

DEED POLL

Made on

BY **PROPERTY FUNDS AUSTRALIA LIMITED** ACN 078 199 569 of Level 3, 200
Adelaide Street, Brisbane, Queensland, 4000

(**'Responsible Entity'**)

BACKGROUND

- A. Property Funds Australia Limited ACN 078 199 569 ('Responsible Entity') is the responsible entity of the Trilogy Trust ('Scheme'). The Scheme was originally established by a deed made on 14 August 2001 and amended by deed poll on 23 August 2001 (collectively referred to as 'the Current Deed').
- B. Clause 33 of the Current Deed provides that the Current Deed may be modified by Special Resolution of Unit Holders.
- C. Pursuant to a Special Resolution of Unit Holders passed on 27 June 2003, the Current Deed shall be amended in its application to the Scheme by deleting Background A to C and clauses 1 to 41 (inclusive) there from and replacing such clauses with the provisions of this Deed ('Replacement Constitution') with effect from 1 July 2003 ('Effective Date').
- D. This document is the constitution of the Scheme.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

These definitions apply in this document.

'Accounting Standards' means:

- (a) all accounting standards and principles required by an Australian law to be complied with; and
- (b) except to the extent inconsistent with paragraph (a), generally accepted accounting principles.

'Affiliate' of a body corporate means:

- (a) any related body corporate of that body;
- (b) each director of that body; and
- (c) any person who has a substantial holding in that body.

'Aggregate Uncalled Amount' means the aggregate of the Uncalled Amount for all Partly Paid Units which have not been paid.

‘Applicable Standards’ means:

- (a) the Corporations Act including any regulations made under it, subject to any relief, exemption, declaration or modification granted or made by ASIC;
- (b) other relevant legislation including any regulations made under it; and
- (c) if the Scheme is Officially Quoted, the Listing Rules,

as they apply to the Scheme or the Responsible Entity.

‘Application Money’ means any form of valuable consideration received by the Responsible Entity for an Interest, and excludes any amount attributable to commissions or other fees associated with the acquisition of an Interest.

‘Approved Market Analyst’ means any person, independent of the Responsible Entity, who is duly qualified to advise on the appropriate trading window for the purposes of ascertaining from time to time ‘Current Market Price’ under this document.

‘Approved Valuer’ means any person, independent of the Responsible Entity, who is duly qualified to value any Scheme Property or Interests.

‘ASIC’ means the Australian Securities and Investments Commission or any body that takes over its functions in relation to managed investment schemes.

‘ASIC Instrument’ means:

- (a) an exemption or modification granted by ASIC under the Corporations Act, or
- (b) any other instrument issued by ASIC under a power conferred on ASIC which applies or relates to the Responsible Entity or the Scheme.

‘Associate’ has the meaning given to that expression in Part 1.2 of the Corporations Act for the purposes of Chapter 5C of the Corporations Act.

‘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’ has its ordinary meaning and includes cheques.

‘Class’ means a class of Units or Options as the context requires.

‘Compliance Committee’ means a compliance committee for the Scheme for the purposes of the Corporations Act.¹

‘Compliance Plan’ means the compliance plan for the Scheme for the purposes of the Corporations Act.²

‘Corporations Act’ means the Corporations Act 2001 (Cth).

‘Current Market Price’ of a Unit or Class of Unit means:

- (a) the volume weighted average price per Unit for sale on the Exchange (excluding any special crossings) for the period of 30 trading days (or such longer period as determined by the Responsible Entity after consideration of the volume and number of transactions and any other factors that the Responsible Entity 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

¹ Refer to Part 5C.5 and ASIC Policy Statement 136, paragraphs 11A, 11B, 29A, 29B and 67 to 81.

² Refer to Part 5C.4 and ASIC Policy Statement 132 as well as ASIC Policy Statement 133, paragraphs 21 to 29.

- (ii) in the Responsible Entity's opinion a determination under paragraph (a) of this definition would not provide a fair reflection of the current market value of the Unit,

the Current Market Price will be an amount, calculated in a manner which complies with the Corporations Act and which (if applicable) is as set out in the offer document for the Units, and which in the opinion of an Approved Valuer will approximate the fair market price of the Unit.

'Deed' means this deed.

'Derivative' means any product or investment whose economic performance depends on any change in an interest rate, currency value or exchange rate or the economic performance of another security or commodity (including but not limited to a warrant, swap, cap, collar and floor).

'Disqualifying Event' means a division or consolidation of Units on issue, or if the S&P/ASX300 Property Accumulation Index (and if it should cease to exist an appropriate alternative index) should fall by more than 5% from its level as at the close of trading on the date of the recent prospectus, product disclosure statement or other offering memorandum referred to for the purposes of the definition of Recent Issue Price.

'Distribution' means a distribution of income or capital of the Scheme under this document.

'Distribution Amount' means the distributions of the Scheme to be made under clause 12 including income and capital of the Scheme.

'Distribution Date' means the date specified by the Responsible Entity as the distribution date from time to time.

'Distribution Period' means a period as determined by the Responsible Entity from time to time.

'Effective Date' means the date set out in Recital C as the date this Replacement Constitution is expressed to take effect from.

'Entry Price' means the price calculated for the issue of a Unit under this Deed.

'Exchange' means the recognised stock exchange the official list of which the Scheme is admitted to from time to time.

'Extraordinary Resolution' has the meaning given to that term in section 9 of the Corporations Act.

'Foreign Members' means Members whose address on the Register is a place outside Australia or, if the Scheme is Officially Quoted, outside Australia and New Zealand.

'Government Agency' means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

'GST Law' means the same as 'GST law' means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

'Individual Property' means, for the purposes of clause 25:

- (a) all real estate registered in the name of the Scheme; or
- (b) all real estate registered in the name of a trust, managed investment scheme or company all of the shares or interests in which are owned directly or indirectly by the Scheme; or
- (c) interests on issue in a trust, managed investment scheme or company owned directly or indirectly by the Scheme; or

- (d) securities owned directly or indirectly by the Scheme; or
- (e) Derivatives owned directly or indirectly by the Scheme.

‘Intangibles’ means Scheme Property intangible in nature as defined in the Accounting Standards.

‘Interest’ means Units and Options, as the context requires.

‘Issue Price’ means:

- (a) while the Units are not Officially Quoted, Unit Value plus the Issue Provision; or
- (b) while Units are Officially Quoted, the lower of:
 - (i) Unit Value plus Issue Provision; or
 - (ii) Current Market Price.

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

- (a) the issue of Interests;
- (b) the conversion of the Application Money into investments; and
- (c) where all or part of the Application Money is an asset (other than Cash), the valuation of the asset and the vesting of it in the Responsible Entity or its custodian.

‘Listed’ means admitted to and not removed from the official list of the Exchange.

‘Listing Rules’ mean the official listing rules of the Exchange and any other rules of the Exchange which are applicable while the Scheme is admitted to the official list of the Exchange, except to the extent of any express written waiver by the Exchange.

‘Market Rate’ means the average mid rate for bills of exchange which have a tenor of 90 days which is displayed on the ‘BBSW’ page of the Reuters monitor system on the first day of the period for which the rate is to be determined, or if there is a manifest error in the calculation of that average rate or it is not displayed by 10.30am on that day, then the rate specified in good faith by the Responsible Entity as the average rate for bills of that tenor and offered by at least 4 leading financial institutions in Brisbane on that date (whether such bids and offers are displayed on the ‘BBSW’ page or otherwise evidenced).

‘Meeting’ means a meeting of all Members or a Class of Members.

‘Member’ means a person whose name is entered in the Register as the holder of a Unit or Option (including persons jointly registered), as the context may require.

‘Minimum Holding’ means the minimum holding for the Scheme set by the Responsible Entity or the Exchange, expressed in either or both dollar terms and number of Units or Options.

‘Net Scheme Value’ means the Scheme Value less the Scheme Liabilities.

‘Offer’ includes making available, issuing, offering for subscription or purchase and inviting to subscribe for or buy.

‘Officially Quoted’ means official quotation by the Exchange.

‘Option’ means an option to subscribe for a Unit.

‘Ordinary Resolution’ means a resolution passed at a meeting of Unit Holders 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 show of hands and if a poll is validly demanded then by a majority of votes cast on such a poll.

‘Partly Paid Unit’ means a Unit issued as such under clause 6.

‘Recent Issue Price’ means the price at which Units have been offered for issue in the most recent prospectus, product disclosure statement or other offering memorandum issued by the Responsible Entity, provided that the prospectus, product disclosure statement or other offering memorandum does not bear a date more than 6 months prior to the date Redemption Price is to be calculated.

‘Record Date’ means the date determined by the Responsible Entity for determining the persons who are entitled to Distributions, new Interests or any other entitlement.

‘Redemption Amount’ means the amount worked out as follows:

$$\text{REDEMPTION OFFER PRICE} \times \text{NUMBER OF UNITS BEING REDEEMED}$$

‘Redemption Offer Price’ means, for each offer to redeem Units, the Redemption Price as adjusted by any permissible discount or premium.

‘Redemption Price’ means:

- (a) while the Units are not Officially quoted, Unit Value less the Redemption Provision; or
- (b) while Units are Officially Quoted, the higher of:
 - Unit Value less Redemption Provision; or
 - Current Market Price less Redemption Provision; or
 - Recent Issue Price (if available) less Redemption Provision,provided that if a Disqualifying Event occurs, the Recent Issue Price may be disregarded by the Responsible Entity when calculating the Redemption Price.

‘Redemption Provision’ means the amount (if any) determined by the Responsible Entity 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 Responsible Entity or its Affiliates in connection with:

- (a) the redemption of Interests;
- (b) the realisation and conversion into cash of Scheme Property to satisfy the Redemption Offer Price;
- (c) where all or part of the Redemption Amount is paid by transferring Scheme Property, the valuation and transfer of the Scheme Property; and
- (d) the acquisition of Interests by an Affiliate of the Responsible Entity to fund a redemption of Interests.

‘Replacement Constitution’ means this Deed.

‘Register’ means the register of holders of Units and the register of holders of Options, kept in accordance with the Corporations Act³.

‘Responsible Entity’ means:

- (a) the body corporate named at the beginning of this Deed; or
- (b) if another body corporate holds office as responsible entity of the Scheme, that body corporate.

‘Scheme’ means the registered managed investment scheme governed by this Deed.

‘Scheme Liabilities’ as at a particular day, means the total of:

- (a) the amount of losses, Taxes, fees, expenses and other liabilities of the Responsible Entity in relation to the Scheme; and

³ Refer to sections 168 and 169.

(b) amounts the Responsible Entity determines consistently with the Accounting Standards or in consultation with an auditor, including reasonable provision for contingent or future losses, expenses and other liabilities of the Responsible Entity in relation to the Scheme, and includes accrued but unpaid Member entitlements in connection with the Scheme.

‘Scheme Property’ means property that is property of the Scheme for the purposes of the Corporations Act⁴ being property held by or for the Responsible Entity in connection with the Scheme.

‘Scheme Value’ means the value of the Scheme Property calculated in accordance with Clause 9.

‘Special Resolution’ means a resolution passed at a meeting of Unit Holders 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 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 consisting of not less than 75% of the votes cast on such poll.

‘Subscription Amount’ means in respect of an application for a Partly Paid Unit, the Entry Price less the Uncalled Amount.

‘Tax’ means a tax, levy, duty, charge, deduction or withholding (however it is described) that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

‘Uncalled Amount’ means, in respect of a Partly Paid Unit, the amount of the Entry Price which has not been paid or called under this Deed.

‘Underwriter’ means any person appointed as such by the Responsible Entity from time to time.

‘Underwriting Liabilities’ means any amount which the Responsible Entity is or may become liable to pay to the Underwriter or any other person in respect of or arising out of any underwriting agreement for Units or Options, including but not limited to underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or wilful breach of duty) by the Responsible Entity of its obligations, representations or warranties under any such underwriting agreement.

‘Unit’ subject to any rights, obligations and restrictions attaching to any particular Units or Class, means an undivided share in the beneficial interest in the Scheme Property as provided in this Deed.

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

‘Unit Value’ means the amount worked out using the formula:

$$\frac{\text{NET SCHEME VALUE} + \text{AGGREGATE UNCALLED AMOUNT}}{\text{UNITS IN ISSUE}}$$

‘Units in Issue’ means the number of Units that have been issued less the number that have been redeemed.

‘Valuer’ means a valuer appointed by the Responsible Entity.

