

Ingenia Communities Management Trust

INGENIA COMMUNITIES RE LIMITED ACN 154 464 990

PLEASE NOTE:

This is an unexecuted consolidated working copy of the constitution for Ingenia Communities Management Trust as amended by supplemental deed dated 31 May 2012

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Details

Date

Parties

Name	Ingenia Communities RE Limited ACN 154 464 990
Short form name	Responsible Entity
Notice details	Level 6, 345 George Street, Sydney, NSW 2000

Background

- A The Responsible Entity intends that this trust deed will be the constitution for a unit trust known as the Ingenia Communities Management Trust.
- B The Responsible Entity intends that this trust will be registered as a managed investment scheme under section 601EB(1) of the Corporations Act and Listed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Accounting Standards means:

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

Affiliate of a body corporate means:

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

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

Applicable Standards means:

- (a) the Corporations Act including any regulations made under it, subject to any relief, exemption, declaration or modification granted or made by ASIC;
- (b) other relevant legislation including any regulations made under it; and
- (c) the Listing Rules, as they apply to the Scheme or the Responsible Entity.

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

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

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

ASIC Instrument means:

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

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

ASX Market Rules means the Exchange Market Rules, as amended from time to time.

Attached Security means a Security which is from time to time Stapled or to be Stapled to a Unit.

Business Day has the meaning given in the Listing Rules.

Capital Reallocation Issue means an issue of Units in the circumstances contemplated by clause 8.8.

Cash has its ordinary meaning and includes cheques and electronic funds transfers.

Class means a class of Units or Options or, while Stapling applies, Stapled Securities, as the context requires.

Complaints Resolution Scheme means an external dispute resolution scheme approved by ASIC to provide dispute resolution services for complaints made by retail clients in respect of financial services provided by the Responsible Entity in accordance with its Licence.

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

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

Corresponding Number in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to the same number of issued Units at that time.

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

Current Market Price has the meaning given in clause 1.4:

Deed means this deed.

Deed of Sale of Units means a deed, between the Responsible Entity on behalf of the Scheme (**Purchaser**) and the Responsible Entity in its own right or its Associate (**Seller**), pursuant to which the Purchaser may acquire units in a unit trust from the Seller where such unit trust was established to acquire real property upon which it is proposed to develop a Village.

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

Development Agreement means an agreement between the Responsible Entity in its own right or its Associate (**Developer**) and the Responsible Entity as trustee of the Scheme (**Land Owner**) pursuant to which the Developer will construct a Village on land owned by the Land Owner.

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

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

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

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

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

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

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

Distribution Reinvestment Plan means an arrangement, where Distributions to Unitholders are satisfied by the issue or transfer of Units, established pursuant to clause 12.8.

Effective Date means the date of this Deed.

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

Exchange means Australian Stock Exchange Limited ACN 008 624 691 the official list of which the Scheme is admitted to from time to time.

Exercise Price means, in relation to a Unit issued on exercise of an Option, means the dollar value of the total consideration payable in respect of the issue of the Unit determined in accordance with clause 7.

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

Foreign Members means Members whose address on the Register is a place outside Australia and New Zealand.

Government Agency means:

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

Gross Assets mean the total assets of the Scheme, which are, or would be, recognised as assets under generally accepted accounting principles.

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

Holder means a Unitholder or an Optionholder, as the context requires.

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

Interest means Units and Options, as the context requires except for clause 1.4 where 'Interest' has the meaning given in clause 1.4.

Issue Price means in relation to a Unit or an Option, the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with the clause in clause 7 pursuant to which the Unit or Option was issued and in respect of a Unit issued on the exercise of an Option, means the Exercise Price.

Land Sale Contract means a land sale contract for the acquisition of a Village or Manager's Unit by the Scheme;

Licence means the Australian Financial Services Licence issued by ASIC to the Responsible Entity.

Lease means any lease, from time to time, between the Responsible Entity as trustee of the Scheme and the Responsible Entity in its own right or its Associate in respect of a Village or Manager's Unit owned by the Scheme.

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

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

Manager's Unit means a strata titled unit in a Village in which an On-Site Manager resides.

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

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

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

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

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

Officially Quoted means official quotation by the Exchange.

On Site Manager means an independent contractor engaged by the Responsible Entity in its own right to manage a Village.

Option means an option to subscribe for a Unit.

Optionholder means the person for the time being registered as a holder of an Option, including any persons jointly registered.

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

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

PDS means a product disclosure statement.

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

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

Redemption Amount means the amount worked out as follows:

$$\text{Redemption Offer Price} \times \text{Number of Units being Redeemed}$$

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

Redemption Price means the higher of

- (a) Unit Value less Redemption Provision; or
- (b) Current Market Price less Redemption Provision; or
- (c) Recent Issue Price (if available) less Redemption Provision,

provided that if a Disqualifying Event occurs, the Recent Issue Price may be disregarded by the Responsible Entity when calculating the Redemption Price.

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

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

Register means the register of holders of Units and the register of holders of Options, kept in accordance with the Corporations Act.³

Relationship Deed means the deed known as the 'Village Life Developments Relationship Deed' to be entered into by the Responsible Entity, ING Management Limited ACN 006 065 032, VL Lease Pty Ltd ACN 108 440 697, VL Assets Pty Ltd ACN 078 388 995 and VL Developments Pty Ltd ACN 078 666 396 which provides a methodology for:

- (a) the future acquisition, indirectly, of real property by the Scheme from the Responsible Entity in its own right or its Associate;
- (b) the development of such property by the Responsible Entity in its own right or its Associate; and
- (c) the leasing of that property to the Responsible Entity in its own right or its Associate.

Responsible Entity means:

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

Rights Issues means an issue of Units in a class which has been offered to all Unitholders in that class (or all Unitholders in that class other than Foreign Members) on a pro rata basis.

Scheme means this trust governed by this Deed which is a registered managed investment scheme.

³ Refer to sections 168 and 169.

Scheme Liabilities as at a particular day, means the total of.

- (a) the amount of losses, Taxes, fees, expenses and other liabilities of the Responsible Entity in relation to the Scheme; and
- (b) amounts the Responsible Entity determines consistently with the Accounting Standards or in consultation with an auditor, including reasonable provision for contingent or future losses, expenses and other liabilities of the Responsible Entity in relation to the Scheme,

and includes accrued but unpaid Member entitlements in connection with the Scheme. However, the obligation to account to Members for their interests in the Scheme as Members is not a Scheme Liability even if it is treated as a debt obligation in the financial statements of the Scheme.

Scheme Property means property that is property of the Scheme⁴ for the purposes of the Corporations Act⁵ being property held by or for the Responsible Entity in connection with the Scheme.

Scheme Value means the value of the Scheme Property calculated in accordance with clause 9.

Security has the meaning given to that term in section 92(1) of the Corporations Act.

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

Stapled Application Price means the distribution per Unit to be received by Unitholders under clause 37.2 which will be the amount required by Unitholders to subscribe for Stapled Securities.

Stapled Entity means any trust, body corporate, managed investment scheme or other entity Securities in or of which are Stapled to Units.;

Stapled Security means a Unit and each Attached Security which are Stapled together.

Stapled Security Register means the register of Stapled Securities to be established and maintained by or on behalf of the Responsible Entity under clause 37A.7.

Staple, Stapled or Stapling means in relation to a Unit and one or more Attached Securities, being linked together so that one may not be issued or transferred without the other or others.

Stapling Date means the date the Fund is stapled to the Stapled Entity under clause 37.4 together with such other date as determined by the Responsible Entity from time to time.

Stapling PDS means the PDS lodged with ASIC relating to the issue of Units for the purposes of implementing Stapling.

Stapling Provisions means all clauses in this Deed primarily relating to Stapling.

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

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

⁴ Refer section 23.3 for investment power and types of investment.

⁵ Refer to sections 9 and 601FB(4).

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

Terms of Issue means in relation to a Stapled Security, Unit or Option, the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire an Option;

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

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

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

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

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

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

Unit Value means the amount worked out using the formula:

$$\frac{\text{Net Scheme Value} + \text{Aggregate Uncalled Amount}}{\text{Units in Issue}}$$

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

Unstapled means, in relation to a Unit, not being Stapled to an Attached Security.

Unstapling Date means the date determined by the Responsible Entity to be the Unstapling Date pursuant to clause 37.9 or such other date as determined by the Responsible Entity from time to time.

Valuer means a valuer appointed by the Responsible Entity.

Village means a complex providing managed rental accommodation specifically designed for persons usually over the age of 65 years who do not rely on assisted medical care on a daily basis.

1.2 Rules for interpreting this Deed

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

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it,

and in the case of legislation which has been repealed and not replaced, the reference is to the legislation immediately prior to its repeal;

- (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) A power to do something includes a power, exercisable in like circumstances, to revoke or undo it.
 - (h) A reference to a power is also a reference to authority or discretion.
 - (i) A reference to something being 'written' or 'in writing' includes that thing being represented or reproduced in any mode in a visible form.
 - (j) In this document, the following words have the same meaning as in the Corporations Act:
 - (i) administrator;
 - (ii) month;
 - (iii) registered office;
 - (iv) Australian law property;
 - (v) related body corporate;
 - (vi) constitution;
 - (vii) record;
 - (viii) related entity;
 - (ix) entity;
 - (x) registered company auditor securities;
 - (xi) insolvent;
 - (xii) registered office;
 - (xiii) solvent;

- (xiv) managed investment scheme;
 - (xv) related body corporate;
 - (xvi) substantial holding.
- (k) A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act.
 - (l) A reference to 'GST' includes any other Commonwealth, State or Territory goods and services tax, or any Commonwealth, State or Territory tax applying to a transaction in a way similar to GST.
 - (m) Words defined in the GST Law have the same meaning in clauses 1.2(n) and 1.2(o) and clause 32.
 - (n) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
 - (o) If a person is notionally liable to pay GST under the GST Law or is liable to pay an amount which is treated as GST under the GST Law, references to GST which the person must pay extend to any notional liability of the person to pay GST and references to an input tax credit extend to any notional input tax credit to which the person is entitled.
 - (p) The recitals in paragraph A and B (inclusive) form part of this Deed and have the same force and effect as if set out in the body of this Deed.

