



HERBERT
SMITH
FREEHILLS

BWP Trust

ARSN 088 581 097

Constitution consolidated as at ~~4 June 2019~~[insert]*

Responsible entity:

BWP Management Limited
ACN 082 856 424

This is a consolidated version of the trust deed of the Bunnings Warehouse Property Trust dated 18 June 1998 (**Original Trust Deed**), incorporating the amendments that have subsequently been made to the Original Trust Deed, up to and including amendments made by a ~~supplemental deed~~special resolution dated ~~4 June 2019~~[insert]*, but excluding the details of the original trustee and manager.

This is not a legally binding document. Reference should be made to the Original Trust Deed and each subsequent amending deed and special resolutions for the full consolidated version of the constitution.

**Note: this document contains the proposed amendments to the BWP Trust Constitution that are to be considered for adoption at the BWP Trust unitholders' meeting to be held on Tuesday, 4 February 2020.*

Table of contents

| Clause | Page |
|---|-----------|
| 1 Definitions and Interpretation | 6 |
| 1.1 Definitions | 6 |
| 1.2 Interpretation | 13 |
| 1.3 [Deleted] | 14 |
| 1.4 Market Price | 14 |
| 1.5 [Deleted] | 14 |
| 1.6 Inconsistency with the Listing Rules | 14 |
| 1.7 Additional Listing Rule requirements | 15 |
| 1.8 Clauses to prevail | 16 |
| 2 The Trust | 16 |
| 2.1 [Deleted] | 16 |
| 2.2 Responsible Entity | 16 |
| 2.3 Vesting of Assets in Responsible Entity | 16 |
| 2.4 Name of Trust | 16 |
| 3 Interest of Unitholder | 16 |
| 3.1 Division into Units | 16 |
| 3.2 Fractions and splitting | 16 |
| 3.3 Issue of Partly Paid Units | 17 |
| 3.4 Joint Holders | 17 |
| 3.5 Classes of Units | 18 |
| 3.6 Benefits and obligations of Unitholders and Optionholders | 18 |
| 3.7 No further liability | 18 |
| 3.7A Taxes payable by Unitholder | 19 |
| 3.8 Failure to pay Instalment on Partly Paid Unit | 19 |
| 3.9 Sale of Forfeited Unit | 20 |
| 3.10 Income and Capital of a Forfeited Unit | 20 |
| 3.11 Notice of sale of Forfeited Unit | 20 |
| 3.12 Cancellation of Forfeiture | 20 |
| 3.13 Consequences of sale and continuing liability | 21 |
| 3.14 Proceeds of sale of Forfeited Unit | 21 |
| 3.15 Lien for Amounts Owing | 22 |
| 4 Issue of Options and Units | 22 |
| 4.1 Number of Units issued | 22 |
| 4.2 Application for Units or Options | 22 |
| 4.3 Payments to the Responsible Entity | 22 |
| 4.4 Allotment | 23 |
| 4.5 Responsible Entity's discretion on Application | 23 |
| 4.6 Certificates | 24 |
| 4.7 Foreign Unitholders | 24 |
| 5 Power to issue Units and Options | 25 |
| 5.1 Powers Cumulative | 25 |

