

AUSTRALIAN PROPERTY GROWTH TRUST
TRUST DEED

(Consolidated as at **09/12/2009**)

TABLE OF CONTENTS

1.	PRELIMINARY.....	1
2.	CLOSING DATE.....	8
3.	CONSTITUTION OF THE TRUST.....	8
4.	CONTRIBUTIONS.....	8
5.	APPLICATION OF CONTRIBUTIONS AND FUND	9
6.	THE FUND.....	9
7.	APPLICATION FOR UNITS.....	9
8.	INVESTMENT OF THE FUND	11
9.	INCOME OF THE TRUST.....	11
10.	COMMENCEMENT, PERIOD AND TERMINATION OF THE TRUST	12
11.	SALE OF REAL ESTATE.....	13
12.	WITHDRAWING FROM THE SCHEME.....	13
13.	TRANSFER OF UNITS.....	14
14.	TRANSMISSION	15
15.	LIMITATION OF ENTITLEMENT	16
16.	REGISTERS.....	19
17.	REIMBURSEMENT OF MANAGER EXPENSES.....	20
18.	LIABILITY OF THE MANAGER	22
19.	DUTIES OF THE MANAGER	24
20.	RIGHTS AND POWERS OF THE MANAGER	26
21.	RETIREMENT OR REMOVAL OF MANAGER.....	28
22.	AUDITOR	29
23.	MEETINGS OF UNITHOLDERS	30
24.	HOW TO CALL MEETINGS OF UNITHOLDERS	31
25.	UNITHOLDERS' RIGHTS TO PUT RESOLUTIONS AT MEETINGS OF UNITHOLDERS.....	32
26.	HOLDING MEETINGS OF UNITHOLDERS.....	33

27.	PROXIES AND BODY CORPORATE REPRESENTATIVES.....	34
28.	VOTING AT MEETINGS OF UNITHOLDERS.....	37
29.	MINUTES AND UNITHOLDERS' ACCESS TO MINUTES	39
30.	CHANGING THE DEED.....	39
31.	LIMITATION OF LIABILITY OF UNITHOLDERS.....	39
32.	TAXATION LIABILITY OF THE MANAGER.....	40
33.	INDEMNITY FOR COMPLIANCE COMMITTEE MEMBERS	42
34.	NOTICES	42
35.	MISCELLANEOUS.....	43
36.	HOW THE MANAGER DEALS WITH UNITHOLDERS COMPLAINTS	45
37.	RESTRICTED INTERESTS.....	45
39A	IMPACT OF INTERNATIONAL ACCOUNTING STANDARDS	46
38.	LISTING RULES TO PREVAIL	46
39.	STAPLING PROVISIONS.....	47
40.	INTERPRETATION.....	50

TRUST DEED

THIS DEED POLL dated 8 November 2004

This consolidated deed does not make any amendments to Trust Deed. It is a compilation based on the original deed and subsequent amending documents and it to be used for internal purposes only. This deed is not to be signed.

BY **APGF MANAGEMENT LIMITED** ACN 090 257 480 having its registered office at
Level 1, 295 Elizabeth Street, Brisbane, Queensland

(**'Manager'**)

BACKGROUND

- A. By trust deed dated 14 May 2004 (**'Trust Deed #1'**) the Trust was established and the Manager appointed to manage the property of the Trust for the Unitholders.
- B. Clause 31.1 of Trust Deed #1 authorises the Manager to modify, repeal and replace Trust Deed #1 with a new trust deed (**'Trust Deed'**) where the Manager reasonably considers the change will not adversely affect Unitholders' rights.
- C. The Manager reasonably considers the amendments contemplated by this Deed Poll do not adversely affect Unitholders' rights.
- D. This Deed is made with the intent that the benefits and obligations herein will enure not only to the Manager but also, to the extent provided in this Deed, to every person who is, or becomes, a Unitholder, and be binding on both the Manager and the Unitholders.

OPERATIVE PROVISIONS

1. PRELIMINARY

In this Deed and in any instrument, supplemental deed, agreement or other document made, entered into, executed or issued under this Deed, unless a contrary intention appears, the following expressions will have the following meaning:

'ASIC' means Australian Securities and Investments Commission;

'Accounting Standard' has the meaning given to that term in Section 9 of the Law;

'Affiliate' means any Person whose relationship with the Manager is of such a nature that a reasonable person might consider that dealings between them would not be at arm's length and includes an Associate;

'Applicant' means a person who has completed and lodged with the Manager an Application Form and has paid to the Manager their Contribution;

'Application Form' means the application form provided by the Manager and included in, or accompanying, a product disclosure statement or other offer document in relation to an offer of Units;

'Approved Market Analyst' means any person or firm, independent of and appointed by the Manager, who is duly qualified to advise on:

- (a) the appropriate trading window; or
- (b) the fair market price of the Units,

in order to determine the 'Current Market Price' under this document;

'Approved Stock Exchange' means any prescribed financial market and relevant market operator as prescribed by the Law and determined by the directors of the Manager for the purposes of listing the Stapled Securities;

'Approved Valuer' means a valuer, or, if that valuer is a company or firm, a person employed in the valuation by the company or firm, who:

- (a) is authorised to practise as a valuer under the law of the State where the relevant Real Estate is located;
- (b) has at least 5 years continuous experience in valuation of comparable properties in the region where the relevant Real Estate is located;
- (c) is appointed and instructed in writing by the Manager; and
- (d) is independent of the Manager;

'Assets' means Authorised Investments or any entitlement to Authorised Investments and Cash or any entitlement to Cash forming for the time being a constituent part of the Fund;

'Associate' means an Associate as defined in Division 2 of Part 1.2 of the Law;

'Auditor' means:

- (a) a person who is a chartered accountant and a registered company auditor under the Law; or
 - (b) a firm of chartered accountants, at least one member of which is a registered company auditor,
- and where more than one of the above is appointed by the Manager, includes each of them;

'Authorised Investment' of the Fund means:

- (a) deposits (whether secured or unsecured) with a Bank, bills of exchange, certificates of deposit and negotiable certificates of deposit issued by a Bank and bills of exchange or similar instruments accepted and endorsed by a Bank;
- (b) deposits with, and promissory notes, debentures, debenture stock, stock, inscribed stock, shares, bonds, bills or similar securities issued by the Commonwealth of Australia or any Australian State or Territory or any semi-governmental body or statutory authority where repayment of the principal and interest is guaranteed in each case by the Commonwealth Government or by a State or Territory Government;
- (c) any investment authorised by the *Trusts Act 1973 (Qld)* or any law of the Commonwealth of Australia;
- (d) real property;
- (e) Cash;
- (f) fixed interest securities, equities, and related securities and interests in registered managed investment schemes (including where the managed investment scheme invests in direct real property or mortgages); and
- (g) Derivatives.

'Bank' will have the meaning ascribed to that term in Section 9 of the Law;

'Business Day' means a day other than a Saturday, Sunday, a public holiday or other holiday appointed pursuant to the *Holidays Act 1983 (Qld)* in Brisbane;

‘Cash’ includes currency, coin, cash at bank, payment orders, cheques, transfers and drafts;

‘Certificate’ means a certificate of title to a Unit (if any) issued under this Deed (if any);

‘Commencement Date’ means the date of Trust Deed #1;

‘Company’ means Australian Property Growth Limited ACN 111 628 589;

‘Compliance Committee’ means a compliance committee for the Trust for the purposes of the Law;

‘Contributions’ means the contributions, including the Issue Price, to be made by the Applicant in accordance with clause 4(a) and as may be required by the then current prospectus, product disclosure statement or other offer document for the Units;

‘Costs and Disbursements’ includes, without limitation, legal costs (on an indemnity basis) and fees of professional advisers, stamp duty, valuation fees, registration fees and all other usual and proper costs, charges, expenses and outgoings (including without limitation, commission payments and brokerage);

‘Court’ means the Supreme Court of Queensland or such other court of competent jurisdiction;

‘Current Market Price’ of a Unit means:

- (a) the volume weighted average price per Unit for sale on the relevant Approved Stock Exchange (excluding any special crossings) for the period of 30 trading days (or such longer period as determined by the Manager after consideration of the volume and number of transactions and any other factors that the Manager considers relevant and which in the opinion of an Approved Market Analyst is a reasonable period of trading days to have regard to, to fairly arrive at the current market price of the Unit) immediately prior to the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
 - (i) Units have not been Officially Quoted for at least 30 consecutive trading days before the relevant day; or
 - (ii) in the Manager’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 Current Market Price will be:

$$\frac{\text{net Assets of the Trust}}{\text{Total Units on issue}}$$
 or such other amount which in the opinion of an Approved Valuer or Approved Market Analyst will approximate the fair market price of the Units;

‘Custodian’ means the person (if any) appointed by the Manager from time to time as Custodian of the Property. If no custodian is appointed then references to the Custodian are to the Manager;

‘Deed’ means this Deed Poll as executed and as it may from time to time be amended, and is the constitution for the Trust;

‘Derivative’ has the meaning set out in section 761D of the Law but limited for the purposes of lodging and not for speculation;

‘Development Agreement’ means the development agreement between the Company and Leyshon Properties Pty Ltd as trustee of London Woolstore Trust dated 8 November 2004 and includes any variations to the agreement that may be made from time to time;

‘Distribution’ means the distribution of income or capital of the Trust;

‘Distributable Amount’ means, in relation to the Trust, any amount determined by the Manager from time to time to be distributed to Unitholders;

‘Equity Investors’ means together those parties who submit funds for investment in the Projects and become Shareholders and Unitholders;

‘Extraordinary Resolution’ means a resolution of which notice has been given in accordance with clause 23.2(c) and that has been passed by at least 50% of the total votes that may be cast by Unitholders entitled to vote on the resolution (including Unitholders who are not present in person or by proxy);

‘Financial Statements’ has the meaning given to that term in Section 9 of the Law;

‘Financial Year’ means the period of 12 months ending on the 30th day of June in each year during the continuance of this Deed and includes the period commencing on the date of this Deed and expiring on the next succeeding 30th day of June and any period between the 30th day of June last occurring before the termination of the Trust and the termination of the Trust;

‘Financier’ means any lender of any money to the Manager on behalf of the Trust;

‘Foreign Exchange Contract’ has the meaning set out in section 761A of the Law;

‘Foreign Unitholder’ means a Unitholder whose address on the Register is a place outside Australia or, if the Trust is Officially Quoted, outside Australia and New Zealand;

‘Fund’ means all real and other property of any kind whatsoever, including the Real Estate, which may from time to time be paid to, received or held by, the Manager (other than the Manager’s fees and expenses) or held on their behalf for the benefit of the Unitholders under the provisions of this Deed whether pending investment or not and any investments for the time being representing the same and any income derived therefrom and accruals and capital accretions thereto howsoever arising;

‘GST’ has the meaning provided in the GST Act;

‘GST Act’ means *A New Tax System (Goods & Services Tax) Act 1999* as amended;

‘GST Value’ has the same meaning as ‘Value’ in the GST Act;

‘Income’ means all amounts which are, or would be recognised as, income by the application of generally accepted accounting principles;

‘Income of the Trust’ includes all Income received from the Fund;

‘Issue Price’ means:

- (a) while the Units are not Officially Quoted, \$0.50 per Unit or, if the Manager considers that \$0.50 does not reflect the value of the Units, the Market Value of the Assets less the Liabilities of the Fund divided by the total number of Units on issue; or
- (b) upon an initial public offering on an Approved Stock Exchange, \$0.50 per Unit; or
- (c) while the Units are Officially Quoted or upon an initial public offering on any Approved Stock Exchange, the Current Market Price;

‘Interim Distribution’ means distributions to Unitholders and Shareholders in addition to the Quarterly distributions;

‘Law’ means the *Corporations Act 2001* and the Corporations Regulations 2001;

‘Liabilities’ means any and all liabilities of any nature recognised by generally accepted accounting principles and practice, whether such liabilities are absolute, accrued, actual, contingent, present or future, liquidated or unliquidated, matured or unmatured including without limitation, any Taxes, Relevant Taxes, imposts or duties (however called or imposed) of any nature whatsoever;

‘Licence’ means the Australian Financial Services Licence issued by ASIC to the Manager;

‘Listed’ means admitted to and not removed from the official list of the Approved Stock Exchange;

‘Listing Rules’ means the official listing rules of the Approved Stock Exchange and any other rules of the Approved Stock Exchange which are applicable while the Trust is admitted to the official list of the Approved Stock Exchange, except to the extent of any express written waiver by the Approved Stock Exchange;

‘Manager’ means APGF Management Limited ACN 090 257 480 and includes any company appointed as responsible entity (as defined in the Law) to undertake the management of the Trust pursuant to the provisions hereof (whether original, additional or substituted);

‘Market Value’ means the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion, to be determined by an independent registered valuer (with at least five years experience in valuation of comparable properties) as approved by the parties (if applicable) and where the parties cannot agree on a valuer (if applicable), an independent valuer appointed by the President of the Queensland Division of the Australian Property Institute;

‘Month’ means calendar month;

‘Net Income’ means in relation to the Trust, ‘net income’ as that term is defined in section 95 of the Tax Act as calculated each Financial Year;

‘New Unitholder’ means a person who has applied for New Units;

‘New Units’ means Units issued or to be issued;

‘Notice’ means a notice, circular, statement, document, communication or information;

‘Offer Document’ means the disclosure document to be issued by the Company and the Manager seeking to raise approximately \$30 million from investors to carry out the Projects;

‘Officially Quoted’ means official quotation by the Approved Stock Exchange;

‘Ordinary Resolution’ means a resolution passed at a meeting of Unitholders duly convened and held in accordance with the provisions of this Deed by a majority of the Persons voting thereat (whether present in person, or by attorney, proxy or representative) upon a show of hands and if a poll is validly demanded then by a majority of the votes cast on such poll;

‘Person’ includes a Company, trust (including a person or body of persons acting on behalf of a trust), firm or body of persons;

‘Projects’ means any projects undertaken by the Trust and the Company;

‘Property’ means the property comprising the Fund including the Real Estate;

‘Purchase Price’ means in relation to the Property the purchase price for that property set out in the contract of sale;

‘Quarter’ means a calendar quarter;

‘Real Estate’ means any interest in the real property held by the Trust, including the real property known as Melbourne Street, South Brisbane and described as lot 8 on SP 172780, with title reference 50523733;

‘Record Date’ means the date determined by the Manager for determining the persons who are entitled to Distributable Amounts, New Units, or any other entitlement;

‘Redemption Amount’ means such amount per Unit as determined by the Manager in accordance with this Deed, the Law and the Listing Rules (as applicable) less the Redemption Provision (if any);

‘Redemption Provision’ means the amount (if any) determined by the Manager in respect of, or as an allowance for, costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, Taxes and other costs that may be incurred or are expected to be incurred by the Manager or its Associates in connection with:

