims and entitlements for:
  - (i) the Required Payments;
  - (ii) the Administrators Remuneration; and
  - (iii) the Administrators Disbursements.
- (c) The indemnity under clause 4.4(b) of this Deed will not be affected in any way by any irregularity or invalidity in the appointment of the Administrators or the Deed Administrators and extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or the Deed Administrators.
- (d) The Deed Administrators have a lien over the Company's property to secure the indemnity in clause 4.4(b) of this Deed and which lien is in addition to any conferred on them by the Corporations Act or general law.
- (e) The Indemnity under clause 4.4(b) of this Deed and the lien under clause 4.4(d) of this Deed will take effect on the Commencement Date and will not be limited as to time for the benefit of the Deed Administrators, notwithstanding the removal, replacement or resignation of the Deed Administrators either as administrators of the Company or as Deed Administrators under this Deed, or the termination of this Deed for any reason.

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#### 5. Deed Administrators deemed agents of the Company

In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Deed Administrators acts as agents for and on behalf of the Company.

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#### 6. Deed Fund

- 6.1 The Deed Fund will comprise of:

- (a) the balance of Company's funds held by the Administrators at the Commencement Date;
- (b) any funds remaining from the Indemnity Funds;
- (c) any GST or other recoveries made during the Administration, or during the period governed by this Deed; and
- (d) the Holdings Contributions.

6.2 The Deed Fund does not include the Excluded Assets.

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## 7. Holdings Contributions

### 7.1 Payment of Holdings Contributions

- (a) Holdings will make or procure payment of the Holdings Contribution by way of electronic funds transfer to the Deed Administrator's Account by way of the following instalments:
  - (i) \$100,000 in accordance with clause 3.1;
  - (ii) \$100,000 within 1 calendar month of the Commencement Date; and
  - (iii) \$100,000 within 2 calendar months of the Commencement Date.
- (b) If Holdings fails to comply with clauses 7 Deed Administrators may, at their discretion, extend the time for payment, but any such extension can be for no more than one month.
- (c) The Holdings Contribution is not refundable to Holdings or any other person.

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## 8. Order of distribution of the Deed Fund

8.1 The Deed Administrators shall distribute the Deed Fund in the following order:

- (a) first, in payment of any unpaid Administrator's remuneration, disbursements, expenses, trading liabilities and Required Payments incurred in the course of the administration as at the commencement of this Deed;
- (b) second, in payment of the Deed Administrators' remuneration, fees, costs and expenses in relation to the Company pursuant to the Corporations Act, incurred administering the Deed;
- (c) third, in payment of any Participating Creditors with priority creditor Claims in accordance with section 556 of the Act;
- (d) fourth, pari passu in payment of Participating Creditors with unsecured creditor Claims;
- (e) fifth, any surplus to be returned to the Company.

### 8.2 Interim Payments

- (a) The Deed Administrators may make interim payments to Participating Creditors whose claims have been proved and admitted in partial satisfaction of their debts at such time as their in their absolute discretion might deem fit.

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## 9. Claims of Participating Creditors

### 9.1 Dealing with Claims

Subject to this Deed, Subdivisions A, B, D and E of Division 6 of Part 5.6 of the Corporations Act and regulations 5.6.37 to 5.6.72 of the Corporations Regulations each apply to this Deed with such modifications as may be necessary in respect of the manner in which Participating Creditors must make a Claim and in how the Deed Administrators adjudicates on a Claim (but, for the avoidance of doubt, not in respect of the priority of such Claims) as if:

- (a) the references to:
  - (i) "liquidator" were references to the Deed Administrators; and
  - (ii) the "relevant date" was a reference to the Appointment Date;
- (b) any other reference that is relevant to:
  - (i) the liquidator were in a reference in a form that is applicable to the Deed Administrators; and
  - (ii) any other matter relating to the liquidation were a reference in a form that is applicable to the administration of this Deed.

### 9.2 Bar to Creditor's claims

Subject to section 444D of the Corporations Act and clause 9.3 of this Deed, this Deed may be pleaded by the Company against any Creditor in bar of any Claim and a Creditor (whether the Creditor is a Participating Creditor or a Non-Participating Creditor and whether the Creditor's Claim is admitted or not admitted or established or not established under this Deed) in respect of such a Claim must not, in the Arrangement Period:

- (a) take or concur in the taking of any step to wind up the Company; or
- (b) except for the purpose and to the extent provided in this Deed, institute, revive, continue or prosecute any legal proceedings, action or suit pending against or in relation to the Company; or
- (c) take any further step (including any step by way of legal or equitable execution) in any proceedings pending against or in relation to the Company as at the Appointment Date other than to seek that the proceedings be discontinued or dismissed; or
- (d) commence or take any further steps in any Enforcement Process in relation to the property of the Company including property used or occupied by or in possession of the Company as at the Appointment Date; or
- (e) exercise any right of set off or cross action to which the Creditor would not have been entitled had the Company been wound up as at the Appointment Date; or
- (f) commence or take any further step in any arbitration or mediation against the Company or to which the Company is a party.

### 9.3 Insured Creditors and Insured Claims

- (a) An Insured Creditor in respect of an Insured Claim may:

- (i) provided clause 9.3(b) of this Deed is first complied with, in relation to its Insured Claim only, take action to recover the amount due in respect of the Insured Claim against the Company, but such action must not exceed the minimum which is necessary to obtain payment directly from the insurer; and
- (b) by settlement, arbitral award, or judgment, obtain payment from the insurer in connection with the Insured Claim in the same way as if the Company was being wound up and section 562 of the Corporations Act applied to the Insured Claim and the payment received, or to be received, from the insurer.
- (c) Where an Insured Creditor intends to take action permitted by clause 9.3(a) of this Deed:
  - (i) it must:
    - (A) take the action and do all things required by this clause before Effectuation; and
    - (B) prior to taking the action, provide the Company with an indemnity prior to, or during, any action in relation to the Insured Claim, and which indemnity must be in a form satisfactory to the Deed Administrators (acting reasonably);
  - (ii) the Company and the Deed Administrators are not required to accept the indemnity if it or they are not satisfied (acting reasonably) that the Insured Creditor has (and will continue to have) access to sufficient cash, or cash equivalents, to satisfy the indemnity; and
  - (iii) the Company may plead this Deed as a bar to any action taken by an Insured Creditor in relation to the Insured Claim in circumstances where the Insured Creditor has not, prior to commencing the action, given the indemnity required by this clause of this Deed.

