

Constitution of Becton Industrial Fund

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Constitution of Becton Industrial Fund

Date ► 15 August 2002

Responsible Entity **Becton Investment Management Limited**
ABN 62 090 939 192 of 470 St Kilda Road, Melbourne, Victoria (the
Responsible Entity)

Recitals

- 1 The Responsible Entity holds a dealer's licence issued under part 7.3 of the Corporations Act which permits it to operate the trust as a managed investment scheme.
- 2 The Trust will be a fixed term, property trust.
- 3 The Responsible Entity intends to issue one or more Prospectuses which will enable investors to acquire Units in the Trust.
- 4 The Responsible Entity will manage the Trust for the Unit Holders for the Term and, at the end of the Term, will wind up the Trust.
- 5 This Deed is the constitution of the Trust and contains the terms and conditions which govern the operation of the Trust.

This deed provides:

1 Definitions and interpretation

1.1 Definitions

In this Deed

Term	Meaning
Accrued Income	for a Distribution Period means the amount the Responsible Entity calculates as the Net Income for the Trust from the beginning of the current Distribution Period to the day on which the calculation is made.
Acquisition Costs	in respect of a Property: <ol style="list-style-type: none">1 for the purposes of determining the Exit Mechanism Fee for each Property for which an Exit Mechanism Fee has been calculated the Independent Value of that Property at the last occurring Exit Date for that Property; and2 for the purposes of determining the Exit Mechanism Fee for each Property for which an Exit Mechanism Fee has not been calculated, the aggregate of:<ul style="list-style-type: none">• the purchase price payable for the relevant Property;• all stamp duty, registration fees, legal costs and agents' commissions; and• all fees paid to Experts and other persons engaged to assist in the process of the selection, assessment, legal and structural engineering due diligence and negotiation of the purchase of the relevant Property.
Additional Services	those services which the Responsible Entity is obliged to provide to the Trust in respect of the Property as described in clause 8.
Applicant	a person who makes an application to become a Unit Holder in accordance with an application form attached to a Prospectus.
ASIC	the Australian Securities and Investments Commission.
Associate	has the meaning given to that term by Division 2 of Part 1.2 of the Corporations Act.
Attached Security	A Security which is from time to time Stapled or to be Stapled to a Unit.
Australian Property Exchange	a Government approved market for the exchange of interests in managed investment schemes and other property investment vehicles which is being sought to be established by Australian Pacific Exchange Limited, ACN 080 399 220.

Term	Meaning
Authorised Investment	those investments that the Responsible Entity has the power to make pursuant to clause 7. 1.
Business Day	a day on which banks are generally open for business in Western Australia.
Compliance Committee	the compliance committee established by the, Responsible Entity in accordance with Part 5C.5 of the Corporations Act.
Compliance Plan	the compliance plan of the Trust created pursuant to Part 5C.4 of the Corporations Act.
Compliance Plan Auditor	an auditor registered under Part 9.2 of the Corporations Act and appointed under clause 19.1 to audit the Compliance Plan.
Consumer Price Index	<p>the Consumer Price Index, as published by the Australian Bureau of Statistics for the 8 Capital Cities Weighted Average (All Groups) on the basis that:</p> <ol style="list-style-type: none">1 the reference base for the index shall be the fiscal year 1989/90; and2 if the Australian Statistician updates the reference based of the index, appropriate arithmetical adjustments will be made to preserve the intended continuity of the calculation, <p>PROVIDED THAT if the Consumer Price Index is suspended or discontinued, references to "Consumer Price Index" will mean the index, scale or other system which most closely measures economic inflation on a weighted average basis for the 8 capital cities of Australia;</p>
Contract	a contract for the sale and purchase of a Property pursuant to which the Responsible Entity (or the Custodian as agent of the Responsible Entity) will acquire the Property on trust for the Unit Holders.
Corporations Act	the Corporations Act 2001 and includes the regulations made under that Act from time to time.
Corresponding Number	in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to an issued Unit at that time.
CPI Movement	<p>the number obtained by dividing the Consumer Price Index as determined for the quarter ending immediately prior to:</p> <ol style="list-style-type: none">1 the quarter in which the relevant Exit Date falls; or2 the date upon which the sale of the relevant Property is completed <p>(as the case may be),</p> <p>by the Consumer Price Index as determined by the quarter ending immediately prior to the later of the Purchase Date of that Property and the most recent Exit Date.</p>

Term	Meaning
Current Unit Value	the current market value of a Unit determined by the Responsible Entity on the basis of an Independent Valuer's valuation of the Property and an independent assessment of the other Trust Property and the liabilities of the Trust.
Custodian	the party appointed as custodian pursuant to clause 2.3.
Deed	this constitution and any schedules or annexures to it.
Directors	the directors of the Responsible Entity from time to time.
Distributable Income	any amount determined by the Responsible Entity from time to time to be distributed to Unit Holders, including: <ol style="list-style-type: none">1 the Net Income of the Trust;2 other Income of the Trust; and3 any other amount of whatever nature.
Distribution Date	the date fixed by the Responsible Entity for the distribution of the Distributable Income of the Trust for each Distribution Period being a date no later than 28 days after the end of a Distribution Period.
Distribution Period	each 3 month period in a year ending on the last days of March, June, September and December (" quarter ") except that: <ol style="list-style-type: none">4 if the first Purchase Date occurs during a Distribution Period then the first Distribution Period will be from the first Purchase Date to the end of the quarter (or, if there is less than one full calendar month remaining in the quarter then to the end of the next quarter);5 if the termination of the Trust occurs during a Distribution Period then the last Distribution Period will end on the date of termination;6 the Responsible Entity may change the duration or dates for the commencement or end of the Distribution Period (in which case the Responsible Entity must notify the Unit Holders of the new dates) provided that the Distribution Period does not exceed 3 months.
Exit Date	17 December 2012 (and every subsequent tenth anniversary of that date).
Exit Mechanism	the mechanism described in clause 25, under which each Exiting Unit Holder may exit their investment.
Exit Mechanism Fee	is defined in clause 25.4.
Exit Price	an amount equal to the Subscription Sum at the Exit Date.
Exiting Unit Holder	is defined in clause 25.1(a).

Term	Meaning
Expert	includes solicitors, barristers, accountants, bankers, financial advisers, valuers, architects, engineers, quantity surveyors and other professionally qualified consultants,
Financial Year	the period of 12 months ending on 30 June in each year during the continuance of the Trust and includes: <ol style="list-style-type: none">1 the period commencing on the date the Trust is established and expiring on the next 30 June; and2 the period between 1 July last occurring before the termination of the Trust and the date of termination of the Trust.
First Prospectus	the first Prospectus issued by the Responsible Entity in respect of the Trust.
Gross Proceeds	the aggregate of all moneys (including base rent, turnover rent, licence fees, outgoings and other moneys payable in respect of the use or occupation of the Property) received from the tenants and other occupants and users of the Property and all other revenue generated by or in respect of the use of the Property.
GST	the tax known as or imposed in the nature of a goods and services tax, value added tax or supply tax.
Income	all amounts which are, or would be recognised as, income by the application of generally accepted accounting principles.
Independent Expert	for the purposes of a Merger Proposal, an expert who is experienced in assessing the merits of proposals such as the Merger Proposal and who is independent of the Responsible Entity, its related bodies corporate and Associates.
Independent Value	the value of each Property determined by an Independent Valuer.
Independent Valuer	a person with the relevant professional qualification and experience who: <ol style="list-style-type: none">1 does not have a pecuniary interest that conflicts with his or her obligation to provide a proper valuation of the relevant Unit; and2 is independent of:<ul style="list-style-type: none">• the Responsible Entity;• any company related to the Responsible Entity;• any person who is an Associate of the Responsible Entity; and• any person acting in concert with the Responsible Entity in relation to the sale or issue of the relevant Unit.
Liabilities	all liabilities of the Trust, including any provisions the Responsible Entity considers should be taken into account in determining liabilities. To the extent applicable Australian accounting standards require any amounts representing

Term	Meaning
	Unit Holder's funds to be classified as a liability, then for the purposes of calculating the Net Asset Value in this Constitution, the Unit Holders' funds are not to be treated as a liability.
Liquid	has the same meaning as in section 601KA of the Corporations Act.
Loan Funds	the loan or other financial accommodation described in clause 11.1.
Merger Proposal	a merger proposal determined by an Independent Expert to: <ol style="list-style-type: none"> 3 be in the best interests of Unit Holders; and 4 relate to Property.
Net Asset Value	the total value of the Trust Property calculated in accordance with clause 24, less the Liabilities.
Net Income	in relation to the Trust, ' net income ' as defined in section 95 of the Tax Act as calculated for each Financial Year or other relevant period.
Option	an option to purchase a Property, the exercise of which will result in the formation of a Contract.
Personal Representative	an executor or administrator of the estate of a deceased Unit Holder or Applicant, the trustee of the estate of a Unit Holder or Applicant under a legal disability or a person who holds a general power of attorney granted by a Unit Holder or Applicant.
Proceeds Fund	the fund established under clause 10.1 and into which the Gross Proceeds and all other Income generated by the Trust must be deposited.
Property	either: <ol style="list-style-type: none"> 1 a parcel or parcels of land that have satisfied the Responsible Entity's investment criteria and strategy described in Schedule 3 and which the Responsible Entity (or the Custodian as agent of the Responsible Entity) acquires or intends to acquire and hold for the Trust and includes all buildings and other improvements on that land and all fixtures, fittings, plant, equipment and other assets acquired or held from time to time for the purposes of the Trust and, where the context permits, includes any part of it. Where more than one Property is acquired or is to be acquired for the Trust, a reference to the Property includes a reference to each Property; or 2 units in a unit trust or interests in another investment vehicle which holds property of the kind described in paragraph 1.
Prospectus	a prospectus, product disclosure document or any other similar document inviting applications for Units, issued by the Responsible Entity in compliance with the Corporations Act and includes any replacement of it or supplementary

Term	Meaning
	Prospectus.
Purchase Date	<p>the later of:</p> <ol style="list-style-type: none"> 1 the last Exit Date that has occurred; and 2 the date on which the purchase or other acquisition of a Property by the Responsible Entity or the Custodian (as the case may be) is completed.
Register	the register of Unit Holders required to be kept by the Responsible Entity under section 169 of the Corporations Act and to be established and maintained by the Responsible Entity in accordance with clause 5.
Security	has the meaning given to that term in section 92(1) of the Corporations Act.
Stapled	in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others.
Stapled Entity	any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units.
Stapled Security	a unit and each Attached Security which are Stapled together.
Stapled Security Register	the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity in accordance with clause 27.7.
Stapling Date	the date determined by the Responsible Entity to be the first day on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities.
Subscription Fund	the fund established under clause 10.1 and into which all Subscription Sums must be deposited.
Subscription Sum	<p>the price to be paid by an Applicant for a Unit in the Trust and which:</p> <ol style="list-style-type: none"> 1 under the First Prospectus is \$1.00; and 2 subject to the Responsible Entity determining another amount in accordance with clause 3.7 or as otherwise permitted under the Corporations Act, at all other times under each subsequent Prospectus will be <p>an amount calculated as follows:</p> $\frac{\text{Net Asset Value} - \text{Accrued Income} + \text{Transaction Costs}}{\text{Units in issue}}$
Tax Act	the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997, and includes the regulations made under those Acts from time to time.

