

To the Interested Persons as addressed

18 May 2023

Dear Sir/Madam

**KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 as trustee for
APM Security Plan Sickness & Accident Fund (In Liquidation) ('the Fund') trust ('Trust')
ABN 57 413 197 086**

New Trustee remuneration and disbursement application

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). On 2 November 2021, by further Order of the Supreme Court of New South Wales ('the Second Order'), the New Trustee was authorised to undertake a second course of action in respect of the Trust ('Second Course of Action'). Subsequently, on 6 May 2022, by Order of the Supreme Court of New South Wales ('the Third Order'), the New Trustee was authorised to undertake a third course of action ('Third Course of Action').

Pursuant to the First Order, the Second Order and the Third Order, the New Trustee's remuneration and disbursements are to be paid from the assets of the Trust on an indemnity basis, subject to the Court's review and approval.

On 29 June 2022, the New Trustee provided notice of its first application seeking approval of New Trustee's remuneration and disbursements. This was subsequently approved by the Supreme Court of New South Wales by Order dated 8 July 2022. On 11 November 2022 and 27 February 2023, the New Trustee provided notice of its second application seeking approval of New Trustee's remuneration and disbursements. This was subsequently approved by the Supreme Court of New South Wales by Order dated 10 March 2023.

I advise all Interested Persons that the New Trustee filed its third application seeking the Court's review and approval for the New Trustee's remuneration and disbursements on 5 May 2023 ('the Application'). The Application is in respect of the New Trustee's remuneration and disbursements for the period 18 October 2022 to 30 April 2023 and for the future period through to the conclusion of the trusteeship of the Trust.

Enclosed, for your reference, in respect of the Application, is the:

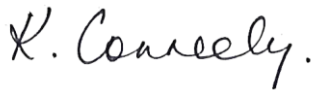
- Background to the New Trustee's appointment and notice of the Application at Annexure A
- Notice of motion dated 5 May 2023, which has been filed with the Supreme Court of NSW at Annexure B

- New Trustee's affidavit in support of the notice of motion at Annexure C.

I advise the Application is now presently listed for **9.30 am on 6 June 2023**. Any changes to this time will be made known on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

Should you have any queries in relation to this matter, please contact Elyse Diamond of my office on (02) 8257 3014 or by email at ediamond@kordamentha.com.

Yours faithfully



Kate Conneely
Liquidator and Director of New Trustee

Enc.

Annexure A – Background and Notice of Application

KordaMentha Shelf Co (APMSPSAF) Pty Ltd ('New Trustee') was appointed replacement trustee of the Fund Trust on 22 June 2021 pursuant to an Order of the Supreme Court of New South Wales ('the First Order'). The First Order authorised New Trustee to undertake a course of action in respect of the Trust ('First Course of Action'). The First Order further provided that New Trustee's remuneration and disbursements in respect of the First Course of Action be paid from the assets of the Trust on an indemnity basis, subject to New Trustee making an application to the Court for review of its remuneration and disbursements within 6 months of the date of the First Order.

Subsequently, on 2 November 2021, by further Order of the Supreme Court of New South Wales ('the Second Order'), New Trustee was authorised to undertake a second course of action in respect of the Trust ('Second Course of Action'). As a part of the Second Course of Action, New Trustee was authorised to make an application to the Court to, among other things, seek the Court's direction in relation to the future of the Fund ('Judicial Advice Application'), the Second Order varied the First Order to allow New Trustee to bring its application for review of its remuneration and disbursements in respect of the First Course of Action and the Second Course of Action within four weeks after the Court determines the Judicial Advice Application.

On 6 May 2022, the Court determined the Judicial Advice Application and gave its opinion, advice and direction to the New Trustee that it would be justified in, among other things, bringing proceedings to wind up the Fund ('the Third Order'). The Third Order authorised New Trustee to undertake a further course of action in respect of the Trust ('Third Course of Action'). The Third Order further provided that New Trustee's remuneration and disbursements in respect of the Third Course of Action be paid from the assets of the Trust on an indemnity basis, subject to New Trustee making an application to the Court for review of its remuneration and disbursements within 6 months of the date of the Third Order. On the same day, by Order of the Supreme Court of New South Wales, Scott Langdon and Kate Conneely were appointed as joint and several liquidators of the Fund.

Pursuant to the Second Order and the Third Order, New Trustee's remuneration and disbursements are to be paid from the assets of the Trust on an indemnity basis for the Second Course of Action and the Third Course of Action, subject to the Court's review and approval.

In this correspondence, formal notice is provided to all Interested Persons that New Trustee has filed its Application seeking the Court's review and approval of New Trustee's remuneration and disbursements for the Second Course of Action and the Third Course of Action, for the periods 18 October 2022 to 30 April 2023, and through to conclusion of the trusteeship of the Trust.

Further to this background, enclosed, for your perusal, in respect of the remuneration and disbursement Application, is the:

- Notice of motion dated 5 May 2023, which has been filed with the Supreme Court of New South Wales (Annexure B)
- New Trustee's affidavit in support of the notice of motion (Annexure C).

A copy of Exhibit CMC-15 to New Trustee's affidavit in support of the notice of motion is available on the KordaMentha website at <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund>.

Annexure B – Notice of motion dated 5 May 2023



NOTICE OF MOTION ACKNOWLEDGEMENT

NOTICE OF MOTION RECEIVED

Your motion has been received and is being processed by the registry. This acknowledgement and its attachments should NOT be served.

WHAT NEXT?

Once the motion has been processed, you will be able to see any orders made online. To do this, you should:

- Log in to the Online Registry
- Click on the name of the case on the case list page
- Click on the Judgments & orders tab

If your motion requires a listing, an order will be made to list the motion. If there is an order to list the motion, you will be required to download your sealed Notice of Motion and the relevant Notice of Listing and serve both of these on all parties. To do this, you should click on the Filed documents tab.

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2021/00179305

TITLE OF PROCEEDINGS

First Plaintiff	PP New Pty Ltd ACN 088406437
Second Plaintiff	KordaMentha Shelf Co (APMSPSAF) Pty Ltd
First Defendant	.

Form 20 (version 3)
UCPR 18.1 and 18.3

NOTICE OF MOTION

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General
Registry	Sydney
Case number	2021/00179305

TITLE OF PROCEEDINGS

First Plaintiff	PP New Pty Ltd ACN 088 406 437
Second Plaintiff	KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799

FILING DETAILS

Person seeking orders	Second Plaintiff
Filed in relation to	Second Plaintiff's notice of motion dated 5 May 2023.
Legal representative	Bernard Colin Walrut, Ashurst Australia
Legal representative reference	1000-122-769
Legal representative PCN	51098
Contact name and telephone	Aaron Kam (02) 9528 6014
Contact email	Aaron.Kam@ashurst.com

PERSON AFFECTED BY ORDERS SOUGHT

Second Plaintiff

HEARING DETAILS

This motion is listed at

ORDERS SOUGHT

The Second Plaintiff (**New Custodian Trustee**) seeks the following relief:

