

AMENDED AND RESTATED  
ORYX LONG TERM SHARE INCENTIVE TRUST

---

originally executed and dated at Windhoek on 23 February 2015

concluded between

**Oryx Properties Limited**

(the Company)

and

**Jens Christian Kuehhirt, Christiaan Johan Gouws**

and

**Henry Hermann Hopker**

(the Trustees)

## 1 INTRODUCTION

- 1.1 By written deed the Company on 23 February 2015 established a Trust (the original deed of Trust) having the following main objectives:
  - 1.1.1 to provide the framework for a scheme in terms of which units in the capital of the Company can be acquired and held for the benefit of eligible participants and awarded to participants against predetermined performance criteria;
  - 1.1.2 to acquire units in the capital of the Company;
  - 1.1.3 to establish a scheme to enable eligible participants of the Company to hold units in the Company so as to allow them to participate in the growth and prosperity of the Company, thereby creating an incentive to such employees to remain in the service of the Company, to increase performance and to align their interests with those of investors and unitholders.
- 1.2 On 25 November 2015 the original deed of Trust and scheme was amended by the First Addendum thereto. The original deed of Trust as amended by the First Addendum thereto is herein referred to as the “existing deed of Trust”.
- 1.3 The existing deed of Trust is hereby further amended by the deletion of the existing deed of Trust in its entirety and the simultaneous substitution therefor in its place and stead of this Amended and Restated Deed of Trust in respect of the Oryx Long Term Share Incentive Trust, which Amended and Restated Deed of Trust is hereby covenanted as such and constitutes a Deed of Assumption between the existing and the new trustees.
- 1.4 This agreement accordingly is an amendment and restatement of the original deed of Trust dated 23 February 2015 as amended by the First Addendum dated 25 November 2015 and the scheme. This Amended and Restated Deed of Trust is an agreed variation and amendment of the original deed of Trust as contemplated in clause 29 of the original deed of Trust.
- 1.5 By virtue of this agreement the deed of Trust is hereby amended to read as follows below.

## 2 INTERPRETATION

2.1 In this deed, unless the context clearly indicates a contrary intention, the following words shall have the following meanings -

- 2.1.1 “allocation” – an allocation of units to constitute base units beneficially held by the Trust with a view to making awards to eligible participants;
- 2.1.2 “allocation date” – a date on which base units are set aside with a view to an award being made;
- 2.1.3 “award” – an award of units to an eligible participant in terms of the scheme;
- 2.1.4 “award date” - the date on which an award of units is made to a participant in terms of the scheme;
- 2.1.5 “Act” - the Companies Act 28 of 2004, as amended;
- 2.1.6 “base units” – units held by the Trust as beneficial owner as a pool of units available for award, prior to the award thereof to participants;
- 2.1.7 “board” - the board of directors of the Company, acting either itself or through any committee constituted by it for the purposes of administering all or any part of this scheme including to determine the composition and evaluation of the peer group;
- 2.1.8 “capital of the Company” – the issued capital of the Company comprised of ordinary shares and debentures, styled as units;
- 2.1.9 “capital of the trust” - all assets and funds which the Trust has acquired and may from time to time acquire whether by donation from the Company or any other person or by acquisition or otherwise including any portion of the income which is added to the capital of the Trust in terms of clause 16 from time to time;
- 2.1.10 “company” – Oryx Properties Limited, a public company incorporated in Namibia and listed on the NSX;

- 2.1.11 “dispose” - sell, alienate, donate, exchange, encumber or in any other manner dispose or deal in or endeavour to dispose of or deal in;
- 2.1.12 “eligible participant” – an executive employee or selective senior management as determined by the Board of the Company eligible for participation in this scheme, being executive and senior management employees of the Company who are directly engaged in the day to day management of the Company and deliver a material contribution to the Company’s performance, including any present or future executive and senior management employees of the Company, as determined by the Board; provided that no trustee of this Trust shall participate in this scheme;
- 2.1.13 “executive employee” – a company employee with executive functions;
- 2.1.14 “performance targets” – performance targets determined and reviewed on an annual basis by the Board, and conveyed to eligible employees, based on -
- 2.1.14.1 budgeted financial performance targets based on the Company’s overall Net Income during each financial year; and
- 2.1.14.2 the Company’s distribution growth performance measured against the peer group;
- that together form the basis for the evaluation of the Company’s overall performance;
- 2.1.15 “group” - Oryx Properties Limited and its subsidiaries and associated companies;
- 2.1.16 “incentive period” – a three (3) year period, and it is agreed that the first incentive period shall be deemed to have commenced on 1 July 2019 ;

- 2.1.17 “incentive amount” – an amount determined in the discretion of the Board, that is to be awarded in the form of units to an eligible employee, set as an incentive to seek to facilitate that the Company achieves the desired performance targets;
- 2.1.18 “income” - the net income of the Trust being all distributions and other income thereof after meeting all expenses;
- 2.1.19 “lock-in-period” – a period of three (3) years from the date of vesting of any units in a participant during which period participants may only dispose of units awarded to them under the scheme in accordance with limitations prescribed by clause 23;
- 2.1.20 “Net Income” – distributable income excluding taxation, but including dividends received from investments;
- 2.1.21 “NSX” - The Namibian Stock Exchange;
- 2.1.22 “participant” - an eligible participant who has been awarded units, including his or her heirs, executors or administrators;
- 2.1.23 “peer group” – a variable group comprised of property companies listed on the Johannesburg Securities Exchange selected by the Remuneration and Nomination committee in its discretion which is to be reviewed annually to measure the performance of the Company against the industry performance;
- 2.1.24 “Remuneration and Nomination Committee” or “RNC” means the committee of the Board by that name of the Company;
- 2.1.25 “retirement” - retirement at normal retirement age in accordance with any scheme or policy of the Company from time to time in force;
- 2.1.26 “scheme” - the scheme to enable eligible participants to be awarded units, the terms of which are embodied in this deed;