#### 9.4 Statutory priority of Employee Creditors preserved

- Notwithstanding that the Administrators have been informed that the Company did not employ any employees, for the purposes of section 444DA of the Corporations Act, any Employee Creditors that have employee entitlements will be entitled to a priority from the Deed Fund the equivalent of which they would otherwise receive under sections 556, 560 and 561 of the Corporations Act as if the Company was in liquidation.

#### 9.5 Superannuation Contribution Debts not admissible

Notwithstanding that the Administrators have been informed that the Company did not employ any employees, should the need arise, the Deed Administrators must determine that the whole of a debt or a particular part of a debt by way of a Superannuation Contribution is not admissible to proof against the Company if:

- (a) a debt by way of a Superannuation Guarantee Charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to proof against the Company; and
- (b) the Deed Administrators is satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first mentioned debt in the case of the whole of a debt or part of the first mentioned debt in the case of part of a debt.

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**10. Westfield**

For distribution purposes, Westfield (and any of its Related Entities) may only claim once, by way of a single proof of debt, in respect of all amounts claimed in connection with the Leases or Stores.

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**11. Secured Creditors**

This Deed does not prevent a Secured Creditor from realising or otherwise dealing with their Security Interest unless:

- (a) the debt subject to the Security Interest has been paid in full; or
- (b) the Security Interest granted by the Company has vested in the Company.

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**12. Claims of Non-Participating Creditors and Insured Claims**

- (a) Non-Participating Creditors have no entitlement to, and must not receive or participate in, any distribution from the Deed Fund.
- (b) Without limiting clause 12(a) of this Deed and subject to the other provisions of this Deed, any Claim of a Non-Participating Creditor, as and from the Commencement Date, is deferred and may not be pursued against the Company until this Deed has been effectuated or terminated
- (c) The Non-Participating Creditors undertake that they will not take any steps to wind up the Company or commence, revive, continue or prosecute legal proceedings, or claims against the Company until this Deed has been effectuated or terminated;
- (d) Insured Creditors, to the extent to which any Claim they have is an Insured Claim, must not receive or participate in, any distribution from the Deed Fund.

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**13. Claims Extinguished****13.1 Deed binds Creditors**

This Deed binds all Creditors, including for the avoidance of doubt, the Non-Participating Creditors.

**13.2 Entitlement accepted in full satisfaction of Claims**

If the Deed Administrators have distributed the Deed Fund in accordance with the Deed, all Claims of Creditors are released in full and extinguished other than the Claims of:

- (a) Non-Participating Creditors, which have been subordinated and postponed in accordance with clause 12 of this Deed; and
- (b) Insured Creditors in respect and to the extent of its Insured Claim, which Insured Claim is released in full and extinguished on the last to occur of:
  - (i) Effectuation; and
  - (ii) where a policy of insurance has first responded in and provided the Insured Creditor has (where required) first complied with clause 9.4 of this Deed, payment to the Insured Creditor of the Insured Claim in the amount

It is entitled to by operation of section 562 of the Corporations Act as modified and applied by clause 9.1 of this Deed; and

**13.3 Execution of release**

Upon their release under this Deed, a Creditor, if called upon to do so by the Deed Administrators, shall execute and deliver to the Deed Administrators or the Company such forms of postponement, release or extinguishment of its Claim against the Company as the Deed Administrators require.

**13.4 Meetings**

Division 75 of the Practice Schedule and Division 75 of the Practice Rules as at the date of this Deed, with such modifications as are necessary, apply to meetings of Creditors, Employee Creditors or Members, held pursuant to this Deed.

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**14. Termination and Effectuation**

**14.1 Termination of Deed**

(a) This Deed automatically terminates upon the happening of any one of the following events:

- (i) a breach of clause 3; or
- (ii) a breach of clause 7.1(a), subject to clause 7.1(b);
- (iii) the Court makes an order terminating this Deed under section 445D of the Corporations Act.
- (iv) the Creditors pass a resolution terminating this Deed at a meeting convened pursuant to Division 75 of the Practice Schedule by notice setting out the proposed resolution; or
- (v) a Secured Creditor enforces its security by the appointment of a receiver or if an administrator, provisional liquidator or liquidator is appointed to the Company.

(b) In the event that a party to this Deed is unable to comply with a fundamental or material provision of this Deed, including the payment of money required by this Deed or the outcome for Creditors is materially different to that which was estimated in the proposal that was voted upon by Creditors on the Meeting Date and which gave rise to this Deed, the Deed Administrators may, in their absolute discretion, convene a meeting of the Creditors pursuant to Division 75 of the Practice Schedule, at which Creditors may resolve to:

- (i) vary the terms of this Deed;
- (ii) terminate this Deed;
- (iii) enforce the terms of this Deed; or
- (iv) approve any other proposal permitted under the Corporations Act, provided that the Deed will not be capable of termination after the Deed Fund has been distributed in accordance with the Deed.

(c) If this Deed is terminated under clause 14.1 then the Company is to be wound up and Deed Administrators are to be appointed as liquidators of the Company.

---

#### 14.2 Effectuation of Deed

(a) If:

- (i) the Condition has been satisfied;
- (ii) all payments required to be made to the Company or to the Deed Administrators pursuant to this Deed have been made or the Deed Administrators form the view that no further amounts will be paid or recovered; and
- (iii) distribution has taken place in accordance with clause 8,

the Deed Administrators must certify to that effect in writing by completing the notice set out below and must within 10 Business Days lodge with ASIC a notice of termination of this Deed in the following form:

*"We, Jonathon Sherwood Keenan and Peter Paul Krejci, as Deed Administrators of AFAR Retail EF Pty Ltd (subject to Deed of Company Arrangement) executed on [date] certify that the Deed has been wholly effectuated."*

(b) Upon Effectuation, this Deed terminates.