1. An order pursuant to section 90 of the *Civil Procedure Act 2005* (NSW) (**Civil Procedure Act**), sections 59(4) and/or 93 of the *Trustee Act 1925* (NSW) (**Trustee Act**) and/or the Court's inherent jurisdiction that New Custodian Trustee's disbursement incurred in connection with undertaking the course of action authorised by order 2 of the orders made on 2 November 2021 on 14 July 2022, be approved in the amount of \$5,754.10 (excluding GST).
2. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's remuneration incurred in connection with undertaking the course of action authorised by order 2 of the orders made on 6 May 2022 (**Third Course of Action**) for the period 18 October 2022 to 30 April 2023 inclusive (**Relevant Period**), be approved in the amount of \$94,235.50 (excluding GST).
3. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's disbursements incurred in connection with undertaking the Third Course of Action for the Relevant Period be approved in the amount of \$191,721.02 (excluding GST).
4. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's remuneration incurred or to be incurred in connection with undertaking the Third Course of Action after the Relevant Period to the conclusion of the trusteeship of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086 trust (**Future Period**), be approved in the amount of \$10,000.00 (excluding GST).
5. An order pursuant to section 90 of the *Civil Procedure Act*, sections 59(4) and/or 93 of the *Trustee Act* and/or the Court's inherent jurisdiction that New Custodian Trustee's disbursements incurred or to be incurred in connection with undertaking the Third Course of Action for the Future Period be approved in the amount of \$55,000.00 (excluding GST).
6. An order discharging order 13 of the orders made on 22 May 2022.
7. An order pursuant to section 93 of the *Trustee Act* that New Custodian Trustee's costs and expenses of and incidental to this application are paid on an indemnity basis out of the assets of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086.
8. Such further or other orders as the Court considers necessary and/or appropriate.

SIGNATURE

Signature of legal representative

A handwritten signature in green ink, consisting of several overlapping loops and a final horizontal stroke.

Capacity

Solicitor

Date of signature

5 May 2023

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address Law Courts Building, 184 Phillip Street, Sydney NSW 2000

Postal address Supreme Court of NSW, GPO Box 3, Sydney NSW 2001

Telephone 1300 679 272

Annexure C – New Trustee’s affidavit

AFFIDAVIT OF CATHERINE MARGARET CONNEELY
SWORN 5 MAY 2023

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General
Registry	Sydney
Case number	2021/00179305

TITLE OF PROCEEDINGS

First plaintiff	PP New Pty Ltd ACN 088 406 437
Second plaintiff	KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799

FILING DETAILS

Filed for	Second plaintiff
Filed in relation to	Second plaintiff's notice of motion dated 5 May 2023
Legal representative	Ashurst Australia Lawyers ABN 75304286095 Level 11 5 Martin Place SYDNEY NSW 2000 DX: 388 SYDNEY Tel: (02) 9258 6000 Fax: (02) 9258 6999
Legal representative reference	1000 122 769
Legal representative PCN	51098
Contact name and telephone	Aaron Kam (02) 9528 6014
Contact email	Aaron.Kam@ashurst.com

K. Conneely

AFFIDAVIT

Name Catherine Margaret Conneely
 Address Level 5, Chifley Tower, 2 Chifley Place, Sydney NSW 2000
 Occupation Registered liquidator and chartered accountant
 Date 5 May 2023

I say on oath:

A Introduction

1. I am a registered liquidator, chartered accountant and partner of KordaMentha.
2. I am also a director of the second plaintiff, KordaMentha Shelf Co (APMSPSAF) Pty Ltd ACN 642 981 799 (**New Custodian Trustee**), along with my partners of KordaMentha, Scott David Harry Langdon, Mark Anthony Korda and Mark Francis Xavier Mentha.
3. New Custodian Trustee was appointed in substitution of the first plaintiff, PP New Pty Ltd (**PP New**), as trustee of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086 (**Fund**) trust (**Custodian Trust**), pursuant to orders made by Ward CJ in Eq (as the President then was) on 22 June 2021 in these proceedings (**22 June 2021 Orders**).
4. Subsequently, Mr Langdon and I were appointed as joint and several liquidators of the Fund (**Liquidators**) pursuant to orders made by Hammerschlag CJ in Eq on 6 May 2022 in proceedings no. 2022/00130874 (**6 May 2022 Winding Up Orders**).
5. I make this affidavit from my own knowledge and the books and records of the Fund (**Books and Records**), except where otherwise indicated. Where I make this affidavit from facts outside of my personal knowledge, I am informed by the source stated and believe those facts to be true. Where I refer in this affidavit to an opinion being held by me, I do so after having discussed the matter with Mr Langdon and having confirmed that he also holds the opinion to which I depose.
6. The investigations referred to in this affidavit have been carried out by me and by staff at KordaMentha who have acted on my instructions. My references to KordaMentha or New Custodian Trustee in this affidavit also include, where the context so dictates, information which I have obtained from those staff.
7. Exhibited to me at the time of swearing this affidavit are two bundles of documents titled "Exhibit CMC-15" and "Confidential Exhibit CMC-16". Unless otherwise stated, where I refer to documents in this affidavit, I do so by reference to the page number in Exhibit CMC- 15 and Confidential Exhibit CMC-16.
8. Confidential Exhibit CMC-16 contains documents which disclose details of Interested Persons (as defined below) and legally privileged information. New Custodian Trustee seeks an order under section 7 of the *Court Suppression and Non-publication Orders Act 2010* (NSW) limiting the disclosure of these documents.

K. Conneely

B Purpose of this affidavit

9. This affidavit is filed in support of the notice of motion dated 5 May 2023, seeking orders for review and approval of New Custodian Trustee's remuneration and disbursements paid from the assets of the Custodian Trust in accordance with order 13 of the orders made by Hammerschlag CJ in Eq on 6 May 2022 in these proceedings (**6 May 2022 Judicial Advice Orders**) and future remuneration and disbursements in respect of the Third Course of Action (defined below).
10. The total remuneration and disbursements for which review and approval is sought in this application (**Third Remuneration Application**) is \$104,235.50 in fees and \$252,475.12 in disbursements (both excluding GST). This amount comprises:
 - (a) \$5,754.10 (excluding GST) being the disbursements incurred by New Custodian Trustee on 14 July 2022 in connection with the Second Course of Action (defined below);
 - (b) \$94,235.50 (excluding GST), being the professional fees of New Custodian Trustee incurred during the period 18 October 2022 to 30 April 2023 (**Relevant Period**) in connection with the Third Course of Action;
 - (c) \$191,721.02 (excluding GST), being the disbursements incurred by New Custodian Trustee during the Relevant Period in connection with the Third Course of Action;
 - (d) \$10,000.00 (excluding GST), being the professional fees of New Custodian Trustee incurred/to be incurred after the Relevant Period to the conclusion of the trusteeship of the Custodian Trust (**Future Period**) in connection with the Third Course of Action; and
 - (e) \$55,000.00 (excluding GST), being the disbursements to be incurred/incurred by New Custodian Trustee during the Future Period in connection with the Third Course of Action.

