

EVEREST BABCOCK & BROWN



Everest Babcock & Brown Alternative Investment Trust • ARSN 112 129 218
Responsible entity • Everest Capital Investment Management Limited • ABN 96 112 731 978
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19 December 2006

ASX RELEASE

Everest Babcock & Brown Alternative Investment Trust (EBI) Amendment to the Constitution

Attached is the Amending Deed for the Everest Babcock & Brown Alternative Investment Trust (EBI) which was approved at a meeting of Directors of the responsible entity, Everest Capital Investment Management Limited on 18 December 2006.

Ends.

About Everest Babcock & Brown Alternative Investment Trust (EBI)

Everest Babcock & Brown Alternative Investment Trust has investments in a portfolio of leading international absolute return funds and selected direct investments in subordinated debt and equity co-investments. The objective of the investment portfolio is to generate attractive risk-adjusted absolute returns over the medium-to-long term while maintaining a constant focus on capital preservation.

Everest Babcock & Brown Limited is one of Australia's leading investment managers of absolute return funds. Everest manages a number of investment funds and has assets under management of approximately \$2 billion at 30 November 2006.

For further information please visit our website www.everest.com.au or contact:

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**Amending Deed Poll
Everest Babcock & Brown Alternative
Investment Trust - Trust Deed**

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Reference PJS:MK30A

This amending deed poll

is made on **18 DECEMBER** 2006 by:

Everest Capital Investment Management Limited
ABN 96 112 731 978
Level 35, AMP Centre, 50 Bridge St, Sydney, NSW 2000
(Trustee)

Recitals

- A. The Everest Babcock & Brown Alternative Investment Trust (Trust) is governed by a trust deed dated 7 December 2004 (Trust Deed), as amended from time to time.
- B. The Trust is a registered managed investment scheme under Chapter 5C of the Corporations Act 2001.
- C. Under clause 38.3 of the Trust Deed and pursuant to section 601GC of the Corporations Act 2001, the Trustee can modify the Trust Deed provided the amendment does not adversely affect Unit Holders' rights.
- D. The amendments to the constitution of the Trust set out in this amending deed will be effective on and from the Effective Date and the Trustee has formed the view those amendments do not adversely affect the rights of Unit Holders.
- E. The Trustee wishes to amend the Trust Deed as set out in this deed.

This deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and interpretation

- (a) Clauses 1.1, 1.2 and 1.3 of the Trust Deed apply to this deed.
- (b) **Effective Date** means the date on which a copy of this amending deed is lodged with ASIC under section 601GC(2) of the Corporations Act 2001.

2 Amendment to Trust Deed

2.1 Amendment

- (a) The Trust Deed is amended (except clause 2.2 "When the Trust starts and ends" which is not amended or affected by this deed in any way) as shown in Schedule A by:
 - (1) deleting the text which is marked as 'deleted' in Schedule A;
 - (2) inserting the text which is underlined in Schedule A; and

- (3) renumbering the clauses to conform with the clause numbering set out in the Schedule A (including the consequential amendment of cross references to those clauses).

(b) The amendments to the Trust Deed take effect from the Effective Date.

2.2 Binding conditions

This amending deed is binding on the Trustee, the Unit Holders and any other person claiming through any of them as if each was a party to this amending deed.

3 Governing law and jurisdiction

This deed is governed by the laws of New South Wales.

Executed as a deed poll:

Signed for
Everest Capital Investment Management Limited
by:



Secretary/Director

Abba Popo

Name (please print)



Director

JEREMY REID

Name (please print)

Schedule A – Amendments to Trust Deed

(Clause 2.1 of this deed – Amendments)

1 Preliminary

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Act means the *Corporations Act 2001*;

Actual Total Securityholder Return means, in respect of each Tranche, the Total Securityholder Return at each relevant Measurement Date;

Application Period has the same meaning given to it in the PDS;

Approved Valuer means a person appointed by the RE to value any Unit;

Assets means all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in any distribution account;

ASIC means Australian Securities and Investments Commission;

ASTC means ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

ASX means Australian Stock Exchange Limited ACN 008 624 691;

Average Market Price means the volume weighted average price of fully paid Stapled Securities or Units (as the case may be) on ASX over the ten day trading period immediately prior to the relevant date;

Business Day has the same meaning given to the term "business day" in the Listing Rules;

Cashflows means, in respect of a Tranche:

- (a) the Security Issue Price multiplied by the number of Securities or Convertible Securities in the Tranche, respectively (which, for the avoidance of doubt, is treated as a negative cashflow for the purposes of the Net Present Value calculation) (but in the case of Shares or Convertible Securities convertible into Shares, this amount equals nil for Measurement Periods beginning after the Unstapling Date);
- (b) those sums paid by the Trust and/or (for Measurement Periods ending on or prior to the Unstapling Date) the Company during the relevant Measurement Period in respect of any dividends or other distributions (including of a capital nature) received during the relevant Measurement Period by the Securityholders from the Trust or (for Measurement Periods ending on or prior to the Unstapling Date) the Company in respect of any Securities in the Tranche (which are treated as received on the date of payment or distribution as the case may be by the Trust or the Company);

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- (c) for the Measurement Period ending on the Unstapling Date, those sums payable by the Trust and/or the Company in respect of any dividends or other distributions (including of a capital nature) in respect of the period from 1 January 2006 to 30 June 2006 which are received by the Securityholders from the Trust or the Company in respect of any Securities in the Tranche (which, in relation to the dividends or other distributions payable in respect of the period from 1 January 2006 to 30 June 2006 are treated as received on the Unstapling Date even if actual payment occurs after that date);
- (d) those sums paid or deemed to be paid by the Trust and/or (for Measurement Periods ending on or prior to the Unstapling Date) the Company during the relevant Measurement Period, and for the Measurement Period ending on the Unstapling Date those sums payable by the Trust and/or the Company in respect of any dividends or other distributions (including of a capital nature) in respect of the period from 1 January 2006 to 30 June 2006, and which are reinvested by way of subscription for Securities pursuant to a dividend and/or distribution reinvestment plan (which, for the avoidance of doubt, are treated as a positive cashflow for the purposes of the Net Present Value calculation);
- (e) those sums paid or deemed to be paid by the Trust and/or (for Measurement Periods ending on or prior to the Unstapling Date) the Company out of Investors' equity and/or Shareholders' equity during the relevant Measurement Period and which are reinvested by way of subscription for Securities pursuant to a bonus or other plan (which, for the avoidance of doubt, are treated as a positive cashflow for the purposes of the Net Present Value calculation); and
- (f) an amount equal to the Net Market Capitalisation (but in the case of Shares or Convertible Securities convertible into Shares, this amount equals nil for Measurement Periods beginning after the Unstapling Date).

For the purposes of this definition all of the above cashflows are calculated prior to the effect of any Tax and the amounts received shall be deemed to be increased by the amount of any deductions or withholding from them on account of Tax and, in the case of dividends and other distributions, an amount equal to any Tax payable in advance by the Trust or the Company and attributable to that dividend or distribution (which includes, for the avoidance of doubt, the amount of any franking credit allocated to that dividend or distribution);

CHES means the Clearing House Electronic Sub register System established and operated by ASTC;

Class means a class of Units of the Trust created under clause 6.3(a);

Company means Everest Babcock & Brown Alternative Investment Management Limited ACN 112 480 145;

Completion Date means, in respect of a Tranche, the date or dates of payment in respect of a subscription for Securities or the date or dates of conversion or exercise in respect of the conversion or exercise of Convertible Securities;

Constitution means the constitution of the Trust for the time being in force;

Convertible Securities means any securities convertible or exercisable into Securities;

Cut Off Time means the time or times the RE determines that applications or redemption requests for Investors or any group or class of Investors must be received to obtain a Unit price calculated at a particular time;

Current Unit Value means the amount calculated in accordance with the following formula:

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Net Asset Value + Transaction Costs
number of Units on issue

Directors means the directors of the RE from time to time;

Dispose has the meaning given to the term "Dispose" in the Listing Rules;

Distributable Income means the amount calculated in accordance with clause 29.1(b);

Distribution Calculation Date means the last day of each Income Year and such other days as the RE determines;

Distribution Period means:

- (a) for the first distribution period, the period on and from the establishment of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period on and from the day after the preceding Distribution Calculation Date to and including the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period between two consecutive Distribution Calculation Dates excluding the day of the Distribution Calculation Date that is first in time but including the day of the Distribution Calculation Date that is second in time;

Distribution Reinvestment Plans has the meaning given to that term in clause 29.5;

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Exempt Income has the same meaning given to the term "exempt income" in the Tax Act;

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Exercise Price means, in relation to a Unit issued on exercise of an Option, means the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with clause 4;

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Exit Price means the exit price of Units calculated in accordance with clauses 5.6 and 5.7;

Extraordinary Resolution has the same meaning given to the term "extraordinary resolution" in the Act;

Financial Year has the same meaning given to the term "financial year" in the Act;

First PDS means the PDS issued for the IPO;

Foreign Exchange Hedge Liability means a Liability arising from any financial instrument entered into by the Trust to insulate the Trust Fund, in whole or in part, from fluctuations in foreign exchange rates other than, and regardless of subsequent interpretations of or changes to accounting standards, gains or losses arising on leverage provided under any total equity return swap due to fluctuations in foreign exchange rates;

Foreign Unitholder means a Unitholder whose address appearing in the Register is in a country outside Australia;

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Government Agency means:

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- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or

- (c) a commission, delegate, instrumentality, agency, board or other governmental, semi-governmental, judicial, administrative, monetary or fiscal authority, whether statutory or not;

GST has the same meaning given to the term "GST" in section 195-1 of the GST Legislation;

GST Group has the same meaning given to the term "GST group" in the GST Legislation;

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Holding Lock has the same meaning given to the term "holding lock" in the Listing Rules;

Home Branch means the branch of the ASX designated to the Trust by the ASX;

Income Year has the same meaning given to the term "income year" in the Tax Act;

Investor means the person registered as the holder of a Unit (including persons jointly registered);

IPO means the initial public offering of Stapled Securities;

Issue Date means the date on which Stapled Securities are issued by the RE and the Company under the IPO;

Issue Price means, in relation to a Unit or an Option, the dollar value of consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with clause 4 pursuant to which the Unit or Option was issued and in respect of a Unit issued on the exercise of an Option, means the Exercise Price;

Deleted: issue price of Units calculated in accordance with clause 4.3(a)

Liabilities means all present liabilities, other than Unitholder Liabilities, appearing in the consolidated financial statements of the Trust at a particular date, including any provision which the RE decides should be taken into account in determining the liabilities of the Trust, determined in accordance with Australian Equivalent International Financial Reporting Standards issued by the Australian Accounting Standards Board (or such other standards as may from time to time be issued by the Australian Accounting Standards Board) as those standards are applied to the accounting policies adopted by the Trust from time to time;

Listed means admission to the Official List in accordance with the Listing Rules;

Listing Rules means the listing rules of the ASX and any other rules of ASX which are applicable while the Trust is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

Management Fee means the annual fee to which the RE is entitled under clause 24.1;

Measurement Date means the Issue Date, the Unstapling Date and 31 December of each year other than 31 December 2006 until the Trust terminates and the date of termination of the Trust;

Measurement Period means the period between two consecutive Measurement Dates excluding the day of the Measurement Date that is first in time but including the day of the Measurement Date that is second in time;

Month means calendar month;

Net Asset Value means the Total Asset Value less the Liabilities;

Net Market Capitalisation means, in respect of a Tranche, the volume weighted average price of fully paid Securities in that Tranche on ASX over the 20 day trading period immediately prior to the

relevant Measurement Date multiplied by the number of Securities in that Tranche on issue as at that Measurement Date but:

- (a) in the case of any Tranche which were issued as Stapled Securities but have since been Unstapled, this calculation shall be determined by the Responsible Entity on the Units and the Shares which formed such Stapled Securities; and
- (b) for the Measurement Period ending on the Unstapling Date, in respect of a Tranche, the volume weighted average price of fully paid Securities in that Tranche on ASX over the period from commencement of trading on 17 July 2006 to the end of trading on the Unstapling Date multiplied by the number of Securities in that Tranche on issue as at the Unstapling Date.