2.1.27 “scheme capitalisation units” – units, shares or other securities in the Company allotted and issued by way of a capitalisation of profits, share premium or reserves to the Trust in respect of its holding of scheme units;

2.1.28 “scheme rights units” – units, shares or other securities subscribed for pursuant to a rights issue and acquired by the Trust in terms of this scheme;

2.1.29 “scheme units” - units acquired and held by the Trust in terms of this scheme including -

2.1.29.1 base units;

2.1.29.2 scheme capitalisation units;

2.1.29.3 scheme rights units;

2.1.29.4 scrip dividend units; and

2.1.29.5 units in the Company or shares or debentures or securities in any other company allotted, issued or transferred by way of exchange for such units, shares or debentures or securities pursuant to any conversion or redemption of units, shares or debentures or securities in accordance with the Company's articles of association and/or pursuant to any takeover of the Company or any scheme of arrangement or other proposal having as its object the passing of control or the reconstruction of the capital of the Company and/or pursuant to a reduction of capital;

for so long as those units, shares, debentures or securities remain subject to the provisions of this scheme;

2.1.30 “scrip dividend units” - units allotted and issued to the Trust in lieu of a cash dividend on account of its scheme units;

- 2.1.31 “selective senior management” – employees of the Company engaged in senior management positions within the Company, as determined by the Board;
- 2.1.32 “Trust” – the trust hereby established and constituted and styled the Oryx Long Term Share Incentive Trust constituted in terms of clause 3;
- 2.1.33 “Trust fund” - the aggregate of all of the assets of the Trust for the time being including, without limitation, scheme units, but less all the liabilities for the time being of the Trust ;
- 2.1.34 “Trustees” - the persons referred to in clause 0 or such other persons who hold office as Trustees for the time being and from time to time in terms of this deed;
- 2.1.35 “unit” - a unit in the capital of the Company, being a linked unit comprised of one ordinary par value share in the issued share capital of the Company and one debenture issued by the Company;
- 2.1.36 “unit price” - the purchase price per unit payable by the Trust in terms of this scheme, which price shall be the unit value;
- 2.1.37 “unit value” - the market value per unit which value shall –
- 2.1.37.1 for so long as the units are listed on the NSX, be the value of the units as quoted on the NSX on the day prior to any transaction for purposes of which the unit value is required, or,
  - 2.1.37.2 if the units are not listed, a value equal to the average unit price on the NSX in the eighteen (18) months preceding the delisting, or such other value as the Board may determine in consultation with the Trustees and auditors of the Company.
- 2.2 In this deed, unless the context clearly indicates a contrary intention -
- 2.2.1 expressions which denote -
    - 2.2.1.1 any gender includes the other genders;

- 2.2.1.2 the singular includes the plural and *vice versa*;
- 2.2.1.3 a natural person includes an artificial person and *vice versa*;
- 2.2.2 where a day on or by which anything is to be done is not a business day in Namibia, it shall be done on or by the next business day;
- 2.2.3 when any number of days is prescribed in this document, the same shall be calculated on the basis that the first of such number shall be excluded and the last included unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.2.4 if any provision in clause 2.1 is a substantive provision conferring rights or imposing obligations on anyone, effect shall be given to it as if it were a substantive provision in the body of this deed;
- 2.2.5 annexures to this deed shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 2.2.6 references to a party to an agreement or document includes such party's successors in title and permitted assigns;
- 2.2.7 references to an Act of Parliament or regulation are to such Act of Parliament or regulation as at the date of signature of this deed and as amended or re-enacted from time to time;
- 2.2.8 a reference to an agreement or document includes an amendment or supplement to or replacement or novation of that document;
- 2.2.9 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.2.10 expressions defined in this deed shall bear the same meanings in schedules or annexures hereto which do not themselves contain their own definitions.



### **3 CONSTITUTION OF TRUST**

- 3.1 The Trust is hereby constituted by the Company to serve as a scheme with the aim to benefit eligible participants and shall be administered in accordance with the provisions hereof.
- 3.2 The Trust is to be known as the **ORYX LONG TERM SHARE INCENTIVE TRUST**.

### **4 DONATION**

- 4.1 The Company hereby irrevocably donates NAD100.00 (one hundred Namibia Dollars) to the Trust. The sum donated shall be paid by the Company to the Trustees on behalf of the Trust within a reasonable time after execution of this deed.
- 4.2 The Company shall be entitled from time to time to add to, increase or augment the capital of the Trust by donation or otherwise as the Company may deem fit. The terms of this deed shall apply, *mutatis mutandis*, to any such additional, increased or augmented capital, which the Trustees shall have power to accept without any further deed or formality being required to vest any such additional, increased or augmented capital of the Trust upon the transfer or delivery by the Company and/or other person concerned of any asset or payment of any sum to the Trustees on behalf of the Trust.

### **5 SPECIAL PURPOSE OF THE TRUST**

- 5.1 Without in any way derogating from the powers, rights, duties and authorities contained in this deed the primary purpose of this Trust is to confer the benefits regulated by the Trust to secure an interest in the Company for its executive employees and selective senior management.
- 5.2 Agreements shall be negotiated and concluded from time to time between the Trustees and the directors of the Company for, *inter alia*, the following purposes:
- 5.2.1 to evaluate the Company's actual performance against the performance targets;