Term	Meaning
Term	has the meaning given to that word in clause 2.1.
Transaction Costs	an allowance (which is independently verifiable) for the total cost of acquiring the Trust Property. However, subject to the Corporations Act (if relevant) the Responsible Entity may in connection with any particular application for Units deem these costs to be a lesser sum or zero
Trust	the managed investment scheme established by this Deed and to be known as the " Becton Industrial Fund ".
Trust Auditor	an auditor registered under part 9.2 of the Corporations Act and appointed to audit the Trust under clause 19.1.
Trust Costs	<p>the total of all fees, costs, charges, expenses and other amounts ("costs") incurred or payable in relation to the establishment, operation and winding up of the Trust or in respect of the Trust Property including, but not limited to:</p> <ol style="list-style-type: none"> 1 the purchase price payable for the Property; 2 the costs incurred by the Responsible Entity in and about the establishment of the Trust and the purchase of the Property including, but not limited to: <ul style="list-style-type: none"> • all stamp duty, registration fees, legal costs and agents' commissions; • valuation fees for any valuation of the Property; • accountant's fees for any financial or other accounting information, advice or report included or referred to in each Prospectus; • fees payable to any Expert or other person whose advice or report is included or referred to in or obtained for the purpose of each Prospectus; • commissions which may lawfully be paid in respect of applications for Units under each Prospectus, other than commissions to be paid by the Responsible Entity out of its own fees; • all costs incurred in the issue of the Units including, without limitation, costs incurred in the preparation, verification, registration, printing, distribution and promotion of each Prospectus; • underwriting fees payable in relation to each Prospectus to an underwriter of any issue of Units pursuant to an underwriting agreement; • all costs incurred in relation to the engagement of Experts and other persons to assist in the process of selecting, assessing and negotiating the purchase of a Property; and • any Option fee paid or payable by the Responsible Entity or any Associate of the Responsible Entity to ensure the right to purchase the Property. 3 the fees properly payable to the Responsible Entity and the Custodian for the performance of their duties and the provision of their services to the Trust; 4 the costs of auditing the Trust accounts and all other services of the Trust Auditor required by this Deed or the Corporations Act; 5 the costs of establishing, maintaining and auditing the Register; 6 the costs incurred in connection with the sale of the Property including marketing expenses, legal fees, brokerage and commission;

Term	Meaning
	7 the valuation fees payable in relation to the Property;
	8 the costs incurred in connection with any rearrangement of the capital structure of the Trust;
	9 the costs incurred in connection with convening or holding any meeting of Unit Holders and implementing any resolution passed by Unit Holders;
	10 the costs incurred in connection with any modification of this Deed;
	11 bank charges on the Subscription Fund, Proceeds Fund and any other banking accounts operated solely for the Trust;
	12 income tax, capital gains tax, GST, stamp duties, financial institutions duties and bank account debit taxes and fines and penalties relating to any of these and any other tax, duty or impost payable by the Responsible Entity on account of or on behalf of the Trust;
	13 the costs of preparing, printing and posting statements, cheques, Trust accounts, notices, reports and other documents sent to Unit Holders;
	14 the costs incurred by or on behalf of the Responsible Entity in connection with its retirement and the appointment of a substitute, including costs associated with the preparation, execution and stamping of any deed of retirement and release;
	15 except where the court otherwise directs, the costs incurred in the initiation, conduct and settlement of any court proceedings (including any negotiations, conferences and demands) made or brought by or against the Responsible Entity in respect of any actual or alleged breach or default under this Deed;
	16 the costs incurred by the Responsible Entity in the initiation conduct and settlement of any court proceedings (including any negotiations, conferences and demands) to enforce or to protect the rights of Unit Holders;
	17 the rates, taxes, charges, assessments and impositions, whether governmental, municipal or otherwise, assessed, charged, levied or imposed in respect of the Property;
	18 premiums and other costs incurred in insuring any Trust Property;
	19 the costs of professional indemnity insurance in relation to directors and officers of the Responsible Entity and members of the Compliance Committee;
	20 the costs incurred in preparing and lodging returns, notices or statements under the Corporations Act or any other law binding on the Responsible Entity;
	21 the costs of acquiring, establishing, maintaining and developing computer software and systems specifically required for the administration of the Trust;
	22 the costs incurred by or in relation to the compliance plan (including maintaining and auditing) and the Compliance Committee including fees paid to members of the Compliance Committee;
	23 the costs in connection with the management and administration of the Trust and Trust Property, the performance of the functions and duties of the Responsible Entity under this Deed and under any law;
	24 the costs associated with handling complaints pursuant to clause 14;
	25 the costs associated with ownership of a Property including, but not limited to, the cost of managing (including fees paid to any managing agent) insuring, repairing, maintaining, operating, upgrading and improving the Property;
	26 the costs (including interest and bank fees and charges) associated with any loan or other financial accommodation and any security granted to finance

Term	Meaning
	<p>the purchase of a Property or to finance any other cost of ownership;</p> <p>27 the costs incurred as a consequence of any approval granted or condition imposed by any relevant authority;</p> <p>28 the costs of leasing, licensing, selling or otherwise disposing of or dealing with a Property or any estate or interest therein (including fees and commissions paid to any agent); and</p> <p>29 all other costs, fees, charges and expenses arising from the ownership or the proper management of the Trust Property or arising from the proper performance of the Responsible Entity's obligations under this Deed and/or any law.</p>
Trust Management Services	those services which the Responsible Entity is obliged to provide to the Unit Holders in respect of the Trust as described in clause 6.2.
Trust Property	<p>(and where the context permits, includes reference to any part of):</p> <ol style="list-style-type: none"> 1 the Properties; 2 the Subscription Sums; 3 the Gross Proceeds; 4 any Authorised Investments; and 5 any other right, entitlement, property or income acquired or derived from the Trust Property described in paragraphs (a) to (d) inclusive or to which the Responsible Entity becomes entitled for the benefit of the Trust;
Unit	the interest in the Trust which a Unit Holder acquires by applying in accordance with an application form attached to a Prospectus and having the application accepted by the Responsible Entity. Each interest is expressed as a number and in percentage form, with 100% being the aggregate, for the time being, of all Units in the Trust. The proportion that each Unit Holder's Subscription Sum bears to the total Subscription Sums raised from time to time determines that Unit Holder's percentage interest in the Trust.
Unit Holder	a person whose name is, for the time being, entered in the Register as the holder of a Unit (including persons jointly registered).
Unstapling Date	The date determined by the Responsible Entity to be the Unstapling Date pursuant to clause 27.5.
Valuation Date	a date on which the Responsible Entity calculates the Net Asset Value.

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and, unless the context indicates a contrary intention:

- (b) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (c) a reference to this Deed or to any other deed, agreement or document includes, respectively, this Deed or that other deed, agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (d) words importing the singular include the plural (and vice versa), words denoting a , given sex include the other sex, and words denoting individuals include corporations, bodies corporate and firms (and vice versa);
- (e) references to currency are references to Australian currency;
- (f) reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by-laws, regulations and other statutory instruments issued under any legislation;
- (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit and annexure;
- (h) if any day appointed or specified by this Deed for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified will be deemed to be the next Business Day;
- (i) if more than one person is under an obligation to act or not to act under this Deed, the liability of those persons so identified binds each of them severally and every two or more of them jointly, and if more than one person receives the same benefit under this Deed the benefit is to be enjoyed by each of them severally;
- (j) references to payments to any party to this Deed will be construed to include payments to another person upon the direction of such party;
- (k) all payments to be made under this Deed must be made by unendorsed bank cheque or other immediately available funds and in Australian currency;
- (l) any obligation to give notice or make payment to joint Unit Holders shall be satisfied by giving the notice or making the payment to the Unit Holder first named in the Register for that Unit; and
- (m) any word or expression defined in or for the purposes of the Corporations Act, unless otherwise defined in clause 1.1 or the context otherwise requires, has the same meaning when used in this Deed, and the clauses of interpretation specified in or applicable for the purposes of the Corporations Act, unless the context otherwise requires, apply in the interpretation of this Deed.

2 The Trust

2.1 Establishment and Term of Trust

- (a) [TEXT NOT ALTERED OR REPRODUCED IN ANY WAY].
- (b) The Trust shall commence operation on the day on which the ASIC registers the Trust as a managed investment scheme and, unless it is wound up earlier, shall continue in force for a period of 80 years from the first Purchase Date and may be extended under paragraph (e) ("**Term**").
- (c) [**Intentionally deleted**]

- (d) The Responsible Entity shall sell the Property at the expiration of the Term whereupon the Trust shall come to an end.
- (e) ***[Intentionally deleted]***
- (f) ***[Intentionally deleted]***.
- (g) The Trust shall be wound up if, within 12 months from the date of commencement of the Trust, the Responsible Entity has not purchased or entered into a contract to purchase the first Property.

2.2 Enforceability of constitution

- (a) This Deed is the Trust's constitution and is legally enforceable as between each Unit Holder and the Responsible Entity.
- (b) To the extent to which there is any inconsistency between the terms of this Deed and the requirements of the Corporations Act, the latter shall prevail and the terms of this Deed shall be construed accordingly.

2.3 Trust Property held on trust

- (a) [TEXT NOT ALTERED OR REPRODUCED IN ANY WAY].
- (b) The Responsible Entity shall, if required by the Corporations Act, and otherwise may, appoint any person to act as custodian of any Trust Property and to hold any Trust Property on trust for the Responsible Entity or the Unit Holders. Any Custodian appointed by the Responsible Entity must enter into a written agreement with the Responsible Entity detailing the terms and conditions of the appointment. The written agreement must be consistent with the provisions of this Deed.
- (c) If the Responsible Entity appoints a Custodian, the Responsible Entity may delegate to the Custodian any of the Responsible Entity's functions or obligations in relation to the Trust Property held by the Custodian provided that no such delegation shall:
 - (1) in any way relieve the Responsible Entity from its liability or responsibility to the Unit Holders in respect of in the performance of its functions or obligations in relation to that Trust Property; or
 - (2) impose any liability or responsibility to the Unit Holders on the Custodian except as agreed with or accepted by the Custodian.

3 Offer and issue of interests in trust

3.1 Offer of Units

The Responsible Entity:

- (a) may offer Units for sale at any time;
- (b) shall determine the number of Units to be offered, the Subscription Sum and the rights, terms and conditions applicable to any Units; and
- (c) shall cause the issue of any Prospectus required to offer Units.

3.2 Consideration

The consideration to acquire a Unit is the Subscription Sum.

3.3 Applications

- (a) Each application for a Unit must comprise:
 - (1) a completed application form in the form prescribed by the Responsible Entity;
 - (2) subject to clause 3.4, payment specified in the form specified by the Responsible Entity or by transfer of property of a kind able to be vested in the Responsible Entity for the Subscription Sum.
- (b) Each application must be delivered to the Responsible Entity in the manner prescribed by the Responsible Entity.
- (c) The Responsible Entity may request any further information from an Applicant that the Responsible Entity may reasonably require to assess the Applicant's application.
- (d) The Responsible Entity may, in its absolute discretion, accept or reject an application, and it shall not be required to give an Applicant any reason for rejection. If the Responsible Entity rejects an application, the Responsible Entity shall return the Subscription Sum to the Applicant named in the rejected application within 14 days of rejection.