1.3 Business Days

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

1.4 Current Market Price

- (a) In this clause 1.4, **Interest** means:
 - (i) where a Unit does not form part of a Stapled Security, a Unit; and
 - (ii) where a Unit forms part of a Stapled Security, a Stapled Security.
- (b) Subject to clause 1.4(h), the Current Market Price for an Interest on any Business Day is for all purposes other than the purposes of Rights Issues or issues under a Distribution Reinvestment Plan, either:
 - (i) the average traded price for an Interest for all sales on ASX (excluding transactions referred to in clause 1.4(f) for the period of 10 Business Days immediately preceding the relevant Business Day (whether or not a sale was recorded on any particular day); or
 - (ii) the price obtained pursuant to a bookbuild arranged by a reputable merchant bank with experience in arranging bookbuilds in the Australian equity market, provided that the Scheme auditor has provided written certification that the bookbuild was conducted in accordance with normal market practice for bookbuilds.
- (c) Subject to clause 1.4(h), the Current Market Price for an Interest on any Business Day for the purposes of Rights Issues is an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and which in the opinion of an

Approved Valuer will approximate the Current Market Price of an Interest at or around the relevant date; and

- (d) Subject to clause 1.4(h), the Current Market Price for an Interest on any Business Day for the purposes of a Distribution Reinvestment Plan is the average traded price for an Interest for all sales on ASX (excluding transactions referred to in clause 1.4(f) for the period of 10 Business Days including:
 - (i) the five Business Days up to and including the relevant record date; and
 - (ii) the five Business Days after the relevant record date.
- (e) If in respect of clause 1.4(b)(i) or 1.4(d), the Responsible Entity considers the period of 10 Business Days to be inappropriate in the circumstances, it can extend or reduce the period or change the timing of the period.
- (f) For the purposes of clauses 1.4(b)(i) or 1.4(d), the following transactions are excluded when calculating Current Market Price:
 - (i) any transaction defined in the ASX Market Rules as a **Special Crossing**;
 - (ii) any transaction defined in the ASX Market Rules as a **Crossing** that occurs prior to the commencement of normal trading or during the closing phase or after-hours adjust phase;
 - (iii) any transaction pursuant to the exercise of Options over Units; or
 - (iv) any transaction which the Responsible Entity considers is not reflective of natural supply and demand.
- (g) For the purposes of clauses 1.4(b)(i) or 1.4(d), 'relevant record date' means the date for determination of entitlements to the distribution which will be applied in paying up Units to be issued pursuant to clause 12.8 at an issue price to be calculated by reference to the Current Market Price.
- (h) If the Responsible Entity believes that the calculations in clauses 1.4(b), 1.4(c) or 1.4(d) do not provide an appropriate reflection of the market price of an Interest, the Market Price on any Business Day is an amount determined by an Approved Valuer who:
 - (i) is independent of the Responsible Entity; and
 - (ii) has relevant market experience in determining market price in circumstances similar to those in which the determination of the market price of an Interest is being made,
to be the fair market price of the Interest, having regard to:
 - (iii) the nature of the proposed offer of Interests for which purpose the market price of an Interest is being calculated; and
 - (iv) the circumstances in which the proposed offer of Interests will be made.
- (i) The Current Market Price of an Option on any Business Day must be determined in the same manner as the Current Market Price for an Interest is determined.

2. This deed

2.1 Deed binds Members and Responsible Entity⁶

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

2.2 No agency or partnership created

None of the following:

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

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

2.3 If there are exemptions or modifications etc⁷

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

2.4 Stapling

All clauses with Stapling Provisions take full force and effect as and from the Stapling Date (to the extent these clauses did not already have full force and effect as and from the date of this Constitution).

3. Name of the Scheme

3.1 Name

The name of the Scheme is 'Ingenia Communities Management Trust'.

3.2 Change of name generally

- (a) The Responsible Entity may change the Scheme's name at its discretion.⁸

⁶ Refer to section 601 GB.

⁷ Refer to Part 5C.11 and ASIC Policy Statement 136.

⁸ Refer to regulation 5C.1.02 of the Corporations Regulations.

4. Scheme proper

4.1 Scheme Property held for Unitholders⁹

The Responsible Entity holds the Scheme Property on trust for the Unitholders.

4.2 Holding of Scheme Property¹⁰

All Scheme Property must be held:

- (a) by the Responsible Entity; or
- (b) if required by law¹¹ or the Responsible Entity thinks it necessary or appropriate, by a custodian appointed by the Responsible Entity.

4.3 Custodian holding Scheme Property¹²

The custodian of any Scheme Property must hold it either:

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

5. Units and Options

5.1 Scheme Property divided into Units

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

5.2 Nature of Unitholder's interest in Scheme Property

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

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

5.3 Rights attached to Units

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

5.4 Consolidation, division and reclassification of Units

The Responsible Entity may consolidate, divide or reclassify Units, as it thinks fit. However, while Stapling applies, there must occur contemporaneously a corresponding consolidation, division or reclassification of a Corresponding Number of Attached Securities so that each Unitholder continues to hold a Corresponding Number of Units and Attached Securities, provided that nothing in this clause will prevent the Responsible Entity from issuing Units as part of a Capital Reallocation Issue.

5.5 Classes of Units

The Responsible Entity may:

⁹ Also refer to section 601FC(2).

¹⁰ Refer to section 601FC(1)(i) and ASIC Policy Statement 133.

¹¹ Refer to ASIC Policy Statement 131, paragraphs 4 to 6A.

¹² Refer to ASIC Policy Statement 133, paragraphs 2 to 13 and 15 to 20.

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

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

5.6 No fractions of Units

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

5.7 Rounding

Where any calculation done in accordance with this Deed, the Listing Rules or the Corporations Act¹³ would otherwise result in the issue, transfer pursuant to a Distribution Reinvestment Plan or redemption of a fraction of a Unit or an Option:

- (a) the number of Units or Options to be issued, transferred pursuant to a Distribution Reinvestment Plan or redeemed must be rounded down to the nearest whole number; and
- (b) the excess Application Money or other property which results from rounding becomes Scheme Property excluding where such excess monies arise in the operation of the Distribution Reinvestment Plan in which case the excess monies are to be dealt with in accordance with the rules of the Distribution Reinvestment Plan.

5.8 Terms and conditions of Options

The Responsible Entity may from time to time create and issue Options on such Terms of Issue and Terms of Offer as the Responsible Entity determines. Options may be issued with Units or separately.

5.9 Offers of Options

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

5.10 Exercise of Options

On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the Terms of Issue and Terms of Offer of the Option contemplate.

5.11 Interest of Optionholders

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

6. Partly paid Units

6.1 Partly Paid Units

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

¹³ Refer to section 601KD.

6.2 Subscription Amount

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

6.3 Withdrawal Price

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

6.4 Calls by Responsible Entity

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

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

6.5 Unpaid call

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

6.6 Date of forfeiture

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

6.7 Forfeited Units may be disposed of

- (a) The Responsible Entity may dispose of a forfeited Unit in such manner as required by the Applicable Standards.
- (b) The Responsible Entity must use reasonable endeavours to ensure that the price received on disposal of the Unit is at least the Entry Price at the date of the disposal less the then Uncalled Amount.
- (c) Proceeds of disposal must be applied in the following order.
 - (i) the expenses of the sale;
 - (ii) to the payment of costs and expenses of the forfeiture and disposal;
 - (iii) to any unpaid amount in respect of which the notice in clause 6.5(a) was given and any further calls under clause 6.4 which remain unpaid;
 - (iv) while Stapling applies, in paying up forfeited Attached Securities previously held by the person who was on the date of forfeiture the Unitholder in respect of the forfeited Unit; and
 - (v) any balance is to be paid to the Unitholders whose Units have been forfeited and sold.

6.8 Responsible Entity may Register

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

6.9 Remaining liability

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

6.10 Cancelling forfeiture

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

6.11 Stapling and Forfeited Units

While Stapling applies, the Responsible Entity must take all reasonable steps to ensure that a Corresponding Number of Attached Securities are also forfeited and dealt with in the same way as the forfeited Units.

6.12 Partly-paid Units and Stapling

If the Responsible Entity allots or issues a Unit on the basis that the issue price is payable by instalments and the Unit is to be issued as part of a Stapled Security and the Attached Securities are to be partly paid, the Unit must also be issued with terms for the making and payment of calls and forfeiture which are compatible with the terms of issue of the Attached Securities.

6.13 Payment of calls and Stapling

While Stapling applies any issue of partly paid Units will be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

7. Issue Price of Units

7.1 Powers Cumulative

- (a) The Responsible Entity may issue Units only in accordance with this clause 7 and subject to this deed.
- (b) No clause of this clause 7 (other than this clause 7.1) limits any other such clause.

7.2 Underwriting of Issue

- (a) The Responsible Entity may arrange for:
 - (i) an offer for sale, subscription or issue of Units or Options;
 - (ii) the payment of calls on Uncalled Amounts in respect of Partly Paid Units; or
 - (iii) the exercise of Options,to be underwritten by an underwriter on terms determined by the Responsible Entity.
- (b) The underwriter may:
 - (i) be the Responsible Entity or a related body corporate of the Responsible Entity;
 - (ii) take up any Units or Options not subscribed for; and
 - (iii) purchase forfeited Units sold under clause 6.7.
- (c) The Responsible Entity may issue Units and Options under to this clause 7.2 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

7.3 Issue at fixed price

In addition to any other power the Responsible Entity has to issue Units under this deed, the Responsible Entity may issue Units or Options at any time to any person at an Issue Price as follows:

- (a) prior to the issue of Units pursuant to the Stapling PDS, Units at an issue price of \$1.00 per Unit;
- (b) for the issue of Units pursuant to the Stapling PDS, Units at an Issue Price per Unit calculated by dividing the total Application Money received under the Stapling PDS by the number of Securities on issue in the Stapled Securities at the time of issue of Units, rounded to four decimal places;
- (c) for the issue of Units as part of a Capital Reallocation Issue, Units at an Issue Price equal to the amount calculated by dividing the relevant Application Moneys by the number of Units then on issue in the Scheme;
- (d) where the Scheme is Listed, Units will not form part of Stapled Securities and Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily):
 - (i) on which the offer or issue is made; or
 - (ii) Options at the consideration for the issue of the Option specified in the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to the exercise of those Options are to be issued at the Current Market Price of a Unit immediately before the date upon which the Option is issued;
- (e) where the Scheme is Listed and Stapling applies, Units will form part of Stapled Securities and Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), Units at a price determined by the Responsible Entity provided that the aggregate of the Issue Price of that Unit and the issue price of any Attached Securities to which that Unit will be Stapled is equal to the Current Market Price for Stapled Securities on the Business Day prior to the day on which the offer or issue is made; and

- (f) where Stapled Securities or Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Scheme is no longer Listed and subject to clause 7.2(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made.

7.4 Placements of Units at Current Market Price

- (a) While the Scheme is Listed and Units do not form part of Stapled Securities, are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), the Responsible Entity may issue Units at an issue price equal to the Current Market Price determined in accordance with clause 1.4(b), if the issue is:
 - (i) a placement to professional investors (as that term is defined in section 9 of the Corporations Act) for the purposes of which the Current Market Price was initially calculated;
 - (ii) a placement to professional investors (as that term is defined in section 9 of the Corporations Act) announced at the same time as, or within 15 Business Days of the date as at which the Current Market Price is calculated in accordance with clause 1.4(b); or
 - (iii) made pursuant to a PDS lodged with ASIC pursuant to section 1015B of the Corporations Act within 15 Business Days of the date as at which the Current Market Price is calculated in accordance with clause 1.4(b).
- (b) While the Scheme is Listed, Units form part of Stapled Securities and Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), the Responsible Entity may issue Units as part of Stapled Securities at an issue price determined by it provided that the issue price of the Stapled Securities of which the Units form a part is equal to the Current Market Price determined in accordance with clause 1.4(b), if the issue is:
 - (i) a placement to professional investors (as that term is defined in section 9 of the Corporations Act) for the purposes of which the Current Market Price was initially calculated;
 - (ii) a placement to professional investors (as that term is defined in section 9 of the Corporations Act) announced at the same time as, or within 15 Business Days of the date as at which the Current Market Price is calculated in accordance with clause 1.4(b); or
 - (iii) made pursuant to a PDS lodged with ASIC pursuant to section 1015B of the Corporations Act within 15 Business Days of the date as at which the Current Market Price is calculated in accordance with clause 1.4(b).

7.5 Other issues of Units and Options

The Responsible Entity may issue Units or Options at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clauses 7.2, 7.3 and 7.4, in any circumstance where the Corporations Act (as modified by any applicable ASIC Class Order) permits the Responsible Entity to set such Issue Price in such a manner.

7.6 Placement Threshold

- (a) This clause 7.6 applies solely for the purposes of determining the number of Units or Options which must be included in the Placement Threshold for a Relevant Placement.