- 5.2.2 based on the performance targets and the incentive amount set for an eligible employee, to determine the number of units that will form the subject of any allocation to such eligible employee;
- 5.2.3 based on the performance targets and the incentive amount set for an eligible employee, to determine the number of units that will form the subject of any award to such eligible employee;
- 5.2.4 the period over which allocations in base units will be extended as well as the dates upon which awards shall be made and vest in eligible participants, it being recorded that vesting shall only occur after an award;
- 5.2.5 the terms and conditions that will regulate allocations and awards in order to give effect to this Trust according to its intended purpose, including the evaluation of the Company's performance as against the peer group, it being recorded that –
  - 5.2.5.1 if the Company's distribution growth performance per linked unit is less than fifty percent (50%) of the peer group, the RNC may determine allocations in its sole and unfettered discretion; and
  - 5.2.5.2 if the Company's distribution growth performance per linked unit is between fifty percent (50%) and seventy five percent (75%) of the peer group, allocations will be done at the maximum percentage envisaged in clause 5.3.7; and
  - 5.2.5.3 if the Company's distribution growth performance per linked unit is between ninety percent (90%) and one hundred percent (100%) of the peer group distribution growth, the RNC may determine allocations in its sole and unfettered discretion;
- 5.2.6 the composition and evaluation of the peer group;

- 5.2.7 the terms and conditions that will regulate, from time to time, loans to be granted by the Company to the Trust to enable the Trust to meet its object according to the intent and purpose of the Trust.
- 5.3 Without derogating from the complete discretion of the Trustees and to determine the matters regulated by clause 5.2, the Trust shall be guided by the following criteria:
- 5.3.1 the scheme shall be implemented with effect from 1 July 2019, irrespective of the date on which this Trust was constituted, in order to afford the benefits of the scheme to company employees who qualified as eligible participants as at 1 July 2019;
- 5.3.2 the Trust shall from time to time acquire units to serve as base units on the open market, or, if no units are available, the Company may allot and issue units to the Trust to serve as base units;
- 5.3.3 a prescribed number of base units will be designated on an annual basis for future allocation to eligible participants, but will be beneficially held by the Trust as the Trust's assets until an award of units is granted to the eligible participants;
- 5.3.4 base units shall not vest in eligible participants. Awards of units shall be made to eligible participants at the end of the incentive period or at non-renewal of the employment contract of an eligible participant, whichever event occurs first;
- 5.3.5 the employee contracts for eligible participants shall, in so far as possible, be structured by the Company so as to ensure that the employment contracts are of different duration in order to ensure continuity and a spread of awards over time;

- 5.3.6 all employee contracts of eligible participants shall expire or be deemed to expire on the last day of June in the year in which the employee contract expires by effluxion of time. In the event that the contract of an eligible employee who has been awarded units and the incentive period applicable to him or her expires before the last day of June a *pro rata* allocation will be calculated as at the date of contract termination, in the discretion of the Board;
- 5.3.7 all allocations or awards shall only be made once the year end results for the entire incentive period are known and have been evaluated as against the peer group;
- 5.3.8 the maximum allocation and possible award of units to eligible participants shall be determined by the Remuneration and Nomination Committee (“RNC”), as an equal percentage of the eligible participant’s cost to company (“CTC”) remuneration pertaining to that particular financial year and benefit package, and in accordance with the following basis of the plan:
- 5.3.8.1 **External Perspective:** The allocation is based on the Company’s performance assessed by an external company against the peer group.

<b>Performance</b>	<b>% of peers</b>	<b>Executive team</b>
Under median	Below 50%	Discretionary (RNC)
Median quartile	50% - 75%	1 month of CTC
Upper quartile	76% - 90%	2 months of CTC
Top quartile	91% - 100%	Discretionary (RNC)

5.3.8.2 **Internal perspective:** The allocation is based on achieving distributable income measured against the budgeted distributable income.

<b>Performance</b>	<b>% of budget</b>	<b>Executive team</b>
Under budget	Below 100%	Discretionary (RNC)
Meet budget	100%	3 months of CTC
Exceed budget	101% - 105%	3.5 – 3.9 months of CTC
Exceed budget	106% - 110%	4 months of CTC
Exceed budget	Above 110%	Discretionary (RNC)

## 6 RULES

6.1 Subject to the provisions of this deed the Board of the Company shall be entitled to:

6.1.1 frame rules, standing orders and regulations for the proper administration of the Trust in the conduct of its affairs and to alter, vary or rescind the same from time to time;

6.1.2 make such determinations, interpretations and take such steps in connection therewith as they may deem necessary or desirable;

6.1.3 in particular, without limiting the generality of the foregoing, the Board shall be entitled to establish, implement and apply such rules and regulations as may assist it in giving effect to the rights and powers afforded it in this deed.

6.2 All rules, standing orders and regulations in terms hereof (and any variation, amendment or cancellation thereof) shall be in writing and shall become operative when a copy thereof is received by the Trustees at the Trust's chosen *domicilium citandi et executandi* from time to time, and shall be complied with by the Trustees.

## **7 CURRENT TRUSTEES**

The current Trustees of the Trust shall be Jens Christian Kuehhirt, in his capacity as Chairperson of the RNC, Christiaan Johannes Gous and Henry Hermann Hopker, who by their signatures to this deed accept such appointment.

## **8 NUMBER OF TRUSTEES**

- 8.1 Subject to clause 8.2 the Trust shall be administered and managed by not less than three (3) and no more than five (5) Trustees. No trustee shall be a participant in terms of the scheme created by this Trust.
- 8.2 Pending the appointment of any successor to a trustee who has ceased to hold office as such, the Trustees remaining in office shall be empowered to act in the preservation of and to attend to the formal administration of the Trust.
- 8.3 If the number of Trustees is reduced below the minimum stipulated above as a result of a trustee ceasing to hold office the Board shall forthwith appoint one or more other Trustees in accordance with clause 9.1 to ensure that the minimum number of Trustees is maintained at all times in so far as possible.

