

29 June 2006

Company Announcements Office
Australian Stock Exchange Limited
20 Bond Street
SYDNEY NSW 2000
Via ASX Online

MacarthurCook Property Securities Fund (ASX : MPS)

Notice of Amendment to Constitution

MacarthurCook Fund Management Limited, as responsible entity for the MacarthurCook Property Securities Fund (MPS) has today executed a Supplemental Deed Poll to amend the constitution of MPS in accordance with the Notice of Meeting lodged on 25 May 2006. A copy of the consolidated Constitution is attached.

Yours faithfully



Matthew Wrigley
Company Secretary



Supplemental Deed

MacarthurCook Fund Management Limited

MacarthurCook Property Securities Fund
ARSN 111 442 150

BAKER & MCKENZIE
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Ref: 84220-v3MLA3

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Date 29 June 2006

Parties **MacarthurCook Fund Management Limited** (ABN 79 004 956 558) of Level 4, 30 Collins Street, Melbourne, Victoria 3000 (*Responsible Entity*)

Recitals

- A. The Trust was established by trust deed dated 13 October 2004 (as amended) made by the Responsible Entity.
- B. Clause 36.3 of the Constitution provides that the Responsible Entity may modify the Constitution by deed, subject to law.
- C. Section 601GC(1) of the Corporations Act provides that the Constitution may be modified by:
 - (a) special resolution of the members; or
 - (b) by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect members' rights.
- D. The Unit Holders of the Trust passed a Special Resolution on 29 June 2006 modifying the Constitution as set out in Annexure 1 to this deed poll.
- E. The Responsible Entity enters into this deed poll to give effect to the Special Resolution passed by the Unit Holders.

Operative Provisions

1 Interpretation

- 1.1 Except where otherwise provided in this deed poll, terms used in this deed poll have the same meaning as in clause 37 of the Constitution.
- 1.2 For the purposes of this deed poll:
 - (a) *Constitution* means the trust deed dated 13 October 2004 made by the Responsible Entity establishing the Trust, as modified by supplemental deed poll dated 28 July 2005;
 - (b) *Special Resolution* has the same meaning as in the Corporations Act;
 - (c) *Trust* means MacarthurCook Property Securities Fund ARSN 111 442 150.

2 Modifications

The modifications

2.1 The Constitution is modified:

- (a) inserting all clauses and words that are underlined in the copy of the Constitution that forms Annexure 1 to this Deed; and
- (b) deleting all clauses and words that are struck out or crossed through in the copy of the Constitution that forms Annexure 1 to this Deed.

Effect of modifications

- 2.2 The modifications made to the Constitution by this deed poll take effect, and are binding on the Responsible Entity and each present and future Unit Holder and any person claiming through any of them, on the date that a copy of this deed poll is lodged with ASIC pursuant to section 601GC(2) of the Corporations Act.
- 2.3 This deed poll is supplemental to the Constitution, and the modifications made to the Constitution by this deed poll are not to affect the validity or enforceability of the Constitution.

3 Trust not redeclared, etc

- 3.1 The Responsible Entity declares that nothing expressly or impliedly contained in this deed poll is to:
- (a) redeclare the trust declared under the Constitution;
 - (b) cause the transfer to, vesting in or accruing to any person of property held on trust as at the date of this deed poll.

4 Costs

- 4.1 All taxes, stamp duty, registration costs and other charges, expenses and outgoings arising out of, or in connection with, this deed poll are to be an expense of the Trust.

5 Governing law and jurisdiction

- 5.1 This deed poll is governed by the laws of Victoria and where applicable the laws of the Commonwealth of Australia.
- 5.2 Each person affected by this deed poll irrevocably and unconditionally submits to the non-exclusive jurisdictions of the courts of Victoria.

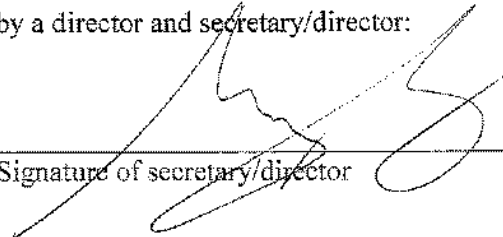
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Execution

Executed as a deed poll

**Signed sealed and delivered
by MacarthurCook Fund Management
Limited in its capacity as responsible
entity for the MacarthurCook Property
Securities Fund**

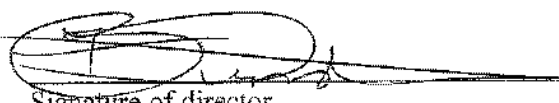
by a director and secretary/director:



Signature of secretary/director

Matthew Wrigley

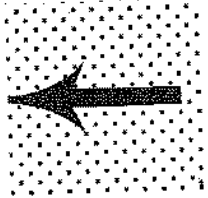
Name of secretary/director (please print)



Signature of director

CRAIG DURST

Name of director (please print)



Schedule 1

Modified Constitution

Constitution

MacarthurCook Property Securities Fund

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CONSTITUTION

by

Deed Poll

Dated 2004

BY

MACARTHURCOOK FUND MANAGEMENT LIMITED ACN 004 956
558 of Level 4, 30 Collins Street, Melbourne, Victoria, 3000

(Responsible Entity)

OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1 Defined meanings

Words used in this constitution and the rules of interpretation that apply are set out and explained in clause 37 at the back of this constitution.

1.2 Binding document

This constitution binds the Responsible Entity, each Unit Holder and Option Holder and any person claiming through any of them as if each of them had been a party to this constitution.

2. Corporations Act 2001

2.1 Statutory requirements

If the Corporations Act or any ASIC Instrument requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provision of this constitution to the extent of any inconsistency.

2.2 Clause 2 prevails

This clause 2 prevails over all other provisions of this constitution, including any that are expressed to prevail over it.

3. Listing Rules

3.1 Inconsistency with the Listing Rules

If the Trust is admitted to the Official List, the following applies:

- (a) even if contrary to this constitution, if the Listing Rules prohibit an act being done, the act must 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).
- (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.
- (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.

3.2 Additional Listing Rule requirements

At all times that the Trust is admitted to the Official List:

- (a) the Responsible Entity must not remove or change the rights of a Unit Holder to vote or receive distributions in respect of a Unit except in any of the following cases:
 - (i) a Call which is due and payable on that Unit under clauses 8.6 and 8.7 has not been paid;
 - (ii) in the case of the voting right, an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with clause 31;
 - (iii) in the case of the voting right, the Unit Holder became the holder of that Unit after the time determined under regulation 7.11.37 of the Corporations Regulations as the "specified time" for deciding who held the Unit for the purpose of the meeting;
 - (iv) the right is removed or changed under Australian legislation or under a provision in this constitution that must be included to comply with Australian legislation;
 - (v) the right is removed or changed under a provision in this constitution that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
 - (vi) the right is removed or changed under a court order.
- (b) a holder of a Unit or Option must not be divested of that Unit or Option except in any of the following cases:
 - (i) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit or Option is set out in the legislation or is approved by ASX as appropriate and equitable;

- (ii) the divestment is under a provision in this constitution that must be included to comply with Australian legislation;
- (iii) the divestment is under a provision in this constitution that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
- (iv) the divestment is under a court order; or
- (v) the divestment is under a lien permitted by the Listing Rules.

4. The Trust

4.1 Appointment of trustee

The Responsible Entity is appointed, and agrees to act, as responsible entity and trustee of the Trust in accordance with this constitution.

4.2 Declaration of trust

The Responsible Entity holds the Trust Fund on trust for the Unit Holders and Option Holders in accordance with this constitution.

4.3 Name of Trust

The name of the Trust is "MacarthurCook Property Securities Fund" or any other name that the Responsible Entity may determine.

4.4 Commencement of Trust

The Trust commences on the date that the Settlor (or his nominee) pays the Responsible Entity \$10.00 to establish the Fund. On the payment of that amount, 10 new fully paid Ordinary Units will automatically be issued to the Settlor or as the Settlor directs.

5. Units and Unit Holders

5.1 Units

The beneficial interest in the Trust Fund is divided into Units. Unless the Terms of Issue of a Unit or a Class otherwise provide, all Units carry all rights, and are subject to all the obligations, of Unit Holders under this constitution.

5.2 Classes

- (a) Different Classes may be issued. If the Responsible Entity determines in relation to particular Units, the Terms of Issue of those Units may:
 - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units; or
 - (ii) provide for conversion of Units from one Class to another Class and, if the Responsible Entity so determines, change the number of Units on such a conversion.

- (b) The Responsible Entity must enter on the Register the class or Terms of Issue of Units held by a Unit Holder or Option Holder.

5.3 Benefits and obligations of Unit Holders and Option Holders

- (a) Except where expressly provided in this constitution to the contrary, all benefits and obligations contained in this constitution apply for the benefit of and bind each Unit Holder to the extent provided in this constitution.
- (b) Except where expressly provided in this constitution to the contrary, all obligations in this constitution bind each Option Holder to the extent provided in this constitution. The benefits in this constitution only apply for the benefit of Option Holders where expressly provided in this constitution.
- (c) Where the interests of Option Holders and Unit Holders conflict the Responsible Entity must prefer the interests of Unit Holders.

5.4 No further liability

- (a) This clause 5.4 is subject to any separate agreement between a Unit Holder and the Responsible Entity and to any Call on Partly Paid Units which the Responsible Entity is entitled to make under clause 8.
- (b) The liability of each Holder in its capacity as such is limited to the Holder's investment in the Trust.
- (c) A Holder is not required to indemnify the Responsible Entity or a creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Trust.
- (d) The recourse of the Responsible Entity and any creditor of the Responsible Entity is limited to the Assets of the Fund.
- (e) Except as provided in clauses 8.9(b), 8.11(b) and 14.5, nothing in or under this constitution makes either the Responsible Entity the agent of a Holder, nor does it create any relationship other than that of beneficiary and Responsible Entity.

5.5 Fractions

Fractions of a Unit may not be issued. When any calculations under this constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit. Any excess application or other money becomes an Asset.

5.6 Equal value

At any time, all the Units in a Class are of equal value and confer an equal undivided interest in the Trust Fund.

5.7 Interest

A Unit confers an interest in the Trust Fund as a whole. No Unit confers any interest in any particular Asset.

5.8 Consolidation and division of Units

- (a) Subject to clause 5.8(b), the Responsible Entity may at any time convert the Units into a larger or smaller number of Units.
- (b) A conversion referred to in clause 5.8(a) must not change the ratio which Units in a Class registered in the name of any Unit Holder bears to the Units on Issue in the Class.
- (c) Where a conversion of Units under clause 5.8(a) would otherwise result in a Unit Holder holding a fraction of a Unit, the Responsible Entity may consolidate or split the Units using a formula which includes the ability of the Responsible Entity to round the number of Units downwards or upwards to the nearest whole number at the discretion of the Responsible Entity. Any excess Application Monies or other money or property which results from a rounding become an Asset of the Fund.

5.9 Rights attaching to Units and Options

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) An Option Holder holds an Option subject to the terms and conditions attaching to that Option.
- (c) A Holder must not:
 - (i) interfere with any rights, powers, authority or discretion of the Responsible Entity under this constitution;
 - (ii) purport to exercise any right in respect of any Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
 - (iii) require an Asset to be transferred to the Holder.

5.10 Directions

Unit Holders may not give any directions to the Responsible Entity if it would require the Responsible Entity to do or omit doing anything which may result in:

- (a) the Responsible Entity acting contrary to law or the Listing Rules; or
- (b) the exercise of any discretion or power expressly conferred on the Responsible Entity by this constitution, or the determination of any matter which under this constitution requires the agreement of the Responsible Entity.

5.11 Joint Holders

Where two or more persons are recorded in the Register as the Holders of a Unit or of an Option (**Joint Holders**) they are, for the purposes of the administration of the Trust and not otherwise, deemed to hold the Unit or Option as joint tenants, on the following conditions:

- (a) the Responsible Entity is not bound to record in the Register more than three persons as the Joint Holders of the Unit or Option;

- (b) the Joint Holders are jointly and severally liable in respect of all payments including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a Joint Holder, the survivor or survivors are the only person or persons whom the Responsible Entity will recognise as having any title to the Unit or Option, but the Responsible Entity may require any evidence of death which it thinks fit;
- (d) any one of the Joint Holders may give an effective receipt which will discharge the Responsible Entity in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the Joint Holders is entitled to delivery of any notices, cheques or other communications from the Responsible Entity, and any notice, cheque or other communication given to that person is deemed to be given to all the Joint Holders.

6. Options

6.1 Issue of Options

- (a) Subject to the Listing Rules, the Responsible Entity may issue Options:
 - (i) subject to clause 6.1(b), on the basis that the price for a Unit to be issued on exercise of the Option (the **Exercise Price**) is a price determined by the Responsible Entity other than in accordance with clause 9;
 - (ii) for consideration or no consideration; and
 - (iii) on such other terms as the Responsible Entity determines.
- (b) The Responsible Entity may issue an Option and a Unit may be issued on exercise of the Option at a price determined by the Responsible Entity, to the extent it is permitted to do so by an ASIC Instrument (and subject to the terms of ~~that~~ the relevant ASIC Instrument) in which case the exercise price of the Option must not be less than 50% of the Market Price for the Unit on the day immediately prior to the day on which the Option is issued.

6.2 Reorganisation of Options

Subject to the Listing Rules, the Responsible Entity may at any time reorganise Options in accordance with the Terms of Issue.

6.3 Option exercise

- (a) Options may only be exercised in accordance with their Terms of Issue.
- (b) The Responsible Entity must deal with payment for and issue of Units on exercise of Options as if such payment and issue were an application for Units but the Responsible Entity may not refuse to issue any Units except if the Terms of Issue and the Listing Rules permit such refusal.

6.4 Option Holder's Rights and Interest

- (a) An Option does not confer on the Option Holder any interest in the Trust Fund. Option Holders have only those rights conferred on them by this constitution, the Terms of Offer, the Terms of Issue and the Listing Rules.
- (b) Option Holders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Option Holders are entitled:
 - (i) to inspect any document which may be inspected by; and
 - (ii) to be sent any document which is sent to,

Unit Holders in similar circumstances.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new responsible entity is appointed under this constitution, it must execute any documents and do all things reasonably required by the outgoing Responsible Entity to ensure that it assumes the covenants and obligations of the outgoing Responsible Entity under those Options.

6.5 Redemption or Repurchase

- (a) The Responsible Entity may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Responsible Entity must make any payment to an Option Holder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 6.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Responsible Entity and the Responsible Entity may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 6.5(a) form part of the Trust Fund, and the Responsible Entity is recognised as the Holder and may exercise, re-issue, re-sell and otherwise deal with them as it determines. The Responsible Entity retains title in law to each and every Option and right so purchased in its name until the Option or right is re-sold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

7. Issue of units and options

7.1 Power to issue Units

Subject to the Corporations Act, the Listing Rules and the constitution, the Responsible Entity may issue Units on such terms and conditions as the Responsible Entity may determine.

7.2 Offer and minimum subscription

- (a) The Responsible Entity may at any time offer Units or Options for subscription or sale.

- (b) The Responsible Entity may determine a minimum amount which must be lodged with an Application for Units or Options.
- (c) The Responsible Entity may invite persons to make offers to subscribe for or buy Units or Options.

7.3 Form of application

Each Application for Units or Options must, unless the Responsible Entity approves otherwise:

- (a) conform with the form and content requirements of any relevant Disclosure Document; and
- (b) be accompanied by Application Monies as required by any relevant Disclosure Document; or
- (c) if there is no relevant Disclosure Document, be made in such manner as the Responsible Entity approves.