---

#### 15. Control of Company

During the term of the Deed, the Deed Administrators will take no part in the management or operation of the Company's business. The day to day control and stewardship of the Company and its trading immediately returns to the Directors, Joseph Shalala and Peter Shalala from the Commencement Date, provided always that, notwithstanding day to day control and stewardship of the Company immediately returns to the Directors, the Deed Administrators retain the right and entitlement, in their absolute discretion, to exercise all or any of the powers conferred on the Deed Administrators, for the purpose of this Deed, by this Deed or the Corporations Act to the exclusion of the powers of the Directors, or directors of the Company.

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#### 16. Director Assistance

(a) The Directors will assist the Deed Administrators with accounting, taxation reporting, or as otherwise requested.

---

#### 17. Notices

(a) A notice or other communication connected with this Deed (Notice) has no legal effect unless it is in writing.

(b) In addition to any other method of service provided by law, the Notice may be:

- (i) sent by prepaid post to the address of the addressee set out in this Deed or subsequently notified;
- (ii) sent by email to the email address of the addressee; or
- (iii) delivered at the address of the addressee set out in this Deed or subsequently notified.

(c) A Notice must be treated as given and received:

- (i) if sent by post, on the 5th Business Day (at the address to which it is posted) after posting; or
- (ii) if sent by email, on the Business Day the email is received by the recipient.

(d) A Notice sent or delivered in a manner provided by clause 13(b) must be treated as validly given to and received by the party to which it is addressed even if:

- (i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
- (ii) the Notice is returned unclaimed.

(e) Any Notice by a party may be given and may be signed by its solicitor.

(f) The address for service on the Deed Administrators is:

- (i) By post:

Attention: Jonathon Sherwood Keenan and Peter Paul Krejci  
C/- BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000
- (ii) By email:

[jkeenan@brifnsw.com.au](mailto:jkeenan@brifnsw.com.au) and [pkrejci@brifnsw.com.au](mailto:pkrejci@brifnsw.com.au)

(g) The addresses for service on the Company and the Director are:

- (i) By post:

Attention: Joseph Shalala  
Suite 4, 132-134 Burwood Road  
Burwood NSW 2134
- (ii) By email: [joseph@insport.com.au](mailto:joseph@insport.com.au)

(h) The addresses for service on Holdings is

- (i) By post:

Attention: Joseph Shalala  
Suite 4, 132-134 Burwood Road  
Burwood NSW 2134
- (ii) By email: [joseph@insport.com.au](mailto:joseph@insport.com.au)

---

## 18. General

### 18.1 Governing law

This Deed is governed by and construed in accordance with the laws of New South Wales and any action or proceeding arising out of or in connection with this Deed must be brought in a court of competent jurisdiction in the state of New South Wales.

**18.2 Admission of penalties**

Claims in the nature of penalties, fines and penalty interest imposed on the Company by a court or by a person in accordance with legislation are not admissible to proof under this Deed if they would not have been admissible to proof in a liquidation, and the Claims of that type of a Creditor will not be admitted notwithstanding that the Claim in respect of the penalty, fine or penalty interest will otherwise be subject to this Deed.

**18.3 Electronic Signature & Counterparts**

- (a) To the extent permitted by law, this Deed may be electronically signed.
- (b) Each party consents to this Deed being electronically signed by each party.
- (c) Where this Deed is electronically signed by a party, the party warrants and agrees that:
  - (i) the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by electronic signature; and
  - (ii) they have affixed their own electronic signature.
- (d) This Deed may be signed, including electronically signed, in a number of counterparts which together constitute one document.
- (e) Each party consents to the exchange of counterparts of this Deed by delivery by email or such other electronic means as may be agreed by the parties. The parties agree that an electronic or scanned copy of a counterpart that is delivered or such other agreed electronic means:
  - (i) is deemed an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.

**18.4 Severability**

Notwithstanding anything contained within this Deed, if any provision or clause of this Deed is held or found to be void, invalid or otherwise unenforceable, then the provision or clause is deemed to be severed from this Deed to the extent only that it is void, invalid or unenforceable, and the remainder of the provision or clause remains in full force and effect.

**18.5 Waiver**

The failure or omission of a party at any time to enforce or require strict compliance with any clause of this Deed or to make any decision or election under this Deed shall not operate as a waiver by them of any rights, whether express or implied, arising under this Deed

Executed by the parties as a Deed

Executed by Afar Retail EF Pty Ltd  
(Administrators Appointed) ACN 105 772  
978 by its Administrators, Jonathon Sherwood  
Keenan and Peter Paul Krejci

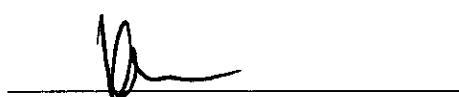


Signature of Jonathon Sherwood Keenan



Signature of Peter Paul Krejci

Signed, sealed and delivered by Jonathon  
Sherwood Keenan in the presence of:



Signature of Witness



Signature of Jonathon Sherwood Keenan

Name of Witness  
(BLOCK LETTERS)

Signed, sealed and delivered by Peter Paul  
Krejci in the presence of:



Signature of Witness



Signature of Peter Paul Krejci

Name of Witness  
(BLOCK LETTERS)

Signed, sealed and delivered by Afar Holdings Pty Ltd ACN 002 668 313 in accordance with s 127 of the Corporations Act 2001 (Cth) )

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Signature of Director

---

Signature of Director/Secretary

Signed, sealed and delivered by Joseph Shalala in the presence of: )

---

Signature of Joseph Shalala

---

Signature of Witness

Name of Witness  
(BLOCK LETTERS)

Signed, sealed and delivered by Peter Shalala in the presence of: )

---

Signature of Peter Shalala

---

Signature of Witness

Name of Witness  
(BLOCK LETTERS)



## Deed of Company Arrangement

**Afar Retail EF Pty Ltd**  
(Administrators Appointed) ACN 105 772 978

**Jonathon Sherwood Keenan and Peter Paul Krejci**

**Afar Holdings Pty Ltd**  
ACN 002 668 313

**Joseph Shalala**

**Peter Shalala**

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## Deed of Company Arrangement