- (b) In this clause 7.6:
- (i) **Placement Resolution** means a special resolution to approve or ratify the issue of Units or Options pursuant to a placement in respect of which:
 - (A) no votes are cast by Holders who acquired or will acquire Units or Options pursuant to such placement;
 - (B) no votes are cast in respect of Units or Options which are held by their Holder for the benefit of a person who acquired or will acquire Units or Options pursuant to such placement;
 - (C) the value of Units and Options in respect of which votes are cast is equal to at least 25% of the total value of all Units and Options on issue; and
 - (D) the notice of meeting convening the meeting at which Holders voted on such special resolution set out particulars of the use made or to be made of the money raised by such placement;
 - (ii) **Placement Threshold** means a percentage of Units or Options on issue immediately before a placement of Units or Options (as the case may be) which percentage is specified in paragraph (2)(c)(i)(A) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it); and
 - (iii) **Relevant Placement** means a placement of Units or Options in the circumstances described in paragraph (2) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it) and in respect of which the Issue Price is determined pursuant to clause 7.4(b)(i).
- (c) Units or Options:
- (i) the issue of which has been approved or ratified by a Placement Resolution of Holders of the Class of Units or Options being issued and, unless the Responsible Entity reasonably considers that the issue will not adversely affect the interests of Holders of another Class of Units Options, a separate Placement Resolution of Holders of that Class of Units or Options, in respect of which; or
 - (ii) which are issued pursuant to clause 5.9, 5.10, 7.2, 7.3 or 7.4 (other than pursuant to a placement of Units or Options in the circumstances described in paragraph (2) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it)),
- are not Units or Options which must be counted towards any applicable Placement Threshold for a Relevant Placement.

7.7 Rounding of Issue Price

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

7.8 Issues in excess of Issue Price

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

7.9 Stapling

Where Stapling applies, the Responsible Entity may determine what part of the issue price of the Stapled Security is to represent the Issue Price of a Unit in its absolute discretion.

8. Application procedure

8.1 Form of application

An application for Units or Options must be in such form as the Responsible Entity determines. The Responsible Entity may determine that such application need not be in writing. The form may be transmitted electronically if approved by the Responsible Entity. While Stapling applies, an applicant for Units must contemporaneously apply for a Corresponding Number of Attached Securities except if the Responsible Entity is satisfied that each of those Units will be issued to a Stapled Entity (or where such Stapled Entity is a trust, to the trustee of such Stapled Entity) as part of a Capital Reallocation Issue.

8.2 Deciding applications¹⁴

The Responsible Entity may reject all or part of an application for Units or Options without giving a reason for doing so. While Stapling applies, the Responsible Entity must reject an application if the applicant does not apply at the same time for a Corresponding Number of Attached Securities or if an Corresponding Number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the applicant, except if the Responsible Entity is satisfied that each of those Units will be issued to a Stapled Entity (or where such Stapled Entity is a trust, to the trustee of such Stapled Entity) as part of a Capital Reallocation Issue.

8.3 What happens to rejected applications

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

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

8.4 Application Money

- (a) Payment in respect of an application must accompany the application.
- (b) Application Money must be:
 - (i) Cash; or
 - (ii) at the discretion of the Responsible Entity and subject to any conditions it imposes, property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property acceptable to the Responsible Entity if the Responsible entity requires) or a combination of that and Cash; or
 - (iii) comprise a reinvestment of Distributions in accordance with this Deed, and in the case of paragraph 8.4(b)(ii):
 - (iv) the contribution is taken to be the value of the asset as determined by the Responsible Entity;
 - (v) the application for Units or Options cannot be accepted unless the asset is vested in the Responsible Entity or its custodian.
- (c) For the purposes of clause 8.4 and subject to clause 6:
 - (i) payment in respect of a Unit must be an amount equal to the Entry Price; and

¹⁴ Note section 601NE(3) and clause 30.8.

- (ii) transfer of property in respect of a Unit must have a value equal to the Entry Price plus any costs associated with the transfer of the property incurred or likely to be incurred by the Responsible Entity if the Responsible Entity so requires.
- (d) If the Responsible Entity does not require payment of costs under clause 8.4(c)(ii), any costs associated with the valuation and listing of the asset are payable or can be reimbursed out of Scheme Property.
- (e) Where the Responsible Entity accepts property (other than money/cash) for the issue of Units the property must first be valued by an Approved Valuer.

8.5 Default in payment of Application Money

If:

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

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

8.6 When applications are received and Interests are issued

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

8.7 Number of Units

- (a) If the Responsible Entity accepts an application for Units in whole or in part, the number of Units issued is:
 - (i) in the case of the issue of Units as part of a Capital Reallocation Issue, a number of Units equal to the number of Units on issue in the Scheme on the date the Capital Reallocation Issue takes place; and
 - (ii) in any other case, the number determined by the Responsible Entity by dividing the relevant Application Moneys by the Entry Price.
- (b) If the Responsible Entity accepts an application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Responsible Entity dividing the relevant Application Moneys by the amount of the Subscription Amount for a Unit which is to be paid on application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

- (d) While Stapling applies, the number of Units issued at any time must equal the number of Attached Securities issued at that time and Units must not be issued to a person unless at the same time a Corresponding Number of Attached Securities are issued to that person.

8.8 Capital Reallocation Issue

Notwithstanding any other provision of this deed, the Responsible Entity may at any time issue Units (Capital Reallocation Units) to a Stapled Entity (or, where the Stapled Entity is a trust, to the trustee of that Stapled Entity) in either of the following circumstances;

- (a) if the Responsible Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities; or
- (b) the Stapled Entity (or, where the Stapled Entity is a trust, to the trustee of that Stapled Entity) makes an application for Capital Reallocation Units as agent for the holders of Stapled Securities and applies a distribution of capital paid by (or out of) that Stapled Entity towards the Application Moneys for those Capital Reallocation Units,

so long as immediately following the issue of Capital Reallocation Units referred to in paragraph (a) above or the in specie distribution referred to in paragraph (b) above, the Responsible Entity immediately consolidates the Capital Reallocation Units with all other Units then on issue in the Scheme such that the total number of Units in Issue after the consolidation is equal to the total number of Units in Issue immediately prior to the Capital Reallocation Issue taking place.

9. Valuing scheme proper

9.1 Valuation roll to be kept

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

9.2 When the Scheme Property is to be valued

The Responsible Entity:

- (a) may have the Scheme Property valued by a Valuer at any time; and
- (b) must have it done at regular intervals appropriate to the nature of the Scheme Property and having regard to the Applicable Standards¹⁵ and Accounting Standards.

9.3 Method for valuing Scheme Property¹⁶

The value of the Scheme Property for working out Scheme Value is its market value, unless the Responsible Entity in consultation with the Scheme auditor¹⁷:

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

9.4 Adjustments to Scheme Value and Net Scheme Value

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

¹⁵ Also refer to 601FC(1)(j).

¹⁶ How the scheme property is to be valued is required to be in a registered scheme's constitution by ASIC Policy Statement 134, paragraph 29.

¹⁷ Refer to Division 2 of Part 2M.4.

9.5 Valuer qualifications

A Valuer appointed by the Responsible Entity must:

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

10. Scheme Values

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

The Responsible Entity:

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

10.2 Effect of determination

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

11. Paying liabilities and expenses

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

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

12. Distributions of income and capital

12.1 Working out Distributable Amount

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

12.2 Obligation to distribute income

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

12.3 Unitholder's present entitlement to Distribution Amount

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

12.4 Separate accounts

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

12.5 Transfer of Distribution Amounts to distribution account

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

12.6 Deductions that may be made from Distribution Amount

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

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

12.7 When Distribution Amount is paid

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

12.8 Reinvestment of distributions

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

- (a) must notify Unitholders of the procedure for reinvestment and any changes to the procedure;
- (b) is taken to have received and accepted an application to reinvest distributions on the relevant Distribution Date; and
- (c) must not, while Stapling applies, issue Units to a Unitholder under this clause unless the Unitholder is contemporaneously issued with a Corresponding Number of Attached Securities. The Responsible Entity may provide for and pay the application moneys for those Attached Securities to the Stapled Entity on the Unitholder's behalf out of the amount otherwise available to be distributed.

12.9 Transfer of capital

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

12.10 Interim distributions

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

12.11 Other Distributions

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

- (a) a person is entitled to any such distribution pro rata in accordance with clause 12.2; and
- (b) the distribution may be in Cash, in specie or by way of bonus Units, with such bonus Units to rank with existing Units for the purposes of distributions of income and capital as determined by the Responsible Entity. provided that while Stapling applies, a distribution by way of bonus Units must not be made to a Unitholder unless the Unitholder is contemporaneously issued with a Corresponding Number of Attached Securities.

The Responsible Entity may provide for and pay the application moneys for those Attached Securities to the Stapled Entity on the Unitholder's behalf out of the amount otherwise available to be distributed.

12.12 Capital distributions for capital reallocation issue

The Responsible Entity may at any time make a pro rata distribution of capital out of the Fund to Unitholders and apply the proceeds of such Distribution for the purposes of subscribing for Securities in any Stapled Entity as agent for Unitholders.

12.13 Determination whether capital or income

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

12.14 Distribution statements to be sent out

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

12.15 Other reporting

The Responsible Entity must report to Unitholders concerning the affairs of the Scheme and their respective Unit and Option holdings as required by the Corporations Act. The form, content and timing of any report sent by the Responsible Entity to the Unitholders is (subject to the law) at the discretion of the Responsible Entity.

12.16 Distribution Equalisation Reserve

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

12.17 Distribution Process

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

12.18 Scheme taxed as a company

Notwithstanding clauses 12.2 and 12.3, if in any financial year the Responsible Entity in its capacity as trustee becomes taxable as if it were a company under the Tax Act:

- (a) the Responsible Entity has complete discretion as to how much, if any, of:
 - (i) the Distributable Amount for that financial year; or
 - (ii) in years subsequent to that financial year, amounts which have not previously been distributed from prior financial years,is to be distributed to Unitholders;
- (b) Each Unitholder's entitlement to the Distribution Amount is to be determined in accordance with clause 12.2; and
- (c) The Responsible Entity must pay the Distribution Amount to the persons who are the Unitholders on the Calculation Date for that Distribution Period in accordance with clause 12.7.

13. Reserves

13.1 Establishing reserves

The Responsible Entity may establish any reserve it thinks fit. 13.2 Crediting net capital gains and losses to a reserve The Responsible Entity may:

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

13.2 Distributing reserves

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

14. Withdrawing from the scheme - general provisions¹⁸

14.1 Right to withdraw¹⁹

A Member may withdraw from the Scheme in accordance with clause 15 and the Corporations Act²⁰.

14.2 General Restrictions on right to withdraw²¹

- (a) A Member cannot withdraw from the Scheme by redemption of Units:
 - (i) after a Meeting has been called to vote on a resolution to terminate the Scheme and before the vote has been taken;
 - (ii) after the Scheme is terminated; or
 - (iii) while the Scheme is being wound up.

¹⁸ Refer to Part 5C.6.

¹⁹ Required to be in a registered scheme's constitution by section 601 GA(4) if members are to have a right to withdraw. Also, refer to sections 601KA(1) and (2) as well as ASIC Policy Statement 134, paragraphs 25, 54 and 55.

²⁰ Refer to sections 601KB to 601KE.

²¹ Also refer to clause 30.8 and section 601KA(3).

- (b) The Responsible Entity does not have to comply with a redemption request if in the Responsible Entity's reasonable opinion, it would not be adequately indemnified out of the Scheme Property.