## **9 APPOINTMENT OF TRUSTEES, VACATION OF OFFICE**

- 9.1 The Board shall have the power of appointing new or additional Trustees from time to time, including the appointment of a trustee to replace a trustee who ceases to hold office for any reason.
- 9.2 The Chairperson of the RNC shall always be a Trustee of the Trust; subject to the approval of the Master of the High Court. A trustee may retire or resign from office at any time on thirty (30) days written notice to the Trust without assigning any reason therefore.
- 9.3 A trustee shall vacate his office as such if -
- 9.3.1 he or she resigns; or

- 9.3.2 his or her estate is sequestrated or he or she is declared insolvent (whether provisionally or otherwise) or he or she surrenders his or her estate or is in any other way incapable of managing his or her own affairs or is or becomes under any legal disability affecting his or her legal capacity; or
- 9.3.3 he or she was a director of a company he or she would be disqualified from being such a director by virtue of the provisions of the Act; or
- 9.3.4 he or she fails, in the sole discretion of the Board, to properly discharge his or her duties as a trustee and he or she is removed as a trustee by resolution of the Board; or
- 9.3.5 where such trustee holds office by virtue of being the chairperson of the RNC, he or she ceases to hold that position.
- 9.4 Any trustee or Trustees succeeding to office in that capacity shall in their representative capacity, *ipso facto*, become vested with the assets and liabilities of the Trust and with immediate effect and in every way take the place of and assume the powers and duties of the trustee or Trustees whom he, she or they will have succeeded.

## **10 SECURITY DISPENSED WITH**

- 10.1 The Trustees herein appointed or from time to time succeeding to office as such shall not be required to find security for the due and faithful administration of the Trust under the Trust Monies Protection Act, 1934, or any other law which may now be or may hereafter become of force or effect, and the Master of the High Court or any other competent authority having jurisdiction in connection therewith is hereby directed to dispense with such security, the intent and purpose being that no trustee shall be required to give any security in respect of or in connection with or arising out of such appointment.

## **11 MEETINGS OF TRUSTEES**

- 11.1 Subject to the Trustees giving effect to the terms and conditions of this deed, they shall, in administering the Trust and its affairs generally, adopt such procedures and take such administrative steps as they shall from time to time deem necessary and advisable.
- 11.2 At the first meeting of Trustees the Trustees shall appoint from amongst their number a person to act as chairperson, who shall hold office for a period of twelve (12) months. On expiration of the said twelve (12) month period he or she shall retire but shall be eligible for re-election.
- 11.3 The Trustees shall meet at least once per year to consider and administer the affairs of the Trust.
- 11.4 Meetings shall be convened by the chairperson, who shall also have the power to convene meetings at any time if he or she considers it appropriate to do so, and who shall call a meeting if required to do so, in writing, by a fellow trustee. At least fourteen (14) days' notice shall be given of any meeting, unless all the trustees agree to a shorter period of notice. Notice may be given by electronic means, such as email, sms and What's App.
- 11.5 If a meeting is called by the chairperson on his or her own initiative or as a result of a requisition he or she shall fix the date, time and venue at which such meeting shall take place. Meetings of Trustees shall take place in Namibia. The Trustees shall meet together for the despatch of business, adjourn and otherwise regulate their meetings as they, in their discretion, think fit.
- 11.6 A simple majority of Trustees present shall constitute a quorum at meetings of the Trustees. Each trustee shall have one vote.
- 11.7 In taking decisions the vote of a majority of the Trustees present shall prevail. The chairperson shall not have a casting vote.
- 11.8 The Trustees shall keep written minutes of their meetings and the chairperson shall certify same as correct, unless each trustee has signed the resolution.



11.9 A resolution in writing signed by all the Trustees shall be as valid as a resolution taken at a meeting of the Trustees duly constituted. A resolution in terms of this clause shall be duly pasted into the minute book of the Trust within a period of twenty-one (21) days after the last signature has been affixed thereto.

## **12 DECISIONS OF THE TRUSTEES AND PERFORMANCE OF THEIR DUTIES**

12.1 Whenever reference is made in this deed to the discretion of the Trustees or the Board, such discretion shall be sole, absolute and unfettered.

12.2 The Trustees shall have the power to delegate to any person the performance of all or any acts which they are entitled to perform or exercise under this deed, and if deemed necessary to this end to employ persons who shall be responsible for the administration of the trust or to render other defined services on such terms and conditions and at such remuneration, if any, as the Trustees may decide.

12.3 A person engaged by the Trustees in terms of clause 12.2 may be an officer or employee of the group.

12.4 Any person engaged by the Trustees in terms of clause 12.2 shall perform all his or her duties in accordance with the instructions of the Trustees.

12.5 The Trustees shall also be entitled, instead of acting personally, to employ as far as may reasonably be necessary, and to pay, any attorney or any other person to transact business or do any act of whatsoever nature required to be done pursuant to this deed, including the receipt and payment of money, provided that any reasonable payment made in terms hereof shall be refunded to the Trustees by the Trust.

12.6 Where the Trustees employ any expert or professional they are entitled to take and act upon any expert or professional advice received.

### 13 POWERS OF TRUSTEES

13.1 The Trustees shall have all such powers as are required to enable them to carry out and give effect to the extent, purposes and provisions of this scheme, including such powers as may from time to time be expressly conferred on them by the Board and including, without derogating from the generality of the foregoing, the power, *inter alia* -

13.1.1 to borrow moneys from the Company for the purpose of giving effect to this scheme;

13.1.2 to open and operate banking accounts and to draw and issue cheques and to receive cheques, promissory notes and/or bills of exchange, and to endorse any of the same for collection, by the bank at which the said account was opened;

13.1.3 to invest any surplus moneys of the Trust in units or other securities of the Company;

13.1.4 to acquire for the purposes of the Trust units in the Company either by original subscription or purchase and upon such terms as they in their sole and absolute discretion may deem fit;

13.1.5 to exercise all the rights conferred by units and other assets beneficially held by the Trust, including base units, and including voting powers attaching thereto, rights of conversion and redemption, rights to take up further allotments of shares and the like as they in their sole and absolute discretion may deem fit;

13.1.6 to surrender and deliver up any units forming part of the Trust assets for such consideration and upon such terms and conditions as they may approve to any company reducing its capital and to receive such consideration in the form of cash, securities or other assets as may be agreed upon between them and the Company;

13.1.7 to repurchase from any participant holding units all or some of such units, upon such terms as the Trustees may deem fit;

13.1.8 to exercise such further rights, powers and authorities as may from time to time be conferred upon them under this scheme.