7.4 Acceptance or rejection

The Responsible Entity may, without giving any reason:

- (a) accept an Application;
- (b) reject an Application; or
- (c) reject part of the Application.

7.5 Payments to the Responsible Entity

- (a) The Responsible Entity must hold the payment received or property to be transferred to the Responsible Entity on an Application in accordance with the Corporations Act until the Responsible Entity has accepted or rejected the Application.
- (b) If an applicant is to transfer property to the Responsible Entity, the Responsible Entity must not accept the Application unless:
 - (i) the Responsible Entity has received from the applicant an effective transfer of the title to the property in favour of the Responsible Entity; and
 - (ii) the Responsible Entity has determined the value of the property in accordance with clause 24.4.
- (c) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Responsible Entity prior to the Responsible Entity accepting the Application, the Responsible Entity must deduct those amounts before determining the number of Units to be issued under clause 7.7.
- (d) If Units or Options are purported to be issued and:
 - (i) the Responsible Entity has not received the Application Monies in accordance with the Terms of Issue; or

- (ii) any payment for Units or for Options is not cleared or property is not effectively transferred to the Responsible Entity,

the Units or Options are void as from their date of issue, or such other date as the Responsible Entity determines if the Responsible Entity has not otherwise received payment of an amount equal to the Application Monies for the Units or Options.

- (e) All income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Responsible Entity) prior to the issue of those Units or Options forms part of the Trust Fund.
- (f) Applications Monies for Units or for Options issued pursuant to a PDS must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:
 - (i) the minimum subscription, if any (to be specified in the PDS) has been reached and the Responsible Entity decides to proceed to allotment of Units or Options; or
 - (ii) the date by which the Application Monies would need to be repaid under the Corporations Act.

Until the Responsible Entity decides to proceed to the allotment of Units or Options in accordance with this clause 7, it holds such Application Monies in accordance with the Corporations Act and the Responsible Entity must comply with all obligations imposed by the Corporations Act in relation to the Application Monies.

7.6 Issue of Units or Options

Units or Options are taken to be issued when:

- (a) the Responsible Entity accepts the Application and the Unit Holders' or Option Holders' names are entered in the Register; or
- (b) the Application Monies are received by (or Property which is acceptable to the Responsible Entity against which Units or Options are to be issued is transferred to) the Responsible Entity,

whichever happens later or at such other time as the Responsible Entity determines.

7.7 Number of Units issued

- (a) The number of Units or Options issued at any time in respect of an Application for Units or Options must be calculated as follows:
 - (i) by dividing the Application Monies or the value of the Property paid by the applicable Issue Price at that time; and
 - (ii) by rounding down to the nearest Unit,
 and any balancing amount becomes an Asset.
- (b) If the Responsible Entity accepts an Application for Partly Paid Units in whole or in part, then the number of Units to be issued is the number determined by the

Responsible Entity dividing the Application Monies by the amount of the total Issue Price payable for the Unit.

7.8 Certificates

Certificates are not issued for Units or Options (unless the Responsible Entity determines otherwise in relation to some Units or Options, a Class or all Units).

7.9 Foreign Holders

(a) ~~Other than as specified in clauses 9.5(b) and 9.7A, The~~ the Responsible Entity may determine that Holders whose addresses appearing in the Register are in any one or more countries outside Australia or New Zealand (**Specific Foreign Holders**) are not to be offered or issued:

- (i) Units pursuant to a pro-rata issue of Units; or
- (ii) Options pursuant to a pro-rata issue of Options,

if the Responsible Entity decides that it is unreasonable to make the offer in accordance with rule 7.7.1(a) of the Listing Rules.

(b) If the Responsible Entity makes a determination in relation to a Renounceable Offer under clause 7.9(a) above then:

- (i) the rights that the Specific Foreign Holders would have been entitled to but for the fact they are Specific Foreign Holders (**Foreign Rights**) must be offered to a nominee approved:
 - (A) if the Trust is admitted to the Official List, by the ASX; or
 - (B) if the Trust is not admitted to the Official List, by ASIC.
- (ii) the nominee must cause the Foreign Rights to be offered for sale and sold in such manner, at such price and on such other terms and conditions as are approved by the Responsible Entity; and
- (iii) the nominee must pay to each of the Specific Foreign Holders the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$

where:

AF is the amount to be paid to that Specific Foreign Holder;

NP is the net proceeds of the sale of the Foreign Rights, being the amount (if any) remaining after deducting from the proceeds of the sale of the Foreign Rights the aggregate of:

- (A) the costs of the sale;

- (B) the amounts (if any) payable to the Responsible Entity by the nominee in respect of the Foreign Rights; and
- (C) any amounts the Responsible Entity would be required by law or otherwise entitled to deduct or withhold pursuant to this constitution.

NE is the number of Foreign Rights to which that Specific Foreign Holder would otherwise have been entitled; and

N is the aggregate number of Foreign Rights.

8. Partly paid units and forfeiture

8.1 Terms of issue

The Responsible Entity may issue Partly Paid Units on such terms and conditions as it determines.

8.2 Calls

Each Holder of a Partly Paid Unit must pay a Call made in accordance with the Terms of Issue of the Unit. The Responsible Entity may only make a Call if the Call is made on all Unit Holders of that Class.

8.3 Interest on late payment of Call

- (a) If any Call is not paid on or before the day appointed for payment, the Holder of such Partly Paid Unit must pay interest on the late payment from the day appointed for the payment to the time of actual payment.
- (b) Interest which accrues on an unpaid Call becomes an Asset.

8.4 Non-receipt of notice of Call

A Call is not invalidated because any Unit Holder does not receive a notice of the Call, or because of the accidental omission to give notice to any Unit Holder.

8.5 Deductions for unpaid Calls

If all or part of a Call is not paid by the date appointed for payment, the Responsible Entity may apply any amount payable to the relevant Unit Holder under this constitution to pay amounts unpaid under the Call (as well as accrued interest and all costs and expenses incurred by the Responsible Entity in relation to the unpaid Call).

8.6 Notice requiring payment of sums payable

- (a) If a Call is not paid by the day appointed for the payment, the Responsible Entity may, while any part of the Call remains unpaid, give notice to the Unit Holder requiring payment of the unpaid amount, accrued interest and all costs and expenses incurred by the Responsible Entity in relation to the unpaid Call.
- (b) The notice must appoint a day (at least 14 days after the date of the notice) by which the payment required by the notice must be made.³

- (c) The notice must also state that, if the payment is not made by the day appointed, the Units to which the Call related are liable to be forfeited.
- (d) While the Trust is Officially Quoted, the notice must contain such other information as is required by the Listing Rules (or by ASX under the Listing Rules).

8.7 Forfeiture on non-compliance with notice

- (a) If a Unit Holder does not comply with a Forfeiture Notice, any Units the subject of the Forfeiture Notice may be forfeited.
- (b) Forfeiture may be effected by a notice from the Responsible Entity, with effect from the date of the notice.
- (c) Forfeiture includes forfeiture of all distributions and other money payable to the Unit Holder relating to the Forfeited Units not actually paid to the Unit Holder before the forfeiture (except where such amounts have already been applied to reduce the Call amount under clause 8.5).
- (d) Unless the Responsible Entity determines otherwise, the rights attaching to Forfeited Units which have not yet been sold (or otherwise disposed of) are suspended for the period from the date of the forfeiture to the date of sale (or disposal).

8.8 Entry on Register of Holders

Where any Unit has been Forfeited in accordance with this clause 8, the Responsible Entity must enter the forfeiture and the date of the forfeiture in the Register of Unit Holders.

8.9 Disposal of forfeited units

- (a) Subject to the Listing Rules and the Corporations Act, the Responsible Entity may sell (or otherwise dispose of) a Forfeited Unit in the manner and at such price as the Responsible Entity determines (including on the basis that the purchaser of such Forfeited Units is not obliged to pay the unpaid Call).
- (b) Notwithstanding clause 5.4(e), if the Responsible Entity offers a Forfeited Unit for sale, it does so as agent for the Holder of the Forfeited Unit.
- (c) Without limiting the generality of clause 8.9(a), the Responsible Entity may set the price for the sale of Forfeited Units where both of the following apply:
 - (i) on the payment of the outstanding amount, the Forfeited Unit would be in a class of interests that are quoted on the financial market of ASX;
 - (ii) the sale is conducted in accordance with section 254Q of the Corporations Act other than subsections 254Q(1), 254Q(9), 254Q(10) and 254Q(13) as if the Forfeited Unit was a share, the Trust was the company and the Responsible Entity was each director of the company.

8.10 Cancellation of forfeiture

At any time before a Forfeited Unit is sold:

- (a) the Responsible Entity may cancel the forfeiture upon such conditions as the Responsible Entity determines; and
- (b) if the Unit Holder pays to the Responsible Entity the full amount owing in relation to the Forfeited Units (including accrued interest and all costs and expenses incurred by the Responsible Entity in relation to the unpaid Call), the forfeiture must be cancelled.

8.11 Transfer of forfeited Units

- (a) The Responsible Entity may, on any sale of Forfeited Units, receive the selling price for those Units and effect a transfer of those Units in the name of the Unit Holder whose Units have been forfeited, in favour of the person to whom the Units have been sold.
- (b) The Unit Holder authorises the Responsible Entity to take these steps and appoints the Responsible Entity its attorney to do so.
- (c) The Unit Holder indemnifies the Responsible Entity against any claim or liability the Responsible Entity may incur in doing so.
- (d) The Responsible Entity must register the transferee as the holder of the Units immediately after the transfer.
- (e) The transferee's title to the Units is not affected by any irregularity or invalidity in connection with the forfeiture or sale of the Units.

8.12 Liability after forfeiture

- (a) A Unit Holder whose Units have been forfeited ceases to be a Unit Holder (in respect of the Units forfeited) from the date the Responsible Entity gives a notice under clause 8.7(b).
- (b) The Unit Holder remains liable to pay to the Responsible Entity all amounts unpaid specified in clause 8.15(a) and 8.15(c) that are referable to the Forfeited Units.
- (c) Liability under clause 8.12(b) ceases when the Responsible Entity is paid all amounts under clause 8.15 or otherwise in relation to the Units.
- (d) A statement signed by a director or secretary of the Responsible Entity setting out:
 - (i) that a Partly Paid Unit has been forfeited; and
 - (ii) the date of forfeiture,

is conclusive evidence against any person claiming entitlement to the Forfeited Unit.

8.13 Lien

- (a) Subject to the Listing Rules, the Responsible Entity has a first and paramount lien upon every Unit for unpaid Calls and other money payable to the Responsible Entity by the Unit Holder in relation to a Unit.
- (b) The lien extends to all distributions and other money from time to time payable in relation to that Unit.

8.14 Sale of Units to enforce lien

For the purpose of enforcing a lien, the Responsible Entity may sell the Units subject to the lien, in the same manner, so far as is applicable, as if the Units had been forfeited for non-payment of a Call.

8.15 Proceeds of sale

- (a) The net proceeds of any sale of Forfeited Units or the sale of Units to enforce a lien (including all distributions and other money from time to time payable to the Unit Holder in relation to those Units) must be applied:
 - (i) first, in paying all costs incurred in relation to the enforcing of the lien or the forfeiture (as the case may be) and the sale; and
 - (ii) second, in satisfying the amount of the unpaid Call and accrued interest on the Call and any other money payable to the Responsible Entity.
- (b) The balance (if any) must be paid to the Unit Holder whose Units have been sold.
- (c) If the net proceeds of any sale are insufficient to pay the amounts in paragraphs (a) and (b), then the Unit Holder remains liable for the difference between the net proceeds of sale and the sum of those amounts.

9. Issue Price

9.1 Issue Price before Units are Officially Quoted

Prior to the Units being granted Official Quotation, the Responsible Entity may:

- (a) issue Units at an Issue Price of \$1.00;
- (b) grant Options with an exercise price of \$1.20; and
- (c) issue Deferred Units under clause 21.2(e) at an issue price of \$0.00001 per Deferred Unit.

9.2 Issue Price while Units are Officially Quoted

Subject to this clause 9, while Units are Officially Quoted, the issue price for any Unit will be equal to the Market Price.

9.3 Issue of Units at Issue Price determined by Responsible Entity – placements of Units without Unit Holder approval

The Responsible Entity may issue Units at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clauses 9.1 and 9.2 where:

- (a) the Trust has been admitted to the Official List, and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);

- (b) the issue is not to the Responsible Entity or any person who is an Associate of the Responsible Entity;
- (c) the amount by which the aggregate of the Issue Price of those Units is less than the Market Price of a Unit does not exceed 10%; and
- (d) the issue is of Units that would not immediately ~~after~~ before the issue (when aggregated with any other issue of Units pursuant to this clause up to one year previously, other than an issue ~~that was subsequently approved or ratified~~ by the Holders under clause 9.4 below, and other than an issue in accordance with clause 9.1, or clauses 9.5 or 9.6) comprise more than ~~10~~15% (or such greater percentage as may be permitted from time to time by both the Corporations Act and the Listing Rules) of either all of the Units in the Trust or the Units on issue in the Trust in the same class as the Units comprised in the issue.

9.4 Issue of Units at Issue Price determined by Responsible Entity – placement of Units with Unit Holder approval

The Responsible Entity may issue Units at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clauses 9.1 and 9.2 where:

- (a) the Trust has been admitted to the Official List, and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
- (b) the issue is not to the Responsible Entity or any person who is an Associate of the Responsible Entity;
- (c) the Holders who hold Units in the same class approve the issue;
- (d) ~~[omitted] if the interests to be issued are in a particular class, members in that class approve the issue;~~
- (e) unless the Responsible Entity reasonably considers that the issue will not adversely affect the interests of members in another class, members in that other class approve the issue;
- (f) any notice convening a Meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;
- (g) an approval for the purposes of paragraphs (c), (d) and (e) of this clause is given by special resolution where both of the following apply:
 - (i) votes are only cast in respect of Units ("the eligible interests"):
 - (A) that are held by a Holder who will not acquire any of the Units that are to be issued; or
 - (B) that are held by a Holder for the benefit of another person who will not obtain beneficial ownership of any of the Units that are to be issued;
 - (ii) the value of the eligible interests held by the Holders who vote represents at least 25% of the total value of eligible interests of the Holders where Holders

~~with at least 25% of the total value of all the Units of Holders entitled to vote on the question vote on the question at the Meeting; and~~

~~(g) if, in making the calculations referred to in paragraph (g) of this clause, any vote of a person to whom the Units are to be issued or any vote of any associate of that person were not counted, the resolutions would be passed.~~

9.5 Issue of Units at Issue Price determined by Responsible Entity – rights issues of Units

(a) The Responsible Entity may issue Units at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clauses 9.1 and 9.2 pursuant to offers made at substantially the same time to only and all the then Holders on the Register no more than 20 Business Days before the date of the offer, subject to clause 9.5(b), if:

~~(a)(i)~~ all the Units offered are in the same class;

~~(b)(ii)~~ the Issue Price of all the Units offered is the same;

~~(c)(iii)~~ the Issue Price of those Units is not less than 50% of the Market Price of a Unit on the Business Day preceding the day on which the intention to make the offer or issue is announced on ASX; and

~~(d)(iv)~~ the amount the Units offered to each Holder is proportionate to the value of that Holder's interest in the Trust at the relevant date, although interests offered to, but not acquired by, Holders may be issued to other persons, subject to clause 9.5(a)(v);

~~(v)~~ the Responsible Entity only issues interests to its Associates as Holders.