- (a) the redemption of Units (as applicable);
- (b) the realisation and conversion into Cash of Property to satisfy the payment of the Redemption Amount;

- (c) where all or part of the Redemption Amount is paid by transferring Property, the valuation and transfer of the Property; and
- (d) the acquisition of Units by an Associate of the Manager to fund a redemption of Units;

'Register' means the register of Unitholders;

'Related', when used in relation to a Company, has a meaning consistent with Section 50 of the Law;

'Relevant Law' includes an act of any Parliament, code, ordinance, statute or any rules, regulations, bylaw, orders or other subordinate legislation made pursuant thereto;

'Relevant Person' means, for the purpose of clause 32, a Person who at any time is, was or becomes an Unitholder or the successor of any such Person;

'Relevant Tax' for the purpose of clause 32, includes, without limitation, any:

- (a) present or future stamp or documentary taxes, or any other excise or property taxes, GST, charges or similar levies, interest, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed;
- (b) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, GST, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatever, whenever and however imposed, and all liabilities with respect thereto;
- (c) taxes, GST, interest, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed upon:
 - (i) Contributions;
 - (ii) the Fund or Income, capital gains, profits, transactions, accounts, accruals, receivables, or any change in the worth or value of any property; or
 - (iii) the Manager in its capacity as trustee and Manager of the Fund; or
- (d) all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debits tax, GST, withholding tax, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (however called) imposed, levied, collected, withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of, an Unitholder or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

'Resolution' means a Special, Ordinary, or Extraordinary Resolution;

'Return' means, all payments of Unitholders and Shareholders including quarterly distributions, Interim Distributions and distribution of the net proceeds from the sale of the Projects;

'Share' means an ordinary share in the Company;

'Shareholder' means a shareholder of the Company in accordance with the Law;

'Special Resolution' means a resolution passed at a meeting of Unitholders duly convened and held in accordance with the provisions of this Deed by a majority consisting of not less than 75% of the Persons voting there at (whether present in person, or by attorney, proxy or representative) upon a show of hands and if a poll is validly demanded then by a majority consisting of not less than 75% of the votes cast on such poll;

'Stapled' means the joining together of a Share and a Unit so that individually, a Share or a Unit may not be transferred or otherwise dealt with without the other and which are quoted on an Approved Stock Exchange jointly as a Stapled Security or such other term as the Approved Stock Exchange permits;

'Stapled Security' means one Share and one Unit which are stapled together and registered in the name of a person;

‘Stapled Security Register’ means the register of Stapled Security holders maintained under rule 39.2;

‘Stapling’ means the process of joining which results in each Share and Unit being and remaining Stapled to each other;

‘Stapling Deed’ means the stapling deed between the Trust and the Company, relating to the stapling of units in the Trust and shares in the Company;

‘Supply’ has the same meaning as in the GST Act;

‘Tax Act’ means the *Income Tax Assessment Act 1936 (Cth)* and the *Income Tax Assessment Act 1997 (Cth)* as amended and the regulations made thereunder from time to time;

‘Tax Income’ means the ‘net income’ of the Trust as defined in section 95 of the Tax Act;

‘Tax Invoice’ has the same meaning as in the GST Act;

‘Taxable Supply’ has the same meaning as in the GST Act;

‘Taxation Amount’ for the purpose of clause 32 means in relation to a Relevant Person an amount of Relevant Tax referable to that Relevant Person including, without limitation, an amount of Relevant Tax imposed on account of or in respect of:

- (a) that Relevant Person;
- (b) a receipt or deemed receipt from, on behalf of, or in relation to, that Relevant Person;
- (c) a sum paid or payable to or applied or applicable on behalf of that Relevant Person or a Unit registered in the name of or transferred to or by that Relevant Person;
- (d) an amount of Relevant Tax which that Relevant Person is primarily liable to pay; and
- (e) an amount paid or payable to any Person intended bona fide to reimburse that Person for an amount of Relevant Tax referred to in paragraphs (a) or (b) of this definition which is paid or payable by that Person;

‘Taxes’ includes, without limitation, any:

- (a) present or future stamp or documentary taxes, or any other excise or property taxes, GST, charges or similar levies, interest, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed which arise from any payment made to or by the Manager under this Deed or any other instrument delivered hereunder or which are imposed on the Manager in respect of the Trust or any of the Authorised Investments thereof;
- (b) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, GST, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatever, whensoever and howsoever imposed, and all liabilities with respect thereto which arise from any payment made to the Manager under this Deed or any other instrument delivered hereunder; or
- (c) taxes, interest, penalties, GST, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed upon:
 - (i) Contributions;
 - (ii) the Trust, or the Income, capital gains, profits, transactions, accounts, accruals, receivables or any change in the worth or value of the Fund or the Authorised Investments; or
 - (iii) the Manager in its capacity as Manager of the Trust,

all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debits tax, withholding tax, GST, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of

an Unitholder or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

‘Total Funds Raised’ means the amount of funds raised under the Offer Document;

‘Trust’ means the Trust established by this Deed;

‘Unit’ means an undivided share in the Fund as provided in clause 6;

‘Unitholder’ means a person whose name is for the time being entered in the Register as the holder of a Unit and includes persons jointly so registered;

‘Unstaple’ means:

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

‘Value’ when used in relation to any Property means on each Valuation Date the value established by an Approved Valuer; and

‘Valuation Date’ means the latest date on which a valuation is conducted by an Approved Valuer after commencement of the operation of this Deed.

2. CLOSING DATE

The closing date is the date on which the offer for investment in the Trust closes.

3. CONSTITUTION OF THE TRUST

- (a) The Manager is hereby appointed as the trustee of the Trust and the Fund for the Unitholders and the Manager agrees to act as the trustee for the Unitholders upon and subject to the terms and conditions contained in this Deed.
- (b) The Manager declares that it holds and will at all times hold the Fund on trust for the Unitholders subject to the provisions of this Deed.
- (c) The appointment of the Manager as manager of the Trust is hereby confirmed and the Manager agrees to manage the Trust upon and subject to the terms and conditions contained in this Deed.
- (d) This Deed is made with the intention that the benefits and obligations hereunder may enure not only to the Manager but also to the extent provided to every Unitholder, and the Units will be held upon and subject to the provisions contained in this Deed.
- (e) The terms and conditions of this Deed will be binding on the Manager and each Unitholder and all Persons claiming through them respectively as if each such Unitholder was a party to this Deed.

4. CONTRIBUTIONS

- (a) Each Applicant will at the time of lodging an Application Form for Units pay to the Manager appointed by the Manager, their Contribution.
- (b) No Applicant is eligible to become a Unitholder unless their Contribution is accompanied by an Application Form duly completed in accordance with the instructions set out in the Application Form. The Manager has the sole discretion whether to accept or reject an application in whole or in part without giving reasons. Where the Manager determines to reject an Application, it must give written notice to the Applicant within a reasonable time after receipt of the Application. The Manager must within 10 business days after giving notice of rejection, refund the Application money to the Applicant.

- (c) All Contributions will be held in an interest bearing account established and maintained by the Manager in the name of the Manager or the Custodian on behalf of the Trust with any financial institution pending the allotment of Units to the Unitholder.
- (d) The Manager will calculate each Unitholder's share of the interest earned on the Contributions less any Taxes and bank charges and the Manager will account to each Unitholder for the amount so calculated within 21 days after allotment of Units to the Unitholder.

5. APPLICATION OF CONTRIBUTIONS AND FUND

- (a) Subject to this Deed and the requirements of the Law, the aggregate of the Contributions will be applied by the Manager on behalf of the Unitholders at the direction of the Manager:
 - (i) to invest in Authorised Investments from time to time, including payment of all acquisition costs of the Real Estate, and costs and disbursements relating to the acquisition of the Real Estate;
 - (ii) in the maintenance and management of the Fund on behalf of the Unitholders in accordance with the terms of this Deed; and
 - (iii) for any other purposes permitted by the Deed.
- (b) If insufficient Contributions are achieved by a particular closing date, the Manager will forthwith return to each New Unitholder their Contribution together with the New Unitholder's share of the interest from the date of deposit of that New Unitholder's Contribution under clause 4 less any Tax and bank or other charges.

6. THE FUND

- (a) The beneficial interest in the Fund will be divided into Units. Subject to the terms of issue, every Unit confers an equal interest in the Fund but not an interest in any particular part of the Fund.
- (b) The Manager has all the powers of a natural person and a body corporate, including the power from time to time to make distributions from the Fund to the Unitholders as the Manager deems surplus to the needs of the Trust.

7. APPLICATION FOR UNITS

7.1 Time for Settlement

- (a) The Manager will not offer any Unit for subscription or purchase, or issue invitations to subscribe for or buy Units unless it has complied with the Law in relation to that Unit.
- (b) The Manager in its absolute discretion may accept or refuse any application for Units in part or in whole and it will not be required to assign any reasonable ground for such refusal. Where the Manager refuses an application for Units in part or in whole, it will give written notice of its refusal to the Applicant, and will return to the Applicant the Contribution paid by the Applicant, within a reasonable period after making the decision to refuse the application.

7.2 Issue Price of Unit

- (a) Units in the Trust will issued for the Issue Price.
- (b) This clause 7.2 is at all times subject to the Law, any applicable ASIC policy, and the Listing Rules (if applicable).
- (c) Except as set out in this clause 7.2, the Manager will not sell or issue, or permit to be issued, Units at a price which is less than the Issue Price.

Rights Issues

- (d) Where:
- (i) the Units are offered to all Unitholders on the Record Date at substantially the same time and on a pari passu basis (whether or not the right of entitlement is renounceable);
 - (ii) all the Units offered are in the same class; and
 - (iii) the Units are offered for subscription at the same price,
- the Units may be issued at a price determined by the Manager, provided the price will be an amount not less than 60% of the Issue Price calculated at the close of the Business Day of the offer or, if the Trust is Listed, at the close of the Business Day of the announcement of the offer by the Manager to the Approved Stock Exchange.
- (e) For the purposes of an offer of Units for sale or issue, if the Manager reasonably considers it would be in the best interests of Unitholders to exclude Foreign Unitholders and not unfair to those Foreign Unitholders, the Manager may sell to whom the Manager sees fit, the Units that the Foreign Unitholders would have been entitled to but for the fact that they are Foreign Unitholders, instead of issuing or selling the Units to the Foreign Unitholders, taking reasonable steps to maximise the sale price net of expenses of the sale and promptly pay to the Foreign Unitholders the net sale price.

Reinvestment Plan

- (f) Where:
- (i) under an arrangement the whole or any part of any money payable to a Unitholder under this Deed, by way of Distributable Amounts is applied in payment for the subscription of Units; and
 - (ii) all Units issued are of the same class or classes;
 - (iii) the price of all such Units of each class issued at substantially the same time is the same; and
 - (iv) subject to clause 7.3, all Unitholders may from time to time elect to participate in the arrangement as to the whole or some proportion of a Distributable Amount which is payable to the Unitholder,
- the Units may be issued at a price determined by the Manager, provided the price will be an amount not less than 90% of the Issue Price calculated on the Business Day immediately after the Record Date for the relevant Distributable Amount.

[7.2(f) 'Placements' repealed DPA 1 with effect 9 March 2005]

7.3 Rounding of Issue Price

The Issue Price may be rounded up or down as the Manager thinks fit.

7.4 Issues in excess of Issue Price

Notwithstanding any other provisions of this clause 7 the Manager may issue Units at its discretion at a price which exceeds the Issue Price by up to 50%.

7.5 Further Issue of Units

- (a) Notwithstanding anything else contained in this Deed, and subject to the Law and the Listing Rules (if applicable), the Manager during the term of the Trust may determine to create and issue further interests or Units in the Trust. The purpose of the creation and issue of the further interests or Units may be for any reason including:
- (i) reduction of debt;
 - (ii) further development of the Real Estate;

- (iii) acquisition of adjoining land to the Real Estate;
 - (iv) expenditure which is in the opinion of the Manager necessary or desirable for the preservation or advancement of an asset of the Trust; or
 - (v) any other reason where the Manager reasonably believes it is in the best interests of the Unitholders to do so.
- (b) The further interests or Units created and issued under this clause 7.5 may be of the same class or of a different class to those already on issue.

8. INVESTMENT OF THE FUND

The Fund may, pending its application in accordance with the terms of this Deed, be invested in Authorised Investments in the name of the Manager on behalf of the Trust.

9. INCOME OF THE TRUST

9.1 Collection of Income

- (a) The Manager will collect, receive and get in the Income of the Trust and will pay it into an account in the name of the Manager on behalf of the Trust. The Manager will make all the payments relating to the Trust from this account.
- (b) Clause 9.1(a) is not to be interpreted to restrict the Manager engaging:
 - (i) a custodian; or
 - (ii) property managers; or
 - (iii) others,

to get in Income of the Trust into a trust account maintained by them or to make payments relating to the Trust from that trust account.

9.2 Income of the Trust

The decision of the Manager as to whether any item is Income or capital shall be final.

9.3 Determination of Distributable Amount

The Distributable Amount of the Trust for a Quarter, Financial Year or any other period will be such amount as the Manager determines, and the Manager is deemed to determine the Distributable Amount for a period to include the amounts actually paid to the Manager pursuant to the Stapling and Asset Management Deed to which the Unitholders are entitled for that period as Equity Investors.

9.4 Apportionment and Distribution of Amount Categories

The Manager may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Unitholder.

9.5 Distribution Equalisation Reserve

The Manager may require the withholding from distribution to Unitholders during any Month, Financial Year or any other period, an amount which the Manager considers is necessary to minimise variability in income distributions over Quarters, Financial Years or any other period.

9.6 Time for Distribution of Distributable Amount Distributions

The Distributable Amount for a Quarter must be distributed by the Manager to Unitholders no later than the date specified in clause 9.9.

9.7 Income Entitlements

The Distributable Amount of the Trust for any period will be credited to a distribution account and after payment of all Taxes (if any) will be distributed to Unitholders registered at the close of business on the last day of the previous Quarter to which the distribution relates in proportion to their Units.

9.8 Entitlement to Distributable Amount of the Trust

Persons registered as Unitholders at the close of business on the last day of a Quarter will be presently entitled (within the meaning of the *Income Tax Assessment Act*) to the Distributable Amount of the Trust in accordance with clause 9.7 for that Quarter.

9.9 Distribution of Income of Trust

The Manager will make distributions Quarterly during each Financial Year. Distributions will be made by the last Business Day of the month following the end of each Quarter.

9.10 Present Entitlement at Year End

At the end of the Financial Year, the Unitholders will be presently entitled to the Net Income derived during the Financial Year in proportion to their Units.

9.11 Interim Distributions

The Manager may at any time determine that capital or Income be distributed to the Unitholders.