| | | |
|-----------|---|-----------|
| 5.2 | Underwriting of Issue | 25 |
| 5.3 | Issues of Options | 25 |
| 5.4 | Issue price | 25 |
| 5.5 | Issue of Units pursuant to Options | 26 |
| 5.6 | Other issues of Units and Options | 26 |
| 5.7 | [Deleted] | 26 |
| 5.8 | [Deleted] | 26 |
| 5.9 | Restriction on issue and redemption of units | 26 |
| 6 | Management of the Trust | 26 |
| 6.1 | Responsible Entity to manage Trust | 26 |
| 6.2 | [Deleted] | 27 |
| 6.3 | Voting rights exercisable by Responsible Entity | 27 |
| 6.4 | Insurance Arrangements | 27 |
| 7 | Investment of Assets | 27 |
| 7.1 | Responsible Entity's discretion | 27 |
| 7.2 | Investment proposals | 28 |
| 7.3 | Adoption of proposal | 28 |
| 7.4 | [Deleted] | 28 |
| 7.5 | [Deleted] | 28 |
| 7.6 | [Deleted] | 28 |
| 7.7 | [Deleted] | 28 |
| 8 | Valuation of Assets | 28 |
| 8.1 | Valuation of assets | 28 |
| 8.2 | Currency Conversion | 29 |
| 8.3 | Current Unit Value | 29 |
| 9 | Income and Distributions | 29 |
| 9.1 | Responsible Entity to collect | 29 |
| 9.2 | Determination of income and reserves | 29 |
| 9.3 | Distribution of income | 29 |
| 9.3A | Responsible Entity discretion | 30 |
| 9.4 | Distribution Entitlement | 30 |
| 9.5 | Distribution of Entitlement | 31 |
| 9.6 | Composition of distribution | 31 |
| 9.7 | Categories and sources of income | 31 |
| 9.8 | Distribution Reinvestment Arrangements | 32 |
| 9.9 | Trust taxed as a company | 32 |
| 10 | Remuneration of Responsible Entity | 32 |
| 10.1 | Responsible Entity's remuneration | 32 |
| 10.2 | [Deleted] | 33 |
| 10.3 | Waiver of remuneration | 33 |
| 10.4 | Priority of Responsible Entity's remuneration | 33 |
| 10.5 | Establishment and administration costs | 33 |
| 10.6 | [Deleted] | 33 |

| | | |
|------------|--|-----------|
| 11 | Options | 33 |
| 11.1 | Terms and Subscription | 33 |
| 11.2 | Nominees | 33 |
| 11.3 | Exercise | 34 |
| 11.4 | Optionholder's Rights and Interest | 34 |
| 11.5 | Redemption or Repurchase | 34 |
| 12 | Audit | 35 |
| 12.1 | Appointment of Auditor | 35 |
| 13 | Responsible Entity's Powers | 35 |
| 13.1 | General powers of Responsible Entity | 35 |
| 13.2 | [Deleted] | 35 |
| 13.3 | Delegation by Responsible Entity | 35 |
| 13.4 | Limitation on Liabilities | 36 |
| 13.5 | Buy-back of Units | 36 |
| 14 | Responsible Entity's responsibilities and indemnities | 36 |
| 14.1 | No limitation of other undertakings | 36 |
| 14.2 | Limitation of liability | 37 |
| 14.3 | Interested dealings by Responsible Entity | 37 |
| 14.4 | [Deleted] | 37 |
| 14.5 | Indemnities and liability | 37 |
| 14.6 | Responsible Entity may rely on advice | 38 |
| 14.7 | Responsible Entity not obliged to notify Unitholders of breaches | 38 |
| 14.8 | [Deleted] | 39 |
| 14A | Indemnity and insurance | 39 |
| 14A.1 | Persons to whom clauses 14A.2 and 14A.4 apply | 39 |
| 14A.2 | Indemnity | 39 |
| 14A.3 | Extent of indemnity | 39 |
| 14A.4 | Insurance | 39 |
| 14A.5 | Savings | 39 |
| 15 | Register and Transfers | 40 |
| 15.1 | Register | 40 |
| 15.2 | Transfer | 40 |
| 15.3 | Transaction advice after transfer | 40 |
| 15.4 | No General Restriction on Transfer | 40 |
| 15.4A | Power to decline to register transfers | 40 |
| 15.5 | Restricted Securities | 41 |
| 15.6 | Transmission | 41 |
| 15.7 | Recognition of Holder | 41 |
| 15.8 | Participation in Transfer Systems | 42 |
| 16 | Unmarketable parcels | 42 |
| 16.1 | Application of clause | 42 |
| 16.2 | Definitions | 42 |
| 16.3 | Unitholder's Units less than Marketable Parcel | 42 |