Net Present Value means the net aggregate discounted Cashflows as at the relevant Completion Date;

Non-Assessable Non-Exempt Income has the same meaning given to the term "non-assessable non-exempt income" in the Tax Act;

Notional 10% Pre-Tax Total Securityholder Return means, in respect of each Tranche, the Total Securityholder Return at each relevant Measurement Date assuming a Total Securityholder Return Rate of 10% per annum and calculated prior to the effect of any Tax;

Notional Amounts means those amounts such as foreign tax credits and franking credits which give rise to assessable income but do not result in the receipt of any cash or property;

Official List has the same meaning given to the term "official list" in the Listing Rules;

Official Quotation or Officially Quoted means official quotation by ASX of the Units or Options, as the case requires;

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Option means an option to subscribe for an unissued Unit;

Partly Paid Unit means a Unit in respect of which a portion of its Issue Price remains unpaid;

PDS means a document complying with Part 7.9 of the Act or any other unregulated offer document issued by the responsible entity with respect to the Trust from time to time, including any supplementary or replacement disclosure document;

Performance Fee means the fee to which the RE is entitled under clause 24.2;

Placement Resolution has the same meaning given to the term "placement resolution" in ASIC Class Order [CO 05/26] as amended or replaced from time to time;

Quoted means officially quoted on a financial market;

RE means the responsible entity of the Trust, being Everest Capital Limited ACN 092 753 252, or such other entity entered on ASIC's register from time to time as the responsible entity;

Register means the registers and/or sub registers of Investors to be kept under the Act and the Listing Rules;

Representative Member has the meaning given in the GST Legislation;

Restricted Securities has the same meaning given to the term "restricted securities" in the Listing Rules;

Retail Investor has the same meaning given to the term "retail client" in the Act;

Rights Issue means an issue of Units in a class which has been offered to all holders of Units in that class (or all holders of Units in that Class other than Foreign Unitholders) on a pro rata basis;

Secretary means a person appointed as secretary of the RE and also includes any person appointed to perform the duties of secretary on a temporary basis and any duly appointed assistant secretary;

Section 95 Income means "net income" as defined by section 95 of the Tax Act or, if repealed or replaced, any concept enacted to replace this definition;

Security means any Unit, Share or Stapled Security;

Security Issue Price means:

- (a) in the case of Stapled Securities issued on or prior to the Unstapling Date the amount per Stapled Security paid by a Securityholder for any subscription for Stapled Securities;
- (b) in the case of Convertible Securities, the conversion or exercise price per Convertible Security;
- (c) in the case of Units which were issued as Stapled Securities, for Measurement Periods commencing after the Unstapling Date, the amount per Stapled Security paid by a Securityholder for any subscription for Stapled Securities multiplied by the Trust Fraction; and
- (d) in the case of Units issued after the Unstapling Date, the amount per Unit paid by a Securityholder for any subscription for Units;

Settlement Rules means the settlement rules of the ASTC as amended or replaced from time to time;

Shareholder means a person registered as the holder of a Share;

Shares means shares in the capital of the Company;

Special Resolution has the same meaning given to the term "special resolution" in the Act;

Stapled means the state that results from Stapling;

Stapled Security means one Unit and the Share to which it is Stapled;

Stapled Security Register means the register for the Units and the Shares when they are Stapled;

Stapling means the linking of a Unit and a Share together so that one may not be Disposed of or otherwise dealt with without the other;

Tax means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty) at any time imposed or levied by any Government Agency or required to be remitted to, or collected, withheld or assessed by, any Government Agency, and any related interest, expense, fine, penalty or other charge on those amounts;

Tax Act means the *Income Tax Assessment Act 1997* (Cth) or *Income Tax Assessment Act 1936* (Cth) or both, as the context requires;

Total Asset Value means the total value of the individual assets appearing in the consolidated financial statements of the Trust at a particular date, where the carrying amount of each asset is

determined in accordance with Australian Equivalent International Financial Reporting Standards issued by the Australian Accounting Standards Board (or such other standards as may from time to time be issued by the Australian Accounting Standards Board) as those standards are applied to the accounting policies adopted by the Trust from time to time and includes, for the avoidance of doubt and regardless of subsequent interpretations of or changes to accounting standards, the gross receivable (representing the underlying value of the investment portfolio to which the Trust is exposed) under any total equity return swap;

Total Securityholder Return means, in respect of each Tranche at each Measurement Date, an amount calculated in accordance with the following formula:

$A \times B$, compounded continuously at the relevant Total Securityholder Return Rate from the Completion Date with respect to that Tranche up to that Measurement Date,

where:

A = the Security Issue Price for that Tranche, adjusted for any subdivision or consolidation of Securities (in an equivalent manner to an adjustment by ASX of securities or exercise prices under ASX traded options for the purposes of ASX market rules, particularly rule 11.3); and

B = the number of Securities in that Tranche on issue as at that Measurement Date;

Total Securityholder Return Rate means that percentage compounding continuously which, when applied as a discount rate to the Cashflows in respect of a Tranche from the Completion Date in respect of that Tranche up to the relevant Measurement Date, gives a Net Present Value of zero for those Cashflows;

Tranche means any tranche of Securities or Convertible Securities having the same Security Issue Price and any Securities issued pursuant to a bonus plan or dividend and/or distribution reinvestment plan, other than any Shares, or Convertible Securities convertible into Shares, issued on or after the Unstapling Date;

Transaction Costs means:

- (a) when calculating the Issue Price while the Trust is not Listed, the RE's estimate of the total cost of acquiring the Units on issue; and
- (b) when calculating the Exit Price while the Trust is not Listed, the RE's estimate of the total cost of selling or otherwise Disposing of the Units on issue,

but the RE may (for a particular application or request for redemption or Class or generally) deem these to be less;

Trust means the registered managed investment scheme subject to this Constitution, being the Everest Babcock & Brown Alternative Investment Trust ARSN 112 129 218;

Trust Fraction means 0.8710 in respect of Stapled Securities issued under the IPO and 0.9191 in respect of Stapled Securities issued in March 2006 under the distribution and dividend reinvestment plan;

Trust Fund means at any time, all of the Assets but subject to the Liabilities at that time;

Uncalled Amount has the meaning given to it in clause 5.5;

Unit means an undivided share in the beneficial interest in the Trust as provided in this Constitution;

Unitholder Liabilities means, to the extent that Australian Equivalent International Financial Reporting Standards issued by the Australian Accounting Standards Board (or such other standards as

may from time to time be issued by the Australian Accounting Standards Board) require the interests of Investors in the Units to be classified as present liabilities of the Trust, the interests of the Investors in the Units. Unitholder Liabilities do not include any dividends or distributions declared on Units;

Unstapled means:

- (a) in relation to a Unit, not being Stapled to a Share; and
- (b) in relation to a Share, not being Stapled to a Unit;

Unstapling Date means the date when all Shares and all Units become Unstapled; and

Value Time means a time at which the RE calculates the Net Asset Value.

1.2 Corporations Act 2001 and Listing Rules definitions

In this Constitution, unless the context otherwise requires, if an expression is defined in, or given a meaning for the purposes of, the Act or the Listing Rules that expression has the same definition or meaning in this Constitution to the extent that it relates to the same matter for which it is defined or given a meaning in the Act or the Listing Rules.

1.3 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to:
 - (i) the singular includes the plural and the other way round;
 - (ii) a gender includes every gender;
 - (iii) this Constitution or another instrument includes any variation or replacement of any of them;
 - (iv) the Act, any section, regulation or schedule of the Act or any other legislation is a reference to that law as amended, modified, consolidated, supplemented or replaced;
 - (v) **in writing** or **written** includes printing, lithography, photography and other means of representing or reproducing words in a visible form;
 - (vi) **paid up** or **paid** includes credited as paid up or paid;
 - (vii) **dividend** includes bonus;
 - (viii) any person includes a reference to any individual, company, body corporate, association, partnership, firm, joint venture, trust or Government Agency;
 - (ix) a person includes the person's successors and legal personal representatives;
 - (x) a body (including an institute, association, authority or Government Agency) whether statutory or not:
 - (A) which ceases to exist; or
 - (B) whose powers are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (xi) amend includes delete or replace;
 - (xii) the word **including** or **includes** means **including but not limited to** or **including without limitation**;
 - (xiii) any thing (including, without limitation, any amount) is a reference to the whole and each part of it;
 - (xiv) a year (other than a financial or income year) means a calendar year;
 - (xv) a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (c) headings are for convenience only and must be ignored in interpreting this Constitution;
 - (d) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
 - (e) if a period starts from, after or before a day or the day of an act or event, it excludes that day.

1.4 Constitution subject to the Act

This Constitution is subject to the Act. Where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.

1.5 Other documents

A document does not become part of this Constitution by reason only of that document referring to this Constitution or vice versa, or any electronic link between them.

1.6 Constitution legally binding

This Constitution binds the RE and each present and future Investor and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

1.7 Listing Rules and Settlement Rules only to have effect if the Trust is Listed

In this Constitution, a reference to the Listing Rules or the Settlement Rules has effect only if at the relevant time the Trust is admitted to the Official List and is otherwise to be disregarded.

1.8 Constitution subject to Listing Rules if Trust is Listed

If the Trust is admitted to the Official List, the following clauses apply¹:

- (a) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);

¹ LR 1.1, condition 2; LR 15.11.1; Appendix 15A

- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

1.9 Change in text of Constitution

In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 1.8 is not a modification of, or the repeal or replacement of the Constitution for the purposes of subsection 601GC(1) and (2) of the Act.

1.10 Market Price

- (a) Subject to clause 1.10(f), the Market Price for a Unit on any Business Day is for all purposes other than the purposes of Rights Issues or issues under a Distribution Reinvestment Plan, either:
 - (i) the average traded price for a Unit for all sales on ASX (excluding transactions referred to in clause 1.10(d)) for the period of 10 Business Days immediately preceding the relevant Business Day (whether or not a sale was recorded on any particular day); or
 - (ii) the price obtained pursuant to a bookbuild arranged by a reputable merchant bank with experience in arranging bookbuilds in the Australian equity market, provided that the auditor has provided written certification that the bookbuild was conducted in accordance with normal market practice for bookbuilds.
- (b) Subject to clause 1.10(f), the Market Price for a Unit on any Business Day for the purposes of Rights Issues is an amount calculated in a manner which is set out in the Terms of Issue and which in the opinion of an Approved Valuer will approximate the market price of a Unit at or around the relevant date; and
- (c) Subject to clause 1.10(f), the Market Price for a Unit on any Business Day for the purposes of Distribution Reinvestment Plan is a price not less than 10% of the volume weighted average price of a Unit for all sales on ASX (excluding transactions referred to in clause 1.10(d)) for the period of 5 Business Days from and including the "Ex Date" as determined by ASX in accordance with ASX Listing Rule 3.20 (Appendix 3A) by reference to relevant record date.
- (d) For the purposes of clauses 1.10(a)(i) and (c), the following transactions are excluded when calculating Market Price:
 - (i) any transaction defined in the ASX market rules as a "Special Crossing"
 - (ii) any transaction defined in the ASX market rules as a "Crossing" that occurs prior to the commencement of normal trading or during the closing phase of after-hours adjust phase;
 - (iii) any transaction pursuant to the exercise of Options over Units; or
 - (iv) any transaction which the RE considers is not reflective of natural supply and demand.

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- (e) For the purposes of clause 1.10(c), “relevant record date” means the date for determination of entitlements to the distribution which will be applied in paying up Units to be issued pursuant to clause 29.5 at an issue price calculated by reference to the Market Price.
- (f) If the RE believes that the calculations in clauses 1.10(a), (b) or (c) do not provide an appropriate reflection of the market price of a Unit, the Market Price on any Business Day is an amount determined by an Approved Valuer who:
 - (i) is independent of the RE; and
 - (ii) has relevant market experience in determining market price in circumstances similar to those in which the determination of the market price of a Unit is being made.
to be the fair market price of the Unit, having regard to:
 - (iii) the nature of the proposed offer of Units for which purpose the market price of a Unit is being calculated; and
 - (iv) the circumstances in which the proposed offer of Units will be made.
- (g) The Market Price of an Option on any Business Day must be determined in the same manner as the Market Price for a Unit is determined.

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2 The Trust

2.1 What the Trust is called

- (a) The RE determines the name of the Trust and can change it from time to time.
- (b) If the RE retires or is removed its successor as RE must, unless otherwise approved by the former RE, change the name of the Trust to a name without any material association with the RE or its associates or businesses.

2.2 When the Trust starts and ends

- (a) The RE declares that it holds the Assets on trust for Investors. The Assets vest in the RE.
- (b) The Trust starts on the date that Units are issued pursuant to applications made under the First PDS and monies received by the RE for those Units (as determined in accordance with clause 4.3(a)) will establish the Trust Fund.
- (c) The Trust terminates on the first of:
 - (i) its 80th anniversary, if the law has such a rule against perpetuities;
 - (ii) the date the RE tells Investors it terminates; or
 - (iii) any date the law requires.
- (d) Following termination
 - (i) the RE must realise the Assets in accordance with clause 34; and
 - (ii) subject to the Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 34, but during that period the RE may not accept any applications for Units from a person who is not an Investor at the time of termination.

3 Investors

3.1 Nature of investor's interests

An Investor does not have any interest in a particular Asset, subject to the rights and obligations attaching to any Class, only a beneficial interest in the Assets as a whole. It follows that an Investor:

- (a) must not interfere with any rights or powers of the RE;
- (b) must not even try to exercise a right in respect of, or lodge notice (for example a caveat) affecting, an Asset, or otherwise even try to claim any interest in an Asset, other than as this Constitution contemplates; and
- (c) cannot require an Asset to be transferred to them.

3.2 Joint Investors

Unless the Listing Rules require, or subject to the Listing Rules the RE requires otherwise, 2 or more persons registered as the holders of any Unit are deemed to hold the Unit as joint tenants with benefits of survivorship, subject to the following provisions:

- (a) the joint Investors are jointly and severally liable for all payments (including calls and instalments) required to be made for the Unit;
- (b) if a joint Investor dies, the survivor or survivors are the only person or persons recognised by the RE as having any title to the Unit, but the RE may require evidence of death;
- (c) any 1 joint Investor may give a valid receipt for any distribution, bonus or return of capital payable to the joint Investors; and
- (d) delivery of a notice or a certificate for a Unit to any joint Investor is sufficient delivery to all the joint Investors.

3.3 More than 3 persons registered

If more than 3 persons are noted in the Register as holders of Units, or a request is made to register more than 3 persons then (except in the case of executors or trustees or administrators of a deceased Investor), the first 3 persons named in the Register or the request (as the case may be) are deemed to be the holders of those Units and no other persons will be regarded by the RE as a holder of those Units for any purpose.

3.4 Recognition of trusts and other interests

Subject to the provisions of the Act, the RE is entitled to treat the registered holder of any Units as the absolute owner of those Units and, accordingly, the RE is not bound to recognise (whether or not it has notice):

- (a) a person as holding a Unit on any trust; or
- (b) any equitable, contingent, future or partial interest in any Unit or unit of a Unit.

4 Becoming an Investor

4.1 Promoting the Trust and application forms

- (a) The RE may promote the Trust any way it wishes but any offer of Units to Retail Investors must comply with the Act (so a PDS is generally needed).
- (b) A person becomes an Investor when their name is recorded in the Register as such by the RE or while the Trust is Listed, in any way CHESS or the Listing Rules contemplate.
- (c) By becoming an Investor, the Investor is telling the RE they have read, understood and agree to any terms of issue (for example, in the First PDS or in any other PDS).
- (d) The RE determines the other procedures for becoming an Investor and may change them from time to time (for example, by requiring completion of an application form or the giving of certain information or material). Such procedures do not need to be the same for all potential Investors. If the Trust is Listed, they must however comply with the Listing Rules.
- (e) The RE may refuse to accept all or part of any application for Units without giving reasons, but must tell the applicant.
- (f) While Stapling applies, the RE must reject an application for Units if the applicant does not apply at the same time for an identical number of Shares.