10. COMMENCEMENT, PERIOD AND TERMINATION OF THE TRUST

10.1 Commencement

The Trust will commence on the Commencement Date and unless otherwise provided in this Deed, the Trust will continue until terminated in accordance with Clause 10.2. Notwithstanding anything in this Deed to the contrary, the Trust may not issue or redeem Units following the 80th anniversary of the Trust's establishment if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity. [

[10.1 substituted DPA 4 with effect 13 February 2007]

10.2 Termination

- (a) If the Manager is removed or retires from the management of the Trust, and the relevant meeting does not appoint a replacement manager, or the replacement manager appointed by the meeting does not accept that appointment, then the Manager must determine the Trust and the provisions of clause 10.2(c) shall apply to such determination.
- (b) If:
 - (i) at a meeting of Unitholders an Extraordinary Resolution is passed directing the Manager to wind up the Trust;
 - (ii) the Court makes an order directing the Manager to wind up or determine the Trust; or
 - (iii) if the Manager determines that the Trust should be wound up;then the Manager shall do so and the provisions of clause 10.2(c) shall apply.
- (c) Upon determination of the Trust, the Manager shall realise all Authorised Investments and other Assets, and, after deduction of all fees provided for in the Stapling and Asset Management Deed and otherwise in this Deed, shall distribute the net proceeds of the realisation of the Authorised Investments and other Assets among the Unitholders in proportion to the Units in respect of which they are respectively registered as holders, provided always that the Manager shall be entitled to retain its costs, charges and expenses, including its remuneration, and shall be entitled to retain for so long as it thinks fit such

amount which in its opinion may be required to meet all claims, demands and expenses incurred or expected to be incurred by the Trust on the determination thereof, provided further that a distribution shall be made only against delivery to the Manager of such evidence as the Manager may require of the Unitholder's entitlement thereto and against delivery to the Manager of such form of receipt and discharge as may reasonably be required by the Manager. Such net proceeds shall be distributed to the Unitholders as soon as practicable and in any case not later than 2 months after the settlement of the sale of all the Real Estate.

- (d) If the requisite number of Unitholders wish the Trust to be wound up earlier than in accordance with the foregoing provisions, then a meeting of Unitholders may be called in accordance with the provisions of this Deed to consider and vote on an Extraordinary Resolution directing the Manager to wind up the Trust.
- (e) Upon the termination of the Trust, the Manager shall prepare final accounts of the Trust and shall cause those accounts to be audited by the Auditor.

11. SALE OF REAL ESTATE

- (a) The final sale of the Property may occur:
 - (i) upon termination of the Trust; or
 - (ii) where the Manager is of the opinion it is in the best interests of Unitholders, but in any event, must occur in accordance with the Stapling and Asset Management Deed.
- (b) The Manager will as soon as practicable (but not later than 2 months after settlement of the sale pursuant to clause 11(a)) deal with the proceeds of sale on a winding up of the Trust as follows:
 - (i) first, in payment of any amounts mortgages or encumbrances which affect the whole of the Fund and which secure borrowings (if any);
 - (ii) second, in payment of the Manager's expenses as set out in clause 17, the costs of sale and any outstanding remuneration of the Manager as set out in clause **Error! Reference source not found.**;
 - (iii) third, in repayment of outstanding Unitholder's initial investment or subscription amount;
 - (iv) final, in payment of outstanding Distributions.
- (c) Where the ultimate sale of the Property occurred upon termination of the Trust, the Manager will divide the balance on a pro rata basis according to each Unitholder's Units and distribute it to the relevant Unitholder or at its direction.

12. WITHDRAWING FROM THE SCHEME

12.1 Right to withdraw

- (a) Subject to the Law, a Unitholder may not withdraw from the Trust other than by transfer of Units pursuant to clause 14 or pursuant to a withdrawal offer made by the Manager to Unitholders under this clause 12 (**'Withdrawal Offer'**).
- (b) The Manager is not at any time obliged to make a Withdrawal Offer.

12.2 Withdrawal Offer

- (a) A Unitholder may only redeem Units in accordance with the terms of any current Withdrawal Offer made by the Manager under this Deed and not otherwise.
- (b) If there is no Withdrawal Offer currently open for acceptance by Unitholders, a Unitholder has no right to redeem Units and thereby withdraw from the Trust.

12.3 Unitholder cannot deal with Unit after acceptance of Withdrawal Offer

A Unitholder cannot deal with a Unit after the Unitholder has accepted a Withdrawal Offer made by the Manager under this clause 12.

12.4 Conditions of withdrawal

The terms of any Withdrawal Offer made by the Manager under this clause 12 may impose conditions including (but not limited to) the following:

- (a) Unitholders can only redeem Units which have been held for a specified minimum period;
- (b) Unitholders will only be permitted to redeem a specified percentage of their Units during a specified period; and
- (c) the Redemption Amount not be paid directly to the Unitholder but be applied on behalf of the Unitholder to acquire securities in another entity or interests in a managed investment scheme that is registered pursuant to the Law.

12.5 Buy-back of Units

While the Trust is Listed, the Manager may, subject to and in accordance with the Law and any requirements under the Listing Rules, purchase Units on the Approved Stock Exchange and cause the Units to be cancelled.

13. TRANSFER OF UNITS

13.1 Transfer

A Unitholder may transfer their Units only in accordance with the provisions of this Deed and, in particular, the transferee must agree to be bound by the provisions of this Deed.

13.2 Instrument of Transfer

- (a) Where a Unit is not Officially Quoted:
 - (i) A transfer of a Unit, which is not Officially Quoted, will not be registered unless a stamped transfer of the Units in the Trust is delivered to the Manager together with the Certificate or Certificates (if issued) in respect of the Units to be transferred.
 - (ii) The Manager will not be required to effect any transaction or dealing in any Unit on behalf of or for the benefit of or at the request of any Unitholder unless the Unitholder has paid or otherwise provided for, to the Manager's satisfaction, all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges (whether similar to the foregoing or not) which may have become or may be payable in respect of the transaction or dealing. The Manager is entitled, if it thinks fit, to pay and discharge all or any of those duties and charges on behalf of the Unitholder concerned and retain the amount so paid out of any moneys to which the Unitholder may be, or become, entitled.
 - (iii) Provided that the Trust is not Listed, the Manager may decline to register any transfer during the period that the Register is closed pursuant to clause 16(g), or for any other reason.
 - (iv) Every instrument of transfer of a Unit which is registered will be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Deed to the contrary) the Manager may destroy it.
 - (v) If the Unit to be transferred is not Officially Quoted, where the Manager refuses to register any instrument of transfer, within 2 months after the date on which the instrument was deposited with the Manager in a registrable form, the Manager will give Notice of the refusal to the Person who deposited it and any instrument of

transfer which the Manager refuses to register will (except in the case of suspected fraud) be returned to the Person depositing it within 2 months of the giving of the Notice. The Manager is not required to provide a reason for refusing the transfer.

- (b) Where a Unit is Officially Quoted:
 - (i) any transfer of a Unit which is Officially Quoted must be effected in accordance with the Listing Rules;
 - (ii) the form of transfer must comply with the Law and the Listing Rules;
 - (iii) where the Manager subject to the law and the Listing Rules refuses to register the transfer, within 5 days after the date on which the instrument of transfer was deposited with the Manager in a registrable form, the Manager will give Notice of the refusal to the person who deposited it and any instrument of transfer which the Manager refuses to register will (except in the case of suspected fraud) be returned to the Person depositing it within 5 days of the giving of the Notice. The Notice will state the reasons for the refusal.
- (c) Subject to the Listing Rules, the transferor of a Unit remains the holder of the Unit until the name of the transferee is entered in the Register.
- (d) The Manager may decline to register any instrument of transfer where in the Manager's opinion the transfer may contravene any legislation or guidelines issued by or on behalf of the Government of the Commonwealth of Australia in respect of ownership of assets by persons not being Australian persons, or when required to do so by the law, the Law or any of the Listing Rules.
- (e) Subject to the Listing Rules, the Manager may suspend registration of transfers of Units at the times and for the periods it thinks fit.
- (f) The Manager is not required or obliged to repurchase or purchase any Units from a Unitholder. A Unitholder may only withdraw from the Trust by way of a transfer or transmission or as otherwise provided in this Deed.

14. TRANSMISSION

- (a) In the case of the death of a Unitholder, the survivor of the deceased Unitholder where they were a joint holder of a Unit, or the executor or administrator of the deceased Unitholder where they were the sole owner of a Unit, will be the only Person recognised by the Manager as having any title to any Unit registered in their name.
- (b) Subject to clause 14(e), any Person becoming entitled to any Unit in consequence of the death or bankruptcy or lunacy of an Unitholder or otherwise by operation of law may, upon such evidence being produced as may from time to time be required by the Manager and subject as hereinafter provided, elect either to be registered himself as holder of the Unit or to have some Person nominated by them registered as the holder thereof.
- (c) Subject to clause 14(e), if the Person so becoming entitled elects to be registered, they will deliver or send to the Manager an executed notice in writing in the form prescribed by the Manager or in such other form as the Manager may approve stating such election. If the Person so becoming entitled elects to have their nominee registered, they will testify the election by delivering or sending to the Manager a form of transfer of the Unit to that nominee. All the provisions of this Deed relating to the registration of transfers of Units will be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy or lunacy of the Unitholder had not occurred and the notice or transfer was a transfer executed by such Unitholder.
- (d) A Person becoming entitled to a Unit in consequence of the death, bankruptcy or lunacy of a Unitholder or otherwise by operation of law will be entitled to receive and may give a discharge of all moneys payable in respect of the Unit but will not be entitled to receive

notices of or to attend or vote at any meetings of Unitholders until the Person has become registered as the holder of the Unit.

- (e) For the purposes of this clause, an application by a personal representative of a deceased Unitholder for registration as the holder of Units in place of the deceased Unitholder will be deemed to be an instrument of transfer effecting a transfer of the Unit to the personal representative.
- (f) The production to the Manager of a document that is under the laws of a State or Territory of Australia, sufficient evidence of probate of the will, or letters of administration of the estate of a deceased Unitholder having been granted to a Person will be accepted by the Manager as sufficient evidence of the grant.

15. LIMITATION OF ENTITLEMENT

15.1 Prescribed value limit

In this clause the term 'the prescribed value' shall mean 15% of the beneficial interest in the Units in the Trust. Except as provided in this clause, a person shall not, either alone or together with any other person, acquire Units if any person who is not entitled to Units or is entitled to not more than the prescribed value would immediately after the acquisition be entitled to more than the prescribed value.

15.2 Manager's Consent

The restriction contained in clause 15.1 shall not apply to or in relation to an acquisition or holding of a Unit or Units with respect to:

- (a) which the Manager has given its prior written consent, which it may grant or withhold in its absolute discretion and subject to any conditions which the Manager in its absolute discretion may impose;
- (b) any Units issued pursuant to a distribution reinvestment plan activated by the Manager;
- (c) any right/entitlement issue of Units by the Manager; or
- (d) any other issue of Units for which the Manager has resolved this clause 15 does not apply.

15.3 Relevant interest

For the purposes of this clause a person shall be taken to acquire a Unit (in this clause 15.3 referred to as 'the Unit concerned') if:

- (a) the person acquires a relevant interest in the Unit concerned as a direct or indirect result of a transaction entered into by their or on their behalf in relation to the Unit concerned or in relation to any other securities; or
- (b) the person acquires any legal or equitable interest in Units or in any other securities and, as a direct or indirect result of the acquisition, another person acquires a relevant interest in the Unit concerned.

15.4 Person Concerned

For the purposes of this clause the Unit or Units to which a person (in this clause 15 and clause 15.5 referred to as the 'person concerned') is entitled includes:

- (a) Units in which the person concerned has a relevant interest; and
- (b) Units in which a person who is an associate of the person concerned has a relevant interest.

15.5 Associate

A reference in clause 15.4 to a person who is an associate of the person concerned shall be construed as a reference to:

- (a) if the person is a corporation:
 - (i) a director or secretary of the corporation;
 - (ii) a corporation that is related to the person concerned; or
 - (iii) a director or secretary of such a related corporation;
- (b) a person with whom the person concerned has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied:
 - (i) by reason of which the first-mentioned person, or the person concerned, may exercise, directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to the Units;
 - (ii) under which the first-mentioned person may acquire from the person concerned, or the person concerned may acquire from the first-mentioned person, Units; or
 - (iii) under which the first-mentioned person, or the person concerned, may be required to dispose of Units in accordance with the directions of the person concerned, or of the first-mentioned person, as the case may be;
- (c) a person in concert with whom the person concerned is acting, or proposes to act, in relation to the acquisition or proposed acquisition of Units;
- (d) a person with whom the person concerned is, or proposes to become, associated, whether formally or informally, in any other way in relation to the Units; or
- (e) if the person concerned has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with another person as mentioned in clauses 15.5(b), (c) or (d) above, that other person.

15.6 Control

Subject to this clause 15.6, a person has a relevant interest in a Unit for the purposes of this clause if that person has power:

- (a) to exercise, or control the exercise of, the right to vote attached to that Unit; or
- (b) to dispose of, or to exercise control over the disposal of, that Unit,

however, a relevant interest in a Unit shall be disregarded:

- (c) if the Unit is subject to a trust, the relevant interest is that of a trustee; and
- (d) the trustee is a bare trustee.

For the purposes of clause 15.6(d) above, a trustee shall not be taken not to be a bare trustee by reason only of the fact that the trustee is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

15.7 Power of Manager

- (a) The Manager may, within the limitations of clause 13.2, decline to allot or to register any transfer or transmission of a Unit if in the Manager's opinion, the allotment or registration thereof would or might result in or have the effect of causing an infringement or contravention of clause 15.1.
- (b) Where the Manager is satisfied that a person has acquired Units in such circumstances as might or would in the opinion of the Manager result in or have the effect of causing an

infringement or contravention of clause 15.1, the Manager may do either or both of the following:

- (i) by notice in writing to such person, require the person to dispose of the Units so acquired, or any part thereof, (in this clause 15.7 referred to as the 'specified Units') within such time as is specified in the notice, provided that in the absence of any such requirement by the Manager, the person concerned shall not be entitled in any way to set aside or cancel the transaction whereby they acquired the specified Units, nor to claim any refund or to otherwise recover any monies paid in respect thereto; and
 - (ii) prohibit the exercise of any voting or other rights attached to such Units and in the event of an exercise or purported exercise of such rights the same shall be disregarded for all purposes.
- (c) If the requirements of any such notice are not complied with by the person to whom the notice is addressed within the time specified in the notice, the Manager may cause the specified Units to be sold on the Approved Stock Exchange if they are Officially Quoted or, if they are not so quoted, in such other manner as the Manager may determine.
- (d) The Manager may:
- (i) appoint a person to execute as transferor a transfer in respect of any Units sold in accordance with the provisions of clause 15.7(c) and to receive and give good discharge of the purchase money thereof; and
 - (ii) register the transfer notwithstanding that the certificate (if one has been issued) for such Units may not have been delivered to the Manager in which event the previous certificate (if any) shall be deemed to have been cancelled.