C Background

11. I seek leave to rely upon the following affidavits filed in these proceedings:
 - (a) my affidavit sworn on 22 June 2021 (**First Conneely Affidavit**);
 - (b) my affidavit sworn 28 October 2021 (**Second Conneely Affidavit**);
 - (c) my affidavit sworn 24 March 2022 (**Fourth Conneely Affidavit**);
 - (d) my affidavit sworn 3 June 2022 (**Fifth Conneely Affidavit**);
 - (e) my affidavit sworn 3 November 2022 (**Sixth Conneely Affidavit**);
 - (f) my affidavit sworn 2 December 2022 (**Seventh Conneely Affidavit**);
 - (g) my affidavit sworn 9 December 2022 (**Eighth Conneely Affidavit**); and
 - (h) my affidavit sworn 3 March 2023 (**Ninth Conneely Affidavit**).
12. I refer to paragraph 12 of the Second Conneely Affidavit where I depose to the background of the commencement of these proceedings.

K Conneely

C1. Appointment of New Custodian Trustee

13. As a result of the matters deposed to in paragraph 12 of the Second Conneely Affidavit, on 22 June 2021, the plaintiffs made an application (**First Application**) before Ward CJ in Eq, seeking the appointment of New Custodian Trustee in substitution of PP New as custodian trustee of the Custodian Trust, the vesting of property held on trust for the Fund in New Custodian Trustee and consequential relief, including, the authorisation of a prescribed course of action by New Custodian Trustee (**First Course of Action**).

C2. First Course of Action

14. Following the First Application and in accordance with the 22 June 2021 Orders, New Custodian Trustee undertook the First Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the First Course of Action in paragraphs 17 to 61 of the Second Conneely Affidavit.
15. As part of the First Course of Action, on 2 November 2021, New Custodian Trustee made an application (**Second Application**) before Ward CJ in Eq, seeking authorisation to, among other things, convene and hold a meeting of the current and past members of the Fund, creditors, claimants and contributories or potential creditors, claimants and contributories of the Fund and the persons who have been acting as officeholders on behalf of the Fund (together, **Interested Persons**) to vote on the future of the Fund (**First Meeting**), along with consequential steps to facilitate the holding of the First Meeting (**Second Course of Action**). At pages 1 to 5 of Exhibit CMC-15 is a copy of the orders dated 2 November 2022 (**2 November 2022 Orders**).

C3. Second Course of Action

16. Following the Second Application and in accordance with the 2 November 2021 Orders, New Custodian Trustee undertook the Second Course of Action. I depose to the steps taken by New Custodian Trustee pursuant to the Second Course of Action in paragraphs 15 to 62 of the Fourth Conneely Affidavit.
17. As part of the Second Course of Action, on 6 May 2022, New Custodian Trustee made an application (**Third Application**) before Hammerschlag CJ in Eq, seeking, among other things, authorisation to (**Third Course of Action**):
- (a) bring proceedings to wind up the Fund (**Winding Up Proceedings**);
 - (b) provide notice (Third Notice) to the Interested Persons of:
 - (i) the orders made in respect of the Third Application and any reasons for judgment;
 - (ii) the Winding Up Proceedings; and
 - (iii) any orders or directions made by the Court in the Winding Up Proceedings;
 - (c) issue the Third Notice by:
 - (i) sending the Third Notice to the email addresses of Interested Persons known to New Custodian Trustee;

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- (ii) sending the Third Notice to the postal addresses of Interested Persons known to New Custodian Trustee; and/or
- (iii) publishing the Third Notice and the documents referred to in the Third Notice on the following website: <https://www.kordamentha.com/creditors/apm-security-plan-sickness-accident-fund> (**New Custodian Trustee Website**);
- (d) sell the property held under the Custodian Trust (**Property**);
- (e) to the extent necessary, bring proceedings seeking the Court's opinion, advice and direction in relation to the sale of any of the Property (**Approval Application**);
- (f) transfer the net amount of the sale proceeds of the Property and any other funds held by New Custodian Trustee under the Custodian Trust (**Proceeds**) to the Liquidators, after paying all expenses incurred in respect of the Third Course of Action and retaining such other amount as to New Custodian Trustee appears to be reasonably necessary for satisfying any other liability or contingent liability of the Custodian Trust; and
- (g) obtain professional representation and advice for the purposes of sub-paragraphs (a) to (f) above.

At pages 6 to 9 of Exhibit CMC-15 is a copy of the 6 May 2022 Judicial Advice Orders.

C4. Third Course of Action

18. Following the Third Application and in accordance with the 6 May 2022 Judicial Advice Orders, New Custodian Trustee undertook the Third Course of Action. With the exception of the step referred to in paragraph 17(f) above:
 - (a) I depose to the steps taken by New Custodian Trustee pursuant to the Third Course of Action in the Sixth Conneely Affidavit, paragraphs 21 to 27 of the Seventh Conneely Affidavit and paragraphs 18 to 59 of the Eighth Conneely Affidavit; and
 - (b) New Custodian Trustee completed the sale of 67 Victory Parade, Tascott NSW 2250 (**67 Victory Parade**) and 69 Victory Parade, Tascott NSW 2250 (together, **Point Clare Properties**) on 4 January 2023. At pages 10 to 11 of Exhibit CMC-15 is a copy of title searches in respect of the Point Clare Properties.
19. New Custodian Trustee has not transferred the Proceeds to the Liquidators in accordance with paragraph 17(f) above. This is in circumstances where the remuneration and disbursements paid (or to be paid) in connection with the Third Course of Action for the Relevant Period and Future Period are the subject of Court approval sought in Third Remuneration Application. Once the Court has determined the Third Remuneration Application, New Custodian Trustee intends to pay the Proceeds (after payment of any unpaid remuneration and disbursements) to the Liquidators and upon doing so, will have completed the Third Course of Action.
20. No further courses of action have been authorised by the Court and New Custodian Trustee does not intend on seeking approval to conduct any further courses of action once the Proceeds have been paid to the Liquidators.

K. Conneely.

D Work undertaken since 18 October 2022

D1. Second Remuneration Application

21. On 3 November 2022, in accordance with the 6 May Judicial Advice Orders, New Custodian Trustee filed an application in these proceedings seeking review and approval of its remuneration and disbursements for the period 23 May 2022 to 29 July 2022 (in respect of the Second Course of Action) and 6 May 2022 to 17 October 2022 (in respect of the Third Course of Action) (**Second Remuneration Application**). The relevant background in respect of the Second Remuneration Application is set out in the Sixth Conneely Affidavit.
22. On 11 November 2022 and 28 February 2023, New Custodian Trustee provided notice of the Second Remuneration Application to Interested Persons (**Second Remuneration Notice**). The relevant background in respect of the Second Remuneration Notice is set out in paragraphs 10 to 20 of the Ninth Conneely Affidavit.
23. On 10 March 2023, Kunc J heard the Second Remuneration Application and approved New Custodian Trustee's remuneration and disbursements. At pages 12 to 14 of Exhibit CMC-15 is a copy of the orders made by Kunc J on 10 March 2023 in these proceedings.

D2. Approval Application

24. In accordance with the 6 May 2022 Judicial Advice Orders, New Custodian Trustee filed the Approval Application in these proceedings on 2 December 2022. The relevant background in respect of the Approval Application is set out in the Seventh and Eighth Conneely Affidavits.
25. On 2 December 2022, New Custodian Trustee provided notice of the Approval Application (**Approval Application Notice**) to the known email and/or postal addresses of the Interested Persons identified by New Custodian Trustee at the time (as recorded in the Interested Persons List).
26. On 12 December 2022, Black J heard the Approval Application. The Court gave an opinion, advice and direction to New Custodian Trustee that it would be justified in completing the sale of the Point Clare Properties. At pages 15 to 23 of Exhibit CMC- 15 is a copy of the orders made by Black J on 12 December 2022 in these proceedings and Black J's ex tempore judgment.
27. Following the Approval Application, New Custodian Trustee completed the sale of the Point Clare Properties on 4 January 2023. The settlement of the Point Clare Properties followed multiple delays to settlement by the purchaser of the Point Clare Properties. Correspondence regarding the completion of the sale has not been exhibited to this affidavit but can be provided to the Court.