14.3 Member cannot deal with Unit after redemption request

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

14.4 Conditions of redemption

- (a) The Responsible Entity may impose conditions on the redemption of Units including that:
 - (i) Members can only request redemption of Units which have been held for a specified minimum period;
 - (ii) Members only be permitted to request redemption of a specified percentage of their Units during a specified period; and
 - (iii) the Redemption Amount not be paid directly to the Member but be applied on behalf of the Member to acquire securities in another entity.

15. Redemption while the Scheme is not liquid

15.1 Method of withdrawal

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

15.2 Redemption Price

- (a) Subject to clause 15.2(b) a Unit may only be redeemed at the Redemption Price.
- (b) Subject to:
 - (i) the consent of the relevant Unitholder (in the case of one Unitholder's Units); or
 - (ii) a resolution of the majority of Unitholders (in the case of more than one Unitholders Units),the Responsible Entity may redeem Units at its discretion at a Redemption Offer Price which:
 - (iii) exceeds the Redemption Price by up to 10%; or
 - (iv) is not less than 90% of the Redemption Price.

15.3 Making withdrawal offer

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

15.4 Terms of withdrawal offer

- (a) A withdrawal offer must specify:
 - (i) the period during which the offer will remain open, subject to any minimum period required by the Corporations Act;
 - (ii) the assets that will be used to satisfy withdrawal requests;
 - (iii) the amount of money that is expected to be available when those assets are converted to money; and
 - (iv) the method for dealing with withdrawal requests if the money available is insufficient to satisfy all requests.
- (b) The Responsible Entity must ensure:
 - (i) any Redemption Amount payable to a Member is paid within 21 days after the offer closes; and
 - (ii) no Redemption Amount is paid while the offer is still open.
- (c) If an insufficient amount of money is available from the assets specified in the offer to satisfy all requests to withdraw received by Members, the requests must be satisfied proportionately in accordance with the following formula:

Amount of money available x Amount Member requested to withdraw

15.5 Cancelling a withdrawal offer

The Responsible Entity may cancel a withdrawal offer if the offer contains a material error or if it is in the best interests of Unitholders to do so by:

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

15.6 Deducting redemption fees and other amounts from Redemption Amount

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

- (a) any redemption fees²²;
- (b) other amounts owing by the Member to the Responsible Entity; and
- (c) in accordance with clause 6.3, any Uncalled Amount.

15.7 Payment of Redemption Amount

The Responsible Entity may pay the Redemption Amount:

- (a) in Cash;
- (b) by transferring Scheme Property to the Member; or
- (c) a combination of both,

but in the case of paragraph (b) or (c):

- (d) the value of the Scheme Property and the Cash paid (if any) must be equal to the Redemption Amount;

²² Refer to clause 25.1.

- (e) the value of the Scheme Property must be based on a valuation carried out by a Valuer; and
- (f) be reimbursed out of the Scheme Property at the discretion of the Responsible Entity.

15.8 Redemption proceeds

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

15.9 Buy-back of Units

- (a) The Responsible Entity may, subject to and in accordance with the Corporations Act and any requirements under the Listing Rules, purchase Units on the Exchange and cause the Units to be cancelled.
- (b) No Redemption Amount is payable upon cancellation of the Units bought back on the Exchange under clause (a).
- (c) Nothing contained in clause 15.9(a) requires the Responsible Entity to cancel Units purchased on the Exchange where such purchase is made for the purposes of clause.

16. Transfer of Units and Options

16.1 Transfer

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

16.2 Instrument of Transfer

Any transfer of an Interest must be effected in accordance with the Listing Rules.

16.3 Date of Transfer

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

16.4 Form of Transfer

The form of transfer must comply with the Corporations Act and the Listing Rules.

16.5 Refusal to Register

The Responsible Entity may decline to register a transfer of an Interest where to do so would not contravene the Listing Rules. The Responsible Entity must decline to register a transfer when required to do so by law or by the Listing Rules. Where the Listing Rules so require, the Responsible Entity must notify the lodging party of the refusal to register the transfer and the reasons for the refusal within the time prescribed by the Listing Rules.

16.6 Responsible Entity may suspend registration of transfers

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

16.7 Powers of attorney

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

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

16.8 Consideration for transfer

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

16.9 Transfers while Stapling applies

- (a) While Stapling applies:
 - (i) a transfer of Units forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this Constitution and applicable law, the transfer relates to or is accompanied by, a contemporaneous transfer of a Corresponding Number of Attached Securities by the transferor to the transferee.
 - (ii) a transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of Attached Securities will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Corresponding Number of Attached Securities from the same transferor to the same transferee; and
 - (iii) 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 Security to which the Unit is Stapled to the same transferee.
- (b) Each Unitholder 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.
- (c) Nothing in clause 16.9(a) prevents a Capital Reallocation Issue.

17. Transmission of Interests

17.1 Death of joint holder

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

17.2 Death of single holder

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

- (a) subject to clauses 16.5 and 17.4, the Responsible Entity must register the personal representative as the holder of the Units as soon as possible after receipt of a written and signed notice to the Responsible Entity from the representative requiring it to do so; and
- (b) whether or not registered as the holder of the Units, the personal representative:

- (i) may, subject to clause 16, transfer the Units to another person; and
- (ii) has the same rights as the deceased Member.

17.3 Transmission of Units on insolvency or mental incapacity

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

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

17.4 Refusal to register holder

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

18. Holding statement

18.1 No obligation to issue certificates

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

18.2 Requirement for holding statements

Subject to the Listing Rules, the Responsible Entity may determine whether or not holding statements will be issued for Units and Options.

18.3 Cancellation or replacement

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

18.4 Signature of holding statements

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

18.5 Evidence of ownership

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

18.6 Joint certificates or joint holding statements

While Stapling applies, subject to the Listing Rules, the Responsible Entity may determine to issue joint certificates or joint holding statements for Stapled Securities.

19. Register²³

19.1 Changes to details in Register

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

19.2 Non-beneficial holders of Units or Options

Subject to this Deed, the Responsible Entity:

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

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

20. Members

20.1 Joint tenancy

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

20.2 Things a Member has no right to do

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

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

20.3 Member's liability limited

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

²³ Refer to Chapter 2C and Part 9.3.

21. Meetings of Members

21.1 Clause subject to the Corporations Act

This clause 21 is subject to the Corporations Act.

21.2 Convening of meetings

The Responsible Entity may at any time convene a meeting of Unitholders, and must do so if the Corporations Act requires or directed to do so by the Compliance Committee.

21.3 Responsible Entity may determine

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

21.4 Notice of meeting

- (a) Notice of meeting of Unitholders must be given in accordance with the Corporations Act and Listing Rules.
- (b) Notice of meeting of Unitholders must also be given to each director of the Responsible Entity, the Scheme auditor and the Compliance Plan auditor.
- (c) In computing the period of notice under clause 21.4(a), the date on which the notice is given or taken to be given is to be disregarded.
- (d) Any notice sent by post will be deemed to have been served at the expiration of 24 hours after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.

21.5 Notice to auditors

Any notice or other communications relating to a meeting of Unitholders given to Unitholders must also be given to the Scheme auditor and the Compliance Plan auditor.

21.6 Quorum

The quorum for a meeting of Unitholders is two Unitholders and the quorum must be present at all time during the meeting.

21.7 No quorum

If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:

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

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

21.8 Chairman

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

21.9 Role of chairman

The chairman of a meeting of Unitholders convened by the Responsible Entity:

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

and a decision by the chairman under this clause 21.9 is final.

21.10 Notice of cancellation or postponement of meeting

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

- (a) to each Unitholder individually; and
- (b) to each other person entitled to be given notice of a meeting of Unitholders under the Corporations Act.

21.11 Content of notice or postponement of meeting

A notice of postponement of a meeting of Unitholders must specify:

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

21.12 Number of clear days for postponement of meeting

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

21.13 Business at postponed meeting

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

21.14 Proxy, attorney or representative at postponed meeting

Where:

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

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

21.15 Proxies containing some of the required information

The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act, provided the proxy form complies with the requirements of the Listing Rules.

21.16 Adjournment of meeting

In exercising the discretion under clause 21.9(e), the chairman may, but need not, seek the approval of Unitholders present. Unless required by the chairman, no vote may be taken or demanded by the Unitholders present in respect of any adjournment.

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

21.17 Notice of adjourned meeting

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

21.18 Demand for a poll

- (a) A poll may be demanded by:
 - (i) at least five Unitholders entitled to vote on the resolution,
 - (ii) Unitholders with at least 5% of the votes that may be cast on the resolution on a poll, or
 - (iii) by the chairman.

A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

- (b) A Special Resolution or Extraordinary Resolution put to the vote at a meeting of Unitholders must be decided on a poll.

21.19 How voting is carried out

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

minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

21.20 Poll

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

21.21 Equality of votes — no casting vote for chairman

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

21.22 Entitlement to vote

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

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

21.23 Joint Unitholders' vote

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

21.24 Vote of Unitholder of unsound mind

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

21.25 Objection to voting qualification

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

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

21.26 Validity of vote in certain circumstances

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

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise; or
- (b) the execution of the transfer of those Units by that holder,

unless a notice in writing of the revocation or transfer has been received by the Responsible Entity or by the chairman of the meeting before the vote is cast.

21.27 Meetings of Option holders or Classes

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

21.28 Joint Meetings

While Stapling applies:

- (a) meetings of Unitholders may be held in conjunction with meetings of the holders of Attached Securities and the chairman may determine such procedures for the conduct of such meetings as the chairman considers necessary; and
- (b) the Responsible Entity, the auditor of the Fund and the directors of the Stapled Entity may attend and speak at any meeting, or invite any other person to attend and speak.

22. Responsible Entity²⁴

22.1 Responsible Entity

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

22.2 Retirement and removal of Responsible Entity²⁵

- (a) The Responsible Entity may retire as responsible entity subject to compliance with the Corporations Act.
- (b) The Responsible Entity may be removed by Ordinary Resolution.
- (c) On the retirement or removal of the Responsible Entity the Responsible Entity may, subject to compliance with the requirements of the Corporations Act, appoint some other corporation to be the responsible entity.
- (d) If the Responsible Entity retires or is removed the new responsible entity must, unless otherwise approved by the outgoing Responsible Entity, within 7 days after the outgoing Responsible Entity retires or is removed:
 - (i) if the name of the Scheme implies an association with the outgoing Responsible Entity or its business, change the Scheme's name to a name that does not imply the association; and
 - (ii) withdraw any current offer document; and
 - (iii) pay to the outgoing Responsible Entity the amount of any sums payable to the outgoing Responsible Entity under this Deed;
- (e) The outgoing Responsible Entity shall, in consideration of its retirement as a responsible entity, be entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity and shall not be required to account to Members for such remuneration or benefit.

²⁴ Also refer to Part 5C.2.

²⁵ Also refer to section 601FL as well as the other sections in Division 2 of Part 5C.2 which governs changing the responsible entity.

- (f) When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Scheme arising after the time it retires or is removed and the reasonable costs of doing so are an expense of the Scheme.

23. Responsible Entity's powers

23.1 General powers²⁶

Subject to this Deed, the Responsible Entity has:

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

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

23.2 Power to borrow and use Scheme Property as security²⁷

- (a) The Responsible Entity may:
 - (i) borrow, raise money or otherwise obtain financial accommodation for the purposes of the Scheme, on terms it thinks fit; and
 - (ii) use Scheme Property as security, but only in relation to borrowing, raising money or obtaining financial accommodation for the purposes of the Scheme, and
 - (iii) acquire Derivatives relative to borrowings.
- (b) Unless otherwise notified in a product disclosure statement, offering memorandum or disclosure document issued by the Responsible Entity from time to time the Responsible Entity will not arrange any loans or financing arrangements which at the time of draw down together with any existing loans exceed 65% of the value of Gross Assets.

