

BODAS PTY LIMITED
(ADMINISTRATORS APPOINTED)

TRUST DEED
"THE WESTSKY TRUST"

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THIS DEED OF DECLARATION OF TRUST is made on 7 March 2002 and varied on 31 August 2006

BY:

BODAS PTY LIMITED (Administrators Appointed) (ACN 002 158 741) acting by the Administrator (**Bodas**).

RECITALS

- A Mark Anthony Korda and Mark Francis Xavier Mentha were appointed administrators of Skywest Airlines Pty Limited (ACN 008 997 662) (the **Company**) and Bodas pursuant to an order of the Court on 17 September 2001 (the **Administrators**) which later appointment subsists today. Those appointments succeeded the appointment of Messrs. Hall, Hedge and Watson as administrators of the Company on 12 September 2001 (the **Appointment Date**).
- B Bodas was the sole shareholder of the Company.
- C On 25 January 2002 a meeting of creditors of the Company was held pursuant to Section 439A of the Corporations Act 2001 (the **Meeting**) at which it was resolved that the Company execute a deed of company arrangement (**DOCA**) and details of which were provided by the Administrators to creditors of the Company pursuant to Section 439A(3)(a) of the Corporations Act 2001.
- D The DOCA was executed on 15 February 2002. The DOCA terminated on 21 February 2002.
- E On or before the date of this deed the Assets were transferred by the Company to Bodas.
- F The Trustee has determined to declare a trust (the **Westsky Trust**) concerning the proceeds of sale by it of the issued shares in the Company and the Assets and to hold those proceeds and Assets (the **Fund**) on trust on the terms and conditions of this deed.
- G Pursuant to a resolution of Admitted Creditors passed 31 August 2006 in accordance with clause 10.1(a) of this deed, the Fund will be pooled into Ansett Australia Limited (ACN 004 209 410) (subject to Deed of Company Arrangement) (**AAL**) and Admitted Creditors will be entitled to make Admissible Claims against AAL instead of the Westsky Trust.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Where commencing with a capital letter unless the context otherwise requires:

Admissible Claim means a Claim that is determined as contemplated by clause 6;

Admitted Creditor means any person who has an Admissible Claim;

Ansett Group means the companies listed in Schedule 2 and **Member of the Ansett Group** means any of them;

Assets means those items listed in Schedule 1;

Business Day means a day that is not a Saturday, a Sunday or public holiday in the State;

Cash Amount has the meaning given to that term under the Share Sale Agreement;

Claim means as at the Appointment Date a debt owing (whether then, now, in the future or contingently) by, or a claim subsisting against, the Company in favour of a person irrespective of whether the debt or claim arose by virtue of contract, at law, in equity or otherwise and including (without limitation) a claim sounding only in damages, and a debt or claim arising pursuant to any Guarantee;

Committee has the meaning in clause 7.1;

Completion has the meaning given to that term under the Share Sale Agreement;

Court means any court having jurisdiction to hear and determine matters under the Corporations Act 2001;

Corporations Regulations means the regulations under the Corporations Act 2001 (Cth);

First Trustee means Bodas;

GST has the meaning given to that term in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Guarantee means any guarantee, indemnity, letter of credit, correspondence giving rise to legal liabilities or suretyship or any other obligation (whatever called and on whatever terms):

- (a) to pay, to purchase or to provide funds for the payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or
- (c) otherwise to be responsible for

any obligation in respect of any financial indebtedness, dividend, capital or premium on shares or stock, or the insolvency or financial condition of any other person;

Meeting has the meaning in Recital C;

Related Body Corporate has the meaning given to that term in the Corporations Act 2001 (Cth);

Resolution means a resolution passed at a meeting of Admitted Creditors convened in accordance with clause 9 and **Resolve** has a corresponding meaning;

Share Sale Agreement means the agreement between Bodas and Airline Investments Lamented ACN 098 904 262 concerning the sale by Bodas to Airline Investments Limited of the issued shares in the Company;

State means Victoria;

Termination Date has the meaning in clause 8.2;

Trustee means each person or entity which is, and while it is, a trustee of this trust and as at the date of this deed is the First Trustee;

Trustee's Demands has the meaning in clause 4 1(c), and

Trustee's Liabilities has the meaning in clause 4.1(b).

Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2 Interpretation

In this deed, unless the context otherwise requires.

- (a) month means a calendar month;
- (b) headings are for convenience only and do not affect the interpretation of this deed;
- (c) references to sections, sub-sections and paragraphs of an Act or Law are references to sections, sub-sections and paragraphs of the Corporations Act 2001;
- (d) the singular denotes the plural and vice versa;
- (e) words importing a gender include each other gender;
- (f) an expression importing a natural person includes any corporation, partnership, joint venture, association or other body corporate;
- (g) a reference to any thing or amount is a reference to the whole and each part of it;
- (h) a reference to a Part, Recital, clause, paragraph, Exhibit, Annexure or Schedule is a reference to a Part, clause or paragraph of, or a Recital, Exhibit, Annexure or Schedule to, this deed;
- (i) a reference to any legislation includes any regulation or instrument made under it and where amended re-enacted or replaced means that amended re-enacted or replacement legislation regulation or instrument;
- (j) a reference to a document includes a reference to an amendment or supplement to, or replacement or novation of, that document;
- (k) a reference to a party to any document includes a reference to that party's successors and permitted assigns;
- (l) when a day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (m) a covenant or agreement on the part of two or more persons binds them jointly and severally.

2 COMMENCEMENT DATE, SETTLEMENT AND NAME

2.1 Commencement Date

This trust shall take effect on the date hereof.

2.2 Settlement

Bodas hereby declares that it holds the proceeds of sale by it of the issued shares in the Company and the Assets upon trust on the terms and conditions of this deed, that at the

time of this declaration those proceeds of sale are cash in a bank account in the State and that it will hold the Fund on trust on the terms and conditions of this deed.

2.3 **Name**

This trust is called the ~~Westsky~~WestSky Trust.

3 **TRUSTEE AND ADMINISTRATORS**

3.1 **Role**

This trust shall be administered by the Trustee who shall have the powers, functions and duties conferred on him by this trust.

3.2 **Agency**

In exercising any of the powers conferred by this trust and carrying out duties or functions arising under or by reason of or in connection with this trust, the Administrators shall act as agent for and on behalf of the Trustee.

3.3 **Limitation of the Administrators' liability**

In the performance of the Administrators' functions and duties and the exercise of any powers under this trust the Administrators shall not be personally liable for:

- (a) any debt, liability or other obligation which the Administrators may incur as agent for or on behalf of the Trustee or as administrators of Bodas; or
- (b) any loss or damage caused by any act, default or omission by the Administrators as agent for or on behalf of the Trustee or as administrators of Bodas in the performance or attempted performance of the Trustees powers, functions and duties under this trust.

3.4 **Powers**

The Trustee shall have the following powers:

- (a) the power conferred by the laws of the State upon trustees;
- (b) the powers set out in paragraph 2 of Schedule 8A to the Corporations Regulations as if references in that paragraph to "this deed", "the company" and "the administrator" were references to this trust, the Fund and the Trustee respectively;
- (c) the power to appoint agents (including but not limited to appointing the Administrators as agents of the Trustee);
- (d) the power to delegate any and all functions and powers of the Trustee under this deed;
- (e) the power to appoint any person or company as a replacement trustee of this trust for it.

3.5 **Remuneration**

The Administrators shall be:

- (a) remunerated out of the Fund in respect of any work done by the Administrators, and any partners or employee of the Administrators, in connection with this trust at the scale of rates charged from time to time by Arthur Andersen for the provision of services during the period of the Company's administration, whilst the Company was subject to deed of company arrangement or as otherwise agreed by the Committee; and
- (b) reimbursed out of the Fund in respect of all costs, fees and expenses incurred in connection with the performance and attempted performance of their actions, duties, obligations and responsibilities under or in respect of this trust.