1.2 Rules for interpreting this Deed

Headings and footnotes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

⁴ Refer to sections 9 and 601FB(4).

- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it, and in the case of legislation which has been repealed and not replaced, the reference is to the legislation immediately prior to its repeal;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word 'agreement' includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) A power to do something includes a power, exercisable in like circumstances, to revoke or undo it.
 - (h) A reference to a power is also a reference to authority or discretion.
 - (i) A reference to something being '**written**' or '**in writing**' includes that thing being represented or reproduced in any mode in a visible form.
 - (j) In this document, the following words have the same meaning as in the Corporations Act:

administrator	month	registered office
Australian law	property	related body corporate
constitution	record	related entity
entity	registered company auditor	securities
insolvent	registered office	solvent
managed investment scheme	related body corporate	substantial holding
 - (k) A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act.
 - (l) A reference to '**GST**' includes any other Commonwealth, State or Territory goods and services tax, or any Commonwealth, State or Territory tax applying to a transaction in a way similar to GST.
 - (m) Words defined in the GST Law have the same meaning in clauses 1.2(n) and 1.2(o) and clause 32.
 - (n) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
 - (o) If a person is notionally liable to pay GST under the GST Law or is liable to pay an amount which is treated as GST under the GST Law, references to GST which the person

must pay extend to any notional liability of the person to pay GST and references to an input tax credit extend to any notional input tax credit to which the person is entitled.

1.3 Business Days

If the day on or by which a person must do something under this Deed is not a Business Day the person must do it on or by the next Business Day.

2. THIS DEED

2.1 Deed binds Members and Responsible Entity⁵

This Deed binds the Responsible Entity and each Member as well as any person who claims through any of them.

2.2 No agency or partnership created

None of the following:

- (a) this Deed;
- (b) a trust created under this Deed;
- (c) a trust associated with this Deed; and
- (d) except so far as the agreement expressly provides otherwise, an agreement entered into in connection with the Scheme,

creates a relationship of principal and agent, or of partnership, between the Members and the Responsible Entity, or between the Members themselves.

2.3 If there are exemptions or modifications etc.⁶

- (a) Subject to paragraph (c), if relief from the provisions of the Corporations Act is given by an ASIC Instrument, the provisions of this Deed operate subject to the ASIC Instrument.
- (b) Subject to paragraph (c), if relief from the provisions of the Corporations Act is given by an ASIC Instrument on condition that this Deed includes specified provisions, then, for so long as the condition applies, the provisions:
 - (i) are taken to be included in this Deed; and
 - (ii) prevail over the other provisions of this Deed to the extent of any inconsistency.
- (c) If the relief is granted by class order (rather than specifically in relation to the Scheme), the ASIC instrument applies, and the specified provisions referred to in paragraph (b) are taken to be included in this Deed, unless the Responsible Entity states in writing that that is not the case.

3. NAME OF THE SCHEME

3.1 Name

The name of the Scheme is changed to the 'Mirvac PFA Diversified Property Trust'.

3.2 Change of name generally

The Responsible Entity may change the Scheme's name at its discretion.⁷

⁵ Refer to section 601GB.

⁶ Refer to Part 5C.11 and ASIC Policy Statement 136.

⁷ Refer to regulation 5C.1.02 of the Corporations Regulations.

4. SCHEME PROPERTY

4.1 Scheme Property held for Unit Holders⁸

The Responsible Entity holds the Scheme Property on trust for the Unit Holders.

4.2 Holding of Scheme Property⁹

All Scheme Property must be held:

- (a) by the Responsible Entity; or
- (b) if required by law¹⁰ or the Responsible Entity thinks it necessary or appropriate, by a custodian appointed by the Responsible Entity.

4.3 Custodian holding Scheme Property¹¹

The custodian of any Scheme Property must hold it either:

- (a) directly in its name; or
- (b) indirectly by any asset title, transfer or holding system approved by the Responsible Entity.

5. UNITS AND OPTIONS

5.1 Scheme Property divided into Units

The beneficial interest in the Scheme Property is divided into Units.

5.2 Nature of Unit Holder's interest in Scheme Property

Subject to the rights attached to any particular Units or Class of Units:

- (a) each fully paid Unit confers on its holder an equal undivided interest in the Scheme Property;
- (b) a Unit confers on its holder an interest in the Scheme Property as a whole. It does not confer on a Unit Holder an interest in any particular Scheme Property; and
- (c) all Units in a Class rank equally.

5.3 Rights attached to Units

Subject to the rights attached to a class of Units, all Units have the same rights attached to them.

5.4 Consolidation, division and reclassification of Units

The Responsible Entity may consolidate, divide or reclassify Units, as it thinks fit.

5.5 Classes of Units

The Responsible Entity may:

- (a) create and issue Classes; and
- (b) divide issued Units into different Classes.

⁸ Also refer to section 601FC(2).

⁹ Refer to section 601FC(1)(i) and ASIC Policy Statement 133.

¹⁰ Refer to ASIC Policy Statement 131, paragraphs 4 to 6A.

¹¹ Refer to ASIC Policy Statement 133, paragraphs 2 to 13 and 15 to 20.

The Responsible Entity must determine the rights attached to a Class when it issues a Class or divides issued Units into different classes and such rights will prevail over the provisions of this Deed to the extent of any inconsistency.

5.6 No fractions of Units

The Responsible Entity cannot issue a fraction of a Unit or an Option.

5.7 Rounding

Where any calculation done in accordance with this Deed or the Corporations Act¹² would otherwise result in the issue or redemption of a fraction of a Unit or an Option:

- (a) the number of Units or Options to be issued or redeemed must be rounded up or down to the nearest whole number as determined by the Responsible Entity and disclosed in the relevant Offer; and
- (b) the excess Application Money or other property which results from rounding becomes Scheme Property.

5.8 Terms and conditions of Options

The Responsible Entity may from time to time create and issue Options on such terms and conditions as the Responsible Entity determines. Options may be issued with Units or separately.

5.9 Issue of Options

Subject to this Deed, the Corporations Act (and the conditions of any applicable ASIC relief from it) and, if relevant, the Listing Rules, the Responsible Entity may determine that Options will be issued:

- (a) for consideration or no consideration;
- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Responsible Entity, provided that the exercise price is less than the price that would otherwise apply under this Deed by a percentage not exceeding 50%; and
- (c) conferring on the holder of the Option such other entitlements under this Deed as the Responsible Entity determines,

and otherwise on terms and conditions and with such entitlements as determined by the Responsible Entity. The terms of issue of the Option may allow the Responsible Entity to buy back the Options.

5.10 Offers of Options

Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC relief from it), if the Responsible Entity is making an offer of Options to Unit Holders which is otherwise in proportion to their existing holdings of Interests, the Responsible Entity is not required to offer Options under this clause to Foreign Members.

5.11 Exercise of Options

On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.

¹² Refer to section 601KD

5.12 Interest of Optionholders

An Option does not confer any interest in the Scheme or any right to participate in the income or capital of the Scheme.

6. PARTLY PAID UNITS

6.1 Partly Paid Units

The Responsible Entity may determine that any Unit or Class of Units is to be partly paid. If it does so, the following provisions of this clause 6 apply.

6.2 Subscription Amount

Payment in respect of a Unit must be an amount equal to the Subscription Amount and any transfer of property in respect of a Unit must have a value equal to the Subscription Amount plus any costs associated with the transfer of the property incurred by the Responsible Entity.

6.3 Withdrawal Price

For so long as Units are partly paid, the Uncalled Amount must be deducted from the Redemption Price.

6.4 Calls by Responsible Entity

If there is an Uncalled Amount in respect of a Unit, the Responsible Entity may:

- (a) call on a Unit Holder to pay all or any part of the Uncalled Amount subject to the rights, obligations and restrictions attaching to any Units or Classes; and
- (b) only make such a call if it also makes the same call on all other Unit Holders who hold Units of that Class which are similarly partly paid.

6.5 Unpaid call

- (a) If a call under clause 6.4 remains unpaid, the Responsible Entity may give the Unit Holder a notice requiring payment by a nominated date of any part of the Uncalled Amount together with interest determined in accordance with clause 6.5(b) from the date the call was due.
- (b) The interest rate is 15% per annum, or 6% per annum above Market Rate, whichever is the greater, and is calculated on the daily balance and accrues daily unless the Responsible Entity determines otherwise.

6.6 Date of forfeiture

If the notice under clause 6.5 is not complied with by the nominated date, the Responsible Entity may determine that the Unit (including any accrued income) is forfeited from the nominated date.

6.7 Forfeited Units may be disposed of

- (a) The Responsible Entity may dispose of a forfeited Unit in such manner as it determines.
- (b) The Responsible Entity must use reasonable endeavours to ensure that the price received on disposal of the Unit is at least the Entry Price at the date of the disposal less the then Uncalled Amount.
- (c) Proceeds of disposal must be applied in the following order.
 - (i) to the payment of costs and expenses of the forfeiture and disposal;
 - (ii) to unpaid interest;

- (iii) to any unpaid amount in respect of which the notice in clause 6.5(a) was given; and
- (iv) any balance is to be paid to the Unit Holders whose Units have been forfeited and sold.

6.8 Responsible Entity may Register

The Responsible Entity may execute a transfer of the forfeited Unit in favour of the purchaser or its nominee, and register the purchaser or its nominee as the holder of the Unit, and the Unit Holder where Units have been forfeited and sold authorises the Responsible Entity, and appoints the Responsible Entity as its attorney, to do so.

6.9 Remaining liability

- (a) The Unit Holder whose Unit was forfeited ceases to be a Unit Holder from the nominated date referred to in clause 6.5 but remains liable to pay to the Responsible Entity:
 - (i) all unpaid amounts in respect of the forfeited Units;
 - (ii) the costs and expenses of the forfeiture and disposal; and
 - (iii) interest on the unpaid calls at the rate determined under clause 6.4(b) from the date of forfeiture,
 but their liability in respect of the matters listed at (i), (ii) and (iii) above (but not otherwise) ceases if and when the Responsible Entity receives payment in full of all amounts owing in respect of the Units.
- (b) The purchaser of a forfeited Unit remains liable to pay the amount equal to the Uncalled Amount (if any) on the Unit in accordance with this Deed.

6.10 Cancelling forfeiture

The Responsible Entity may cancel forfeiture before the Units are disposed of on such terms as it determines, and must do so if the Unit Holder pays the amounts owing in respect of the Units.

7. ISSUE PRICE OF UNITS

7.1 Responsible Entity may issue Units¹³

- (a) The Responsible Entity may from time to time create and issue Units on such terms and conditions as the Responsible Entity determines subject to this Deed, the Corporations Act and the Listing Rules, if otherwise applicable.
- (b) The Responsible Entity may issue a Unit on application or under an arrangement to reinvest distributions.

7.2 Issue Price¹⁴

The Responsible Entity must issue Units at a price no less than the Issue Price subject to the circumstances and exceptions referred to in this clause 7 and the Corporations Act or any ASIC policy issued thereunder.

7.3 Rights Issues

- (a) Where:

¹³ Note section 601NE(3) and clause 30.8.

¹⁴ Required to be in a registered scheme's constitution by section 601GA(1)(a). Also, refer to ASIC Policy Statement 134, paragraphs 19 to 21 and 27 to 47F.

- (i) subject to this clause, the Units are Offered to all Unit Holders 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;
- (iii) the Units are Offered for subscription at the same price,

the Units may be issued at a price determined by the Responsible Entity, 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 Scheme is Listed, at the close of the Business Day of the announcement of the Offer by the Responsible Entity to the Exchange.

- (b) If the Responsible Entity reasonably considers that it would be in the best interest of Members to exclude Foreign Members and not unfair to those Foreign Members, the Responsible Entity may sell the Units that the Foreign Members would have been entitled to but for the fact that they are Foreign Members, instead of issuing the Units to the Foreign Members, taking reasonable steps to maximise the sale price net of expenses of the sale and promptly pay to the Foreign Members the net sale price.