D3. Balance of the Third Course of Action

28. New Custodian Trustee has continued to attend to various matters associated with the Third Course of Action, including, the administration of the Fund and continued investigations into the Fund's affairs, including:
 - (a) general accounting tasks, including processing receipts and payments and attending to bank account reconciliations;

K Conneely

- (b) preparation and review of cash flow statements and forecasts to ensure adequate management of the Property; and
 - (c) continued investigation into the background of the Fund, including a review of the Rules governing the affairs of the Fund and listing of members of the Fund at various points in time.
29. There is one final step to be completed by New Custodian Trustee in accordance with the Third Course of Action, namely, transferring the Proceeds to the Liquidators. New Custodian Trustee will withhold \$10,000 from the Proceeds for satisfying any other liability or contingent liability of the Custodian Trust. As deposed to in paragraph 19 above, it is New Custodian Trustee's intention to transfer the Proceeds once the Court has determined the Third Remuneration Application. In the event no other liabilities or contingent liabilities are required to be satisfied, the \$10,000 will also be transferred to the Liquidators.

E Categorisation of work undertaken by New Custodian Trustee

30. The process for categorising and recording fees undertaken by New Custodian Trustee in connection with the administration of the Custodian Trust and the Fund is described below.
31. Each staff member of KordaMentha maintains a computerised time sheet system, capturing time spent on various engagements on a daily basis. The time spent on various engagements is recorded in that time sheet on the basis of six minute units.
32. The system requires the person entering the time in the computerised system first to nominate the category of work performed before entering their time. My staff and I allocated our time to the following categories:
- (a) "Administration and risk mitigation";
 - (b) "Litigation/legal"
 - (c) "Statutory compliance";
 - (d) "Assets";
 - (e) "Trading"; and
 - (f) "Interested Persons".
33. While my staff and I used the above categories to record time, certain items of work could have fallen within more than one of the categories, so that, for example, communicating with Interested Persons could have been recorded under either the "Administration and risk mitigation" category or the "Interested Persons" category. However, each task is only recorded once, and the time for carrying out each task has only been recorded once.
34. These records have been extracted from the computerised system for the purpose of the Third Remuneration Application. The extracts, to the best of my knowledge and belief, only record time spent by each of my staff and me in relation to the administration of the Custodian Trust and the Fund.

K. Kennedy.

F Time-based method

35. New Custodian Trustee has calculated its remuneration on the basis of an hourly rate for each staff member who carried out work in respect of the administration of the Custodian Trust and the Fund multiplied by the number of hours spent by each person on the tasks performed (i.e., a time-based method).
36. The rates charged by New Custodian Trustee are the hourly rates for the relevant staff member (at the time that each task was being performed) of KordaMentha. At pages 24 to 26 of Exhibit CMC-15 is a copy of KordaMentha's hourly schedules of rates (exclusive of GST) as applicable during the Relevant Period and disbursement policies for the Relevant Period. KordaMentha's rates are updated each financial year however it is expected that completion of the balance of the Third Course of Action will be completed by 30 June 2023.
37. I believe that the rates are reasonable given:
 - (a) the work actually performed;
 - (b) the experience of each staff member;
 - (c) the responsibility of each staff member in relation to the work performed by them;
 - (d) the complexity of the various tasks performed by each staff member;
 - (e) rates charged by comparable firms for such work;
 - (f) the costs incurred by my firm in performing the work in relation to the administration of the Custodian Trust and the Fund; and
 - (g) the risks undertaken by my firm in allowing New Custodian Trustee to accept the appointment as trustee of the Custodian Trust and conducting the work in relation to the appointment.
38. In the First Conneely Affidavit, which was filed in support of a successful application for the appointment of PP New as trustee of the Custodian Trust, I, at paragraphs 59 to 62, indicated to the Court that New Custodian Trustee proposed to calculate its remuneration using a time-based method and expressed the opinion that this approach was appropriate.
39. I still consider that the time-based method rather than one of the other methods — for example, fixed fee, percentage (i.e., the fee is based on a percentage rate of a particular variable such as assets recovered) and contingency (i.e., contingent on a particular outcome), is the most appropriate for reasons including:
 - (a) the method allows New Custodian Trustee to produce a detailed analysis of time spent on each task by each individual staff member utilised in the administration of the Custodian Trust and Fund;
 - (b) the method provides full accountability to Interested Persons in the method of calculation and ensures that Interested Persons are only charged for work that is actually performed; and
 - (c) the method fairly reflects the necessary work performed, noting that there are a number of tasks that are required to be performed but do not relate to the realisation

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of assets, for example, responding to Interested Persons' enquiries, reporting to Interested Persons and general administration and risk mitigation.

40. I also note that the time-based method has been used for the duration of New Custodian Trustee's appointment.

G Remuneration and disbursements claimed

41. At page 27 of Exhibit CMC-15 is a summary of the key work performed by New Custodian Trustee during the period Relevant Period in respect of the Third Course of Action.

42. At page 28 of Exhibit CMC-15 is a schedule which provides an overview of the quantum of the remuneration claimed by New Custodian Trustee during the Relevant Period in respect of the Third Course of Action. The schedule identifies the following information:

- (a) each individual who carried out work during the Relevant Period;
- (b) their position within KordaMentha;
- (c) their hourly charge out rate;
- (d) their total hours of work;
- (e) the total remuneration charged in respect of their work; and
- (f) the remuneration charged in respect of each of the categories referred to in paragraph 32.

43. At page 29 of Exhibit CMC-15 is a schedule which provides a summary of the disbursements that were incurred by New Custodian Trustee in connection with the performance of the role as trustee of the Custodian Trust during the Relevant Period in respect of the Third Course of Action.

44. I have also included a detailed schedule at pages 30 to 42 of Exhibit CMC-15 setting out each time entry allocated to the categories identified in paragraph 32 above during the Relevant Period in respect of the Third Course of Action. I have reviewed the narrations for all the work claimed in the Third Remuneration Application on a line-by-line basis. From my knowledge of the work carried out and my supervision of the tasks undertaken, I am satisfied that the time recorded for each of the tasks is commensurate with what was required to be undertaken and that the records are accurate.

45. In my view, all of the tasks detailed in this affidavit were necessary for the proper administration of the Custodian Trust and the Fund in accordance with the Third Course of Action and in order to maximise realisations for the benefit of Interested Persons.

46. KordaMentha follows the Australian Restructuring Insolvency and Turnaround Association Code of Professional Practice (**ARITA Code**) in relation to the insolvency appointments KordaMentha undertakes. Given the similarities between New Custodian Trustee's role in relation to the administration of the Custodian Trust and the Fund and the role of a voluntary administrator and subsequently, a liquidator, under Chapter 5 of the *Corporations Act 2001* (Cth), New Custodian Trustee has adopted the ARITA Code as a guide in carrying out the Second Course of Action and Third Course of Action. At pages 43 to 97 of Exhibit CMC-15 is

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a copy of "Practice Statement Insolvency 5: Remuneration reporting" which came into effect on 31 March 2021 and is contained in the fourth edition of the ARITA Code.