4.2 Application money

- (a) Application money must be dealt with as the Act requires. The RE determines the other procedures for paying application money and may change them from time to time, for example by:
 - (i) requiring a bank cheque or funds transfer, or acceptable transfer of acceptable property, to accompany the application or be received by a particular time; and
 - (ii) setting a minimum application amount,
 and the procedures do not need to be the same for all potential Investors.
- (b) Application money must be held and, where relevant, returned as the Act and, if relevant, the Listing Rules require.
- (c) If payment of application money involves a transfer of property, the RE can require some or all of the associated costs to be paid by the Investor or can take these into account in calculating the number of Units to be issued.
- (d) A Unit issue is void if the relevant application money is not received or transfer fails.

4.3 Underwriting of Issue

- (a) The RE may arrange for:
 - (i) an offer for sale, subscription or issue of Units or Options;
 - (ii) the payment of calls in respect of Partly Paid Units; or
 - (iii) the exercise of Options,

to be underwritten by an underwriter on terms determined by the RE.
- (b) The underwriter may:

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- (i) be the RE or a related body corporate of the RE;
 - (ii) take up any Units or Options not subscribed for; and
 - (iii) purchase forfeited Units sold under clause 10.4.
- (c) The RE may issue Units and Options under this clause 4.3 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

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4.4 Issues of Units pursuant to Options

The RE may issue a Unit or Units in accordance with the terms and conditions on which the Options were offered and issued.

4.5 Issue of Units at a fixed price

- (a) In addition to any other power the RE has to issue Units under this deed, the RE may issue Units or Options at any time to any person at an Issue Price as follows:
- (i) where Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily):
 - (A) Units or Options at the Market Price on the Business Day prior to the day on which the offer or issue is made; or
 - (B) Options at the consideration for the issue of the Option specified in the terms of issue of such Option, where the Units to be issued pursuant to the exercise of those Options are to be issued at the Market Price of a Unit immediately before the date upon which the Option is issued;
 - (ii) where Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed and subject to clause 4.3(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made;
 - (iii) _____
- (b) The Issue Price may be rounded up or down up to 1% or 1 cent as the RE chooses.

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Deleted: <#> for Units issued pursuant to an application made under the First PDS, that part of the current market price for a Stapled Security at the time the offers of Stapled Securities are made under that PDS, which for the purposes of this clause is deemed to be equal to the offer price of the Stapled Security specified in that PDS, determined by the RE to represent the issue price of a Unit;¶ <#>while the Trust is Listed and, where any relevant ASIC relief is dependent on the Units not being suspended from quotation, the Units are not suspended fro ... [1]

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4.6 Placement of Units at Market Price

While the Trust is Listed and Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), the RE may issue Units at an issue price equal to the Market Price determined in accordance with clause 1.10(b), if the issue is:

- (a) a placement to professional investors (as that term is defined in section 9 of the Act) for the purposes of which the Market Price was initially calculated;
- (b) a placement to professional investors (as that term is defined in section 9 of the Act) announced at the same time as, or within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 1.10(b); or
- (c) made pursuant to a PDS lodged with ASIC pursuant to section 1015B of the Act within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 1.10(b).

4.7 Other issues of Units and Options

The RE may issue Units or Options at an Issue Price determined by the RE, being a price other than the Issue Price calculated in accordance with clauses 4.3, 4.5 and 4.6, in any circumstance where the Corporations Act (as modified by any applicable ASIC Class Order) permits the RE to set such Issue Price in such a manner, and for the purposes of setting an Issue Price under this clause 4.7 for Units issued pursuant to a Rights Issue, the Issue Price must not be more than 50% less than the Market Price of the Units.

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4.8 Placement Threshold

(a) This clause 4.8 applies solely for the purposes of determining the number of Units or Options which must be included in the Placement Threshold for a Relevant Placement.

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(b) In this clause 4.8:

Placement Threshold means a percentage of Units or Options on issue immediately before a placement of Units or Options (as the case may be) which percentage is specified in paragraph 2(c)(i)(A) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it); and

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Relevant Placement means a placement of Units or Options in the circumstances described in paragraph (2) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it) and in respect of which the Issue Price is determined pursuant to clause 4.6(a).

(c) Unit or Options:

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(i) the issue of which has been approved or ratified by a Placement Resolution in accordance with clause 4.9; or

(ii) which are issued pursuant to clauses 4.3, 4.4, 4.5, 4.6 and 6.1(b) (other than pursuant to a placement of Units or Options in the circumstances described in paragraph (2) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it)).

are not Units or Options which must be counted towards any applicable Placement Threshold for a relevant Placement.

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4.9 Approval and ratification of placements

If any applicable ASIC relief requires Investors or a class of Investors to approve a placement referred to in clause 4.3(a)(i)(A), the placement must be approved or ratified in accordance with the following:

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- (a) Investors who hold Units in the same class must approve the placement by a Placement Resolution;
- (b) unless the RE reasonably considers that the placement will not adversely affect the interests of Investors in another class (if any) – Investors in that other class must approve the placement by a Placement Resolution; and
- (c) any notice convening a meeting to vote on the placement must contain particulars of the use to be made of the money raised by the placement.

5 Exiting the Trust

5.1 Where the Trust is liquid

- (a) Subject to clause 6.5, while the Trust is liquid the RE determines the procedures for Investors exiting the Trust (including by way of a buy-back of Units under clause 13.4), and may change them from time to time, for example by:
- (i) requiring the Investor to nominate an account for funds transfer; and
 - (ii) setting a minimum withdrawal amount,
- and the procedures must treat all Investors fairly.
- (b) The RE may pay cash or transfer Assets or both as consideration for the withdrawal. It can borrow to provide cash.
- (c) If an Investor exits the Trust by way of a transfer, the RE can require some or all of the associated costs to be paid by the Investor and the value of the relevant Assets must have been calculated within one month before the date of the proposed transfer.

5.2 Request for redemption

- (a) An Investor may ask to exit the Trust any time, but there is no obligation for the RE to satisfy the request (if it does not, it must tell the Investor).
- (b) An Investor may not withdraw a redemption request unless the RE agrees.

5.3 Compulsory redemption

Subject to clause 6.5, the RE can determine to redeem Units without a request in these six circumstances and if it does so, the Exit Price is the next calculated after it so determines:

- (a) if the Investor has breached its obligations to the RE;
- (b) to satisfy any amount of money due to it (as responsible entity or in any other capacity relevant to the Trust) by the Investor;
- (c) to satisfy any amount of money it (as responsible entity or in any other capacity relevant to the Trust) owes someone else relating to the Investor (for example, to the Australian Tax Office);
- (d) if this Constitution otherwise allows (for example, where a minimum holding is or will be breached or if the RE nominates a date under clause 2.2(c)(ii));
- (e) where the RE suspects that law prohibits the person from legally being an Investor; or
- (f) the terms of issue contemplate.

5.4 Redemption

- (a) When the RE agrees that an Investor can exit the Trust, it redeems the Investor's relevant Units. Units can only be redeemed at the Exit Price.
- (b) If the RE so agrees, it must redeem the Investor's Units as soon as is practicable given any hedging arrangements it has in place.
- (c) Except to the extent that cooling off rights might prohibit, the RE can delay Unit redemption (and must inform investors) for up to 56 days or such longer period as considered reasonable in the RE's view in all the circumstances if:

- (i) there is a circumstance outside its control which it considers impacts on its ability to properly or fairly calculate the Exit Price, for so long as the circumstance continues (for example, if the assets or relevant currencies are subject to restrictions or if there is material market uncertainty);
 - (ii) it has determined to honour redemption requests in relation to a particular time the Trust is valued and the total redemption moneys which would be payable at this time represent more than 5% of the Net Asset Value, and in this case the RE can redeem the Units at such future time, or at times over such period, as it determines. Payments to each Investor must be in the proportion that their redemption moneys bear to all other redemption moneys which were payable at that time;
 - (iii) the terms of issue contemplate; or
 - (iv) it is necessary, as a result of the redemption, to unwind any hedging arrangements the Trust has in place.
- (d) If the RE delays Unit redemption:
- (i) under clause 5.4(c)(i), the Exit Price is the next calculated after the circumstances stop;
 - (ii) under clause 5.4(c)(ii), the Exit Price is the next calculated after the time or times it determines Units will be redeemed;
 - (iii) under clause 5.4(c)(iii), the Exit Price is calculated according to the terms of issue; and
 - (iv) under clause 5.4(c)(iv), the Exit Price is the next calculated after the successful unwind of the hedging arrangements.
- (e) Any redemption payment or transfer must be made as soon as is practicable after the redemption moneys or Assets become available, and in any event within 60 days of receipt of request.
- (f) The RE is not obliged to pay any part of the Exit Price out of its own money.

5.5 Partly Paid Units

For any Partly Paid Units, any amount not yet paid in relation to the Unit (the *Uncalled Amount*) must be deducted from the Exit Price calculated below.

5.6 Exit Price of Units while the Trust is not Listed

- (a) Other than for cooling off, and subject to clause 34.1 and the rights and obligations attaching to any Class, the exit price per Unit while the Trust is not Listed is:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units on issue}}$$

For the avoidance of doubt, if redemption of Units requires the RE to unwind all or part of any hedging arrangements, the Exit Price will be determined by reference to the value received by the Trust on successfully unwinding all or part of the hedging arrangements and will be adjusted for any costs, fees and/or penalties incurred by the Trust as a result of an unwind.

- (b) For the price to use when an Investor is cooling off, look to the Act (generally it is the Issue Price on the relevant day with certain adjustments and less any administration fees as contemplated by the Act and the terms of issue).

- (c) The Trust is forward priced ~ that is, subject to the rights and obligations attaching to any Class, each of the variables in the formula in clause 5.6(a) must be calculated as at the Value Time after the Cut Off Time. However, the time is different where the Trust is illiquid (see clause 5.7(b)), for compulsory redemptions (see clause 5.3), for reinvestments (see clause 29.5(c)), and for unsuccessful payments and transfers (see clause 30(d)).
- (d) The Exit Price may be rounded up or down up to 1% or 1 cent as the RE chooses.

5.7 Where the Trust is not liquid

If the Trust is not liquid:

- (a) the RE may make a withdrawal offer as the Act contemplates. Offers may be made any way the RE determines (for example, by e-mail or advertisement). Offers accepted by Investors must be dealt with as the Act requires;
- (b) the Exit Price for a withdrawal offer is the next price calculated after the withdrawal offer closes; and
- (c) the right to withdraw must be exercised in accordance with Part 5C.6 of the Act.

6 Units

6.1 Allotment and issue of Units under control of RE

The RE controls the allotment and issue of Units. Subject to the Act, the Listing Rules and clause 6.5, the RE:

- (a) may allot, issue or otherwise Dispose of Units to any persons, on any terms and conditions, at that issue price and at those times as the RE thinks fit;
- (b) has full power to give any person a call or option over any Units during any time and for any consideration as the RE thinks fit; and
- (c) may issue Units with any preferential, deferred or special rights, privileges or conditions or with any restrictions (whether in regard to distribution of income or Assets, voting or otherwise) as the RE determines.

6.2 Nature of Units

The beneficial interest in the Trust is divided into Units. Subject to the rights and obligations attaching to any Class, each Unit confers an equal undivided interest.

6.3 Classes²

- (a) Subject to clause 6.5(c), the RE may issue Classes of Units with such rights and obligations as it determines (for example, subject to the Act and to the Listing Rules, with such rights and obligations (for example, as to fee rebates, voting, transfer, distributions and rights on winding up) as are set out in a PDS).
- (b) The RE must enter the terms of any rights or obligations of a Class in the Register.

² see LR 6.1; LR 6.2; LR 6.4.1; LR 6.5; LR 6.6.

6.4 Partly Paid Units

Subject to this Constitution (in particular clause 6.5(I)), the Act and the Listing Rules, the RE may determine (in such manner as it determines, for example by disclosure in any PDS) that any Unit or Class of Units is to be partly paid.