15.8 Manager not liable

Nothing in clause 15 shall render the Manager liable or responsible by reason of any person acquiring Units in contravention of clause 15 or failing to comply with the obligation imposed by clause 15.

15.9 Request for information

- (a) The Manager, before or at any time after allotting any Units or approving or rejecting any transfer or transmission of Units or at any other time and from time to time, may, by notice in writing to the applicant, allottee, transferee, transmittee or Unitholder, require the person (or, where such person is a corporation, a competent officer thereof) to furnish the Manager such information or evidence (on oath or otherwise verified if the Manager should so require) as the Manager may consider likely to be of assistance in determining whether or not such person is eligible to become or remain a Unitholder.
- (b) Without limiting clause 15.9(a) above, the Manager may at any time by notice in writing require a Unitholder within 2 Business Days after service of the notice, to furnish to the Manager:
- (i) a statement in writing setting out:
 - (A) full particulars of the person's relevant interests in Units ('the Units') and of the circumstances by reason of which the person has that interest; and
 - (B) so far as it lies within his knowledge:
 - (I) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units;
 - (II) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (III) full particulars of the name and address of each person (if any) who has given to the Unitholder instructions in relation to any matter concerning the Units and of those instructions, and the date or dates on which those instructions were given; and

- (C) a true copy of every letter, agreement, declaration of trust, deed and, without limitation, document in the person's possession or within the person's control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units held by the person.
- (ii) where the Manager received, pursuant to a notice under clause 15.9 information that another person has a relevant interest in any of the Units; or another person has given instructions in relation to any matter concerning the Units; a statement in writing setting out:
 - (A) full particulars of any relevant interest that the person has in any of the Units and of the circumstances by reason of which the person has that interest; and
 - (B) so far as it lies within the person's knowledge:
 - (I) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units;
 - (II) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (III) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed instructions in relation to any matter concerning the Units and of those instructions, and the date or dates on which those instructions were given; and
 - (C) a true copy of every letter, agreement, declaration of trust, deed and without limitation document in the person's possession or within the person's control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units;
- (c) If the requirements of any notice referred to above are not complied with within the time so specified, the Manager may:
 - (i) refuse to register a transfer of the Units within the limitations of clause 13.2;
 - (ii) prohibit the exercise of any voting or other rights attached to the Units and in the event of any exercise or purported exercise of such rights the same shall be disregarded for all purposes;
 - (iii) suspend the payment of any distributions or other monies payable on or in respect of the Units;
 - (iv) cause the Units to be sold upon any Approved Stock Exchange if they are Officially Quoted or at such place as the Manager determines and at a price which the Manager, acting in good faith, determines or accepts.
- (d) In the event of any Units being sold pursuant to clause 15, the Manager may:
 - (i) appoint a person to execute on behalf of a Unitholder the transfer of the Units and to receive and to give a good discharge for the purchase money;
 - (ii) register the transfer notwithstanding that the certificates for the Units (if any) may not have been delivered to the Manager and issue a new Certificate to the transferee, in which event the previous certificate shall be deemed to have been cancelled.
- (e) The purchase money in respect of the Units so sold less the expenses of sale shall be paid to the person in whose name the Units were registered immediately prior to the sale thereof. After the purchaser's name has been entered into the Register in respect of the Units, the title of the purchaser to the Units shall not be called into question on any legal ground in relation to the terms of this clause 15.

16. REGISTERS

- (a) The Manager will keep and maintain or cause to be kept and maintained an up-to-date Register of Unitholders in such form and containing such particulars as are required by the

Law or any declaration, exemption or ruling granted or made thereunder, and such other particulars as the Manager may from time to time consider appropriate.

- (b) Subject to clause 16(a), there will be entered in the Register:
 - (i) the names, addresses and descriptions of the Unitholders from time to time;
 - (ii) the Units from time to time held by each Unitholder;
 - (iii) the date at which the name of each Unitholder was entered in the Register in respect of their Units;
 - (iv) the date at which any person ceased to be the holder of Units; and
 - (v) any other information required by law.
- (c) The information relating to a Unitholder (or any of it) may be expunged from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Unitholder ceased to be the holder of Units.
- (d) Subject to clause 16(e), any Unitholder will be entitled to:
 - (i) inspect the Register, and any Unitholder, free of charge, and in the case of any other Person, upon payment for each inspection of the maximum amount prescribed by the Law or such lesser amount as the Manager may from time to time require; and/or
 - (ii) obtain a copy of the Register, free of charge, and in the case of the Unitholder or other Person, at a charge prescribed by the Manager from time to time provided that any such charge will not exceed (for each copy) the maximum amount prescribed from time to time by the Law,

during normal business hours on any Business Day.

- (e) Clause 16(d) will not require the Manager to make available or provide copies of the Register in excess of its obligations to do so under the Law.
- (f) The Manager may after receiving a written request from any Unitholder resident in such State or Territory make available for inspection by the Unitholder a complete list of all Unitholders whether or not resident in that State or Territory.
- (g) Provided the Trust is not Listed, the Manager may close the Register or part of the Register for any time or times but so that no part of the Register will be closed for more than 30 days in the aggregate in each calendar year. Closure of the Register if the Trust is Listed must only be in strict adherence to all applicable Listing Rules and as directed by or with the prior consent of the Approved Stock Exchange.
- (h) Each Unitholder will give the Manager Notice of any change of name or address on the part of such Unitholder and the Manager, upon receiving such notification, will alter, or cause to be altered, the Register accordingly.

17. REIMBURSEMENT OF MANAGER EXPENSES

- (a) All costs, charges and expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Manager or the performance of its duties under this Deed will be paid out of the Fund, and where the Manager pays such costs, charges and expenses the Manager will be indemnified and will be entitled to be reimbursed out of the Fund in respect of such costs, charges and expenses and any GST payable by the Manager in respect of those costs, charges and expenses.
- (b) Without limiting the generality of clause 17(a), such costs, charges and expenses will include but are not limited to the following:
 - (i) all costs, charges and expenses incurred in connection with the acquisition, improvement, management, custody, transfer, financing or disposal of the Authorised Investments, including commissions, procuration fees, brokerage, legal fees, bank charges and stamp duty;

- (ii) the fees and expenses of the Auditor of the Trust, or compliance plan of the Trust;
- (iii) stamp duty;
- (iv) all costs, charges and expenses incurred in connection with the borrowing of money on behalf of the Trust or in connection with the Real Estate including stamp duty, establishment fees, legal fees and interest together with discount and acceptance fees in respect of bill facilities;
- (v) all Taxes and GST (save those payable in respect of the Income of the Manager) whether payable or which may become payable in respect of the Fund;
- (vi) fees and charges of any regulatory authority including, without limitation, local government, titles office and Office of State Revenue;
- (vii) fees and expenses of any Approved Valuer and of any solicitor, barrister, broker, computer expert or other expert from time to time employed by the Manager in the discharge of its duties under this Deed but no reimbursement of the fees and expenses of such expert will be paid from the Fund where such expert is appointed to perform the functions of the Manager;
- (viii) all costs, charges and expenses of and incidental to the preparation, execution and stamping of this Deed, or any deeds or plans supplemental hereto;
- (ix) asset management fees, project management fees, construction management and development management fees;
- (x) the costs of convening and holding any meeting of Unitholders;
- (xi) costs of printing, postage and other fees in respect of all electronic transfers or cheques, accounts, distribution statements, notices and other documents posted to all or any Unitholders in accordance with provisions of this Deed including envelopes;
- (xii) all costs charges and expenses incurred in relation to the preparation and distribution of any periodical or other report or document required by law to be prepared in respect of the Fund or the Real Estate or prepared by the Manager in good faith in respect of the Fund or the Real Estate;
- (xiii) expenses in connection with the keeping and maintaining of accounting records and registers (including the Register);
- (xiv) all agents' fees and expenses;
- (xv) any monies advanced by the Manager (or any other person) to secure the Real Estate including option fees and deposits;
- (xvi) costs and disbursements incurred by or on behalf of the Manager in connection with the retirement of the other of them and the appointment of a substitute;
- (xvii) costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings to enforce any provisions of the Deed;
- (xviii) insurance premiums involved in insuring the Real Estate or any Asset;
- (xix) costs and disbursements incurred in the preparation and lodgement of returns under the Law or any other statute;
- (xx) costs of acquiring, establishing and developing computer software systems required for the administration of the Trust;
- (xxi) costs and expenses incurred in conversions, rearrangements or reorganisations that are associated with complying with any law;
- (xxii) all other costs and disbursements in connection with the management and administration of the Trust and the performance of the functions and duties of the Manager under the Deed;
- (xxiii) all costs and disbursements in connection with the establishment, management and maintenance of any listing on any exchange or secondary market of the Trust and the performance of the functions and duties of the Manager under the Deed;
- (xxiv) any costs incurred by the Manager arising out of the matters contained in clause 20;

- (xxv) all costs, charges and expenses (including legal, compliance, accounting, tax, financial and other services) of establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of any document prepared in respect of the Deed, or the Trust;
- (xxvi) all costs, charges and expenses (including legal, compliance, accounting, tax, financial and other services) in respect of the acquisition, leasing and ultimate sale of the Real Estate; and
- (xxvii) insurances, including insurance premiums payable in respect of any Property, and insurance policies with respect to insurance cover for the Manager, its directors, employees, officers and agents and Compliance Committee members.
- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or Associates of, the directors of the Manager.
- (d) The Manager may pay its reimbursement out of the Fund in priority to any claim by the Unitholders.
- (e) The Manager will be entitled to pay commission or brokerage to any agent or broker who has introduced a Unitholder to the Manager. The amount of commission or brokerage may be determined by agreement between the Manager and the agent or broker.
- (f) All Taxes incurred in connection with the Trust by the Manager will be paid out of the Fund, and where the Manager pays such Taxes, the Manager will be indemnified and will be entitled to be reimbursed out of the Fund in respect of such Taxes.

18. LIABILITY OF THE MANAGER

Without in any way limiting the covenants given by the Manager hereunder and in accordance with the requirements of the Law and without prejudice to any indemnity allowed by law or elsewhere herein given to the Manager it is hereby expressly declared as follows:

- (a) The Manager is authorised to take all actions necessary to give effect to the terms of the Stapling and Asset Management Deed.
- (b) Subject to the Law the Manager will not incur any liability to anyone in respect of any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any ordinance rule regulation or by-law made pursuant thereto or of any decree order or judgment of a competent Court the Manager will be hindered, prevented or forbidden from doing or performing.
- (c) Subject to the Law the Manager will not be liable to account to any Unitholder or otherwise for any payments made by the Manager in good faith to any duly empowered authority of the Commonwealth of Australia or any State or Territory (including any local government authority or semi-governmental instrumentality) thereof for Taxes or other charges on the Fund or otherwise or with respect to any transaction under this Deed notwithstanding that any such payment ought not or need not have been made.
- (d) Subject to the Law, and except in the case of fraud or dishonesty or wilful neglect, the Manager is not responsible to Unitholders for any loss suffered in respect of the Trust. Without limiting anything in the first sentence of this clause, when acting in good faith without fraud, the Manager will not be liable to any Unitholder or any future responsible entity, Unitholder, or any other person:
 - (i) for loss caused by:
 - (A) the Manager's acts or omissions in reliance on:
 - (I) the Register; or
 - (II) the authenticity of any documents;

if the Manager has no reason to believe the relevant material not to be authentic;

- (B) any act or omission required by law or by any court of competent jurisdiction;
- (C) any particular price or reserve not having been realised;
- (D) any act by the Manager giving effect to the arrangements set out in the Stapling and Asset Management Deed;
- (E) any unnecessary payment having been made to any fiscal authority; or
- (F) the act or omission of any operator of any securities title, transfer or holding system; and

to any greater extent than the amount which the Manager is entitled to, and does, recover through its right of indemnity from the Trust in accordance with this Deed.

- (e) The Manager may validly act upon the opinion or advice of or information obtained from barristers and solicitors whether instructed by the Manager or by any third party, and the Manager may act upon any statement of or information obtained from any bankers, accountants, Approved Valuers or other Persons believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted. The Manager will not be liable for anything done or suffered by it in good faith (which will not include any loss occasioned to a Unitholder to the extent that such loss may be attributable to the Manager's neglect or default) in reliance upon such opinion, advice, statement or information provided that:
 - (i) any such barristers, solicitors, bankers, accountants, Approved Valuers and other Persons consulted are independent of the Manager; and
 - (ii) in any case where the Manager is seeking to be indemnified out of the Fund in relation to any matters upon which such bankers, accountants, Approved Valuers or other Persons have been consulted the Manager undertakes to supply the Unitholders, at its own expense, with all information in its possession or over which it has control which may be relevant to any decision by them to so indemnify the Manager.
- (f) Except so far as herein otherwise expressly provided, the Manager will as regards all the trusts, powers, authorities and discretions vested in it, have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode of and time for the exercise thereof, and in the absence of fraud or breach of trust, the Manager will be in no way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.
- (g) Subject to any statute or rule of law, nothing in this Deed will prevent the Manager or any subsidiary of the Manager or the directors or officers of the Manager or of such subsidiary from at any time contracting or acting in any capacity as representative or agent or entering into any financial, banking, agency or other transaction with the other of them or any Unitholder or any company in or with which any part of the Fund is invested by the Manager in the performance of any of the duties or obligations imposed upon the Manager pursuant to the terms of this Deed, and provided further that any such person or corporation will act in connection with such transactions in a fiduciary relationship of utmost good faith to all Unitholders.
- (h) The Manager may appoint any officer (whether jointly or severally) to exercise for or on behalf of the Manager all or any of the powers and authorities exercisable by the Manager under the provisions of this Deed.
- (i) The Manager will be entitled to rely on any person as to the validity of any signature on any transfer form, application or other instrument given under the provisions of this Deed and will not in any way be liable to make good out of its own funds any loss incurred by any person in the event of such signature being forged or otherwise ineffective, which loss (if any) will,

subject to any right of reimbursement from any other person be treated as an expense relating to the Trust.