| | | |
|-----------|---|-----------|
| 16.4 | Responsible Entity may sell Units | 42 |
| 16.5 | Procedures for sale | 43 |
| 16.6 | Validity of sale | 43 |
| 16.7 | Costs of sale | 43 |
| 16.8 | Consideration | 43 |
| 16.9 | Instrument of transfer | 43 |
| 16.10 | Title of transferee | 43 |
| 16.11 | Proceeds of sale | 44 |
| 16.12 | Certificate is evidence | 44 |
| 16.13 | [Deleted] | 44 |
| 16.14 | Effect of clause following announcement of takeover | 44 |
| 16.15 | Frequency of invoking clause | 44 |
| 16.16 | [Deleted] | 44 |
| 17 | Retirement or removal of Responsible Entity | 45 |
| 17.1 | Retirement and removal of Responsible Entity | 45 |
| 17.2 | Appointment of new Responsible Entity | 45 |
| 17.3 | Name of Trust to be changed | 45 |
| 18 | [Deleted] | 45 |
| 19 | Redemption and Cancellation of Units | 45 |
| 20 | Alterations to Trust | 45 |
| 20.1 | [Deleted] | 45 |
| 20.2 | Variation of this constitution | 45 |
| 21 | Term of Trust and termination of Trust | 45 |
| 21.1 | Term of Trust | 45 |
| 21.2 | Automatic Termination | 46 |
| 21.3 | Procedure on winding up of Trust | 46 |
| 22 | Meetings of Unitholders | 47 |
| 22.1 | Meetings of Unitholders | 47 |
| 22.2 | Resolution by Postal Ballot | 48 |
| 22.3 | Passing of resolution | 48 |
| 22.4 | Optionholders | 48 |
| 22.5 | Statutory Meetings | 48 |
| 23 | [Deleted] | 48 |
| 24 | General | 48 |
| 24.1 | Service of notices | 48 |
| 24.2 | Method of payment, repayment or redemption | 50 |
| 24.3 | Binding conditions | 50 |
| 24.4 | Governing law and jurisdiction | 51 |
| 24.5 | Inspection of deed | 51 |
| 24.6 | Severability | 51 |

| | | |
|-----------|--|-----------|
| 25 | Complaints | 51 |
| 26 | Plebiscite to approve proportional takeover bids | 52 |
| 26.1 | Definitions | 52 |
| 26.2 | Transfers not to be registered | 52 |
| 26.3 | Approving Resolution | 53 |
| 26.4 | Sunset | 53 |
| | Schedule 1 - Establishment and Administrative Costs (clause 10.5) | 54 |
| | Schedule 2 - Meetings of Unitholders (Part 22) | 56 |

This trust deed

is made on 18th June 1998

This deed witnesses

That in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Definitions and Interpretation

1.1 Definitions

In this constitution, unless the context otherwise requires:

- (a) **AMIT** means, in respect of a Distribution Period in a Financial Year, an attribution managed investment trust in respect of that year as that term is defined in section 276-10 of the Tax Act where the choice to be an attribution managed investment trust was made before the end of the Financial Year;

Application means an application for Units, a notification of the exercise of or application to exercise Options, or an application for Options, as the case requires;

Application Moneys means the amount required to be paid or consideration required to be provided to the Responsible Entity by an applicant on the making of an Application for Units or Options;

Approved Valuer means a valuer appointed by the Responsible Entity;

ASIC means Australian Securities & Investments Commission;

Assets means all the cash, investments and other property of the Trust (including, but not limited to, each Instalment in respect of each Partly Paid Unit);

ASX means ASX Limited ACN 008 624 691 or the market operated by it as the context requires~~and any successor to the stock exchange operated by it;~~

ASX Settlement means ASX Settlement Pty Limited ACN 008 504 532;

ASX Settlement Operating Rules means the ASX Settlement Operating Rules and any other rules of ASX Settlement which apply while the Units are CHESS Approved Securities, each as amended from time to time;

ASX Market Rules means the *ASIC Market Integrity Rules (ASX Securities Markets) 2017*~~0~~ prepared by ASIC, as amended or replaced from time to time;

Auditor means an auditor appointed under clause 12;

Australian Accounting Standard means:

- (1) the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board) and other mandatory professional reporting requirements issued by the joint accounting

bodies (including the Australian Accounting Standards issued either jointly by CPA Australia and the Chartered Accountants Australia and New Zealand or by the Australian Accounting Research Foundation on behalf of CPA Australia and the Chartered Accountants Australia and New Zealand); and

(2) if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in Australian Statements of Accounting Concepts;

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

Calculation Period means a period of not less than five consecutive Trading Days as determined by the Responsible Entity from time to time in its absolute discretion and announced to the ASX;

Chi-X means the alternative stock market known as Chi-X Australia operated by Chi-X Australia Pty Ltd;

CHESS Approved Securities means securities in respect of which approval has been given by the securities clearing house (being a licensed CS facility under Part 7.3 division 1 of the Corporations Act, namely, ASX Settlement ~~Pty Limited ACN 008 504 532~~) in accordance with the ASX Settlement Operating Rules;