23.3 Investment Power²⁸

- (a) Subject to the Corporations Act²⁹, the Responsible Entity may invest or apply the Scheme Property as it thinks fit.
- (b) Without limiting the generality of the above, the Responsible Entity may subject to its Licence:
 - (i) invest in:
 - (A) real property;
 - (B) managed investment schemes;

²⁶ Required to be in a registered scheme's constitution by section 601GA(1)(b). Also, refer to ASIC Policy Statement 134, paragraphs 22 and 48.

²⁷ Required to be in a registered scheme's constitution by sections 601GA(1)(b) and 601GA(3). Also refer to ASIC Policy Statement 134, paragraphs 22 and 48.

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

²⁹ Refer to section 601FC(4) and ASIC Policy Statement 136, paragraphs 6 to 8 and 23 to 26.

- (C) unit trusts;
 - (D) securities;
 - (E) financial products; and
 - (F) Derivatives; and
- (ii) subject always to the Corporations Act and the Listing Rules, purchase on-market Units or Options which are Officially Quoted, following which it must cancel the Units or Options purchased or, in the case of Units purchased on-market to satisfy its obligations under a Distribution Reinvestment Plan, transfer the Units to Unitholders.

23.4 Exercise of discretions by Responsible Entity

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

23.5 Management Power³⁰

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

23.6 Delegation power³¹

- (a) The Responsible Entity may appoint an agent or delegate to perform any act or exercise any power that the Responsible Entity can in relation to the Scheme, including the power to appoint a sub-agent or sub-delegate,
- (b) Paragraph (a) includes:
 - (i) the power to appoint an attorney in respect of a dealing with Scheme Property, on terms the Responsible Entity thinks fit (including a provision authorising the attorney to appoint a sub-attorney); and
 - (ii) the power to appoint a person to act as a custodian of Scheme Property³², with the powers, duties and rights specified in the appointment document - for example, the appointment may authorise the custodian:
 - (A) to act within or outside Australia;
 - (B) to act in the name of the Responsible Entity or, at its direction, in its own name or in a name nominated by the custodian and approved by the Responsible Entity; or
 - (C) to appoint sub-custodians.
- (c) The appointment may be joint, in which case the agents or delegates may act or exercise a power jointly and severally.
- (d) The agent or delegate may be an Affiliate or employee of the Responsible Entity.³³
- (e) In the document appointing the agent or delegate, the Responsible Entity may include provisions for the protection and convenience of those who deal with the agent or delegate that the Responsible Entity thinks fit.

³⁰ Also refer to section 601FB(1).

³¹ Also refer to sections 601FB(2) to (4).

³² Refer to ASIC Policy Statement 133, paragraphs 2 to 13 and 15 to 20.

³³ Refer to Part 5C.7.

23.7 Responsible Entity may rely on advice

The Responsible Entity may take and act upon:

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

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

23.8 Power when Stapling applies

- (a) It is intended that, once Stapling applies:
 - (i) each Unitholder at all times holds a Corresponding Number of Units and Attached Securities; and
 - (ii) so far as the law permits, the Fund and the Stapled Entities are managed and dealt with by the Responsible Entity as though they were assets of a single trust, and the Responsible Entity has power:
 - (iii) to take such action as it reasonably considers necessary or appropriate to ensure that Stapling applies; and
 - (iv) to the extent permitted by law, to deal with the Scheme Property as though the Scheme Property and the assets of the Stapled Entity were assets of a single trust including, for example, giving any form of security over the Scheme Property in connection with obligations and liabilities incurred in connection with the Stapled Entity.
- (b) In addition, if the Fund is Listed, once Stapling applies:
 - (i) the Fund and the Stapled Entities are jointly listed on the Exchange;
 - (ii) Units and Attached Securities are jointly traded on the stock market of the Exchange and, so far as the law permits, the Units and Attached Securities are traded and otherwise dealt with as though they were a single security, and the Responsible Entity has power to take such action as it reasonably considers necessary or appropriate to ensure that Stapling applies and that, once Stapling applies, Units and Attached Securities continue to be Listed as Stapled Securities.

24. Responsible Entity's rights

24.1 Responsible Entity may hold Units³⁴

- (a) The Responsible Entity and its Affiliates may hold and deal with Units in any capacity including as trustee of the Scheme.
- (b) Unless otherwise expressly provided by this Deed or the Corporations Act³⁵, the Responsible Entity and its Affiliates, as Members, have all the rights of a Member in relation to the Units they hold.³⁶

24.2 Responsible Entity may deal etc with itself in other capacities

Subject to the Corporations Act³⁷, the Responsible Entity (or any of its Affiliates) may:

- (a) deal with itself (in any capacity), an Affiliate, a Member or the Stapled Entities, including:
 - (i) buying Scheme Property; or
 - (ii) selling property into the Scheme;
 - (iii) underwriting any issue of Units or, while Stapling applies, Stapled Securities; in its own right, as trustee of another trust or in another capacity;
- (b) participate in joint venture arrangements with itself in its own right, as trustee of another trust or in another capacity including sharing in the profits and contributing to the expenses and liabilities of such arrangement and the entitlement to such fees and any reimbursement expenses in respect of such joint venture arrangements will not be fees and expenses to which clause 25 applies;
- (c) be interested in any contract or transaction with itself (in any capacity), an Affiliate, a member or the Stapled Entities; or
- (d) act in the same or similar capacity in relation to another managed investment scheme or trust.

24.3 Responsible Entity not accountable

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

25. Responsible Entity's fees and expenses³⁸

25.1 Fees payable to Responsible Entity³⁹

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

- (a) A management fee of up to 0.5% per annum of the value of Gross Assets calculated monthly and payable monthly in advance, from the Effective Date to the date of final distribution under clause 30.2. For the purposes of this sub-clause only, Gross Assets

³⁴ Refer to section 601FG.

³⁵ Refer to section 253E. Also, refer to Part 5C.7 and section 225 as well as ASIC Policy Statement 136, paragraphs and 22.

³⁶ Refer to Part 5C.7 and section 215. Also refer to section 601FG for consideration for transfers to and by the Responsible Entity.

³⁷ Refer to section 601FC(1)(c) and Part 5C.7.

³⁸ Required to be in a registered scheme's constitution by section 601GA(2). Also refer to section 601LC.

³⁹ Refer to ASIC Policy Statement 136, paragraphs 1 1D, 1 1E and 29D to 29P as well as ASIC Policy Statement 134, paragraphs 47A to 47F.

shall be that amount calculated in accordance with the last audited financial statements of the Scheme less any adjustments necessary due to the purchase or sale of Scheme Property or making of Distributions, since the balance date of those last audited financial statements. During the period from the Effective Date until audited financial statements are next issued, the pro forma financial statements of the Scheme may be used as the basis for the calculation of this management fee.

- (b) A due diligence co-ordination fee of up to \$2,000,000 for co-ordinating property and offer due diligence, including the commission of valuation reports and building inspections, and all other activities and tasks associated with the due diligence performed in connection with the admission of the Scheme to the Official List of the Exchange. The Responsible Entity is not entitled to be reimbursed for any expenses it may incur, and would otherwise be entitled to recover pursuant to clause 25.8, in respect of services provided, functions undertaken or activities performed for which the Responsible Entity is paid the due diligence co-ordination fee.
- (c) A capital raising fee for the provision of capital raising services to the Scheme (including underwriting and capital raising management and coordination) which may otherwise have been obtained from a stockbroker, merchant bank or similar organisation of 2.5% of gross amount raised under a capital raising.

25.2 Units in place of cash

- (a) Subject to the Listing Rules the Responsible Entity may elect that it is to be issued Units of a Class or Options wholly or partly in the place of other payments of its fees under this Deed.
- (b) Units issued under this clause will be issued on the same basis as a placement may occur under this Deed.

25.3 Responsible Entity's fees accrue daily

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

25.4 GST

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

25.5 Adjustment of Responsible Entity's fees on proportionate basis

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

25.6 Waiver

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

25.7 Sums owed to Responsible Entity

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

25.8 Responsible Entity's expenses

Subject to the Corporations Act, the Responsible Entity will be paid or reimbursed out of the Scheme Property on a full indemnity basis for all expenses and liabilities which it may incur in

connection with the Scheme or in performing its obligations or exercising its powers under this Deed including (without limitation) those expenses permitted as expenses by other clauses of this Deed and expenses and liabilities connected with:

- (a) cheques, certificates, investment advices, accounts, distribution statements, and other communications;
- (b) the establishment and maintenance of the Register, any other registers, accounting and other records;
- (c) any transaction or proposed transaction in relation to the Scheme, including the acquisition, disposition, and development or redevelopment of Scheme Property;
- (d) the analysis or investigation of any potential or proposed acquisition, disposal or other dealing with any investment (including agency fees);
- (e) its admission to the official list of the Exchange, and maintenance of Listing, and compliance with the Listing Rules;
- (f) convening and holding meetings of Members and the implementation of any resolutions;
- (g) communication with Members (written or otherwise);
- (h) management of Scheme Property including property management fees, leasing, insurance, valuation, project management, promotion and development or redevelopment of the Scheme Property;
- (i) the accounts of the Scheme or Scheme Property;
- (j) Taxes, rates, charges (including bank charges), duties and other imposts, including any GST collectable from, or incurred or payable by, the Responsible Entity in connection with the Scheme, or the management or administration of the Scheme (including Taxes payable by the Responsible Entity in respect of its fees and reimbursable expenses);
- (k) regulatory compliance;
- (l) any restructuring or proposed restructuring of the Scheme (including any contemplated merger) or process by which the Scheme is Listed;
- (m) offers or invitations, to apply for, or issues or transfers of, Units, Options and Stapled Securities including the preparation, underwriting, review, distribution (including brokerage, handling fees and commissions payable) and promotion (including marketing and roadshow costs) of any product disclosure statement, disclosure document, or offering memorandum in respect of Units, Options or Stapled Securities;
- (n) borrowings or raisings or other financial accommodation and any bank account or services offered by any authorised deposit-taking institution (including electronic funds transfer and other electronic banking or payment services);
- (o) delegates, agents, consultants, experts, advisers and other persons retained or appointed by the Responsible Entity, including legal, accounting and taxation advisers, members of any Compliance Committee and Valuers;
- (p) researching property and securities markets;
- (q) this Deed and the formation of the Scheme, and any supplemental deed amending this Deed;
- (r) custody of the Scheme Property and custodian expenses generally;

- (s) computer hardware, software and other equipment (including development and maintenance of internet facilities);
- (t) having the Scheme credit rated;
- (u) any court proceedings, arbitration or dispute concerning the Scheme including proceedings against the Responsible Entity except to the extent that the Responsible Entity is found by a court to be in breach of its fiduciary duty or to have been grossly negligent in which case any expenses reimbursed under this clause 25.8(u) must be repaid;
- (v) retirement or removal of the Responsible Entity;
- (w) termination of the Scheme;
- (x) Compliance Committees and any compliance officer;
- (y) preparation, implementation, amendment and audit of the Compliance Plan;
- (z) contributions to professional or industry bodies for advocacy and lobbying for property and real estate interests;
- (aa) maintenance and development of websites or part thereof relating to the Scheme;
- (bb) preparing documentation in relation to the Scheme and the Scheme Property;
- (cc) insurances, including insurance premiums payable in respect of insurance policies for Scheme Property, for the Responsible Entity, its directors, and Compliance Committee members;
- (dd) promoting the Scheme to, or communicating with, Members, potential investors and their advisers;
- (ee) Member complaints resolution;
- (ff) provision of guarantees and indemnities by the Responsible Entity (including any indemnity given to a retiring responsible entity of the Scheme); and
- (gg) reasonable travel, accommodation and entertainment expenses associated with the proper performance of the Responsible Entity's duties.