~~where, if the Responsible Entity reasonably considers under clause 7.9 that it would be in the best interests of Holders to exclude Foreign Holders and not unfair to those members, the Responsible Entity need not offer or issue the Units to the Foreign Holders if the Units are sold, taking reasonable steps to maximise the sale price (net of expenses of the sale) and the Foreign Holders are promptly paid the net sale price.~~

~~(b)~~ The Responsible Entity may elect not to make an offer to Foreign Holders under clause 9.5(a):

~~(i)~~ where the Trust is included in the Official List of the ASX – if the Responsible Entity complies with the requirements of Rule 7.7 of the Listing Rules of the ASX as at 1 January 2005 concerning the treatment of Unit Holders with a registered address outside Australia and New Zealand that are applicable to the relevant offer and issue of Units; or

~~(ii)~~ where the Trust is not included in the Official List of the ASX and the offer is renounceable – if the Responsible Entity appoints a nominee to sell the rights to acquire the Units that would otherwise have been offered to Foreign Holders and distribute to each Foreign Holder their proportion of the proceeds of sale net of expenses; or

(iii) in any other case – if the Responsible Entity determines that it would be unreasonable to make the offer to the Foreign Holder having regard to each of the following:

- (A) the number of Foreign Holders in the place ("the relevant place") where the registered address of the Foreign Holder is situated;
- (B) the number and the value of the Units that may be issued to Foreign Holders in the relevant place; and
- (C) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place.

(c) For the purposes of this clause 9.5, a reference to an offer of the issue of Units includes a reference to inviting an application for the issue of the Unit.

9.6 Issue of Units at Issue Price determined by Responsible Entity – distribution reinvestment

The Responsible Entity may issue Units at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clauses 9.1 and 9.2 pursuant to a distribution reinvestment arrangement referred to in clause 27.7 where:

- (a) the whole or part of a Unit Holder's Distribution Entitlement is applied in payment for the subscription for Units;
- (b) each Unit Holder, except Foreign Holders, if any, excluded under clause 9.7A, may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the Distribution Entitlement which is or would otherwise be, payable to that Unit Holder;
- (c) all the Units issued under the arrangement are of the same class;
- (d) the Issue Price of each Unit issued pursuant to that arrangement in relation to any particular distribution at substantially the same time is the same; and
- (e) all Units issued under the arrangement in relation to any particular distribution are issued at substantially the same time; and
- (e)(f) the aggregate of the Issue Price of those Units is not less than 95% of the Market Price of a Unit as at the Business Day immediately preceding the record date for the determination of entitlements to income;

where, if the Responsible Entity reasonably considers that it would be in the best interests of Holders to exclude Specific Foreign Holders and not unfair to those members, the Responsible Entity need not offer or issue the Units to the Specific Foreign Holders if the Units are sold, taking reasonable steps to maximise the sale price (net of expenses of the sale) and the Specific Foreign Holders are promptly paid the net sale price.

9.7 Issue of Units at Issue Price determined by Responsible Entity - interest purchase plan rights issue of Units at price totalling no more than \$5,000

The Responsible Entity may issue Units at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clause 9.2, where:

- (a) the Trust has been admitted to the Official List of the ASX, and the Units are Officially Quoted on the ASX and have not been suspended from Official Quotation on the ASX (other than temporarily);
- (b) the offer for the issue of Units is made to each Unit Holder, except Foreign Holders, if any, excluded under clause 9.7A;
- (c) each offer is made on the same terms and conditions and on a non-renounceable basis;
- (d) the Issue Price is less than the Market Price during a specified period in the 30 days prior to either the date of the offer or the date of the issue; and
- (e) no Unit Holder may be issued with Units for Application Monies totalling more than \$5,000 (or such other amount specified for this purpose under the Corporations Act or by ASIC (including without limitation, by ASIC Instrument)) in any consecutive 12 month period;

~~provided that an offer need not be made to any Unit Holder whose address is in a place where the Responsible Entity reasonably considers that it is not lawful or not practical for the Responsible Entity to offer and issue Units to the person under the arrangement.~~

For the purposes of this clause 9.7:

- (i) if a trustee or nominee is expressly noted on the Register as holding interests on account of another person (Beneficiary), then:
 - (A) the Beneficiary is taken to be the Unit Holder in relation to those Units; and
 - (B) any issue of Units to the trustee or nominee is taken to be an issue to the Beneficiary;
- (ii) if the Unit must, under the terms on which it is traded, only be transferred together with one or more other interests or other financial products (together a Stapled Security), then the \$5,000 limit in this clause applies to the Stapled Security as if its component interests and product constituted a single interest rather than to any of those components separately; and
- (iii) a reference to an offer of the issue of Units includes a reference to inviting an application for the issue of the Unit.

9.7A Foreign Holders – application of clauses 9.6 and 9.7

The Responsible Entity may elect not to make an offer of the kind referred to in clauses 9.6 and 9.7 to Foreign Holders if it determines that it is unreasonable to do so having regard to each of the following:

- (a) the number of Foreign Holders in the place ("the relevant place") where the registered address of the Foreign Holder is situated;
- (b) the number and the value of the Units that may be issued to Foreign Holders in the relevant place; and
- (c) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to making the offer in the relevant place.

9.8 Issue of Units at Current Unit Value

Where Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust has been removed from the Official List, the Responsible Entity may issue Units at an Issue Price equal to the Current Unit Value on the Business Day prior to the day the offer to issue the Units is made.

9.9 Satisfaction of Issue Price

- (a) The Issue Price may be satisfied by payment of Cash or by transfer to the Responsible Entity of other Property acceptable to the Responsible Entity (or by a combination of both).
- (b) If the Responsible Entity accepts Property other than Cash, it may determine that some or all of the costs associated with the valuation or transfer of the Property are payable or reimbursable out of the Trust Fund or by the applicant Unit Holder.

10. Withdrawal of Units

10.1 Withdrawal request while Trust is Liquid

Subject to clause 10.3, while the Trust is Liquid, any Unit Holder may request that some or all of their Units be withdrawn. Each request must:

- (a) satisfy the form and content requirements prescribed by the Responsible Entity; and
- (b) be delivered to the Responsible Entity at its registered office (or other place nominated by the Responsible Entity).

Once the request is made, the Unit Holder will have no right to deal with the Units unless and until the request is denied by the Responsible Entity.

10.2 Action following request

Within a reasonable time of receiving a withdrawal request under clause 10.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:

- (a) deny the request (and notify the Unit Holder accordingly); or
- (b) effect the withdrawal by causing the number (or value) of Units held by the Unit Holder referred to in the withdrawal notice to be withdrawn at the applicable Withdrawal Price out of the Trust Fund; or

- (c) to the extent permitted by the Corporations Act, purchase (in a capacity other than as trustee of the Trust) or arrange for another person to purchase the number (or value) of Units held by the Unit Holder referred to in the withdrawal notice; or
- (d) partially effect the withdrawal in the manner described in paragraph (b) and partially purchase (or arrange for Units to be purchased) in the manner described in paragraph (c).

10.3 Suspension of withdrawal request right

The right to make a withdrawal request under clause 10.1 is suspended while the Units are Officially Quoted.

10.4 Withdrawal while Trust is not Liquid

- (a) Subject to clause 10.9, while the Trust is not Liquid the Responsible Entity may make a Withdrawal Offer.
- (b) A Unit Holder may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer. Otherwise, a Unit Holder has no right to request that some or all of the Unit Holder's Units be withdrawn.
- (c) A Withdrawal Offer must contain the information required by the Corporations Act and the Listing Rules.
- (d) To the extent permitted by the Corporations Act and the Listing Rules, a Withdrawal Offer may include an offer by the Responsible Entity (in a capacity other than as trustee of the Trust) or a nominee to purchase Units.

10.5 Minimum holding

- (a) If the Responsible Entity has established a minimum number of Units for which an application can be made then the Responsible Entity may treat:
 - (i) a withdrawal request; and
 - (ii) an acceptance of a Withdrawal Offer,

which would lead a Unit Holder to hold fewer Units than that minimum number as a request for the withdrawal of all that Unit Holder's Units.

- (b) If there is more than one Class, this clause only applies to Units in the same Class.

10.6 Sums arising

The Responsible Entity may deduct from the proceeds of withdrawal of Units any money due to the Responsible Entity in relation to the Unit Holder.

10.7 Transfer of Assets

- (a) The Responsible Entity may transfer Assets to a Unit Holder (or the Unit Holder's nominee) in preference to paying Cash to effect a withdrawal (or pay a distribution) in whole or in part.

- (b) The Responsible Entity must satisfy itself that the Asset Value (with any Cash paid) will equal the total amount of Cash otherwise payable. The Responsible Entity may do this on the basis of a valuation of the Assets obtained within 1 month of the withdrawal date.

10.8 Liquid or not Liquid

The Responsible Entity only may determine whether or not the Trust is Liquid. Such a determination is binding on Holders and no Holder may challenge it.

10.9 Suspension of power to make withdrawal offers

- (a) The power of the Responsible Entity to make a Withdrawal Offer under clause 10.4 is suspended while the Units are officially Quoted.
- (b) The Responsible Entity may make an on-market Withdrawal Offer if it consults ASX before making the offer and complies with any requirements ASX sets.

11. Withdrawal Price

11.1 Withdrawal Price Calculation

The Withdrawal Price for any Unit will be equal to:

$$\frac{\text{Net Fund Value} - \text{Transaction Costs}}{\text{number of Units on Issue}}$$

11.2 While the Trust is Liquid

While the Trust is Liquid each of these variables must be calculated as at the next Valuation Time after the Responsible Entity receives (or is taken to have received) the withdrawal request.

11.3 Trust not Liquid

If the Trust is not Liquid, then each such variable will be calculated at as the day the relevant Withdrawal Offer closes.

11.4 Adjustment

The Responsible Entity may adjust any variable where the calculation is in respect of a particular Class.

12. Transfer of Units and Options

12.1 Transferability

- (a) Subject to this constitution, a Unit or Option may be transferred by instrument in writing, or by the Listing Rules in any form authorised by law or in any other form that the Responsible Entity approves.

- (b) A transferor of Units or Options remains the holder of the Units or Options (as the case may be) transferred until the transfer is registered.

12.2 General transfer

Before the Trust is admitted to the Official List, or at any time after the Trust ceases to be admitted, all transfers of Units or Options must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity.

12.3 Paper-based transfer

Where Units or Options are transferred by a paper-based transfer document, the following documents must be lodged for registration at the registered office of the Responsible Entity or the location of the Register:

- (a) the instrument of transfer, duly executed and (if required by law) stamped;
- (b) the certificate (if any) for the Units or Options (or, if acceptable to the Responsible Entity, satisfactory evidence of loss or destruction of the certificate); and
- (c) any other information that the Responsible Entity may require to establish the transferor's right to transfer the Units or Options.

12.4 Where registration may be refused

Where permitted to do so by law or the Listing Rules, the Responsible Entity may refuse to register any transfer of Units or Options.

12.5 No general restriction on transfer whilst Trust admitted to Official List

Subject to paragraphs (a),(b) and (c) below, and to clauses 12.6(a) and 12.6(b) below, the Responsible Entity must not prevent, delay or in any way interfere with the registration of a transfer, other than a paper-based transfer document which is not a proper instrument of transfer, save that:

- (a) the Responsible Entity may apply a holding lock to specified CHESS Approved Securities where permitted to do so by the Listing Rules;
- (b) the Responsible Entity may refuse to register a paper-based transfer document where permitted to do so by the Listing Rules; and
- (c) the Responsible Entity must refuse to register a transfer if required to do so by the Listing Rules.

12.6 Restricted securities

- (a) The Responsible Entity must refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any restricted securities on issue which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Responsible Entity under the Listing Rules in relation to the restricted securities.
- (b) During a breach of the Listing Rules related 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.

13. Transmission of Units and Options

13.1 Transmission upon death

- (a) The personal representative of a deceased Holder (who is not one of several Joint Holders) is the only person recognised by the Responsible Entity as having any title to Units or Options registered in the name of the deceased Holder.
- (b) The Responsible Entity may, subject to compliance by the transferee with this constitution, register any transfer signed by a Holder prior to the Holder's death despite the Responsible Entity having notice of the Holder's death.

13.2 Transmission by operation of law

- (a) A person (a Transmitlee) who establishes to the Responsible Entity's satisfaction that the right to any Units or Options has devolved on the Transmitlee by will or by operation of law may be registered as a Holder in respect of the Units or Options or may (subject to the provisions in this constitution relating to transfers) transfer the Units or Options.
- (b) The Responsible Entity has the same right to refuse to register the Transmitlee as if the Transmitlee was the transferee named in an ordinary transfer presented for registration.

14. Unmarketable parcels

14.1 Application of clause

This clause applies while the Trust is admitted to the Official List.

14.2 Definitions

In this clause:

Unit Holder means a Unit Holder, or that Unit Holder's legal personal representative; and

Purchaser means the Person whose offer to purchase Units is accepted by the Responsible Entity, whether or not the Person is a Unit Holder.

14.3 Unit Holder's Units less than Marketable Parcel

If at any time the number of Units registered in the name of a Unit Holder, including Units to which the Unit Holder is jointly entitled, is less than a Marketable Parcel, then the Responsible Entity may serve a notice in writing in accordance with this clause on the Unit Holder:

- (a) requiring the Unit Holder to advise the Responsible Entity by a date being not less than forty-two (42) days after the date of service of that notice if that Unit Holder elects that this clause not apply to the Units registered in that Unit Holder's name; and
- (b) stating that unless the Unit Holder advises the Responsible Entity by the date referred to in the notice that this clause is not to apply to the Units registered in that Unit

Holder's name, those Units will be liable to be sold and the proceeds dealt with in accordance with clause 14.11.

14.4 Responsible Entity may sell Units

If a Unit Holder does not advise the Responsible Entity by the date referred to in the Notice that this clause is not to apply to the Units registered in that Unit Holder's name, then the Responsible Entity may resolve to sell those Units together with all rights attaching to those Units including all distributions declared but unpaid.

14.5 Procedures for sale

A Unit to be sold under this clause may be sold or otherwise disposed of on the terms, in the manner, and at the time, the Responsible Entity thinks fit, and for the purposes of that sale or disposal:

- (a) the Unit Holder has appointed the Responsible Entity as the Unit Holder's agent to sell the Units held by that Unit Holder at a price determined by the Responsible Entity and to deal with the proceeds of the sale of those Units in accordance with this clause; and
- (b) the Unit Holder is deemed to have irrevocably appointed the Responsible Entity as that Unit Holder's attorney in the name and on behalf of that Unit Holder to do an act or execute an instrument to effect a transfer of the Units sold or otherwise disposed of.

14.6 Validity of sale

The transferee of a Unit sold under this clause is not bound to see to:

- (a) the regularity of proceedings; or
- (b) the application of the purchase money,

and after the transferee's name has been entered in the Register in respect of the Units:

- (c) the validity of the sale or other disposal may not be impeached by any person; and
- (d) the remedy of any person aggrieved by the sale or other disposal will be in damages only and against the Responsible Entity exclusively.

14.7 Costs of sale

All costs associated with the sale of a Unit under this clause will be paid out of the Trust Fund.

14.8 Consideration

The Responsible Entity must receive any consideration given on any sale or disposal of Units under this clause and the Responsible Entity's receipt will be good discharge to the purchaser.

14.9 Instrument of transfer

Where:

- (a) all the Units of each Unit Holder to whom this clause applies are sold to one purchaser at one time; or
- (b) all the Units of two or more Unit Holders to whom this clause applies are sold to one purchaser at one time,

the transfer may be effected by one instrument of transfer.