3.4 Deposits

- (a) The Responsible Entity may, in its discretion, accept a deposit as part payment of the Subscription Sum and nominate a date for payment of the balance.
- (b) If an Applicant fails to pay the balance of the Subscription Sum on the due date, the Responsible Entity may, in addition to or in lieu of any other right or remedy available, forfeit the deposit.

3.5 Becoming a Unit Holder

- (a) An Applicant shall be entitled to have his name entered on the Register as a Unit Holder when:
 - (1) the Responsible Entity has accepted the Applicant's application under clause 3.3 and confirmed in writing to the Applicant the Responsible Entity's approval to the issue of Units to that Applicant; and
 - (2) payment of the full amount of the Subscription Sum has been received by the Responsible Entity in cash or by cheque and the cheque has been cleared.
- (b) The Responsible Entity is not obliged to issue certificates evidencing membership of the Trust.

3.6 [Deleted by prior supplemental deed]

[deleted.]

3.7 Rights issue

- (a) The Responsible Entity may, from time to time, offer further Units for subscription to all Unit Holders named in the Register on a date determined by the Responsible Entity.
- (b) A Unit Holder may not transfer its entitlement in respect of any Units offered to it under clause 3.7(a) in favour of another person, unless the Responsible Entity makes it an express term of the issue that the offer is transferable.
- (c) Where:
 - (1) Units are offered only to Unit Holders (and to all Unit Holders) named in the Register on a date determined by the Responsible Entity;

- (2) those offers are made at substantially the same time;
- (3) all Units offered are in the same class;
- (4) all of the Units that are offered for subscription are at the same price; and
- (5) the amount of Units offered to each Unit Holder is proportionate to the value of that Unit Holder's existing interest in the Trust,

the Units may be offered and issued at a price determined by the Responsible Entity, but not less than 98% of the amount which otherwise would have been calculated and determined to be the Subscription Sum under paragraph (b) of the definition of "Subscription Sum". For the purposes of this Deed, the price so determined by the Responsible Entity shall be deemed to be the Subscription Sum for the Units so issued.

- (d) If, for the purposes of an issue of Units under this clause 3.7, the Responsible Entity reasonably considers that it would be in the best interests of Unit Holders to exclude certain Unit Holders that are resident in a country outside Australia ("**Foreign Unit Holders**") and not unfair to those Foreign Unit Holders, the Responsible Entity may, instead of issuing the Units to the Foreign Unit Holders, sell the Units to which the Foreign Unit Holders would have been entitled under this clause 3.7 but for the fact that they are Foreign Unit Holders. In doing so, the Responsible Entity shall take reasonable steps to maximise the net sale price of the relevant Units and promptly pay the net sale price to the Foreign Unit Holders.

4 Membership of trust

- (a) Unit Holders are bound by the terms of this Deed.
- (b) The beneficial interests in the Trust are divided into Units. A Unit is not capable of division.
- (c) Subject to the provisions of this Deed (and, in the case of partly paid Units, subject to the due payment of the Subscription Sum in full) every Unit shall be of equal value and shall confer upon the Unit Holder an equal interest in the Trust Property. No Unit shall confer an interest in any particular part of the Trust Property but only such interest in the Trust Property as a whole as is conferred by a Unit under the provisions contained in this Deed.
- (d) No Unit Holder may lodge a caveat against the titles to the Property in respect of its Unit.
- (e) No Unit Holder may interfere with the valid exercise of any of the Responsible Entity's powers or discretions conferred by the Corporations Act or this Deed.

5 Register of unit holders register

5.1 Register

- (a) The Responsible Entity must establish and maintain the Register:
 - (1) in accordance with the Corporations Act; and
 - (2) at the registered office of the Responsible Entity.
- (b) In addition to the Corporations Act requirements as to the contents of the Register, but subject to the requirements of any law pertaining to privacy, the Responsible Entity may include any other information in the Register that it considers appropriate.

5.2 Details of Unit Holders

A Unit Holder must promptly notify the Responsible Entity of a change to his, her or its name or address. The Responsible Entity shall alter the Register accordingly.

5.3 Noting encumbrances

Unless required by law, the Responsible Entity shall not be obliged to note on the Register any encumbrances on a Unit Holder's Unit, but the Responsible Entity is not prevented from doing so.

5.4 Inspection of Register

The Responsible Entity shall make the Register available for inspection and will provide copies of it in accordance with section 173 of the Corporations Act and the requirements of any law pertaining to privacy.

5.5 Reliance on Register

For the purposes of determining the identity of a Unit Holder at any given time, the Responsible Entity is entitled to rely exclusively on the contents of the Register.

5.6 Suspension of registration

The Responsible Entity may refuse, in its discretion, to register any transfer or transmission of a Unit Holder's Unit during the 14 days immediately preceding 1 July of any year during the Term.

6 Duties of responsible entity

6.1 Duties Generally

The Responsible Entity shall perform the duties required of it under:

- (a) section 601FC of the Corporations Act;
- (b) this Deed; and
- (c) the Compliance Plan.

6.2 Trust Management Services

- (a) The Responsible Entity shall operate and manage the Trust for the Unit Holders. In performing these functions, the Responsible Entity will establish and maintain a reporting system that will provide the Unit Holders with regular, comprehensive and detailed information concerning the management and investment performance of the Trust. As part of the services to be provided to the Unit Holders, the Responsible Entity will provide those services specified in Schedule 1.
- (b) The Responsible Entity may, at its own expense, engage or subcontract any consultant, contractor or agent to perform any of the services described in Schedule 1 and shall ensure that any person who performs any of those services is suitably qualified and experienced and, where appropriate, licensed under any applicable legislation.

7 Powers of responsible entity

7.1 Powers generally

Subject to the provisions of this Deed and any restriction imposed by law, the Responsible Entity has the legal capacity and all of the powers of a natural person and a body corporate required to carry out its obligations and exercise its powers and discretions under this Deed. Without limiting the generality of this clause, the Responsible Entity's powers include the powers:

- (a) to investigate and identify properties that may fulfill the Responsible Entity's investment strategy described in Schedule 3 and to negotiate with the vendors of those properties with the intention of entering into an Option or a Contract;
- (b) to purchase or otherwise acquire the Property and any estate or interest in the Property;
- (c) to enter into any option, contract, assignment, agreement or other arrangement in respect of the acquisition or disposal of the Property;
- (d) to enter into any lease, licence or other like agreement granting a right or interest in respect of the Property and any variation, assignment, extension or surrender of any such right or interest;
- (e) to create and grant any easement, covenant or other right or interest in favour of a third party in respect of the Property;
- (f) to accept the benefit of any easement, covenant or other right or interest created or granted by a third party in respect of or relating to the Property;
- (g) to execute any transfer of the Property;
- (h) to develop, upgrade, construct, repair, landscape, alter or improve the Property and to engage or employ any architect, engineer, builder, contractor and consultant for that purpose;
- (i) to make development and building applications, enter into building contracts, prepare, approve and vary any plans, specifications and contracts, purchase, lease and hire any goods, plant and equipment, and do all other things necessary for or incidental to any works on or about the Property;
- (j) to enter into any agreement relating to the operation, management, maintenance, development, upgrading or improvement of the Property;
- (k) to make interest bearing deposits with any bank carrying on business under the authority of an Act of the State of Western Australia or of the Commonwealth of Australia;
- (l) to invest all or part of the Trust Property in any investments which are authorized by the laws relating to the investment of trust funds;
- (m) to engage or employ any person to act as agent of the Responsible Entity or as trustee or custodian of any Trust Property;
- (n) to grant an option to any person to purchase the Property;
- (o) to sell the Property and any estate or interest in it to any person in one lot or as several parcels or interests at a price and upon terms and conditions which the Responsible Entity thinks fit;
- (p) to subdivide the Property (including subdivision by strata titles) and do all things necessary or desirable for effecting any subdivision;
- (q) to purchase or hire or take on hire-purchase, lease or licence, on such terms as the Responsible Entity shall decide, any goods (including furniture, furnishings, fittings, electrical and other appliances and equipment) which, in the opinion of the Responsible Entity, are necessary or desirable for the proper and efficient management and operation

- of the Property and to this end, to execute contracts, hire-purchase agreements, leases, licences or hiring agreements;
- (r) to engage or employ any Expert, agent, consultant, adviser, contractor and workman as may be necessary or desirable in relation to the identification, investigation, negotiation, acquisition, ownership, development, management, operation, maintenance and disposal of the Property as the Responsible Entity thinks fit;
 - (s) to make all elections, give all notices and enter all agreements under the Tax Act in relation to the Trust and to prepare, execute and lodge all or any returns required by law in connection with the Trust;
 - (t) to institute, prosecute or defend any action or proceeding which affects the Trust and to conduct, pursue, abandon, settle, compromise or release any action or proceeding in any manner that the Responsible Entity thinks fit;
 - (u) to apply for, purchase and otherwise deal in patents, copyright, trade marks and other intellectual property rights and licences pertaining to any Trust Property;
 - (v) to insure the Trust Property which is capable of being so insured against damage and destruction, public liability, breakdown, loss of rent and such other risks as the Responsible Entity deems prudent with an insurer approved by the Responsible Entity;
 - (w) to execute, issue and deliver any document which the Responsible Entity considers necessary or expedient in relation to the exercise of any of its powers conferred by this Deed or by law;
 - (x) to pay the Trust Costs as and when they fall due for payment or upon such terms as the Responsible Entity may agree with any creditor of the Trust;
 - (y) if the Australian Property Exchange becomes an approved stock exchange in accordance with Part 7.2 of the Corporations Act, at the Responsible Entity's discretion, to apply and do all things necessary to list the Trust on the Australian Property Exchange at any time during the Term; and
 - (z) to do any other act or thing which, in the opinion of the Responsible Entity, is necessary or desirable for the proper and efficient management and operation of the Trust or the Trust Property.

7.2 Power To Delegate And Seek Advice

- (a) The Responsible Entity may, in its discretion, engage:
 - (1) related bodies corporate of the Responsible Entity;
 - (2) directors or officers of the Responsible Entity; or
 - (3) other persons in any way associated with the Responsible Entity,as independent contractors, agents, contractors and consultants, notwithstanding their relationship to the Responsible Entity, to perform any of its duties or exercise any of its powers or discretions under the Corporations Act or this Deed.
- (b) The terms and conditions of all engagements of agents shall be specified in writing and shall be determined by the Responsible Entity.
- (c) In accordance with section 601FB(2) of the Corporations Act, the Responsible Entity shall be deemed to have done or failed to do anything that the agent has done or failed to do for the purposes of the engagement, even if the agent acted fraudulently or outside the scope of his authority.
- (d) In addition to the engagement of agents, the Responsible Entity may engage any Expert or other adviser to assist it in the performance of its powers and duties under this Deed and the Corporations Act. The Responsible Entity may rely on the opinion, advice or on information obtained from any Expert or other adviser if such reliance is in good faith.

7.3 Other specific powers

Subject to the Corporations Act, the Responsible Entity or any of its Associates may:

- (a) in any capacity, subscribe for, purchase, hold or otherwise deal with Units;
- (b) act as the responsible entity in relation to any other managed investment schemes; and
- (c) be interested in or enter into any contract or transaction with itself or with any of its Associates or with any Unit Holder.