7.4 Placements and other issues

If the Scheme is Officially Quoted, and the Units (or Class of Units) have not been suspended from Official Quotation, provided the Units are not issued to the Responsible Entity or an Associate of the Responsible Entity, the Units may be issued at a price determined by the Responsible Entity provided that where:

- (a) the Units, together with any Interests issued within a period of 1 year prior to the date of the proposed issue (but excluding an issue approved or ratified by Unit Holders in accordance with the provisions of this clause) would, immediately after the issue, comprise more than 15% of either all the Interests on issue or the Units in the same Class as the Units to be issued; or
- (b) the Price at which the Units are to be issued is less than 90% of the Issue Price calculated on the Business Day immediately preceding the date of issue of the Units,

the following conditions must be satisfied:

- (c) the Unit Holders must approve the issue by ordinary resolution;
- (d) if the Units are in a particular Class, Unit Holders in that Class must approve the issue;
- (e) unless the Responsible Entity reasonably considers that the issue will not adversely affect the interests of Unit Holders in any other Class, Unit Holders in that other Class must approve the issue;
- (f) any notice convening a meeting to vote on the issue must contain particulars of the use to be made of the money raised by the issue, and other material required by the Listing Rules, and otherwise comply with the Listing Rules.

7.5 Reinvestment Plan

- (a) Where:
 - (i) under an arrangement the whole or any part of any money payable to a Unit Holder under this Deed, by way of Distribution, is applied in payment for the subscription of Units;
 - (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 paragraph (b), all Unit Holders may from time to time elect to participate in the arrangement as to the whole or some proportion of a distribution which is payable to the Unit Holder,

the Units may be issued at a price determined by the Responsible Entity, 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 Distribution.

- (b) If the Responsible Entity reasonably considers that it would be in the best interest of Members to exclude Foreign Members and not unfair to those Foreign Members, the Responsible Entity may sell the Units that the Foreign Members would have been entitled to but for the fact that they are Foreign Members, instead of issuing the Units to the Foreign Members, taking reasonable steps to maximise the sale price net of expenses of the sale and promptly pay to the Foreign Members the net sale price.

7.6 Rounding of Issue Price

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

7.7 Issues in excess of Issue Price

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

7.8 Issues to implement merger proposal

Notwithstanding any other provisions of clause 7, the Responsible Entity may issue Units in accordance with clause 38 of this Deed.

8. APPLICATION PROCEDURE

8.1 Form of application

An application for Units or Options must be in such form as the Responsible Entity determines. The Responsible Entity may determine that such application need not be in writing. The form may be transmitted electronically if approved by the Responsible Entity.

8.2 Deciding applications¹⁵

The Responsible Entity may reject all or part of an application for Units or Options without giving a reason for doing so.

8.3 What happens to rejected applications

If the Responsible Entity rejects an application for Units or Options, it must:

- (a) give the applicant written notice of the rejection; and
- (b) cause an amount equal to the Application Money (less any Taxes and bank fees in connection with the application) to be paid back to the applicant.

8.4 Application Money

- (a) Payment in respect of an application must accompany the application.
- (b) Application Money must be:
 - (i) Cash; or

¹⁵ Note section 601NE(3) and clause 30.8.

- (ii) at the discretion of the Responsible Entity and subject to any conditions it imposes, property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property acceptable to the Responsible Entity if the Responsible entity requires) or a combination of that and Cash; or
 - (iii) comprise a reinvestment of Distributions in accordance with this Deed,
- and in the case of paragraph 8.4(b)(ii):
- (iv) the contribution is taken to be the value of the asset as determined by the Responsible Entity;
 - (v) the application for Units or Options cannot be accepted unless the asset is vested in the Responsible Entity or its custodian.
- (c) For the purposes of clause 8.4 and subject to clause 6:
- (i) payment in respect of a Unit must be an amount equal to the Entry Price; and
 - (ii) transfer of property in respect of a Unit must have a value equal to the Entry Price plus any costs associated with the transfer of the property incurred or likely to be incurred by the Responsible Entity if the Responsible Entity so requires.
- (d) If the Responsible Entity does not require payment of costs under clause 8.4(c)(ii), any costs associated with the valuation and listing of the asset are payable or can be reimbursed out of Scheme Property.

8.5 Default in payment of Application Money

If:

- (a) a cheque or similar instrument used to pay the Application Money is dishonoured on first presentation; or
- (b) an electronic transfer of funds to pay the Application Money is not actually received by the Responsible Entity; or
- (c) the property contributed does not vest in the Responsible Entity or its custodian within 1 month (or such other period as the Responsible Entity determines) of the date the Units or Options are taken to be issued

the payment is taken never to have been made and any issue of Units or Options against the Application Money is void.

8.6 When applications are received and Interests are issued

- (a) An application for Units or Options is taken to be received when the Responsible Entity exercises its discretion to accept the application, subject to (b)
- (b) A Unit or Option is taken to be issued when the name of the person to whom it is issued is entered in the Register as the holder of the Unit or Option, subject to (c).
- (c) Units which are issued on a reinvestment of distributions are taken to be issued on the day the application in respect of those Units is deemed to be received.

8.7 Minimum Holding

The Responsible Entity may set a minimum holding of Units of Options and alter those amounts from time to time.

8.8 Transfer of application money or property to sub-trust

- (a) Notwithstanding clause 8.4, the Responsible Entity may determine that the Application Money against which Units or Options are to be issued is to be vested in the trustee of a

trust in which the Responsible Entity holds all or part of the beneficial interest, rather than the Responsible Entity itself.

- (b) If the Responsible Entity does so:
 - (i) clause 8.4 applies as if references to vesting of application money or property in the Responsible Entity were references to vesting of application money or property in the trustee of that trust; and
 - (ii) it may also determine that some or all of any costs associated with a transfer of property incurred or likely to be incurred by the trustee of that trust should be taken into account for the purposes of clause 8.4(c) and 8.4(d).

9. VALUING SCHEME PROPERTY

9.1 Valuation roll to be kept

The Responsible Entity must set up and keep a valuation roll which records the value of the Scheme Property.

9.2 When the Scheme Property is to be valued

The Responsible Entity:

- (a) may have the Scheme Property valued by a Valuer at any time; and
- (b) must have it done at regular intervals appropriate to the nature of the Scheme Property and having regard to the Applicable Standards.¹⁶

9.3 Method for valuing Scheme Property¹⁷

The value of the Scheme Property for working out Scheme Value is its market value, unless the Responsible Entity in consultation with the Scheme auditor¹⁸:

- (a) thinks it an inappropriate way of valuing particular Scheme Property; and
- (b) determines another way of valuing that Scheme Property.

9.4 Adjustments to Scheme Value and Net Scheme Value

In determining the Scheme Value and the Net Scheme Value the Responsible Entity may make such incremental and decremental adjustments and provisions as it reasonably determines in consultation with the Scheme auditor.

9.5 Valuer qualifications

A Valuer appointed by the Responsible Entity must:

- (a) not be a related entity of the Responsible Entity; and
- (b) have sufficient experience in valuing the particular kind of asset or property to be valued.

10. SCHEME VALUES

10.1 When the Scheme Value and Net Scheme Value is to be worked out

The Responsible Entity:

¹⁶ Also refer to 601FC(1)(j).

¹⁷ How the scheme property is to be valued is required to be in a registered scheme's constitution by ASIC Policy Statement 134, paragraph 29.

¹⁸ Refer to Division 2 of Part 2M.4.

- (a) must work out the Scheme Value and the Net Scheme Value each time it is necessary to do so; and
- (b) may work them out at any other times it thinks fit, including more than once a day.

10.2 Effect of determination

The Responsible Entity's determination of a Scheme Value or Net Scheme Value binds all the Members.

11. PAYING LIABILITIES AND EXPENSES

Liabilities and expenses of the Scheme for a Distribution Period are to be paid:

- (a) first, out of the income of the Scheme for that Distribution Period; and
- (b) then, if that is not enough, out of the balance of the Scheme Property.

12. DISTRIBUTIONS OF INCOME AND CAPITAL

12.1 Working out Distributable Amount

The Responsible Entity must work out the Distributable Amount of the Scheme for each Distribution Period, and may do so in its absolute discretion.

12.2 Obligation to distribute income

Subject to the rights attached to any Class, the Responsible Entity must distribute the Distribution Amount to Unit Holders in proportion to the number of Units of which they are the registered holders at such time and, in the case of Partly Paid Units, according to the proportion or proportions of the price paid upon those Partly Paid Units and the proportion of the Distribution Period (calculated in days) for which the relevant proportion or different proportions of the Issue Price have been paid up, where the number of Units the Unit Holder holds is worked out as at 5:00pm (Brisbane time) on the Distribution Date.

12.3 Unit Holder's present entitlement to Distribution Amount

Subject to the rights attached to any Class, each person who is a Unit Holder at 5:00pm (Brisbane time) on the Distribution Date is presently and irrevocably entitled at the end of the relevant Distribution Period to its Distribution Amount for that Distribution Period.

12.4 Separate accounts

The Responsible Entity may keep separate accounts of different categories or sources of income or both and may allocate income from a particular category or source or both to particular Unit Holders or Classes. The Responsible Entity must notify the Unit Holders concerned of that allocation.

12.5 Transfer of Distribution Amounts to distribution account

As soon as possible after the Distribution Date, the Responsible Entity must transfer Unit Holders' Distribution Amounts for the relevant Distribution Period to a separate distribution account to be held for the Unit Holders entitled to the Distribution Amounts. When transferred, these amounts cease to be part of the Scheme Property.

12.6 Deductions that may be made from Distribution Amount

The Responsible Entity may deduct from a Unit Holder's Distribution Amount:

- (a) the amount (or the amount it reasonably determines to be) of any Taxes, fees and charges relating to the Unit Holder or its investment in the Scheme accrued for the relevant Distribution Period; and
- (b) any fees or other amounts payable by the Unit Holder to the Responsible Entity, before paying the Unit Holder's Distribution Amount or reinvesting it to acquire Units.

12.7 When Distribution Amount is paid

The Responsible Entity must pay the Unit Holder its Distribution Amount within 90 days after the relevant Distribution Date or any longer period allowed by law.

12.8 Reinvestment of distributions

The Responsible Entity may allow Unit Holders to reinvest all or some of any distribution to acquire Units. If the Responsible Entity decides to allow reinvestment, it:

- (a) must notify Unit Holders of the procedure for reinvestment and any changes to the procedure; and
- (b) is taken to have received and accepted an application to reinvest distributions on the relevant Distribution Date.

12.9 Deleted intentionally

12.10 Transfer of capital

The Responsible Entity may transfer capital to the distribution account at its discretion to enable a distribution to Unit Holders.

12.11 Interim distributions

The Responsible Entity may at any time make an interim distribution to the Unit Holders. If it does then the Responsible Entity must specify a date as the Distribution Date.

12.12 Other Distributions

The Responsible Entity may at any time distribute any amount of capital or income of the Scheme to the Unit Holders. Subject to the rights attached to any Class:

- (a) a person is entitled to any such distribution pro rata in accordance with clause 12.2; and
- (b) the distribution may be in Cash, in specie or by way of bonus Units, with such bonus Units to rank with existing Units for the purposes of distributions of income and capital as determined by the Responsible Entity.

12.13 Determination whether capital or income

The question of whether an amount is capital or income is to be determined by the Responsible Entity.

12.14 Distribution statements to be sent out

The Responsible Entity must cause a distribution statement to be sent to the Unit Holders at least once for each financial year, specifying a break-up between the income and capital amounts of the Distributable Amount paid throughout the financial year.

12.15 Other reporting

The Responsible Entity must report to Unit Holders concerning the affairs of the Scheme and their respective Unit and Option holdings as required by the Corporations Act. The form, content

and timing of any report sent by the Responsible Entity to the Unit Holders is (subject to the law) at the discretion of the Responsible Entity.

12.16 Distribution Equalisation Reserve

The Responsible Entity may require the withholding from distributions to Unit Holders during any Distribution Period or month, financial year or any other period, an amount which the Responsible Entity considers is necessary to minimise variability in income distributions over a Distribution Period, or months, financial years or any other period.

12.17 Distribution Process

- (a) Any distribution by the Responsible Entity under this clause will generally be by electronic funds transfer to the nominated account of the Unit Holder.
- (b) Each Unit Holder must provide to the Responsible Entity:
 - (i) when submitting an application form; and
 - (ii) whenever requested by the Responsible Entity or its officers, sufficient, accurate and current account information to enable the Responsible Entity to make distributions by electronic funds transfer ('Account Information').
- (c) Each Unit Holder is responsible for ensuring at all times the Account Information provided to or held by the Responsible Entity is both current and accurate. Where the Unit Holder's Account Information changes it is the responsibility of the Unit Holder to notify the Responsible Entity in writing immediately.
- (d) Each Unit Holder absolves and discharges completely the Responsible Entity from any loss incurred or suffered by the Unit Holder as a result of the Responsible Entity relying on the Account Information or on information supplied to the Responsible Entity which the Responsible Entity reasonably considers to be Account Information for the Unit Holder irrespective of whether that information was provided by the Unit Holder or some person purporting to be, represent, or act on behalf of the Unit Holder.