6.5 Stapling

- (a) The provisions in this clause 6.5 apply whilst the Units are Stapled to the Shares and despite any other provision of this Constitution other than clauses 1.4 and 1.8. To the extent there are any inconsistencies between any other provision of this Constitution and this clause 6.5, the provisions of this clause 6.5 prevail, except where this would result in a breach of the Listing Rules, the Settlement Rules, the Act or any other law.
- (b) Each Unit will be Stapled to a Share on and from the date of issue of the Units. The RE must not issue any Units unless it is satisfied that:
 - (i) a number of Shares which is equal to the number of Units will be issued at the same time to the same persons to whom the Units are to be issued; and
 - (ii) each of those Units to be issued will be Stapled to a Share to form a Stapled Security immediately after the later of the date of issue of the Share and the date of issue of the Unit.
- (c) If any Unit is issued without a Share Stapled to it, the holder of such Unit is not entitled to any benefit as a holder of a Unit until the Unit has been Stapled to a Share to form a Stapled Security.
- (d) If Units have been issued, the relevant Investors and the RE shall co-operate to ensure that the Units are Stapled to Shares to form Stapled Securities.
- (e) Each Unit that is Stapled to a Share will remain Stapled to that Share to form a Stapled Security until the date the Units are Unstapled. Units will cease to be Stapled to any Share which ceases to be on issue.
- (f) The Investors, Directors and the RE shall neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so, as the case may be, would result directly or indirectly in any Units no longer being Stapled as a Stapled Security. In particular:
 - (i) the RE shall not offer any Units for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Shares for issue or sale;
 - (ii) any offer relating to Units for subscription or sale shall require each offeree to subscribe for or buy a number of Shares equal to the number of Units subscribed for or bought;
 - (iii) the RE shall not issue (including upon exercise of an Option) or sell any Units to any person unless an identical number of Shares are also issued or sold to the same person at the same time;
 - (iv) the RE shall not register any transfer of Units to any person unless an identical number of Shares is also transferred to the same person at the same time and is capable of being registered at the same time as the transfer of Units;
 - (v) a transfer of a Unit which is not accompanied by a transfer of a Share to which the Unit is Stapled will be taken to authorise any Director as agent for the transferor to

effect in accordance with the provisions of this Constitution, a transfer of the Share to the same transferee; and

- (vi) the Directors and the RE shall not consolidate, sub-divide, forfeit, cancel, buy-back, redeem or repurchase any Units or otherwise re-organise the interests in the Trust unless at the same time there is a corresponding consolidation, subdivision, forfeiture, cancellation, buy-back, redemption or repurchase of the Shares or re-organisation of the capital of the Company.
- (g) If a Unit is Unstapled from a Share, the provisions of the Constitution in respect of Stapling will continue to apply to the Units which remain Stapled.
- (h) The Units are to be Stapled to the Shares in the ratio of one Unit to one Share. Despite any other provision of this Constitution:
 - (i) the Investor holding a Unit must be identical to the Shareholder holding the Share to which the Unit is Stapled;
 - (ii) as far as the law permits, a Unit and a Share which are Stapled together are treated as one security; and
 - (iii) no transfer of a Unit is to occur without one of the Shares being transferred at the same time from the same transferor to the same transferee.
- (i) The RE must procure that joint certificates and/or joint holding statements (as the case requires) are issued to each holder of Stapled Securities for those Stapled Securities.
- (j) The RE must ensure that it maintains a Stapled Security Register which records the names and addresses of the Investors, the number of the Units held, the number of Shares held and any additional information required by the law. Details of all Stapled Securities sufficient to identify the Units and Shares which comprise the Stapled Security must be registered in the Stapled Security Register. The Stapled Security Register must be identical to the Register in relation to the information regarding the Units. The RE may deem the Stapled Security Register to be part of the Register for the purposes of the details of the Units.
- (k) The RE must obtain the Company's consent to the issue and agree with the Company on the terms, including the issue price, of any Options before any offer to subscribe for Options is made.
- (l) Any issue of Partly Paid Units must be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Share to which the Partly Paid Unit is Stapled is also paid. The RE must consult with the Company prior to making any calls in respect of any partly paid Units.
- (m) In exercising its rights under this Constitution in relation to Partly Paid Units, in particular in relation to forfeiture of Partly Paid Units, the RE must deal with the Partly Paid Units in the same way as the Company deals with the Shares to which those Partly Paid Units are Stapled.
- (n) To the extent permitted by law, the RE and the Directors may have regard to the interest of the holders of the Shares and must act in the interest of both the Trust and the Company as a whole rather than only in the interest of the Trust.
- (o) To the extent permitted by law, meetings of Investors may be held in conjunction with meeting of Shareholders and subject to the Act, the RE may make such rules for the conduct of such meetings as the RE determines.

- (p) Without limiting the provisions of this Constitution or the Act, this clause 6.5 cannot be varied, amended or deleted without the approval by a Special Resolution of the Investors and approval by a Special Resolution of the Shareholders.

7 Certificates

7.1 Certificated holdings

The provisions of this clause 7 apply only to the extent that the RE is required by the Act, the Listing Rules or the Settlement Rules to issue certificates for Units or other marketable securities of the Trust, and then only for those Units or other marketable securities for which certificates are required to be issued.

7.2 Issue of certificates

Subject to this Constitution, where the RE is required by the Act, the Listing Rules or the Settlement Rules to issue certificates for Units or other marketable securities of the Trust, the certificates must be issued in accordance with the Act, the Listing Rules and the Settlement Rules and must include all information required by the Act, the Listing Rules and the Settlement Rules.

7.3 Entitlement of investor to certificate

Subject to this Constitution, every Investor is entitled free to 1 certificate for each class of Units or other marketable securities registered in its name or to several certificates each for a reasonable proportion of those Units or marketable securities.

7.4 Certificate for joint holders

Where Units or other marketable securities are registered in the names of 2 or more persons, only 1 certificate is required to be issued for each class of those Units or marketable securities.

7.5 Cancellation of certificate on transfer

- (a) Subject to this Constitution, on every application to register the transfer of any Units or other marketable securities or to register any person as an Investor in respect of any Units or other marketable securities which may have been transmitted to that person by operation of law, the certificate for those Units or other marketable securities must be delivered up to the RE for cancellation.
- (b) The RE must issue a new certificate in similar form specifying the Units or other marketable securities transferred or transmitted and deliver it to the transferee or transmittee within 5 Business Days after the registrable transfer or transmission notice is lodged with the RE.
- (c) If registration is required for some only of the Units or other marketable securities specified on the certificate delivered up to the RE, a new certificate specifying the Units or other marketable securities remaining untransferred or untransmitted must be delivered to the transferor.

7.6 Replacement of certificates

- (a) The RE must issue a replacement certificate:
- (i) if the certificate is worn out or defaced, on production of the certificate to the RE to be replaced and cancelled; or

- (ii) if the certificate is lost or destroyed, on the RE being furnished with:
 - (A) evidence that the certificate has been lost or destroyed, and has not been disposed of or pledged, as is required by the Act;
 - (B) an undertaking to return the certificate, if found, as required by the Act; and
 - (C) if the RE considers it necessary, a bond or indemnity as the Act authorises the RE to require.
- (b) The RE must issue all replacement certificates within 5 Business Days after receiving the original certificate or evidence of loss or destruction.

8 CHESS

8.1 Participation in CHESS³

- (a) The RE may at any time resolve that the Trust will participate in CHESS, but the Trust must participate in CHESS to the extent required by the Listing Rules while it is admitted to the Official List.
- (b) Clauses 8.2 to 8.4 will apply if the Trust is granted participation in CHESS.

8.2 Compliance with Settlement Rules

The Trust must comply with the Settlement Rules if any of its Units are CHESS approved securities. In particular the Trust must comply with the requirements of the Settlement Rules and Listing Rules regarding the maintenance of registers, the issuing of holding statements and transfers in relation to its CHESS approved securities.

8.3 Registers

If the Trust's Units are CHESS approved securities, in addition to the CHESS subregister, it must provide for an issuer sponsored subregister, or a certificated subregister, or both (at least if the Trust has Restricted Securities on issue).

8.4 No interference with proper ASTC transfer

The Trust must not in any way prevent, delay or interfere with the generation of a proper ASTC transfer or the registration of a paper-based transfer in registrable form (which satisfies the requirements of clause 11), except as permitted by clause 11.4, the Listing Rules or the Settlement Rules.

9 Calls

9.1 RE may make calls

- (a) The RE may, subject to clause 6.5(1), make calls as it thinks fit on the Investors for all moneys unpaid on Units held by those Investors which are not moneys made payable by the conditions of allotment at fixed times.

³ LR 2.1, condition 3

- (b) A call may be made payable by instalments.
- (c) The RE may revoke or postpone a call.

9.2 Notice of calls

- (a) The RE must give written notice of a call at least 30 Business Days before the call is due. The notice must specify the time and place for payment and any other information required by the Listing Rules.
- (b) The non-receipt of any notice by, or the accidental omission to give notice of any call to, any Investor will not invalidate the call.

9.3 Difference in terms of issue as to calls

The RE may, on the issue of Units, differentiate between the holders as to the amount of calls to be paid and the time for payment of those calls.

9.4 Fixed payments deemed calls

Any sum which, by the terms of issue of a Unit, becomes payable on allotment or at any fixed date, will for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which the sum is payable. In case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise will apply as if the sum had become payable by virtue of a call duly made and notified.

9.5 Interest on sums not paid

A sum called in respect of a Unit and not paid on or before the date for payment bears interest from the date for payment to the time of actual payment at any rates as the RE may determine. The RE may waive payment of interest, either in whole or in part.

9.6 Payment of calls

Each Investor must pay the amount of every call made on it at the times and places appointed by the RE.

9.7 Proof of calls

In any proceeding to recover moneys due for any call, it is sufficient and conclusive evidence of the debt if it is proved that:

- (a) the name of the Investor sued is entered in the Register as the holder or 1 of the holders of the Units in respect of which the call was made; and
- (b) the Resolution of the RE making the call was recorded in its minute book; and
- (c) notice of the call was given to the Investor sued in accordance with this Constitution.

9.8 Prepayment of calls

The RE may receive from any Investor willing to advance it, all or any part of the amount unpaid on the Unit held by that Investor beyond the sums actually called up. The RE may then either:

- (a) if the Investor so requests, make a call on the Investor for the amount advanced, pro rata in respect of all Units held by that Investor on which moneys remain unpaid or on any other basis as agreed between that Investor and the RE; or

- (b) authorise payment out of the Assets of interest on the whole or any part of the amount so received until the amount becomes due or is repaid at the rate agreed between the Investor paying the sum in advance and the RE. The RE may at any time authorise repayment of the whole or any part of the amount paid in advance on giving the Investor 1 Month's notice of the date for repayment.

10 Forfeiture of Units

10.1 Forfeiture on non-payment of calls

Unless the RE otherwise determines, any Unit on which a call is unpaid 14 days after the day for its payment has expired will be absolutely forfeited without any resolution of the RE or other proceeding being required. Subject to the Act and the Listing Rules, the RE may then proceed to cancel, sell or otherwise Dispose of the forfeited Units. So long as Stapling applies, the RE must notify the Company if it proposes to forfeit (and cancel, offer for sale or otherwise Dispose of) any Units.

10.2 Evidence of forfeiture

A written statement declaring that the person making the statement is a Director or Secretary of the RE and that a Unit in the Trust has been forfeited on a date stated in the statement, is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the Unit.

10.3 Effect of forfeiture

On forfeiture of a Unit:

- (a) the person whose Unit is forfeited will cease to be an Investor in respect of the forfeited Unit;
- (b) that person will lose all entitlements to distributions declared in respect of the forfeited Unit but not made; and
- (c) that person remains liable to pay the RE all money which, at the date of forfeiture, was payable by it to the RE in respect of the forfeited Unit together with interest on that amount from the date of forfeiture until payment at the rate determined by the RE. The RE is under no obligation to enforce payment.

10.4 Sale of forfeited Unit

- (a) If the RE determines to sell any forfeited Unit, the RE may, subject to clauses 6.5(m), 10.4(e) and 10.4(f), Dispose of any forfeited Unit on any terms and in any manner as the RE determines, and in accordance with any applicable requirements of the Act and the Listing Rules.
- (b) The RE may do all things necessary to give effect to the sale of the forfeited Units, including authorising a Director of the RE or any other person to:
 - (i) execute a transfer of the Units sold in favour of the purchaser of the Units; and
 - (ii) do all acts and things as are necessary or desirable under the Act, the Listing Rules or the Settlement Rules, to effect a transfer and to enable the forfeited Units to be Disposed of; and

the Investor irrevocably authorises the RE and appoints the RE and each Director jointly and severally as its attorney to do so.

- (c) The RE must register the transferee as holder of the Units forfeited.
- (d) The transferee of the forfeited Units is not bound to see that forfeit money is properly applied as set out in this clause 10. The transferee's title to the Units is unaffected by any irregularity or invalidity in connection with the forfeiture, sale or Disposal of the Units.
- (e) Where the Units are quoted on ASX and are not suspended from quotation, the sale price of a forfeited Unit is the price determined by the RE provided that the sale is conducted in accordance with section 254Q of the Act other than subsections 254Q(1), 254Q(9), 254Q(10), 254Q(13) and 254Q(14) as if the Unit was a share, the Trust was the company and the RE was the directors of the company and, while Stapling applies, the RE must determine, provided that it complies with the Listing Rules and the Act, what part of the sale price of a forfeited Stapled Security is to represent the sale price of the Units.
- (f) Where the Units are not quoted on ASX or are suspended from quotation, the sale price of the forfeited Unit is the price calculated in accordance with the formula in clause 5.6(a) where all the variables in that formula are calculated as at the end of the Month immediately prior to the Month in which the forfeited Unit is sold.

10.5 Proceeds of sale

The proceeds of sale of any forfeited Units received by the RE must be applied in payment of:

- (a) first, the expenses of the sale;
- (b) secondly, any expenses necessarily incurred in connection with the forfeiture, including any interest accrued;
- (c) thirdly, the calls then due and unpaid; and
- (d) the balance (if any) must be paid to the Investor whose Units have been sold within 5 Business Days of the RE receiving the proceeds of sale.

10.6 Redemption of forfeited Units

A Unit belonging to a person which has been forfeited may be redeemed at any time up to, but not including, the day on which the Unit is intended to be sold, by payment to the Trust of all calls due on the Unit and any other costs and expenses which may be permitted by the Act and the Listing Rules, and on payment the person is entitled to the Unit as if the forfeiture had not occurred.

10.7 Limitation on remedy

The remedy of any person aggrieved by the sale or other Disposal of its Units under this clause 10 is limited to a right of action in damages against the RE to the exclusion of any other right, remedy or relief against any other person.

10.8 Surrender of Units

The RE may accept the surrender of any Unit which they are entitled to forfeit on any terms they think fit and any Unit so surrendered may be disposed of in the same manner as a forfeited Unit.

10.9 Cancelling forfeiture

The RE may cancel a forfeiture of Units before the Units are sold or otherwise Disposed of on such terms as it determines.

11 Transfer of Units

11.1 Transfer document

Subject to this Constitution (in particular clause 6.5), the Act, the Listing Rules⁴ and the Settlement Rules an Investor may transfer all or any Units by a transfer document duly stamped (if necessary) and delivered to the RE. The transfer document must be in writing in the usual or common form or in any other form as the RE may from time to time prescribe or, in particular circumstances, agrees to accept and must be signed by or on behalf of the transferor or as otherwise permitted by the Act.

11.2 Registration procedure

Subject to this Constitution, the Act, the Listing Rules and the Settlement Rules every transfer document must be delivered to the RE accompanied by the certificate for the Units to be transferred and any other evidence the RE may require to prove the title of the transferor or its right to transfer the Units. The RE must retain all transfer documents registered but any transfer document which the RE refuses to register must (except in the case of fraud or suspected fraud) be returned on demand to the person who deposited that document.

11.3 Registration of transfer

Subject to clause 11.4, the RE must register each registrable paper-based transfer of Units which complies with clauses 11.1 and 11.2, the Act and the Listing Rules and must do so without charge.