Date 20 December 2024

### Parties

1. Afar Retail EF Pty Ltd (Administrators Appointed) ACN 105 772 978 C/- BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 (the Company)
2. Jonathon Sherwood Keenan and Peter Paul Krejci C/- BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000 (the Administrators)
3. Afar Holdings Pty Ltd C/- Kelly Partners (South West Sydney) Suite1-8 Kellicar Lane, Macarthur square, 200 Gilchrist Drive, Campbelltown NSW 2560 (Holdings)
4. Joseph Shalala, C/- Mangioni Biggs + Co, Level 5, 179 Elizabeth Street, Sydney NSW 2000 (Joseph or Director)
5. Peter Shalala, C/- Mangioni Biggs + Co, Level 5, 179 Elizabeth Street, Sydney NSW 2000 (Peter or Director)

### Background

- A. On the Appointment Date, the Administrators were appointed joint and several administrators of the Company under Section 436A(1) of the Corporations Act.
- B. At the Resumed Second Meeting of the creditors of the Company, held in accordance with Section 439A of the Corporations Act on the Meeting Date, the creditors of the Company resolved that they enter into a Deed of Company Arrangement.
- C. This Deed is the instrument which sets out the terms of the Deed of Company Arrangement.
- D. The Administrators have consented to act as Deed Administrators and such consent is evidenced by his execution of this Deed.
- E. Claims of Creditors are to be dealt with as provided for in this Deed.

### Agreed terms

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#### 1. Definitions and interpretation

##### 1.1 Definitions

In this Deed, the following words, phrases or expressions shall have the following meanings:

**Administrators** means Jonathon Sherwood Keenan and Peter Paul Krejci in their capacity as administrators of the Company or any replacement Administrator and/or Administrators appointed pursuant to the provisions of the Corporations Act.

**Administration** means the administration of the Company under Part 5.3A of the Corporations Act in the period between the Appointment Date and the Commencement Date.

**Administrators Disbursements** means all disbursements (both internal and external) reasonably incurred by the Administrators or the Deed Administrators and, where required, approved by resolution of the Creditors or order of the Court:

(a) in their capacity as administrators of the Company; or

(b) in their capacity as Deed Administrators,

including but not limited to any Required Payments and amounts connected with any action, suit, proceeding, account, claim or demand made on the Administrators or the Company by any person arising out of the appointment of the Administrators as administrator of the Company or as Deed Administrators under this Deed, acting as administrators of the Company or as Deed Administrators under this Deed or any application to set aside this Deed including without limitation, all legal costs incurred by the Administrators or the Deed Administrators in respect of the foregoing.

**Administrators Remuneration** means the remuneration of the Administrators or Deed Administrators, their partners, directors, and staff or other fees to which the Administrators or Deed Administrators are lawfully entitled, with respect to acting:

- (a) in their capacity as administrators of the Company; or
- (b) in their capacity as Deed Administrators under this Deed,

calculated at the hourly rates charged from time to time by BRI Ferrier.

**Admitted Claim** means a Claim of a Participating Creditor in the amount it is admitted to participate in the Deed.

**Appointment Date** means the appointment of the Administrators on 1 October 2024.

**Arrangement Period** means the period commencing on the Commencement Date and ending upon Effectuation.

**ASIC** means the Australian Securities & Investments Commission.

**Associated Entity** has the same meaning as in section 50AAA of the Corporations Act.

**Business** means the business and undertaking of the Company and which was carried on by it at or before the Appointment Date.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or a bank holiday in New South Wales.

**Claim** means a debt payable by or a claim or cause of action against the Company, whether present or future, certain or contingent, ascertained or sounding only in damages and whether a penalty or fine, being debts, claims or causes of action the circumstances giving rise to which occurred before the Appointment Date and would have been provable against the Company if it had gone into liquidation on that date, including any claim made by Westfield or its Related Entities in relation to any Leases or Stores entered into by the Company (whether actual or implied).

**Commencement Date** means the date of this Deed.

**Conditions** means the condition in clause 3 of this Deed.

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

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

**Court** means a Court within the meaning of section 58AA of the Corporations Act and which has jurisdiction in connection with Part 5.3A of the Corporations Act and this Deed.

**Creditors** means any persons having a Claim against the Company.

**Deed** means this Deed of Company Arrangement and any annexures to it.

**Deed Administrators** means Jonathon Sherwood Keenan and Peter Paul Krejci in their capacity as deed administrators of the Deed of Company Arrangement or any replacement Deed Administrator and/or Deed Administrators appointed pursuant to the provisions of the Corporations Act.

**Deed Administrator's Account** means:

Account name: Afar Retail EF Pty Ltd  
(Subject to Deed of Company Arrangement)

BSB: 082 057

Account number: 530271473

Bank: National Australia Bank

**Deed Fund** means the assets and funds set out in clause 6.

**Effectuation** means the time when the events set out in clause 13.2(a) of this Deed have all occurred.

**Employee Creditors** means a Participating Creditor of the Company whose Claim would, in the event of a winding up of the Company which commenced on the Appointment Date, be payable in priority to other unsecured Claims in accordance with sections 556(1)(c) and (e) to (h), section 560 or section 561 of the Corporations Act.

**Employee Superannuation Entitlements** means superannuation entitlements accrued by Continuing Employees of the Company as at the Appointment Date as determined by the Deed Administrators in accordance with this Deed.

**Enforcement Process** has the meaning given to that phrase in section 9 of the Corporations Act.

**Excluded Assets** means any guarantees held by Westfield or its Related Entities in respect of the Leases or Stores and any other assets of the Company not included within the Deed Fund.

**GST** meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

**Holdings Contribution** means the \$300,000 required by clause 7 of this Deed.

**Indemnity Funds** means the balance of the \$140,000 funds that were paid by Peter and Joseph, that remain held by the Administrators as at the Commencement Date, subject to the Administrator's remuneration, costs and expenses.

**Insured Claim** means a Claim to which an insurance policy responds under a contract of insurance that is of the type described in section 562 of the Corporations Act.