H Third Course of Action (Relevant Period)

H1. Remuneration

47. Immediately below is a summary of the amounts claimed in respect of work undertaken by New Custodian Trustee in the relevant categories identified in paragraph 32 above in connection with the Third Course of Action during the Relevant Period. At paragraphs 48 to 65 below, I provide specific details of the work my staff and I performed during the Relevant Period by reference to those categories.

Category	Remuneration sought to be approved for the Third Course of Action
Administration and risk mitigation	\$8,053.50
Litigation/legal	\$34,336.00
Assets	\$22,945.50
Interested Persons	\$8,479.50
Statutory compliance	\$5,403.00
Trading	\$15,018.00
TOTAL (excluding GST and disbursements)	\$94,235.50

Administration and risk mitigation

48. The total amount of remuneration sought with respect to this category for the Relevant Period in respect of the Third Course of Action is \$8,053.50 (excluding GST).
49. A schedule setting out each time entry allocated to this category during the Relevant Period in respect of the Third Course of Action is at page 30 of Exhibit CMC-15. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.
50. In summary, New Custodian Trustee has undertaken the following work in respect of the administration and risk mitigation category:
- (a) renewing appropriate insurance policies for the Point Clare Properties and notifying insurers of events as required;
 - (b) maintaining the New Custodian Trustee Website for Interested Persons;
 - (c) attending to ongoing management of Relativity, the online document management platform for Books and Records;
 - (d) preparation of internal billings for New Custodian Trustee's remuneration;

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- (e) general engagement planning meetings and discussions relating to finalisation tasks for New Custodian Trustee prior to the Proceeds being transferred to Liquidators; and
- (f) general administration including filing of documents and document finalisation.

Litigation/legal

51. The total amount of remuneration sought with respect to this category for the Relevant Period in respect of the Third Course of Action is \$34,336.00 (excluding GST).
52. A schedule setting out each time entry allocated to this category during the Relevant Period in respect of the Third Course of Action is at pages 31 to 34 of Exhibit CMC-15. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.
53. This category has been used to record time spent liaising with Ashurst, in particular, in respect of the various applications made by New Custodian Trustee, namely, the Approval Application, Second Remuneration Application and Third Remuneration Application. In summary, New Custodian Trustee has undertaken the following work in respect of the litigation/legal category:
 - (a) liaising with and assisting Ashurst in respect of the preparation of the Approval Application seeking, among other things, the Court's opinion, advice and direction to New Custodian Trustee that it would be justified in, among other things, completing the settlement of the sale of the Point Clare Properties as affected by the contracts for sale of land in respect of those properties. This included:
 - (i) considering the issues which are likely to arise in respect of the sale of the Point Clare Properties;
 - (ii) preparing my affidavits in support of the Approval Application;
 - (iii) considering, reviewing and collating relevant information and documentation for the exhibits to my affidavits in support of the Approval Application; and
 - (iv) considering and reviewing the submissions in support of the Approval Application;
 - (b) liaising with and assisting Ashurst in respect of the preparation of the Second Remuneration Application and Third Remuneration Application. This included:
 - (i) considering the issues which are likely to arise in respect of the Second Remuneration Application and Third Remuneration Application;
 - (ii) preparing my affidavits in support of the Second Remuneration Application and Third Remuneration Application;
 - (iii) considering, reviewing and collating relevant information and documentation for the exhibits to the affidavits in support of the Second Remuneration Application and Third Remuneration Application; and
 - (iv) considering and reviewing the submissions in support of the Second Remuneration Application and Third Remuneration Application.

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- (c) liaising with and assisting Ashurst in respect of various other issues relating to the finalisation of New Custodian Trustee's Courses of Action.

Assets

- 54. The total amount of remuneration sought with respect to this category for the Relevant Period in respect of the Third Course of Action is \$22,945.50 (excluding GST).
- 55. A schedule setting out each time entry allocated to this category during the Relevant Period in respect of the Third Course of Action is at pages 35 to 37 of Exhibit CMC-15. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.
- 56. As per the 6 May 2022 Judicial Advice Orders, New Custodian Trustee was authorised to sell the Property. In summary, New Custodian Trustee has undertaken the following work in respect of the assets category:
 - (a) attending to post-auction matters following the sale of the Point Clare Properties on 15 October 2022, including liaising with agents and attending to payment of various expenses relating to the sale process;
 - (b) providing notice to Interested Persons following the auctions in respect of the sale of the Point Clare Properties;
 - (c) engaging various parties and liaising with them in the clean-up of the Point Clare Properties prior to settlement, removal and disposal of limited value items;
 - (d) attending to various tasks in respect of the completion of sale including settlement reconciliations, land tax and agent commissions;
 - (e) liaising with Ashurst and the agents in respect of the completion of the sale of the Point Clare Properties;
 - (f) attending to settlement changes and delays at the request of the purchaser and liaising with Ashurst in respect of the same; and
 - (g) liaising with Ashurst in respect of the transfer of the transfer Domestic Waterfront Licence in respect of 67 Victory Parade.

Interested Persons

- 57. The total amount of remuneration sought with respect to this category for the Relevant Period in respect of the Third Course of Action is \$8,479.50 (excluding GST).
- 58. A schedule setting out each time entry allocated to this category during the Relevant Period in respect of the Third Course of Action is at pages 38 to 39 of Exhibit CMC-15. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.
- 59. My staff and I have been required to consider and respond to an extensive number of enquiries (approximately 100 emails and phone calls during the Relevant Period from Interested Persons as well as provide notice of the Approval Application (**Approval Application Notice**) and Second Remuneration Application (**Second Remuneration**

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Notice). In summary, New Custodian Trustee has undertaken the following work in respect of the Interested Persons category:

- (a) issuing the Approval Application Notice and Second Remuneration Notice by:
 - (i) publishing it on the New Custodian Trustee Website;
 - (ii) sending a copy to the known addresses and email addresses of the Interested Persons identified at the time;
 - (iii) maintaining a dedicated email for any queries from Interested Persons and responding to the queries;
 - (iv) considering responses to the Approval Application Notice and/or Second Remuneration Notice from Interested Persons; and
 - (v) reviewing and considering additional information provided by Interested Persons;
- (b) responding to various queries received from Interested Persons via email and phone calls; and
- (c) answering queries from Interested Persons in person at the auction for the Point Clare Properties.

Investigations and statutory compliance

- 60. The total amount of remuneration sought with respect to this category for the Relevant Period in respect of the Third Course of Action is \$5,403.00 (excluding GST).
- 61. A schedule setting out each time entry allocated to this category during the Relevant Period in respect of the Third Course of Action is at page 40 of Exhibit CMC-15. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.
- 62. In summary, New Custodian Trustee has undertaken the following work in respect of the investigations and statutory compliance category:
 - (a) reviewing the Books and Records to identify additional potential members of the Fund (including former members of the committee of management of the Fund) and additional property of the Fund;
 - (b) reviewing the Books and Records to identify sets of Rules governing the affairs of the Fund at various points in time;
 - (c) liaising with various statutory bodies, including the Office of State Revenue and Australian Taxation Office;
 - (d) attending to the preparation of bank reconciliations for each bank account held by the Fund; and
 - (e) investigating the background of the Fund, including, the historical ownership of the Point Clare Properties and the Domestic Waterfront Licence in respect of 67 Victory Parade.