13. RESERVES

13.1 Establishing reserves

The Responsible Entity may establish any reserve it thinks fit.

13.2 Crediting net capital gains and losses to a reserve

The Responsible Entity may:

- (a) separate net realised and unrealised capital gains and losses of the Scheme from other receipts, profits and gains of the Scheme; and
- (b) credit them to a reserve.

13.3 Distributing reserves

The Responsible Entity may distribute reserves to the Unit Holders in the same way as Distribution Amount.

14. WITHDRAWING FROM THE SCHEME – GENERAL PROVISIONS¹⁹

14.1 Right to withdraw²⁰

A Member may withdraw from the Scheme in accordance with clause 15 and the Corporations Act²¹.

14.2 General Restrictions on right to withdraw²²

- (a) A Member cannot withdraw from the Scheme by redemption of Units:
 - (i) after a Meeting has been called to vote on a resolution to terminate the Scheme and before the vote has been taken;
 - (ii) after the Scheme is terminated; or
 - (iii) while the Scheme is being wound up.
- (b) The Responsible Entity does not have to comply with a redemption request if in the Responsible Entity's reasonable opinion, it would not be adequately indemnified out of the Scheme Property.

14.3 Member cannot deal with Unit after redemption request

A Member cannot deal with a Unit it has requested the Responsible Entity to redeem unless the Responsible Entity determines not to redeem that Unit.

14.4 Conditions of redemption

The Responsible Entity may impose conditions on the redemption of Units including that:

- (a) Members can only request redemption of Units which have been held for a specified minimum period;
- (b) Members only be permitted to request redemption of a specified percentage of their Units during a specified period; and
- (c) the Redemption Amount not be paid directly to the Member but be applied on behalf of the Member to acquire securities in another entity.

15. REDEMPTION WHILE THE SCHEME IS NOT LIQUID

15.1 Method of withdrawal

- (a) A Unit Holder may withdraw from the Scheme in accordance with the terms of any current withdrawal offer made by the Responsible Entity under the Corporations Act and this Deed.
- (b) If there is no withdrawal offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Scheme.

15.2 Redemption Price

- (a) Subject to clause 15.2(b) a Unit may only be redeemed at the Redemption Price.

¹⁹ Refer to Part 5C.6.

²⁰ Required to be in a registered scheme's constitution by section 601GA(4) if members are to have a right to withdraw. Also, refer to sections 601KA(1) and (2) as well as ASIC Policy Statement 134, paragraphs 25, 54 and 55.

²¹ Refer to sections 601KB to 601KE.

²² Also refer to clause 30.8 and section 601KA(3).

- (b) The Responsible Entity may redeem Units at its discretion at a Redemption Offer Price which:
 - (i) exceeds the Redemption Price by up to 10%; or
 - (ii) is not less than 90% of the Redemption Price.

15.3 Making withdrawal offer

- (a) The Responsible Entity may make a withdrawal offer by:
 - (i) publishing it by any means (for example including, without limitation, in a newspaper or on the internet); or
 - (ii) giving a copy to the Unit Holders or Unit Holders of a Class.
- (b) The Responsible Entity is not at any time obliged to make a withdrawal offer.

15.4 Cancelling a withdrawal offer

The Responsible Entity may cancel a withdrawal offer by:

- (a) publishing a notice of cancellation by any means (for example including, without limitation, in a newspaper or on the internet); or
- (b) notice in writing to the Members to whom the withdrawal offer was made.

15.5 Deducting redemption fees and other amounts from Redemption Amount

The Responsible Entity may deduct from the Redemption Amount payable to a Member:

- (a) any redemption fees²³;
- (b) other amounts owing by the Member to the Responsible Entity; and
- (c) in accordance with clause 6.3, any Uncalled Amount.

15.6 Payment of Redemption Amount

The Responsible Entity may pay the Redemption Amount:

- (a) in Cash;
 - (b) by transferring Scheme Property to the Member; or
 - (c) a combination of both,
- but in the case of paragraph (b) or (c):
- (d) the value of the Scheme Property and the Cash paid (if any) must be equal to the Redemption Amount;
 - (e) the value of the Scheme Property must be based on a valuation carried out by a Valuer; and
 - (f) the costs associated with valuation and transfer of the Scheme Property are payable or can be reimbursed out of the Scheme Property at the discretion of the Responsible Entity.

15.7 Redemption proceeds

The Responsible Entity may determine at its discretion that the Redemption Offer Price will comprise income as well as capital in which case Members will be presently entitled to such income component. In the absence of such a determination, the Redemption Offer Price will comprise capital only.

²³ Refer to clause 25.1

15.8 Buy-back of Units

- (a) While the Scheme is Listed, the Responsible Entity may, subject to and in accordance with the Corporations Act and any requirements under the Listing Rules, purchase Units on the Exchange and cause the Units to be cancelled.
- (b) No Redemption Amount is payable upon cancellation of the Units bought back on the Exchange under clause (a).

16. TRANSFER OF UNITS AND OPTIONS

16.1 Transfer

Subject to the provisions of this Deed and the Applicable Standards, an Interest may be transferred or transmitted.

16.2 Instrument of Transfer

- (a) A transfer of an Interest, which is not Officially Quoted, will not be registered unless there has been lodged with the registered office of the Responsible Entity or the address of the Register (as notified to Members) a proper instrument of transfer duly stamped (if necessary) and executed by the transferor and the transferee.
- (b) Any transfer of an Interest which is Officially Quoted must be effected in accordance with the Listing Rules.
- (c) Subject to the Applicable Standards the Responsible Entity may at its sole discretion accept the transfer of an Interest in any form it considers acceptable or appropriate.

16.3 Date of Transfer

The transferor remains the holder of the Interest until the name of the transferee is entered in the Register.

16.4 Form of Transfer

The form of transfer must be in writing and comply with the Corporations Act, and if the Interest is Officially Quoted, the Listing Rules, and if the Interest is not Officially Quoted, be in such form as the Responsible Entity may approve.

16.5 Refusal to Register

- (a) While the Scheme is not Listed, the Responsible Entity may refuse to register or fail to register or give effect to any transfer of an Interest without assigning a reason.
- (b) While the Scheme is Listed, the Responsible Entity may decline to register a transfer of an Interest in accordance with clause 36 of this Deed, or otherwise where to do so would not contravene the Listing Rules. The Responsible Entity must decline to register a transfer when required to do so by law or by the Listing Rules. Where the Listing Rules so require, the Responsible Entity must notify the lodging party of the refusal to register the transfer and the reasons for the refusal within the time prescribed by the Listing Rules.

16.6 Responsible Entity may suspend registration of transfers

Subject to the Listing Rules, the Responsible Entity may suspend registration of transfers of Interests at the times and for the periods it thinks fit.

16.7 Powers of attorney

The Responsible Entity may assume, as against a Member, that a power of attorney granted by that Member that is lodged with or produced or exhibited to the Responsible Entity remains in force, and may rely on it, until the Responsible Entity receives express notice in writing at its registered office of:

- (a) the revocation of the power of attorney; or
- (b) the death, dissolution or insolvency of the Member.

16.8 Consideration for transfer

The Responsible Entity need not concern itself with the consideration for a transfer of an Interest.

17. TRANSMISSION OF INTERESTS

17.1 Death of joint holder

The Responsible Entity must recognise only the surviving joint holders as being entitled to Interests registered jointly in the names of a deceased Member and others. The estate of the deceased joint holder is not released from any liability in respect of the Interests.

17.2 Death of single holder

The Responsible Entity must not recognise anyone except the legal personal representative of the deceased Member as having any title to Interests registered in the sole name of a deceased Member. If the personal representative gives the Responsible Entity or other information that satisfies the Responsible Entity of the representative's entitlement to be registered as holder of the Units:

- (a) subject to clauses 16.5 and 17.4, the Responsible Entity must register the personal representative as the holder of the Units as soon as possible after receipt of a written and signed notice to the Responsible Entity from the representative requiring it to do so; and
- (b) whether or not registered as the holder of the Units, the personal representative:
 - (i) may, subject to clause 16, transfer the Units to another person; and
 - (ii) has the same rights as the deceased Member.

17.3 Transmission of Units on insolvency or mental incapacity

Subject to the Bankruptcy Act 1966 (Cth), if a person entitled to Units because of the insolvency or mental incapacity of a Member gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as holder of the Units:

- (a) subject to clauses 16.5 and 17.4, the Responsible Entity must register that person as the holder of the Units as soon as possible after receipt of a written and signed notice to the Responsible Entity from that person requiring it to do so; and
- (b) whether or not registered as the holder of the Units, that person:
 - (i) may, subject to clause 16, transfer the Units to another person; and
 - (ii) has the same rights as the insolvent or incapable Member.

17.4 Refusal to register holder

The Responsible Entity has the same right to refuse to register a personal representative or person entitled to Units on the insolvency or mental incapacity of a Member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent Member.

18. HOLDING STATEMENT

18.1 No obligation to issue certificates

The Responsible Entity is not obliged to issue Unit certificates or Option certificates to a Member.

18.2 Requirement for holding statements

The Responsible Entity may determine whether or not holding statements will be issued for Units and Options.

18.3 Cancellation or replacement

The Responsible Entity may cancel or replace any Unit or Option certificate or holding statement, in the circumstances and subject to the conditions determined by the Responsible Entity.

18.4 Signature of holding statements

Holding statements may be prepared as the Responsible Entity determines and need not be signed.

18.5 Evidence of ownership

Holding statements will not be evidence of ownership of Units or Options.

19. REGISTER²⁴

19.1 Changes to details in Register

A Member must promptly notify the Responsible Entity of any change to its name or address and the Responsible Entity must update the Register to reflect the change.

19.2 Non-beneficial holders of Units or Options

Subject to this Deed, the Responsible Entity:

- (a) may treat the person named in the Register as the holder of the Unit as the absolute owner of it; and
- (b) need not recognise any equitable or other claim or interest in a Unit by any person except the registered holder,

unless otherwise ordered by a court of competent jurisdiction or required by statute.

20. MEMBERS

20.1 Joint tenancy

Where 2 or more persons are registered as the holder of a Unit or Option, they hold it as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

20.2 Things a Member has no right to do

Except as otherwise provided by this Deed or the Corporations Act, a Member has no right or power, merely because it is a Member:

²⁴ Refer to Chapter 2C and Part 9.3.

- (a) to interfere with, or question the exercise or non-exercise of, any power, duty or right of the Responsible Entity;
- (b) to exercise a right in respect of the Scheme Property;
- (c) to lodge, in respect of the Scheme Property, a caveat or other document that prohibits (whether conditionally or not) an action, or the registration of a dealing, in respect of the Scheme Property;
- (d) to claim an interest in the Scheme Property; or
- (e) to require the Scheme Property to be transferred to the Member.

20.3 Member's liability limited

- (a) If there is not enough Scheme Property to meet the liabilities of the Responsible Entity in relation to the Scheme, a Member does not have to:
 - (i) make up the difference; or
 - (ii) indemnify or make a payment to the Responsible Entity or any of its creditors.
- (b) The liability of a Member is limited to the unpaid part (if any) of the Entry Price of its Units.
- (c) A Member has no liability to the creditors of the Responsible Entity.

21. MEETINGS OF MEMBERS

21.1 Convening of meetings

The Responsible Entity may at any time convene a meeting of Unit Holders, and must do so if the Corporations Act requires.

21.2 Responsible Entity may determine

- (a) Subject to the specific provisions of this Deed relating to meetings of Unit Holders and to the Corporations Act, the Responsible Entity may determine the time and place at which a meeting of Unit Holders will be convened and the manner in which the meeting will be conducted.
- (b) The Responsible Entity may, by notice in writing to Members adjourn any meeting convened by the Responsible Entity, to such time and place as the Responsible Entity sees fit.

21.3 Notice of meeting

- (a) Notice of meeting of Unit Holders must be given in accordance with the Corporations Act.
- (b) In computing the period of notice under clause 21.3(a), the date on which the notice is given or taken to be given is to be disregarded.
- (c) Any notice sent by post will be deemed to have been served at the expiration of 24 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.

21.4 Quorum

- (a) Subject to clause 21.4(c) the quorum for a meeting at which either an Ordinary Resolution or a Special Resolution is proposed is two Unit Holders and the quorum must be present at all time during the meeting.