**Insured Creditors** means a Participating Creditor whose Claim is an Insured Claim.

**Leases or Stores** means the terms governing the Company's occupation of the following premises:

1. shop 1088 and 1099, Westfield Tuggerah;
2. shop 2010, Westfield Liverpool;
3. shops 355 and 357, Westfield Liverpool;
4. shop 092/93, Westfield Penrith;

5. shop 121, Westfield Burwood;
6. shops 91 and 92, Westfield Mt Druitt.

**Meeting Date** means 16 December 2024.

**Member** has the same meaning as in section 231 of the Corporations Act and to the extent not already included in that definition, includes a "contributory", as that word is defined in section 9 of the Corporations Act.

**Non-Participating Creditor** means any creditor that is a Related Entity of the Company (including the Peter and Joseph and any of their Related Entities)

**Officers** has the same meaning as in section 9 of the Corporations Act.

**Participating Creditors** means Creditors which are not Non-Participating Creditors.

**PPSR** means Personal Property Securities Register.

**Practice Rules** means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

**Practice Schedule** means the *Insolvency Practice Schedule (Corporations)* that is Schedule 2 to the Corporations Act.

**Prescribed Provisions** means the regulations contained in Schedule 8A of the Corporations Regulations.

**Property** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a chose in action as at Commencement Date.

**Related Entity** has the same meaning as in section 9 of the Corporations Act.

**Required Payments** means any debt or other monetary obligation due and payable (now or in the future) and incurred by the Administrators or the Company during the administration of the Company under Part 5.3A of the Corporations Act and for which the Administrators are personally liable.

**Superannuation Contribution** has the same meaning as in section 556 of the Corporations Act.

**Superannuation Guarantee Charge** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Termination Date** means, unless this Deed is terminated earlier by operation of clause 13.1 of this Deed, the date when this Deed terminates upon Effectuation.

**Westfield** means Scentre Shopping Centre Management Pty Ltd, the lessors identified on the Leases, or the owners of the Stores, by themselves, their related or nominated entities or otherwise

## 1.2 **Interpretation**

In this Deed the headings are used for convenience only and do not affect the interpretation of this Deed and unless the context requires otherwise:

- (a) the singular number includes the plural number and the masculine gender includes the feminine gender and the neutral gender and vice versa;

- (b) covenants binding or benefiting more than one party shall respectively bind or benefit each of them severally and every two or more of them jointly;
- (c) headings shall not form part of this Deed nor be used in its interpretation;
- (d) all amounts are in Australian dollars unless otherwise stated;
- (e) the reference to a person shall include a reference to a corporation or to any other entity, including the Crown, and vice versa;
- (f) the reference to a party includes a reference to that party's successors and assigns;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney;
- (j) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaced it or which substantially succeeds to its powers or functions;
- (k) no provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision; and
- (l) if doubt arises as to the meaning of any term in this Deed, the meaning ascribed to that term in the Corporations Act or the Corporations Regulations as at the date of this Deed is to apply.

**1.3 Inconsistency with Act or Regulations**

If there is any inconsistency between the provisions of this Deed and the Corporations Act or Regulations, this Deed prevails to the extent permitted by law.

**1.4 Business Days**

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, that act, matter or thing will be done on the immediately succeeding Business Day.

**1.5 Prescribed Provisions**

The Prescribed Provisions are not incorporated into this Deed except to the extent specifically set out in this Deed.

**1.6 Purpose and objects**

The purposes and objects of this Deed are to provide for the business, property and affairs of the Company to be administered in a way that maximises the chances of the Company, or as much as possible, its business continuing in existence, or if this is not possible provides

the best return for Creditors and a return that is better than would result from an immediate winding up of the Company.

---

## **2. Operation**

### **2.1 Commencement Date**

This Deed will commence and take effect on the Commencement Date.

### **2.2 Persons bound by this Deed**

This Deed binds:

- (a) in accordance with section 444D of the Corporations Act, every Creditor;
- (b) in accordance with section 444G of the Corporations Act:
  - (i) the Company;
  - (ii) the Officers of the Company;
  - (iii) the Members of the Company; and
  - (iv) the Non-Participating Creditors;
  - (v) the Deed Administrators.
- (c) This Deed otherwise has a binding effect as a deed of company arrangement in accordance with the Corporations Act.

### **2.3 Directors covenants, warranties and obligations**

The covenants, warranties and obligations provided, or owed, by the Director to the Company or the Deed Administrators in this Deed are given by them by way of deed, and binding upon them as such, and accordingly, are enforceable at law.

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## **3. Conditions**

### **3.1** Simultaneously with the execution of this Deed, Holdings will direct Mangioni Biggs & Co to transfer the sum of \$100,000 from its trust account to the Deed Administrators' Account.

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## **4. Administrators**

### **4.1 Administrators to administer Deed**

This Deed is administered by the Deed Administrators who are hereby appointed as administrators of this Deed. The Deed Administrators, by their execution of this Deed, consent to be appointed as Deed Administrators, without prejudice to any rights which may have arisen by virtue of their appointment, if at all, as administrators of the Company.

### **4.2 Deed Administrators remuneration and costs**

In consideration for consenting to be appointed as administrators of this Deed, the Deed Administrators are entitled to be remunerated for acting as the Administrators and Deed Administrators from the Deed Fund on the basis that such remuneration has been approved by the Creditors of the Company or the Court under Division 60 of the Practice Schedule (as applicable).

### **4.3 Powers of the Deed Administrators**

For the purpose only of administering this Deed, the Deed Administrators:

- (a) will have those powers set out in provision 2 of the Prescribed Provisions;
- (b) have full access to the Company's books, records and bank accounts (including a right to inspect and audit the same); and
- (c) will be entitled to do anything necessarily incidental or ancillary to exercising a power set out in this Deed.