11.4 Restrictions on transfer

Except as otherwise provided for in the Listing Rules and the Settlement Rules, the RE may in its absolute discretion ask ASTC to apply a holding lock to prevent a proper ASTC transfer, or refuse to register a paper-based transfer, of a Unit where:

- (a) the RE has a lien on the Units the subject of the transfer;
- (b) the RE is served with a court order that restricts an Investor's capacity to transfer the Unit;
- (c) registration of the transfer may break an Australian law and the ASX has agreed in writing to the application of a holding lock (which must not breach the Settlement Rules) or that the RE may refuse to register a transfer;
- (d) if the transfer is paper-based, either a law related to stamp duty prohibits the RE from registering it or the RE is otherwise allowed to refuse to register it under the Listing Rules;
- (e) the transfer does not comply with the terms of any employee incentive scheme of the Trust;
- (f) if the transfer is paper-based, registration of the transfer will create a new holding which at the time the transfer is lodged is less than a marketable parcel as defined in the Listing Rules;
- (g) the relevant Investor has agreed in writing to the application of a holding lock (which must not breach the Settlement Rules) or that the RE may refuse to register a transfer;
- (h) it is permitted under clause 6.5 of this Constitution; or
- (i) it is otherwise permitted under the Listing Rules.

⁴ see LR 8.10 and 8.14

11.5 Notice of refusal to register

- (a) If the RE refuses to register a paper-based transfer under clause 11.4, it must tell the lodging party in writing of the refusal and the reason for it, within 5 Business Days after the date on which the transfer was lodged.
- (b) If the RE asks ASTC to apply a holding lock under clause 11.4, it must tell the Investor in writing of the holding lock and the reason for it, within 5 Business Days after the date on which it asked for the holding lock.

11.6 Transfer not complete until name entered in the Register

Subject to the Settlement Rules, the transferor of a Unit remains the holder of the Unit until the name of the transferee is entered in the Register in respect of that Unit.

12 Transmission of Units**12.1 Death of an Investor**

If an Investor dies:

- (a) and the Investor was a joint holder of any Units, the surviving joint holder (or holders) is (or are) the only person (or persons) recognised by the RE as having any title to or interest in those Units; and
- (b) the legal personal representatives of the Investor (not being 1 of 2 or more joint holders) are the only persons recognised by the RE as having any title to or interest in the Units registered in its name.

12.2 Transmission on death or bankruptcy

Any person becoming entitled to a Unit because an Investor dies or becomes bankrupt, or otherwise by operation of law, on producing the evidence of entitlement which the RE may require, may elect either to be registered personally as the holder of the Unit or to have some person nominated by it registered as the transferee of that Unit.

12.3 Election as to registration on transmission

If the person becoming entitled to a Unit:

- (a) elects to be registered personally, he or she must deliver or send to the RE a personally signed written notice stating that election; or
- (b) elects to have another person registered, he or she must effect a transfer of the Unit in favour of that person.

All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, the form of transfer and the registration of transfers of Units will be applicable to any notices or transfers.

13 Alteration of capital**13.1 RE's power to alter interests in the Trust**

The RE may, by resolution passed at a meeting of Investors:

- (a) consolidate all or any of the Units into Units of a larger amount, but so that in the consolidation the proportion between the amount paid and the amount (if any) unpaid on each consolidated Unit is the same as it was for the Units from which the consolidated Unit is derived (adjusted for any differences between the amounts paid up on those Units);
- (b) subdivide the Units or any of them into Units of a smaller amount, but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each subdivided Unit is the same as it was for the Unit from which the subdivided Unit is derived; or
- (c) cancel Units which have been forfeited, subject to the requirements of the Listing Rules.

13.2 Dealing with fractions

Subject to the Act, the RE may do anything required to give effect to a resolution which alters the number of Units on issue. Where an investor becomes entitled to a fraction of a Unit on a consolidation, this power includes:

- (a) making cash payments;
- (b) determining that fractions may be disregarded to adjust the rights of all parties;
- (c) appointing a trustee to deal with any fractions on behalf of Investors; and
- (d) rounding up each fractional entitlement to the nearest whole Unit.

13.3 Reduction of capital

Subject to the Act and the Listing Rules, the RE may reduce the capital of the Trust in any manner, including by way of distributing specific assets, including securities of the Trust or of any other corporation, trust or entity. While Stapling applies, the RE may not effect a reduction of interests in the Trust unless there is a similar reduction of capital in the Company.

13.4 Power to buy back Units

The RE may, in accordance with the Act and the Listing Rules, buy back Units on any terms and conditions determined by the RE. The consideration paid for a buy back of Units may include specific assets, including securities of the Trust or of any other corporation, trust or entity.

14 Variation or cancellation of rights

14.1 Variation or cancellation of Class rights

Subject to the Act, the Listing Rules, all or any of the rights and privileges attached to any Class (unless otherwise provided by the terms of issue of the Units of that Class) may be varied or cancelled, including by converting or reclassifying Units from one class to another:

- (a) with the written consent of holders of at least 75% of the Units issued in that Class; or
- (b) with the approval of a Special Resolution passed at a meeting of holders of the Units of that Class. The provisions of this Constitution relating to notice of meetings, quorum at a meeting, the appointment of a chairperson and of proxies, attorneys and representatives, the depositing and form and validity of proxies and the conduct of meetings of Investors will apply to any meeting of that Class to approve that resolution.

14.2 No consent or sanction required for redemption

A consent or sanction referred to in clause 14.1 is not required to redeem any Units or vary any other rights attaching to any Units where that redemption or variation is in accordance with the terms of issue of those Units or any other provision of this Constitution permitting the redemption or variation.

14.3 No variation by issue of further Units ranking equally

The rights conferred on the holders of the Units of any Class will not, unless otherwise expressly provided by the terms of issue of the Units of that Class, be deemed to be varied by the creation or issue of further Units ranking equally in respect of those rights.

15 Restricted Securities

The RE must comply in all respects with the requirements of the Listing Rules relating to Restricted Securities. Notwithstanding any other provisions of this Constitution:

- (a) Restricted Securities cannot be Disposed of during the escrow period for those Restricted Securities, except as permitted by the Listing Rules or ASX;
- (b) the RE must refuse to acknowledge a Disposal (including registering a transfer) of Restricted Securities during the escrow period for any Restricted Securities except as permitted by the Listing Rules or ASX; and
- (c) during a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any distribution, or voting rights, in respect of the Restricted Securities.

16 Proportional takeover bids

16.1 Definitions

In this clause 16:

Approving resolution has the same meaning as in section 648D of the Act;

Approving resolution deadline has the same meaning as in section 648D of the Act;

Associate has the same meaning as in section 9 of the Act for the purposes of Chapter 6 of the Act; and

Proportional takeover bid has the same meaning as in section 9 of the Act.

16.2 Prohibition on registration of transfer unless takeover scheme approved

Where an offer has been made under a proportional takeover bid in respect of Units included in a Class, the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the proportional takeover bid is prohibited unless and until an approving resolution to approve the proportional takeover bid is passed in accordance with the provisions of this Constitution.

16.3 Approving resolution

An approving resolution is to be voted on at a meeting, convened and conducted by the RE, of the persons entitled to vote on that resolution under the Act.

16.4 Entitlement to vote on approving resolution

A person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the proportional takeover bid was made, held Units included in that Class is entitled to vote on an approving resolution and, for the purposes of so voting, is entitled to 1 vote for each of those Units.

16.5 Bidder and associates not entitled to vote

The bidder or an associate of the bidder is not entitled to vote on an approving resolution.

16.6 Approving resolution passed

An approving resolution is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.

16.7 Meeting provisions to apply

The provisions of this Constitution which apply to a meeting of the Investors apply, with any modifications as the circumstances require, to a meeting convened under this clause.

16.8 Meeting to be held before approving resolution deadline

Where takeover offers have been made under a proportional takeover bid, then the RE must ensure that the approving resolution is voted on in accordance with this Constitution before the approving resolution deadline in relation to the proportional takeover bid.

16.9 Notice as to whether approving resolution is passed

Where a resolution to approve a proportional takeover bid is voted on in accordance with this clause, before the approving resolution deadline in relation to the proportional takeover bid, the RE must, on or before the approving resolution deadline:

- (a) give to the bidder; and
- (b) serve on the Home Branch,⁵

a written notice stating that a resolution to approve the proportional takeover bid has been voted on and that the resolution has been passed, or has been rejected, as the case may be.

16.10 Approving resolution deemed to have passed

Where, as at the end of the day before the approving resolution deadline in relation to a proportional takeover bid under which offers have been made, no resolution to approve the proportional takeover bid has been voted on in accordance with this clause, then a resolution to approve the proportional takeover bid is, for the purposes of this clause, deemed to have been passed in accordance with this clause.

16.11 Effect of this clause

This clause ceases to have effect on the third anniversary of the later of the date of its adoption or of its most recent renewal.

⁵ see LR 3.2

17 Unmarketable parcels

17.1 Definitions

In this clause:

Effective Date means the date immediately following the expiry of the period referred to in the notice given by the RE to Unmarketable Parcel Holders in accordance with this clause;

Marketable Parcel means a number of Units equal to a marketable parcel as defined in the Listing Rules, calculated on the day before the RE gives notice under clause 17.2;

Unmarketable Parcel means a number of Units which is less than a Marketable Parcel; and

Unmarketable Parcel Holder means an investor holding an Unmarketable Parcel.

17.2 Notice to Unmarketable Parcel Holder

The RE may give written notice to an Unmarketable Parcel Holder advising of the RE's intention to sell its Unmarketable Parcel under this clause, unless the Unmarketable Parcel Holder, within 6 weeks from the date the notice is sent by the RE, gives written notice to the RE that it wishes to retain its Units in which case the provisions of this clause will not apply to the Units held by that Unmarketable Parcel Holder.

17.3 Revocation or withdrawal of notice

If an Unmarketable Parcel Holder has given written notice to the RE that it wishes its Units to be exempted from this clause, it may at any time before the Effective Date revoke or withdraw that notice and the provisions of this clause will then apply to the Units held by that Unmarketable Parcel Holder.

17.4 Sale of Unmarketable Parcels

Subject to clause 17.2, on and from the Effective Date, the RE may sell or otherwise Dispose of the Units held by each Unmarketable Parcel Holder on any terms and in that manner and at those times which the RE determines, provided that while Stapling applies, no sale or other Disposal of the Units under this clause 17.4 may occur unless, at the same time as the Units are sold or otherwise Disposed of, an identical number of Shares are sold or otherwise Disposed of. For the purpose of selling or Disposing of those Units, each Unmarketable Parcel Holder irrevocably:

- (a) appoints the RE as its agent to sell all the Units it holds;
- (b) appoints the RE as its attorney in its name and on its behalf to effect a transfer document for its Units and to otherwise act to effect a transfer of its Units; and
- (c) appoints the RE as its agent to deal with the proceeds of sale or other Disposal of those Units in accordance with this clause.

17.5 RE to pay all costs

The RE will pay all costs and expenses of the sale and disposal of Unmarketable Parcels under this clause out of the Assets in accordance with clause 24.5.

17.6 Title of purchaser of Unmarketable Parcel

Once the name of the purchaser of the Units sold or Disposed of in accordance with this clause is entered in the Register for those Units, the title of the purchaser to those Units is not affected by any

irregularity or invalidity in connection with the sale or Disposal of those Units and the validity of the sale may not be impeached by any person.

17.7 Remedy of Unmarketable Parcel Holder

The remedy of any Unmarketable Parcel Holder who is aggrieved by the sale or Disposal of its Units under this clause is limited to a right of action in damages against the RE to the exclusion of any other right, remedy or relief against any other person.

17.8 Evidence of sale in accordance with this clause

A written statement declaring that the person making the statement is a Director or Secretary of the RE and that the Units of an Unmarketable Parcel Holder have been dealt with in accordance with this clause, is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to those Units.

17.9 Receipt of proceeds of sale

The RE's receipt of the sale proceeds of the Units of an Unmarketable Parcel Holder is a good discharge to the purchaser of all liability in respect of the purchase of those Units and the purchaser will not be bound to see to the application of the money paid as consideration.

17.10 RE to deal with proceeds of sale

The RE will receive the proceeds of sale of the Units of each Unmarketable Parcel Holder and will deal with those proceeds as follows. It must:

- (a) pay the proceeds into a separate bank account which it opens and maintains for that purpose;
- (b) hold the proceeds in trust for the Unmarketable Parcel Holder;
- (c) immediately it receives the proceeds, notify the Unmarketable Parcel Holder in writing of the receipt and that the proceeds are being held by the RE pending receipt of the unit certificate (if any) for those Units sold or Disposed of or, if those certificates have been lost or destroyed, a statement and undertaking in accordance with the Act, and seeking instructions from the Unmarketable Parcel Holder as to how the proceeds are to be dealt with;
- (d) deal with the sale proceeds as instructed by the Unmarketable Parcel Holder on whose behalf they are held if the Investor provides the RE with the certificate (if any) for those Units or, if that certificate has been lost or destroyed, a statement and undertaking in accordance with the Act; and
- (e) if the whereabouts of the Unmarketable Parcel Holder are unknown or no instructions are received from the Unmarketable Parcel Holder within 2 years of the proceeds being received by the RE, deal with those proceeds according to the applicable laws dealing with unclaimed moneys.

17.11 Overriding effect of this clause

Subject to clauses 1.8 and 17.12, the provisions of this clause 17 have effect despite any other provision of this Constitution.

17.12 Clause ceases to have effect following announcement of takeover bid

This clause 17 ceases to have effect following the announcement of a takeover bid but, despite clause 17.13, the procedures set out in this clause may be started again after the close of the offers made under the takeover bid.

17.13 Clause may be invoked only once in any 12 Month period

The provisions of this clause 17 may be invoked only once in any 12 Month period.

18 Meetings of Investors**18.1 Annual meeting of Investors**

While Stapling applies, an annual meeting of Investors may be held in conjunction with any annual general meeting of the Company. The business of the annual meeting of Investors may include:

- (a) receiving and considering the statement of financial performance and statement of financial position and the reports of the Directors and of the auditors and the statement of the Directors;
- (b) appointing the auditor; and
- (c) fixing the remuneration of the auditor,

whether or not this is stated in the notice of meeting.