- (b) The quorum for a meeting at which an Extraordinary Resolution is proposed is at least four persons holding or representing in person, by proxy or attorney at least 51% of the Units by value.
- (c) The quorum for a meeting at which any resolution is proposed (regardless of the type of resolution) to remove the Responsible Entity, is at least four persons holding or representing in person, by proxy or attorney at least 51% of the Units by value.
- (d) The quorum for a meeting at which any resolution is proposed (regardless of the type of resolution) to amend clause 21.4(c), or this clause 21.4(d), is at least four persons holding or representing in person, by proxy or attorney at least 51% of the Units by value.

21.5 No quorum

If a quorum is not present within 60 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Unit Holders – dissolved; or
- (b) otherwise – adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Responsible Entity decides by notice to the Unit Holders and others entitled to notice of meeting.

If a quorum is not present within 60 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

21.6 Chairman

Subject to the Corporations Act the Responsible Entity may appoint a person to chair a meeting of Unit Holders.

21.7 Role of chairman

The chairman of a meeting of Unit Holders convened by the Responsible Entity:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting;
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it is necessary or desirable for the proper conduct of the meeting;
- (d) has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chairman thinks fit;
- (e) may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place,

and a decision by the chairman under this clause 21.7 is final.

21.8 Notice of cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Unit Holders must state the reason for cancellation or postponement and be given:

- (a) to each Unit Holder individually; and

- (b) to each other person entitled to be given notice of a meeting of Unit Holders under the Corporations Act.

21.9 Content of notice or postponement of meeting

A notice of postponement of a meeting of Unit Holders must specify:

- (a) the postponed date and time for the holding of the meeting; and
- (b) a place for holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting.

21.10 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a meeting of Unit Holders to the date specified in that notice for holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Deed or the Corporations Act.

21.11 Business at postponed meeting

The only business that may be transacted at a meeting of Unit Holders the holding of which is postponed is the business specified in the notice convening the meeting.

21.12 Proxy, attorney or representative at postponed meeting

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Unit Holders to be held on a specified date or at a meeting of Unit Holders to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date no later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by the force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Unit Holder appointing the proxy, attorney or representative gives to the Responsible Entity notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

21.13 Proxies containing some of the required information

The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

21.14 Adjournment of meeting

In exercising the discretion under clause 21.7(e), the chairman may, but need not, seek the approval of Unit Holders present. Unless required by the chairman, no vote may be taken or demanded by the Unit Holders present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

21.15 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

21.16 Demand for a poll

- (a) A poll may be demanded by at least 5 Unit Holders entitled to vote on the resolution, Unit Holders with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (b) A Special Resolution or Extraordinary Resolution put to the vote at a meeting of Unit Holders must be decided on a poll.

21.17 How voting is carried out

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Scheme, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

21.18 Poll

- (a) If a poll is properly demanded or required, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.

21.19 Equality of votes – no casting vote for chairman

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Unit Holder or proxy or attorney or representative.

21.20 Entitlement to vote

Subject to any rights or restrictions for the time being attached to any class or classes of Units and to this Deed:

- (a) on a show of hands, each Unit Holder present and each other person present as a proxy, attorney or representative of a Unit Holder has one vote; and
- (b) on a poll, each Unit Holder present in person has one vote for each one dollar of the value of the Units held by the Unit Holder and each person present as proxy, attorney or representative of a Unit Holder has one vote for each one dollar of the value of the Units held by the Unit Holder that the person represents.

21.21 Joint Unit Holders' vote

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

21.22 Vote of shareholder of unsound mind

If a Unit Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Unit Holder's committee or trustee or any other person who properly has the management of the Unit Holder's estate may exercise any rights of the Unit Holder in relation not a meeting of Unit Holders as if the committee, trustee or other person were the Unit Holder.

21.23 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

21.24 Validity of vote in certain circumstances

A vote cast by a person as a proxy, attorney or representative is valid notwithstanding:

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise; or
 - (b) the execution of the transfer of those Units by that holder,
- unless a notice in writing of the revocation or transfer has been received by the Responsible Entity or by the chairman of the meeting before the vote is cast.

21.25 Meetings of Option holders or Classes

If any meeting of Option holders or a Class is required to be held the foregoing provisions of this clause 21 will apply with any necessary amendments.

22. RESPONSIBLE ENTITY²⁵

22.1 Responsible Entity

The Responsible Entity agrees to act as the responsible entity of the Scheme.

22.2 Retirement and removal of Responsible Entity²⁶

- (a) The Responsible Entity may retire as responsible entity subject to compliance with the Corporations Act.
- (b) The Responsible Entity may be removed:
 - (i) while the Scheme is Listed with Bendigo Stock Exchange Limited and the listing rules of Bendigo Stock Exchange Limited provide that removal of a manager must be by Ordinary Resolution, by Ordinary Resolution;
 - (ii) otherwise while Listed, by Extraordinary Resolution; and
 - (iii) while the Scheme is not Listed, by Extraordinary Resolution.
- (c) On the retirement or removal of the Responsible Entity the Responsible Entity may, subject to compliance with the requirements of the Corporations Act, appoint some other corporation to be the responsible entity.
- (d) If the Responsible Entity retires or is removed the new responsible entity must, unless otherwise approved by the outgoing Responsible Entity, within 7 days after the outgoing Responsible Entity retires or is removed:
 - (i) if the name of the Scheme implies an association with the outgoing Responsible Entity or its business, change the Scheme's name to a name that does not imply the association; and
 - (ii) withdraw any current offer document; and
 - (iii) pay to the outgoing Responsible Entity the amount of any sums payable to the outgoing Responsible Entity under this Deed;

²⁵ Also refer to Part 5C.2.

²⁶ Also refer to section 601FL as well as the other sections in Division 2 of Part 5C.2 which governs changing the responsible entity.

- (e) The outgoing Responsible Entity shall, in consideration of its retirement as a responsible entity, be entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity and shall not be required to account to Members for such remuneration or benefit.
- (f) When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Scheme arising after the time it retires or is removed and the reasonable costs of doing so are an expense of the Scheme.

23. RESPONSIBLE ENTITY'S POWERS

23.1 General powers²⁷

Subject to this Deed, the Responsible Entity has:

- (a) all the powers in respect of the Scheme Property that it is possible under the law to confer on a trustee;
- (b) all the powers it would have if it were the absolute owner of the Scheme Property and were acting in its personal capacity; and
- (c) all the powers necessary or desirable for the performance or exercise of its powers, duties and rights in respect of the Scheme (including its obligations under this Deed).

The other provisions of this clause 23 do not limit the Responsible Entity's general powers under this clause.

23.2 Power to borrow and use Scheme Property as security²⁸

- (a) The Responsible Entity may:
 - (i) borrow, raise money or otherwise obtain financial accommodation for the purposes of the Scheme, on terms it thinks fit; and
 - (ii) use Scheme Property as security, but only in relation to borrowing, raising money or obtaining financial accommodation for the purposes of the Scheme, and
 - (iii) acquire Derivatives relative to borrowings.
- (b) Unless otherwise notified in a disclosure document issued by the Responsible Entity from time to time the Responsible Entity will not arrange any loans or financing arrangements which at the time of draw down together with any existing loans exceed 75% of the value of Scheme Property comprised of real estate.

23.3 Investment Power²⁹

- (a) Subject to the Corporations Act³⁰, the Responsible Entity may invest or apply the Scheme Property as it thinks fit.
- (b) Without limiting the generality of the above, the Responsible Entity may:
 - (i) invest in:
 - (A) real property;
 - (B) managed investment schemes;

²⁷ Required to be in a registered scheme's constitution by section 601GA(1)(b). Also, refer to ASIC Policy Statement 134, paragraphs 22 and 48.

²⁸ Required to be in a registered scheme's constitution by sections 601GA(1)(b) and 601GA(3). Also refer to ASIC Policy Statement 134, paragraphs 22 and 48.

²⁹ Required to be in a registered scheme's constitution by section 601GA(1)(b). Also, refer to ASIC Policy Statement 134, paragraphs 22 and 48.

³⁰ Refer to section 601FC(4) and ASIC Policy Statement 136, paragraphs 6 to 8 and 23 to 26.

- (C) securities;
- (D) financial products; and
- (E) Derivatives, and
- (ii) subject always to the Corporations Act and the Listing Rules, purchase on-market Units or Options which are Officially Quoted, following which it must cancel the Units or Options purchased

23.4 Exercise of discretions by Responsible Entity

The Responsible Entity has an unfettered discretion whether or not to exercise, and how and when to exercise, its powers, duties and rights under this Deed.

23.5 Management Power³¹

The Responsible Entity may do whatever it thinks proper in the management and operation of the Scheme.

23.6 Delegation power³²

- (a) The Responsible Entity may appoint an agent or delegate to perform any act or exercise any power that the Responsible Entity can in relation to the Scheme, including the power to appoint a sub-agent or sub-delegate,
- (b) Paragraph (a) includes:
 - (i) the power to appoint an attorney in respect of a dealing with Scheme Property, on terms the Responsible Entity thinks fit (including a provision authorising the attorney to appoint a sub-attorney); and
 - (ii) the power to appoint a person to act as a custodian of Scheme Property³³, with the powers, duties and rights specified in the appointment document - for example, the appointment may authorise the custodian:
 - (A) to act within or outside Australia;
 - (B) to act in the name of the Responsible Entity or, at its direction, in its own name or in a name nominated by the custodian and approved by the Responsible Entity; or
 - (C) to appoint sub-custodians.
- (c) The appointment may be joint, in which case the agents or delegates may act or exercise a power jointly and severally.
- (d) The agent or delegate may be an Affiliate or employee of the Responsible Entity.³⁴
- (e) In the document appointing the agent or delegate, the Responsible Entity may include provisions for the protection and convenience of those who deal with the agent or delegate that the Responsible Entity thinks fit.

23.7 Responsible Entity may rely on advice

The Responsible Entity may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Responsible Entity in relation to the interpretation of this Deed or any other document (whether statutory or otherwise) or generally as to the administration of the Scheme or any other matter in connection with the Scheme;

³¹ Also refer to section 601FB(1).

³² Also refer to sections 601FB(2) to (4).

³³ Refer to ASIC Policy Statement 133, paragraphs 2 to 13 and 15 to 20.

³⁴ Refer to Part 5C.7.

- (b) the advice, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are in each case believed by the Responsible Entity (as the case requires) in good faith at the time of appointment to be expert in relation to the matters upon which they are consulted and who the Responsible Entity, as the case may be, has no reason to believe at the time of appointment will not act independently;
- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Scheme; and
- (d) any other document provided to the Responsible Entity in connection with the Scheme upon which it is reasonable for the Responsible Entity to rely,

and the Responsible Entity will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statements or information.

24. RESPONSIBLE ENTITY'S RIGHTS

24.1 Responsible Entity may hold Units³⁵

- (a) The Responsible Entity and its Affiliates may hold and deal with Units in any capacity.
- (b) Unless otherwise expressly provided by this Deed or the Corporations Act³⁶, the Responsible Entity and its Affiliates, as Members, have all the rights of a Member in relation to the Units they hold.³⁷

24.2 Responsible Entity may deal etc with itself in other capacities

Subject to the Corporations Act³⁸, the Responsible Entity (or any of its Affiliates) may:

- (a) deal with itself (in any capacity), an Affiliate or a Member, including:
 - (i) buying Scheme Property; or
 - (ii) selling property into the Scheme;
 - (iii) underwriting any issue of Units;
 - (iv) paying any fee (including any capital raising fee relating to the issue of Units and other fees contemplated by clause 25.12),
 in its own right, as trustee of another trust or in another capacity;
- (b) be interested in any contract or transaction with itself (in any capacity), an Affiliate or a member; or
- (c) act in the same or similar capacity in relation to another managed investment scheme or trust.

24.3 Responsible Entity not accountable

The Responsible Entity and its Affiliates do not have to account for, and may retain for their own benefit, any profit or benefit arising from anything referred to in clause 24.2.

³⁵ Refer to section 601FG.

³⁶ Refer to section 253E. Also, refer to Part 5C.7 and section 225 as well as ASIC Policy Statement 136, paragraphs 5 and 22.

³⁷ Refer to Part 5C.7 and section 215. Also refer to section 601FG for consideration for transfers to and by the Responsible Entity.

³⁸ Refer to section 601FC(1)(c) and Part 5C.7.