#### 4.4 Limitation of Deed Administrators liability and indemnity

- (a) To the fullest extent permitted by law, the Deed Administrators will not, in the performance of their functions and duties and the exercise of their powers under this Deed, be personally liable for:
  - (i) any debt, liability or other obligation which the Deed Administrators may incur on behalf of the Company under this Deed; or
  - (ii) any loss or damage caused by any act, default or omission by the Deed Administrators or on their behalf in the performance of their powers, functions and duties under this Deed (unless due to the gross or wilful negligence of, or fraud or other breach of duty by, the Deed Administrators).
- (b) The Deed Administrators are entitled to an indemnity out of all property of the Company that would otherwise be available for the Creditors of the Company, in priority to all other Creditor claims and entitlements for:
  - (i) the Required Payments;
  - (ii) the Administrators Remuneration; and
  - (iii) the Administrators Disbursements.
- (c) The indemnity under clause 4.4(b) of this Deed will not be affected in any way by any irregularity or invalidity in the appointment of the Administrators or the Deed Administrators and extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or the Deed Administrators.
- (d) The Deed Administrators have a lien over the Company's property to secure the indemnity in clause 4.4(b) of this Deed and which lien is in addition to any conferred on them by the Corporations Act or general law.
- (e) The indemnity under clause 4.4(b) of this Deed and the lien under clause 4.4(d) of this Deed will take effect on the Commencement Date and will not be limited as to time for the benefit of the Deed Administrators, notwithstanding the removal, replacement or resignation of the Deed Administrators either as administrators of the Company or as Deed Administrators under this Deed, or the termination of this Deed for any reason.

---

#### 5. Deed Administrators deemed agents of the Company

In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Deed Administrators acts as agents for and on behalf of the Company.

---

#### 6. Deed Fund

##### 6.1 The Deed Fund will comprise of:

- (a) the balance of Company's funds held by the Administrators at the Commencement Date;
- (b) any funds remaining from the Indemnity Funds;
- (c) any GST or other recoveries made during the Administration, or during the period governed by this Deed; and
- (d) the Holdings Contributions.

6.2 The Deed Fund does not include the Excluded Assets.

---

## 7. Holdings Contributions

### 7.1 Payment of Holdings Contributions

- (a) Holdings will make or procure payment of the Holdings Contribution by way of electronic funds transfer to the Deed Administrator's Account by way of the following instalments:
  - (i) \$100,000 in accordance with clause 3.1;
  - (ii) \$100,000 within 1 calendar month of the Commencement Date; and
  - (iii) \$100,000 within 2 calendar months of the Commencement Date.
- (b) If Holdings fails to comply with clauses 7 Deed Administrators may, at their discretion, extend the time for payment, but any such extension can be for no more than one month.
- (c) The Holdings Contribution is not refundable to Holdings or any other person.

---

## 8. Order of distribution of the Deed Fund

### 8.1 The Deed Administrators shall distribute the Deed Fund in the following order:

- (a) first, in payment of any unpaid Administrator's remuneration, disbursements, expenses, trading liabilities and Required Payments incurred in the course of the administration as at the commencement of this Deed;
- (b) second, in payment of the Deed Administrators' remuneration, fees, costs and expenses in relation to the Company pursuant to the Corporations Act, incurred administering the Deed;
- (c) third, in payment of any Participating Creditors with priority creditor Claims in accordance with section 556 of the Act;
- (d) fourth, pari passu in payment of Participating Creditors with unsecured creditor Claims;
- (e) fifth, any surplus to be returned to the Company.

### 8.2 Interim Payments

- (a) The Deed Administrators may make interim payments to Participating Creditors whose claims have been proved and admitted in partial satisfaction of their debts at such time as their in their absolute discretion might deem fit.

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## **9. Claims of Participating Creditors**

### **9.1 Dealing with Claims**

Subject to this Deed, Subdivisions A, B, D and E of Division 6 of Part 5.6 of the Corporations Act and regulations 5.6.37 to 5.6.72 of the Corporations Regulations each apply to this Deed with such modifications as may be necessary in respect of the manner in which Participating Creditors must make a Claim and in how the Deed Administrators adjudicates on a Claim (but, for the avoidance of doubt, not in respect of the priority of such Claims) as if:

- (a) the references to:
  - (i) "liquidator" were references to the Deed Administrators; and
  - (ii) the "relevant date" was a reference to the Appointment Date;
- (b) any other reference that is relevant to:
  - (i) the liquidator were in a reference in a form that is applicable to the Deed Administrators; and
  - (ii) any other matter relating to the liquidation were a reference in a form that is applicable to the administration of this Deed.

### **9.2 Bar to Creditor's claims**

Subject to section 444D of the Corporations Act and clause 9.3 of this Deed, this Deed may be pleaded by the Company against any Creditor in bar of any Claim and a Creditor (whether the Creditor is a Participating Creditor or a Non-Participating Creditor and whether the Creditor's Claim is admitted or not admitted or established or not established under this Deed) in respect of such a Claim must not, in the Arrangement Period:

- (a) take or concur in the taking of any step to wind up the Company; or
- (b) except for the purpose and to the extent provided in this Deed, institute, revive, continue or prosecute any legal proceedings, action or suit pending against or in relation to the Company; or
- (c) take any further step (including any step by way of legal or equitable execution) in any proceedings pending against or in relation to the Company as at the Appointment Date other than to seek that the proceedings be discontinued or dismissed; or
- (d) commence or take any further steps in any Enforcement Process in relation to the property of the Company including property used or occupied by or in possession of the Company as at the Appointment Date; or
- (e) exercise any right of set off or cross action to which the Creditor would not have been entitled had the Company been wound up as at the Appointment Date; or
- (f) commence or take any further step in any arbitration or mediation against the Company or to which the Company is a party.

### **9.3 Insured Creditors and Insured Claims**

- (a) An Insured Creditor in respect of an Insured Claim may:

- (i) provided clause 9.3(b) of this Deed is first complied with, in relation to its Insured Claim only, take action to recover the amount due in respect of the Insured Claim against the Company, but such action must not exceed the minimum which is necessary to obtain payment directly from the insurer; and
- (b) by settlement, arbitral award, or judgment, obtain payment from the insurer in connection with the Insured Claim in the same way as if the Company was being wound up and section 562 of the Corporations Act applied to the Insured Claim and the payment received, or to be received, from the insurer.
- (c) Where an Insured Creditor intends to take action permitted by clause 9.3(a) of this Deed:
  - (i) it must:
    - (A) take the action and do all things required by this clause before Effectuation; and
    - (B) prior to taking the action, provide the Company with an indemnity prior to, or during, any action in relation to the Insured Claim, and which indemnity must be in a form satisfactory to the Deed Administrators (acting reasonably);
  - (ii) the Company and the Deed Administrators are not required to accept the indemnity if it or they are not satisfied (acting reasonably) that the Insured Creditor has (and will continue to have) access to sufficient cash, or cash equivalents, to satisfy the indemnity; and
  - (iii) the Company may plead this Deed as a bar to any action taken by an Insured Creditor in relation to the Insured Claim in circumstances where the insured Creditor has not, prior to commencing the action, given the indemnity required by this clause of this Deed.