- (j) No Unitholder will be entitled to require the transfer to him of any Asset nor be entitled to interfere with or question the exercise or non-exercise by the Manager of any of the trusts, powers, authorities or discretions conferred upon them by this Deed or in respect to any Asset.
- (k) Should the Manager purchase any Authorised Investment in regard to which there is a Liability, the Manager will have a right of indemnity in respect of any such Liability.
- (l) Except as modified or excluded by the Deed, all powers authorities and discretions vested in and all indemnities allowed to trustees pursuant to the provisions of the *Trusts Act 1973 (Qld)* or in equity or at common law are deemed to be included in this Deed and all such powers authorities and discretions are vested in and such indemnities are allowed to the Manager.
- (m) The Manager will be entitled to commence, institute, carry on and prosecute all actions, suits and proceedings at law to procure compliance with the provisions of this Deed, and to obtain and recover any moneys payable to it or to enforce the payment thereof or for damages against any person arising out of any loss suffered by Unitholders and to pursue the same to judgment, decree, order and execution or to discontinue, become non-suited in or abandon or otherwise to act therein as the Manager may determine, and the Manager will be indemnified in respect of all costs, charges and expenses incurred by it in respect to any such action, suit or proceeding.

19. DUTIES OF THE MANAGER

19.1 Property to be valued before Dealing

The Manager will ensure that the Property is not acquired or disposed of by, or on behalf of, the Manager, unless its Market Value has been valued by an Approved Valuer.

19.2 Preparation of valuations

The Manager may, from time to time, appoint and instruct an Approved Valuer to determine the Market Value of the Property of the Trust.

19.3 Valuer to be Independent

The Manager will strive to ensure that the appointed Approved Valuer does not have a pecuniary interest that could conflict with the proper valuation of the Property.

19.4 Valuation where significant change

The Manager will cause the Property to be valued at regular intervals and in any event at such times as the Manager reasonably believes it is in the interest of Unitholders that there has been a significant change in the value of the Property and that is in the best interests of the Unitholders to do so.

19.5 Other duties of the Manager

- (a) In addition to other duties of the Manager set out in this document, the Manager will:
 - (i) act honestly;
 - (ii) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Manager's position;
 - (iii) act in the best interests of Unitholders and, if there is a conflict between the Unitholder's interests and its own interests, give priority to the Unitholder's interests;
 - (iv) treat the Unitholders who hold Units of the same class equally and Unitholders who hold Units of different classes fairly;
 - (v) not make use of information acquired through being the Manager in order to:

- (A) gain an improper advantage for itself or another person; or
 - (B) cause detriment to the Unitholders;
- (vi) ensure that the Trust's constitution meets the requirements of sections 601GA and 601GB of the Law;
- (vii) comply with the Trust's compliance plan;
- (viii) ensure that Property is:
 - (A) clearly identified as Property; and
 - (B) held separately from property of the Manager and property of any other Trust or managed investment scheme (as defined in the Law);
- (ix) ensure that all payments out of Property are made in accordance with this document and the Law;
- (x) report to ASIC any breach of the Law that:
 - (A) relates to the Trust; and
 - (B) has had, or is likely to have, a materially adverse effect on the interests of Unitholders;
 as soon as practicable after it becomes aware of the breach; and
- (xi) carry out or comply with any other duty, not inconsistent with the Law, that is conferred on the Manager by this document.
- (b) The Manager is expressly authorised to open and maintain accounts on behalf of the Trust.
- (c) The Manager will keep or cause to be kept lists and records of Unitholders and their Units.
- (d) The Manager will ensure that any Certificates that are issued for Unitholders' Units and are replaced when necessary. The Manager will cause the issue of Certificates to Unitholders setting out their respective Units not more than 2 months after the allotment of those Units or within such other time period as may be required by the Listing Rules.
- (e) The Manager will treat Unitholders equally and fairly between them.
- (f) The Manager may take such steps as will be necessary to ensure that this Deed is amended from time to time to comply with any Relevant Law affecting the same.
- (g) The Manager will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.
- (h) The Manager will for each Financial Year forward to each Unitholder a statement of the necessary details to assist the Unitholder in completion of those parts of any tax return for that Financial Year.
- (i) The Manager will ensure that no Real Estate will be purchased on behalf of the Unitholders other than as authorised under this Deed.
- (j) The Manager will insure or cause to be insured and keep insured the Property to its full insurable value on a replacement and reinstatement basis and its rents and profits against loss or damage by fire and against the other usual risks against which a prudent owner of property of a similar type to the Property would insure. The cost of all such insurances will be borne by the Fund.

19.6 Preparation of financial statements

- (a) A financial report and directors' report for the Trust must be prepared for each Financial Year in accordance with the requirements of the Law.
- (b) The financial report for a Financial Year must comply with the Accounting Standards.
- (c) The financial report must comply with any further requirements in the Law.

19.7 True and fair view

The Financial Statements and notes for a Financial Year must give a true and fair view of:

- (a) the financial position and performance of the Trust; and
- (b) if consolidated Financial Statements are required - the financial position and performance of the consolidated entity.

19.8 Audit of annual financial report

- (a) The Trust must have the financial report for the Financial Year audited in accordance with Division 3 of Part 2M.3 of Chapter 2M of the Law and obtain an Auditors report.
- (b) The Manager must report to Unitholders for a Financial Year by either:
 - (i) sending Unitholders copies of:
 - (A) financial report for the year; and
 - (B) a report on the Trust for the year similar in nature to a directors' report required by section 298 - 300 of the Law; and
 - (C) the Auditor's report on the financial report; or
 - (ii) sending Unitholders a concise financial report for the year of the complies, so far as is possible with the Law.
- (c) The Trust must report to its Unitholders within 3 months after the end of the Financial Year.

19.9 Unitholders choices for Annual Financial Information

- (a) A Unitholder may request the Manager:
 - (i) not to send them the annual financial reports; or
 - (ii) to send them a full financial report and the director's report and Auditors report.
- (b) A request may be a standing request or for a particular Financial Year. The Unitholder is not entitled to a report for a Financial Year earlier than the one before the Financial Year in which the request is made.
- (c) The time for complying with a request under paragraph (a)(ii) is:
 - (i) 7 days after the request is received; or
 - (ii) 3 months after the end of the Financial Year;whichever is the later.
- (d) A full financial report, director's report and Auditors report are to be sent free of charge unless the Unitholder has already received a copy of them free of charge.

20. RIGHTS AND POWERS OF THE MANAGER

20.1 General Powers

Subject to the provisions of this Deed, the Manager has all the powers and rights over and in respect of the Fund as if it were the absolute and beneficial owner of the Fund.

20.2 Power to appoint agent (section 601FB(2))

The Manager has power to appoint an agent, or otherwise engage a person, to do anything that it is authorised to do in connection with the Trust.

20.3 Authority for agent (section 601FB(3))

An agent appointed, or a person otherwise engaged, by:

(a) the agent or person referred to in clause 20.2; or

(b) a person who is taken under this clause to be an agent of the Manager,

to do anything that the Manager is authorised to do in connection with the Trust is taken to be an agent appointed by the Manager to do that thing for the purposes of clause 20.2.

20.4 Liability of agent (section 601FB(4))

If:

(a) an agent holds any Assets on behalf of the Manager; and

(b) the agent is liable to indemnify the Manager against any loss or damage that:

(i) the Manager suffers as a result of a wrongful or negligent act or omission of the agent; and

(ii) relates to a failure by the Manager to perform its duties in relation to the Trust;
then any amount recovered under the indemnity forms part of the Assets.

20.5 Management Powers

The Unitholders hereby authorise the Manager to generally act and have such power in the management of the Fund as it would if it was the owner thereof and including without limitation the power to:

(a) manage, improve and enhance the value of the Fund and to do all matters incidental thereto;

(b) collect and receive all Income and capital receipts arising from the Fund;

(c) sell or dispose of any part or all of the Property when determined appropriate;

(d) invest any surplus funds in an Authorised Investment or as may be required under any financing arrangement;

(e) take or defend any Court or arbitration action to protect the interests of the Unitholders;

(f) deal with any authorities (public or otherwise);

(g) keep records relating to all financial transactions and prepare any necessary Income Tax, GST and other returns to report on such matters to Unitholders and to pay the costs and expenses related thereto;

(h) nominate and engage Auditors;

(i) operate any accounts and cheque accounts as are deemed necessary by the Manager;

(j) delegate its authorities to such persons or corporations as it thinks fit;

(k) appoint any financial, legal, accounting, property valuer, architect, engineer, project manager, development manager or other expert to advise it in relation to the exercise of its authorities referred to in this clause;

(l) make all necessary payments required for the proper management of the Trust including payments to be made under any financial arrangement in respect of the Real Estate and the interests of the Unitholders;

(m) negotiate and make any financing arrangements (including any borrowing and raising any funds or negotiating any financial instruments or other facilities) in the opinion of the Manager required for the purpose of any of the matters set out herein or otherwise in the interest of the Unitholders;

- (n) negotiate and make arrangements and agreements for the purpose of protecting the Unitholders and their interests from adverse movements in interest rates including but not limited to entering into forward rate contracts, the payment of fees and premiums on hedging contracts entered into to promote such protection;
- (o) employ any necessary personnel or engage contractors and subcontractors as the Manager deems necessary; and
- (p) generally to do all things necessary to give effect to this Deed.

20.6 Specific Powers

Without limiting the application of clause 20.1, the Manager may:

- (a) acquire Derivates, grant mortgages, fixed and floating charges or third party mortgages raise funds and sign such other documents including guarantees or indemnities in favour of the Financier or any other financier over the Property and the income of the Property as are required to obtain any loans or any other finance or facility the Manager considers necessary or prudent;
- (b) enter into leases or other agreements relating to the Property;
- (c) sign and do all things as required for the management of the Trust;
- (d) refurbish the Property; and
- (e) sell the Property when deemed appropriate.

20.7 Contracting Services

- (a) Nothing in this Deed will prohibit the Manager from contracting with or obtaining the services of or remunerating any Associate or related party of the Manager, or a director or shareholder of the Manager.
- (b) Where the Manager intends to conduct business in accordance with clause 20.7(a), it will at all times comply with the requirements of the Law.

21. RETIREMENT OR REMOVAL OF MANAGER

21.1 Retirement of the Manager

If the Manager wants to retire, it must call a Unitholders' meeting to explain its reason for wanting to retire and to enable the Unitholders to vote on an Extraordinary Resolution to choose a new Manager.

21.2 Removal of the Manager by Unitholders

If the Unitholders want to remove the Manager, they must call a meeting of Unitholders to consider and vote on:

- (a) a Resolution that the Manager should be removed; and
- (b) a Resolution choosing a Person to be the new responsible entity.

21.3 Obligations of Former Manager

If the Manager of the Trust changes, the former Manager must:

- (a) as soon as practicable give the new responsible entity any books in the former Manager's possession or control that the Law requires to be kept in relation to the Trust; and
- (b) give other reasonable assistance to the new responsible entity to facilitate the change of manager.

21.4 Rights, obligations and liabilities of former Manager

- (a) If the manager of the Trust changes, the rights, obligations and liabilities of the former manager in relation to the Trust become rights, obligations and liabilities of the new responsible entity.
- (b) Despite clause 21.4(a), the following rights and liabilities remain rights and liabilities of the former Manager:
 - (i) any right of the former Manager to be paid fees for the performance of its functions before it ceased to be the Manager;
 - (ii) any right of the former Manager to be indemnified for expenses it incurred before it ceased to be the manager;
 - (iii) any right, obligation or liability that the former Manager had as a Unitholder in the Trust; and
 - (iv) any liability for which the former Manager could not have been indemnified out of the property of the Trust if it had remained the Trust's responsible entity.

21.5 Forced Retirement

The Manager will retire in the following circumstances:

- (a) if the Manager is placed into liquidation, other than for the purpose of amalgamation, reconstruction or a purpose of a similar kind, or in official management;
- (b) if the Manager ceases to carry on business;
- (c) if a receiver, or a receiver and manager is appointed in relation to the property of the Manager and is not removed or withdrawn within 30 days of the appointment.

21.6 Unitholders option to terminate Trust

The Manager will convene a meeting of the Unitholders, no later than every 5 years from the date of the first allotment of Units in the Trust, at which Unitholders may pass, by Special Resolution, a resolution that the Trust be terminated. If the Trust holds any Property at the time of termination, APGF Management Limited (or its nominees), in its own capacity and not in its capacity as Manager of the Trust, will have the right to purchase that Property at Market Value as assessed and agreed by 2 independent valuers. In the event that the 2 independent valuers fail to reach agreement, a third independent valuer will be appointed to determine the Market Value, taking into account the evidence utilised by the 2 original valuers and such matters considered relevant.

22. AUDITOR

22.1 Appointment

- (a) The Manager will appoint the Auditor. The appointments will be a registered company auditor according to the provisions of the Law.
- (b) Subject to the law, the appointee may be the auditor of the Manager.
- (c) The remuneration of the Auditor shall be determined by the Manager and be paid as an expense of the Trust. Subject to the Law, the Auditor can be one and the same person or different persons as the Manager may determine.

22.2 Vacancy

In the event of any vacancy in the office of Auditor occurring under this clause or otherwise, the Manager shall appoint a new Auditor.

23. MEETINGS OF UNITHOLDERS

23.1 Manager's power to call Unitholder's meeting

The Manager may call a meeting of the Unitholders at any time.

23.2 Unitholders' power to call a meeting

- (a) The Manager must call and arrange to hold a meeting of the Unitholders to consider and vote on a proposed resolution on the request:
 - (i) of the Unitholders with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Unitholders who are entitled to vote on the resolution;
- (b) The request by the Unitholders must:
 - (i) be in writing; and
 - (ii) state any resolution to be proposed at the meeting; and
 - (iii) be signed by the Unitholders proposing to move the resolution.
- (c) The request may be accompanied by a statement about the proposed resolution provided by the Unitholders making the request.
- (d) Separate copies of a document setting out the request and statement (if any) may be used for signing by Unitholders if the wording of the request and statement (if any) is identical in each copy.
- (e) The percentage of the votes that Unitholders have is to be worked out as at the midnight before the request is given to the Manager.
- (f) The Manager must call the meeting within 21 days after the request is given to it. The meeting must be held not later than 2 months after the request is given to the Manager.
- (g) The Manager must give to each of the Unitholders a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The Manager must distribute the copies in the same way in which it gives notice of the meeting.
- (h) The Manager does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.
- (i) The Manager is responsible for the expenses of calling and holding the meeting and making the distribution. The Manager may meet those expenses from the Fund.

23.3 Failure of Manager to call meeting of the Unitholders

- (a) Unitholders with more than 50% of the votes carried by Units held by the Unitholders who make a request under clause 23.2 may call and arrange to hold a meeting of the Unitholders and distribute the statement (if any) if the Manager does not do so within 21 days after the request is given to the Manager.
- (b) The meeting must be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the Unitholders may be called by the Manager and information is distributed to Unitholders by the Manager. The meeting must be held not later than 3 months after the request is given to the Manager.
- (c) To call the meeting the Unitholders requesting the meeting may ask the Manager for a copy of the Register. The Manager must give the Unitholders requesting the meeting the copy of the Register without charge.
- (d) The reasonable expenses of calling the meeting must be paid by the Trust.