14.10 Title of transferee

The title of a transferee to Units sold under this clause is not affected by any irregularity or invalidity in connection with the sale or disposal of Units to the transferee.

14.11 Proceeds of sale

The Responsible Entity:

- (a) must pay the proceeds of sale under this clause into a bank account opened and maintained by the Responsible Entity generally for the purpose of receiving the proceeds of sale from all sales of Units made under this clause;
- (b) must hold the proceeds of sale on trust for the Unit Holder whose Units are sold under this clause;
- (c) when the proceeds of sale of all Units are received, remit the proceeds of sale to the Unit Holder whose Units were sold; and
- (d) in the case where a Unit Holder's whereabouts are unknown, the proceeds of sale will be applied in accordance with the law dealing with unclaimed money.

14.12 Certificate is evidence

A certificate in writing under the hand of any two (2) directors or any one (1) director and a secretary of the Responsible Entity that:

- (a) a notice required to be served by or on the Responsible Entity was or was not served, as the case may be; and
- (b) a resolution of the Responsible Entity required to be made was made,

is sufficient evidence of the facts stated in that certificate unless the contrary is proved as against all persons claiming to be entitled to Units the subject of that certificate and to the right and title of the Responsible Entity to dispose of the same.

14.13 Effect of clause following announcement of takeover

This power to sell a Unit Holder's Units under clause 14.4 lapses following the announcement of a takeover offer or takeover announcement made under Chapter 6 of the Corporations Act but, notwithstanding clause 14.14 the procedure may be started again after the close of the offer made under the takeover.

14.14 Frequency of invoking clause

This clause may be invoked only once in any twelve (12) month period.

15. Powers of Responsible Entity

15.1 Powers

The Responsible Entity has all the powers:

- (a) in respect of the Trust Fund that it is possible under the Act to confer on a trustee and a responsible entity;
- (b) as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity; and
- (c) necessary for fulfilling its obligations under this constitution.

15.2 Specific powers

The Responsible Entity's powers include (but are not limited to) the following:

- (a) to purchase Property and sell Assets for cash or other consideration;
- (b) to develop and otherwise deal with any Assets (in particular, Land);
- (c) to borrow or raise money (whether or not on security) and to incur all types of obligations and liabilities (for example, for the purposes of paragraphs (d) and (e));
- (d) to create Security Interests over the Trust Fund or any Asset (for example, for the purposes of paragraphs (f) and (h));
- (e) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (f) to make any kind of investment (including entering into Derivative Transactions);
- (g) to fetter future discretions, such as by the granting of options; and
- (h) to enter into any arrangement or agreement with underwriters in relation to the Trust.

15.3 Delegation

- (a) The Responsible Entity may appoint delegates or agents (including Custodians or underwriters) to perform any act or exercise any power of the Responsible Entity (including a power to in turn appoint its own agent or delegate).
- (b) An agent or delegate may be an associate or employee of the Responsible Entity.
- (c) An appointment may be joint.
- (d) Subject to section 601FB of the Corporations Act, the Responsible Entity is not liable for the acts or omissions of any delegate so long as reasonable care is taken in selecting the delegate.
- (e) The Responsible Entity may include provisions to protect and assist those dealing with the delegate as the Responsible Entity thinks fit.

15.4 Limitation of Liabilities

Despite clause 15.1, for so long as:

- (a) the Units are Officially Quoted; and
- (b) the Listing Rules require,

the Responsible Entity must ensure that the Liabilities of the Trust do not exceed 60% of its total tangible Assets.

15.5 Advisers

Without limiting clause 15.1, the Responsible Entity may engage Advisers (including Advisers who are associates of the Responsible Entity) to assist it with its duties and functions under this constitution.

16. Limitation of liability

16.1 General

- (a) Subject to the Corporations Act, the Responsible Entity is not liable for any loss or damage to any person (including any Unit Holder) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this constitution; and
 - (ii) without a belief held in good faith that it was acting in accordance with this constitution.
- (b) In any case, to the extent permitted by law, the liability of the Responsible Entity in relation to the Trust is limited to the Assets from which the Responsible Entity is entitled to be, and is in fact, indemnified.

16.2 Specific

In particular, subject to the Corporations Act, the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (a) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity;
- (b) it acted as required by law; or
- (c) it relied in good faith upon any signature, marking or documents.

16.3 Liability of Unit Holders limited

Subject to this constitution and to the extent permitted by law, no Unit Holder is personally liable for any obligation of, or liability incurred by, the Responsible Entity.

17. Other activities and obligations of the Responsible Entity

17.1 Other activities

Subject to the Act, nothing in this constitution restricts the Responsible Entity (in its personal capacity or in any capacity other than as trustee or responsible entity of the Trust) or its associates from:

- (a) dealing with itself (as trustee or responsible entity of the Trust);
- (b) being interested in any contract, transaction, or matter with itself (as trustee or responsible entity of the Trust) or with any Holder; or
- (c) acting in the same or similar capacity in relation to any other trust or managed investment scheme,

and in each such case the Responsible Entity (or any associate) may retain for its own benefit all profits or benefits derived from that activity.

17.2 Interested dealings by Responsible Entity

The Responsible Entity, or an officer or employee or Associate of the Responsible Entity, may:

- (a) be a Holder;
- (b) act in any capacity including without limitation as a representative, delegate or agent of the Responsible Entity or any Holder;
- (c) have an interest in or enter into a contract or transaction with:
 - (i) the Responsible Entity or an Associate of the Responsible Entity;
 - (ii) any Holder; or
 - (iii) any other person, including one whose shares or other securities form an asset of the Fund; or
- (d) hold or deal in or have any other interest in an asset of the Fund,

and may retain and is not required to account for any benefit derived by doing so.

17.3 Other obligations

All obligations of the Responsible Entity that might otherwise be implied by law are expressly excluded to the extent permitted by law.

18. Investment of the Fund

18.1 Investment policy

The general investment policy of the Trust is primarily investment in:

- (a) unlisted property trusts;
- (b) listed property trusts;
- (c) property related securities;
- (d) direct property;
- (e) Cash, money on deposit with Australian ADIs, and Cash Management Trust Interests; and
- (f) wholesale property funds,

with a view to achieving income with security and capital appreciation over a term of years.

18.2 Investments

- (a) The Responsible Entity has absolute and uncontrolled discretion as to the investment of any asset of the Trust Fund including without limitation any purchase, sale, transfer, exchange or alteration of any of the investments from time to time.
- (b) The Responsible Entity must only invest an asset of the Trust Fund if, at the time of making that investment, the investment is an Authorised Investment.
- (c) If an investment ceases to be an Authorised Investment, then the Responsible Entity must, within a reasonable period of time, dispose of that investment.
- (d) If an investment in the Trust Fund is redeemed or the capital paid thereon is wholly or partly repaid (whether by way of reduction of capital or otherwise) by the Person who issued or created that investment, then the Responsible Entity may:
 - (i) if an option is given to convert, convert that investment into some other investment pursuant to that option provided that such other investment is an Authorised Investment and the provisions of this constitution are otherwise complied with; or
 - (ii) accept repayment in Cash of the capital paid or advanced on that investment and any other moneys payable in connection with such redemption or repayment, and may reinvest all or any of the moneys becoming payable whether in respect of capital, premium, surplus or otherwise by reason of such redemption or repayment in Cash in the purchase of Authorised Investments to be added to the Trust Fund, provided that such reinvestment will be in accordance with the provisions of this constitution.
- (e) If any Securities are received by the Responsible Entity:
 - (i) by way of bonus or in lieu of, or in satisfaction (in whole or in part) of, a dividend in respect of any investment forming part of the Trust Fund; or
 - (ii) from the amalgamation or reconstruction of any company,

then Responsible Entity may either retain the Securities as part of the Trust Fund, sell the Securities, or retain part of the Securities and sell the balance, and the net proceeds of any sale must be invested in an Authorised Investment.

18.3 Transactions costs associated with investing

The Responsible Entity may pay out of the Trust Fund in accordance with clause 19.1 the costs of the purchase, sale, transfer, exchange or alteration of any of the investments comprising the Fund (including stamp duty or like impost, brokerage and commission).

19. Indemnity

19.1 Indemnity

In addition to any indemnity under any Act, the Responsible Entity has a right of indemnity out of the Trust Fund on a full indemnity basis, in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of trust.

19.2 Indemnity continuing

- (a) A right of indemnity in respect of a matter will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of trust or in breach of this constitution.
- (b) The right of indemnity continues to be available after the Responsible Entity retires or is removed as trustee of the Trust.

19.3 Payment

The Responsible Entity may pay out of the Trust Fund any amount for which the Responsible Entity would be entitled to be indemnified under clause 19.1 or clause 20.

19.4 Responsible Entity not to incur liability

The Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

19.5 Compliance Committee

If any member of a compliance committee established by the Responsible Entity in connection with the Fund incurs a liability in that capacity in good faith, the Responsible Entity may indemnify the compliance committee member out of the Trust Fund, to the extent permitted by the Corporations Act.

19.6 Extent of indemnity

The indemnity in clause 19.5:

- (a) is a continuing obligation and is enforceable by a person to whom clause 19.5 applies even though that person may have ceased to be a member of the Compliance Committee (if any); and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

19.7 Insurance

The Responsible Entity may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

out of the Trust Fund for any person to whom this clause 19.7 applies against any liability incurred by the person as a member of the Responsible Entity's Board or of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

19.8 Savings

Nothing in clauses 19.5 or 19.7:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Responsible Entity to indemnify or provide insurance for any person to whom those clauses do not apply.

20. Responsible Entity's further indemnity

20.1 Liability limited

The Responsible Entity is entitled to be indemnified by a Holder to the extent that it incurs any liability for Tax as a result of the Holder's action or inaction.

20.2 Joint Holders

Joint Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 20.1 applies.

21. Fees

21.1 Management fees

- (a) The Responsible Entity is entitled to a management fee of 0.45% per annum of the Fund Value (**Management Fee**) payable quarterly in arrears and calculated on the Fund Value as at the last day of the previous quarter.
- (b) The Management Fee must be paid out of the Trust Fund within 21 days of the end of each quarter (or such later time as the Responsible Entity determines).

21.2 Performance Fee

- (a) In addition to the Management Fee, the Responsible Entity is entitled to a performance fee (**Performance Fee**) equal to 20% of the Net Fund Return of the Trust in respect of each calculation period described below in clause 21.2(c).

- (b) The Responsible Entity will determine the Net Fund Return at the end of each Financial Year. If at the end of the relevant Financial Year, the Net Fund Return is negative or zero, then no Performance Fee is payable to the Responsible Entity. Where the Net Fund Return is greater than zero, the Responsible Entity will have its determination reviewed by the Trust Auditor and upon completion of such review, the Performance Fee, subject to any variation by the Trust Auditor, will become immediately payable to the Responsible Entity in accordance with clause 21.2(d).
- (c) The calculation period for the Performance Fee is:
- (i) for the first calculation period, from the date of Official Quotation of the Ordinary Units until the end of the Financial Year in respect of which the Net Fund Return has been determined, in accordance with clause 21.2(b), to be greater than zero;
 - (ii) for each subsequent calculation period, the period commencing immediately after the end of the immediately preceding calculation period until the end of the Financial Year in respect of which the Net Fund Return has been determined, in accordance with clause 21.2(b), to be greater than zero; and
 - (iii) if the Responsible Entity retires or is removed as the responsible entity of the Fund or the Fund is terminated, the period commencing immediately after the end of the calculation period immediately preceding the date the Responsible Entity retires or is removed or the date on which the Fund is terminated (relevant date) and ending on the relevant date.
- (d) On the Commencement Date, the Responsible Entity was issued with 2,000,000 new fully paid Deferred Units which will automatically convert into new fully paid Ordinary Units in satisfaction of the Performance Fee in accordance with the terms and conditions specified in Schedule 4.
- (e) The first \$2,000,000 in Performance Fees payable to the Responsible Entity will be satisfied by the conversion of Deferred Units into new fully paid Ordinary Units in accordance with paragraph 6 of Schedule 4 and thereafter, the Performance Fee will then be payable to the Responsible Entity in cash.
- (f) In this clause, the following definitions apply:

Net Fund Return is calculated as follows:

Net Fund Return = Australian Constant Capital Net Return + Singapore Constant Capital Net Return + Australian Aggregate Additional Capital Net Return + Singapore Aggregate Additional Capital Net Return

Australian Constant Capital Net Return is the return calculated in accordance with the following formula for Units traded on the ASX for the whole of the period in respect of which the return is being calculated:

Australian Constant
Capital Net Return = $\frac{((EP - SP) - (SP \times (EI - SI))) \times ASXCU}{SI}$

Singapore Constant Capital Net Return is the return calculated in accordance with the following formula for Units traded on the SGX-ST for the whole of the period in respect of which the return is being calculated:

$$\frac{\text{Singapore Constant Capital Net Return}}{\text{SGXCU}} = \frac{((EP - SP) - (SP \times (EI - SI))) \times SI}{\text{SGXCU}}$$

EP is the aggregate of:

- (a) the Relevant Market Price (in dollar terms) of a fully paid Ordinary Unit as at the last Business Day of the relevant Financial Year; and
- (b) an amount (in Australian dollar terms) equal to the aggregate of the Distributable Income, determined in accordance with clause 27, paid or payable in respect of a fully paid Ordinary Unit for the period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year; and
- (c) an amount (in Australian dollar terms) equal to the aggregate of the capital of the Trust distributed by the Responsible Entity in accordance with clause 27.4 in respect of a fully paid Ordinary Unit for the period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year.

The amount of the distribution is to be the gross Australian dollar amount before any withholding of tax or conversion into another currency;

Relevant Market Price is the weighted average price per fully paid Ordinary Unit for sales of fully paid Ordinary Units on the ASX or SGX-ST (as the case requires) (excluding any special crossings) for the period commencing from the first day on which fully paid Ordinary Units commence trading on an "ex-distribution" basis on the ASX or SGX-ST (as the case requires) following the last announcement by the Responsible Entity of an estimated distribution rate or proposed distribution in respect of the relevant Financial Year and ending at the end of the relevant Financial Year, with the Relevant Market Price in respect of Units traded on SGX-ST being converted to Australian dollars in accordance with clause 24.2 on the last day of the relevant Financial Year;

SP is the Market Price (in dollar terms) of a fully paid Ordinary Unit as at the last Business Day of the calculation period immediately preceding the relevant calculation period, with the Market Price in respect of Units traded on SGX-ST being converted to Australian dollars in accordance with clause 24.2 as at the relevant Business Day;

EI is the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the last Business Day of the relevant Financial Year, provided that if the ASX ceases to publish the S&P/ASX 200 Property Accumulation Index then the published index which most closely resembles it must be used;

ST is the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the last Business Day of the calculation period immediately preceding the relevant calculation period or, where there has not been a preceding calculation period, the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the date of Official Quotation of the fully paid Ordinary Units, provided that if the ASX ceases to publish the S&P/ASX 200 Property Accumulation Index then the published index which most closely resembles it must be used;

ASXCU is that number of fully paid Ordinary Units which are on issue, and remain on issue, and are traded on the ASX, for the entire period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year;

SGXCU is that number of fully paid Ordinary Units which are on issue, and remain on issue, and are traded on the SGX-ST, for the entire period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year;

Australian Aggregate Additional Capital Net Return means the aggregate of all the Australian Additional Capital Net Returns calculated in respect of Units traded on the ASX for part of the relevant Financial Year;

Australian Additional Capital Net Return means, in respect of a fully paid Ordinary Unit that is on issue and traded on the ASX during the relevant Financial Year but is not a fully paid Ordinary Unit that is on issue, and remains on issue, for the entire period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year;

$$\frac{(\Delta CEP - ACSP) - (ACSP \times (\Delta CEI - ACSI))}{ACSI}$$

For the purposes of calculating the Australian Additional Capital Net Return, and without limiting the meaning of "issue", the removal of a Unit from the SGX-ST in order for it to be traded on the ASX will be deemed to be the issue and trading of a Unit on the ASX on and from the day following the date of its removal from the SGX-ST;

Singapore Aggregate Additional Capital Net Return means the aggregate of all the Singapore Additional Capital Net Returns calculated in respect of Units traded on the SGX-ST for part of the relevant Financial Year;

Singapore Additional Capital Net Return means, in respect of a fully paid Ordinary Unit that is on issue and traded on the SGX-ST during the relevant Financial Year but is not a fully paid Ordinary Unit that is on issue, and remains on issue, for the entire period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year;

$$\frac{(\Delta CEP - ACSP) - (ACSP \times (\Delta CEI - ACSI))}{ACSI}$$

For the purposes of calculating the Singapore Additional Capital Net Return, and without limiting the meaning of "issue", the removal of a Unit from the ASX in order for it to be traded on the SGX-ST will be deemed to be the issue and trading of a Unit on the SGX-ST on and from the day following the date of its removal from the ASX;

ACEP is the aggregate of:

- (a) the Market Price (in dollar terms) of a fully paid Ordinary Unit as at the Relevant End Date, with the Market Price in respect of Units traded on SGX-ST being converted to Australian dollars in accordance with clause 24.2 as at the Relevant End Date; and
- (b) an amount (in Australian dollar terms) equal to the aggregate of the Distributable Income, determined in accordance with clause 27, paid or payable in respect of the fully paid Ordinary Unit for the period commencing from the Relevant Start Date and concluding at the Relevant End Date; and
- (c) an amount (in Australian dollar terms) equal to the aggregate of the capital of the Trust distributed by the Responsible Entity in accordance with clause 27.4 in respect of the fully paid Ordinary Unit for the period commencing from the Relevant Start Date and concluding at the Relevant End Date.