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Trading

63. The total amount of remuneration sought with respect to this category for the Relevant Period in respect of the Third Course of Action is \$15,018.00 (excluding GST).
64. A schedule setting out each time entry allocated to this category during the Relevant Period in respect of the Third Course of Action is at pages 41 to 42 of Exhibit CMC-15. This schedule includes the name of the person who performed the task, the date the task was undertaken, the length of time it took, the amount charged, and a narration of the task undertaken.
65. This category has been used to record time spent on general accounting tasks and day- to- day administration connected with the Fund. In summary, New Custodian Trustee has undertaken the following work in respect of the investigations and statutory compliance category:
- (a) general accounting tasks, including, processing receipts, attending to bank account reconciliations and processing receipts and payments onto Insol;
 - (b) attending to accounting for settlement of the sale of the Point Clare Properties, including consideration of relevant tax treatment;
 - (c) preparation and review of historical cash flow statements to ensure adequate historical management of assets;
 - (d) preparation and review of forecast cash flow statements to ensure adequate management of the Property;
 - (e) preparation of an Estimated Outcome Statement to forecast Proceeds available for distribution as the Fund enters liquidation; and
 - (f) continued liaising with the ongoing service providers to the Point Clare Properties to ensure maintenance as required.

12. Disbursements

66. As per the 6 May 2022 Judicial Advice Orders, New Custodian Trustee is required to seek a review of disbursements in connection with the Third Course of Action paid out of the assets of the Custodian Trust. Immediately below is a summary of the disbursements paid in connection with the Third Course of Action in respect of the Relevant Period. At paragraphs 67 to 78 below, I provide more specific details of the disbursements incurred.

Disbursement	Amount (excluding GST)	Third Course of Action Amount (excluding GST)
Ashurst invoice dated 31 October 2022 (Ashurst 31 October Invoice)	\$101,344.47	\$62,329.50
Ashurst invoice dated 30 November 2022 (Ashurst 30 November Invoice)	\$69,210.76	\$33,302.50



Ashurst invoice dated 22 December 2022 (Ashurst 22 December Invoice)	\$38,922.60	\$33,120.50
Ashurst invoice dated 31 January 2023 (Ashurst 31 January Invoice)	\$31,842.50	\$15,722.50
Ashurst invoice dated 27 February 2023 (Ashurst 27 February Invoice)	\$5,704.50	\$3,121.00
Ashurst invoice dated 30 March 2023 (Ashurst 30 March 2023 Invoice)	\$69,756.00	\$33,660.00
RelativityOne hosting fees (internal disbursement)	\$2,249.10	\$2,249.10
RelativityOne user fees (internal disbursement)	\$4,950.00	\$4,950.00
Books and Records storage	\$11.34	\$11.34
Law Image document transcription	\$2,720.00	\$2,720.00
Postage expenses	\$378.53	\$378.53
Travel expenses to Point Clare Properties	\$156.05	\$156.05
TOTAL (excluding GST)	\$327,245.85	\$191,721.02

67. I have reviewed each of the disbursements in connection with the Third Course of Action and am satisfied that they were reasonably incurred and properly payable by New Custodian Trustee.

Ashurst and counsel

68. I am informed by Bernie Walrut, Partner of Ashurst, that each Ashurst invoice referred to in the table in paragraph 66 (**Ashurst Invoices**) is separated into a "General" phase and a "Liquidation" phase. The General phase relates to the work undertaken by Ashurst for New Custodian Trustee and the Liquidation phase relates to work undertaken by Ashurst for the Liquidators. The former is the subject of this application.
69. I am informed by Mr Walrut that Ashurst has done a subsequent review of the Ashurst Invoices and identified a number of time entries which were incorrectly categorised. I am informed by Mr Walrut that Ashurst has recategorized the time entries to correspond with the appropriate phases (and corrected a number of narrations) At pages 1 to 12 of Confidential Exhibit CMC-16 is a copy of a spreadsheet reflecting the recategorized time

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entries (**Spreadsheet**). In the Spreadsheet, "phase 10" is a reference to the General phase and "phase 20" is a reference to the Liquidation phase.

70. At pages 13 to 19 of Confidential Exhibit CMC-16 is a copy of the Ashurst 31 October Invoice. The total amount of the invoice is \$101,344.47 (excluding GST) (including disbursements). I have reviewed the Ashurst 31 October Invoice and Spreadsheet and note that the General phase time entries (\$62,329.50) relate to the Third Course of Action, largely, in relation to the Approval Application, Second Remuneration Application and sale of the Point Clare Properties by New Custodian Trustee.
71. At pages 20 to 25 of Confidential Exhibit CMC-16 is a copy of the Ashurst 30 November Invoice. The total amount of the invoice is \$69,210.76 (excluding GST) (including disbursements). I have reviewed the Ashurst 30 November Invoice and Spreadsheet and note that the General phase time entries (\$31,968.50) relate to the Third Course of Action, largely, in relation to the Approval Application, Second Remuneration Application and sale of the Point Clare Properties by New Custodian Trustee. I have also reviewed the external disbursement of \$1,334.00 which relates to Court fees for the Second Remuneration Application. At page 26 of Confidential Exhibit CMC-16 is a copy of Court's invoice.
72. At pages 27 to 33 of Confidential Exhibit CMC-16 is a copy of the Ashurst 22 December Invoice. The total amount of the invoice is \$38,922.60 (excluding GST) (including disbursements). I have reviewed the Ashurst 22 December Invoice and Spreadsheet and note that the General phase time entries (\$31,720.50) relate to the Third Course of Action, largely, in relation to the Approval Application and sale of the Point Clare Properties by New Custodian Trustee. I have also reviewed the external disbursement of \$1,400.00 which relates Court fees in respect of the Approval Application. At pages 34 to 35 of Confidential Exhibit CMC-16 are copies of the Court's invoices.
73. I also note there is an external disbursement of \$5,754.10 recorded in the Ashurst 22 December Invoice which is senior counsel's invoice in respect of the First Remuneration Application. At pages 36 to 37 of Confidential Exhibit CMC-16 is a copy of senior counsel's invoice. This invoice was not included in previous Ashurst invoices. As deposed to paragraph 51 of the Sixth Conneely Affidavit, the First Remuneration Application related to the Second Course of Action and accordingly, New Custodian Trustee seeks approval of this disbursement in connection with Second Course of Action.
74. At pages 38 to 42 of Confidential Exhibit CMC-16 is a copy of the Ashurst 31 January Invoice. The total amount of the invoice is \$31,842.50 (excluding GST). I have reviewed the Ashurst 31 January Invoice and Spreadsheet and note that the General phase time entries (\$15,722.50) relate to the Third Course of Action, largely, in relation to the sale of the Point Clare Properties by New Custodian Trustee.
75. At pages 43 to 45 of Confidential Exhibit CMC-16 is a copy of the Ashurst 27 February Invoice. The total amount of the invoice is \$5,704.50 (excluding GST) (including disbursements). I have reviewed the Ashurst 27 February Invoice and Spreadsheet and note that the General phase time entries (\$3,121.00) relate to the Third Course of Action, largely, in relation to the

K. Conneely

Second Remuneration Application and the sale of the Point Clare Properties by New Custodian Trustee.