23.4 Calling of meetings of Unitholders by Unitholders

- (a) Unitholders who hold Units carrying at least 5% of the votes that may be cast at a meeting of Unitholders may call and arrange to hold a meeting of the Unitholders to consider and vote on a proposed Special Resolution or a proposed Extraordinary Resolution. The Unitholders calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which meetings of the Unitholders may be called by the Manager.
- (c) The percentage of the votes carried by Units that Unitholders hold is to be worked out as at the midnight before the meeting is called.

24. HOW TO CALL MEETINGS OF UNITHOLDERS

24.1 Notice of Meetings

- (a) At least 21 days' (or if the Trust is listed 28 days if required by the Law or Listing Rules) notice must be given of a meeting of Unitholders.
- (b) Written notice of a meeting of Unitholders must be given to:
 - (i) each Unitholder entitled to vote at the meeting;
 - (ii) each director of the Manager; and
 - (iii) the Auditor.
- (c) Notice to joint Unitholders need only be given to the joint Unitholders named first in the Register.
- (d) The Manager may give notice of the meeting to a Unitholder:
 - (i) personally; or
 - (ii) by sending it by post to the address for the Unitholder in the Register or an alternative address (if any) nominated by the Unitholder; or
 - (iii) by sending it to the fax number or electronic address (if any) nominated by the Unitholder.
- (e) A defect in the notice given or failure to receive the notice does not invalidate a meeting.
- (f) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.

24.2 Auditor entitled to other communications

The Manager must give the Auditor all communications relating to the meeting that a Unitholder is entitled to receive.

24.3 Contents of Notice of Meeting of Unitholders

- (a) A notice of a meeting of Unitholders must:
 - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the meeting's business;
 - (iii) if a Special Resolution or an Extraordinary Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution or Extraordinary Resolution and state the resolution; and
 - (iv) contain a statement setting out the following information:
 - (A) that the Unitholder has a right to appoint a proxy;

- (B) that the proxy does not need to be a Unitholder; and
- (C) that if the Unitholder appoints 2 proxies the Unitholder may specify the proportion or number of votes the proxy is appointed to exercise.

24.4 Notice of adjourned meetings

When a meeting is adjourned, a new notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

25. UNITHOLDERS' RIGHTS TO PUT RESOLUTIONS AT MEETINGS OF UNITHOLDERS

25.1 Unitholders' resolutions

- (a) The following Unitholders may give the Manager notice of a Special Resolution or an Extraordinary Resolution that they propose to move at a meeting of Unitholders:
 - (i) Unitholders with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Unitholders who are entitled to vote at a meeting of Unitholders.
- (b) The notice must:
 - (i) be in writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Unitholders giving the notice.
- (c) Separate copies of a document setting out the notice may be used for signing by Unitholders if the wording of the notice is identical in each copy.
- (d) The percentage of the votes that Unitholders have is to be worked out as at the midnight before the Unitholders give the notice.

25.2 Manager giving notice of Unitholders' resolutions

- (a) If a Manager has been given notice of a Special Resolution or an Extraordinary Resolution under 25.1, the resolution is to be considered at the next meeting of Unitholders that occurs more than 2 months after the notice is given.
- (b) The Manager must give all the Unitholders notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Manager is responsible for the cost of giving Unitholders notice of the resolution if the Manager receives the notice in time to send it out to Unitholders with the notice of meeting.
- (d) The Unitholders requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Manager in giving Unitholders notice of the resolution if the Manager does not receive the Unitholders' notice in time to send it out with the notice of meeting.
- (e) The Manager need not give notice of the resolution:
 - (i) if it is more than 1,000 words long or defamatory; or
 - (ii) if the Unitholders making the request are to bear the expenses of sending the notice out, unless the Unitholders give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

25.3 Unitholders' statements to be distributed

- (a) Unitholders may request a Manager to give to all its Unitholders a statement provided by the Unitholders making the request about:
 - (i) a resolution that is proposed to be moved at a meeting of Unitholders; or

- (ii) any other matter that may be properly considered at a meeting of Unitholders.
- (b) The request must be made by Unitholders with at least 10% of the votes that may be cast on the resolution;
- (c) The request must be:
 - (i) in writing; and
 - (ii) signed by the Unitholders making the request; and
 - (iii) given to the Manager.
- (d) Separate copies of a document setting out the request may be used for signing by Unitholders if the wording of the request is identical in each copy.
- (e) The percentage of the votes that Unitholders have is to be worked out as at the midnight before the request is given to the Manager.
- (f) After receiving the request, the Manager must distribute to all the Unitholders a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives a notice of a meeting.
- (g) The Unitholders making the request are jointly and individually liable for the expenses reasonably incurred by the Manager in making the distribution if the Manager does not receive the statement in time to send it out with the notice of meeting.
- (h) The Manager need not comply with the request:
 - (i) if the statement is more than 1,000 words long or defamatory; or
 - (ii) if the Unitholders making the request are responsible for the expenses of the distribution, unless the Unitholders give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

26. HOLDING MEETINGS OF UNITHOLDERS

26.1 Time and place of meeting of Unitholder

A meeting of Unitholders must be held at a reasonable time and place.

26.2 Technology

A Manager may hold a meeting of the Unitholders at 2 or more venues using any technology that gives the Unitholders as a whole a reasonable opportunity to participate.

26.3 Quorum

- (a) The quorum for an Ordinary Resolution shall be at least 1 person holding or representing by proxy or attorney at least 10% of the Units by both number and value. The quorum necessary for a Special Resolution shall be at least 2 persons holding or representing by proxy or attorney at least 20% of the Units by both number and value. The quorum for an Extraordinary Resolution shall be at least 2 persons holding or representing by proxy or attorney, at least 51% of the Units by value. If a quorum is not present within 30 minutes of the time specified for a meeting, the meeting will be adjourned to a date and time 7 days after the original time of the meeting and at the same place as the original meeting by written notice to all parties. Any party in attendance (in person or by alternate) at that adjourned meeting will constitute a quorum.
- (b) notwithstanding clause 26.3(a), the quorum for a Resolution pursuant to clause 21.2 is at least 2 persons representing 51% of Units by value.
- (c) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, these proxies or representatives only count as one

person. If an individual is attending both as a Unitholder and as a proxy or body corporate representative they shall all only be counted as one individual.

- (d) A meeting of Unitholders that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the Manager specifies. If the Manager does not specify one (1) or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified—the same day in the next week; and
 - (ii) if the time is not specified—the same time; and
 - (iii) if the place is not specified—the same place.
- (e) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is dissolved.

26.4 Chairing meetings of Unitholders

- (a) Subject to clauses 26.4(b) and 26.4(c), the Manager may, in writing, appoint an individual to chair a meeting of Unitholders.
- (b) The Unitholders present at a meeting called by the Manager must elect a Unitholder present to chair the meeting (or part of it) if:
 - (i) a chairperson has not previously been appointed to chair the meeting; or
 - (ii) a previously appointed chairperson is not available, or declines to act for the meeting (or part of the meeting).
- (c) The Unitholders present at a meeting called under clause 23.2, clause 23.3 or clause 23.4 must elect a Unitholder present to chair the meeting.

[28.4(a) amended DPA 3 with effect 04 September 2006]

26.5 Auditors' right to be heard at meetings of Unitholders

- (a) An Auditor is entitled to attend any meeting of the Unitholders.
- (b) An Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.
- (c) An Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the Unitholders.

26.6 Adjourned meetings

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

26.7 Joint meetings

Where Stapling applies, a meeting of Unitholders may be held in conjunction with a meeting of Shareholders (**Joint Meeting**) and the Manager may, subject to the Law, make such rules for the conduct and operation of Joint Meetings as it sees fit. For the purposes of removing doubt:

- (a) a single notice of meeting may be used where the Manager intends to convene a Joint Meeting;
- (b) a single proxy form may be used through which a vote or votes may be made by proxies appointed by the Unitholders and by holders of Shares at a Joint Meeting;
- (c) only persons who are the holders of a Stapled Security shall be entitled to vote at any Joint Meeting; and

- (d) subject to clauses 26.4(b) and 26.4(c), the Manager may, in writing, appoint an individual to chair a Joint Meeting.

26.8 Other attendees

While Stapling applies, each director or other representative of the Company, as well as invitees of the chairman of the Company, may attend and speak at any Joint Meeting.

27. PROXIES AND BODY CORPORATE REPRESENTATIVES

27.1 Who can appoint a proxy

- (a) A Unitholder who is entitled to attend and cast a vote at a meeting of Unitholders may appoint a person as the Unitholder's proxy to attend and vote for the Unitholder at the meeting.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) A Unitholder may appoint one or 2 proxies. If the Unitholder appoints 2 proxies and the appointment does not specify the proportion or number of the Unitholder's votes each proxy may exercise, each proxy may exercise half of the votes.
- (d) Fractions of votes resulting from the application of clauses 27.1(b) and 27.1(c) are to be disregarded.

27.2 Rights of proxies

- (a) A proxy appointed to attend and vote for a Unitholder has the same rights as the Unitholder:
 - (i) to speak at the meeting; and
 - (ii) to vote (but only to the extent allowed by the appointment).
- (b) A proxy is entitled to vote on a show of hands.
- (c) A proxy's authority to speak and vote for a Unitholder at a meeting is suspended while the Unitholder is present at the meeting.

27.3 Manager sending appointment forms or lists of proxies must be sent to all Unitholders

If the Manager sends a Unitholder a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Unitholder requested the form or list—the Manager must send the form or list to all Unitholders who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise—the Manager must send the form or list to all its Unitholders entitled to appoint a proxy to attend and vote at the meeting.

27.4 Appointing a proxy

- (a) An appointment of a proxy is valid if it is signed by the Unitholder making the appointment and contains the following information:
 - (i) the Unitholder's name and address;
 - (ii) the Trust's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used.
- (b) An appointment of a proxy remains valid even if clause 27.4(a) is not strictly complied with, provided in the reasonable opinion of the Manager the intentions of the Unitholder is clear.

- (c) An undated appointment is taken to have been dated on the day it is given to the Manager.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
 - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
 - (iii) if the proxy is the chairperson—the proxy must vote on a poll, and must vote that way; and
 - (iv) if the proxy is not the chairperson—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) If a proxy is also a Unitholder, this clause does not affect the way that the person can cast any votes they hold as a Unitholder.
- (f) The appointment of a proxy does not have to be witnessed.
- (g) The later appointment of a proxy revokes an earlier appointment, if both appointments could not be validly exercised at the meeting.

27.5 Proxy documents

- (a) For an appointment of a proxy for a meeting of Unitholders to be effective, the following documents must be received by the Manager at least 48 hours before the meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Unitholders has been adjourned, an appointment and any authority received by the Manager at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) A Manager receives an appointment authority when it is received at any of the following:
 - (i) the Manager's registered office;
 - (ii) a fax number at the Manager's registered office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.

27.6 Ineffective appointment

An appointment of a proxy is ineffective if:

- (a) the Manager receives either or both the appointment or authority at a fax number or electronic address; and
- (b) a requirement (if any) in the notice of meeting that:
 - (i) the transmission be verified in a way specified in the notice; or
 - (ii) the proxy produce the appointment and authority (if any) at the meeting;
 is not complied with.

27.7 Validity of proxy vote

- (a) Unless the Manager has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Unitholder dies; or
 - (ii) the Unitholder is mentally incapacitated; or

- (iii) the Unitholder revokes the proxy's appointment; or
 - (iv) the Unitholder revokes the authority under which the proxy was appointed by a third party; or
 - (v) the Unitholder transfers the Units in respect of which the proxy was given.
- (b) A proxy who is not entitled to vote on a resolution as a Unitholder may vote as a proxy for another Unitholder who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

27.8 Body corporate representative

- (a) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of Unitholders. The appointment may be a standing one.
- (b) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (c) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
- (d) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

28. VOTING AT MEETINGS OF UNITHOLDERS

28.1 How many votes a Unitholder has

- (a) On a show of hands, each Unitholder has one vote.
- (b) On a poll, each Unitholder has one vote for each dollar of equity subscribed for that Unitholder's Unit.

28.2 Jointly held Units

If a Unit is held jointly and more than one Unitholder votes in respect of that Unit, only the vote of the Unitholder whose name appears first in the Register counts.

28.3 Manager and associates cannot vote if interested in resolution

Other than in respect of a resolution pursuant to clause 21.2 and 21.6, the Manager and its Associates are not entitled to vote their Units on a resolution at a meeting of Unitholders if they have an interest in the resolution or matter other than as a Unitholder.

28.4 How to determine the value of a Unit

Subject to the Law, each Unitholder on a poll shall have one vote for each one dollar of equity subscribed for that Unitholder's Unit.

28.5 Objection to a right to vote

A challenge to a right to vote at a meeting of Unitholders:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson, whose decision is final.

28.6 Votes need not all be cast in the same way

On a poll a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

28.7 How voting is carried out

- (a) A Special Resolution or an Extraordinary Resolution put to the vote at a meeting of Unitholders must be decided on a poll.
- (b) Any other resolution put to the vote at a meeting of Unitholders must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by Unitholders entitled to vote on the resolution.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

28.8 Matters on which a poll may be demanded

- (a) A poll may be demanded on any resolution.
- (b) A poll cannot be demanded on any resolution concerning:
 - (i) the election of the chairperson of a meeting; or
 - (ii) the adjournment of a meeting.
- (c) A demand for a poll may be withdrawn.

28.9 When a poll is effectively demanded

- (a) At a meeting of Unitholders, a poll may be demanded by:
 - (i) at least five (5) Unitholders present entitled to vote on the resolution; or
 - (ii) Unitholders present with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chairperson.
- (b) The poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that Unitholders have is to be worked out as at close of business on the day before the poll is demanded.

28.10 Written approval to resolutions

- (a) Subject to any contrary provision in the Law, any resolution which is required to be passed or approved at a general meeting of Unitholders shall be deemed to have been so passed or approved if a written instrument containing such resolution is approved or consented to as evidenced by the execution of such instrument by all Unitholders, and such resolution shall be deemed to have been passed or approved on the date when the last Unitholder shall have executed that instrument.
- (b) Separate copies of an instrument may be used for execution purposes if the wording of the resolution contained in the instrument is the same in all copies.
- (c) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Unitholder with the Unitholder's authority is deemed to be a written instrument executed by the Unitholder.