25. RESPONSIBLE ENTITY'S FEES AND EXPENSES³⁹

25.1 Fees payable to Responsible Entity⁴⁰

The Responsible Entity is to be paid the following fees in relation to the performance of its duties in respect of the Scheme:

- (a) A management fee equal to 0.6% per annum of the Scheme Value calculated monthly and payable monthly in advance, from the Effective Date to the date of final distribution under clause 30.2. For the purposes of this sub-clause only, Scheme Value shall be that amount calculated in accordance with the last audited financial statements of the Scheme, taking into consideration any adjustments necessary due to the purchase or sale of Scheme Property since the balance date of those last audited financial statements. During the period from the Effective Date until audited financial statements are next issued, the proforma financial statements of the Scheme may be used as the basis for the calculation of this management fee.
- (b) An acquisition fee in respect of any Individual Property which is acquired by the Scheme equal to 2% of the gross purchase price of that property. This fee is payable upon settlement of the acquisition.
- (c) A disposal fee in respect of any Individual Property which is sold by the Scheme equal to 2% of the gross sale price of that property. This fee is payable upon settlement of the sale.
- (d) A performance fee in consideration for the Responsible Entity identifying suitable Individual Properties with capital growth potential being, if the gross sale price of an Individual Property:
 - (i) is more than 50% above the original gross purchase price of the Individual Property, then the Responsible Entity will be paid 2.5% of the gross sale price; and
 - (ii) is less than 50% above but more than 30% above the original gross purchase price of the Individual Property, then the Responsible Entity will be paid 1.5% of the gross sale price.This fee is payable upon settlement of the sale of Individual Properties progressively as they occur.
- (e) Any other fees to which the Responsible Entity is entitled from time to time pursuant to clause 25.12.
- (f) A redemption fee for each redemption of Units equal to 2% of the Redemption Amount. This fee must be deducted from, and paid out of, the Redemption Price.

25.2 Fee calculation

- (a) In the event of an acquisition or disposal of Individual Property being by the acquisition or disposal of interests or shares in a trust, company, or other entity which owned or controlled the relevant property the Responsible Entity may at its complete discretion elect, for the purpose of calculating its fees under clause 25.1, to treat the acquisition or disposal of such units, interests or shares as the acquisition or disposal of the underlying real estate held by the trust, company or other entity, at the then market value of the underlying real estate or other property, and calculate and receive the relevant fees as if the underlying real estate or property had been acquired or disposed of at its then value determined in accordance with clause 9. In the event that part only of the interests or

³⁹ Required to be in a registered scheme's constitution by section 601GA(2). Also refer to section 601LC.

⁴⁰ Refer to ASIC Policy Statement 136, paragraphs 11D, 11E and 29D to 29P as well as ASIC Policy Statement 134, paragraphs 47A to 47F.

shares in a trust, company or other entity is acquired or disposed of then for the purposes of fee calculation, the percentage that the interests or shares bear to the total interests or shares on issue shall be applied to the market value of the underlying real estate or other property.

- (b) For the purposes of clause 25.1, original gross purchase price of an Individual Property refers to that gross purchase price originally paid by the Scheme or where the Individual Property is owned by any sub-trust or other entity owned directly or indirectly by the Scheme, the original gross purchase price paid by that sub-trust or other entity.
- (c) A sale, redemption or cancellation of all or over 90% of the Units of the Scheme shall for the purposes of clauses 25.1(b), 25.1(c) and 25.1(d) be treated as a sale of all of the Individual Properties.
- (d) The terms gross purchase price and gross sale price refer to the prices on the face of any contract for purchase or sale of property, and do not include stamp duty, agency fees, settlement adjustments or other costs or expenses associated with the purchase or sale.

25.3 Responsible entities fees upon removal

This clause 25.3 has effect as if its sub-clauses consisted of separate covenants. If clause 25.3(b) becomes invalid or unenforceable for any reason then the invalidity or unenforceability does not affect clause 25.3(c).

- (a) Only clause 25.3(b) or clause 25.3(c) may apply at any one time.
- (b) In consideration of the work performed by the removed Responsible Entity in the establishment of the Scheme (and any sub trusts) prior to its removal as Responsible Entity, if the Responsible Entity is removed (other than for its gross negligence in the management of the Scheme or a "material fiduciary breach"), the Responsible Entity shall be paid a fee of 2% of the Scheme Value (as valued by an independent valuer in the most recent valuation provided to the Responsible Entity) payable immediately prior to its replacement as Responsible Entity of the Scheme. This payment in addition to any payment which the removed Responsible Entity has received or is entitled to receive pursuant to clause 25.1. A "material fiduciary breach" is a breach by the Responsible Entity of a fiduciary duty to the Unitholders which causes substantial loss to them.
- (c) In the event that clause 25.3(b) is declared or determined to be invalid or unenforceable, or otherwise at the Responsible Entity's discretion, the removed Responsible Entity may declare that the following provisions alternatively to apply in the event of its removal as responsible entity of the Scheme:
 - (i) If the Responsible Entity is removed (for reasons other than for a breach of its duties or the law) as Responsible Entity of the Scheme, the replacement responsible entity will cause the Scheme to pay or cause to be paid out of the Scheme Property to that Responsible Entity (who was the Responsible Entity as at the time an Individual Property was acquired) the performance fee pursuant to clause 25.1(d).
 - (ii) This fee is the fee which would have been payable to the Responsible Entity under clause 25.1(d) had the Responsible Entity remained the responsible entity of the Scheme for the full term of the Scheme.
 - (iii) If the removed Responsible Entity becomes entitled to a payment pursuant to this clause then its successors as responsible entity are not entitled to any payment of the performance fee pursuant to clause 25.1(d).

25.4 Units in place of cash

- (a) Subject to the Listing Rules the Responsible Entity may elect that it is to be issued Units of a Class or Options wholly or partly in the place of other payments of its fees under this Deed.

- (b) Units issued under this clause will be issued on the same basis as a placement may occur under this Deed.

25.5 Responsible Entity's fees accrue daily

The fees payable to the Responsible Entity accrue daily and, subject to the specific provisions of this Deed, are payable at the times determined by the Responsible Entity.

25.6 GST

All fees payable to the Responsible Entity are exclusive of GST.

25.7 Adjustment of Responsible Entity's fees on proportionate basis

Where a fee is payable in respect of a period and the fee commences or ceases to be payable during the period, the fee must be adjusted on a proportionate basis.

25.8 Waiver

The Responsible Entity may waive, lower, or defer its right to receive fees, or recover expenses in relation to such amounts, for such period and on such terms as it determines. Where reimbursement is deferred, the expense accrues daily until paid. The Responsible Entity may pay to any Member, from its own resources any amounts which it in its discretion determines by way of offset or rebate of fees.

25.9 Sums owed to Responsible Entity

The Responsible Entity may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by a Member.

25.10 Responsible Entity's expenses

Subject to the Corporations Act, the Responsible Entity will be paid or reimbursed out of the Scheme Property on a full indemnity basis for all expenses and liabilities which it may incur in connection with the Scheme or in performing its obligations or exercising its powers under this Deed including (without limitation) those expenses permitted as expenses by other clauses of this Deed and expenses and liabilities connected with:

- (a) cheques, certificates, investment advices, accounts, distribution statements, and other communications;
- (b) the establishment and maintenance of registers, accounting and other records;
- (c) any transaction or proposed transaction in relation to the Scheme, including the acquisition, disposition, and development or redevelopment of Scheme Property;
- (d) the analysis or investigation of any potential or proposed acquisition, disposal or other dealing with any investment (including agency fees);
- (e) its admission to the official list of the Exchange, and maintenance of Listing, and compliance with the Listing Rules;
- (f) maintenance of the Registers;
- (g) convening and holding meetings of Members and the implementation of any resolutions;
- (h) communication with Members (written or otherwise).
- (i) management of Scheme Property including property management fees, leasing, insurance, valuation, project management, promotion and development or redevelopment of the Scheme Property;
- (j) accounts;

- (k) Taxes, rates, charges (including bank charges), duties and other imposts, including any GST collectable from, or incurred or payable by, the Responsible Entity in connection with the Scheme, or the management or administration of the Scheme (including Taxes payable by the Responsible Entity in respect of its fees and reimbursable expenses);
- (l) regulatory compliance;
- (m) any restructuring or proposed restructuring of the Scheme (including any contemplated merger) or process by which the Scheme is Listed;
- (n) offers or invitations, to apply for, or issues or transfers of, Units and Options including the preparation, underwriting, review, distribution (including brokerage, handling fees and commissions payable) and promotion (including marketing and roadshow costs) of any prospectus, disclosure document, product disclosure statement, or offering memorandum in respect of Units or Options;
- (o) borrowings or raisings or other financial accommodation and any bank account or services offered by any ADI (including electronic funds transfer and other electronic banking or payment services);
- (p) delegates, agents, consultants, experts, advisers and other persons retained or appointed by the Responsible Entity, including legal, accounting and taxation advisers, members of any Compliance Committee and Valuers;
- (q) researching property and securities markets;
- (r) this Deed and the formation of the Scheme, and any supplemental deed amending this Deed;
- (s) custody of the Scheme Property and Custodian expenses generally;
- (t) computer hardware, software and other equipment (including development and maintenance of internet facilities);
- (u) having the Scheme credit rated;
- (v) any court proceedings, arbitration or dispute concerning the Scheme including proceedings against the Responsible Entity except to the extent that the Responsible Entity is found by a court to be in breach of its fiduciary duty or to have been grossly negligent in which case any expenses reimbursed under this clause 25.10(v) must be repaid;
- (w) retirement or removal of the Responsible Entity;
- (x) termination of the Scheme;
- (y) Compliance Committees and any compliance officer;
- (z) preparation, implementation, amendment and audit of the Compliance Plan;
- (aa) contributions to professional or industry bodies for advocacy and lobbying for property and real estate interests;
- (bb) maintenance and development of websites or part thereof relating to the Scheme;
- (cc) preparing documentation in relation to the Scheme and the Scheme Property;
- (dd) insurances, including insurance premiums payable in respect of insurance policies for Scheme Property, for the Responsible Entity, its directors, and Compliance Committee members;
- (ee) promoting the Scheme to, or communicating with, Members, potential investors and their advisers;
- (ff) Member complaints resolution;

- (gg) provision of guarantees and indemnities by the Responsible Entity (including any indemnity given to a retiring responsible entity of the Scheme); and
- (hh) reasonable travel, accommodation and entertainment expenses associated with the proper performance of the Responsible Entity's duties.

In this clause 25.10 the term 'expenses' includes amounts paid by the Responsible Entity to related body corporates or other entities for services provided to the Responsible Entity in connection with the Scheme where the expenses referable to such service would have been reimbursable under this clause 25.10 had they been incurred by the Responsible Entity.

25.11 Class and apportioned expenses

- (a) Subject to the Corporations Act, where a Class of Units is on issue the Responsible Entity may make a determination that an expense, or part of an expense, is to be a Class expense in relation to a Class; but if no determination is made under this clause, any expense under clause 25 is to be referable to all Units on an equal basis.
- (b) If an expense or liability is referable to the Scheme as well as another scheme, trust or other managed investment for which the Responsible Entity is the manager, it will be apportioned between the schemes, trusts or managed investments as the Responsible Entity considers appropriate in the circumstances.

25.12 Additional fees

- (a) The Responsible Entity (or an Associate of the Responsible Entity) will also be entitled to receive and charge fees in addition to other fees specified in this Deed and recover costs and outlays for those services listed below and for any other services not reasonably contemplated by the Responsible Entity as being part of those duties for which it is remunerated under clause 25.1 where such services are provided by the Responsible Entity (or an Associate of the Responsible Entity) to the Scheme. Specific services contemplated by this clause for which the Responsible Entity (or an Associate of the Responsible Entity) could be remunerated in addition to remuneration under clause 25.1 include:
 - (i) property management or managing agent services;
 - (ii) acting as a sales agent for the disposal of Scheme Property;
 - (iii) project management services;
 - (iv) leasing services;
 - (v) the provision of capital raising services (including underwriting and capital raising management and coordination) which may otherwise have been obtained from a stockbroker, merchant bank or similar organisation;
 - (vi) property sourcing fees;
 - (vii) refurbishment, co-ordination or development management fees;
 - (viii) accounting and registry services; and
 - (ix) finance procurement services.
- (b) The fee that the Responsible Entity (or an Associate of the Responsible Entity) can charge to the Scheme for the services set out in clause 25.12(a) is the rate normally charged for the provision of the particular service. A letter or quotations procured by the Responsible Entity from two or more service providers in the relevant area of specialisation or service that are not an Associate of the Responsible Entity or its directors certifying as to 'the rate normally charged' or quoting in respect of the relevant service will be conclusive evidence of 'the rate normally charged'. Where a service is provided on a medium to long term basis then the Responsible Entity should review the pricing arrangement at least once in every three (3) years to substantiate that the pricing continues to be 'the rate normally charged' for such services.