In this clause 25.8 the term 'expenses' includes amounts paid by the Responsible Entity to related body corporates or other entities for services provided to the Responsible Entity in connection with the Scheme where the expenses referable to such service would have been reimbursable under this clause 25.8 had they been incurred by the Responsible Entity.

25.9 Class and apportioned expenses

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

25.10 Stapled Entity expenses

The Responsible Entity may pay or reimburse the Stapled Entity for expenses properly incurred by the Stapled Entity in connection with the Attached Securities and such other expenses as the Responsible Entity considers appropriate for the Fund to bear on behalf of the Stapled Entity.

26. Limitation on Responsible Entity's liability

26.1 Limitation on liability to Members generally⁴⁰

Without limiting its liability under the Corporations Act⁴¹:

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

26.2 Responsible Entity not liable for certain loss or damage⁴²

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

- (a) caused by it relying on:
 - (i) the Register; or
 - (ii) information or a document given to it by its agent, delegate or adviser, unless it has reason to suspect that it is incorrect;
- (b) caused by it relying on a document as authentic, unless it has reason to suspect that it is not authentic;
- (c) caused by it relying on an opinion or information from an expert, unless it has reason to suspect that the expert does not have the appropriate expertise;
- (d) caused by it relying on an opinion or information from a banker, the Scheme auditor⁴³ or the Compliance Plan auditor⁴⁴;
- (e) caused by it complying with a law or an order or direction of a court, Government Agency or government official;
- (f) that arises because Scheme Property which is auctioned does not attract a particular price; or
- (g) that arises because of something the operator of an asset title, transfer or holding system does or does not do.

This clause 26.2 does not limit clause 26.1.

⁴⁰ Also refer to sections 601FB(2) and (3).

⁴¹ Refer to ASIC Policy Statement 134, paragraph 17A.

⁴² Also refer to sections 601FB(2) and (3).

⁴³ Refer to Division 2 of Part 2M.4.

⁴⁴ Refer to sections 601 HG to 601 HI.

26.3 Responsible Entity may limit liability

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

26.4 Other obligations and duties excluded

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

27. Indemnities

27.1 Responsible Entity to be indemnified out of Scheme Property⁴⁵

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

27.2 Indemnity by Members

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

- (a) the Member's or former Member's action or inaction;
- (b) any act or omission requested by the Member or former Member, or

any other matter arising in connection with Units or Options held by the Member or former Member.

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

To the extent the Corporations Act allows it⁴⁶, the indemnity under clause 27.1 includes any loss, damage, expense or other liability incurred as a direct or indirect result of any act or omission of an agent or delegate appointed by the Responsible Entity.

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

The indemnity under clause 27.1 is:

- (a) in addition to any indemnity the Responsible Entity may have at law or in equity; and
- (b) a continuing indemnity and, subject to the Corporations Act⁴⁷, it applies to the Responsible Entity after it retires or is removed as responsible entity of the Scheme.

27.5 Indemnity for Compliance Committee members⁴⁸

- (a) Subject to, and so far as permitted by, the Corporations Act⁴⁹, the Responsible Entity must, to the extent the person is not otherwise indemnified, indemnify every member of the Compliance Committee against a liability:

⁴⁵ Required to be in a registered scheme's constitution by section 601GA(2). Also, refer to sections 601FH and 601LC.

⁴⁶ Refer to sections 601FB(2) and (3) as well as 601GA(2).

⁴⁷ Refer to section 601FS.

⁴⁸ Refer to Part 5C.7 and section 212.

⁴⁹ Refer to section 601JF.

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

27.6 Insurance for Compliance Committee members⁵⁰

Subject to the Corporations Act⁵¹, the Responsible Entity may enter into, and pay premiums on, a contract of insurance for a person who is or has been a member of the Compliance Committee.

27.7 Compliance Committee members' indemnity is a continuing one

The indemnity in favour of Compliance Committee members under clause 27.4 is a continuing indemnity. It applies in respect of all acts done by a person while a member of the Compliance Committee even though the person is not a member at the time the claim is made.

27.8 Deeds

Subject to the Corporations Act and without limiting a person's rights under this clause 27, the Responsible Entity may enter into an agreement with a person who is or has been a member of the Compliance Committee to give effect to the rights of the person under this clause 27 on any terms that the Responsible Entity thinks fit.

28. How the Responsible Entity deals with Members' complaints⁵²

28.1 Complaints handling

The Responsible Entity must establish and maintain a procedure consistent with AS — Complaints Handling — AS 4269 for dealing with complaints by Members in relation to the Scheme which is consistent with the requirements (if any) of the Corporations Act.

28.2 Members' Complaints

- (a) A Member may by writing or by phone complain to the Responsible Entity in relation to the Scheme.
- (b) In normal circumstances anonymous complaints will not be considered unless, in the opinion of the Responsible Entity, the issue reported is significant, material or systemic.

28.3 Handling of complaints

- (a) The Responsible Entity will attempt to resolve any complaint within 5 Business Days of receipt.
- (b) Upon completion of enquiries, the Responsible Entity will advise the complainant of the outcome of the enquiries, or, should enquiries not be completed within 5 Business Days, the Responsible Entity will acknowledge the complaint and advise the complainant of the estimated time to complete the enquiry.
- (c) On completion of the enquiry, the Responsible Entity will advise the complainant in writing of the results of the enquiry, including what avenues of appeal are available to the complainant, should the complainant be aggrieved of the result.

⁵⁰ Refer to Part 5C.7 and section 212.

⁵¹ Refer to section 601JG.

⁵² Required to be in a registered scheme's constitution by section 601GA(1)(c).

- (d) Where the complainant remains aggrieved, the complainant can refer the matter to the board of the Responsible Entity or alternatively refer the matter to the Complaints Resolution Scheme of which the Responsible Entity is a member.
- (e) Where the complainant asked the board of the Responsible Entity to review the complaint, the board of the Responsible Entity will consider the complaint within 21 days of receiving notice the complainant requires the complaint to be considered by the board.
- (f) The Responsible Entity must advise the complainant of the board's decision within 7 Business Days of the board meeting which considered the complaint.

28.4 Assistance and Information

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

29. Commencement, Period and Termination of the Trust

29.1 Commencement

The Scheme shall be deemed to have commenced on 24 November 2006.

29.2 Termination in other circumstances

This Scheme terminates on the earlier of:

- (a) the date the Members fix as a termination date, or the date on which Members resolve to
- (b) terminate the Scheme, by a resolution that has been passed at a Meeting on a poll by at least 50% of the total votes that may be cast by Members entitled to vote on the resolution (including Members who are not present in person or by proxy);
- (c) the date specified by the Responsible Entity as the date of termination of the Scheme in a notice given to Members; or
- (d) the date on which the Scheme terminates in accordance with another provision of this Deed or an order of a court or by law for example Part 5C.9 of the Corporations Act.

29.3 Preparation of accounts

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

30. Winding up the Scheme⁵³

30.1 Winding up

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

- (a) this clause 30; and
- (b) any orders a court makes under the Corporations Act.⁵⁴

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

30.2 Procedure

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

- (a) first, pay the expenses of the winding up;
- (b) next, pay all other fees, expenses and liabilities of the Scheme;
- (c) next, pay any preferential payments to Unitholders in accordance with the rights attached to the Class of Units held by them; and
- (d) next, subject to the rights attached to a Class of Units, distribute the balance to Unitholders in proportion to the number of fully paid Units held by them.

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

30.3 Distribution by instalments

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

30.4 Transfer of Scheme Property to Unitholder⁵⁵

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

30.5 Receipt and discharge

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

30.6 Timing for liquidation of Scheme Property

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

30.7 Audit on winding up⁵⁶

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

30.8 Provisions continue after termination of Scheme

Subject to the Corporations Act, the provisions of this Deed continue to apply after the date of termination of the Scheme until the date of final distribution under clause 30.2(d), but during that period the Responsible Entity must not accept any applications for Units⁵⁷ or make any withdrawal offers.⁵⁸

⁵⁴ Refer to section 601NF(2).

⁵⁵ Note the Responsible Entity's duty to act in the best interests of the Members. This duty requires Members to be treated impartially, that is, equally where their rights are similar and fairly where their rights are dissimilar. Also refer to section 601FC(1)(d).

⁵⁶ Refer to ASIC Policy Statement 134, paragraphs 24 and 53.

⁵⁷ Also refer to section 601NE(3).

⁵⁸ Also refer to clause 14.1.

30.9 Notice to Stapled Entity

On or before commencement of the termination of the Fund in accordance with this clause 30, the Responsible Entity must give the directors of the Stapled Entity written notice that the Fund is to be terminated.

30.10 Effect of termination of a Stapled Entity

Upon termination of a Stapled Entity, Stapling will cease to apply between a Unit and that Stapled Entity unless the Responsible Entity notifies Unitholders otherwise.

31. Payment and Discharge

31.1 How payments can be made

The Responsible Entity may pay money to a Member:

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

31.2 Unsuccessful payment

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

31.3 Whole cents

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

31.4 Discharge of Responsible Entity

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

31.5 Deductions for Tax

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

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

31.6 Unclaimed money

Subject to the Corporations Act⁵⁹, the Responsible Entity must deal with any unclaimed money under this Deed in accordance with the law relating to unclaimed money in Queensland.

32. GST

32.1 GST indemnity

If the Responsible Entity must pay GST on any supply under or in connection with this Deed made in the proper performance or exercise of any of its powers, duties or rights in relation to the Scheme, the Responsible Entity may recover the amount of that GST out of the Scheme Property. However, the Responsible Entity must not recover out of the Scheme Property any amount for GST that it has included in or added to a fee paid by a Member, or has deducted from an amount paid to a Member.

32.2 Refund to Scheme for GST overpaid

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

32.3 GST on claims

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

32.4 GST on expenses

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

33. Notices

33.1 When this clause 33 does not apply

(a) This does not apply to a notice of Meeting.⁶⁰

33.2 How to give a notice

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

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;

⁵⁹ Refer to section 601NG.

⁶⁰ Refer to section 252G as well as clause 21.1.

- (ii) sent by fax to the fax number (if any) nominated by that person and the machine from which it is sent produces a report that states that it was sent in full; or
- (iii) in the case of a notice, consent or other communication given by the Responsible Entity, sent by electronic message to the electronic address (if any) nominated by that person.

33.3 When a notice is given

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

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

33.4 Responsible Entity's address for notices

The Responsible Entity's address for notices is the Responsible Entity's registered office as recorded with ASIC.

33.5 Member's address for notices

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

33.6 Joint holders

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

33.7 Person entitled to a Unit

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

33.8 Signature on notices

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

33.9 Counting days

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

33.10 Certificate of director or secretary

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

33.11 Notices to 'lost' Members

If.

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this clause 33 is returned and unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Responsible Entity believes on other reasonable grounds that a Member is not at the address set out in the Register or notified to the Responsible Entity under clause 33.5,

the Responsible Entity may give effective notice to that Member by exhibiting the notice at the Responsible Entity's registered office for at least 48 hours.

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

34. General

34.1 Governing law

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

34.2 Waiver of rights by Responsible Entity

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

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

34.3 Severance

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

34.4 Consents

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

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Deed expressly contemplates otherwise.

In this clause 34.4, 'agree' includes approve.