29. MINUTES AND UNITHOLDERS' ACCESS TO MINUTES

29.1 Minutes

- (a) A Manager must keep minute books in which it records within one month:
 - (i) proceedings of meetings of Unitholders; and
 - (ii) resolutions of meetings of Unitholders.
- (b) The Manager must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chairperson of the meeting or the chairperson of the next meeting.
- (c) The Manager must keep the minute books at:
 - (i) its registered office; or
 - (ii) its principal place of business in Australia; or
 - (iii) another place approved by ASIC.
- (d) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

29.2 Unitholders' access to minutes

- (a) The Manager must ensure that the minute books for the meetings of Unitholders are open for inspection by Unitholders free of charge.
- (b) A Unitholder may ask the Manager in writing for a copy of any minutes of a meeting of the Unitholders or an extract of the minutes.
- (c) The Manager is entitled to charge a Unitholder a copying fee of not more than \$0.50 per page or an amount not exceeding any amount prescribed, whichever is the lesser.

30. CHANGING THE DEED

30.1 Power to amend

- (a) The Deed may be modified, or repealed and replaced with a new deed:
 - (i) by Extraordinary Resolution of the Unitholders; or
 - (ii) by the Manager if the Manager reasonably considers the change will not adversely affect Unitholders' rights.
- (b) If the Law or any declaration or exemption from the provisions of the Law granted by the ASIC requires that this Deed contain certain provisions, then those provisions:
 - (i) are deemed to be incorporated into this Deed at all times at which, and to the extent to which, they are required to be included; and
 - (ii) prevail over any other provisions of this Deed to the extent of any inconsistency.

31. LIMITATION OF LIABILITY OF UNITHOLDERS

- (a) Subject to the Law, the Manager is to be indemnified by the Unitholders from the Assets of the Trust for all loss, debts, Liabilities, damages, costs, charges, expenses and outgoings incurred by it in performing its functions and duties and exercising its powers under this Deed or at law.
- (b) The provisions of clause 31 are not to be construed in any way as requiring an obligation of any Unitholder to personally indemnify or create an obligation to pay the Manager or a creditor of the Trust to any extent beyond their Unit Holding in the Trust.
- (c) Subject to the Law and to the extent allowed by the Law, the indemnity under clause 31(a):

- (i) includes any loss, debts, Liabilities, damages, costs, charges, expenses and outgoings incurred as a direct or indirect result of any act or omission of an agent or delegate appointed by the Manager;
- (ii) is a continuing indemnity which applies to all acts and omissions of the Manager even though the Manager may not be the Manager at the time the claim is made; and
- (iii) is in addition to any indemnity the Manager may have at law or in equity.

32. TAXATION LIABILITY OF THE MANAGER

- (a) The Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person an amount equal to the Taxation Amount of that Relevant Person which is payable or anticipated to become payable by the Manager on its own account or out of the Fund.
- (b) Amounts deducted under clause 32(a) will be applied in:
 - (i) payment of the Taxation Amount of the Person or authority entitled thereto;
 - (ii) reimbursement of the Manager of any corresponding amount paid from its own funds; or
 - (iii) payment to the Relevant Person of any amount deducted pursuant to clause 32(a) which is not required for the purposes of this clause 32(b),
 and pending such application will form part of the Fund.
- (c) Except to the extent to which the relevant Taxation Amount has been deducted pursuant to clause 32(a):
 - (i) the Manager will be entitled to be indemnified by each Relevant Person for the Taxation Amount of that Relevant Person paid by the Manager except to the extent to which the Manager is reimbursed out of the Fund in respect of that amount; and
 - (ii) the Manager on account of the Fund will be entitled to be indemnified by each Relevant Person for the Taxation Amount of that Relevant Person paid out of the Fund and for the amount of any reimbursement of the Taxation Amount paid to the Manager.
- (d) The Manager on its own account and on account of the Trust will be entitled to be paid by the Relevant Person interest on the amount outstanding for which each is entitled to be indemnified from the date on which the payment in respect of which right of indemnity has arisen was made at the rate equal to the 90 day bank bill (bid) rate/SWAP reference rate. Nothing in this clause will oblige the Manager, whether on its own account or on account of the Trust, to seek payment of such interest.
- (e) If the Manager on its own account or on account of the Trust becomes entitled to be indemnified pursuant to clause 32(c), or the Manager on its own account and on account of the Trust:
 - (i) may deduct or require to be deducted from any amount otherwise payable to or be applied in respect of the Relevant Person the amount for which it or the relevant Fund(s) is entitled to be indemnified (together with interest thereon pursuant to clause 32(d) hereof) and apply such amount on account of such interest and right of indemnity;
 - (ii) may by written Notice to the Relevant Person require the amounts for which it is entitled to be indemnified, together with interest, to be paid on or before such date (not earlier than the expiration of 21 days from the date of service of the Notice) as the Notice may specify and the Notice will state that in the event of such payment not being made on or before that date, any Units registered in the name of the Relevant Person will be liable to be caused to be redeemed to recover such amount.

- (f) If the requirements of the Notice under clause 32(e)(ii) are not complied with by the Relevant Person within the time specified therein, the Manager may:
- (i) cause the Units held by the Relevant Person which were specified in such Notice or such part of it as the Manager may in its discretion determine to be sold by the Manager at whatever price the Manager deems fit, and the Manager is hereby authorised by the Relevant Person to take such steps and to sign such documents in the name of the Relevant Person as may be necessary for the sale and transfer of the Relevant Person's Units and to account to the Unitholder for the proceeds thereof after deducting all reasonable expenses in relation to the sale;
 - (ii) appoint a Person to execute on behalf of the Relevant Person a transfer of such Units; and
 - (iii) in priority to any transfer by the Relevant Person, complete the sale.
- (g) The proceeds of the sale of the Units will be applied:
- (i) first, on account of the amount in respect of which the Notice pursuant to clause 32(e)(ii) was given; and
 - (ii) secondly, in payment of the balance (if any) remaining to the Relevant Person.
- (h) The Manager may, by Notice to a Relevant Person, require that Relevant Person to furnish in writing within 14 days of service of such Notice to the Manager such particulars regarding the Relevant Person, or their holding of Units or any other matter in connection therewith as may be specified in the Notice being particulars which are required by the Manager to enable the Manager to determine whether there exists or may in the future exist a Taxation Amount in relation to that Relevant Person and that Relevant Person will furnish such particulars within 14 days of service of such Notice.
- (i) If any particular furnished to the Manager pursuant to clause 32(h) ceases to be correct for any reason it will be the duty of the Relevant Person who furnished such particular, if that person is a Unitholder at the time such particular ceases to be correct, promptly to give to the Manager (as the case may be) Notice of the fact that the particular is no longer correct, and to furnish to the Manager such particulars as are, at the time of such notification, correct in lieu of the particular which has ceased to be correct.
- (j) If a Relevant Person fails to provide a particular specified in a Notice in accordance with clause 32(h) or which he is required to provide pursuant to clause 32(i), the Manager will be entitled to make such assumptions as it thinks fit as to the particular, and the Relevant Person will have no claim against the Manager or the Trust for any loss suffered as a result of such assumption being incorrect.
- (k) Without limiting the preceding provisions of this clause 32, the Manager on its own account and on account of the Trust will be entitled to be indemnified by any person who supplies an incorrect particular pursuant to clause 32(h) or fails to give the Manager Notice pursuant to clause 32(i) hereof that a particular has ceased to be correct, for any loss suffered as a result of the Manager acting on the basis of the incorrect particular. The Manager on its own account and on account of the Trust, and the Manager will be entitled to be indemnified irrespective of whether the relevant particular was furnished or notified to the Manager.
- (l) If the Manager, on its own account or on account of the Trust, is be entitled to be indemnified pursuant to clause 32(c), the provisions of clauses 32(g) to 32(j) inclusive will, mutatis mutandis, apply.
- (m) Nothing in this clause 32 will prejudice or affect any right or remedy which any other clause in this Deed or any law may confer or purport to confer on the Manager, and as between the Manager and every Relevant Person, his executor, administrator and estate, wheresoever constituted or situate, any right or remedy which this Deed or such Law will confer or purport to confer on the Manager will be enforceable by it.
- (n) The Unitholders are responsible for their own income tax returns.

33. INDEMNITY FOR COMPLIANCE COMMITTEE MEMBERS

33.1 Indemnity

Subject to, and so far as permitted by, the Law, the Manager must, to the extent the person is not otherwise indemnified, indemnify every member of the Compliance Committee against a Liability:

- (a) incurred as a Compliance Committee member to a person (other than the Manager or a related body corporate), unless the Liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred by the Compliance Committee member in defending civil or criminal proceedings in which judgment is given in favour of the member or in which the member is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to the member under the Law.

33.2 Insurance

Subject to, and to the extent permitted by, the Law, the Manager may enter into, and pay premiums on, a contract of insurance for a person who is or has been a member of the Compliance Committee.

33.3 Continuing indemnity

The indemnity in favour of Compliance Committee members under this clause 33 is a continuing indemnity. It applies in respect of all acts done by a person while a member of the Compliance Committee even though the person is not a member at the time the claim is made.

33.4 Deeds

Subject to the Law and without limiting a person's rights under this clause 33, the Manager may enter into an agreement with a person who is or has been a member of the Compliance Committee to give effect to the rights of the person under this clause 33 on any terms that the Manager thinks fit.

34. NOTICES

34.1 Notices to and by Unitholders

- (a) A Notice may be given under this Deed to any Unitholder personally, or by leaving it at their address as stated in the Register, or by sending it addressed to the Unitholder at such address by ordinary pre-paid post, or if that address is outside Australia by pre-paid airmail. In the case of joint Unitholders a Notice given to the joint Unitholder whose name appears first in the Register will be sufficient notice to all such joint Unitholders.
- (b) Any Notice sent by post will be deemed to have been served at the expiration of 48 hours after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the Notice was properly addressed and posted.
- (c) Any Notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement.
- (d) The signature to any Notice to be given by the Manager may be written or printed.
- (e) Subject to the Law, where a given number of days' Notice or Notice extending over any other period is required to be given, either the day of service or the day upon which the Notice will expire (but not both) will be reckoned in the number of days or other period.
- (f) Every person who, by operation of law, equity or other means whatsoever, becomes entitled to any Unit or any part thereof, will be bound by every Notice which, prior to their name and address being entered into the Register as being duly given to the Person from whom they derive their title.

- (g) Any Notice delivered or sent by post to, or left at, the address as stated in the Register or address for service of any Unitholder, if an individual, in pursuance of the provisions of this Deed will (notwithstanding that the Unitholder, if an individual, is then deceased and whether or not the Manager has notice of his death) be deemed to have been duly served in respect of their Units.
- (h) Without limiting the generality of any other clause of this Deed, any notice, request or application (including, without limitation, a Notice to be given by a Unitholder) will be given to the Manager at its registered office, at any of its principal places of business in each State or Territory of Australia, or at such other places as the Manager may from time to time determine and advise in a Notice to Unitholders.

34.2 Notices to the Manager and Unitholder

- (a) Any Notice required by this Deed to be given or made by the Manager or the Unitholder to the other of them will be given or made in writing and addressed to the general manager, secretary or a director of the party to whom it is intended to be given or made at its address as hereinbefore appearing (or to such other officer and or such other address as may from time to time be notified by that party to the other as the appropriate officer and/or address for service of Notice pursuant to this Deed).
- (b) A Notice referred to in clause 34 will be signed by a duly authorised officer on behalf of the other giving or making it provided that such Notice may be given, sent or made by facsimile transmission, hand delivery or ordinary mail with postage pre-paid.
- (c) Any Notice referred to in clause 34 will be deemed to have been given, sent or made:
 - (i) when received by the general manager, the secretary or a director of the party to whom it is addressed or other officer notified in accordance with clause 34; or
 - (ii) clear Business Days after being deposited in the mail with postage pre-paid; or
 - (iii) if sent by facsimile transmission, when receipt is acknowledged.

35. MISCELLANEOUS

35.1 Access to Records and Deeds

- (a) Subject to all applicable Acts, applications for New Units and instruments of transfer and transmission will be retained by the Manager 7 years from the completion of the transaction to which the instrument relates after which time the same may be destroyed in the absolute discretion of the Manager.
- (b) The Manager will provide a copy of this Deed and of any supplemental deed free of charge to any Unitholder who requests it or to any other person upon payment of the fee as prescribed by the Manager.
- (c) A copy of this Deed and of any supplemental deed will at all times during business hours be made available by the Manager at its registered office in Brisbane for inspection.
- (d) Unitholders will be entitled to receive from the Manager additional copies of this Deed and of any supplemental deeds (if any) on payment to the Manager (for retention by the Manager) of the sum of \$25.00 or such other sum as the Manager prescribes.

35.2 Cheques/Account Details and Distributions

- (a) Each Unitholder must give the Manager details of a bank account into which any moneys payable to that Unitholder under the provisions of this Deed is to be paid by the electronic transfer of funds. The Manager is not obliged to make payments to a Unitholder other than by the electronic transfer of funds.

- (b) Notwithstanding clause 35.2(a), any moneys payable to a Unitholder under the provisions of this Deed may be paid by a crossed 'not negotiable' cheque made payable to the Unitholder or bearer and sent through the post to the registered address of such Unitholder in the case of joint Unitholders made payable to the joint Unitholders or bearer and sent to the registered address of that joint Unitholder whose name stands first in the Register.
- (c) Payment of every such cheque if duly presented and paid will be satisfaction of the moneys payable and will be a good discharge of the Manager.
- (d) Where there is an electronic transfer of funds confirmation from the bank of the Unitholder of receipt of the moneys will be satisfaction of the moneys payable and will be a good discharge of the Manager.

35.3 Government intervention

- (a) If at any time during the period of the Fund the Manager is required by the Federal Government or the Government of any State or Territory or by any Relevant law to lodge approved deposits, securities or bonds for the additional protection of Unitholders, the Manager will provide the same from its own resources and it will have no claim on the Fund or the other of them for such purposes provided always that unless the Manager complies with all such requirements as aforesaid or if any statutory obligation is placed upon the Manager which it is not willing to accept, then the Manager will be at liberty to resign from office as Manager of the Fund or to terminate the Fund or to appoint or engage another Manager who is willing to comply with such requirements as aforesaid in the place of the Manager who will be deemed immediately upon such appointment or engagement to have retired as such and who will:
 - (i) thereupon deliver all registers, books of account and all other books, deeds, documents and writings in any way relating to the Fund to the new Manager; and
 - (ii) thereupon vest, or cause to be vested in a new Manager appointed by the Manager all Assets held by it as Manager of the Fund and deliver all books, documents, records and other property whatsoever relating to the Fund to such Manager.
- (b) If at any time during the period of the Trust the Manager is required by the Federal Government or the Government of any State or Territory or by any Relevant Law to lodge approved deposits, securities or bonds for the additional protection of Unitholders the Manager will provide the same from its own resources and it will have no claim on the Trust or the other of them for such purposes provided always that unless the Manager complies with all such requirements as aforesaid or if any statutory obligation is placed upon the Manager which it is not willing to accept, then the Manager will be at liberty to resign from office as Manager of the Trust or to terminate the Trust or to appoint or engage another Manager who is willing to comply with such requirements as aforesaid in the place of the Manager who will be deemed immediately upon such appointment or engagement to have retired as such and who will:
 - (i) deliver all registers, books of account and all other books, deeds, documents and writings in any way relating to the Fund to the new Manager; and
 - (ii) thereupon vest, or cause to be vested in a new Manager appointed by the Manager all Assets held by it as Manager of the Fund and deliver all books, documents, records and other property whatsoever relating to the Fund to such new Manager.