#### 9.4 Statutory priority of Employee Creditors preserved

Notwithstanding that the Administrators have been informed that the Company did not employ any employees, for the purposes of section 444DA of the Corporations Act, any Employee Creditors that have employee entitlements will be entitled to a priority from the Deed Fund the equivalent of which they would otherwise receive under sections 556, 560 and 561 of the Corporations Act as if the Company was in liquidation.

#### 9.5 Superannuation Contribution Debts not admissible

Notwithstanding that the Administrators have been informed that the Company did not employ any employees, should the need arise, the Deed Administrators must determine that the whole of a debt or a particular part of a debt by way of a Superannuation Contribution is not admissible to proof against the Company if:

- (a) a debt by way of a Superannuation Guarantee Charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to proof against the Company; and
- (b) the Deed Administrators is satisfied that the Superannuation Guarantee Charge is attributable to the whole of the first mentioned debt in the case of the whole of a debt or part of the first mentioned debt in the case of part of a debt.

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**10. Westfield**

For distribution purposes, Westfield (and any of its Related Entities) may only claim once, by way of a single proof of debt, in respect of all amounts claimed in connection with the Leases or Stores.

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**11. Secured Creditors**

This Deed does not prevent a Secured Creditor from realising or otherwise dealing with their Security Interest unless:

- (a) the debt subject to the Security Interest has been paid in full; or
- (b) the Security Interest granted by the Company has vested in the Company.

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**12. Claims of Non-Participating Creditors and Insured Claims**

- (a) Non-Participating Creditors have no entitlement to, and must not receive or participate in, any distribution from the Deed Fund.
- (b) Without limiting clause 12(a) of this Deed and subject to the other provisions of this Deed, any Claim of a Non-Participating Creditor, as and from the Commencement Date, is deferred and may not be pursued against the Company until this Deed has been effectuated or terminated
- (c) The Non-Participating Creditors undertake that they will not take any steps to wind up the Company or commence, revive, continue or prosecute legal proceedings, or claims against the Company until this Deed has been effectuated or terminated;
- (d) Insured Creditors, to the extent to which any Claim they have is an Insured Claim, must not receive or participate in, any distribution from the Deed Fund.

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**13. Claims Extinguished****13.1 Deed binds Creditors**

This Deed binds all Creditors, including for the avoidance of doubt, the Non-Participating Creditors.

**13.2 Entitlement accepted in full satisfaction of Claims**

If the Deed Administrators have distributed the Deed Fund in accordance with the Deed, all Claims of Creditors are released in full and extinguished other than the Claims of:

- (a) Non-Participating Creditors, which have been subordinated and postponed in accordance with clause 12 of this Deed; and
- (b) Insured Creditors in respect and to the extent of its Insured Claim, which Insured Claim is released in full and extinguished on the last to occur of:
  - (i) Effectuation; and
  - (ii) where a policy of insurance has first responded in and provided the Insured Creditor has (where required) first complied with clause 9.4 of this Deed, payment to the Insured Creditor of the Insured Claim in the amount

it is entitled to by operation of section 562 of the Corporations Act as modified and applied by clause 9.1 of this Deed; and

**13.3 Execution of release**

Upon their release under this Deed, a Creditor, if called upon to do so by the Deed Administrators, shall execute and deliver to the Deed Administrators or the Company such forms of postponement, release or extinguishment of its Claim against the Company as the Deed Administrators require.

**13.4 Meetings**

Division 75 of the Practice Schedule and Division 75 of the Practice Rules as at the date of this Deed, with such modifications as are necessary, apply to meetings of Creditors, Employee Creditors or Members, held pursuant to this Deed.

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**14. Termination and Effectuation**

**14.1 Termination of Deed**

- (a) This Deed automatically terminates upon the happening of any one of the following events:
  - (i) a breach of clause 3; or
  - (ii) a breach of clause 7.1(a), subject to clause 7.1(b);
  - (iii) the Court makes an order terminating this Deed under section 445D of the Corporations Act.
  - (iv) the Creditors pass a resolution terminating this Deed at a meeting convened pursuant to Division 75 of the Practice Schedule by notice setting out the proposed resolution; or
  - (v) a Secured Creditor enforces its security by the appointment of a receiver or if an administrator, provisional liquidator or liquidator is appointed to the Company.
- (b) In the event that a party to this Deed is unable to comply with a fundamental or material provision of this Deed, including the payment of money required by this Deed or the outcome for Creditors is materially different to that which was estimated in the proposal that was voted upon by Creditors on the Meeting Date and which gave rise to this Deed, the Deed Administrators may, in their absolute discretion, convene a meeting of the Creditors pursuant to Division 75 of the Practice Schedule, at which Creditors may resolve to:
  - (i) vary the terms of this Deed;
  - (ii) terminate this Deed;
  - (iii) enforce the terms of this Deed; or
  - (iv) approve any other proposal permitted under the Corporations Act, provided that the Deed will not be capable of termination after the Deed Fund has been distributed in accordance with the Deed.
- (c) If this Deed is terminated under clause 14.1 then the Company is to be wound up and Deed Administrators are to be appointed as liquidators of the Company.

#### 14.2 Effectuation of Deed

(a) If:

- (i) the Condition has been satisfied;
- (ii) all payments required to be made to the Company or to the Deed Administrators pursuant to this Deed have been made or the Deed Administrators form the view that no further amounts will be paid or recovered; and
- (iii) distribution has taken place in accordance with clause 8,

the Deed Administrators must certify to that effect in writing by completing the notice set out below and must within 10 Business Days lodge with ASIC a notice of termination of this Deed in the following form:

*"We, Jonathon Sherwood Keenan and Peter Paul Krejci, as Deed Administrators of AFAR Retail EF Pty Ltd (subject to Deed of Company Arrangement) executed on [date] certify that the Deed has been wholly effectuated."*

(b) Upon Effectuation, this Deed terminates.