18.2 RE may convene meetings

The RE may convene a meeting of Investors or any class of Investors whenever it thinks fit.

18.3 Investors may requisition meeting

Investors may requisition the holding of a meeting in accordance with the Act and the RE must convene a meeting in accordance with the time limits under the Act.

18.4 Notice

Notice of every annual meeting of Investors, meeting of Investors or meeting of any class of Investors must be given in the manner provided by this Constitution and the Act to the Investors and those persons who are otherwise entitled under this Constitution to receive notices.

18.5 Contents of notice of meeting

Every notice convening a meeting of Investors must include or be accompanied by all information required by the Act and the Listing Rules and must at least:

- (a) set out the place, the day and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) subject to clause 18.1, state the general nature of the business to be transacted at the meeting and any Special Resolution or Extraordinary Resolution to be proposed;
- (c) include a statement that:
 - (i) an Investor entitled to attend and vote is entitled to appoint a proxy;
 - (ii) a proxy need not be an Investor; and
 - (iii) an Investor who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise;
- (d) be accompanied by an instrument of proxy in the form described in this Constitution or in any other form as the RE may from time to time prescribe or accept;

- (e) include information about how instruments of proxy can be delivered to the RE; and
- (f) if required by the Listing Rules, include a voting exclusion statement.

18.6 Omission to give notice

Except as prescribed by the Act, the accidental omission to give notice of a meeting to any Investor or the non-receipt of a notice of a meeting by any Investor does not invalidate any of the proceedings at that meeting.

18.7 Changes to meeting

The RE may change the venue for, and postpone or cancel a meeting if it considers that the meeting has become unnecessary, or that a postponement is in the interests of Investors, or that the venue would be unreasonable or impractical, or a change is otherwise necessary to conduct the meeting efficiently. However, a meeting called to comply with an Investors' requisition may not be postponed or cancelled unless those who requisitioned the meeting first consent in writing.

19 Proceedings at meetings of Investors

19.1 Investor deemed to be present

An Investor may attend a meeting at which it is entitled to be present, and is deemed to be present, in any of the following ways:

- (a) in person;
- (b) by attorney;
- (c) by proxy;
- (d) in the case of an Investor which is a body corporate, by a representative appointed under section 250D of the Act.

19.2 Attorney of Investor

Any Investor may appoint an attorney to act on its behalf at all meetings of the Investors or all meetings of the Investors during a specified period. Before the first meeting at which the attorney acts on the Investor's behalf, the power of attorney validly appointing the attorney must be deposited at the RE's registered office or at any place specified in the notice convening that meeting.

19.3 Representative of body corporate

Any Investor being a body corporate may, in accordance with the Act, by resolution of its directors authorise any person to act as its representative at any meeting. That representative is then entitled to exercise the same powers as the body corporate appointing the representative could have exercised as an Investor, if it were a natural person.

19.4 Quorum for meeting

No business may be transacted at any meeting unless a quorum is present at the start of the business. A quorum is 3 Investors who are present.

19.5 No quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting;

- (a) any meeting convened on a requisition of Investors is dissolved;
- (b) any other meeting stands adjourned to the same day in the next week at the same time and place or to any other day, time and place as the RE may appoint by notice to the Investors. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, then those Investors who are present in person are deemed to be a quorum and may transact the business for which the meeting was called.

19.6 Chairperson of meeting

- (a) The RE may appoint a person to chair a meeting of Investors. A poll cannot be called by Investors on the issue of appointment of the chair unless the RE agrees.
- (b) If there is no chairperson or if at any meeting the chairperson is not present within 30 minutes after the time appointed for holding the meeting or if the chairperson is unwilling to act, the RE may choose a chairperson. If the RE does not choose a chairperson, the Investors present must choose 1 of the Directors of the RE to be chairperson, and if no Director of the RE is present or willing to take the chair, the Investors must choose 1 of the Investors to be chairperson.
- (c) The chairperson may, in the case of a conflict of interest or otherwise in his or her discretion, appoint someone else (who need not be a Director of the RE) to chair one or more items of business or resolutions at a meeting. While acting as chair the appointee may exercise all of the chairperson's powers and discretions. The chairperson resumes the chair after the appointment concludes.

19.7 Powers of chairperson

- (a) The chairperson is responsible for the general conduct of and procedures at the meeting.
- (b) The chairperson's decisions about general conduct and procedures is final.
- (c) At any meeting of Investors, if:
 - (i) the chairperson declares that a resolution has been carried, or carried by a particular majority, or not carried; and
 - (ii) an entry to that effect is recorded in the minutes of proceedings,
 - that declaration is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution.

19.8 Resolutions

A resolution binds all Investors or class of Investors, whether or not they were present at the meeting.

19.9 Non-physical meetings

Subject to the Act, the RE may hold meetings any way it determines (for example, phone hook-up, video conference, electronic voting, circular resolution or the necessary Investors agreeing in writing (this includes e-mail and fax)).

19.10 Adjournment of meeting

The chairperson of a meeting of Investors may adjourn the meeting from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. A poll cannot be called by Investors on the issue of adjournment unless the RE agrees.

19.11 Notice of adjourned meeting

If any meeting of Investors is adjourned for more than 1 month, Investors must be given notice of the adjournment in the same manner in which notice was, or ought to have been, given of the original meeting.

20 Voting

20.1 Resolution determined by majority

At a meeting of Investors all resolutions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this Constitution, the Act or the Listing Rules.

20.2 Casting vote of chairperson

If an equal number of votes occurs on a show of hands or on a poll, the chairperson does not have a casting vote in addition to any votes to which the chairperson may be entitled as an Investor, proxy, attorney or representative.

20.3 Method of voting

Every resolution submitted to the meeting, in the first instance, will be determined by a show of hands unless a poll is demanded under clause 20.4 or the Act either before or on the declaration of the result of the vote on a show of hands.

20.4 Demand for poll

A poll may be demanded on any resolution by:

- (a) the chairperson;
- (b) at least 5 Investors who are present; or
- (c) any 1 or more Investors who are present, holding Units conferring not less than 5% of the total voting rights of all Investors having the right to vote on the resolution.

20.5 Conducting a poll

- (a) The chairperson will decide in each case the manner in which a poll is taken.
- (b) In every case the chairperson must ascertain the number of votes attaching to Units held or represented by persons voting in favour of a resolution and by those voting against the resolution.
- (c) The chairperson will determine any dispute about admitting or rejecting a vote and that determination made in good faith will be final and conclusive.

20.6 Votes

Subject to this Constitution, the Listing Rules and the rights or restrictions on voting which may attach to or be imposed on any Unit or Class of Units:

- (a) on a show of hands every Investor present will have 1 vote; and
- (b) on a poll every Investor present will have 1 vote for each dollar of the value of the total interests they have in the Trust.

Deleted: fully paid Unit held by that Investor and a fraction of a vote for each Partly Paid Unit, equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that Unit, ignoring any amounts paid in advance of a call

20.7 Votes by proxy

- (a) An Investor who is entitled to attend and cast a vote at a meeting of the Investors may appoint not more than 2 other persons as that Investor's proxy or proxies to attend and vote at the meeting on that Investor's behalf.
- (b) If an Investor appoints 1 proxy, that proxy may vote on a show of hands.
- (c) A proxy may demand or join in demanding a poll.
- (d) If an Investor is present at any meeting of Investors for which the Investor has validly appointed a proxy to attend and vote for the Investor:
 - (i) the proxy's authority to speak for the Investor is suspended while the Investor is present; and
 - (ii) the proxy's authority to vote for the Investor on any resolution is not suspended while the Investor is present but is revoked by the Investor voting in person on that resolution.
- (e) A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy must vote on any resolution. The proxy may only vote or abstain on a poll or show of hands as instructed by proxy appointment.

20.8 Voting if call unpaid on Units

- (a) Subject to any restrictions affecting the right of any Investor or class of Investors to attend any meeting, an Investor holding Units on which no calls or other moneys are due and payable to the RE is entitled:
 - (i) to receive notices and to attend any meeting of Investors; and
 - (ii) to vote and be counted in a quorum,
 - even though that Investor has moneys then due and payable to the RE in respect of other Units which that Investor holds.
- (b) An Investor may not vote at any meeting of Investors in respect of those Units it holds on which calls or other moneys are due and payable to the RE at the time of the meeting.

20.9 Voting by joint Investors

- (a) Subject to clause 20.9(b), joint Investors may vote at any meeting either personally or by proxy or by attorney or representative in respect of those Units as if they were solely entitled to those Units.
- (b) If more than 1 joint Investor is present at any meeting (whether personally, by proxy or by attorney or by representative) and tenders a vote, only the vote of the joint holder whose name appears first on the register will be counted.
- (c) Several legal personal representatives of a deceased Investor will for the purpose of this clause be deemed to be joint holders of the Units registered in the name of that Investor.

20.10 Voting by transmittee

A person entitled to transmission of a Unit under clause 12 who, at least 48 hours before the time notified for a meeting of Investors (or an adjourned meeting), satisfies the RE of its right to that Unit, may vote at that meeting in respect of that Unit as if that person were registered as the holder of the Unit.

20.11 Voting by Investor of unsound mind

If an Investor is of unsound mind, or is someone whose person or estate is liable to be dealt with under a law relating to mental health, that Investor's committee or trustee or other person who properly manages the Investor's estate may, if that person has at least 48 hours before the time notified for a meeting of Investors (or an adjourned meeting) satisfied the RE of its relationship to the Investor or the Investor's estate, exercise the Investor's rights in respect of the meeting as if the committee, trustee or other person were the Investor.

20.12 Voting exclusions

If:

- (a) the Listing Rules so require; or
- (b) to ensure that a resolution on which the Act requires that particular persons do not cast a vote so that the resolution has a specified effect under the Act; and
- (c) the notice of a meeting of Investors includes any voting exclusion statement specifying that, in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or description of particular classes of persons) are to be disregarded by the RE,

the RE must not take into account, in determining the votes cast on a resolution relating to that business (whether a Special Resolution or an ordinary resolution) or for any other purpose, any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution except to the extent that the Listing Rules or the Act (as applicable) permit.

20.13 Ruling on entitlements and votes

- (a) An objection raised with the chairperson of a meeting of Investors as to:
 - (i) whether a purported voter is qualified; or
 - (ii) whether the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote should be admitted or rejected,

may only be made at the meeting or adjourned meeting at which the purported voter wishes to vote or the vote objected to is given or tendered.
- (b) In relation to that objection:
 - (i) the decision of the chairperson is final and conclusive; and
 - (ii) a vote not disallowed as a result is valid and effective for all purposes.

21 Proxies

21.1 Instrument appointing proxy

The instrument appointing a proxy must be in writing and signed by the appointor or the appointor's attorney duly authorised in writing, or, if the appointor is a body corporate, by its corporate representative or in accordance with the Act.

21.2 Deposit of proxy with RE

The instrument appointing a proxy and the original power of attorney (if any) under which it is signed, or a certified copy of the power of attorney:

- (a) must be received by the RE at least 48 hours before the time for holding the meeting; and
- (b) may be:
 - (i) delivered to the RE's registered office; or
 - (ii) sent by facsimile received at the RE's registered office or at any other place, fax number or electronic address specified for the purpose in the notice of meeting; or
 - (iii) otherwise received by any other means permissible under section 250B of the Act.

21.3 Validity of vote given in accordance with proxy

Unless the RE has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy voted:

- (a) the investor dies;
- (b) the investor is mentally incapacitated;
- (c) the investor revokes the proxy's appointment;
- (d) the investor revokes the authority under which the proxy was appointed by a third party; or
- (e) the investor transfers the Units for which the proxy was given.

21.4 Form of proxy

- (a) Every instrument of proxy must specify the investor's name and address, the Trust's name, the proxy's name or the name of the office held by the proxy and the meetings at which the proxy may be used, and must otherwise comply with the provisions of section 252Y of the Act. An appointment of proxy may be a standing one.
- (b) The instrument of proxy may specify the manner in which the proxy is to vote in respect of each of the resolutions to be proposed.
- (c) The instrument of proxy may specify the proportion or number of votes which the proxy may exercise.
- (d) Any instrument of proxy deposited in accordance with this Constitution which does not name the appointee will be deemed to be given in favour of the chairperson of the meeting to which it relates.

22 Investments

- (a) The RE may invest in anything it chooses, including derivatives, subject to what it tells investors from time to time (for example, in a PDS or by giving reasonable notice that there is to be a material change in investment policy).
- (b) Valuations must be at least as frequent as the Act or Listing Rules require.

- (c) Unless the RE determines or the Act requires, the value of an Asset for the purpose of calculating the Net Asset Value must be market value as determined in the accounting policies adopted by the Trust. If the RE values at other than market value, or where there is no market value, the valuation methods used by the RE must be capable of calculating an Issue Price and an Exit Price that is independently verifiable.
- (d) The Assets must be clearly identified as property of the Trust. Unless ASIC has modified the Act (for example, by class order) and the conditions of relief are met, Assets must be held separately from the RE's and any other managed investment scheme's assets.

23 Powers of the RE

23.1 General powers

- (a) The RE has all the powers in respect of the Trust that are possible to confer on a responsible entity under the law and as though it was the absolute owner of the Assets acting in its personal capacity.
- (b) Without limiting this, the RE can borrow or obtain financial accommodation (whether or not on security and including investing in derivatives or financial products with internal leveraging) and incur obligations and Liabilities (including giving guarantees), and may invest in, Dispose of or otherwise deal with Assets and Liabilities.
- (c) The RE may decide how and when to exercise its powers in its absolute discretion.

23.2 Delegates

- (a) The RE may authorise any person (including associates) to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to do anything in the RE's power (including to appoint its own agent or delegate).
- (b) The terms of appointment of the agent or delegate will be determined by the RE in its sole discretion except to the extent the Act governs these.