The amount of the distribution is to be the gross Australian dollar amount before any withholding of tax or conversion into another currency;

ACSP is:

- (a) where the Relevant Start Date, in respect of a fully paid Ordinary Unit, is 1 July of the Financial Year immediately following the immediately preceding calculation period, the Market Price (in dollar terms) of a fully paid Ordinary Unit as at that Relevant Start Date, with the Market Price in respect of Units traded on SGX-ST being converted to Australian dollars in accordance with clause 24.2 as at the Relevant Start Date; and
- (b) where the Relevant Start Date, in respect of a fully paid Ordinary Unit, is a day during the relevant Financial Year other than 1 July of the Financial Year immediately following the immediately preceding calculation period, the Issue Price (in dollar terms) of a fully paid Ordinary Unit issued on that Relevant Start Date;

ACEI is the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the Relevant End Date in respect of a fully paid Ordinary Unit, provided that if the ASX ceases to publish the S&P/ASX 200 Property Accumulation Index then the published index which most closely resembles it must be used;

ACSI is the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the Relevant Start Date in respect of a fully paid Ordinary Unit, provided that if the ASX ceases to publish the S&P/ASX 200 Property Accumulation Index then the published index which most closely resembles it must be used;

Unit Reduction means a reduction in the number of fully paid Ordinary Units on issue in the Fund including without limitation a reduction through a consolidation of fully paid Ordinary Units or a redemption of fully paid Ordinary Units.

Without limiting the definition of "Unit Reduction" as set out above:

- (a) for the purposes of calculating the Australian Additional Capital Net Return, the removal of a Unit from trading on the ASX in order for it to be traded on the SGX-ST will be deemed to be a Unit Reduction on and from the date of its removal from trading on the ASX;
- (b) for the purposes of calculating the Singapore Additional Capital Net Return, the removal of a Unit from trading on the SGX-ST in order for it to be traded on the ASX will be deemed to be a Unit Reduction on and from the date of its removal from trading on the SGX-ST;

Relevant Start Date means:

- (a) in respect of a fully paid Ordinary Unit which is on issue as at 1 July of the Financial Year immediately following the immediately preceding calculation period but is no longer on issue at the end of the relevant Financial Year as a consequence of a Unit Reduction, 1 July of the Financial Year immediately following the immediately preceding calculation period;
- (b) in respect of a fully paid Ordinary Unit that is issued during the relevant Financial Year, the day on which the fully paid Ordinary Unit is issued;
- (c) in respect of a fully paid Ordinary Unit that is issued during the relevant Financial Year in respect of which the Relevant Start Date in paragraph (b) has been applied and where following the issue of the fully paid Ordinary Unit but before the end of the relevant Financial Year there is a Unit Reduction, the day in the relevant Financial Year which immediately follows the day in the relevant Financial Year on which the Unit Reduction occurs;

Relevant End Date means:

- (a) in respect of a fully paid Ordinary Unit which is on issue as at 1 July of the Financial Year immediately following the immediately preceding calculation period but is no longer on issue at the end of the relevant Financial Year as a consequence of a Unit Reduction, the day in the relevant Financial Year on which the Unit Reduction occurs;
- (b) in respect of a fully paid Ordinary Unit that is issued during the relevant Financial Year:
 - (i) where there is no Unit Reduction during the relevant Financial Year, the end of the relevant Financial Year; or
 - (ii) where there is a Unit Reduction during the relevant Financial Year, the day in the relevant Financial Year on which the Unit Reduction occurs.

(a) In addition to the Management Fee, the Responsible Entity is entitled to a performance fee (Performance Fee) equal to 20% of the Net Fund Return of the Trust in respect of each calculation period described below in clause 21.2(e).

(b) Following the end of each Financial Year the Responsible Entity will determine the Net Fund Return. If at the end of the relevant Financial Year the Net Fund Return is negative or zero, then no Performance Fee is payable to the Responsible Entity. Where the Net Fund Return is greater than zero, the Responsible Entity will cause this determination to be reviewed by the auditor and upon completion of such review, the Performance Fee will become immediately payable to the Responsible Entity.

(c) The calculation period for the Performance Fee is:

- (i) for the first calculation period, from the date of Official Quotation of the Ordinary Units until the end of the Financial Year following which the Net Fund Return has been determined, in accordance with clause 21.2(b), to be greater than zero;
- (ii) for each subsequent calculation period, the period from the end of the immediately preceding calculation period until the end of the Financial Year following which the Net Fund Return has been determined, in accordance with clause 21.2(b), to be greater than zero; and
- (iii) if the Responsible Entity retires or is removed as the responsible entity of the Fund or the Fund is terminated, the period from the end of the calculation period immediately preceding the relevant calculation period to the date the Responsible Entity retires or is removed or the date on which the Fund is terminated.

(d) On the Commencement Date, the Responsible Entity will be issued with 2,000,000 new fully paid Deferred Units which will automatically convert into new fully paid Ordinary Units in satisfaction of the Performance Fee in accordance with the terms and conditions specified in Schedule 4.

(e) The first \$2,000,000 in Performance Fees payable to the Responsible Entity will be satisfied by the conversion of Deferred Units into new fully paid Ordinary Units in accordance with paragraph 6 of Schedule 4 and thereafter, the Performance Fee will then be payable to the Responsible Entity in cash.

(f) In this clause, the following definitions apply:

Net Fund Return:

$$\text{Net Fund Return} = \frac{((EP - SP) - (SP \times \frac{(EI - SI)}{SI})) \times \text{WANU}}{SI}$$

Where:

EP is the aggregate of:

- (a) the Relevant Market Price (in dollar terms) of a fully paid Ordinary Unit as at the last Business Day of the relevant Financial Year; and
- (b) an amount (in dollar terms) equal to the aggregate of the Distributable Income, determined in accordance with clause 27, paid or payable in respect of a fully paid Ordinary Unit for the period commencing from 1 July of the Financial

~~Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year and, if there is no preceding calculation period, for the period commencing on the date of Official Quotation of the fully paid Ordinary Units and concluding at the end of the relevant Financial Year; and~~

~~(e) an amount (in dollar terms) equal to the aggregate of the capital of the Trust distributed by the Responsible Entity in accordance with clause 27.4 in respect of a fully paid Ordinary Unit for the period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year and, if there is no preceding calculation period, for the period commencing on the date of Official Quotation of the fully paid Ordinary Units and concluding at the end of the relevant Financial Year;~~

~~Relevant Market Price is the weighted average price per fully paid Ordinary Unit for sales of fully paid Ordinary Units on the ASX (excluding any special crossings) for the period commencing from the first day on which fully paid Ordinary Units commence trading on an "ex distribution" basis on the ASX following the last announcement by the Responsible Entity of an estimated distribution rate or proposed distribution in respect of the relevant Financial Year and ending at the end of the relevant Financial Year;~~

~~SP is the Market Price (in dollar terms) of a fully paid Ordinary Unit as at the last Business Day of the calculation period immediately preceding the relevant calculation period or, where there has not been a preceding calculation period, the sum of \$1.00;~~

~~EI is the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the last Business Day of the relevant Financial Year, provided that if the ASX ceases to publish the S&P/ASX 200 Property Accumulation Index then the published index which most closely resembles it must be used;~~

~~SI is the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the last Business Day of the calculation period immediately preceding the relevant calculation period or, where there has not been a preceding calculation period, the level of the S&P/ASX 200 Property Accumulation Index published by the ASX on the date of Official Quotation of the fully paid Ordinary Units, provided that if the ASX ceases to publish the S&P/ASX 200 Property Accumulation Index then the published index which most closely resembles it must be used; and~~

~~WANU is the weighted average number of fully paid Ordinary Units on issue for the period commencing from 1 July of the Financial Year immediately following the immediately preceding calculation period and concluding at the end of the relevant Financial Year and, if there is no preceding calculation period, for the period commencing on the date of Official Quotation of the fully paid Ordinary Units and concluding at the end of the relevant Financial Year.~~

21.3 Custodian's fee

If the Responsible Entity appoints a custodian to hold any Asset, the Responsible Entity is entitled to pay the custodian out of the Assets (without limiting the right of the Responsible Entity to pay under any other clause of this constitution) a fee per annum to be negotiated

between the Responsible Entity and the Custodian based on prevailing market rates, to be paid in instalments quarterly in arrears.

21.4 Reimbursement fee on replacement of Responsible Entity

Subject to the proper performance of its duties, if the Responsible Entity is removed as responsible entity of the Trust, the Responsible Entity will be entitled to receive the following fee immediately prior to its removal as responsible entity of the Trust:

- (a) if such removal becomes effective during the period of 12 months ending on the first anniversary date of the date on which the Trust is admitted to the Official List (**Admission Date**), the sum of \$2,000,000; or
- (b) if such removal becomes effective during the period of 12 months ending on the second anniversary date of the Admission Date, the sum of \$1,600,000; or
- (c) if such removal becomes effective during the period of 12 months ending on the third anniversary date of the Admission Date, the sum of \$1,200,000; or
- (d) if such removal becomes effective during the period of 12 months ending on the fourth anniversary date of the Admission Date, the sum of \$800,000; or
- (e) if such removal becomes effective during the period of 12 months ending on the fifth anniversary date of the Admission Date, the sum of \$400,000.

21.5 Adjustment of fee

If any fee payable under this clause commences or ceases to be payable during the relevant period then the fee payable must be adjusted on a pro rata basis for the number of days in the relevant period the fee was payable.

21.6 Units instead of Cash

Subject to the Corporations Act and the Listing Rules if applicable, and to clause 21.2(d) the Responsible Entity may elect to be issued Units or Options instead of Cash in payment of its fees or reimbursement of its expenses under this constitution.

21.7 Waiver of fees

The Responsible Entity may waive or postpone the receipt of any fee (or any part of a fee) or charge a lesser fee than it is entitled to receive under this constitution.

21.8 Expenses

- (a) All Expenses reasonably and properly incurred by the Responsible Entity in connection with the Trust or in performing its obligations under this constitution are payable or may be reimbursed out of the Trust Fund.
- (b) Amounts payable under this clause 21.8 are in addition to fees payable under this clause 21 and rights to indemnification or reimbursement conferred under this constitution or by law.

21.9 Priority of Responsible Entity's remuneration

The remuneration of the Responsible Entity has priority over the payment of all other amounts payable from the Trust Fund.

21.10 Waiver of Expenses

The Responsible Entity may waive or postpone reimbursement of any or all Expenses under clause 21.8.

21.11 GST

- (a) The fees payable to the Responsible Entity under this constitution do not include GST.
- (b) If the Responsible Entity is or will become liable to pay GST in respect of any supply under this constitution, the fees payable to the Responsible Entity under this constitution will be increased so that after payment of the GST by the Responsible Entity the net amount retained by the Responsible Entity is the same as if the Responsible Entity was not liable to pay any GST in respect of that supply.
- (c) The Responsible Entity is entitled to be reimbursed or indemnified for such amount of GST out of the Trust Fund.

21.12 Proper Performance

The rights under this Constitution of the Responsible Entity to be paid fees out of the Assets, or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties, are available only in relation to the proper performance of those duties.

22. Retirement of Responsible Entity

22.1 Retirement

The Responsible Entity must retire as the trustee and responsible entity of the Trust when required to retire by law. The Responsible Entity may retire as the trustee and responsible entity of the Trust as permitted by law.

22.2 Release

Subject to the Corporations Act, when it retires or is removed, the Responsible Entity is released from all obligations in relation to the Trust arising after the date of its retirement, except that the Responsible Entity must deliver all books and records of the Trust to the new trustee.

22.3 Name of Trust to be changed

- (a) If MacarthurCook Fund Management Limited ABN 79 004 956 558 has retired or is removed as the Responsible Entity, then the new Responsible Entity must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with MacarthurCook Fund Management Limited, or any of its Associates, from the title of

the Trust and this constitution and such letters, words or expressions must not be used in any connection with the Trust and this constitution.

- (b) Clause 22.3(a) does not apply if the new trustee of the Trust obtains the consent of MacarthurCook Fund Management Limited not to take the action set out in that clause.

23. Value of the Trust Fund

23.1 Valuation of an Asset

Subject to clauses 23.2 and 23.3, the Responsible Entity may cause an Asset to be valued at any time using the valuation methods in Schedule 1 and Schedule 2.

23.2 Valuation of Land

The Responsible Entity must cause Land to be valued if it reasonably believes that there has been a significant change in the value of the Land, and in any event at intervals of not more than three (3) years.

23.3 Valuation if required

The Responsible Entity must cause an Asset to be valued if required by ASIC or under the Corporations Act and the valuation must be undertaken in accordance with those requirements.

23.4 Determination of Net Fund Value

The Responsible Entity may determine the Net Fund Value at any time in its discretion, including more than once on each day.

24. Valuation

24.1 Valuation of assets

- (a) The Responsible Entity may at any time cause the valuation of any asset of the Trust Fund by an Independent Expert.
- (b) In determining whether a valuation accurately reflects the current value of an asset of the Trust Fund, the Responsible Entity is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of assets of the Trust Fund.
- (c) Subject to clause 24.3, each asset of the Trust Fund must be valued at its Market Value unless the Responsible Entity determines that:
- (i) there is no market in respect of the asset; or
 - (ii) the Market Value does not represent the fair value of the Asset,

in which case the Responsible Entity must determine the method of valuation for the asset.

- (d) Subject to clause 24.3, where any asset of the Trust Fund is to be valued, or the Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Responsible Entity.
- (e) Where the calculation of the Issue Price for the purposes of clause 9.8 is to be made as at a particular date, the Responsible Entity need not cause a valuation of the Trust Fund to be performed as at that date but may rely on the most recent valuations for the purposes of that calculation.