35.4 Jurisdiction

This Deed will be construed and governed in accordance with the laws of Queensland.

35.5 Conflict or inconsistency

Subject to clause 39, in the event of a conflict or inconsistency between this Deed, the Offer Document and the Stapling and Asset Management Deed, the provisions of this Deed will prevail.

36. HOW THE MANAGER DEALS WITH UNITHOLDERS COMPLAINTS

36.1 Complaints handling

The Manager must establish and maintain a procedure for dealing with complaints by Unitholders in relation to the Trust which is consistent with the requirements (if any) of the Law.

36.2 Unitholders' Complaints

- (a) A Unitholder may by writing or by phone complain to the Manager in relation to the Trust.
- (b) The Manager must.
 - (i) record the complaint and the date it was received in a register maintained for that purpose; and
 - (ii) send the Unitholder an acknowledgment of receipt of the complaint.

36.3 Handling of Complaints

- (a) The Manager must use reasonable endeavours to deal with a complaint by a Unitholder under clause 36.2 in accordance with this clause 36, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Manager 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 Manager must inform the Unitholder by notice in writing of:
 - (i) its decision in relation to the complaint;
 - (ii) the remedies available to the Unitholder in relation to the complaint; and
 - (iii) any avenues of appeal that may be available to the Unitholder if the Unitholder is dissatisfied with the decision.

36.4 Assistance and Information

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

36.5 Membership of External Dispute Resolution Scheme

If required by the Law or ASIC policy, the Manager must ensure that it obtains and maintains membership of an external dispute resolution scheme appropriate to the business of the Manager in acting as responsible entity of the Trust and which is approved by ASIC.

37. RESTRICTED INTERESTS

- (a) For the purpose of this clause 37:
 - (i) **'Escrow Period'** means the escrow period in the relevant restriction agreement; and
 - (ii) **'Restricted Interest'** means a Unit that is a restricted security for the purposes of the Listing Rules.
- (b) A Member cannot dispose of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or the Approved Stock Exchange.
- (c) The Manager will refuse to acknowledge a disposal (including registering a transfer) of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or Approved Stock Exchange.

- (d) During such period as there is a breach of the Listing Rules relating to Restricted Interests, or a breach of a restriction agreement relating to Restricted Interests, the holder of the Restricted Interests is not entitled to any Distribution, or voting rights, in respect of the Restricted Interests.

39A IMPACT OF INTERNATIONAL ACCOUNTING STANDARDS

Notwithstanding anything to the contrary contained or implied by this Trust Deed, where:

- (e) Issue Price;
- (f) assets;
- (g) Current Market Price;
- (h) Net Scheme Value;
- (i) Redemption Amount;
- (j) Redemption Provision;
- (k) Scheme Liabilities;
- (l) Total Funds Raised;
- (m) liabilities;
- (n) value;
- (o) capital;
- (p) equity: or
- (q) similar terms or phrases ('the Items'),

are used for the purposes of calculating:

- (r) the issue or redemption price of Units;
- (s) the fees payable to the Responsible Entity, any agent of the Responsible Entity or any custodian who holds Scheme property;
- (t) the extent of any limitation on borrowings or on investment of Scheme property; or
- (u) the amount of a distribution payable to Unit Holders in the Scheme,

the Items are to be calculated by reference to generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

[39A inserted DPA 4 with effect 13 February 2007]

38. LISTING RULES TO PREVAIL

- (a) Whilst any Units of a class are Officially Quoted the Manager and each Unitholder must comply with the provisions of the Listing Rules relevant to them.
- (b) If the Fund is Listed, the following provisions apply:
 - (i) if the Listing Rules prohibit an act being done, the act shall not be done;
 - (ii) nothing contained in this Deed prevents an act being done that the Listing Rules require to be done;
 - (iii) 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);
 - (iv) if the Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;

- (v) if the Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision.
- (c) If any provision of this Deed is or becomes inconsistent with the Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.

39. STAPLING PROVISIONS

39.1 Stapling of Units and Shares

- (a) The Units are intended to be Stapled to the Shares in the ratio of one Unit to one Share. The intention is that the Unitholders will be identical to the Shareholders and that, so far as the Law permits, a Unit and a Share which are Stapled together will be treated as one security.
- (b) The provisions of this Deed that relate specifically to Stapling do not apply until the Manager determines and gives the Company notice in writing that:
 - (i) Units are to be Stapled to Shares; and
 - (ii) specifies the date and time from which the Stapling commences.
- (c) Details of all Stapled Securities sufficient to identify the securities which comprise the Stapled Securities will be registered in the Stapled Security Register.
- (d) While Stapling applies, the Manager and the Unitholders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or to refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security. In particular:
 - (i) the Manager will not offer any Units for subscription unless an offer is made at the same time and to the same person for an identical number of Shares for issue;
 - (ii) any offer relating to Units for subscription or sale will require each offeree to subscribe for or buy a number of Units equal to the number of Shares subscribed for or bought;
 - (iii) the Manager will not issue any Units to any person unless an identical number of Shares are also issued or sold to the same person at the same time;
 - (iv) the Manager will not register any transfer of Units to any person unless an identical number of Shares is also transferred to the same person at the same time; and
 - (v) the Manager will not consolidate, sub-divide, forfeit, cancel or buy-back any Shares or otherwise re-organise the Units in the Trust unless at the same time there is a corresponding consolidation, sub-division, cancellation or buy-back of Units or re-organisation of the capital of the Company.
- (e) Prior to the date upon which the Units become Unstapled, if Units have been issued, the relevant Unitholders and the Manager will co-operate to ensure that:
 - (i) if necessary, Shares are issued to the holders of the Units; and
 - (ii) the Units are Stapled to Shares to form Stapled Securities.
- (f) The Manager must use every reasonable endeavour to procure that Stapled Securities are dealt with under this Deed in a manner that is consistent with the provisions relating to Stapling in the constitution of the Company.
- (g) Subject to the Law, the Listing Rules and approval by resolution of the Shareholders and the Unitholders, the Manager may determine that the provisions of this Deed relating to Stapling will cease to apply. If they do so, they may at a later time give notice that the application of the provisions is to recommence.
- (h) Each Unit will remain Stapled to the Share to which it is Stapled to form a Stapled Security until the date the Units are Unstapled. Securities will cease to be Stapled to any security which ceases to be on issue.

- (i) A provision of this Deed relating to Stapling may not be amended except with the prior written consent of the Manager.

39.2 Stapled Security Register

- (a) The Manager will maintain or cause to be maintained a Stapled Security Register of holders of Units which records the names of the Unitholders, the number of Units held and the number of Shares held by the members to which each Unitholders Units are Stapled and any additional information required by the Listing Rules or determined from time to time by the Manager.
- (b) Prior to the date the Units are Unstapled, the Stapled Security Register will be deemed to be separate to the register of Unitholders.

39.3 Definitions for clauses 41.4 ('Capital Raising') and 41.5 ('Takeover')

- (a) For the purposes of clause 41.4 and 41.5 and unless a contrary intention appears, the following expressions will have the following meaning:
 - (i) **'Bidder'** means the Manager (in its capacity as responsible entity of the Trust) and the Company;
 - (ii) **'Bidder's Statement'** means the bidder's statement issued (as amended) by the Bidder in respect of the Takeover and dated on or about 19 July 2006;
 - (iii) **'Blue Tower Trust'** means the Blue Tower Trust ARSN 109 093 852;
 - (iv) **'Blue Tower Trust Unitholders'** means unitholders of the Blue Tower Trust
 - (v) **'BSX'** means Bendigo Stock Exchange Limited ACN 087 708 898;
 - (vi) **'Capital Raising'** means the Entitlement Issue, the Priority Issue and the Public Issue approved by Stapled Security Holders at an extraordinary general meeting of the Trust and the Company on or about 4 September 2006;
 - (vii) **'Entitlement Issue'** means the 'two for one' issue of 70 million Stapled Securities at an issue price of \$1.06 per Stapled Security to Original Investors approved by Stapled Security Holders at an extraordinary general meeting of the Trust and Company on or about 4 September 2006;
 - (viii) **'Non-accepting Blue Tower Trust Unitholders'** means Blue Tower Trust Unitholders, if any, who do not accept the Takeover Offer made to them during the Takeover Offer Acceptance Period;
 - (ix) **'Original Investors'** means all of the holders of Stapled Securities on the record date for the Entitlement Issue;
 - (x) **'Priority Issue'** means the priority issue of Shortfall Stapled Securities to Blue Tower Trust Unitholders which was approved by Stapled Security Holders at an extraordinary general meeting of the Trust and the Company on or about 4 September 2006;
 - (xi) **'Public Issue'** means the issue of Shortfall Stapled Securities to the public which was approved by Stapled Security Holders at an extraordinary general meeting of the Trust and the Company on or about 4 September 2006;
 - (xii) **'Shortfall Stapled Securities'** means Stapled Securities that are not taken up by Original Investors under the Entitlement Issue;
 - (xiii) **'Stapled Security Holders'** means the holders of Stapled Securities;
 - (xiv) **'Takeover'** means at least 90% of the units of the Blue Tower Trust having been transferred to the Manager in its capacity as trustee of the Trust (or its nominated custodian) by way of an off market takeover in accordance with the Bidder's Statement;
 - (xv) **'Takeover Acceptance'** means acceptances of the Takeover Offer sufficient to enable the Takeover;

- (xvi) **'Takeover Actions'** means the Takeover Stapled Security Issue and the Takeover;
- (xvii) **'Takeover Offer'** means the Bidder's offer for the Trust to acquire all of the units of Blue Tower Trust, as set out in the Bidder's Statement;
- (xviii) **'Takeover Offer Acceptance Period'** means the period during which Blue Tower Trust Unitholders can accept the Takeover Offer, being the offer period described in the Bidder's Statement, unless it is withdrawn or extended pursuant to the Law;
- (xix) **'Takeover Share Issue'** means the issue of Shares pursuant to the Takeover;
- (xx) **'Takeover Stapled Security Issue'** means the issue of Stapled Securities for the Takeover comprising the:
 - (A) Takeover Unit Issue; and the
 - (B) Takeover Share Issue; and
- (xxi) **'Takeover Unit Issue'** means the issue of Units pursuant to the Takeover.

[41.3 inserted DPA 3 with effect 04 September 2006]

39.4 Capital Raising

Despite clauses 7.2 and 7.4 of this Deed:

- (a) Stapled Securities issued for the Capital Raising will be issued for \$1.06 per Stapled Security; and
- (b) Units in the Trust issued for the Capital Raising will be issued for \$1.05 per Unit; and
- (c) Shares in the Company issued for the Capital Raising will be issued for \$0.01 per Share.

[41.4 inserted DPA 3 with effect 04 September 2006]

39.5 Takeover

- (a) If:
 - (i) Takeover Acceptance has occurred; and
 - (ii) the Takeover Offer Acceptance Period has been closed,
 then the Manager in co-operation with the Company:
 - (iii) will implement and effect the Takeover Actions;
 - (iv) will ensure that the Takeover Actions are effected in a manner that ensures that the Bidder's obligations under the Bidder's Statement are complied with;
 - (v) may do anything the Manager considers reasonably necessary to implement and effect the Takeover in accordance with the Bidder's Statement; and
 - (vi) may implement and effect compulsory acquisition of units in Blue Tower Trust held by Non-accepting Blue Tower Trust Unitholders if deemed necessary.
- (b) Despite clauses 7.2, 7.4 and 41.4 of this Deed:
 - (i) Stapled Securities issued for the Takeover Stapled Securities Issue will be issued for \$1.0591 per Stapled Security;
 - (ii) Units in the Trust issued for the Takeover Unit Issue will be issued for \$1.0591 per Unit; and
 - (iii) Shares in the Company issued for the Takeover Share Issue will be issued for no price i.e. \$0.

For avoidance of doubt the Manager will not be deemed to have breached clauses 7.2, 7.4 and 41.4 when issuing Stapled Securities in connection with the Takeover Actions.

- (c) In the event there are Non-accepting Blue Tower Trust Unitholders, then the Stapled Securities under the Takeover Stapled Security Issue to which the Non-accepting Blue Tower Trust Unitholders would otherwise be entitled had they accepted the Takeover Offer, will be

issued to the trustee of the Blue Tower Trust (or its nominated custodian) to be held on trust for the Non-accepting Blue Tower Trust Unitholders.

- (d) The Stapled Securities referred to in subclause (c) will be quoted but will not trade on BSX until they have been transferred to the Non-accepting Blue Tower Trust Unitholders whose units in the Blue Tower Trust are subsequently compulsorily acquired by the Bidder.
- (e) Clause 15.1 of this Deed does not apply in respect of the Takeover.
- (f) Despite any provision of this Deed to the contrary, no part of clause 41 will operate in a way that prevents or restricts the Manager's ability to implement and effect the Takeover.'

[41.5 inserted DPA 3 with effect 04 September 2006]

40. INTERPRETATION

- (a) The captions, headings and marginal notes contained in this Deed are inserted only as a matter of convenience and in no way define, limit, describe or affect the scope, intention, construction or effect of any of the provisions contained or implied in this Deed.
- (b) In this Deed:
 - (i) words importing any gender include the other gender and the plural includes the singular and vice versa;
 - (ii) unless otherwise defined, a word or phrase which is given a special meaning by the Law will, where the context permits, have the same meaning in this Deed except that to the extent of any inconsistencies between meanings in this Deed and the Law, the special meaning given by this Deed will prevail;
 - (iii) all references to any clause or provision of this Deed are references to such clause or provision as modified, altered or varied from time to time in accordance with this Deed;
 - (iv) all references to sums of money are to amounts in Australian dollars unless otherwise expressly stated;
 - (v) all references to time mean Queensland local time; and
 - (vi) all references to a Relevant Law whether referred to as such or by name (whether that name is the one currently used or a superseded one) in this Deed include that Relevant Law for the time being in force, as amended, or re-enacted, from time to time and any Relevant Law enacted in lieu of such Relevant Law, whether or not passed by the same Parliament and whether or not incorporating or adopting (wholly or in part) any Relevant Law passed by another Parliament, and all references to a section, clause or other provision (or any part of a section, clause or provision) in any such Relevant Law will be read in a corresponding manner.