76. At pages 46 to 50 of Confidential Exhibit CMC-16 is a copy of the Ashurst 30 March 2023 Invoice. The total amount of the invoice is \$69,756.00 (excluding GST) (including disbursements). I have reviewed the Ashurst 30 March Invoice and Spreadsheet and note that the General phase time entries (\$21,694.00) relate to the Third Course of Action, largely, in relation to the Second Remuneration Application and Third Remuneration Application. I have also reviewed the internal and external disbursements (\$11,966.00) which relate to counsel's fees and Court fees in respect of the Second Remuneration Application. At pages 51 to 57 of Confidential Exhibit CMC-16 are copies of counsel's invoice and the Court's invoice.

Other disbursements

77. I am unable to provide invoices for certain disbursements referred to in the table in paragraph 66 above, for example, RelativityOne disbursements, Books and Records storage and postage expenses, as these costs are paid via KordaMentha's corporate account for various engagements in bulk and then a portion of the cost is applied to the specific engagement.
78. I note the following in respect of these disbursements:
- (a) RelativityOne hosting and user fees – these relate to the maintenance of the Books and Records electronically on Relativity. KordaMentha has an agreement with RelativityOne to pay \$300 in hosting fees and \$150 per person in user fees, each month, which are apportioned to the specific engagement;
 - (b) Books and Records storage – this relates to the physical storage of the Books and Records;
 - (c) Law Image document transcription – at page 98 of Exhibit CMC-15 is a copy of invoice M0072212 dated 25 October 2022. The total amount of the invoice is \$2,720.00 (excluding GST). The invoice relates to the transcription of handwritten Books and Records (principally member listings of the Fund over time) to electronic, usable copies;
 - (d) Postage expenses – these relate to bulk mailout costs incurred for distributing notices to Interested Persons; and
 - (e) Travel expenses – at pages 99 to 100 of Exhibit CMC-15 are copies of invoices 35791169 and 36185481 dated 15 November 2022 and 6 December 2022 respectively. The total amount of the invoices is \$156.05 (excluding GST). These relate to costs incurred by KordaMentha staff in travelling to the Point Clare Properties in order to attend the auction and provide required assistance to the agents.

I Third Course of Action (Future Period)

11. Remuneration

79. Immediately below is a summary of the amounts estimated to be claimed in respect of work undertaken by New Custodian Trustee in the relevant categories identified in paragraph 32

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above in connection with the Third Course of Action for the Future Period. As this is an estimate, in the event that the hourly rates charge is below the total estimate, New Custodian Trustee will only seek payment of remuneration for actual costs incurred. At paragraphs 80 to 88, I provide specific details of the work I expect my staff and I to perform during the Future Period by reference to those categories.

Category	Remuneration sought to be approved for the Third Course of Action
Litigation/legal	\$6,700.00
Interested Persons	\$1,650.00
Trading	\$1,650.00
TOTAL (excluding GST and disbursements)	\$10,000.00

Litigation/legal

80. The total amount of remuneration estimated to be incurred with respect to this category for the Future Period in respect of the Third Course of Action is \$6,700.00 (excluding GST).
81. A schedule setting out the remuneration estimated to be incurred with respect to this category for the Future Period in respect of the Third Course of Action is at page 101 of Exhibit CMC-15.
82. This category will be used to record time spent liaising with Ashurst in respect of the Third Remuneration Application. In summary, New Custodian Trustee anticipates undertaking the following work in respect of the litigation/legal category:
 - (a) preparing this affidavit;
 - (b) considering, reviewing and collating relevant information and documentation for the exhibits to this affidavit; and
 - (c) considering and reviewing submissions for the Third Remuneration Application.

Interested Persons

83. The total amount of remuneration estimated to be incurred with respect to this category for the Future Period in respect of the Third Course of Action is \$1,650.00 (excluding GST).
84. A schedule setting out the remuneration estimated to be incurred with respect to this category for the Future Period in respect of the Third Course of Action is at page 101 of Exhibit CMC-15.
85. This category will be used to record time spent providing notice to and dealing with any enquiries from Interested Persons in relation to the Third Remuneration Application. In summary, New Custodian Trustee anticipates the following work in respect of the Interested Persons category:

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- (a) issuing a notice to Interested Persons of the Third Remuneration Application (**Third Remuneration Notice**) by:
- (i) publishing it on the New Custodian Trustee Website;
 - (ii) sending a copy to the known addresses and email addresses of the Interested Persons identified at the time;
 - (iii) maintaining a dedicated email for any queries from Interested Persons and responding to the queries;
 - (iv) considering responses to the Third Remuneration Notice from Interested Persons; and
 - (v) reviewing and considering additional information provided by Interested Persons.

Trading

86. The total amount of remuneration estimated to be incurred with respect to this category for the Future Period in respect of the Third Course of Action is \$1,650.00 (excluding GST).
87. A schedule setting out the remuneration estimated to be incurred with respect to this category for the Future Period in respect of the Third Course of Action is at page 101 of Exhibit CMC-15.
88. This category will be used to record time spent on general accounting tasks and day- to- day administration connected with the Fund. In summary, New Custodian Trustee anticipates undertaking the following work in respect of the trading category:
- (a) general accounting tasks, including, processing receipts, attending to bank account reconciliations and processing receipts and payments onto Insol; and
 - (b) payment of the Proceeds to the Liquidators.

Ashurst and counsel

89. I am informed by Mr Walrut that he estimates that Ashurst's costs for the Future Period in respect of the Third Course of Action will be \$40,000 (excluding GST) and these costs will largely relate to the preparation of and making the Third Remuneration Application. Mr Walrut also informs me that he anticipates disbursements of \$15,000 (excluding GST) relating to counsel's fees (\$13,000), Court fees (\$1,500) and document production and courier costs (\$500). Accordingly, New Custodian Trustee seeks approval of future disbursements in the amount of \$55,000 (excluding GST). Approval of New Custodian Trustees' future remuneration and disbursements is sought to avoid New Custodian Trustee needing to make a further application for approval of remuneration and disbursements – in which case further costs would be incurred in connection with that application and consequently, further approval from the Court would be required to be sought.

J Matters relevant to consideration of remuneration

90. In the context of an external administration, the Court must have regard to whether the remuneration is reasonable and takes into account any or all of the matters listed in

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section 60-12 of Schedule 2 to the *Corporations Act 2001* (Cth) (**Schedule 2**) when reviewing a remuneration determination. I consider that the role undertaken by New Custodian Trustee in performing the Third Course of Action to be analogous to a voluntary administrator and liquidator. In the circumstances, I consider each of these matters (where relevant) in turn below.

J1. The extent to which the work by New Custodian Trustee was necessary and properly performed (s 60-12(a))

91. I consider that the work performed by New Custodian Trustee as deposed to above was properly incurred by New Custodian Trustee as part of undertaking the Third Course of Action. In this regard, I note that the work performed by New Custodian Trustee related, for the most part, to the litigation/legal category and assets category, and was necessary in order to sell the Point Clare Properties in accordance with the Third Course of Action.