24.2 Currency conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by an Australian ADI or other financial institution nominated by the Responsible Entity.

24.3 Determining current Unit value for purposes of clause 9.8 or clause 10

If the Responsible Entity is required to determine the Current Unit Value for the purposes of clause 9.8 or clause 10, then the value of assets of the Trust Fund for the purposes of calculating that Current Unit Value must be their Market Value calculated in accordance with Schedule 1 and Schedule 2.

24.4 Valuation of application monies

Where the Application Monies are property other than Cash then:

- (a) the Responsible Entity must determine the value of the property to be transferred by an applicant to the Responsible Entity; and
- (b) the value of that property must be its Market Value.

25. Title to assets

25.1 How held

Subject to clauses 25.2 and 25.3, all Assets must be held in the name of the Responsible Entity.

25.2 Other Custodian

If the Responsible Entity considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee nominated by the Responsible Entity and acting as agent for the Responsible Entity.

25.3 Holding of Assets

The Custodian of a particular Asset must hold that Asset either:

- (a) directly in its name; or
- (b) to the extent permitted by the law or an ASIC Instrument, indirectly by means of any asset title transfer or holding system approved by the Responsible Entity.

26. Net accounting income

26.1 Income of the Trust

The income of the Trust for each Financial Year must be determined in accordance with applicable Australian Accounting Standards.

26.2 Expenses and provisions of the Trust

For each Financial Year:

- (a) the Expenses of the Trust must be determined in accordance with applicable Australian Accounting Standards; and
- (b) provisions or other transfers to or from reserves may be made in relation to such items as the Responsible Entity considers appropriate in accordance with applicable Australian Accounting Standards.

26.3 Net Accounting Income

The Responsible Entity must determine (or cause to be determined) the **Net Accounting Income** for each Financial Year by applying against the income of the Trust for that Financial Year:

- (a) the Expenses, provisions and reserve transfers referred to in clause 26.2, subject to any other prudent adjustments in accordance with applicable Australian Accounting Standards; and
- (b) any Net Accounting Loss (as defined below in this clause) carried forward from a preceding Financial Year.

The balance of the income of the Trust for the Financial Year remaining after those applications is the Net Accounting Income for that Financial Year, except where the amount is negative, in which case it is the **Net Accounting Loss** for that Financial Year.

26.4 Net Income

The Responsible Entity must determine (or cause to be determined) the **Net Income** for each Financial Year in accordance with section 95(1) of the *Income Tax Assessment Act 1936*.

27. Distributions

27.1 Distributable Income

- (a) Subject to clause 27.1(b), Distributable Income of the Trust for each Financial Year is the Net Accounting Income for that Financial Year.
- (b) The Responsible Entity may determine that the Distributable Income for a Financial Year will be:
 - (i) the Net Income (if it exceeds the Net Accounting Income) for that Financial Year; or

- (ii) some other amount not less than the Net Accounting Income for that Financial Year.

27.2 Present entitlement

- (a) The Unit Holders on the Register on the last day of the Financial Year are presently entitled to the Distributable Income of the Trust (less any part of the Distributable Income which has previously been distributed in that Financial Year as permitted by this clause 27) in the proportion specified in clause 27.3(e).
- (b) This entitlement is subject to the rights, restrictions and obligations attaching to any particular Unit or Class, and will apply unless otherwise agreed by the Responsible Entity.

27.3 Distribution of Distributable Income

- (a) The Responsible Entity may determine to make an Interim Distribution out of Net Accounting Income accruing during any Interim Distribution Period.
- (b) An Interim Distribution cannot exceed, but can be less than, the amount of the Net Accounting Income which has accrued during the relevant Interim Distribution Period.
- (c) The Responsible Entity must within 60 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Unit Holders on the Register at the end of the last day of the Interim Distribution Period.
- (d) Within 60 days of the end of the Financial Year, the Responsible Entity must pay to the Unit Holders on the Register at the end of the last day of that Financial Year an amount equal to the Distributable Income of the Trust for the Financial Year less any amounts previously distributed during that Financial Year under paragraph (a).
- (e) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder on the Register at the end of the last day of the Financial Year or Interim Distribution Period, is presently entitled to that proportion of the Distributable Income for the purpose of paragraph (d) or Interim Distribution for the purpose of paragraph (a) (as the case may be) as is equal to the number of Units held by that Unit Holder on that date divided by the number of Units on Issue on that date.

27.4 Capital distributions

- (a) The Responsible Entity may distribute capital of the Trust to the Unit Holders.
- (b) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Responsible Entity divided by the number of Units on the Register on that date.
- (c) A distribution may be in Cash or of Assets or by way of bonus Units.

27.5 Grossed up tax amounts

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to

be distributed to Unit Holders in proportion to the Distributable Income for a Financial Year or an Interim Distribution, as the case may be, which is referable to a dividend or other income to which they are presently entitled.

27.6 Excess distribution

If at the end of a Financial Year, the auditor of the Trust determines that the amount distributed as Distributable Income under this clause 27 of the Trust exceeds the aggregate of the Net Accounting Income for such Financial Year, the excess will be taken to be a distribution of capital.

27.7 Reinvestment

- (a) A Unit Holder may, if the Responsible Entity approves, elect to reinvest some or all of any distribution by acquiring Units in the Trust.
- (b) If approved, the Responsible Entity is treated as having received an application to reinvest distributions on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 9.
- (c) The procedure for reinvestment of distributions is to be determined by the Responsible Entity and notified to Unit Holders from time to time.

27.8 Unit Holder's rights

For the removal of doubt and despite anything in this clause 27:

- (a) the rights of a Unit Holder under this clause 27 are subject to the rights, obligations and restrictions attaching to the Units which they hold; and
- (b) for the purposes of distribution entitlements, Units which are partly paid will be treated as that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit, rounded to the nearest 2 decimal places, or will be treated in such other manner as the Responsible Entity determines.

28. Payments

28.1 Money payable

Money payable by the Responsible Entity to a Unit Holder may be paid in any manner the Responsible Entity decides.

28.2 Method of payment or repayment by Responsible Entity to Holders

Without limiting clause 28.1:

- (a) Subject to paragraph (b) below, the Responsible Entity may pay any money payable or repayable by the Responsible Entity to a Holder under this constitution to the Holder by electronic transfer to an account with an Australian ADI nominated by the Holder from time to time in accordance with paragraph (c) below.
- (b) The Responsible Entity may pay any money payable or repayable by the Responsible Entity to a Holder under this constitution to the Holder by cheque if:

- (i) the Holder is a Foreign Holder; and
 - (ii) the Holder has failed to nominate an account with an Australian ADI in accordance with paragraph (c) below.
- (c) A Holder must nominate in writing (or in such other manner approved by the Responsible Entity) that money owing to it under this constitution be paid by electronic transfer into a designated account with an Australian ADI.
- (d) If money is payable or repayable by the Responsible Entity to a Holder under this constitution and either the Holder fails to nominate an account under paragraph (c) above, or the Responsible Entity cannot make an electronic transfer to an account nominated by a Holder under paragraph (c) above, then the amount of money will be reinvested by the Responsible Entity in Units issued to the Holder. The reinvestment is deemed to be made on the day determined by the Responsible Entity and at an Issue Price equal to the Market Price of a Unit on the Business Day prior to the day on the issue of Units is made.

28.3 Cancel cheques

- (a) The Responsible Entity may cancel cheques issued by the Responsible Entity that are not presented within 6 months.
- (b) Subject to law, when such a cheque was drawn in favour of a Unit Holder, the money must be reinvested in Units at the Issue Price prevailing at the next Valuation Time after the day the cheque is cancelled.

28.4 Joint Unit Holders

A payment to any one of joint Unit Holders discharges the Responsible Entity for the payment.

28.5 Deductions for Tax

The Responsible Entity may deduct from any amount payable to a Unit Holder (or received from a Unit Holder) any amount of Tax (or an estimate of it) which the Responsible Entity reasonably believes it must or should deduct, in respect of that Unit Holder.

29. Statements, accounts and audit

29.1 Appointment of auditors

- (a) The Responsible Entity must appoint a registered company auditor to regularly audit the accounts in relation to the Trust and perform the other duties required of the Trust's Auditors under this constitution and the Corporations Act.
- (b) The Responsible Entity must appoint a Compliance Plan Auditor.

29.2 Retirement of auditors

The Trust Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Corporations Act.

29.3 Remuneration of auditors

The remuneration of the Trust Auditor and Compliance Plan Auditor will each be fixed by the Responsible Entity.

29.4 Accounts and reports

- (a) The accounts of the Trust must be kept and prepared by the Responsible Entity in accordance with applicable Australian Accounting Standards and the Corporations Act.
- (b) The Responsible Entity must report to Unit Holders concerning the affairs of the Trust and their holdings as required by the Corporations Act and the Listing Rules. Subject to the Corporations Act and the Listing Rules, the person preparing a report may determine the form, content and timing of it.

29.5 Audit

The Responsible Entity must cause:

- (a) the Trust Auditor to audit and report on the accounts; and
 - (b) the Compliance Plan Auditor to audit and report on the compliance plan,
- each in the manner required by the Corporations Act.

30. The register

30.1 Recognition of Holder

Except as required by law, the Responsible Entity:

- (a) must treat the person entered on the Register as the Holder of a Unit or an Option as the absolute owner of that Unit or that Option (as the context required); and
- (b) need not recognise any claim or interest in any Unit or Option by any other person.

30.2 Keeping registers

The Responsible Entity must establish and keep a register of Unit Holders and a register of Option Holders.

30.3 Information in registers

To the extent applicable, the Registers must be kept in accordance with, and contain the information required by, the Corporations Act. Otherwise, the Responsible Entity may decide what information is included in the Registers. If the Corporations Act applies, the Responsible Entity has the powers conferred under the Corporations Act in relation to the Registers.

30.4 Changes

Every Unit Holder must promptly notify the Responsible Entity of any change of name or address and the Responsible Entity must alter the relevant Register accordingly.

31. Meetings of Unit Holders

31.1 Convening meetings

The Responsible Entity may at any time convene a meeting of Unit Holders and must convene a meeting of Unit Holders when required to do so by the Corporations Act.

31.2 Calling and holding meetings

Meetings of Unit Holders must be called and held in accordance with the Corporations Act. However:

- (a) a notice of meeting sent by post is taken to be given the day after it is posted;
- (b) if, at any time, there is only 1 Unit Holder, the quorum for a meeting is one (1);
- (c) if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the Responsible Entity may in determining whether a quorum is present, count the individual in respect of each such capacity more than once; and
- (d) an appointment of proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.

31.3 Proxies

- (a) Any person, including a Holder, may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Responsible Entity at least 48 hours, or any shorter period determined by the Responsible Entity from time to time, before the time appointed for the Meeting at which the proxy proposes to vote.
- (d) If paragraph 31.3(c) is not complied with, the proxy is invalid.
- (e) The Responsible Entity is not obliged to enquire whether a proxy has been validly given.
- (f) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.

- (g) Clause 31.3(f) does not apply if the Responsible Entity has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

31.4 Resolution by Postal Ballot

- (a) A resolution of Holders may be passed by the Holders completing, signing and returning copies of a written resolution which has been sent by the Responsible Entity within a period specified by the Responsible Entity.
- (b) In respect of such a resolution a Holder has the number of votes determined in accordance with Section 253C(2) of the Corporations Act. The value of a Holder's total interests must be determined at such time as the Responsible Entity specifies.

31.5 CDP Account Holders

- (a) Each person who is a CDP Account Holder is permitted to attend (in person) any meeting, provided that by no later than the time by which proxy forms for a particular meeting are required to be lodged with the Responsible Entity (or such other time as the Responsible Entity deems practicable) the person has:
- (i) notified the Responsible Entity of his or her proposed attendance; and
- (ii) provided to the Responsible Entity evidence which is, in the reasonable opinion of the Responsible Entity, satisfactory to show that the person is in fact a CDP Account Holder at that time (or such other time as the Responsible Entity deems practicable).
- (b) Any CDP Account Holder so attending a meeting has the same right to speak at that meeting as a Unit Holder. However, a person's status as a CDP Account Holder does not give that person any right to vote (either on a show of hands or on a poll), demand a poll, be counted in a quorum, or enjoy any other rights of the kind typically enjoyed by Unit Holders.

32. Notices

32.1 Notice to Unit Holders

Subject to the Corporations Act (if applicable), a notice or other communication from the Responsible Entity to a Unit Holder must be given in writing and may be sent to the Unit Holder's physical or electronic address (which includes fax numbers and e-mail addresses) most recently provided by the Unit Holder.

32.2 Notice to Joint Holders

The Responsible Entity may give a notice or other communication to Joint Holders by giving it to the Unit Holder first named in the Register for that Unit.

32.3 Notice to successor

- (a) The Responsible Entity may give a notice or other communication to the persons entitled to a Unit in consequence of the death, or legal disability of a Unit Holder by sending it to the representatives or trustee of the Unit Holder at the address supplied for the purpose by the Unit Holder.

- (b) Until such an address has been supplied, the Responsible Entity may send the notice or other communication to an address most recently provided by the Unit Holder.

32.4 Signature on notice

The signature to any notice or other communication by the Responsible Entity may be written, printed, stamped or produced electronically and the signature may be that of the Responsible Entity or of any director or secretary of the Responsible Entity.

33. Termination of Trust

33.1 Trust termination date

The Trust terminates on the earlier of:

- (b) a date specified by the Responsible Entity as the date the Trust will terminate in a notice given to Unit Holders; and
- (c) the date on which the Trust is terminated in accordance with another provision of this constitution or by operation of law.

33.2 Corporations Act 2001

The Responsible Entity may terminate the Trust when permitted to do so, and must terminate it when required to do so, by the Corporations Act.

34. Procedure on termination

34.1 Notice of termination

Within a reasonable time before, or as soon as practicable after, termination of the Trust the Responsible Entity must give to each Unit Holder notice of the termination and of its intention to distribute the Trust Fund.

34.2 Procedure on suspension or removal from Official List

If at any time after the first time that the Trust is admitted to the Official List and the Units are Officially Quoted either:

- (a) the Units are suspended from Official Quotation and not re-admitted for Official Quotation; or
- (b) the Trust is removed from the Official List,

for a continuous period of 60 days after the day of such suspension or removal, then the Responsible Entity must call a Meeting within 30 days after the expiration of that continuous 60 day period to consider a Holder's resolution that the Trust be wound up.

If the Holders pass a resolution at that Meeting that the Trust be wound up, then the Trust must be wound up in accordance with, and upon the terms and conditions of, that resolution.

34.3 Realisation of Trust Fund

Subject to clauses 34.5 and 34.7, as soon as practicable after the giving of the notice under clause 34.1 the Responsible Entity must sell or realise the Assets in such manner as the Responsible Entity considers appropriate.

34.4 Final distribution

- (a) Subject to the terms of issue of any Unit or Class, the net proceeds from realisation must be distributed among the Unit Holders in proportion to the number of Units they hold.
- (b) For the purposes of paragraph (a), **Net Proceeds From Realisation** means the proceeds from sale or other realisation of the Assets after paying or providing for:
 - (i) all Liabilities of the Trust;
 - (ii) any unpaid fees payable (or to be payable) to the Responsible Entity; and
 - (iii) the Expenses of termination.

This clause does not limit clause 34.7.