13.2 Without prejudice to any of the foregoing the Trustees shall have -

13.2.1 full capacity to contract on behalf of the Trust, subject always to such limitations, if any, as may be imposed by this deed or by the Board, and provided always that they will under no circumstances be personally liable on any such contract;

13.2.2 *locus standi in judicio* and be entitled and capable of bringing, defending, opposing, withdrawing, settling and/or otherwise acting in connection with any proceedings whatsoever in or before any court, arbitration or before any other forum, and all costs incurred by the Trustees or awarded against them in or arising out of such proceedings shall be for the account of the Trust.

#### **14 REMUNERATION OF TRUSTEES**

14.1 The Trustees shall be entitled and shall receive for their services as Trustees such remuneration (if any) as the Board may stipulate from time to time.

14.2 The Trustees shall be entitled to reimbursement of all reasonable charges, expenses and disbursements incurred by them in or arising out of their administration of the Trust, or their duties as Trustees.

14.3 Such remuneration (if any) and reimbursement of expenditure shall be borne and paid by the Company unless the Company and the Trustees otherwise agree.

14.4 Any trustee engaged in any profession or his or her firm may be employed to render services to the Trust and in that event the trustee concerned shall be entitled to be paid reasonable remuneration and professional charges for such services out of the funds of the Trust.

## **15 INDEMNITY**

- 15.1 No trustee shall be personally liable for any loss which may be suffered or sustained by the Trust or any beneficiary irrespective of the cause thereof, save and except any loss sustained as a result of his or her gross negligence or wilful dishonesty.
- 15.2 No trustee shall be responsible for the actions of any accountants, agents and attorneys appointed by the Trust.
- 15.3 The Trust hereby indemnifies the Trustees (whether the initial Trustees or their successors) and every attorney, agent or other person appointed by the Trustees under this deed against all actions, proceedings, costs, liabilities, claims, expenses and demands in respect of any matter or thing done or omitted to be done in any way in the execution of their office as Trustees, other than claims arising out of their gross negligence or wilful dishonesty.
- 15.4 None of the Trustees, successor Trustees or officers of the Trust shall be liable for any loss sustained by the Trust or by any participant out of whatever cause arising, save and except if such loss was sustained as a result of the gross negligence or wilful dishonesty of the trustee, successor trustee or officer in question.

## **16 ACQUISITION OF SHARES BY THE TRUST AND FUNDING THEREOF**

- 16.1 The Trustees shall from time to time -

16.1.1 purchase or subscribe for; or

16.1.2 be given options to purchase or subscribe for,

such numbers of units as the Board may determine from time to time, in its discretion but subject to clause 16.3, for so long as the units are listed on the NSX at a price equal to the market value of the units as quoted on the NSX on the day prior to such purchase, subscription or granting of option to purchase or subscribe, or, if not listed, at a price determined in accordance with clause 2.1.37.2. Units so acquired shall constitute base units and be part of the capital of the Trust, until some or all of them are awarded to participants.

16.2 The subscription or purchase price of units acquired by the Trust in terms of this scheme, the costs incurred in the acquisition thereof, any duties payable upon the issue or transfer thereof and any repayment of any associated borrowings by the Trustees may be met out of -

16.2.1 the Trust's own resources, if any;

16.2.2 loans to be made to the Trust by the Company in accordance with the provisions of section 44(2)(b) of the Act; and/or

16.2.3 any other resource which is available to the Trust from time to time, as the Board may, in its discretion, from time to time direct. The Company undertakes to ensure that the Trust shall at all times be in a position to fund the acquisition of units under this scheme.

16.3 Without the prior authority of the Company in general meeting, the aggregate number of units held by the Trust for the purposes of this scheme shall not at any time exceed two percent (2%) of the issued capital of the Company.

16.4 It is recorded that during such time as any base units allocated but not yet delivered and transferred to an eligible participant, the eligible participant shall not have any vested right or interest in such base units. If it should be held that any eligible participant does have any vested right or interest, the eligible participant shall be deemed to have granted to the Trustees an irrevocable proxy to vote in respect of such base units and to exercise any rights in respect thereof in any manner in which the Trustees deem fit. Pursuant to the proxy granted in terms hereof the eligible participant hereby undertakes that even if he or she shall be personally present at any general meeting of the Company, he or she shall not attempt to exercise his or her rights (if any) to vote such base units in respect of any resolution proposed at such meeting or attempt to exercise any other right arising therefrom.

## **17 ALLOCATIONS OF UNITS**

17.1 All base units shall -

17.1.1 be evidenced by a unit certificate issued to the Trust;

- 17.1.2 rank *pari passu* with each other;
  - 17.1.3 be dealt with by the Trustees in accordance with the provisions of this scheme;
  - 17.1.4 be held by the Trust as beneficial holder thereof until allocated in accordance with this scheme, with all distributions vesting in the Trust until a unit is awarded and transferred to an eligible employee;
  - 17.1.5 may be allocated by the Trustees to eligible participants in accordance with the scheme;
  - 17.1.6 once awarded entitle the eligible participants to the increment in value of the base units from the time that the Trust acquired the same until the date of award thereof that is attributable to such units.
- 17.2 The Trustees shall, if the Board so directs and subject to clause 17.3, allocate such number of units as is determined by the Board, in its discretion, to eligible participants at the unit value. Any such allocation -
- 17.2.1 shall be in writing in the form from time to time prescribed by the Board in consultation with the Trustees;
  - 17.2.2 shall be upon the terms and conditions as the Board may from time to time resolve;
  - 17.2.3 may, unless the Board otherwise resolves and so states in the allocation document referred to in clause 17.2.1 be accepted in respect of the whole or such lesser number of units to which the allocation relates, or be rejected, as the eligible participant may elect.
- 17.3 Acceptance of any allocation of units shall -
- 17.3.1 be communicated in writing to the Trustees not later than thirty (30) days after the date of the allocation being made and communicated, failing which such allocation shall lapse;
  - 17.3.2 specify the number of units in respect of which the allocation is accepted;

17.3.3 in any event not entitle the eligible employee to an award or any beneficial interest in the allocated base units, until the actual award thereof is implemented as contemplated in clause 18.