8 Management of the trust property

8.1 The Responsible Entity's Management Powers

- (a) The Responsible Entity is authorised by the Unit Holders to manage the Trust Property and act as if the Responsible Entity were the owner of the Trust Property.
- (b) Subject always to the provisions of any lease or licence of the Property, the Responsible Entity will have unrestricted access to all areas of the Property for the purpose of carrying out its rights and obligations under this Deed.

8.2 Principal Objective

The principal objective of the Responsible Entity in managing the Trust Property is to maximise the Unit Holders' financial return on their investment in the Trust Property in the most efficient manner possible in both the short term and the long term.

8.3 Responsible Entity provide Additional Services

The Responsible Entity will provide the following Additional Services during the Term:

- (a) property and facilities management;
- (b) tenancy management; and
- (c) such other services as the Unit Holders and the Responsible Entity agree, from time to time, that the Responsible Entity is to provide to the Unit Holders in respect of the Property.

8.4 Property and Facilities Management

- (a) The Responsible Entity acknowledges that the main objectives in respect of property and facilities management are to:
 - (1) maintain the Property and all services to it to industry standards at all times; and
 - (2) minimise maintenance costs and obtain the longest possible economic life from the Property.
- (b) The Responsible Entity may either employ its own staff or engage others to provide property and facilities management services. All salaries and other employment related expenses and all fees, commissions and other costs and expenses incurred or payable by the Responsible Entity in respect of property and facilities management are Trust Costs.

8.5 Tenancy Management

- (a) The Responsible Entity acknowledges that the main objective in respect of tenancy management is to maintain tenant satisfaction and maximise the rental income from the Property.
- (b) The Responsible Entity may either employ its own staff or engage others to provide tenancy management services. All salaries and other employment related expenses and all fees, commissions and other costs and expenses incurred or payable by the Responsible Entity in respect of tenancy management are Trust Costs.

8.6 Sub-Contracting

The Responsible Entity may engage or subcontract any consultant, contractor or agent to perform any of the Additional Services that the Responsible Entity is to perform pursuant to this Deed. The Responsible Entity shall ensure that any person who performs any of the Additional Services is suitably qualified and experienced and, where appropriate, licensed under any applicable legislation.

9 Responsible entity's fees and indemnities

9.1 Deduction from Trust Property

- (a) The Responsible Entity is entitled to receive fees (which it may deduct from the Trust Property) of the amount and in the manner and at the times set out in Schedule 2 and clause 25.
- (b) The Responsible Entity may pay from or be reimbursed from Trust Property for all Trust Costs incurred by the Responsible Entity in accordance with the terms of this Deed.

9.2 Indemnities

- (a) The Responsible Entity is entitled to be indemnified out of the Trust Property for:
 - (1) all Trust Costs incurred by it;
 - (2) all liabilities incurred by it in relation to the proper performance of its duties or exercise of its powers as Responsible Entity under this Deed; and
 - (3) all other liabilities incurred by it in relation to the operation of the Trust other than liabilities incurred as the result of breach of trust, recklessness or fraud on the part of the Responsible Entity.
- (b) If at any time the Income from the Trust Property and other moneys available to the Trust are insufficient to meet the Trust Costs and other liabilities of the Trust ("**shortfall**"), the Responsible Entity may provide to or borrow for the Trust (on reasonable commercial terms) funds sufficient to meet the shortfall. If the Responsible Entity does this, it may, in its discretion, recoup the funds provided or borrowed out of future Income or out of the capital of the Trust Property.
- (c) The rights of indemnity of the Responsible Entity and any creditor of it are limited to the Trust Property and do not exist against Unit Holders personally.

9.3 Limited Liability of Unit Holders

- (a) A Unit Holder is not liable to contribute more than its Subscription Sum in order to meet the Trust Costs or any other liabilities of the Trust incurred by the Responsible Entity on behalf of the Trust.

- (b) Where any asset forming part of the Trust Property is held by or in the name of the Unit Holders, each Unit Holder is severally liable, in proportion to its Unit in the Trust, for all liabilities incurred by the Unit Holders in respect of that asset.

10 Bank accounts

10.1 Responsible Entity to open bank accounts

- (a) The Responsible Entity must open and maintain for the Trust the following bank accounts with a recognised bank trading in Australia:
- (1) the Subscription Fund; and
 - (2) the Proceeds Fund.
- (b) The Responsible Entity shall, if required by the Corporations Act, and otherwise may, procure the Custodian to hold and control the Subscription Fund and/or the Proceeds Fund.

10.2 Subscription Fund

- (a) The Responsible Entity must deposit into the Subscription Fund all Subscription Sums which it receives under clause 3.3.
- (b) If an offer of Units made by the Responsible Entity is not fully subscribed within 13 months of the issue of the relevant Prospectus (or such other period, if any, specified in that Prospectus):
- (1) the Responsible Entity must immediately notify all Applicants under the relevant Prospectus and, within 28 days, refund to each Applicant the Subscription Sum that Applicant paid to the Responsible Entity together with any interest earned on that Subscription Sum, less any bank charges and taxes; and
 - (2) the Responsible Entity shall remove each Applicant's details from the Register in relation to that application.
- (c) Unless otherwise required by any law and subject to paragraph (b), the Responsible Entity may retain any interest earned on the Subscription Fund for the purposes of the Trust.

10.3 Purchase of Property

The Responsible Entity shall apply all moneys standing to the credit of the Subscription Fund in the following manner upon the settlement of a Property:

- (a) first, to acquire the Property and to meet all acquisition costs;
- (b) second, to meet other Trust Costs; and
- (c) third, pay the balance, if any, into the Proceeds Fund or, if it is intended to use any balance to acquire another Property, allow all or part of the balance to remain in the Subscription Fund pending the acquisition of another Property.

10.4 Proceeds Fund

- (a) The Responsible Entity must collect the Gross Proceeds and all other income generated by the Trust and promptly deposit the same into the Proceeds Fund.
- (b) The Responsible Entity shall, to the extent that it is possible to do so, pay all costs, fees, charges and expenses associated with the Trust, including the Responsible Entity's fees, the Trust Costs and any indemnities payable under clause 9.2 out of the Proceeds Fund.

- (c) The Responsible Entity shall hold and administer the Proceeds Fund in accordance with the Corporations Act and relevant ASIC policies.

10.5 Calculation of Distributable Income

The Distributable Income of the Trust for a Distribution Period or a Financial Year will be such amount as the Responsible Entity determines. If, for a period ending on the last day of a Distribution Period or a Financial Year, the Responsible Entity has not made a determination for the purpose of this clause 10.5, then the Distributable Income of the Trust for the relevant period will be the Net Income of the Trust for that period.

10.6 Persons who will receive Distributable Income

The Distributable Income of the Trust will be accounted for either within the Proceeds Fund or in a separate distribution account and, after payment of all relevant taxes and charges, will be distributed to Unit Holders registered at the close of business on the last day of the period to which the distribution relates, in proportion to their respective Units.

10.7 Time for Distribution of Distributable Income

The Responsible Entity will distribute the Distributable Income for a Distribution Period to Unit Holders no later than the Distribution Date for the relevant Distribution Period. The Responsible Entity may require the withholding from distributions to Unit Holders during any period an amount which the Responsible Entity considers is necessary to minimise variations in distributions over the longer term.

10.8 Unit Holder's presently entitled to Distributable Income

At the end of each Distribution Period or Financial Year, the Unit Holders will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period or Financial Year in proportion to their respective Unit holdings at such time.

10.9 Apportionment and distribution of amount categories

The Responsible Entity may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to any Unit Holder.

10.10 Nature of distribution to Unit Holders

If any question arises as to whether distributions to Unit Holders are of a capital or income nature or whether a particular expense is chargeable against capital or income then the question will be resolved having regard to the following points in this order of priority:

- (a) first, the terms of this Deed;
- (b) second, the provisions of the Tax Act; and
- (c) third, generally accepted accounting principles.

10.11 Other distributions

The Responsible Entity may, at any time, determine that capital or Income be distributed to the Unit Holders.

10.12 Sale of a Property and Reinvestment

The Responsible Entity may, during the first 5 years of the Trust in its absolute discretion, elect to retain any amounts that represent the net proceeds on realisation of an Authorised Investment and apply those amounts towards:

- (a) the acquisition of another Property; or
- (b) an Authorised Investment (which is not the acquisition of another Property) pending the acquisition of another Property.

11 Arranging finance for the trust

11.1 Power to Borrow

The Responsible Entity is empowered to arrange a loan or other financial accommodation for the Trust to complete the purchase of each Property, to develop, upgrade and improve the Property and for any other purpose disclosed to Unit Holders in every Prospectus ("**Loan Funds**"). The Responsible Entity may authorise the establishment of the loan account for the Loan Funds in its own name or in the name of the Custodian.

11.2 No recourse to Unit Holders personally

- (a) Subject to paragraph (b), the Responsible Entity must ensure that any Loan Funds for the Trust arranged by the Responsible Entity do not result in the financier or other provider of those Loan Funds having any recourse against the Unit Holders or any assets of the Unit Holders other than the Trust Property.
- (b) If each Prospectus discloses a requirement for Unit Holders to provide additional security for any Loan Funds or to have a liability beyond the Unit Holders' respective interest in the Trust Property, the Responsible Entity is authorised to include that additional security or liability in the terms upon which the Loan Funds are obtained,

11.3 Security may be offered

The Responsible Entity may mortgage, charge or otherwise encumber the Trust Property as security for repayment of the Loan Funds.

11.4 Loan Arrangements

The Responsible Entity must ensure that Loan Funds are arranged only on terms in accordance with the investment criteria and strategy described in Schedule 3

11.5 General powers of the Responsible Entity in relation to the Loan Funds

The Responsible Entity may:

- (a) enter, rollover, discharge or increase the existing Loan Funds and take out new Loan Funds;
- (b) repay any Loan Funds from any source which forms part of the Trust Property, including from cash generated from income of the Property;
- (c) if a Property is more than one separate lot of real estate then arrange separate Loan Funds for each lot of real estate;
- (d) arrange separate Loan Funds for each Property; and

- (e) take Loan Funds from more than one lender.