4 ADMINISTRATOR

4.1 Nature of indemnity

The Administrators and the Trustee are entitled to be indemnified out of the Fund for:

- (a) the remuneration, costs, fees and expenses payable pursuant to sub-clause 3.5;
- (b) all liabilities incurred by the Trustee in the course of the trust (the Trustee's Liabilities); and
- (c) all actions, suits, proceedings, accounts, claims and demands arising out of the trust which may be commenced, incurred by or made on the Fund by any person and against all costs, charges and expenses incurred by the Trustee in respect thereof (the **Trustee's Demands**),

PROVIDED ALWAYS that the Trustee shall not be entitled to an indemnity in respect of any Trustee's Liabilities or Trustee's Demands to the extent to which such Trustee's Liabilities or Trustees Demands are incurred by or arise due to the Trustee, or any partner, employee, authorised agent or delegate of the Trustee having acted dishonestly, in breach of duty, or breach of trust in relation to this trust.

4.2 Continuing indemnity

This indemnity shall take effect on and from the date hereof and be without limitation as to time and shall inure for the benefit of the Trustee's and the Administrators' respective legal personal representatives notwithstanding the resignation or removal of the Trustee or any of them and the appointment of a new Trustee or the termination of this trust for any reason whatsoever.

5 NATURE AND DURATION OF TRUST

5.1 All persons bound

This trust binds all persons having a Claim to the extent of such Claim.

5.2 Property available

The Fund shall be available to pay Admissible Claims in accordance with clause 6.

6 CALCULATION AND DETERMINATION OF CLAIMS

- 6.1 A meeting of creditors of the Company will be called by the Administrators at such time and place as is determined by the Administrators. Unless otherwise determined by the Administrators, the meeting shall be held on or about the date to which the second

meeting of creditors of the Ansett Group has been adjourned. Subject to any order of the Court to the contrary, that meeting of creditors of the Company will determine:

- (a) Admissible Claims and persons entitled to Admissible Claims;
- (b) the method of calculation of and/or value of and the method of payment of Admissible Claims; and
- (c) the distribution (including the method, of distribution) of the Fund to Admitted Creditors or as otherwise resolved at the meeting.

6.2 Pursuant to a resolution of creditors passed 31 August 2006 in accordance with clause 10.1(a) of this deed, the matters to be determined under clause 6.1 of this deed are to be determined by Mark Anthony Korda and Mark Francis Xavier Mentha, as agents of Bodas as trustee for the Westsky Trust, substantially in accordance with the process for pooling assets and claims set out in the Bodas Deed of Company Arrangement made on or about 2 May 2002, as varied (including, for the avoidance of doubt, as varied as a consequence of the meeting of Bodas' creditors held on or about 31 August 2006 in relation to the proposed pooling of Bodas into AAL) as if the references in the Bodas DOCA to "the Company", "the Distribution Amounts", "the Deed Administrators", "Deed Creditors" and "Claim", respectively, were references to the Westsky Trust, the Fund, the Administrators, Admitted Creditors and Admissible Claim, respectively.

7 COMMITTEE OF CREDITORS

7.1 Operations of this part

The Committee will be comprised of those persons who were members of the committee whilst the Company was under administration and whilst the Company was subject to deed of company arrangement.