## **18 AWARD OF UNITS**

18.1 Once an award is made as contemplated in clauses 5.2 and 5.3 the Trustees shall award the allocated base units to the eligible participant on the award date, which shall be the end of the incentive period or the deemed end of the incentive period as contemplated in clause 5.3.6.

## **19 INCOME OF THE TRUST**

19.1 The Trustees in their discretion may apply the whole of the income by -

19.1.1 making payment of the whole or any portion of the income, in such amounts and at such times as the Trustees in their discretion may determine, to defray the costs of acquisition of units or the repayment of any loan made to the Trust by the Company; and/or

19.1.2 retaining the whole or any portion of the income and adding it to the capital of the Trust, whereafter such income shall be deemed to form part of the capital of the Trust and shall be administered accordingly; and/or

19.1.3 making payment of the whole or any portion of the income, in such amounts and at such times as the Trustees in their discretion may determine, to eligible participants ; provided that if the Trustees resolve to make any such payment, such payment shall be made to eligible participants in proportion to their respective allocation of base units.

- 19.2 Notwithstanding clause 19.1, the Trustees shall be entitled, in their discretion, to retain and give directions and to take steps and safeguards to protect the income and to invest, realise and reinvest any income to which the Trust or any eligible participant may be or become entitled in the name of the Trust, that eligible participant, in such manner and on such terms and conditions as the Trustees determine, and where applicable with the Trustees acting as agents for the eligible participants . In that event, the income so retained and invested (and the accretions thereto) shall vest in and accrue to the Trust or, if applicable, the relevant eligible participant but in the latter event shall be administered on his or her behalf by the Trustees as they in their discretion deem fit. Any such income to which eligible participants are or may be entitled shall be paid over from time to time to the relevant eligible participants as the Trustees determine, in their discretion, and shall only vest in such eligible participants once so paid over.
- 19.3 All income taxes and any other taxes which may be levied by any government or other competent authority on the relevant eligible participant may be deducted from and be paid out of such income. In determining the amount of any such income tax, any income which so vests in and accrues to the relevant eligible participant shall be deemed to be subject to income tax in an amount equal to the income tax actually levied or leviable on the whole of the relevant eligible participant's taxable income minus the income tax which would have been levied on the relevant eligible participant's taxable income had such amount not been vested in or accrued to him or her.



- 19.4 Any class of income distributed to any eligible participant shall retain the same character in the hands of the eligible participant as it had in the hands of the Trust. The Trustees shall be empowered to allocate to all or any of the eligible participants so much of any class of income as they, in their discretion, determine is to be distributed (on the one hand) or is to be retained by the Trust (on the other hand). The costs and expenses incurred by the Trustees in determining the different classes of income shall be allocated in proportion to the amount of income in each separate class. If no such allocation is made by the Trustees in any financial year of the Trust, the retained income and the distributed income shall be treated by the Trustees as consisting of the same proportion of each class of income as the total income for each class for such bears to the total income from all classes for that year.
- 19.5 For the sake of clarity, it is expressly recorded that eligible participants shall have no vested right of any nature whatsoever in respect of the income unless and until such income has been paid or vested to them by the Trustees pursuant to the foregoing provisions of this clause 18.
- 19.6 Save as expressly provided in this deed, the units held by participants shall confer on such participants no other right of whatsoever nature.

## **20 UNIT CERTIFICATES**

- 20.1 The Trustees shall, within thirty (30) days after the acceptance by an eligible participant of an award in terms of clause 18, transfer to and cause the Company to furnish such eligible participant with a unit certificate which shall -
- 20.1.1 have a distinctive number;
  - 20.1.2 reflect the name of the eligible participant holding such units;
  - 20.1.3 reflect the number of units held under such certificate.
- 20.2 It shall not be competent for any eligible participant to -
- 20.2.1 cede any of his or her rights or assign any of his or her obligations pursuant to the allocation of units or income to him or her except to the Trust;

20.2.2 pledge, hypothecate or otherwise encumber any of his or her rights in respect of an allocation or award of units or income.

20.3 Once a certificate has been issued by the Company to the eligible participant, the eligible participant shall hold such units to which it relates as his or her own property, but subject to the restrictions in clause 23.

## **21 REGISTER OF ELIGIBLE PARTICIPANTS AND UNITS**

21.1 The Trustees shall maintain a record of all eligible participants and the units allocated or awarded to them in the form of a Register, which record shall serve as *prima facie* proof of the units allocated or awarded and which shall stipulate, *inter alia* -

21.1.1 the date upon which units were allocated or awarded;

21.1.2 the number of units which were the subject of any allocation or award which has been accepted by an eligible participant;

21.1.3 the base units in respect of each allocated and awarded unit;

21.1.4 the name and address of each eligible participant;

21.1.5 the date on which each eligible participant ceased to be entitled to any allocated base units or ceases to hold any or all of his or her awarded units and the number of units which he or she ceased to hold as from that date;

21.1.6 the date upon which any units were acquired by the Trust from eligible participants as contemplated in clause 20.2.1 or clause 24 and the purchase price and/or consideration paid and/or given by the Trust in consideration therefor;

21.1.7 the date upon which the lock-in-period applicable to an eligible participant will or did expire.

## **22 OWNERSHIP OF TRUST ASSETS**

22.1 Any base units, scheme units or other assets constituting or forming part of the assets of the Trust which are held by the Trustees from time to time shall be registered in the name of any one or more of the Trustees or a nominee for the Trust or in any other manner not inconsistent with the ownership, title, rights or claims in respect thereof held by the Trust.