11.6 Additional Borrowing Powers

In addition to the other powers contained in this clause 11, the Responsible Entity may exercise any or all the following powers:

- (a) to borrow and raise money from, and to secure by mortgage, bill of sale, lien or charge, fixed or floating legal, equitable or otherwise, the payment of money to, any person, corporation, governmental or municipal body on such terms with or without security or interest as the Responsible Entity deems fit, and the Responsible Entity is expressly empowered to join with any company or natural person in executing any mortgage or other document for the purpose of securing the payment of money and to give and to execute a registrable fixed or fixed and floating charge over all or any of the Trust Property (both present and future) held by it as Responsible Entity and to give and execute any other charge or security registrable under the Corporations Act;
- (b) to borrow and raise money to be used in deriving income or gain in augmentation of the Trust Property notwithstanding that the Trust Property may already be wholly invested or applied or that the money to be borrowed or raised may exceed the sum or value of the Trust Property and no lender will be concerned to enquire whether the necessity for any borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;
- (c) to borrow and raise money by way of offshore loans outside the ordinary jurisdiction and in a currency other than Australian dollars;
- (d) in its absolute discretion, as if the Responsible Entity were acting on its own behalf, solely or jointly with any person, corporation or association, to open bank accounts of every description on such terms and conditions as the Responsible Entity thinks fit and to conduct and operate the accounts in such manner as the Responsible Entity thinks fit in accordance with the customs, usages and practices of banks including, without limitation, the power to operate any account on overdraft and to agree to the bank debiting any account with interest, costs, charges, expenses and liabilities incurred by the bank from time to time on behalf of the Responsible Entity;
- (e) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (f) to enter into any arrangement:
- (1) for the purpose of managing financial risks relating to risks arising from changes in foreign currency exchange rates, interest rates or discount rates; or
 - (2) which is a currency or rate swap transaction, a forward rate or currency transaction, a forward rate bill transaction, an interest rate, currency, bond, put or call option, a cap transaction, floor transaction, collar transaction, a combination of any of these transaction or any other similar transaction,

12 Meetings of unit holders

12.1 Convening of meetings of Unit Holders

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

12.2 Part 2G.4 of the Corporations Act

Subject to the provisions of this clause 12 and clause 13, all meetings of Unit Holders shall be convened and conducted in accordance with Part 2G.4 of the Corporations Act,

12.3 Notice

- (a) The Responsible Entity must ensure that a notice of a meeting of Unit Holders is given in accordance with the requirements of the Corporations Act and clause 23.2.
- (b) The Responsible Entity must send a notice of a meeting of Unit Holders to:
 - (1) Unit Holders entitled to vote at a meeting of Unit Holders;
 - (2) each Director of the Responsible Entity;
 - (3) each member of the Trust's compliance committee;
 - (4) the Trust Auditor;
 - (5) the Compliance Plan Auditor;
 - (6) such other person or persons as the Directors may approve; and
 - (7) any other person entitled under this Deed or the Corporations Act to attend,
- (c) If a Unit Holder does not receive, or was not sent, a notice of a meeting of Unit Holders neither circumstance invalidates any resolution passed at any such meeting.
- (d) Only matters that appear in a notice of meeting may be dealt with at a meeting of Unit Holders.

13 Proceedings at meetings of unit holders

13.1 Quorum

A quorum for a meeting of Unit Holders is 5 Unit Holders or the number of Unit Holders holding at least 10%, by value, of the Units held in the Trust, whichever is less, each being a Unit Holder present in person, by proxy, attorney or Personal Representative.

13.2 Chairman

The chairman of the meeting of Unit Holders must be appointed pursuant to section 252S of the Corporations Act. In the case of an equality of votes, the chairman shall not have a casting vote.

13.3 Voting rights

At meetings of Unit Holders:

- (a) each Unit Holder entitled to vote may vote in person or by proxy, attorney or Personal Representative;
- (b) on a show of hands, every person present who is a Unit Holder or a proxy, attorney or Personal Representative of a Unit Holder has one vote; and
- (c) on a poll, every person present who is a Unit Holder or a proxy, attorney or Personal Representative of a Unit Holder has for each Unit held by the person, or in respect of which the person is appointed a proxy, attorney or Personal Representative, one vote.

13.4 Right to appoint proxy

A Unit Holder is entitled to appoint another person (whether a Unit Holder or not) as the Unit Holder's proxy to attend and vote instead of the Unit Holder at any meeting of Unit Holders.

13.5 Form of proxy

The Responsible Entity may prescribe the form of proxy from time to time, subject to the Corporations Act. The Responsible Entity may, in its discretion, accept an appointment of a proxy as valid even if it contains only some of the information required by section 252Y(1) of the Corporations Act.

13.6 Voting - show of hands

At any meeting of Unit Holders a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is demanded in accordance with clause 13.8.

13.7 Results of voting

Unless a poll is so demanded, 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 meetings of Unit Holders, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

13.8 Poll

- (a) Subject to paragraph (b), a poll may be demanded before a vote is taken, or before or immediately after the declaration of the result of the show of hands by:
- (1) the chairman of the meeting of Unit Holders;
 - (2) at least 5 Unit Holders present in person or by proxy, attorney or Personal Representative entitled to vote on the resolution; or
 - (3) any one or more Unit Holders present in person or by proxy, attorney or Personal Representative holding at least 5% of the votes that may be cast on the resolution on a poll.
- (b) A poll may not be demanded on any resolution concerning the election of the chairman of the meeting or the adjournment of the meeting.

13.9 Manner of taking a poll

- (a) If a poll is duly demanded, it must be taken in such manner as the chairman directs.
- (b) The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- (c) The demand for a poll may be withdrawn.

13.10 Meeting may continue

A demand for a poll does not prevent the continuation of the meeting for the transaction of other business.

13.11 Adjournment

The chairman may, with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting to such time and place as the chairman thinks fit.

13.12 Unit Holders Bound

Every Unit Holder, whether or not present or represented at a meeting, is bound by a resolution duly passed by Unit Holders at a meeting duly convened and held in accordance with the provisions of this Deed and, where applicable, the provisions of the Corporations Act. The Responsible Entity must, to the extent that it is able, give effect to every resolution so passed unless the resolution is inconsistent with any law, and the Responsible Entity is not liable for anything done or omitted to be done by it pursuant to or with the authority of the resolution.

14 Complaints by unit holders

14.1 Complaints handling procedure

The Responsible Entity shall:

- (a) within 14 days of receipt of a written complaint, acknowledge receipt of the complaint and, at the same time, advise the Unit Holder of the expected time frame within which the Responsible Entity intends to resolve the complaint;
- (b) consider all aspects of the complaint within the expected time frame advised to the Unit Holder and, during that time, keep the Unit Holder informed as to the progress of the complaint;
- (c) provide the Unit Holder with a written response to the complaint; and
- (d) in resolving the complaint, consider which, if any, remedies should be made available to the Unit Holder in accordance with the Responsible Entity's policy regarding remedies and shall outline those remedies to the Unit Holder, including any further avenues available for the Unit Holder if they are dissatisfied with the Responsible Entity's resolution of the matter.

14.2 Responding to Complaints

In responding to complaints from Unit Holders under clause 14.1:

- (a) the expected time frame within which the Responsible Entity intends to resolve a complaint shall not exceed one month;
- (b) the Responsible Entity shall provide reasons for its response to the Unit Holder's complaint;
- (c) the Responsible Entity may request any further information and assistance from the Unit Holder that it reasonably requires in order to assess properly the Unit Holder's complaint; and
- (d) the Responsible Entity shall immediately cease considering a Unit Holder's complaint if the Unit Holder withdraws the complaint in writing.

14.3 Complaints handling officer

The Responsible Entity shall appoint a complaints handling officer to be responsible for conducting the complaints handling procedure. The complaints handling officer shall keep

detailed records of all complaints made by Unit Holders and the Responsible Entity's response to all complaints.

14.4 Costs of complaints handling

All costs associated with the Trust's complaints handling procedure and the remuneration of the complaints handling officer shall be paid out of Trust Property.

14.5 Dispute resolution

If a Unit Holder's complaint cannot be resolved under clause 14.1, for whatever reason, the Unit Holder may request that the dispute be resolved by a legal practitioner, who will act as an expert and not an arbitrator, appointed by the President for the time being of the Law Society of Western Australia (Inc.). The decision of the legal practitioner shall be final and binding on the Unit Holder and the Responsible Entity, and the costs of the legal practitioner shall be shared equally between the Unit Holder and the Responsible Entity.

14.6 External complaints resolution scheme

A Unit Holder may lodge a complaint in relation to the Responsible Entity with the external complaints resolution scheme of which the Responsible Entity is a member.

15 Responsible entity may require information

- (a) Subject to the requirements of any law pertaining to privacy, any Unit Holder who is asked by the Responsible Entity to supply information in respect of its Unit must do so within 14 days of service of a notice from the Responsible Entity. (For example, the information may be requested in relation to determining whether or not there exists a tax liability in relation to the relevant Unit Holder.)
- (b) If any particular information given to the Responsible Entity under paragraph (a) ceases to be correct for any reason then it is the duty of the Unit Holder which has that information to give notice to the Responsible Entity of the fact that the particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unit Holder fails to provide information required by paragraph (a) or (b) then the Responsible Entity will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unit Holder will have no claim against the Responsible Entity or the Trust Property for any loss suffered as a result of the assumption being incorrect.
- (d) Any person who supplies incorrect information under paragraph (a) or (b) must indemnify the Responsible Entity against all loss and damage suffered by the Responsible Entity as a consequence of its reliance upon such incorrect information.

16 Withdrawal from trust

16.1 Unit Holder's right to withdraw

- (a) If the Trust is not Liquid, then a Unit Holder may withdraw from the Trust in accordance with subclauses 16.2 to 16.6 inclusive and Part 5C.6 of the Corporations Act.
- (b) If the Trust is Liquid, then a Unit Holder may withdraw from the Trust in accordance with subclause 16.7 and Part 5C.6 of the Corporations Act (if applicable).

- (c) The withdrawal procedures set out in this clause are subject to the provisions of the Corporations Act, including Part 5C.6, and if there is any inconsistency between the two then the Corporations Act will prevail to the extent of the inconsistency.

16.2 Withdrawal offers—non-Liquid

- (a) If the Trust is not Liquid, the Responsible Entity may in its absolute discretion make a withdrawal offer to Unit Holders giving them the opportunity to make a withdrawal request to the extent assets are available and able to be converted into money in time to satisfy withdrawal requests by Unit Holders. The withdrawal offer must—
- (1) be made in accordance with this clause 16 and comply with Part 5C.6 of the Corporations Act
 - (2) specify the date on which withdrawals under the offer will be deemed to occur
 - (3) specify the Trust Property to be used to satisfy withdrawal requests
 - (4) only be made to Unit Holders whose names are recorded on the Register on a date to be specified by the Responsible Entity. The date specified by the Responsible Entity must be no earlier than three days prior to and no later than the date on which the withdrawal offer is sent to Unit Holders, and
 - (5) be made by posting a written and dated withdrawal offer to the address of the Unit Holder shown on the Register. The withdrawal offer must contain all information required by Part 5C.6 of the Corporations Act, including the period of time in which the withdrawal offer will remain open for acceptance.
- (b) The Responsible Entity may cancel a withdrawal offer before it closes if it contains a material error or if it is in the best interests of Unit Holders to do so. A written and dated cancellation notice cancelling the withdrawal offer must be sent to Unit Holders. The cancellation notice must be sent to Unit Holders by the same method as the withdrawal offer and will be effective on the date it is sent.

16.3 Withdrawal requests—non-Liquid

A Unit Holder may in response to a withdrawal offer under clause 16.2 make a withdrawal request to the Responsible Entity requesting withdrawal of all or some of the Unit Holder's Units. A withdrawal request must—

- (a) be made only in response to a withdrawal offer, and a Unit Holder must not request to withdraw from the Trust under any other circumstances
- (b) comply with all terms of the withdrawal offer and be in the form or manner specified in the withdrawal offer
- (c) be subject to all of the conditions attaching to a withdrawal offer, and
- (d) be received at the place and in the manner specified by the Responsible Entity no later than the date on which the withdrawal offer closes.

16.4 Acceptance of withdrawal requests—non-Liquid

- (a) If a Unit Holder makes a valid withdrawal request under clause 16.3, then subject to clause 16.4(2), the Responsible Entity must within 21 days after the withdrawal offer closes—
- (1) pay the withdrawal payment described in clause 16.5 to the Unit Holder
 - (2) cancel the Units withdrawn, and
 - (3) update the Register accordingly.
- (b) If an insufficient amount of money is available from the assets specified in the withdrawal offer to satisfy all withdrawal requests, then the withdrawal requests are to be satisfied

proportionally in accordance with the formula set out in clause 601KD of the Corporations Act. The formula result must be rounded to the nearest whole number of Units for each Unit Holder.