7.2 Functions of the Committee

The functions of the Committee are:

- (a) to consult with the Trustee about matters relating to this trust;
- (b) to receive and consider reports by the Trustee, and
- (c) to approve the Administrator's remuneration

7.3 The Committee

The following rules apply to the Committee:

- (a) each member of the Committee must be an Admitted Creditor, an attorney of an Admitted Creditor or a person otherwise authorised in writing by an Admitted Creditor to be a member of the Committee;
- (b) no Admitted Creditor is entitled to have more than one representative (including the creditor himself or herself, if a natural person) on the Committee;
- (c) minutes of the proceedings of each meeting of the Committee must be made and entered in books to be provided from time to time for that purpose by the Trustee;

- (d) if the minutes of a meeting purport to be signed by the chairman of the meeting, or by the chairman of the next meeting of the Committee, the minutes are prima facie evidence of the matters contained in them;
- (e) a resolution of committee members is passed if committee members sign a document containing a statement to the effect that they are in favour of the resolution set out in the document;
- (f) unless the contrary is proved, the meeting is taken to have been properly convened and all proceedings are taken to have properly occurred;
- (g) a corporation being otherwise qualified for membership of the Committee is not entitled to be a member of the Committee but may appoint a person to represent it on the Committee;
- (h) sections 549, 550 and 551 of the Corporations Act 2002 apply, with such modifications as are necessary, to the Committee as if the references in those sections to the liquidator were references to the Trustee and the references to contributories and the option of seeking leave of a Court were deleted; and
- (i) the Committee cannot give directions to the Administrators or the Trustee.

7.4 No remuneration for members of the Committee

Each member of the Committee shall be entitled to be reimbursed by the Trustee for the reasonable out of pocket expenses incurred by him or her in attending meetings of the Committee, as may be approved from time to time by the Trustee in his absolute discretion, but shall not otherwise be entitled to claim or receive from the Trustee or the Fund or the Admitted Creditors (other than, where applicable, the members appointor) any remuneration for acting as a member of the Committee.

8 CONTINUATION OF ARRANGEMENT PERIOD AND TERMINATION

8.1 Continuation

This trust shall remain in force for the period commencing on the date hereof and ending on the Termination Date (the Trust Period).

8.2 Termination

This trust shall terminate on the first of the following:

- (a) when the Admitted Creditors pass a Resolution terminating this trust at a meeting of the Admitted Creditors;
- (b) the Trustee has applied all of the Fund in accordance with clause 6 and the Trustee has notified all Admitted Creditors accordingly; and
- (c) the day preceding the 80th anniversary of the date of this deed,

whereupon the Termination Date shall become the date this trust is so terminated.

8.3 Previous operation preserved

The termination or avoidance, in whole or in part, of this trust does not affect the previous operation of this trust.

9 MEETINGS OF ADMITTED CREDITORS

9.1 Convening meetings

Meetings of Admitted Creditors may be convened by the Trustee from time to time.

9.2 Corporations Regulations

Except to the extent (if any) they are excluded or modified by any resolution of the Company's creditors or the Admitted Creditors or are inconsistent with the terms of this deed, regulations 5.6.12 to 5.6.36A of the Corporations Regulations apply, with such modifications as are necessary, to meetings of the Admitted Creditors or of the Committee as if the references to "the liquidator", "the liquidator or provisional liquidator", "the chairperson", or "trustee for debenture holders", as the case may be, were references to the Trustee.

10 GENERAL

10.1 Variation of this Trust by creditors

- (a) Subject to clause 10.1(b), this deed (and any one or more or all parts of it) may be varied by a simple majority Resolution passed at a meeting of those Admitted Creditors who attend the meeting (whether personally or by proxy or attorney) but only if the variation is not materially different from a proposed variation set out in the notice of meeting.
- (b) This deed may not be varied if the effect of the variation is to give a power of appointment or removal of a trustee of this trust to one or more persons or entities other than the trustee of this trust or if the effect of the variation is to remove the trustee as trustee of the trust or appoint another person or entity as a trustee of this trust

10.2 Governing law

This deed shall be governed by and construed in accordance with the laws in force in the State. Any action or proceeding arising out of or in connection with this deed must be instituted or brought in a Court.