23.3 Listing of the Trust

Without limiting clause 23.1(a), the RE may in its capacity as trustee of the Trust apply for the Trust to be Listed and Units and/or options to be quoted at any time as determined by the RE and for this purpose the RE is authorised on its own behalf and on behalf of each Investor to do all things necessary to effect a Listing.

24 Fees and expenses

24.1 Management Fee

- (a) From the Issue Date, the RE is entitled to a fee equal to 1.25% per annum of the Total Asset Value less any Foreign Exchange Hedge Liability as shown in the Trust's statement of financial position as at the end of each Month, calculated and accrued monthly.
- (b) The Management Fee is payable quarterly in arrears within 90 days from 31 March, 30 June, 30 September and 31 December of each year. When calculating that portion of the Management Fee that is payable as at the end of each Month, that portion will be reduced in proportion to any part of that Month in which the RE was not the responsible entity of the Trust or the Trust was not otherwise in existence.

24.2 Performance Fee

- (a) In addition to the Management Fee, the RE is entitled:
- (i) in respect of each Measurement Period ending on or prior to the Unstapling Date to a fee equal to 20% of the amount (if any) by which the Actual Total Securityholder Return with respect to each Tranche exceeds a Notional 10% Pre-Tax Total Securityholder Return, less the aggregate of any Performance Fees previously received by the RE, within 90 days of calculation of the amount payable; and
 - (ii) in respect of each Measurement Period commencing after the Unstapling Date to a fee equal to 20% of the amount (if any) by which the Actual Total Securityholder Return with respect to each Tranche of Units or Convertible Securities convertible into Units exceeds a Notional 10% Pre-Tax Total Securityholder Return on such Tranches, less the aggregate of any Performance Fees previously received by the RE, within 90 days of calculation of the amount payable.
- (b) For the avoidance of doubt, if a calculation made under clause 24.2(a) results in a negative amount, the fee to which the RE is entitled is \$0 and no amount is payable by the RE to the Trust.
- (c) A worked example of the calculation of the Performance Fee is set out in the Annexure of this Constitution. In the event of any inconsistency between the worked example and this clause 24.2, the worked example will prevail.

24.3 Payment of Fees

- (a) The RE has absolute discretion as to the allocation of any Fees amongst the Trust and the Company, for any Measurement Period up to and including the Measurement Period ending on the Unstapling Date. For subsequent Measurement Periods Fees must be allocated to the Trust.
- (b) Any Fees allocated to the Trust will be paid, subject to clause 24.4, out of the Assets.

24.4 Payment of Fees in cash or Units

If the RE wishes to receive some or all of the Fees (and/or some or all of the GST on the Fees under clause 37) in Units, the RE will be entitled to receive that number of Units calculated in accordance with the following formula, rounded down to the nearest whole number of Units:

$$A \div B$$

where:

A = the total amount of the relevant Fees and GST on those Fees under clause 37; and

B = the volume weighted average price of Unitson ASX over the 15 day trading period immediately following:

- (a) in the case of the Management Fee (and any GST on the Management Fee under clause 37), 31 March, 30 June, 30 September and 31 December, as the case requires; and
- (b) in the case of the Performance Fee (and any GST on the Performance Fee under clause 37), the second in time Measurement Date of the relevant Measurement Period in respect of the Performance Fee.

24.5 Expenses

- (a) The RE is entitled be paid or reimbursed out of the Assets for the amount of all Tax, costs, charges and expenses properly incurred by the RE in connection with the proper performance of its duties, including all Tax, costs, charges and expenses properly incurred by the RE in connection with:
- (i) the establishment of the RE and the Trust;
 - (ii) the promotion of the Trust (including preparation of any PDS, any capital raisings, travel, roadshows, advertising and promotional material and printing);
 - (iii) licensing and other compliance matters (including any appointed compliance committee);
 - (iv) the appointment of any custodian, adviser, consultant or auditor;
 - (v) the preparation of financial statements;
 - (vi) meetings of Investors;
 - (vii) any proposal involving Unstapling the Trust and the Company; and
 - (viii) terminating and winding up the Trust.
- (b) Subject to the Listing Rules the Investors may in general meeting from time to time determine the maximum aggregate cash remuneration (**Remuneration**) to be reimbursed to the RE out of the Assets of the Trust for services rendered by Directors in their capacity as directors of the responsible entity of the Trust. Until a different amount is determined, the Remuneration is \$300,000 per annum.

24.6 Corporations Act 2001

So long as the Act requires, the RE's rights to fees and to expense reimbursement are only available in the proper performance of its duties.

25 Change of RE

- (a) The RE may retire in the way the Act contemplates. The RE must retire when required by the Act. Investors have no right to remove the RE other than the right granted by the Act.
- (b) When the RE changes, the Investors may choose a replacement as the Act contemplates.
- (c) Any proposed replacement must agree to be bound by this Constitution as if it had originally been a party.
- (d) When the RE changes, the RE is released from all obligations in relation to the Trust arising after the time it retires or is removed except those which the Act continue to impose.

26 Complaints

If an Investor submits a complaint to the RE relating to the Trust (this date is C+O), the RE must:

- (a) if the complaint is in writing, acknowledge it by C+14;

- (b) if the complaint is made verbally, acknowledge the complaint verbally at the time the complaint is made (ie C+0);
- (c) properly consider the complaint, whether written or verbal, as soon as practicable; and
- (d) tell the complainant by C+45 of any determination made by the RE with respect to the complaint and alternative avenues they can pursue (such as external resolution).

27 Compliance committee

- (a) The RE must appoint a compliance committee for the Trust if the Act requires.
- (b) If any member of the compliance committee incurs a liability in that capacity in good faith, then if the RE permits, they are entitled to be indemnified out of the Assets for that liability to the extent permitted by the Act.

28 Minutes and registers to be kept

28.1 Minutes

The RE must prepare minutes of any meeting of Investors or class of Investors:

- (a) containing details of the names of the Directors present at the meeting and all resolutions and proceedings of the meeting; and
- (b) which must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

28.2 Registers

The RE must keep:

- (a) a Register and other registers required under the Act;
- (b) a Stapled Security Register in accordance with clause 6.5(j); and
- (c) any other registers or sub-registers required by the Listing Rules.

29 Income and distributions to Investors⁶

29.1 Distributable Income

- (a) The RE must determine the Distributable Income of the Trust for each Financial Year and Income Year.
- (b) Distributable Income is an amount equal to the Section 95 Income plus the Exempt Income and Non-Assessable Non-Exempt Income less any Notional Amounts. These amounts should be prepared in accordance with applicable accounting standards and generally applicable

⁶ refer to LR 3.20 (compliance with timetable and notification of record date to ASX) and LR 6.10 (removing or changing distribution rights)

accounting principles except to the extent that applicable accounting standards require payments to Investors to be treated as an interest expense. Where such a treatment is required by applicable accounting standards, it shall be disregarded for the purposes of section 95 of the Tax Act.

29.2 Income distributions

- (a) Subject to the rights and obligations attaching to any Class, for a Distribution Period ending other than on the date of the end of the Income Year of the Trust, the Distributable Income to which each Investor is presently entitled at that time is calculated as follows as the sum of "A" and "B" where:

"A" equals the amount included in Section 95 Income during the relevant Distribution Period as a direct consequence of the Disposal of Assets by the Trust due to the Investor redeeming its Units under clause 5; and

"B" is calculated by reference to the following formula:

$$\frac{\text{Investor's Units} \times \text{Distributable Income}}{\text{Total Units}}$$

where:

Investor's Units: is the number of Units held by the Investor at the end of the Distribution Period;

Total Units: is the number of Units held by all Investors at the end of the Distribution Period; and

Distributable Income is an estimate of the distributable income for the Distribution Period calculated as if the Distribution Period were a year of income less any amount included (for any Investor) under "A" above.

- (b) Subject to the rights and obligations attaching to any Class, for a Distribution Period ending on the date of the end of the Income Year of the Trust, the Distributable Income to which each Investor is presently entitled at that time is calculated in the same way except:

Distributable Income: is the amount (if any) by which the distributable income for the Income Year exceeds the aggregate of the amounts calculated under "A" in clause 29.2(a) above for that Income Year and the estimates of distributable income for the previous Distribution Periods of that Income Year under "B" in clause 29.2(a) above.

- (c) Subject to the Listing Rules⁷, income distributions must be paid to an Investor as soon as practicable after the Distribution Calculation Date. Any income which is not distributed in a Distribution Period due to rounding when calculating the Distributable Income to which each Investor is presently entitled will be included in the Distributable Income of the following Distribution Period.

⁷ see L.R. 6.11

29.3 Other distributions

- (a) Subject to the rights and obligations attaching to any Class, the RE may at any time distribute any amount of capital or income to Investors or a class of Investors pro rata according to the number of Units held as at a time decided by the RE (for example, to avoid the RE (as responsible entity) becoming assessable to pay Tax).
- (b) Distributions may be in cash, by transfer of Assets or by additional Units, or a mix.

29.4 Separate accounts

The RE may keep separate accounts of different categories or sources of income, or deductions or credits for Tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Investors or class of Investors or both.

29.5 Distribution Reinvestment Plans

- (a) The RE may implement and in its discretion maintain, on terms and conditions determined by the RE from time to time, distribution reinvestment plans (a Distribution Reinvestment Plan) for cash distributions paid by the RE in relation to Units to be reinvested by way of subscription for Units or other securities to be issued and allotted by the RE.
- (b) Participation in a Distribution Reinvestment Plan will be available to those Investors who wish to participate in the Distribution Reinvestment Plan and are eligible to do so under the terms and conditions of the Distribution Reinvestment Plan.
- (c) ~~Units issued for reinvested distributions will be issued at an Issue Price determined in accordance with this deed.~~
- (d) ~~Subject to the Listing Rules, the RE is not required to offer or issue Units under this clause to persons whose address on the Register is in a place other than Australia. Where the amount to be reinvested results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Investor.~~
- (e) ~~While Stapling applies, no reinvestment may occur unless the Investor subscribes for or purchases an identical number of Shares which are then Stapled to the additional Units.~~
- (f) The RE may vary, amend or suspend any terms or conditions of a Distribution Reinvestment Plan as and when it thinks fit in its discretion.

29.6 Other matters

- (a) Subject to clause 10.3, after a distribution is determined and is awaiting payment, the current Investor remains entitled to it even if the Units are transferred before it is paid.
- (b) The RE may classify any item as income or capital and make reserves or provisions.
- (c) The RE must deduct from any amount payable or distributable to an Investor any amount of Tax it is required by law to deduct in respect of that payment or distribution.

30 Payments from the Trust

- (a) The RE determines the procedures for payments to Investors (for example it can pay by cheque or electronic payment) and may change them from time to time.
- (b) Only whole cents need be paid ~ any balance becomes an Asset.

Deleted: While the Trust is not Listed,

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Deleted: under clause

Deleted: 4.3(a)(iv) next calculated after the end of the relevant Distribution Period

Deleted: While the Trust is Listed and Stapling does not apply, the price of Units issued for reinvested distributions is the price determined by the RE, provided that it complies with the Listing Rules and the Act and the price is not less than 10% of the volume weighted average price of fully paid Units on ASX over the 15 day trading period commencing on the third Business Day following the end of the Distribution Period to which the distribution relates, but,

Deleted: and the conditions of any applicable ASIC relief

Deleted: <#> While the Trust is Listed and Stapling applies, the price of Units issued for reinvested distributions is the price determined by the RE, provided that it complies with the Listing Rules and the Act and the price of the Stapled Securities issued for reinvested distributions is not less than 10% of the volume weighted average price of fully paid Stapled Securities on ASX over the 15 day trading period commencing on the third Business Day following the end of the Distribution Period to which the distribution relates, but, subject to the Listing Rules and the conditions of any applicable ASIC relief, the RE is not required to offer or issue Units under this clause to persons whose address on the Register is in a place other than Australia. Where the amount to be reinvested results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Trust and the Company in such proportions as the RE and the Company may determine on behalf of the relevant Stapled Security holder.¶

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- (c) Payment to any one of joint Investors discharges the RE from the obligation to pay.
- (d) Unsuccessful payments can be reinvested. Units issued for reinvested payments are priced using the Issue Price next calculated.

31 Financial statements

31.1 Financial statements

The RE must cause financial and other records to be kept as required by the Act, the Listing Rules and this Constitution.

31.2 Financial statements to be audited

The financial statements of the Trust for each Financial Year must be audited by the auditor in accordance with the Act.

31.3 Auditor

The auditor of the Trust is to be appointed and removed from time to time in accordance with the Act.

32 Inspection of records

Subject to the Act, the RE may determine whether and to what extent the documents and records of the Trust will be open to inspection by any person. This clause does not limit the rights of a Director or former Director under the law.

33 Notices

33.1 Service of notices by RE

A notice may be given by the RE to any Investor in any one of the following ways:

- (a) personally, by giving it to the Investor;
- (b) by leaving it addressed to the Investor at the Investor's address;
- (c) by facsimile to the Investor at the Investor's facsimile number;
- (d) by e-mail to the Investor's electronic address;
- (e) by post by sending it addressed to the Investor at the Investor's address;
- (f) or otherwise by any method (including by advertisement) as the RE may determine.

33.2 Electronic communications

Where the RE is required by the Act or this Constitution to:

- (a) give information in writing;
- (b) provide a signature;
- (c) produce a document;

- (d) record information; or
- (e) retain a document,

that requirement is taken to have been met if the RE uses an electronic communication or an electronic form of the relevant document, and the RE complies with any further requirements of the *Electronic Transactions Act 1999* (Cth).

33.3 Notices to joint Investors

A notice may be given by the RE to joint Investors by giving the notice to the joint Investor whose name appears first in the Register and that notice will be sufficient notice to all the joint Investors.

33.4 Notice deemed to be served

- (a) Any notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement.
- (b) Any notice sent by post will be deemed to have been served on the day following the day on which the notice is posted.
- (c) A notice sent by facsimile or other electronic means will be deemed to have been served on the same day that it is sent.