16.5 Withdrawal payment—non-Liquid

- (a) If the Responsible Entity accepts a withdrawal request by a Unit Holder under clause 16.4, then it must, within 21 days after the withdrawal offer closes, pay to the Unit Holder for each Unit withdrawn the Current Unit Value of the Unit determined not more than three months prior to the date the withdrawal is deemed to occur, less withdrawal costs. Withdrawal costs are the total amount, which may be nil but in any event will not exceed 5% of the Current Unit Value of the Unit, determined or estimated by the Responsible Entity as the costs incurred, or which would be incurred, in funding the withdrawal requests (including by the sale or disposal of Trust Property), divided by the Units on issue. The withdrawal costs represent the costs, charges, fees, expenses, commissions, losses, damages, and taxes and all amounts payable in respect to them or like payments associated with a withdrawal under this clause 16.
- (b) The Responsible Entity may deduct from an amount payable to the Unit Holder under clause 16.5(a)—
- (1) if the Unit is a partly paid Unit, the amount of any Subscription Sum unpaid in respect of the Unit
 - (2) any tax payable by the Responsible Entity in respect of the withdrawal of the Unit, and
 - (3) any other amount due by the Unit Holder to the Responsible Entity.

16.6 Payments from Trust Property—non-Liquid

- (a) All amounts paid by the Responsible Entity to meet withdrawal requests under this clause 16 must be made out of the Trust Property, and the Responsible Entity will not be obliged to make any payment out of its own funds under any circumstances.
- (b) The Responsible Entity may determine whether or not any portion of a withdrawal payment under clause 16.5 represents income or capital gain of the Trust. If an amount paid to a Unit Holder represents income or capital gain of the Trust then the Responsible Entity must notify the Unit Holder of the extent to which the amount paid is composed of, and the types of, income and capital gain.

16.7 Withdrawals—Liquid

- (a) If the Trust is Liquid, the Responsible Entity may in its absolute discretion make a withdrawal offer to Unit Holders giving them the opportunity to make a withdrawal request to withdraw all or part of their Units from the Trust, and may determine the form, manner and conditions on which a withdrawal request may be made under this clause 16.7.
- (b) A Unit Holder may in response to a withdrawal offer under clause 16.7(a) make a withdrawal request to the Responsible Entity requesting withdrawal of all or some of the Unit Holder's Units. A withdrawal request must:
- (1) comply with all terms of the withdrawal offer and be in the form or manner specified in the withdrawal offer
 - (2) be subject to all of the conditions attaching to a withdrawal offer, and
 - (3) be received at the place and in the manner specified by the Responsible Entity. If the offer closes on a certain date, then the withdrawal request must be received no later than the closing date.
- (c) The Responsible Entity may in its absolute discretion accept or reject withdrawal requests under this clause 16.7. If the Responsible Entity accepts a withdrawal request, then it

must process the withdrawal request in accordance with the terms and conditions on which the withdrawal offer was made.

17 Transfer of interests

17.1 Right to Transfer

A Unit Holder is entitled to transfer the Unit Holder's Unit only in accordance with this clause 17.

17.2 Form of Transfer

Any instrument of transfer must:

- (a) be in a form acceptable to the Responsible Entity and signed by the transferor, transferee and the Responsible Entity; and
- (b) state that the transferee agrees to be bound by this Deed.

17.3 Responsible Entity may decline to register if criteria not met

The Responsible Entity may decline to register any instrument of transfer unless:

- (a) it complies with the requirements in clause 17.2;
- (b) if the transferor's Unit is encumbered, the encumbrance is released or otherwise dealt with to the satisfaction of the person in whose favour the encumbrance is granted;
- (c) it is duly stamped (if applicable);
- (d) it is accompanied by evidence the Responsible Entity may reasonably require to show the right of the transferor to transfer the Unit;
- (e) all fees which are due and payable in respect of the Unit Holder's Unit have been paid to the persons who are owed the fees (creditors) except if the creditors agree to waive this requirement; and
- (f) the Responsible Entity approves of the transferee having regard to the capacity of the transferee to meet the obligations of Unit Holders in the Trust (although such approval must not be unreasonably withheld).

17.4 Entry of transfer in Register

- (a) Subject to clause 5.6, upon being satisfied that the provisions of this clause 17 have been complied with, the Responsible Entity will make the appropriate entry of the transfer in the Register.
- (b) The transferring Unit Holder remains the owner of the Unit Holder's Unit until the name of the transferee is entered in the Register as holder of that Unit.
- (c) Upon entry in the Register, the transferee of the Unit acquires the same rights and interest as previously held by the transferor, irrespective of the price paid by the transferee.

17.5 Instrument of transfer to be retained by Responsible Entity

The Responsible Entity will retain every instrument of transfer until the Trust is wound up.

17.6 Transferee to be bound

Every transferee of a Unit Holder's Unit is deemed to be bound by this Deed from the date of the entry of the transfer in the Register.

17.7 Notice of refusal

If the Responsible Entity declines to register any transfer then it must send the transferee a notice of the refusal within 2 months after the instrument of transfer is lodged.

17.8 Australian Property Exchange

- (a) If the Australian Property Exchange becomes an approved stock exchange in accordance with Part 7.2 of the Corporations Act, the Responsible Entity may, if it considers it feasible and desirable to do so, apply and do all things necessary to list the Trust on the Australia Property Exchange at any time during the Term.
- (b) The Responsible Entity will do all things necessary to ensure that the Trust, if listed, complies with the listing rules of the Australian Property Exchange.
- (c) The Responsible Entity may amend this Deed at any time during the Term, in accordance with section 601GC of the Corporations Act, to comply with the listing requirements of the Australian Property Exchange.

18 Transmission of interests

18.1 Unit of deceased Unit Holder and deceased joint holder

- (a) If a Unit Holder (not being one of several joint holders) dies or becomes insane, the Responsible Entity will recognise only the Personal Representative of that Unit Holder as having any title to or interest in the Unit registered in the name of that Unit Holder or any benefits accruing in respect of that Unit.
- (b) If a Unit Holder who is one of the joint registered holders of any Unit dies, the Responsible Entity will recognise only the surviving joint registered holder or holders of that Unit as having any title to or interest in, or any benefits accruing in respect of, that Unit.
- (c) Nothing in this Deed will be taken to release the estate of a deceased Unit Holder from any liability accrued by that Unit Holder with respect to the Trust.
- (d) Where two or more persons are jointly entitled to any Unit in consequence of the death of the registered holder of that Unit, for the purpose of this Deed they will be deemed to be joint holders of the Unit.

18.2 Unit on transmission event

- (a) Subject to the Bankruptcy Act 1966 and the Corporations Act, a person ("**Transmittee**") who gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as a Unit Holder may:
 - (1) elect to be registered as a Unit Holder in respect of that Unit by giving a signed notice in writing to the Responsible Entity; or
 - (2) transfer that Unit to another person;
- (b) A transfer under sub-clause 18.2(a)(2) is subject to the provisions of clause 17 of this Deed;

- (c) If the Responsible Entity has acted in good faith in registering a Transmittree or the transferee of a Transmittree as a Unit Holder under this clause 18.2, that person' must indemnify the Responsible Entity to the extent of any loss or damage suffered by the Responsible Entity as a result of such registration.

18.3 Rights and duties of Transmittree

- (a) Subject to paragraph (b), a Transmittree who:
- (1) has given to the Responsible Entity the information referred to in clause 18.2; and
 - (2) has not yet been registered as a Unit Holder or transferred the relevant Unit to another person,
- is entitled to the same rights and duties to which the Transmittree would be entitled if registered as the Unit Holder in respect of that Unit.
- (b) Subject to the Corporations Act, a Transmittree will not be entitled in respect of a Unit to exercise any right conferred on Unit Holders in relation to meetings of Unit Holders until the Transmittree is registered as a Unit Holder in respect of that Unit.

19 Audit and accounting auditors

19.1 Auditors

- (a) The Responsible Entity must ensure that, at all times, there is a registered auditor appointed to audit the Trust and a registered auditor appointed to audit compliance with the Compliance Plan.
- (b) The appointment, retirement and removal of the Trust Auditor and the Compliance Plan Auditor shall be conducted in accordance with the Corporations Act.
- (c) The Responsible Entity will engage and instruct the Trust Auditor to produce an audit report and perform the other duties imposed on an auditor of a managed investment scheme by the Corporations Act in relation to the Trust. The Responsible Entity shall allow the Trust Auditor access to all documents and records that the Trust Auditor reasonably requires in order to prepare his report and discharge his duties under the Corporations Act.
- (d) The Responsible Entity will engage and instruct the Compliance Plan Auditor to produce an audit report and perform the other duties imposed on an auditor of a compliance plan by the Corporations Act in relation to the Trust. The Responsible Entity shall allow the Compliance Plan Auditor access to all documents and records that the Compliance Plan Auditor reasonably requires in order to prepare his report and discharge his duties under the Corporations Act.
- (e) The Trust Auditor and the Compliance Plan Auditor shall be remunerated by the Responsible Entity out of Trust Property. The remuneration amounts shall be determined by the Responsible Entity.

19.2 Accounts

- (a) The Responsible Entity shall keep and maintain financial records and conduct the financial reporting in respect of the Trust in accordance with the Corporations Act and applicable Australian Accounting Standards.
- (b) The accounting records of the Trust shall be kept at the registered office of the Responsible Entity.

20 Changing the responsible entity

20.1 Retirement of Responsible Entity

The Responsible Entity may retire only in accordance with section 601FL of the Corporations Act.

20.2 Removal of Responsible Entity

The Responsible Entity may be removed in accordance with section 601FM of the Corporations Act.

20.3 Consequence of change of Responsible Entity

- (a) On retirement or removal, the Responsible Entity will hand over the books in its possession or control and provide reasonable assistance to the new responsible entity in accordance with section 601FR of the Corporations Act.
- (b) Subject to section 601FS(2) of the Corporations Act and paragraph (c) of this clause, on retirement or removal of the Responsible Entity the rights, obligations and liabilities of the former Responsible Entity in relation to the Trust become the rights, obligations and liabilities of the new responsible entity.
- (c) Retirement or removal of the Responsible Entity will not prejudice any rights or remedies already accrued to the Responsible Entity or to any Unit Holder under or in respect of this Deed.

21 Changing the constitution

- (a) This Deed may be modified or repealed and replaced only in accordance with section 601GC of the Corporations Act. The Responsible Entity must provide a consolidated copy of the modified or new constitution to the Compliance Committee within 7 days of the modified or new constitution being lodged at the ASIC.
- (b) Notwithstanding any other provision of this Deed (including any provision of this Deed which purports to apply notwithstanding other provisions of this Deed), to the extent to which any provision of this Deed is inconsistent to any requirement of the Corporations Act, that provision shall be read down and shall not apply to the extent of the inconsistency, subject to any relief granted by the ASIC under the Corporations Act.
- (c) If the Corporations Act, as it applies to the operation of the Trust as a managed investment scheme, is changed or a provision of this Deed is otherwise contrary to the law, the Responsible Entity shall have the right to amend this Deed so that it complies with the relevant law.