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#### 15. Control of Company

During the term of the Deed, the Deed Administrators will take no part in the management or operation of the Company's business. The day to day control and stewardship of the Company and its trading immediately returns to the Directors, Joseph Shalala and Peter Shalala from the Commencement Date, provided always that, notwithstanding day to day control and stewardship of the Company immediately returns to the Directors, the Deed Administrators retain the right and entitlement, in their absolute discretion, to exercise all or any of the powers conferred on the Deed Administrators, for the purpose of this Deed, by this Deed or the Corporations Act to the exclusion of the powers of the Directors, or directors of the Company.

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#### 16. Director Assistance

(a) The Directors will assist the Deed Administrators with accounting, taxation reporting, or as otherwise requested.

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#### 17. Notices

(a) A notice or other communication connected with this Deed (Notice) has no legal effect unless it is in writing.

(b) In addition to any other method of service provided by law, the Notice may be:

- (i) sent by prepaid post to the address of the addressee set out in this Deed or subsequently notified;
- (ii) sent by email to the email address of the addressee; or
- (iii) delivered at the address of the addressee set out in this Deed or subsequently notified.

(c) A Notice must be treated as given and received:

- (i) if sent by post, on the 5th Business Day (at the address to which it is posted) after posting; or
- (ii) if sent by email, on the Business Day the email is received by the recipient.

(d) A Notice sent or delivered in a manner provided by clause 13(b) must be treated as validly given to and received by the party to which it is addressed even if:

- (i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
- (ii) the Notice is returned unclaimed.

(e) Any Notice by a party may be given and may be signed by its solicitor.

(f) The address for service on the Deed Administrators is:

- (i) By post:  
Attention: Jonathon Sherwood Keenan and Peter Paul Krejci  
C/- BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000
- (ii) By email:  
i.keenan@brifnsw.com.au and p.krejci@brifnsw.com.au

(g) The addresses for service on the Company and the Director are:

- (i) By post:  
Attention: Joseph Shalala  
Suite 4, 132-134 Burwood Road  
Burwood NSW 2134
- (ii) By email: joseph@insport.com.au

(h) The addresses for service on Holdings is

- (i) By post:  
Attention: Joseph Shalala  
Suite 4, 132-134 Burwood Road  
Burwood NSW 2134
- (ii) By email: joseph@insport.com.au

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## 18. General

### 18.1 Governing law

This Deed is governed by and construed in accordance with the laws of New South Wales and any action or proceeding arising out of or in connection with this Deed must be brought in a court of competent jurisdiction in the state of New South Wales.

**18.2 Admission of penalties**

Claims in the nature of penalties, fines and penalty interest imposed on the Company by a court or by a person in accordance with legislation are not admissible to proof under this Deed if they would not have been admissible to proof in a liquidation, and the Claims of that type of a Creditor will not be admitted notwithstanding that the Claim in respect of the penalty, fine or penalty interest will otherwise be subject to this Deed.

**18.3 Electronic Signature & Counterparts**

- (a) To the extent permitted by law, this Deed may be electronically signed.
- (b) Each party consents to this Deed being electronically signed by each party.
- (c) Where this Deed is electronically signed by a party, the party warrants and agrees that:
  - (i) the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by electronic signature; and
  - (ii) they have affixed their own electronic signature.
- (d) This Deed may be signed, including electronically signed, in a number of counterparts which together constitute one document.
- (e) Each party consents to the exchange of counterparts of this Deed by delivery by email or such other electronic means as may be agreed by the parties. The parties agree that an electronic or scanned copy of a counterpart that is delivered or such other agreed electronic means:
  - (i) is deemed an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.

**18.4 Severability**

Notwithstanding anything contained within this Deed, if any provision or clause of this Deed is held or found to be void, invalid or otherwise unenforceable, then the provision or clause is deemed to be severed from this Deed to the extent only that it is void, invalid or unenforceable, and the remainder of the provision or clause remains in full force and effect.

**18.5 Waiver**

The failure or omission of a party at any time to enforce or require strict compliance with any clause of this Deed or to make any decision or election under this Deed shall not operate as a waiver by them of any rights, whether express or implied, arising under this Deed

Executed by the parties as a Deed

Executed by Afar Retail EF Pty Ltd )  
(Administrators Appointed) ACN 105 772 )  
978 by its Administrators, Jonathon Sherwood )  
Keenan and Peter Paul Krejci )

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Signature of Jonathon Sherwood Keenan

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Signature of Peter Paul Krejci

Signed, sealed and delivered by Jonathon )  
Sherwood Keenan in the presence of: )

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Signature of Jonathon Sherwood Keenan

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Signature of Witness

Name of Witness  
(BLOCK LETTERS)

Signed, sealed and delivered by Peter Paul )  
Krejci in the presence of: )

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Signature of Peter Paul Krejci

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Signature of Witness

Name of Witness  
(BLOCK LETTERS)

Signed, sealed and delivered by Afar Holdings Pty Ltd ACN 002 668 313 in accordance with s 127 of the Corporations Act 2001 (Cth) }

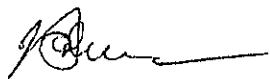


Signature of Director

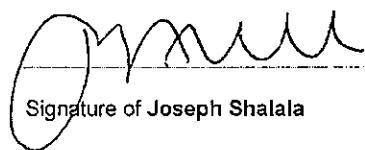


Signature of Director/Secretary

Signed, sealed and delivered by Joseph Shalala in the presence of: }



Signature of Witness



Signature of Joseph Shalala

RUSLAN PANDAPOTAN

Name of Witness  
(BLOCK LETTERS)

Signed, sealed and delivered by Peter Shalala in the presence of: }



Signature of Peter Shalala



Signature of Witness

RUSLAN PANDAPOTAN

Name of Witness  
(BLOCK LETTERS)