34.5 Actions by Responsible Entity after 80 years

The perpetuity period applicable to any disposition made by this Deed is the period of 80 years from 23 November 2003. If to exercise a power under this Deed after the expiry of the perpetuity period, or to exercise a power in a particular way after the expiry of the perpetuity period, would offend against any rule of law or equity such as the rule against perpetuities, then the Responsible Entity ceases to have power to exercise that power (or to exercise that power in that way) at the expiry of the perpetuity period.

35. Amendments to this Deed

35.1 Responsible Entity may amend

Subject to the Corporations Act⁶¹ (if relevant) the Responsible Entity may by deed amend this Deed.

35.2 Statutory requirements

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

- (a) are deemed to be incorporated into this Deed at all times at which, and to the extent to which, they are required to be included; and
- (b) prevail over any other provisions of this Deed to the extent of any inconsistency.

35.3 Official Quotation

The Responsible Entity and each Member must comply with the provisions of the Listing Rules relevant to them.

35.4 Listing Rules

The following provisions apply to the Scheme:

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

35.5 Stapling and amendments to the Constitution

While Stapling applies, an amendment to this Deed that modifies the terms on which a Unit is to be held is not effective unless the same amendments are made to the constitutions of the Stapled Entities.

⁶¹ See Section 601 GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC.

36. Unitholder Restricted Interests

36.1 Definitions

For the purpose of this clause 36:

- (a) **'Escrow Period'** means the escrow period in the relevant restriction agreement;
- (b) **'Restricted Interest'** means an Interest that is a restricted security for the purposes of the Listing Rules.

36.2 No disposal

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

36.3 Refusal of acknowledge

The Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or Exchange.

36.4 Distribution and voting rights

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

37. Implementation of Stapling

37.1 Implementation

Subject to any determination by the Responsible Entity that Stapling should be implemented in another way permitted by applicable law and while the Scheme is Listed, the Listing Rules, the Responsible Entity may, subject to compliance with applicable law and while the Scheme is Listed, the Listing Rules, 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.

37.2 Applications, transfers and distributions in specie

- (a) For the purposes of Stapling, the Responsible Entity may:
 - (i) apply for Securities in the name of a Unitholder;
 - (ii) make a transfer of Securities to all Unitholders; or
 - (iii) make a transfer of Securities by way of an in specie distribution of Securities to all Unitholders.
- (b) If the Responsible Entity applies for Securities in accordance with clause 37.2(a)(i), it must apply for Securities for all Unitholders 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 37.2(a)(ii) it must effect the transfer to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (d) Notwithstanding clause 12.7, if the Responsible Entity makes an in specie distribution under clause 37.2(a)(iii) the Responsible Entity:

- (i) must transfer the Securities by way of distribution between 7pm on the Distribution Date for the distribution in specie and loan the following day; and
- (ii) must effect the distribution to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.

37.3 Application for Securities in a Stapled Entity

Each Unitholder to whom Securities in a Stapled Entity must be issued under this clause appoints the Responsible Entity as the Unitholder's attorney and agent to:

- (a) apply for Securities in the Stapled Entity on the Unitholder's behalf and agrees to the Unitholder becoming a securityholder of the Stapled Entity and being bound by the constitution of the Stapled Entity; and
- (b) execute any other document that the Responsible Entity reasonably considers necessary or appropriate for the Unitholder to become a securityholder of the Stapled Entity.

37.4 Stapling

- (a) Following the completion of the subscription for shares or units (as the case may be) in the Stapled Entity under clause 37.3, Stapling commences to apply for the purposes of this Constitution.
- (b) Following the Stapling Date, if there is an inconsistency between any of the Stapling Provisions and any other provision of this Constitution, then the Stapling Provisions prevail to the extent of the inconsistency, except where this would result in a breach of the Corporations Act, the Listing Rules (if applicable) or any other law. The Stapling Provisions prevail in this way, even if the other provisions are expressed to apply notwithstanding any other provisions of this Constitution.

37.5 General obligations of Stapling

Subject to applicable law and while Stapling applies, Units must not be dealt with without a contemporaneous dealing in a Corresponding Number of Attached Securities. The Responsible Entity and Unitholders must not do any act, matter or thing or 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 a person not holding at any time an equal number of Units and Attached Securities. In particular:

- (a) 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 of sale;
- (b) 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,

provided that nothing in this clause will prevent the Responsible Entity from issuing Units as part of a Capital Reallocation Issue.

37.6 Unstapling Date

- (a) Stapling may cease to apply if the Responsible Entity provides a written notice that Stapling ceases to apply following any of the following events and the date of that notice is to be the Unstapling Date:
 - (i) the Responsible Entity determines that the Stapling Provisions of this Deed will cease to apply and each Stapled Entity makes a similar determination with respect to Stapling; or

- (ii) an administrator, manager, receiver, liquidator or similar officer is appointed to a Stapled Entity..
- (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 37.6, this does not prevent the Responsible Entity from:
 - (i) subsequently determining that the Stapling provisions should recommence; and
 - (ii) stapling an Unstapled Unit to Stapled Securities which are not Stapled.

37.7 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 Unitholders, the number of Units held, the number of Attached Securities held by the Unitholders to which each Unitholder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the Responsible Entity.

37.8 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 Companies 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 Unitholders to that effect

37.9 Operation of clause 37

Nothing in this clause 37 limits or affects in any way the operation of clause 37A or clause 38.

37A Stapling

37A.1 Operation of clause 37A

Subject to clause 37A.13, nothing in this clause 37A limits or affects in any way the operation of clause 37 or clause 38.

37A.2 Power to Staple

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may cause the Stapling of:
 - (i) any Attached Security to the Units; and
 - (ii) further Securities to the Units, whether or not 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,so that while Stapling applies, in each case there is a Corresponding Number of Attached Securities to issued Units.
- (b) While Stapling applies, to the maximum extent permitted by law and the Corporations Act, the Responsible Entity:

- (i) must use reasonable endeavours to ensure that Units are dealt with consistently with the constitutions of the other Stapled Entities; and
- (ii) will be taken to act in good faith in the best interests of the Scheme if they act in good faith in the best interests of the Scheme and each Stapled Entity as a whole.

37A.3 Implementing Stapling

- (a) For the purposes of Stapling, the Responsible Entity may do all or any one or more of the following:
 - (i) apply for Securities in the name of the Member;
 - (ii) transfer Securities to all Members; and
 - (iii) make an in specie distribution of Securities to all Members.
- (b) If the Responsible Entity exercises its powers under clause 37A.3(a)(i) in respect of a Member, it must also exercise that power in the same way in respect of all other Members.
- (c) The Responsible Entity must effect any transfer under clause 37A.3(a)(ii) and any distribution under clause 37A.3(a)(iii) to all Members in the same way and the Securities transferred or distributed to each Member must be of the same type, have the same rights and be fully paid.
- (d) Where Securities are to be issued or transferred to Members for the purposes of Stapling, each Member authorises the Responsible Entity to act as the Member's agent:
 - (i) to agree to obtain the Securities;
 - (ii) to become a member of the relevant Stapled Entity; and
 - (iii) to be bound by the constitution of the relevant Stapled Entity.

37A.4 Operation of Stapling provisions

Clauses 37A.5 to 37A.13 inclusive apply only for so long as a Unit is a component Security of a Stapled Security.

37A.5 Units to be Stapled

Each Unit is Stapled to an Attached Security in each Stapled Entity to form a Stapled Security and each Stapled Security must be registered in the Stapled Security Register as required by clause 37A.9, the intention being that a Unit and each Attached Security which are Stapled together are treated as one Security to the extent possible at law.

- (b) The Responsible Entity may at any time Staple an Unstapled Unit to an Attached Security which is not Stapled.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity must not issue Units unless the Responsible Entity is satisfied that each of those Units will be Stapled to a Corresponding Number of each Attached Security to form a Stapled Security.
- (d) On and from the Stapling Date and prior to the Unstapling Date, the Responsible Entity and the Members 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 Security of a Stapled Security. In particular:

- (i) the Responsible Entity must not offer any Units for issue or sale unless an offer is made at the same time and to the same person for the Corresponding Number of Attached Securities for issue or sale;
- (ii) any offer of Units for issue or sale must require each offeree to apply for or buy the Corresponding Number of Attached Securities for each Unit applied for or bought;
- (iii) the Responsible Entity must not issue or sell any Units to any person unless the Corresponding Number of Attached Securities are also issued or sold to the same person at the same time;
- (iv) the Responsible Entity must not convert into a larger or smaller number, cancel, buy-back or otherwise reorganise any Units unless at the same time there is a corresponding conversion, cancellation, buy-back or other reorganisation of each Attached Security; and
- (v) the Responsible Entity must not register the transmission or transfer of Units pursuant to clause 16, unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security,

but nothing in this clause 37A.5 prohibits the Responsible Entity from determining an Unstapling Date.

- (e) While Stapling applies, the Responsible Entity must use every endeavour to procure that, if the Stapled Securities are Officially Quoted, the Stapled Securities are Officially Quoted as one joint Security and that Units are dealt with under this Deed in a manner consistent with the provisions of the relevant Stapled Entity's constitution as regards Attached Securities Stapled with those Units.

37A.6 Forfeiting Stapled Unit

- (a) The Responsible Entity may determine to forfeit a Unit which is part of a Stapled Security at any time after the Attached Security which is part of that Stapled Security is forfeited under the constitution of the relevant Stapled Entity.
- (b) Promptly after a Unit which is part of a Stapled Security has been forfeited:
 - (i) notice of the forfeiture must be given to the Member in whose name the Unit was registered immediately before its forfeiture; and
 - (ii) the forfeiture and its date must be noted in the Stapled Security Register.

37A.7 Unstapling Date

Stapling may cease to apply if the Responsible Entity provides a written notice that Stapling ceases to apply following any of the following events and the date of that notice is to be the Unstapling Date:

- (i) the Responsible Entity determines that the Stapling Provisions of this Deed will cease to apply and each Stapled Entity makes a similar determination with respect to Stapling and that a particular date is to be the Unstapling Date;
- (ii) the Members and members of each Stapled Entity approve a Special Resolution that the Stapling Provisions of this Constitution will cease to apply; or
- (iii) an administrator, manager, receiver, liquidator or similar officer is appointed to a Stapled Entity.

- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to each Attached Security 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 37A.7, this does not prevent the Responsible Entity from:
 - (i) subsequently determining that the Stapling Provisions should recommence; and
 - (ii) Stapling an Unstapled Unit to each Attached Security which is not Stapled.

37A.8 Stapled Security Register

While Stapling applies to the Scheme, the Responsible Entity must cause to be kept and maintained a Stapled Security Register which:

- (a) may incorporate or form part of the Register; and
- (b) records the names of the Members, the number of Units held, the number of Attached Securities held by the Members to which each Member's Units are Stapled and any additional information required by the Corporations Act or Listing Rules (if applicable to the Scheme), or as determined from time to time by the Responsible Entity.

37A.9 Member meetings

- (a) While Stapling applies to the Scheme, representatives of a Stapled Entity may attend and speak at any meeting of Members or invite any other person to attend and speak.
- (b) Meetings of Members may be held in conjunction with the meetings of 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.

37A.10 Transfers of Stapled Securities

- (a) A transfer of a Unit forming a component Security of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 16, the transfer relates to, or is accompanied by, a transfer of the Attached Securities to which the Unit is Stapled to the same transferee.
- (b) A transfer of a Unit which is not accompanied by a transfer of the Attached Securities to which the Unit is Stapled will be taken to authorise the Responsible Entity as agent for the transferor to effect a transfer of the Attached Securities to which the Unit is Stapled to the same transferee.