34.5 Transfer of Assets

- (a) Despite clause 34.4, the Responsible Entity may transfer Assets to any Unit Holder holding Units having a value in excess of \$10,000, in satisfaction of that Unit Holder's entitlement in the Trust Fund.
- (b) The value of the Assets transferred will be calculated at market value, as determined by the Responsible Entity, and the Expenses incurred in transferring the Assets will be borne by the Unit Holder.

34.6 Postponement of realisation

The Responsible Entity may postpone the sale or realisation of any Asset for as long as the Responsible Entity thinks it is desirable to do so in the interests of Unit Holders. The Responsible Entity is not responsible for any loss attributable to the postponement.

34.7 Retention of property

- (a) The Responsible Entity may retain for as long as it thinks fit sufficient Assets as, in its opinion, may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust Fund.
- (b) If any Asset retained is ultimately found not to be required, then it must be sold or realised and the Net Proceeds from Realisation must be distributed to the Unit Holders in accordance with this clause.

34.8 Continuation of powers

The powers, duties and rights of the Responsible Entity (including the rights to remuneration and to any indemnities under this constitution or the law) continue following termination to the extent to which they are not inconsistent with this clause 34.

34.9 Audit

The Responsible Entity must provide for an independent audit by a registered company auditor of the final accounts of the Trust after termination.

35. Complaints

35.1 Complaints handling

The Responsible Entity must establish and maintain a procedure for dealing with complaints by Holders in relation to a Trust which is consistent with AS4269 Australian Standard on Complaints Handling or such other standard which satisfy's the requirements (if any) of the Corporations Act or ASIC from time to time.

35.2 Assistance and Information

- (a) The Responsible Entity must provide a Holder with all reasonable assistance and information that the Holder may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Responsible Entity.
- (b) A Holder lodging a complaint in relation to a Trust must provide the Responsible Entity with all information the Responsible Entity may require in order to properly deal with and resolve the complaint.

35.3 Handling of Complaints

- (a) The Responsible Entity must use reasonable endeavours to deal with a complaint by a Holder under clause 35.1 in accordance with this clause 35, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Responsible Entity must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (c) The Responsible Entity must inform the Holder by notice in writing of:
 - (i) its decision in relation to the complaint;
 - (ii) the remedies available to the Holder in relation to the complaint; and
 - (iii) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.

35.4 Procedure

A Holder may by notice in writing to the Responsible Entity (or by such other method as the Responsible Entity may approve), lodge a complaint in relation to the Trust or its operation. The Responsible Entity must:

- (a) acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;

- (b) record the complaint and the date it was received in a register maintained for that purpose;
- (c) consider the complaint in accordance with clause 35.2;
- (d) communicate in writing to the complainant the determination and the reasons for that determination of either the compliance committee or the Responsible Entity (as the case may be) in relation to the complaint as soon as practicable and in any event not more than 90 days after the Responsible Entity received the complaint;
- (e) if the complainant is dissatisfied with the outcome of the determination:
 - (i) refer the complainant to (and provide reasonable details of) an independent external dispute resolution body of which the Responsible Entity is a member; and
 - (ii) provide general guidance (without any obligation to provide legal advice) on further avenues available to the complainant.
- (f) if the complainant so requests, provide the complainant with an opportunity to inspect the material referred to in clause 35.5(d).

35.5 Consideration of complaint

In considering a complaint, the Responsible Entity must take into account such of the following factors as are relevant to that complaint:

- (a) the alleged breach of the Corporations Act and the Listing Rules, this constitution or breach of trust;
- (b) legal advice (if any) it has received in relation to that alleged breach;
- (c) the supporting material provided by the Unit Holder in relation to the alleged breach;
- (d) any material held by the Responsible Entity in relation to the alleged breach; and
- (e) any other relevant information.

35.6 Referral of complaint

The Responsible Entity must consider a complaint by referring it to either:

- (a) if the Trust has a compliance committee, the Responsible Entity's compliance committee; or
- (b) if the compliance committee considers the complaint to be of a material nature or the Trust does not have a compliance committee, the board of directors of the Responsible Entity.

36. Administrative provisions

36.1 Governing Law

This constitution is governed by the laws of Victoria. The Responsible Entity and the Unit Holders submit to the non-exclusive jurisdiction of the courts of that State.

36.2 Severability

If any part of this constitution is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of the constitution will not be affected and this constitution will be read as if the part had been deleted in that jurisdiction only.

36.3 Amendments to constitution

Subject to law, the Responsible Entity may amend this constitution (including this clause) by deed.

37. Definitions and interpretation

In this constitution:

Act includes:

- (a) the Corporations Act and any statute; and
- (b) any rule of common law, rule of equity or judgment which applies to the Trust or the Responsible Entity (as the case may be).

Adviser includes any adviser, expert, agent, delegate, solicitor, barrister, contractor, valuer, underwriter or accountant any other person appointed by the Responsible Entity to provide advice in relation to the Trust;

Application means any of the following, as the context requires:

- (a) an application for Units;
- (b) an application for Options; or
- (c) a notification of the exercise of Options.

Application Monies means the property required to be transferred by an applicant to the Responsible Entity on the making of an Application, which property may be in the form of:

- (a) Cash;
- (b) property other than Cash.

Approved Foreign Market has the same meaning as in the Corporations Act, as modified by ASIC Instrument:

ASIC means the Australian Securities and Investments Commission and its successors;

ASIC Instrument means:

- (a) an exemption or modification granted by ASIC in accordance with the Corporations Act; or
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Responsible Entity or the Trust.

Assets means all the assets, cash, investments, Property, rights and income of the Trust from time to time;

Asset Value at any time means the value of all Assets in the Trust Fund at that time, as most recently calculated in accordance with clause 23;

Associate has the meaning given to that term in the Corporations Act;

ASX means any financial market of the Australian Stock Exchange Limited and any successor to ~~the a financial market stock exchange~~ operated by it;

AS4269 Australian Standard on Complaints Handling means the essential elements for the management of complaints from inception to satisfaction or final determination and guidelines for the implementation of a complaints handling process;

Australian Accounting Standards means the following.

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (a) or (b) of this definition.

Australian ADI means:

- (a) an ADI (authorised deposit-taking institution) within the meaning given to that term in the *Banking Act 1959 (Cth)*; and
- (b) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Commonwealth Constitution.

Authorised Investment means any of the following investments, whether they are sited in or outside the Commonwealth of Australia:

- (a) any interest in real estate;
- (b) any licence to occupy real estate;
- (c) a fitting or fittings installed or present on real estate;
- (d) Securities in, or of, an entity where the Responsible Entity is satisfied that:
 - (i) the majority of the assets held by the entity is real estate; or

- (ii) the principal activity or activities of the entity are the ownership or development of real estate or the carrying out of construction on real estate; and
 - (iii) where the Security is an Interest in a Managed Investment Scheme the scheme is registered by ASIC under Part 5C.1 of the Corporations Act.
- (e) Interests in a Managed Investment Scheme in respect of which all of the following are satisfied:
- (i) the scheme is registered by ASIC under Part 5C.1 of the Corporations Act; and
 - (ii) the majority of the assets held by the scheme are Interests in a Managed Investment Scheme or Schemes (the Underlying Schemes) and the Responsible Entity is satisfied that:
 - (A) the majority of the assets held by each of the Underlying Schemes is real estate; or
 - (B) the principal activity or activities of each of the Underlying Scheme is the ownership or development of real estate or the carrying out of construction on real estate; and
 - (iii) Cash, money on deposit with an Australian ADI, a Cash Management Trust Interest;
- (f) bills of exchange and promissory notes, whether purchased or discounted, which have been either drawn, issued, endorsed or accepted by:
- (i) an ADI; or
 - (ii) a public statutory body constituted under a law of the Commonwealth of Australia or any State or Territory of Australia; or
 - (iii) a company which is currently included in the Official List and which has paid up share capital in excess of twenty million dollars (\$20,000,000).
- (g) certificates of deposit (whether negotiable or otherwise) issued by an ADI or a company which is currently included in the Official List and which has paid up share capital in excess of twenty million dollars (\$20,000,000);
- (h) Debentures, stocks, or bonds issued by a governmental or public authority of the Commonwealth of Australia or any State or Territory of Australia;
- (i) the lending of money on security (whether that security is byway of mortgage, charge, transfer, assignment or otherwise, and whether ranking first or otherwise, and whether taken severally or otherwise) of any property of the type described in paragraph (a) of this definition for a duration not exceeding 20 years, and for an amount which when added to moneys owing on any charge ranking prior to, or *pari passu* with, the security to be taken by the Responsible Entity does not exceed:
- (i) two-thirds; or

- (ii) if repayment of the whole of the principal and interest under any mortgage is insured under a mortgage insurance policy acceptable to the Responsible Entity, then nine-tenths,

of the value of the property as determined by an approved valuer within the period of 3 months preceding the taking of the security by the Responsible Entity;

- (j) loans on mortgage (including sub-mortgage) or charge of real estate (including without limitation a mortgage or charge granted by a person guaranteeing repayment of a loan), whether or not the mortgage or charge ranks as first mortgage or charge over the real estate, and whether taken severally or otherwise, including, but not limited to, byway of contributory mortgage. A loan on mortgage or charge of real estate is an Authorised Investment notwithstanding that the amount of the loan exceeds the proportion borne by the amount of the loan to the value of the real estate (at the time the loan was made) prescribed by any statute, and notwithstanding that the loan is made for a period of more than 7 years or any other period so prescribed;
- (k) loans on mortgage, sub-mortgage, charge, hypothecation, transfer, assignment or other security of any personal property, rights, licences or obligations (including any interest therein or any interest in any contract for the sale or purchase of real estate or personal property and including a mortgage or charge granted by a person guaranteeing repayment of a loan), and whether or not the security ranks as a first security over the secured personal property, and whether taken severally or otherwise including, but not limited to, those taken by way of contributory security;
- (l) the acquisition of any loan secured by any mortgage or security described in paragraph (j) or (k) of this definition and on the terms and conditions in it by way of taking an acquisition of the benefit and interest of the relevant mortgagee or security holder in it and in any policies of insurance relating to it;
- (m) real estate or other property which comes into the possession of, or under the control of, the Responsible Entity by virtue of its exercise of any rights or powers vested in it as mortgagee or security holder under any mortgage or security described in paragraph (j) or (k) of this definition, or real estate or other property which is acquired by the Responsible Entity in order to facilitate the disposal of real estate or other property;
- (n) Mortgage Backed Securities;
- (o) contracts to underwrite or sub-underwrite any issues of any of the investments referred to in paragraphs (a) to (o) above;
- (p) options or warrants in respect of any of the investments referred to in paragraphs (a) to (o) above; or
- (q) any investment in, or of, or by, an entity, other than set out above in paragraphs (a) to (q) above where the Responsible Entity is satisfied that either:
- (i) the majority of the assets held by entity is real estate; or
- (ii) the principal activity or activities of the entity is the ownership or development of real estate or the carrying out of construction on real estate.

book entry securities means the documents evidencing title to securities which are deposited by a Depositor with the Depository and are registered in the name of the Depository or its nominee, and which are transferable by way of book-entry in the Depository Register and not by way of an instrument of transfer;

Business Day has the meaning given to that term in the Listing Rules;

Call means a call on a Unit Holder to pay all or any part of the unpaid Issue Price for a Unit;

Cash means money in Australian currency and includes cheques and bank cheques in Australian currency;

Cash Management Trust Interest has the meaning given to that term in the Corporations Act;

CDP Account Holder means a person named in the Depository Register as a person on whose behalf the Depository or its nominee holds one or more Units;

CHESS Approved Securities means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved by the Minister as the securities clearing house under section 793 of the Corporations Act, namely, ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532);

Class means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only one Class;

Commencement Date means 13 October 2004;

Compliance Committee means the compliance committee (if any) for the Trust as required by section 601JA of the Corporations Act;

Compliance Plan means the compliance plan for the Trust as required by section 601HA of the Corporations Act;

Compliance Plan Auditor means the last person appointed under paragraph (b) of clause 29.1;

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

Corporations Regulations means the Corporations Regulations made pursuant to the Corporations Act;

Cost in relation to Land means its total cost to the Trust including:

- (a) any Taxes;
- (b) bank fees and charges, valuation fees, legal fees, brokerage fees and commission fees or similar charges; and
- (c) interest on the cost and fines and penalties with respect to the cost.

Current Unit Value means the amount calculated as follows:

$$\text{CUV} = \frac{\text{NAV}}{\text{NU}}$$

where:

CUV is Current Unit Value;

NAV is Net Asset Value; and

NU is the number of Units on Issue.

Custodian means the Responsible Entity or other custodian or nominee nominated under clause 25.2;

Deferred Unit means a Unit issued on the terms and conditions set out in Schedule 4;

Depositor means an account holder or a depository agent but does not include a sub-account holder;

Depository means The Central Depository (Pte) Limited (a Singapore-incorporated company which is a related corporation of SGX-ST) or any other corporation approved as a depository company or corporation for the purposes of the Companies Act Chapter 50 of Singapore, which operates the Central Depository System for the holding and transfer of book-entry securities;

Depository Register means a register maintained by the Depository in respect of book-entry securities;

Derivative Transaction means any contract, agreement or arrangement which is a futures contract (as defined in the Corporations Act), a forward exchange rate contract, a currency swap, an interest rate swap, a forward interest rate swap, a currency hedge, an interest rate hedge, a Commodity swap or hedge or any other derivative or other contract, agreement or arrangement similar to or having, in respect of its subject matter, a similar effect to any of the above;

Disclosure Document means any PDS or profile statement in relation to Units or Options;

Distributable Income means the amount determined in accordance with clause 27.1;

Distribution Entitlement means the entitlement of a Unit Holder to the Distributable Income of the Trust;

Exercise Price has the meaning given in clause 6;

Expenses includes any costs, commissions, brokerage, fees, Taxes and duties. Examples of expenses are given in Schedule 3;

Financial Year means:

- (a) for the first Financial Year, the period from the Commencement Date to the next 30 June;

- (b) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (c) in all other circumstances, the 12 Month period ending on 30 June in each year.

Foreign Holder means a Holder who has a registered address outside of Australia;

Foreign Rights has the meaning given in clause 7.9;

Forfeiture Notice means a notice given under clause 8.6;

Forfeited Unit means a Partly Paid Unit which is forfeited pursuant to clause 8.7(a) by non-payment of a Call;

Fund means the Trust Fund;

Fund Return has the meaning given in clause 21.2;

Fund Value at any time, means the aggregate of the following at that time as calculated by the Responsible Entity:

- (a) the Gross Asset Value;
- (b) the amount of money held in the Trust Fund (to the extent not included in paragraph (a)); and
- (c) the gross value of any other Assets (to the extent not included in paragraphs (a) or (b)).

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

Gross Asset Value means the sum of:

- (a) the value of the Trust Fund; and
- (b) any other amounts which should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (GST Act) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Holder means a Unit Holder or an Option Holder (as the context may require);

Independent Expert means an expert appointed by the Responsible Entity for the purpose of carrying out a valuation;

Interest in a Managed Investment Scheme has the same meaning given to that term in the Corporations Act;

Interim Distribution has the meaning given in clause 27.3;

Interim Distribution Period means any period determined by the Responsible Entity so long as the period commences and ends during the same Financial Year (but does not end on the last day of that Financial Year);

Issue Price in relation to a Unit or in relation to an Option means the dollar value of the total consideration payable at any time in respect of the issue of that Unit or the grant of that Option determined in accordance with the clause pursuant to which the Unit was issued or the Option was granted;

Joint Holders has the meaning given in clause 5.11;

Land includes any interest in land whether vested or contingent, freehold or leasehold, and whether at law or in equity;

Liabilities at any time, means the aggregate of the following at that time as calculated by the Responsible Entity:

- (a) each liability of the Responsible Entity in respect of the Trust or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
- (b) each other amount payable out of the Trust Fund or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability; and
- (c) other appropriate provisions in accordance with Australian Accounting Standards.