22.2 All distributions, transfer and other rights, including those arising on a liquidation of the Company, which attach to the scheme units, vest in the Trust, to be dealt with by the Trustees as they may in their absolute discretion determine; provided that this shall always be in accordance with this deed.

## **23 RESTRICTIONS ON DEALING IN UNITS**

23.1 A participant shall not be entitled to dispose of the units awarded in terms of this scheme until the expiry of the lock-in-period, save in accordance with the following provisions –

23.1.1 within the first year after vesting of the units a maximum of forty percent (40%) of such units may be disposed;

23.1.2 thereafter a maximum of twenty percent (20%) of such units may be disposed during any one year, over the next three (3) years.

23.2 After the expiry of the lock-in-period the participant shall be entitled to deal freely with any of his or her units.

## **24 REPURCHASE OF UNITS**

24.1 If an eligible participant who has been awarded units wishes to dispose of any of his or her units or if an eligible participant who has been awarded units surrenders his or her estate or is sequestrated then the eligible participant shall first offer the units to the Trust in writing and on the basis that the Trust may acquire them at the unit value.

24.2 A participant shall be entitled to request the Trustees to purchase units held by him or her by delivering a written request to the Trustees to that effect stipulating -

24.2.1 the number of units held by him or her; and

24.2.2 the unit certificate number held by him or her in respect of such units.

24.3 Upon receipt of a request referred to in clause 24.1 the Trustees shall be entitled to repurchase all of the units which the eligible participant in question offers to the Trust by paying to that eligible participant or his or her estate, as the case may be, the unit price, and the Register in terms of clause 21 shall be duly updated.

## **25 TERMINATION OF EMPLOYMENT**

25.1 If the employment of any eligible participant terminates prior to the expiry of the incentive period, for any reasons other than those stated in 25.2 or 25.3 then the allocated base units held by the Trust for the eligible participant shall be deemed to have automatically been forfeited and relinquished in favour of the Trust on the date of such termination of employment, and the eligible participant shall have no claim or entitlement to units or compensation related thereto whatsoever in consequence of such forfeiture or relinquishment; provided that the Trustees shall be entitled, in their discretion, to apply other provisions or impose other conditions which are more favourable to the eligible participant concerned than the above provisions of this clause 25.1.

25.2 If the employment of any eligible participant terminates as a result of -

25.2.1.1 his or her death; or

25.2.1.2 his or her retirement; or

25.2.1.3 his or her retirement due to ill health or disability as certified by a qualified medical practitioner nominated by the Trustees; or

25.2.1.4 his or her early retirement at the request of the Company; or

25.2.1.5 his or her retrenchment at the request of the Company;

then the provisions of clause 25.1 shall apply, *mutatis mutandis*, provided the Trustees shall be entitled, in their discretion, to apply other provisions or impose other conditions which are more favourable to the eligible participant concerned than the above provisions of clause 25.1.

25.3 If the employment of any eligible participant terminates on the grounds of his or her lawful summary dismissal or on the grounds of his or her proven dishonest, fraudulent or grossly negligent conduct (whether such termination occurs as a result of notice given to or by him or her or otherwise),

then the provisions of clause 25.1 shall apply, *mutatis mutandis*, to all of the base units held for such eligible participant at the date of termination of his or her employment.

25.4 Upon relinquishment of any entitlement by an eligible participant the Trustees shall update the Register maintained in terms of clause 21.

25.5 Should the Trustees make any payment to a participant or his or her estate, such payment shall be effected out of the assets of the Trust.

## **26 RIGHTS AND CAPITALISATION ISSUES, CONSOLIDATIONS SUB-DIVISIONS, ADJUSTMENTS ON REORGANISATION AND TAKEOVER**

26.1 Scheme units shall rank *pari passu* with the other issued units of the same class for participation in all rights offers of units, shares or other securities by the Company. The Board may, in its discretion, direct that the Trust shall follow its rights under any such rights offer, in which event such rights shall be subscribed for by the Trust in whole or in part (as directed by the Board) subject to the following terms and conditions -

26.1.1 the units, shares or other securities subscribed for in this manner shall be scheme rights units, shares or securities;

26.1.2 the Company shall lend to the Trust the amount required for the purpose of subscribing for the appropriate number of scheme rights units, shares or securities, and the Trust shall subscribe for those scheme rights units, shares or securities. The scheme rights units, shares or securities shall be registered in the name of the Trust. The loan by the Company to the Trust shall bear interest at a market related interest rate agreed in accordance with the provisions of clause 5.2.7 ;

26.1.3 certificates in respect of scheme rights units, shares or securities shall be delivered to and retained by the Trust.

26.2 Scheme units shall in all other respects rank *pari passu* with the existing issued units, including in respect of participation in capitalisation issues; provided that scheme capitalisation units shall be subject to all the restrictions and conditions of this deed. In such event or in the event of any reduction of the capital of the Company (all of which are hereinafter referred to as "adjustment event") the number of units shall be adjusted by the Board in such manner as it, acting reasonably, may deem appropriate with the objective that such adjustment should give eligible participants and participants the same benefits as those to which they would have been entitled prior to the adjustment event; provided that the auditors of the Company at that time, acting as experts and not as arbitrators, shall have confirmed in writing that in their opinion such adjustments are fair and reasonable.

26.3 If -

26.3.1 the Company becomes an immediate subsidiary of any company (other than any of its holding companies at the acceptance date) as a result of a takeover, reconstruction or amalgamation which makes provision for the Trust to receive shares in such other company on terms which the Company's auditors for the time being determine in their discretion are not less favourable than those to which the Trust is entitled in terms of this deed, the Trust shall be obliged to accept such shares in that other company upon those terms and conditions;

26.3.2 unitholders in the Company who, between them, hold not less than 51% of the issued units in the capital of the Company ("the majority unitholders") agree to sell, exchange or otherwise dispose of their units in the Company, then the Trustees shall be obliged to sell, exchange or otherwise dispose of the scheme units at the same price and upon the same terms and conditions and in the same proportion as the majority unitholders sell or dispose of their units if those majority unitholders so require and the Board so resolves.