37A.11 Options

- (a) Any person applying for Units on the exercise of Options held by the person is taken:
 - (i) to apply for:
 - (ii) the Units; and
 - (iii) the Corresponding Number of Attached Securities to which the Units are to be Stapled;
- (b) to be bound by this Deed and by the constitution of each Stapled Entity; and
- (c) to agree to be issued Stapled Securities instead of the Units.

37A.12 Stapling Provisions paramount

Subject only to clauses 35.1, 35.2, 35.3, 35.4, 37A.4 and 38, this clause 37A has effect irrespective of any other provision of this Deed and subject to the Corporations Act, any provision of this Deed which is inconsistent with this clause 37A does not operate to the extent of the inconsistency.

38. Internalisation Proposal

(a) Defined terms

In this clause 38, these words and phrases have the following meaning unless the contrary intention appears:

AFSL Authorisation means all necessary authorisations given to IGC RE by ASIC to enable it to become the responsible entity of the Scheme and ILF Fund and to operate and manage the business and portfolio of assets of the Scheme and ILF Fund;

Foreign Resident Member means a Member at the Record Time with a registered address on the Register outside of the Commonwealth of Australia, New Zealand and Hong Kong unless the Responsible Entity determines otherwise;

IGC RE means Ingenia Communities RE Ltd ACN 154 464 990;

IGCH means Ingenia Communities Holdings Ltd ACN 154 444 925;

IGCH Shares means ordinary shares in IGCH to be issued to Members at an issue price of 1.3604542 cents per share in accordance with the Implementation Steps;

ILF Fund means ING Real Estate Community Living Fund ARSN 107 459 576;

ILF Staff means those staff that are currently employed by ING Group in relation to which IGC RE has made or has arranged to be made offers of employment effective on and from the Implementation Date.

IML means ING Management Ltd (ACN 006 065 032);

Implementation Date means the date or dates for the implementation of the Proposal as determined by the Responsible Entity in accordance with the Implementation Deed;

Implementation Deed means the deed between the Responsible Entity in its own capacity, the Responsible Entity in its capacity as responsible entity of ING Real Estate Community Living Management Trust, the Responsible Entity in its capacity as responsible entity of the Scheme, REIMA, IGC RE, IGCH and ING Real Estate Corporate Services Pty Limited dated on or about 27 March 2012, as amended from time to time;

Implementation Steps means the implementation steps set out in Schedule 2 of the Implementation Deed, as amended from time to time;

Independent Expert Report means the independent expert's report to be provided to Members with the Meeting Documents;

ING Group means REIMA, IML and their related body corporate;

Meeting Documents means the combined Notice of Meeting and Explanatory Memorandum for the Scheme and ILF Fund in respect of the Meeting issued by the Responsible Entity and the responsible entity of the ILF Fund dated on or about 8 May

2012, and Prospectus for the offer of IGCH Shares issued by IGCH dated on or about 8 May 2012, as may be amended or supplemented;

Meeting means the meetings of Members of the Scheme and ILF Fund to be held on 24 May 2012 or such other date determined by the Responsible Entity and the responsible entity of ILF Fund (as may be postponed or adjourned);

Notice of Meeting and Explanatory Memorandum means the notice of meetings and explanatory memorandum in respect of the Meeting issued by the Responsible Entity;

Proposal means the proposal contemplated by the Implementation Deed and described in the Notice of Meeting and Explanatory Memorandum;

Prospectus means the prospectus to be issued by IGCH in respect of the issue of securities in IGCH to Members in connection with the Proposal (as may be supplemented or replaced);

Record Time means 4pm 1 June 2012 or such other date and time determined by the Responsible Entity;

REIMA means ING Real Estate Investment Management Australia Pty Ltd ACN 096 136 202; and

Sale Agent Nominee means Berne No. 132 Nominees Pty Ltd or another entity nominated by the Responsible Entity to facilitate the security sale facility under the Proposal.

(b) **Power to implement the Proposal**

- (i) The Responsible Entity has power to do, and is authorised to do, all things which it considers are necessary, desirable or reasonably incidental for the purpose of implementing or effecting the Proposal and the Implementation Deed and those powers apply notwithstanding, and are not limited by, any other provision of this Deed.
- (ii) Without limiting clause 38(b)(i), the Responsible Entity has power to, and is authorised to:
 - (A) transfer on the Implementation Date all Units held by Foreign Resident Members to the Sale Agent Nominee as agent and attorney for each Foreign Resident Member in accordance with the Implementation Steps;
 - (B) amend the Register to record the Sale Agent Nominee as the holder of the Units transferred to the Sale Agent Nominee as agent and attorney for each Foreign Resident Member in accordance with clause 38(b)(ii)(A);
 - (C) determine that the Stapling Provisions of this Deed will cease to apply on the Implementation Date by nominating the Implementation Date as an Unstapling Date;
 - (D) apply to IGCH on the Implementation Date as agent for each Member on the Register immediately following the amendment of the Register pursuant to clause 38(b)(ii)(B) for the issue of IGCH Shares to such Members;
 - (E) determine that the Stapling Provisions should recommence on the Implementation Date (at a time after a determination is made under clause

38(b)(ii)(C) above) by stapling each Unit in the Scheme to one unit in the ILF Fund and one IGCH Share;

- (F) create the Stapled Security Register to register the Stapled Securities created pursuant to clause 38(b)(ii)(E);
- (G) in relation to the implementation of the Proposal to deal with any fractional entitlements to a cent or an IGCH Share in such manner as determined by the Responsible Entity;
- (H) pay to REIMA out of the assets of the Scheme the following amounts in accordance with the Implementation Deed and Implementation Steps:
 - (I) all costs and expenses incurred by REIMA in applying for and obtaining the AFSL Authorisation for IGC RE;
 - (II) all costs and expenses incurred by REIMA in obtaining the Independent Expert Report to be given to Members with the Meeting Documents;
 - (III) all costs and expenses incurred by REIMA in connection with the appointment of directors to the IGCH board prior to the Implementation Date;
 - (IV) all costs and expenses incurred by REIMA in relation to the new employment contracts for the ILF Staff;
 - (V) all costs and expenses incurred by REIMA in relation to the extension of REIMA's current prospectus liability insurance to provide cover in respect of the Prospectus; and
 - (VI) all other costs, expenses and liabilities incurred by REIMA in connection with the Proposal;

on the Implementation Date in accordance with the Implementation Deed;
and

- (I) reverse or unwind any action taken in relation to the implementation of the Proposal in circumstances where the Proposal is not completed.
- (iii) Without limiting clause 38(b), the execution by the Responsible Entity of the Implementation Deed and any amending deed is authorised, approved and ratified.

(c) **Implementation of Proposal**

- (i) Each Member and the Responsible Entity must do all things and execute all deeds, applications and other documents which the Responsible Entity considers necessary or desirable to give effect to the Proposal, the transaction contemplated by it and the Implementation Deed.
- (ii) The Responsible Entity may do any act, matter or thing pursuant to this clause 38 notwithstanding that it has an interest in the act, matter or thing or any outcome or consequence thereof.
- (iii) Without limiting clause 25.8, all costs, charges, expenses and outgoings reasonably and properly incurred by the Responsible Entity in relation to, and in connection with, the Proposal (including, without limitation, in circumstances where the Proposal does not proceed and is not completed) and/or the Implementation Deed are payable or reimbursable out of Scheme Property.

(d) **Responsible Entity's limitation of liability**

Subject to the Corporations Act, in addition to all other rights of the Responsible Entity under this Deed and at law the Responsible Entity will be indemnified out of the Scheme from and against any claim, demand, cost, expense, damage, loss and liability that may be suffered or incurred by it in relation to or arising out of the Proposal and/or the Implementation Deed, provided that the Responsible Entity acts without fraud, negligence or breach of trust.

(e) **Responsible Entity not liable**

Subject to the Corporations Act, notwithstanding any other provision of this Deed the Responsible Entity will not be liable to any Member in any way, arising, directly or indirectly, as a result of the Responsible Entity doing or refraining from doing any act (including the execution of documents) pursuant to or in connection with the Proposal or its implementation and/or the Implementation Deed, provided that the Responsible Entity acts without fraud, negligence or breach of trust.

(f) **Invalidity, ineffectiveness or unenforceability**

Clauses 38(d) and 38(e) extend to all liabilities, claims, demands, costs, expenses, damages and losses arising in connection with any invalidity, ineffectiveness or unenforceability of any aspect of the Proposal or its implementation, and/or the Implementation Deed, except to the extent that such loss is attributable to the Responsible Entity's negligence, fraud, or breach of trust.

(g) **Appointment of Responsible Entity as attorney and agent to effect the implementation of the Proposal**

- (i) The Responsible Entity is irrevocably appointed as the agent and attorney of all Members in relation to the implementation of the Proposal to:
- (A) apply to IGCH for IGCH Shares as provided for by clause 38(b)(ii)(D), agree to become a member of IGCH and agree to be bound by the terms of the IGCH constitution; and
 - (B) execute all documents and do all things which it considers necessary or desirable to be executed or done on behalf of such Members to effect the Proposal and the transaction contemplated by it or pursuant to clause 38(b)(ii)(I).
- (ii) The Responsible Entity is irrevocably appointed as the agent and attorney for all Foreign Resident Members in relation to the implementation of the Proposal to transfer on the Implementation Date all Units held by the Foreign Resident Members to the Sale Agent Nominee as provided for by clause 38(b)(ii)(A).
- (iii) The Responsible Entity as attorney and as agent of each Member may sub-delegate its functions, authorities or powers under this clause 38(g) to all or any of its directors and officers (jointly, severally, or jointly and severally).
- (iv) The Responsible Entity is authorised to execute these documents and do these things without needing further authority or approval from any Member and the Responsible Entity accepts such appointment.
- (v) Each Member who is issued IGCH Shares as provided for by clause 38(b)(ii)(D) agrees to become a member of IGCH and to be bound by the IGCH constitution.

- (vi) Each Member consents to the Responsible Entity taking any action which the Responsible Entity considers necessary, desirable or incidental for the purpose of implementing or effecting the Proposal and the Implementation Deed.
- (vii) Any appointment of the Responsible Entity as agent and attorney for the Members may be a joint appointment together with the appointment of the responsible entity of the ILF Fund as agent and attorney for the Member.

(h) **Provision of information**

Each Member is required to provide to the Responsible Entity such information as the Responsible Entity may reasonably require to comply with any law in respect of the Proposal and the transactions contemplated in this clause 38 and the Implementation Deed, including without limitation information in relation to any anti-money laundering requirements.

(i) **Paramountcy**

Subject only to clause 35, this clause 38 has effect irrespective of any other provision of this Deed and subject to the Corporations Act, any provision of this Deed which is inconsistent with this clause 38 does not operate to the extent of the inconsistency.

(j) **Amendments to this Deed**

The amendments to this Deed to give effect to the Proposal are binding on all Members including those Members who:

- (i) did not attend the Meeting to consider the Proposal;
- (ii) attended the Meeting, or whose proxy attended the Meeting, to consider the Proposal but did not vote on the Proposal;
- (iii) attended the Meeting, or whose proxy attended the Meeting, to consider the Proposal but voted against the Proposal; and
- (iv) were not Members at the time of the Meeting.

(k) **Change of name**

After the implementation of the Proposal the Responsible Entity is authorised to change the name of the Scheme to Ingenia Communities Management Trust. Once such name change has been effected, references in the Constitution to ING Real Estate Community Living Management Trust shall become references to Ingenia Communities Management Trust.