22 Winding up of trust

22.1 Winding up

Upon the expiration of the Term, which shall be determined pursuant to clause 2.1, the Responsible Entity shall cause the Trust to be wound up.

22.2 Notification of winding up

The Responsible Entity shall notify each Unit Holder of the winding up of the Trust prior to the Trust being wound up.

22.3 Division of Trust Property

Subject to clauses 22.4 and 22.5, after notifying each Unit Holder of the winding up of the Trust, the Responsible Entity shall as soon as reasonably practicable sell, call in and convert the Trust Property into money or cause it to be sold, called in and converted into money and shall divide the proceeds of such sale, calling in and conversion, less all Trust Costs (including the cost of the final distribution of capital and income and all proper provisions for liabilities), among the Unit Holders in accordance with their Units at the date of the distribution, and in so doing, the Responsible Entity may rely exclusively on the evidence of the Register.

22.4 Delay in sale

The Responsible Entity shall be entitled to postpone the sale, calling in and conversion of any part of the Trust Property for such time as it thinks is desirable to do so, in the interests of the Unit Holders, and shall not be responsible for any loss attributable to such postponement except to the extent that such loss may be attributable to the Responsible Entity's own breach of trust, recklessness or fraud.

22.5 Retention of Trust Property

The Responsible Entity shall be entitled, to the extent permitted by the Corporations Act and paragraph 131.5A of ASIC Policy Statement 133, to retain in its hands or under its control for as long as it thinks fit such part of the Trust Property as, in its opinion, may be required to meet any Trust Costs, provided that Trust Property so retained, to the extent that it is ultimately found not to be so required, shall remain part of the Trust Property for conversion and distribution in accordance with clause 22.3.

22.6 Audit following winding up

After the Trust has been wound up, the Responsible Entity shall cause an independent audit of the Trust's final accounts to be conducted by the Trust Auditor. The auditor's report must be distributed to all persons who were Unit Holders immediately prior to the winding up of the Trust.

23 General provisions

23.1 Governing law

This Deed shall be governed by and construed in accordance with the laws of the State of Western Australia. The parties agree to submit to the jurisdiction of the courts of Western Australia.

23.2 Notices

- (a) Any notice, demand, consent or other communication (including a cheque) shall be in writing and shall be deemed to be properly served or given:
- (1) if sent by facsimile transmission to the intended recipient at its then current facsimile address; or

- (2) if delivered at or posted by prepaid registered post to the address of the intended recipient as shown in this Deed or in the Register.
- (b) The Responsible Entity may by notice in writing to the Unit Holders change the address to which any notice, demand, consent or other communication to the Responsible Entity is to be served or given.
- (c) Any notice, demand, consent or other communication shall be deemed to have been properly served or given to the addressee:
 - (1) if sent by facsimile transmission, upon receipt by the sender of confirmation of successful transmission to the addressee's facsimile number;
 - (2) if posted, two days after the date of posting; and
 - (3) if left or delivered, from the time it is left or delivered.

23.3 Waivers

Any time or indulgence granted by any party shall not in any way affect the rights of that party under this Deed and a party shall not be deemed to have waived any of the provisions under this Deed unless such waiver is in writing and duly executed by the relevant party or parties. No waiver of any right, obligation or breach of this Deed shall be held or construed to be a waiver of any other subsequent or antecedent right, obligation or breach of this Deed.

23.4 Severance

Each of the terms and conditions contained in this Deed shall be deemed to be separate and severable from the others of them and if any one or more of them is determined to be invalid or unenforceable by any Court of competent jurisdiction or inconsistent with any statute or regulation, such determination and any consequential severance shall not invalidate the rest of this Deed which shall remain in full force and effect as if such severed terms and conditions had not been made a part thereof.

23.5 No partnership

The relationship between the Responsible Entity and a Unit Holder or between a Unit Holder and another Unit Holder shall not constitute or be deemed to constitute a partnership.

23.6 Stamp duties and legal costs

All stamp duties assessed on or in relation to this Deed and all legal costs associated with this Deed shall form part of the Trust Costs.

23.7 Goods and services tax

- (a) Notwithstanding any other provision in this Deed to the extent that any party to this Deed ("**Supplier**") is liable to pay GST in connection with the supply of any goods and/or services supplied under this Deed ("**Affected Goods and/or Services**"), the Supplier may add an amount equal to the amount of the GST to the agreed price of all Affected Goods and/or Services. The Supplier shall issue a tax invoice to the other party indicating the amount of the GST and otherwise complying with the requirements of any relevant legislation or regulation. Any party paying consideration for the Affected Goods and/or Services under this Deed will pay the agreed price plus an amount equal to the amount of the GST within 14 days after receiving the relevant tax invoice.
- (b) Without limiting the generality of paragraph (a), it is acknowledged that the Responsible Entity's fees described in Schedule 2 are exclusive of GST. The Responsible Entity is

entitled to be reimbursed for all GST payable by it in relation to the supply of its services under this Deed in addition to the fees described in Schedule 2.

24 Valuation of Trust Property

24.1 Periodic valuations

The Responsible Entity may cause Trust Property to be valued at any time, however the Responsible Entity must do so as and when required by the Corporations Act.

24.2 Net Asset Value

The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.

24.3 Valuation methodology

- (a) The Responsible Entity may determine valuation methods and policies for each category of Trust Property and change them from time to time. Unless the Responsible Entity determines otherwise, the value of a piece of Trust Property for the purpose of calculating Net Asset Value will be its historical cost.
- (b) If the Responsible Entity values a piece of Trust Property at other than its historical cost, then the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Subscription Sum that is independently verifiable.

25 Exit Mechanism

25.1 What must Unit Holders do?

- (a) On or before the date that is 12 months before the Exit Date (or a later date in the discretion of the Responsible Entity) the Responsible Entity must notify Unit Holders of the Exit Mechanism and their rights under clause 25.1(b).
- (b) On or before the date that is six months before the Exit Date (or a later date in the discretion of the Responsible Entity), (**Notification Date**) each Unit Holder who requires liquidity in respect of all or any part of their holding of Units in the Trust under the Exit Mechanism (**Exiting Unit Holder**) must notify the Responsible Entity of what percentage of their Unit Holding they require liquidity for.
- (c) By notifying the Responsible Entity, each Exiting Unit Holder irrevocably appoints the Responsible Entity as its agent and attorney to execute all documents and do all things which the Exiting Unit Holder reasonably considers are necessary or desirable to be executed or done on behalf of the Exiting Unit Holder to effect the Exit Mechanism.

25.2 What must the Responsible Entity do?

- (a) Subject to clause 25.2(b), the Responsible Entity must provide the Exit Mechanism to all Exiting Unit Holders by the relevant Exit Date.
- (b) If the Responsible Entity is not able to, or does not consider that it is in the best interests of Unit Holders to, provide the Exit Mechanism for at least the Exit Price to all Exiting Unit Holders by the relevant Exit Date, the Responsible Entity must wind up the Trust in accordance with clause 22.

25.3 How may the Responsible Entity provide the Exit Mechanism?

Without limitation, the Responsible Entity's strategies to effect the Exit Mechanism may include one or more of:

- (a) the purchase of Units by an Associate of the Responsible Entity;
- (b) the Responsible Entity borrowing to provide liquidity;
- (c) the recapitalisation of the Trust; and
- (d) the disposal of Properties of the Trust.

25.4 What is the Responsible Entity's fee for providing the Exit Mechanism?

- (a) Subject to clause 25.4(b), on the Exit Date and regardless of whether the Responsible Entity provides the Exit Mechanism to any Unit Holders, the Responsible Entity is entitled to receive out of Trust Property an **Exit Mechanism Fee** calculated as follows:

$$\text{EMF} = (1\% \times \text{IV}) + (\text{the lesser of } (1.5\% \times \text{IV}) \text{ and the Surplus})$$

where:

EMF is the Exit Mechanism Fee

IV is the aggregate of the Independent Values of each Property as at the relevant Exit Date;

Net Value in respect of a Property, the Independent Value of the Property as at the relevant Exit Date less the costs of obtaining that Independent Value which are paid out of Trust Property (including without limitation the fees and expenses of the Independent Valuer which are paid out of Trust Property)

Surplus is the aggregate of the amounts obtained for each Property by applying the following formula:

Net Value of the Property – (Acquisition Cost of the Property multiplied by CPI Movement).

- (b) The Responsible Entity as at the date of purchase of the relevant Property for the Trust by the Responsible Entity or the Custodian (as the case may be) ("**the Original RE**") is entitled to the Exit Mechanism Fee notwithstanding that:
 - (1) the Original RE has ceased to be the Responsible Entity as at the Exit Date; and
 - (2) the Original RE's appointment as Responsible Entity has been terminated before the Exit Date, at the election of the Original RE or the Unit Holders.

26 Merger Proposal approved by Independent Expert

26.1 Power to implement a Merger Proposal and limitation of liability

- (a) Having regard to the functions of the Responsible Entity and without limiting anything else in this clause 26 the Responsible Entity has power to do all things which it considers are necessary, desirable or reasonably incidental to effect a Merger Proposal and those powers apply notwithstanding, and are not limited by, any provision of this deed other than clause 2.2(b).
- (b) The Responsible entity may only implement a Merger Proposal if the Merger Proposal satisfies the Responsible Entity's investment strategy described in Schedule 3

- (c) Subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever beyond the assets of the Fund to Unit Holders 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 a Merger Proposal.

26.2 Appointment of Responsible Entity as agent and attorney

The Responsible Entity is irrevocably appointed the agent and attorney of each Unit Holder to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Unit Holder to effect a Merger Proposal, including but without limiting the generality of the foregoing:

- (a) applying for Securities in the name of the Unit Holder;
- (b) accepting transfers of Securities for the Unit Holder;
- (c) Stapling each Unit held by the Unit Holder on the Stapling Date to a corresponding number of Attached Securities;
- (d) transferring every Unit held by that Unit Holder to a company or trust which is to acquire all Units pursuant to a 'trust scheme' or similar arrangement;
- (e) receiving consideration for the transfer of those Units and remitting that consideration to the Unit Holder.

The Responsible Entity is authorised to execute these documents and do these things without needing further authority or approval from the Unit Holder.

26.3 Paramountcy

Subject only to clauses 2.2(b), this clause 26 has effect notwithstanding any other provision of this deed and any provision of this deed which is inconsistent with this clause 26 does not operate to the extent of any inconsistency.

27 Stapling

27.1 Power to staple Securities

- (a) In addition to any power the Responsible Entity has under clause 26, the Responsible Entity may, subject to the Corporations Act and clause 27.1(b), cause the Stapling of any Security to the Units and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, the Corresponding Number of Attached Securities of every kind is Stapled to each Unit.
- (b) The Responsible entity may only cause the Stapling of any Security to the Units if the real property held by the Stapled Entity satisfies the Responsible Entity's investment strategy described in Schedule 3.