10.3 Severance

Notwithstanding anything contained in any provision of this deed, if any such provision shall be held or found to be void, invalid or otherwise unenforceable, such provision shall be deemed to be severed from this deed to the extent only that it is void, invalid or unenforceable but the remainder of any such provision and this deed shall remain in full force and effect.

11 RETIREMENT OF TRUSTEE AND RELEASE

11.1 Resignation

A trustee of this trust may at any time resign as trustee of this trust by giving notice of such resignation to the then Admitted Creditors.

11.2 Appointment of substitute trustee

A trustee of this trust that intends to resign as trustee of this trust may appoint another person or entity to act in its place as trustee of this trust. Any such appointment shall take effect from the date on which the resignation as trustee of this trust of the appointor takes effect.

11.3 Release

A trustee of this trust is discharged and released from its obligations under this deed and in relation to this trust from the date on which the trustee's resignation or other cessation as trustee of this trust takes effect.

SCHEDULE 1 - ASSETS

1 Shares

All of the shares issued to the Company in:

ANST Westsky Aviation Limited ACN 004 444 866 (Subject to Deed of Company Arrangement);

ANST Westsky Jet Charter Pty Limited ACN 008 800 155 (Subject to Deed of Company Arrangement);

Westralian Aviation Pty Limited ACN 000 924 621; and

Trans West Airlines Pty Limited ACN 008 694 157.

2 Unit Trust

All of the units in the Wittenoom Unit Trust.

3 Inter Company Receivables

All monies owing by any Member of the Ansett Group to the Company.

4 Cash

All cash at bank of the Company other than the Cash Amount.

5 Receivables

All receivables as at Completion other than amounts payable by the Company in respect of unavailed flights as at Completion less related credit card merchant fees, booking fees, processing costs, GST, and government and passenger levies and any other applicable fees, costs, taxes and levies.

6 Choses in Action

All rights, claims and actions the Company may have against any persons who were Related Bodies Corporate or officers of the Company prior to Completion.

7 Excluded Fund

All rights, claims and actions existing immediately prior to Completion which the Company may have in respect of the Ansett Australia Ground Staff Superannuation Plan.

SCHEDULE 2 - ANSETT GROUP

Company	ACN
Ansett Australia Holdings Limited (Administrators Appointed)	004 276 291
501 Swanston Street Pty Limited (Administrators Appointed)	005 477 618
Aeropelican Air Services Pty Limited (Subject to Deed of Company Arrangement)	000 653 083
Airport Terminals Pty Limited (Administrators Appointed)	053 976 444
Aldong Services Pty Limited (Administrators Appointed)	000 258 113
Ansett Aircraft Finance Limited (Administrators Appointed)	000 643 276
Ansett Australia and Air New Zealand Engineering Services Limited (Administrators Appointed)	089 520 696
Ansett Australia Limited (Administrators Appointed)	004 409 410
Ansett Aviation Equipment Pty Limited (Administrators Appointed)	008 559 733
Ansett Carts Pty Limited (Administrators Appointed)	005 181 215
Ansett Equipment Finance Limited (Administrators Appointed)	006 827 989
Ansett Finance Limited (Administrators Appointed)	006 555 166
Ansett Holdings Limited (Administrators Appointed)	065 117 535
Ansett International Limited (Administrators Appointed)	060 622 460
Badas Pty Limited (Administrators Appointed)	002 158 741
Brazson Pty Limited (Administrators Appointed)	055 259 008
Eastwest Airlines (Operations) Limited (Administrators Appointed)	000 259 469
Eastwest Airlines Limited (Administrators Appointed)	000 063 972
Kendell Airlines (Aust) Pty Limited (Administrators Appointed)	000 579 680
Morael Pty Limited (Administrators Appointed)	003 286 440
Northern Airlines Limited (Administrators Appointed)	009 607 069
Northern Territory Aerial Work Pty Limited (Administrators Appointed)	009 611 321