J2. The period during which the work was performed by New Custodian Trustee (s 60-12(c))

92. The work performed by New Custodian Trustee in respect of the Third Course of Action occurred over the period October 2022 to April 2023 (a period of approximately seven months). The total professional fees and disbursements over this period was \$285,956.52 (excluding GST), equating to approximately \$40,850.93 per month. The professional fees over this period were \$94,235.50 (excluding GST), equating to approximately \$13,462.21 per month and the disbursements over this period was \$191,721.02 (excluding GST) equating to approximately \$27,388.72 per month. The estimated professional fees and disbursements over the Future Period is a relatively modest amount of \$10,000.00 (excluding GST).

J3. The quality and complexity of the work performed by New Custodian Trustee (s 60-12(d) and (e))

93. I consider the work performed by New Custodian Trustee, and its legal advisers, has been of a high quality. The majority of the remuneration incurred was in respect of the Approval Application, Second Remuneration and Third Remuneration Application. I note that the Court made orders in respect of each of the Approval Application and Second Remuneration Application in substantially the same form as the relief sought by New Custodian Trustee.

J4. The level of risk or responsibility accepted by New Custodian Trustee (s 60-12(g))

94. I considered that the level of risk or responsibility was higher than a typical external administration process, in large part due to the rapidly changing economic environment since the Court authorised New Custodian Trustee to undertake the Third Course of Action (and, in particular, sell the Property). As deposed to in the Seventh Conneely Affidavit, the market conditions were generally unfavourable for vendors and therefore, there was greater responsibility on New Custodian Trustee to obtain the maximum price for the Point Clare Properties. New Custodian Trustee subsequently formed the view that it was necessary to bring the Approval Application, seeking justification in completing the settlement of the sale of the Point Clare Properties as affected by the contracts for sale of land.

K. Conneely

15. The value and nature of any property dealt with, or likely to be dealt with, by New Custodian Trustee (s 60-12(h))

95. As deposed to in the Fourth Conneely Affidavit, the Property at appointment consisted of the Point Clare Properties, Shares and cash held in various bank accounts maintained with St George Bank and Bank Australia (which have since been transferred to Macquarie). All assets have now been realised and are held in various bank accounts with Macquarie. The cash balance of the Fund as at 30 April 2023 is \$8.6 million. This consists of proceeds from the sale of the Property, broken down as follows:

- (a) \$1,750,000 – 67 Victory Parade (being the gross sale price under the 67 Victory Parade Contract);
- (b) \$1,300,000 – 69 Victory Parade (being the gross sale price under the 69 Victory Parade Contract);
- (c) \$4,864,140 – Amcor Shares (being the gross realised value of the shares);
- (d) \$709,373 – Orora Shares (being the gross realised value of the shares); and
- (e) the existing cash balances of the various bank accounts maintained with St George Bank and Bank Australia.

96. I am not aware of any further property held on the trust for the Fund, however the Liquidators' investigations are continuing in this regard.

16. The number, attributes and conduct, or the likely number, attributes and conduct, of Interested Persons (s 60-12(i))

97. Consistent with the process adopted by New Custodian Trustee for the First Remuneration Application and Second Remuneration Application, I intend to provide a copy of the relevant notice of motion and this affidavit (with redactions applied to any paragraphs disclosing the nature of legal advice provided to New Custodian Trustee and excluding Confidential Exhibit CMC-16) to the Interested Persons prior to the determination of the Third Remuneration Application. To the extent that any Interested Person wishes to object to any remuneration and/or disbursements the subject of the Third Remuneration Application, I propose that those Interested Persons should have an opportunity to do so at the hearing of the Third Remuneration Application.

17. The time properly taken by New Custodian Trustee in performing the work (s 60-12(j))

98. In addition to the matters deposed to in paragraphs 35 to 38 above in relation to the rates and the calculation of New Custodian Trustee's remuneration during Relevant Period, I note that:

- (a) the work performed by New Custodian Trustee was delegated to staff members of KordaMentha having regard to their respective rates, their skill and experience and the complexity of the administration of the Custodian Trust and the Fund;
- (b) the majority of the work was performed by an Executive Analyst who had the experience to carry out day-to-day tasks under the supervision of more senior staff.

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The Executive Analyst's hourly charge out rate is \$495 for FY23 and they accounted for 55% of the professional fees sought;

- (c) the Executive Analyst was primarily supervised by me (hourly charge out rate \$795 for FY23) and a Director (hourly charge out rate \$745 for FY23). Together this accounted for 19% of the total professional fees sought;
- (d) a substantial portion of the work was performed by a member of KordaMentha's Real Estate team, a Director (hourly charge out rate of \$745 for FY23), who supervised and managed the sale of the Point Clare Properties. They accounted for 22% of the professional fees sought; and
- (e) general administrative tasks falling into the administration and risk mitigation category were performed by less senior but appropriately qualified staff such as Administration Assistants and Undergraduates.

K Other matters

- 99. At page 102 of Exhibit CMC-15 is a summary of receipts and payments in respect of the Relevant Period.
- 100. In respect of the ongoing administration of the Custodian Trust and the Fund, New Custodian Trustee is in the process of finalising the trusteeship with the only task required being the payment of the Proceeds to the Liquidators and the finalisation of the Third Remuneration Application. The Liquidators have commenced their detailed investigations into the affairs of the Custodian Trust and Fund but do not currently anticipate that there will be further recoveries for Interested Persons apart from the Property. The Liquidators will also continue to undertake the financial review of the Fund with the assistance of Rothsays, including annual bookkeeping and the preparation of financial statements, undertaking audits and completing tax lodgements where required.
- 101. The Liquidators intend to shortly make an application under section 90-15 of Schedule 2 seeking judicial advice in respect of, among other things, the relevant rules which govern the Fund (there are various versions which do not appear to have been properly altered in accordance with the alteration provisions in the Rules). The Liquidators consider this to be a necessary first step in a series of applications for judicial advice and/or directions, ultimately, to determine how the proceeds of the Property should be distributed amongst Interested Persons. The initial application is important because the class of members of the Fund is likely to change depending on which set of rules applies to the Fund. Depending on the outcome of the initial application and subsequent judicial advice/directions applications (see paragraph 82 of the Fourth Conneely Affidavit), I anticipate that the winding up of the Fund will take approximately 12 months to complete.
- 102. I do not anticipate that any further applications for review of New Custodian Trustee's remuneration and disbursements will be made in accordance with the 6 May 2022 Orders and any further orders that may be made in this regard (noting that New Custodian Trustee is seeking approval of future remuneration and disbursements).

K Conneely

103. I note that there is currently no order which relates to the review of the remuneration and disbursements of the Liquidators in respect of the winding up of the Fund. I anticipate that the Liquidators will seek approval of their remuneration in accordance with Division 60 of Schedule 2 and pay disbursements in the ordinary course.

SWORN at Sydney NSW

Signature of deponent

Klanneely.

Name of witness

Aaron Kam

Address of witness

Level 11, 5 Martin Place, Sydney NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness

Endorsement by witness: I have signed a scanned copy of the signed document sent to me electronically by the deponent, having witnessed the signature of the deponent over audio visual link in accordance with section 14G(2) of the *Electronic Transactions Act 2000* (NSW).