26. LIMITATION ON RESPONSIBLE ENTITY'S LIABILITY

26.1 Limitation on liability to Members generally⁴¹

Without limiting its liability under the Corporations Act⁴²:

- (a) if the Responsible Entity acts in good faith and without wilful default or negligence it is not liable in contract, tort or otherwise to Members for any loss or damage suffered in any way relating to the Scheme; and
- (b) the liability of the Responsible Entity to any person other than a Member in respect of the Scheme (including any contracts entered into as a trustee of the Scheme or in relation to any Scheme Property) is limited to the Responsible Entity's ability to be indemnified from the Scheme Property.

26.2 Responsible Entity not liable for certain loss or damage⁴³

Except as otherwise provided by law, the Responsible Entity is not liable for any loss or damage:

- (a) caused by it relying on:
 - (i) the Register; or
 - (ii) information or a document given to it by its agent, delegate or adviser, unless it has reason to suspect that it is incorrect;
- (b) caused by it relying on a document as authentic, unless it has reason to suspect that it is not authentic;
- (c) caused by it relying on an opinion or information from an expert, unless it has reason to suspect that the expert does not have the appropriate expertise;
- (d) caused by it relying on an opinion or information from a banker, the Scheme auditor⁴⁴ or the Compliance Plan auditor⁴⁵;
- (e) caused by it complying with a law or an order or direction of a court, Government Agency or government official;
- (f) that arises because Scheme Property which is auctioned does not attract a particular price; or
- (g) that arises because of something the operator of an asset title, transfer or holding system does or does not do.

This clause 26.2 does not limit clause 26.1.

26.3 Responsible Entity may limit liability

The Responsible Entity is not required to do anything (for example, enter into a contract) that may involve it incurring a liability unless its liability is limited in a way that the Responsible Entity (acting reasonably) thinks appropriate and the Responsible Entity may limit its liability in this way.

26.4 Other obligations and duties excluded

Except as required by the Corporations Act, all obligations and duties of the Responsible Entity which might otherwise be implied or imposed at law or in equity are expressly excluded to the extent the law allows it.

⁴¹ Also refer to sections 601FB(2) and (3).

⁴² Refer to ASIC Policy Statement 134, paragraph 17A.

⁴³ Also refer to sections 601FB(2) and (3).

⁴⁴ Refer to Division 2 of Part 2M.4.

⁴⁵ Refer to sections 601HG to 601HI.

27. INDEMNITIES

27.1 Responsible Entity to be indemnified out of Scheme Property⁴⁶

The Responsible Entity is to be indemnified out of the Scheme Property for any loss, damage, expense or other liability incurred by it in properly performing or exercising any of its powers, duties or rights in relation to the Scheme.

27.2 Indemnity by Members

The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax or fees as a result of:

- (a) the Member's or former Member's action or inaction;
- (b) any act or omission requested by the Member or former Member, or any other matter arising in connection with Units or Options held by the Member or former Member.

27.3 Responsible Entity's indemnity includes liability of its agents etc

To the extent the Corporations Act allows it⁴⁷, the indemnity under clause 27.1 includes any loss, damage, expense or other liability incurred as a direct or indirect result of any act or omission of an agent or delegate appointed by the Responsible Entity.

27.4 Responsible Entity's indemnity additional to those at law etc and is a continuing one

The indemnity under clause 27.1 is:

- (a) in addition to any indemnity the Responsible Entity may have at law or in equity; and
- (b) a continuing indemnity and, subject to the Corporations Act⁴⁸, it applies to the Responsible Entity after it retires or is removed as responsible entity of the Scheme.

27.5 Indemnity for Compliance Committee members⁴⁹

Subject to, and so far as permitted by, the Corporations Act⁵⁰, the Responsible Entity 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 Responsible Entity 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 Corporations Act.

⁴⁶ Required to be in a registered scheme's constitution by section 601GA(2). Also, refer to sections 601FH and 601LC.

⁴⁷ Refer to sections 601FB(2) and (3) as well as 601GA(2).

⁴⁸ Refer to section 601FS.

⁴⁹ Refer to Part 5C.7 and section 212.

⁵⁰ Refer to section 601JF.

27.6 Insurance for Compliance Committee members⁵¹

Subject to the Corporations Act⁵², the Responsible Entity 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.

27.7 Compliance Committee members' indemnity is a continuing one

The indemnity in favour of Compliance Committee members under clause 27.4 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.

27.8 Deeds

Subject to the Corporations Act and without limiting a person's rights under this clause 27, the Responsible Entity 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 27 on any terms that the Responsible Entity thinks fit.

28. HOW THE RESPONSIBLE ENTITY DEALS WITH MEMBERS COMPLAINTS⁵³

28.1 Complaints handling

The Responsible Entity must establish and maintain a procedure for dealing with complaints by Members in relation to the Scheme which is consistent with the requirements (if any) of the Corporations Act.

28.2 Members' Complaints

- (a) A Member may by notice in writing to the Responsible Entity lodge a complaint in relation to the Scheme.
- (b) The Responsible Entity must.
 - (i) record the complaint and the date it was received in a register maintained for that purpose; and
 - (ii) send the Member an acknowledgment of receipt of the complaint.

28.3 Handling of Complaints

- (a) The Responsible Entity must use reasonable endeavours to deal with a complaint by a Member under clause 28.2 in accordance with this clause 28, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Responsible Entity must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (c) The Responsible Entity must inform the Member by notice in writing of:
 - (i) its decision in relation to the complaint;
 - (ii) the remedies available to the Member in relation to the complaint; and
 - (iii) any avenues of appeal that may be available to the Member if the Member is dissatisfied with the decision.

⁵¹ Refer to Part 5C.7 and section 212.

⁵² Refer to section 601JG.

⁵³ Required to be in a registered scheme's constitution by section 601GA(1)(c).

28.4 Assistance and Information

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

29. COMMENCEMENT, PERIOD AND TERMINATION OF THE TRUST

29.1 Commencement

The Scheme shall be deemed to have commenced on 14 August 2001 being the date of execution of the deed by which the Scheme was established.

29.2 Period

Notwithstanding anything else in this Deed the Scheme will not exceed 80 years from 14 August 2001 being the date of execution of the deed by which the Scheme was established.

29.3 Termination in other circumstances

This Scheme terminates on the earlier of:

- (a) the day referred to in clause 29.2 ;
- (b) the date specified by the Responsible Entity as the date of termination of the Scheme in a notice given to Members; and
- (c) the date on which the Scheme terminates in accordance with another provision of this Deed or an order of a court or by law.

29.4 Preparation of accounts

Upon the termination of the Scheme the Responsible Entity shall prepare final accounts of the Scheme and shall cause those accounts to be audited by the auditor.

30. WINDING UP THE SCHEME⁵⁴

30.1 Winding up

On termination of the Scheme, the Responsible Entity must wind it up in accordance with:

- (a) this clause 30; and
- (b) any orders a court makes under the Corporations Act⁵⁵

30.2 Procedure

To wind up the Scheme, the Responsible Entity must liquidate the Scheme Property and:

- (a) first, pay the expenses of the winding up;
- (b) next, pay all other fees, expenses and liabilities of the Scheme;

⁵⁴ Required to be in a registered scheme's constitution by section 601GA(1)(d). Also, refer to sections 601NE and 601NF and ASIC Policy Statement 134, paragraphs 24, 52 and 53.

⁵⁵ Refer to section 601NF(2).

- (c) next, pay any preferential payments to Unit Holders in accordance with the rights attached to the Class of Units held by them; and
- (d) next, subject to the rights attached to a Class of Units, distribute the balance to Unit Holders in proportion to the number of fully paid Units held by them.

For the purpose of paragraph (d), a Partly Paid Unit is counted as a fraction of a fully paid Unit equal to the proportion which the amount paid on it bears to the Issue Price of the Unit.

30.3 Distribution by instalments

The Responsible Entity may make a distribution under clause 30.2(d) in instalments.

30.4 Transfer of Scheme Property to Unit Holder⁵⁶

- (a) The Responsible Entity may transfer Scheme Property to a Unit Holder to satisfy the making of a payment or distribution under clause 30.2(d) instead of making it in Cash.
- (b) The value of the Scheme Property to be transferred must be based on a valuation carried out by a Valuer. The costs associated with the valuation and transfer of the Scheme Property are payable by the Unit Holder.

30.5 Receipt and discharge

The Responsible Entity may require each Unit Holder to give it a receipt and discharge (in a form approved by the Responsible Entity) before it makes a payment or distribution under clause 30.2.

30.6 Timing for liquidation of Scheme Property

As far as reasonably practical having regard to the interests of Unit Holders, the Responsible Entity must liquidate the Scheme Property within 180 days after the termination of the Scheme, but the Responsible Entity may extend that period if it thinks it is in the interests of Unit Holders to do so.

30.7 Audit on winding up⁵⁷

After the Scheme is wound up, the Responsible Entity must arrange for an independent audit of the Scheme's final accounts by a registered company auditor. Despite clause 30.8, this clause 30.7 continues to apply after the date of termination of the Scheme until the audit is finished.

30.8 Provisions continue after termination of Scheme

Subject to the Corporations Act, the provisions of this Deed continue to apply after the date of termination of the Scheme until the date of final distribution under clause 30.2(d), but during that period the Responsible Entity must not accept any applications for Units⁵⁸ or make any withdrawal offers.⁵⁹

31. PAYMENT AND DISCHARGE

31.1 How payments can be made

The Responsible Entity may pay money to a Member:

⁵⁶ Note the Responsible Entity's duty to act in the best interests of the Members. This duty requires Members to be treated impartially, that is, equally where their rights are similar and fairly where their rights are dissimilar. Also refer to section 601FC(1)(d).

⁵⁷ Refer to ASIC Policy Statement 134, paragraphs 24 and 53.

⁵⁸ Also refer to section 601NE(3).

⁵⁹ Also refer to clause 14.1.

- (a) by paying it into an account nominated by the Member, where the Responsible Entity has not received a written notice that the nomination is withdrawn;
- (b) by sending a cheque crossed 'not negotiable' and drawn in favour of the Member or to bearer, by mail to the address of the Member set out in the Register or notified to the Responsible Entity under clause 33.5; or
- (c) in any other way it thinks fit.

31.2 Unsuccessful payment

- (a) If an attempted payment by the Responsible Entity is unsuccessful for any reason, then on the date being 6 months (or such later date as the Responsible Entity determines) after the date on which the payment was first payable (or in the case of a payment by cheque, the date of cancellation of the cheque, whichever occurs first) the amount of the payment becomes Scheme Property.
- (b) Where the amount of an attempted payment becomes Scheme Property under this clause 31 the Responsible Entity will pay an amount equal to the amount of the unsuccessful payment to the Member on demand by the Member to whom the payment was due, at any time before the expiry of 6 years following the date the payment was first due to the Member.

31.3 Whole cents

The Responsible Entity will only pay whole cents, and any remaining fraction of a cent becomes Scheme Property.

31.4 Discharge of Responsible Entity

- (a) A payment to a Member or, in the case of joint holders of a Unit, to any of them in accordance with clause 31.1 will discharge the Responsible Entity in respect of that payment.
- (b) A discharge or release by a Member or, in the case of joint holders of a Unit by any of them to the Responsible Entity is a good discharge of the liability concerned.

31.5 Deductions for Tax

The Responsible Entity may deduct from any money to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) that the Responsible Entity:

- (a) is required or authorised to deduct by law; or
- (b) in its reasonable opinion, thinks should be deducted.

31.6 Unclaimed money

Subject to the Corporations Act⁶⁰, the Responsible Entity must deal with any unclaimed money under this Deed in accordance with the law relating to unclaimed money in Queensland.

32. GST

32.1 GST indemnity

If the Responsible Entity must pay GST on any supply under or in connection with this Deed made in the proper performance or exercise of any of its powers, duties or rights in relation to the Scheme, the Responsible Entity may recover the amount of that GST out of the Scheme Property. However, the Responsible Entity must not recover out of the Scheme Property any amount for

⁶⁰ Refer to section 601NG.