Liquid has the same meaning as in the Corporations Act;

Liquid Scheme has the meaning given to that term in sub-section 601KA(4) of the Corporations Act;

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

Managed Investment Scheme has the same meaning given to that term in the Corporations Act;

Management Fee means the fee payable under clause 21.1;

Market Price of a Unit (where applicable, of a Class) on any Business Day means:

- (a) the weighted average price per Unit in that Class for sales of that Class on the ASX (excluding any special crossings) for the period of 10 Business Days immediately prior to the relevant Business Day (whether or not a sale was recorded on any particular day); or
- (b) if Units in that Class:

- (i) have not been Officially Quoted for at least 10 consecutive Business Days before the relevant Business Day; or
- (ii) in the Responsible Entity's opinion a determination under paragraph (a) of this definition would not provide a fair reflection of the current market value of the Unit,

the price per Unit that an independent valuer determines to be the market price of the Unit on the relevant Business Day; and

- (c) 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;

Market Value means the value of an asset determined in accordance with Schedule 2;

Marketable Parcel has the meaning given to that expression in the Listing Rules;

Meeting means a meeting of Holders convened in accordance with this constitution;

Month means a calendar month;

Mortgage Backed Security means:

- (a) a "mortgage backed security" or a "mortgage backed certificate" as defined in, or for the purposes of, any Act of any State or Territory of Australia intended to specifically govern the activity of trustees or the imposition of stamp duty;
- (b) Interest in a Managed Investment Scheme where not less than half of the assets, profits or income of the scheme arise from the acquisition, holding, management or disposal of mortgages or a pool of mortgages;
- (c) a mortgage or charge over an interest to which paragraph (a) or (b) of this definition applies;

where a reference to a "pool of mortgages" is a reference to:

- (d) a "pool of mortgages" as defined in, or for the purposes of, any Act of any State or Territory of Australia intended to specifically govern the activity of trustees or the imposition of stamp duty; or
- (e) a pool of collection of assets, not less than half being assets of the kinds mentioned in paragraphs (i), (ii) or (iii) below, but otherwise being of any or all of the following kinds:
 - (i) mortgages;
 - (ii) mortgage backed securities or certificates;
 - (iii) debentures of corporations, not less than half of the payments under each of which are derived by the corporation in question from the receipts, whether of capital or income, from mortgages or a pool of mortgages;
 - (iv) Cash;

- (v) bonds, debenture, stock, treasury bills or notes of the Commonwealth of Australia or the Government of any State or Territory of Australia;
- (vi) debentures or stock of any public statutory body constituted under the law of the Commonwealth of Australia or any State or Territory of Australia;
- (vii) deposits with, or certificates of deposit issued by, an Australia ADI;
- (viii) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by an Australian ADI;
- (ix) "guaranteed investment contracts" or "guaranteed certificates" as defined in, or for the purposes of, any Act of any State or Territory of Australia intended to specifically govern the activity of trustees or the imposition of stamp duty,

and, except in paragraph (c) of this definition, a reference to "mortgage" is a reference to a mortgage of any estate or interest (including a leasehold interest) in land;

Net Accounting Income has the meaning given in clause 26.3;

Net Accounting Loss has the meaning given in clause 26.3;

Net Asset Value means the Gross Asset Value less the following:

- (a) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Responsible Entity determines, in consultation with the Auditor, should be made);
- (b) following any Distribution Calculation Date, the amount of any Distributable Income payable but not paid to Unit Holders on the day on which the Net Asset Value is determined; and
- (c) any amount paid in advance of a call on a Partly Paid Unit.

Net Fund Value at any time, means the Fund Value less the Liabilities at that time;

Net Income has the meaning given in clause 26.4;

Net Proceeds from Realisation has the meaning given in clause 34.4;

Official List means the official list of the ASX or an Approved Foreign Market;

Official Quotation or **Officially Quoted** means official quotation by ASX or an Approved Foreign Market of the Units or of the Options (as the context may require), including when quotation is suspended for a continuous period of not more than 60 days;

Option means an option granted by the Responsible Entity in respect of unissued Units giving the holder of the option the right, but not the obligation, to subscribe for Units;

Option Holder means a person registered as the holder of an Option (including persons registered jointly);

Ordinary Units means, subject to the Terms of Issue of any other Unit or Class, Units which carry all rights, and are subject to all the obligations, of Unit Holders under this constitution;

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

PDS means a product disclosure statement as required by Part 7.9 of the Corporations Act in respect of an offer or an issue of Units or of Options (as the context requires);

Performance Fee has the meaning given in clause 21.2;

Person includes a natural person, a company, a partnership or a body of persons whether resident, constituted, incorporated or otherwise formed in Australia;

Property means property of any description and includes Land or personal property and any estate or interest in property and any debt or chose in action or any other right or interest and any permit, licence or authority or any patent, copyright, design, trade mark or other form of intellectual property;

Quarter means each 3 month period ending on the last day of March, June, September and December in each year;

Register means the register of Unit Holders or Option Holders maintained by the Responsible Entity pursuant to Chapter 2C of the Corporations Act, set out in clause 30;

Related Body Corporate has the meaning given to that expression in the Corporations Act;

Renounceable Offer means the sale or assignment of a contractual right that is attached to an offer of securities on the stock exchange;

Responsible Entity means MacarthurCook Fund Management Limited ABN 79 004 956 558 or the responsible entity (as defined in the Corporations Act) of the Trust from time to time;

Schedule means a schedule to this constitution;

Securities has the same meaning given to that term in Section 92(3) of the Corporations Act;

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security;

Settlor means Craig Mathew Dunstan;

SGX-ST means the Singapore Exchange Securities Trading Limited;

Specific Foreign Holder means a Unit Holder or an Option Holder (as the context may require) whose address appearing in the Register is a country other than Australia;

Stapled Security has the meaning given in clause 29.4;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

Tax Act means the *Income Tax Assessment Act 1936 (Cth)* and the *Income Tax Assessment Act 1997 (Cth)*;

Terms of Issue in relation to a Unit or to an Option means the terms and conditions upon which that Unit or that Option is issued (other than those contained in this constitution);

Terms of Offer in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

Transaction Costs in respect of calculating the Withdrawal Price of a Unit, means the total cost of selling the Assets that must be sold in order to satisfy a withdrawal request under clause 10.1 or a Withdrawal Offer that has been accepted;

Transmittee has the meaning given in clause 13.2;

Trust means the trust constituted by this constitution;

Trust Auditor means the auditor from time to time appointed by the Responsible Entity to audit the financial reports of the Trust;

Trust Fund means all Assets of the Trust (including money paid to the Responsible Entity for the issue of any Units);

Unit means a unit created under the provisions of this constitution and for the time being held by Unit Holders;

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

Units on Issue means the total number of Units issued which have not been withdrawn;

Valuation Time means any time the Net Fund Value is determined;

Withdrawal Offer means an offer made by the Responsible Entity in accordance with section 601KB of the Corporations Act; and

Withdrawal Price in relation to a Unit means the price at which that Unit is to be withdrawn in accordance with clause 10.

37.2 Interpretation

In this constitution unless the context otherwise requires:

- (a) terms defined in the *Corporations Act 2001* are used with their defined meaning;
- (b) reference to a person includes any other entity recognised by law and vice versa;
- (c) the singular includes the plural and vice versa;
- (d) words importing one gender include every gender;

- (e) any reference to any party to this constitution or any other agreement or document includes that party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (f) an agreement, representation, or warranty on the part of two or more persons binds them jointly and severally;
- (g) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (h) clause headings are for reference purposes only;
- (i) reference to a Schedule is a reference to the corresponding Schedule to this constitution;
- (j) reference to a statute, ordinance, code, or other law includes regulations and other instructions under it and consolidations, amendments, re-enactments, or replacements of it;
- (k) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (l) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (m) a reference to cash includes cheques and bank cheques;
- (n) a reference to a body, other than a party to this constitution, including a commission or an exchange, whether statutory or not, which ceases to exist or whose functions or powers are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers and functions;
- (o) references to sums of money are to amounts in Australian dollars; and
- (p) a reference to the proper performance of a duty is a reference to the proper performance of the duty after all available appeals from each judgment in respect of the matter have been exhausted.

Schedule 1 - Valuation – Land

In the case of Land, until the Land is valued by an independent valuer, the Cost and, thereafter, the value determined by the independent valuer based on the price at which it might reasonably be expected to be sold at the date of valuation assuming:

- (a) a willing, but not anxious, buyer and seller;
- (b) a reasonable period within which to negotiate the sale, having regard to the nature and situation of the Land and the state of the market for the real property of the same kind;
- (c) that the Land was reasonably exposed to that market;
- (d) that no account is taken of the value or other advantage or benefit, additional to market value, to the buyer incidental to ownership of the Land being valued;
- (e) that the Trust has sufficient resources to allow a reasonable period for the exposure of the Land for sale; and
- (f) that the Trust has sufficient resources to negotiate an agreement for the sale of the Land.

Schedule 2 - Market Value

Item 1 - General

The market value of an asset of the Trust Fund other than Land will be calculated by reference to the following:

	Asset Class	Market Value Valuation Method
1.	Securities in, or of, an entity where the Securities are Officially Quoted.	The average sale price (weighted by reference to volume) at which the Security was sold on the ASX on the last 10 trading days before the day as at which the market value of the Security is being determined.
2.	Interest in a Managed Investment Scheme where the interests are not Officially Quoted.	The cost of acquisition (which shall include all costs and liabilities relating thereto) until the underlying assets in the Managed Investment Scheme are first valued, then its market value quoted by the responsible entity of the Managed Investment scheme on the relevant date or the nearest earlier date or, if the Responsible Entity believes that the purchase price would not provide a fair reflection of the market value of the Interest in the Managed Investment Scheme, then its market value quoted by the responsible entity of the scheme on the relevant date or the nearest earlier date or, the value determined as the fair and reasonable value by an Independent Expert.
3.	Any asset of the Fund other than the assets specified in paragraphs 1 to 3 above.	Valuation method determined by the Responsible Entity which will be by reference to the most recent value determined by an Independent Expert.

Schedule 3 - Expenses

The following are examples of Expenses and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) this constitution and the formation of the Trust;
- (b) the administration, management or promotion of the Trust or its Assets and Liabilities;
- (c) the admission of the Trust to any stock exchange and compliance with the rules of that exchange;
- (d) preparation, review, distribution and promotion of any disclosure document or offering memorandum in respect of Units;
- (e) the sale, purchase, insurance and any other dealing with Assets;
- (f) the custody of Assets;
- (g) any proposed investment;
- (h) convening and holding meetings of Unit Holders, the implementation of any resolutions and communications with Unit Holders;
- (i) postage and printing of all cheques, accounts, disclosure documents, information memoranda, notices, certificates and all other documents posted to all or any Unit Holders;
- (j) Taxes and bank fees;
- (k) the engagement of agents, valuers, Advisers and contractors;
- (l) preparation and audit of the taxation returns and accounts of the Trust;
- (m) maintenance of any register, including the Registers;
- (n) all legal costs and disbursements (on a full indemnity basis) in relation to the Trust including in connection with the interpretation of this constitution;
- (o) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a new trustee;
- (p) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Responsible Entity;
- (q) requirements imposed on the Trust by or arising out of the amendments to the Corporations Act made by the Managed Investments Act 1998, and that are recoverable from the Assets of the Trust to the extent permitted by the Corporations Act, including, although not limited to:
 - (i) the preparation, monitoring, review, amendment and/or replacement of the Trust's compliance plan;

- (ii) the appointment, removal and/or remuneration of the Compliance Plan Auditor;
 - (iii) the formation of the Trust's compliance committee;
 - (iv) the appointment, removal and/or remuneration of compliance committee members;
 - (v) the holding of meetings of the Trust's compliance committee, without regard to where the compliance committee member may reside in Australia;
 - (vi) any indemnity granted to a compliance committee member in accordance with this constitution and the Corporations Act;
 - (vii) any insurance purchased or maintained or premium for insurance paid or agreed to be paid in respect of the Trust in accordance with this constitution and the Corporations Act;
 - (viii) any amounts reasonably paid or payable for independent legal, accounting or other professional advice or assistance to the compliance committee in respect of its functions under the compliance plan and the Corporations Act;
 - (ix) implementing a matter reported on or recommended by the Trust's compliance committee.
- (r) the establishment of the Trust, the admission of the Trust to the Official List of the ASX or in respect of the Official Quotation of any Units or Options;
- (s) maintaining the Trust on the Official List of ASX or any ability to trade Units or Options or in connection with or arising out of any removal of the Trust from the Official list or suspension of any Units or Options from trading by ASX;
- (t) the services of asset managers, property managers, project managers and collection agents appointed in relation to Assets, despite such asset managers, property managers project managers and collection agents may be the Trustee or a Related Body Corporate of the Trustee; and
- (u) rates, development, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants and costs of leasing any Asset.

Schedule 4 – Terms of Deferred Units

1. Rights and Restrictions for Deferred Units

Each Deferred Unit carries the rights and restrictions set out in this Schedule 4.

2. Distribution

A Deferred Unit carries no right to participate in any distribution from the Trust until it converts to an Ordinary Unit.

3. Notices and Voting Rights

(a) Each Deferred Unit entitles the holder:-

- (i) to receive a copy of any notices or other document sent to holders of Ordinary Units; and
- (ii) to attend any meeting of Unit Holders.

(b) A Deferred Unit carries no voting rights until it converts to an Ordinary Unit.

4. Winding Up

A Deferred Unit carries no rights to participation in any distribution or return to Unit Holders on the winding-up of the Trust.

5. Non-transferable

Deferred Units may not be transferred except to a Related Body Corporate of the Responsible Entity. On the conversion of Deferred Units to Ordinary Units, those Ordinary Units cannot be sold, transferred or otherwise disposed of (except to a Related Body Corporate of the Responsible Entity) until the earlier of 1 July 2009, or the retirement or removal of the Responsible Entity as responsible entity of the Fund.

6. Conversion of Deferred Units

- (a) The Deferred Units shall only convert into Ordinary Units on the terms set out in this Schedule 4;
- (b) On each occasion that a Performance Fee calculated in accordance with clause 21.2 becomes payable to the Responsible Entity, a number of Deferred Units calculated by dividing the amount of the Performance Fee by the Market Price of a fully paid Ordinary Unit (as at the day on which the Performance Fee became payable to the Responsible Entity) will automatically convert to new fully paid Ordinary Units ranking equally with all other fully paid Ordinary Units on issue.

7. Listing of Ordinary Units

When the Ordinary Units referred to in paragraph 5 of this Schedule 4 become transferable, the Responsible Entity must apply for Official Quotation of the Ordinary Units.

8. Cancellation

If the Responsible Entity retires or is removed as the responsible entity of the Fund, any Deferred Units remaining on issue after satisfaction of the final Performance Fee payable to the Responsible Entity under clause 21.2 will automatically cancel.

EXECUTED as an Agreement.

EXECUTED by **MACARTHURCOOK
FUND MANAGEMENT LIMITED**
in accordance with section 127(1) of the
Corporations Act 2001 (Cth) by authority
of its directors:

.....
Signature of director

.....
Signature of director/company secretary
*delete whichever is not applicable

.....
Name of director (block letters)

.....
Name of director/company secretary
*delete whichever is not applicable