27.2 Applications, transfers and distributions in specie

- (a) For the purposes of Stapling, the Responsible Entity may:
 - (1) apply for Securities in the name of a Unit Holder;
 - (2) make a transfer of Securities to all Unit Holders; or

- (3) make a transfer of Securities by way of an in specie distribution of Securities to all Unit Holders.
- (b) If the Responsible Entity applies for Securities in accordance with clause 27.2(a)(1), it must apply for Securities for all Unit Holders in the same way and the Securities applied for must be of the same type, have the same rights and be fully paid upon issue.
- (c) If the Responsible Entity effects a transfer made in accordance with clause 27.2(a)(2) it must effect the transfer to all Unit Holders in the same way and the Securities transferred to each Unit Holder must be of the same type, have the same rights and be fully paid.
- (d) Notwithstanding clause 10.7, if the Responsible Entity makes an in specie distribution under clause 27.2(a)(3) the Responsible Entity:
 - (1) must transfer the Securities by way of distribution between 7pm on the last day of the Distribution Period for the distribution in specie and 10am the following day; and
 - (2) must effect the distribution to all Unit Holders in the same way and the Securities transferred to each Unit Holder must be of the same type, have the same rights and be fully paid.
- (e) Where Securities are to be applied for or transferred by the Responsible Entity in accordance with clause 27.2(a), each Unit Holder authorises the Responsible Entity to act as the Unit Holder's agent to:
 - (1) apply for Securities in the name of that Unit Holder;
 - (2) accept a transfer of Securities for that Unit Holder; and
 - (3) agree to become a member of the relevant Stapled Entity.

27.3 Operation of Stapling provisions

Clauses 27.4 to 27.10 apply only, and for so long as, a Unit is a component of a Stapled Security.

27.4 Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity and the Unit Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
 - (1) the Responsible Entity must not offer a Unit for subscription or sale unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
 - (2) any offer of a Unit for subscription or sale must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
 - (3) the Responsible Entity must not issue or sell a unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (4) the Responsible Entity must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding

consolidation, subdivision, cancellation or other reorganisation of all Attached Securities; and

- (5) the Responsible Entity must not register the transmission or transfer of Units pursuant to clause 17 unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.

27.5 Unstapling Date

- (a) Subject to approval by a special resolution of the Unit Holders and the members of each Stapled Entity respectively, the Responsible Entity may determine that the Stapling provisions of this deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this clause 27.5, this does not prevent the Responsible Entity from:
- (1) subsequently determining that the Stapling provisions should recommence; and
 - (2) stapling an Unstapled Unit to Attached Securities which are not Stapled.

27.6 Transfer of Stapled Securities

- (a) Until the Unstapling Date:
- (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 17, the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee;
 - (2) a transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee; and
 - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Responsible Entity as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Share is Stapled to the same transferee.
- (b) Each Unit Holder irrevocably appoints the Responsible Entity as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Responsible Entity the transfer to the Responsible Entity (as trustee of the Trust) or to a person nominated by the Responsible Entity of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

27.7 Stapled Security Register

The Responsible Entity must cause to be set up and maintained a Stapled Security Register which:

- (a) may incorporate or form part of the Register;

- (b) records the names of the Unit Holders, the number of Units held, the number of Attached Securities held by the Unit Holders to which each Unit Holder's Units are Stapled and any additional information required by the Corporations Act or determined from time to time by the Responsible Entity.

27.8 Unit Holder meetings

- (a) Representatives of a Stapled Entity may attend and speak at any meeting or invite any other person to attend and speak.
- (b) Meetings of Unit Holders may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Responsible Entity may make such rules for the conduct of such meetings as the Responsible Entity determines.

27.9 Variation of Stapling provisions

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this deed which:

- (a) directly affects the terms on which Units are Stapled; or
- (b) removes any restriction on the transfer of a Stapled Unit unless that restriction also exists for all other Attached Securities and is simultaneously removed for all Attached Securities.

27.10 Restricted issue of Units of different class

Whilst there is a similar restriction on the issue of Attached Securities of any new class pursuant to the terms of the constitutions of the Stapled Entities without the consent of the holders of Attached Securities, notwithstanding any other provision of this deed, the Responsible Entity must not issue any Units which are of a different class from any Units already issued without an ordinary resolution being passed at a meeting of Unit Holders to that effect.

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Trust Management Services

- (a) Keep a list of the names and addresses of all Unit Holders and record any changes as soon as practicable after it receives notice of any change and must make available the list to any Unit Holder on request for inspection at the Responsible Entity's principal place of business free of charge.
- (b) Utilise the Responsible Entity's existing management computer system for all accounting, budgeting, invoicing and reporting functions.
- (c) Prepare and provide a budget report for each Financial Year. The budget report will comprise a detailed cash flow, income and expenditure budget and capital expenditure budget for each Financial Year.
- (d) Render a quarterly statement of account for moneys received and expenses incurred on behalf of the Unit Holders, including fees retained and disbursements incurred.
- (e) Open at any bank, a trust account (the "Proceeds Fund") specifically for (and dedicated to) financial operation under this Deed.
- (f) Maintain the Proceeds Fund in accordance with the terms of this Deed, the terms of the Compliance Plan and any relevant law.
- (g) Subject to ASIC policy statement 131 paragraph 131.5A, promptly deposit in the Proceeds Fund all moneys received relating to the Property and pay all outgoings relating to the Property from the Proceeds Fund.
- (h) Remit to the Unit Holders not less frequently than quarterly all funds in the Proceeds Fund except funds which according to the approved budget (or as otherwise agreed by the Unit Holders) will be required to pay outgoings during the current quarter provided that the Responsible Entity will use all reasonable endeavours to ensure that the Proceeds Fund balance does not fall below \$100 (the intent being that the maximum possible funds will promptly be remitted to the Unit Holders whilst the Responsible Entity still retains in the Proceeds Fund sufficient funds to meet costs payable during that quarter).
- (i) Ensure that audits are conducted of the Proceeds Fund in accordance with the provisions of all relevant legislation and ASIC Policy Statement 131.
- (j) Subject to there being sufficient funds in the Proceeds Fund (to which the Unit Holders will remit additional funds if required) pay all outgoings of the Property from funds held in the Proceeds Fund and in accordance with the annual budget, unless any item of outgoings is specifically nominated to be paid direct by the Unit Holders.
- (k) Develop reporting procedures and programmes in conjunction with the Unit Holders which will include the following:
 - (1) **Quarterly Financial Report** - This report is to be provided by the Responsible Entity, in respect of each quarter of the Term, no later than the first working day of the next succeeding quarter. The report will comprise a statement which will detail income and expenditure transactions for the quarter, and include current budget figures - ie. year to date and quarterly budget and variation from actual comparisons. The format of the statement will be prepared in conjunction with and subject to the approval of the Unit Holders' accountant.
 - (2) **Budget Reports** - Preparation of a draft budget report and a final budget report.
- (l) The Responsible Entity will convene a meeting of the Unit Holders when required by the Unit Holders and when required to do so by the Corporations Act.

- (m) Assist the Unit Holders in the preparation and maintenance of asset registers and depreciation schedules.
- (n) Permit the Unit Holders and their employees and agents access to the Responsible Entity's files and records relating to the management of the Property for the purpose of reviewing and auditing the functions and operations of the Responsible Entity under this Deed.

Responsible Entity's Fees

1 Entitlement to Fees

- (a) The Responsible Entity will be entitled to an establishment fee, a trust management fee and (where applicable) a leasing fee (together "the Fees") calculated and payable in accordance with the terms of this Schedule.
- (b) In addition to the Fees, there will be Trust Costs incurred by the Responsible Entity for which the Responsible Entity is entitled to be reimbursed.
- (c) The Responsible Entity may deduct the Fees and the Trust Costs incurred from the Trust Property.

2 Establishment fee

- (a) The establishment fee consists of the "**initial fee**".
- (b) The Responsible Entity's entitlement to the establishment fee in respect of a Property arises on the relevant Purchase Date as a result of the Responsible Entity providing its services to locate the relevant Property, negotiating its purchase, establishing and promoting the Trust, negotiating the Loan Funds and settling the purchase of the Property on behalf of Unit Holders.
- (c) The initial fee is due and payable on each Purchase Date.
- (d) The initial fee shall be an amount which is not more than 5% of the purchase price of the relevant Property.
- (e) The initial fee represents part of the payment to the Responsible Entity for the duties described in item 2(b) of this Schedule with the balance being paid as the deferred fee described in following paragraphs.

3 Trust Management fee

- (a) The annual trust management fee shall be an amount determined by the Responsible Entity but which is not more than 6% per annum of the Gross Proceeds received from the Properties during the relevant year. It shall be payable by consecutive monthly installments or at such other intervals and at times as may be determined by the Responsible Entity from time to time (but at intervals not more often than monthly), in accordance with item 3(b).
- (b) The Responsible Entity will invoice the Trust for the trust management fee, monthly in advance, commencing on the first Purchase Date. Payment of the trust management fee will be made by deduction from the Proceeds Fund by the Responsible Entity.

- (c) The Responsible Entity's entitlement to the trust management fee arises on the first day of each month during the Term.

4 Leasing Fee

- (a) Upon the granting of a new lease or an extension of an existing lease of premises that form part of a Property, the Responsible Entity will be entitled to be paid a leasing fee of an amount which is not more than 8.5% of the Gross Proceeds for the first year of the new or extended term. In calculating the Gross Proceeds, if the first year contains a rent free period or a reduced rent period, the calculation of the Gross Proceeds will include the amount of rent which would have been payable but for the rent free period or rent reduced period.
- (b) The Responsible Entity's entitlement to the leasing fee arises on the earlier of the date on which the new lease or extended term is entered into and the date the tenant commences to pay rent under the new lease or extended term of the lease.
- (c) For the purpose of this item 4 "**lease**" includes a licence (eg. car parking licence).

Investment Strategy for the Property

Each Property shall consist of the freehold estate of land and satisfy the Responsible Entity's investment strategy as set out and repeated in each Prospectus, which includes the following criteria for each Property:

- (a) the purchase price shall be supported by a written valuation provided by an Independent Valuer;
- (b) each Property will be located in an established or industrial zoned precinct within the metropolitan boundaries of a capital or regional city of Australia or New Zealand;
- (c) The Responsible Entity may acquire Properties funded initially wholly through debt facilities made available to the Trust, with a requirement that such debt is paid down to a loan valuation ratio not exceeding 65% within 9 months of the acquisition of the relevant Property.
- (d) no single Property acquisition will constitute more than 35% of the total portfolio value at the date of acquisition;
- (e) each Property must be capable of achieving comparable returns and tax advantaged benefits as those detailed in the First Prospectus;
- (f) the Responsible Entity shall commission an independent building condition report which, in the reasonable opinion of the Responsible Entity, provides a satisfactory assessment of the condition of any buildings and services located on the Property, together with a satisfactory forecast of the reliability and longevity of those buildings and services (provided that a Property acquisition may constitute the purchase of vacant land, with a building to be constructed, or under construction, in circumstances where a suitable tenant has pre-committed to a lease term of not less than 5 years);
- (g) the Responsible Entity shall commission an independent quantity surveyor's report, which in the reasonable opinion of the Responsible Entity, identifies satisfactory anticipated annual depreciation benefits available to Unit Holders (unless written down values are provided by the vendor of the Property);
- (h) the Responsible Entity shall obtain an independent legal due diligence which, in the reasonable opinion of the Responsible Entity, satisfactorily reports that the relevant leases and licences contain the terms and conditions which one would ordinarily expect to find in those documents in relation to similar properties and do not impose any unduly onerous obligations on the landlord; and
- (i) the acquisition of each Property shall be subject to the formal approval of board of directors of the Responsible Entity.

Executed as a deed

Executed by
Becton Investment Management Limited
in accordance with section 127 of the Corporations Act.

The common seal of
Becton Investment Management Limited
is fixed to this document in the presence of

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____