GST that it has included in or added to a fee paid by a Member, or has deducted from an amount paid to a Member.

32.2 Refund to Scheme for GST overpaid

The Responsible Entity must refund to the Scheme any over recovery of GST by it out of the Scheme Property. The Responsible Entity need not refund to the Scheme any amount for GST paid to the Commissioner of Taxation unless the Responsible Entity has received a refund or credit for that amount.

32.3 GST on claims

If the Responsible Entity pays money or distributes property to a Member to satisfy a claim or a right to a claim for a breach of duty by the Responsible Entity under or in connection with this Deed (for example, for breach of trust) and that payment gives rise to a liability to pay GST, the Responsible Entity must pay the amount of that GST, and if the Member is liable to pay that GST, the Responsible Entity must indemnify the Member against that amount. The Responsible Entity must not recover out of the Scheme Property any amount for GST paid by it under this clause 32.3.

32.4 GST on expenses

If the Responsible Entity has a claim under or in connection with this Deed for an expense on which it must pay GST, the claim is for the expense plus all GST.

33. NOTICES

33.1 When this clause 33 does not apply

This does not apply to a notice of Meeting.⁶¹

33.2 How to give a notice

A notice, consent or other communication under this Deed is properly given if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - (ii) sent by fax to the fax number (if any) nominated by that person and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) in the case of a notice, consent or other communication given by the Responsible Entity, sent by electronic message to the electronic address (if any) nominated by that person.

33.3 When a notice is given

A notice, consent or other communication that complies with this clause 33 is regarded as given and received:

- (a) if it is delivered or sent by fax or electronic message:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or

⁶¹ Refer to section 252G as well as clause 21.1.

- (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail to the Responsible Entity - on actual receipt; and
- (c) if it is sent by mail to any other person:
 - (i) within Australia- 2 Business Days after posting; or
 - (ii) to a place outside Australia - 5 Business Days after posting.

33.4 Responsible Entity's address for notices

The Responsible Entity's address and fax number are those set out below or another address or fax number notified (in writing) to the Members by the Responsible Entity:

Address: Level 3
 200 Adelaide Street
 (Anzac Square commercial)
 BRISBANE QLD 4000

Fax number: (07) 3221 6729

Attention: Company Secretary

33.5 Member's address for notices

A Members address is that set out in the Register, but if the address is not in Australia, the Member may notify the Responsible Entity of an address in Australia to which notices or other communications may be sent.

33.6 Joint holders

A notice or other communication to joint holders of a Unit must be given to the joint holder named first in the Register.

33.7 Person entitled to a Unit

Every person who becomes entitled to an Interest is bound by every notice in respect of that Unit which was properly given to the person registered as the holder of the Unit before the transfer or transmission of the Interest was entered in the Register.

33.8 Signature on notices

The Responsible Entity may sign a notice or other communication by original or printed signature or in any other way it determines.

33.9 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day the notice is given nor the day the action is to be taken is to be counted in working out the period.

33.10 Certificate of director or secretary

A certificate signed by a director or secretary of the Responsible Entity stating that a notice or other communication was given by the Responsible Entity is admissible as evidence, and is conclusive evidence, that the notice or other communication was given.

33.11 Notices to 'lost' Members

If:

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this clause 33 is returned and unclaimed or with an indication that the Member is not known at the address to which it was sent; or
 - (b) the Responsible Entity believes on other reasonable grounds that a Member is not at the address set out in the Register or notified to the Responsible Entity under clause 33.5,
- the Responsible Entity may give effective notice to that Member by exhibiting the notice at the Responsible Entity's registered office for at least 48 hours.

This clause 33.11 ceases to apply if the Member notifies the Responsible Entity of a new address.

34. GENERAL

34.1 Governing law

- (a) This Deed is governed by the law in force in Queensland.
- (b) The Responsible Entity and the Members:
 - (i) submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Deed; and
 - (ii) waive any right they may have to claim that those courts are an inconvenient forum.

34.2 Waiver of rights by Responsible Entity

The Responsible Entity only waives a right it has under this Deed by notice in writing, and:

- (a) no other conduct of the Responsible Entity (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right by the Responsible Entity on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right by the Responsible Entity does not prevent any further exercise of that right or of any other right.

34.3 Severance

Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

34.4 Consents

Where this Deed contemplates that the Responsible Entity may agree or consent to something (however it is described), the Responsible Entity may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
 - (b) agree or consent subject to conditions,
- unless this Deed expressly contemplates Otherwise.

In this clause 34.4, 'agree' includes approve.

35. AMENDMENTS TO THIS DEED

35.1 Responsible Entity may amend

Subject to the Corporations Act⁶² (if relevant) the Responsible Entity may by deed amend this Deed.

35.2 Statutory requirements

If the Corporations Act or any declaration or exemption from the provisions of the Corporations Act granted by the ASIC requires that this Deed contain certain provisions, then those provisions:

- (a) 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
- (b) prevail over any other provisions of this Deed to the extent of any inconsistency.

35.3 Official Quotation

Whilst any Units of a Class are Officially Quoted the Responsible Entity and each Member must comply with the provisions of the Listing Rules relevant to them.

35.4 Listing Rules

If the Scheme is admitted to the Official List, the following provisions apply:

- (a) if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Deed prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
- (e) 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; and
- (f) 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.

36. LIMITATION OF ENTITLEMENT

36.1 Interpretation

In this clause the term 'the prescribed value' shall mean 15% of the beneficial interest in the Scheme.

36.2 Limitation

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.

⁶² See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

36.3 Responsible Entity's Consent

The restriction contained in clause 36.2 of this clause 36, shall not apply to or in relation to an acquisition or holding of a Unit or Units to which the Responsible Entity has given its prior written consent, which it may grant or withhold in its absolute discretion and subject to any conditions which the Responsible Entity in its absolute discretion may impose.

36.4 Relevant Interest

For the purposes of this clause a person shall be taken to acquire a Unit (in this clause 36.4 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.

36.5 Person Concerned

For the purposes of this clause the Unit or Units to which a person (in this clause 36.5 and clause 36.6 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.

36.6 Associate

A reference in clause 36.5(b) 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 36.6(b), (c) or (d) above, that other person.

36.7 Control

Subject to this clause 36.7, 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; or
- (c) a relevant interest in a Unit shall be disregarded:
 - (i) if the Unit is subject to a trust, the relevant interest is that of a trustee; and
 - (ii) the trustee is a bare trustee; or
- (d) for the purposes of clause 36.7(c)(ii) 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.

36.8 Power of Responsible Entity

- (a) The Responsible Entity may, in its absolute discretion, decline to allot or to register any transfer or transmission of a Unit if in the Responsible Entity's opinion, the allotment or registration thereof would or might result in or have the effect of causing an infringement or contravention of clause 36.2.
- (b) Where the Responsible Entity is satisfied that a person has acquired Units in such circumstances as might or would in the opinion of the Responsible Entity result in or have the effect of causing an infringement or contravention of clause 36.2, the Responsible Entity 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 36.8 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 Responsible Entity, 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 Responsible Entity may cause the specified Units to be sold on the Exchange if they are Officially Quoted or, if they are not so quoted, in such other manner as the Responsible Entity may determine.
- (d) The Responsible Entity may:
 - (i) appoint a person to execute as transferor a transfer in respect of any Units sold in accordance with the provisions of clause 36.8(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 Responsible Entity in which event the previous certificate (if any) shall be deemed to have been cancelled.

36.9 Responsible Entity not liable

Nothing in clause 36 shall render the Responsible Entity liable or responsible by reason of any person acquiring Units in contravention of clause 36 or failing to comply with the obligation imposed by clause 36.

36.10 Request for information

- (a) The Responsible Entity, 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 Unit Holder, require the person (or, where such person is a corporation, a competent officer thereof) to furnish the Responsible Entity such information or evidence (on oath or otherwise verified if the Responsible Entity should so require) as the Responsible Entity may consider likely to be of assistance in determining whether or not such person is eligible to become or remain a Unit Holder.
- (b) Without limiting clause (a) above, the Responsible Entity may at any time by notice in writing require a Unit Holder within two (2) Business Days after service of the notice, to furnish to the Responsible Entity:
 - (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 Unit Holder 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 Responsible Entity received, pursuant to a notice under clause 36.10 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 Responsible Entity may:
 - (i) refuse to register a transfer of the Units;
 - (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 the Exchange if they are Officially Quoted or at such place as the Responsible Entity determines and at a price which the Responsible Entity, acting in good faith, determines or accepts.
- (d) In the event of any Units being sold pursuant to clause 36, the Responsible Entity may:
 - (i) appoint a person to execute on behalf of an Unit Holder 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 Responsible Entity 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 36.

37. RESTRICTED INTERESTS

37.1 Definitions

For the purpose of this clause 37:

'Escrow Period' means the escrow period in the relevant Restriction Agreement;

'Restricted Interest' means an Interest that is a restricted security for the purposes of the Listing Rules;

37.2 No disposal

A Member cannot dispose of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or the Exchange.

37.3 Refusal of acknowledge

The Responsible Entity 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 Exchange.

37.4 Distribution and voting rights

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.

38. MERGER PROPOSAL

- (a) In this clause 38 'Proposal' means the merger proposal described in the explanatory memorandum sent to Unit Holders by the Responsible Entity on or around 2 June 2003 and 'merging trusts' has the meaning ascribed to it in that document.
- (b) The following provisions of this clause 38 have effect only if the Proposal is approved by the Unit Holders by Special Resolution and by all other merging trusts by Special Resolution.
- (c) Having regard to the functions of the Responsible Entity and without limiting anything else in this clause 38, the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to effect the Proposal, including the power to issue the number of Units, and for the consideration, set out in the Proposal and those powers apply notwithstanding, and are not limited by, any provision of this Deed. Subject to the Corporations Act, the Responsible Entity will not have any liability to the Unit Holders of any nature whatsoever beyond the Scheme Property arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of the Proposal.
- (d) The Responsible Entity is irrevocably appointed the agent and attorney of each Unit Holder to do or cause to be done (including without limitation the appointment of any sub-agent or sub attorney) all things which are, or which the Responsible Entity considers are necessary or desirable to be done to give effect to the Proposal and all things which are reasonably incidental thereto, including, without limitation, the execution of all documents necessary to effect the Proposal. The Responsible Entity is authorised to execute these documents and do these things without needing further authority or approval from any Unit Holder.
- (e) Subject to the Corporations Act, the Responsible Entity or an officer or employee or associate of the Responsible Entity may do the things described in this clause even if it has an interest in the outcome.
- (f) Notwithstanding any other provisions of this Deed, the Responsible Entity is entitled to be indemnified, and pay or recoup, from the Scheme Property all costs and expenses reasonably and properly incurred in exercising its power and complying with its obligations under this clause 38 and is entitled to the remuneration disclosed in the Proposal.
- (g) This clause has effect notwithstanding any other provision of this Deed and any provision of this Deed which is inconsistent with this clause 38 does not operate to the extent of any inconsistency.

39. IMPACT OF INTERNATIONAL ACCOUNTING STANDARDS

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

- (a) Entry Price;
- (b) Issue Price;
- (c) assets;
- (d) Net Scheme Value;
- (e) Redemption Amount;
- (f) Redemption Offer Price;
- (g) Redemption Price;
- (h) Scheme Liabilities;
- (i) Scheme Value; Unit Value;
- (j) liabilities;
- (k) capital;
- (l) expenses;
- (m) value; or
- (n) similar terms or phrases ('the Items'),

are used for the purposes of calculating:

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

or for any such similar purpose or purposes, then the Items are to be calculated by reference to Australian generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

EXECUTED as a deed poll

THE COMMON SEAL of)
PROPERTY FUNDS AUSTRALIA LIMITED)
ACN 078 199 569 is affixed in accordance with its)
constitution in the presence of:)

Ü _____
Director

Ü _____
Director/Secretary

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McCULLOUGH ROBERTSON

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Success. In business

**MIRVAC PFA DIVERSIFIED
PROPERTY TRUST
CONSOLIDATED CONSTITUTION**

ARSN 097 860 690

Comprising:

- Original Deed Poll dated 30 June 2003;
- Deed Poll Amendment dated 20 October 2005;
- Deed Poll Amendment dated 23 August 2006; and
- Deed Poll Amendment dated 22 November 2007.

PROPERTY FUNDS AUSTRALIA LIMITED ACN 078 199 569