## **27 BOOKS OF ACCOUNT**

27.1 The Trustees shall keep proper records and books of account of their administration of the Trust in such manner and form as is necessary in order that, at all times, the records and books shall fairly reflect the position of the Trust. There shall be recorded in such books and records, *inter alia*, any change in the assets of the Trust from time to time, income and all outgoings applicable to the administration of the Trust.

27.2 The accounts of the Trust shall be audited by such auditors as shall be appointed from time to time by the Trustees who shall be entitled to terminate any such appointment and appoint other auditors.

## **28 AGREEMENT BINDING ON ELIGIBLE PARTICIPANTS**

28.1 No scheme units which it is proposed will be awarded to or acquired by any eligible participant will be awarded otherwise than -

28.1.1 in writing; and

28.1.2 on the terms set out in this scheme and in terms of which the eligible participant irrevocably and unconditionally undertakes to adhere to and be bound by all the terms of this scheme.

## **29 AMENDMENT**

29.1 It shall be competent for the Board and the Trustees to amend any of the provisions of this deed or the scheme in writing subject to the approval of any competent authority; provided that -

29.1.1 the amendment shall serve to give effect to the objects of the scheme and the Trust according to its intent and purpose;

29.1.2 no such amendment shall affect the vested rights of any participant; and

29.1.3 no such amendment affecting any of the following matters shall be competent unless it is sanctioned by the Company in general meeting -

29.1.3.1 the eligibility of participants under this scheme;

29.1.3.2 the calculation of the total number of units which may be acquired for the purpose of or pursuant to this scheme;

29.1.3.3 the maximum number of units which may be acquired by any participant;

29.1.3.4 the unit price;

29.1.3.5 the unit value;

29.1.3.6 the voting, dividend, transfer and other rights, including those arising on a liquidation of the Company, attaching to the units; and

29.1.3.7 any amendment of this clause 29.

29.2 For so long as the units are listed on the NSX or any other stock exchange, no amendment shall operate without the prior approval of the NSX and all other stock exchanges on which the units of the Company are listed or quoted or dealt in.



### **30 ACCEPTANCE**

30.1 The Trustees hereby accept the donation referred to in clause 4, accept office as such, undertake to discharge their duties in terms of this deed and undertake to carry out the terms and conditions specified herein.

### **31 DISPUTES**

31.1 Should any dispute arise out of or pursuant to this scheme or its termination or cancellation or out of the allocation or award of any units, any eligible participant, trustee or director of the Company shall be entitled, by written notice to the Company and the Trustees, to require that the dispute be referred for determination to such person as is nominated by the President for the time being of The Namibian Institute of Chartered Accountants.

31.2 A person appointed or nominated in terms of 31.1 ("the expert") shall in all respects act as an expert and not as an arbitrator.

31.3 The expert shall not be bound to follow or observe strict rules of evidence or any legal formalities or procedures, which need not be taken into account by him in arriving at his decision.

31.4 The expert shall be vested with entire discretion as to the procedure and manner to be followed in arriving at his decision.

31.5 The expert shall be entitled -

31.5.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and, for that purpose, shall have the widest powers of investigating all the books and records of the Company and/or any parties to the dispute, and the right to take copies and/or to make extracts therefrom and the rights to have them produced and/or delivered at any reasonable place required by him for the aforesaid purposes;

31.5.2 to interview and question under oath any of the parties to the dispute, and/or any trustee and/or director or officer of the Company.

31.6 Any hearing by the expert shall be held in Windhoek.

31.7 The parties shall use their best endeavours to cause the decision of the expert to be given within twenty-one (21) days or as soon thereafter as may be possible after it has been demanded.

31.8 The expert's decision shall be final and binding on all parties affected thereby, shall be carried into effect and may be made an order of any competent court at the instance of any party to the dispute.

31.9 This clause 31 constitutes an irrevocable consent by the Trustees, eligible participants and the Board to any proceedings in terms thereof, and none of those parties shall be entitled to withdraw therefrom or to claim at any such proceedings that he is not bound by the provisions of this clause.

31.10 This clause is severable from the rest of this deed and shall therefore remain of full force and effect even if the trust or this scheme is terminated or cancelled for any reason at any time.

## **32 ANNUAL FINANCIAL STATEMENTS**

32.1 The Company shall ensure that a summary appears in the annual financial statements of the Company of the number of units in issue and the number of scheme shares held by the Trust, any changes in such numbers during the financial year under review, the number of shares held by the Trust which may be acquired by eligible participants and the number of shares under the control of the directors of the Company for allotment or issue in terms of this scheme.

### 33 TERMINATION

33.1 The Trust shall terminate as soon as there are no longer any eligible participants who have been allocated units and the Trustees so resolve. Upon such termination, the assets (if any) of the Trust shall be realised and any surplus remaining after the discharge of the Trust's liabilities shall be paid over to the Company. Any deficit arising from the winding-up of the Trust shall be borne by the Company.

Signed at Windhoek on \_\_\_\_ August 2020.

---

for **ORYX PROPERTIES LIMITED**

By: [**PETER M KAZMAIER**]

who warrants that he is duly authorised  
hereto

We, the undersigned Jens Christian Kuehhirt, Christiaan Johannes Gous and Henry Hermann Hopker, do hereby confirm our appointment as Trustees of the **ORYX LONG TERM SHARE INCENTIVE TRUST**.

Signed at Windhoek on \_\_\_\_\_ August, 2020.

---

Trustee

---

Trustee

---

Trustee

This updated Trust Deed was duly approved at the Annual General Meeting of **ORYX PROPERTIES LIMITED** held at Windhoek on \_\_\_\_\_ October 2020.

---

**Chairman of the meeting**

This updated Trust Deed was adopted at a board meeting of **ORYX PROPERTIES LIMITED** held at Windhoek on 14 September 2020.

---

**Chairman of the meeting**