33.5 Service by post

A notice sent by post will be properly served if the notice was correctly addressed and was posted with the required postage. A certificate in writing signed by any Director, manager, Secretary or other officer of the RE that the notice was so addressed and posted is conclusive evidence of proper service by post.

33.6 Notices to Investors whose whereabouts unknown

Where:

- (a) the RE in good faith has reason to believe that an Investor is not known at the address shown for that Investor in the Register;
- (b) the RE has subsequently made an enquiry at that address as to the whereabouts of the Investor; and
- (c) the enquiry either elicits no response or a response indicating that the Investor's present whereabouts are unknown,

all future notices will be deemed to be given to the Investor if the notice is exhibited in the registered office of the RE for a period (not including weekends and public holidays) of 48 hours and will be deemed to be duly served at the commencement of that period. This clause will apply unless and until the Investor informs the RE that the Investor has resumed residence at the Investor's address shown in the Register or notifies the RE of a new address to which the RE may send the Investor notices (which new address is deemed to be the Investor's registered place of address).

33.7 Notices binding on transferees

Every person who becomes entitled to any Unit by operation of law, transfer or otherwise will be bound by every notice in respect of the Unit which, before that person's name and address is entered on the Register, is duly given to the person from whom title to the Unit is derived.

33.8 Notice to deceased or bankrupt Investors

Any notice or document given to an Investor will be deemed to have been duly given in respect of any Units held solely or jointly by the Investor despite the Investor having died or becoming bankrupt and whether or not the RE has notice of the death or bankruptcy until some other person is registered in the Investor's stead as the holder of the Units or joint Investor.

33.9 Signing notices

The signature to any notice to be given by the RE may be written, printed or provided by electronic means.

33.10 Counting days

Where a given number of days' notice or notice extending over any other period is required to be given, the day on which notice is deemed to be given will not be counted in the number of days or other period.

34 Winding up**34.1 Distribution of surplus Assets**

In a winding up, any Assets available for distribution to Investors will, subject to the rights of the holders of Units issued on special terms and conditions, this Constitution, the Act and the Listing Rules, be distributed amongst the Investors to return capital paid up on their Units and distribute any surplus in proportion to the amount paid up (not credited) on Units held by them.

34.2 Fee or commission paid to liquidator to be approved by Investors

The RE must not pay any Director or liquidator any fee or commission on the sale or realisation of the whole or part of the Assets unless the investors approve. The approval must be given at a meeting of Investors convened by notice specifying the fee or commission proposed to be paid.

34.3 Distribution in specie

If the Trust is wound up (whether voluntarily or otherwise), the RE or liquidator may:

- (a) with the approval of a Special Resolution, divide among the contributories in specie or kind any part of the Assets;
- (b) with the approval of a Special Resolution, vest any part of the Assets in trustees of trusts for the benefit of the contributories or any of them as the RE or liquidator as the case may be thinks fit; and
- (c) set the values it considers fair and reasonable on any property to be divided and determine how the division is to be carried out.

35 Liability of the RE**35.1 Indemnities**

- (a) The RE is entitled to be indemnified out of the Assets for any liability properly incurred by it in relation to the Trust (including any liability incurred because of a delegate or agent).

- (b) The indemnity in clause 35.1(a) is in addition to any indemnity under law. It continues to apply after the RE retires or is removed as responsible entity.
- (c) So long as the Act requires, the RE's rights to indemnification are available only in respect of the proper performance of its duties.

35.2 Liability limited to amount recovered

Except in the case of the RE's fraud, negligence or breach of this Constitution, the RE is not liable to one or more or all of the Investors, the Trust, any creditors of the Trust or any other person for any amount beyond the amount which the RE is entitled to recover, and is actually indemnified for, out of the Trust Fund, through its right of indemnity in respect of the Trust.

35.3 Reliance

The RE is not liable beyond the amount referred to in clause 35.2 for any loss or damage to any person (including the Investors) in acting or omitting to act where:

- (a) it relied upon information or the authenticity of any document, signature or marking, provided that it believed that the information was correct or the document, signature or marking was authentic;
- (b) it relied upon the advice, services or opinion of any person, consultant or adviser (including any custodian, counsel, lawyers, accountants, auditors, valuers, bankers and other professional advisers) whether or not instructed or engaged by the RE, provided that the RE believed the person to have relevant expertise;
- (c) it acted in accordance with a resolution or direction of the Investors, or the RE acts or omits to act as approved by a resolution of Investors;
- (d) it relied on any document provided to it in connection with the Trust upon which it was reasonable for the RE to rely;
- (e) it paid or retained money in good faith or to meet a liability or an amount to a duly empowered fiscal authority which the RE believed in good faith was due or payable to the duly empowered fiscal authority;
- (f) it acted under the compulsion of a law of the Commonwealth, a State or a Territory, or in accordance with the terms of an order or judgment of any competent court; or
- (g) a person (other than a person under its control) failed to carry out or was negligent in the carrying out of any agreement with the RE or any of its agents in connection with the Trust.

35.4 Contractual limitation of liability

The RE is not required to do anything or refrain from doing anything which involves the RE incurring a liability (actual or contingent) unless it is satisfied, in its absolute discretion, that its liability is satisfactorily limited.

35.5 Other obligations excluded

All obligations of the RE which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the RE in its capacity as trustee of the Trust arising under any statute.

35.6 Separate limitations

Each provision in respect of a right of the RE to pay or be reimbursed out of the Assets, a right of indemnification or limiting the RE's liability:

- (a) is separate and independent of any other right, indemnity or limitation of liability, as the case may be;
- (b) does not limit any other provision of this Constitution; and
- (c) applies to the maximum extent permitted by law.

36 Liability of Investors

- (a) Subject to this Constitution, an Investor's liability is limited to the amount (if any) which remains unpaid for their Units.
- (b) An Investor need not indemnify the RE if there are not enough Assets to meet the claim of any creditor of the RE. In the absence of separate agreement with an Investor, the recourse of the RE and any creditor is limited to the Assets.
- (c) Joint Investors and former joint Investors are jointly and severally liable in respect of all payments required to be made by or for an Investor or former Investor.
- (d) Each Investor indemnifies the RE for all liability incurred by the RE arising directly or indirectly from the Investor's breach of its obligations to the RE.

37 GST

- (a) Supplies under or in connection with this Constitution (including the supply of any goods, services, rights, benefits or things) do not include any amount referable to GST.
- (b) If the RE is or becomes liable to pay GST in respect of any supply then (in addition to any fee, other amount or consideration payable to the RE in respect of the supply), the RE is entitled to be paid an additional amount on account of GST.
- (c) The amount is calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST.
- (d) The RE is entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- (e) If the RE is a member of a GST Group, references to the GST for which the RE is or becomes liable under clause 37(b) include GST for which the Representative Member of the GST Group of which the RE is a member is or becomes liable.

38 General

38.1 Investor information

Investors must give all information that the RE reasonably requests to perform its functions.

38.2 Rounding

Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

38.3 Amendments to this Constitution

- (a) The RE may amend this Constitution by supplemental deed.
- (b) When amendments take effect is governed by the Act.
- (c) Approval of investors to any amendment under clause 38.3(a) is needed if the Act requires.

38.4 Severability

- (a) If the whole or any part of any part of this Constitution is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction.
- (b) The remainder of this Constitution has full force and effect and its validity or enforceability in any other jurisdiction is not affected.
- (c) This clause has no effect if the severance alters the basic nature of the Trust or is contrary to public policy.

38.5 Governing law

This Constitution must be interpreted in accordance with laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

Annexure

Worked example of calculation of Performance Fee

Million	Period Ended					
	24/03/2005	31/12/2005	1/08/2006	31/12/2007	31/12/2008	31/12/2009
	stapled	stapled	unstapled	unstapled	unstapled	
Actual Return/Total Shareholder Return (TSR)						
Capitalisation based on issue price	300	300	300	261	261	261
Trust distributions paid			24	42	27	28
Company dividends paid			3			
Trust distributions deemed paid			15			
Company dividends deemed paid			3			
Capitalisation based on assumed VWAP		276	297	271	264	274
TSR Calculation						
24/03/2005		-300	-300	-261	-261	-261
31/12/2005		276				
22/03/2006			27	24	24	24
1/08/2006			315			
22/09/2006				15	15	15
22/03/2007				15	15	15
22/09/2007				12	12	12
31/12/2007				271		
22/03/2008					12	12
22/09/2008					15	15
31/12/2008					264	
22/03/2009						15
22/09/2009						13
31/12/2009						274
Actual Total Stapled Security Return Rate (Actual TSR Rate)		10.39%	10.30%	10.53%	9.88%	10.75%
Actual TSR: Capitalisation x (1 - Actual TSR Rate) ^{year} - capitalisation			43	84	112	164
TSR fee thresholds						
TSR of 10%: Capitalisation x (1 - 10%) ^{year} - capitalisation			41	79	113	151
Fee basis						
Actual Return greater than TSR of 10%			1	5	-1	14
Performance Fee						
(Actual Return greater than TSR of 10%) x 20%			0.2	0.9	-0.3	2.7
Performance Fee			0.3	0.9	-0.3	2.7
Performance Fees paid in previous years			0.0	0.3	0.9	0.9
Performance Fee payable			0.3	0.7	0.0	1.8

Notes:

The following is a high-level example of the Performance Fees that would be payable over a five year period under the following assumptions:

- 60 million Stapled Securities issued at an issue price of \$5.00 comprising 87.1% the Trust and 12.9% the Company
- No new securities or Units are issued i.e. ignores DRP
- Units and Shares are unstapled on 1st August. Capitalisation and dividends/distributions received are adjusted to reflect Units in the Trust only
- Distributions & Dividends (in \$ million) paid during each period of:

Period	Trust and Company	Trust Only
31/12/2005	0	0
1/08/2006	27	27
31/12/2007	42	42
31/12/2008	27	27
31/12/2009	28	28
- Assumed VWAP of Securities over 20 trading day period immediately prior to Measurement Date (except 1/8/06 - see note 6 below):

Measurement Date	Trust and Company - cum dividend & distribution	Trust Only - cum distribution
31/12/2005	\$4.58	\$4.58
1/08/2006	\$4.55	\$4.55
31/12/2007	\$4.62	\$4.62
31/12/2008	\$4.40	\$4.40
31/12/2009	\$4.57	\$4.57

- For period ended 1 Aug '06: dividend and distribution for 6 month period to 30/6/06 deemed to be paid 1 Aug '06. VWAP of securities is ex an estimate of this dividend and distribution payment, the VWAP is calculated from 17 July 06 to 1 Aug 06.

Investors should note the Total Securityholder Return assumed in this example is used to illustrate the calculations involved in the Performance Fee only and should not be considered a forecast. The actual Securityholder Return achieved may differ materially from that assumed in this example. This calculation ignores the GST on the Performance Fee and does not contemplate a dividend or distribution reinvestment plan.

for Units issued pursuant to an application made under the First PDS, that part of the current market price for a Stapled Security at the time the offers of Stapled Securities are made under that PDS, which for the purposes of this clause is deemed to be equal to the offer price of the Stapled Security specified in that PDS, determined by the RE to represent the issue price of a Unit;

while the Trust is Listed and, where any relevant ASIC relief is dependent on the Units not being suspended from quotation, the Units are not suspended from quotation:

in the case of a placement, a price determined by the RE, provided that it complies with the Listing Rules and the Act and to the extent that any applicable ASIC relief:

makes reference to "**the current market price for the Stapled Security**" or "**the current market price for the Unit**" (or a similar reference), that reference means the Average Market Price, where the relevant date is the day on which the RE resolves to make the placement; or

requires Investors or a class of Investors to approve the placement, the placement is approved or ratified in accordance with clause 4.4;

in the case of a proportionate offer (including a rights issue), a price determined by the RE, provided that it complies with the Listing Rules and the Act and, while Stapling applies, the issue price of the Stapled Securities is not less than 10% of the Average Market Price, and while Stapling does not apply, the issue price of the Units is not less than 10% of the Average Market Price, in both cases where the relevant date is the day on which the RE resolves to make the offer, but, subject to the Listing Rules and the conditions of any applicable ASIC relief, the RE is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia;

in the case of reinvestment of distributions, the price calculated in accordance with clause 29.5(d) or (e), as applicable;

in the case of Units issued upon exercise of an Option, the exercise price for the Option where the exercise price is a price determined by the RE provided that it complies with the Listing Rules and the Act and:

in the case of a placement of Options, to the extent that any applicable ASIC relief makes reference to "**the current market price for the Stapled Security**" or "**the current market price for the Unit**" (or a similar reference), that reference means the Average Market Price, where the relevant date is the day on which the RE resolves to make the placement; or

in the case of a proportionate offer of Options, while Stapling applies, the exercise price is not less than 10% of the Average Market Price, where the relevant date is the day on which the RE resolves to make the offer, but, subject to the Listing Rules and the conditions of any applicable

ASIC relief, the RE is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia; and

in the case of Units issued under a Unit or Stapled Security purchase plan, a price determined by the RE, provided that it complies with the Listing Rules and the Act and to the extent that any applicable ASIC relief makes reference to "the current market price for the Stapled Security" or "the current market price for the Unit" (or a similar reference), that reference means the Average Market Price, where the relevant date is the date of the offer or the issue or the day on which the RE resolves to make the offer or the issue (as determined by the RE);

in all other cases while the Trust is Listed and Stapling applies, a price equal to the Average Market Price minus the issue price of Stapled Shares and the RE must determine, provided that it complies with the Listing Rules and the Act, what part of the issue price of a Stapled Security is to represent the issue price of the Units;

while the Trust is not Listed (or while the Trust is Listed but the Units are suspended from quotation and any relevant ASIC relief is dependent on the Units not being suspended from quotation), a price calculated in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units on issue}}$$

The Trust will be forward priced ~ that is, subject to the rights and obligations attaching to any Class, each of the variables in the formula in this clause 4.3(a)(iv) must be calculated by the RE using the most recently available information as at the next Value Time after the Cut Off Time. However, the time is adjusted where Unit redemption is delayed for some reason ~ see clause 5.4(d); and

in all other cases while the Trust is Listed and Stapling does not apply, a price equal to the Average Market Price.