~~**Complainant** means a Holder who makes a complaint to the Responsible Entity under clause 25;~~
Compliance Committee means any compliance committee for the Trust if required by section 601JA of the Corporations Act;

Corporations Act means the *Corporations Act 2001* (Cth) as modified by any applicable ASIC class order or instrument;

Costs means costs, charges, fees, expenses, disbursements, outgoings, Taxes and all amounts paid or payable in respect of any of them or like payment;

Current Unit Value means the amount calculated as follows:

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

where:

CUV is Current Unit Value

NAV is Net Asset Value

NU is the number Units on Issue

Direct Property Investment means a transaction involving the acquisition or disposal of real property, or extensions, additions, alterations, or erections of new improvements to real property and/or any agreement to lease, lease, surrender of lease, variation of lease or extension of lease which in the opinion of the Responsible Entity is material to the Trust;

Distributable Amount means the amount (if any) determined in accordance with clause 9.4(a);

Distribution Calculation Date means 30 June and 31 December in each year or such other dates as the Responsible Entity may determine whether in addition to or in substitution for 30 June and 31 December;

Distribution Date means 90 days after the Distribution Calculation Date for the relevant Distribution Period;

Distribution Entitlement means subject to clauses 9.5(c) and (e) the entitlement to the Distributable Amount determined in accordance with clause 9.4(b);

Distribution Period means:

- (1) for the first Distribution Period, the period from the date of establishment of the Trust to the next Distribution Calculation Date;
- (2) for the last Distribution Period, the period beginning the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- (3) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

Exercise Price means in relation to a Unit issued on the exercise of an Option, the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with clause 5;

Financial Year means:

- (1) for the first Financial Year, the period from the date of establishment of the Trust to the next 30 June;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

Forfeited Unit means a Partly Paid Unit which is forfeited pursuant to clause 3.8(c) by non-payment of an Instalment;

Fully Paid Unit means a Unit on which the whole of the Issue Price has been paid;

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

Gross Asset Value means the sum of:

- (1) the value of all Assets; and
- (2) any other amounts which, in the opinion of the Responsible Entity in consultation with the Auditor should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles;

Holder means a Unitholder or Optionholder (as the context may require);

Home Branch means the State branch of ASX designated to the Trust by ASX;

Income means, for any Distribution Period, the net income of the Trust determined in accordance with Australian Accounting Standards~~generally accepted accounting principles~~ and when calculating Income no amount is included, or is deemed to be included, for any amount which is, or may be, regarded as income under the Australian Accounting Standards as a result of an unrealised gain in relation to one or more of the Assets;

Indicative Buy Back Price means the average market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day;

Instalment means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and which must be paid at the time specified in the Terms of Issue;

Issue Price in relation to a Unit or an Option means the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined as at the date of issue of that Unit or Option in accordance with the clause in part 5 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;

Liabilities means the liabilities in respect of the Trust and includes:

- (1) unpaid administrative costs and expenses including fees of the Responsible Entity;
- (2) accrued charges in respect of or owing in relation to any Asset;
- (3) amounts required to meet present liabilities;
- (4) amounts of all borrowings;
- (5) any provision for Tax which in the opinion of the Responsible Entity should be taken into account; and
- (6) any other amounts required to meet liabilities or other expenditure (including deferred liabilities) which in the opinion of the Responsible Entity, in consultation with the Auditor should be taken into account in determining the amount of liabilities in any of the preceding paragraphs having regard to generally accepted accounting principles from time to time;

and when calculating Liabilities no amount is included, or is deemed to be included, for any amount which is, or may be, regarded as a liability to Unitholders under the Australian Accounting Standards other than:

- (1) the amount of any Distributable Amount payable, but not yet paid, to Unitholders; or
- (2) the amount payable to a Unitholder in relation to a sale of its Units under clause 16 but not yet paid to that Unitholder;

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

Market Price has the meaning given in clause 1.4;

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

Market Value means in respect of property or Assets as at the relevant date:

- (i) where the Responsible Entity decides that it is not necessary for an Approved Valuer to determine the value, the value determined by the Responsible Entity applying generally accepted valuation methods; otherwise
- (ii) the value determined by an Approved Valuer applying generally accepted valuation methods having regard to the particular type of property or Asset and to the nature of any security held by the Responsible Entity in relation to that property or Asset;

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

Minimum Holding means:

- (1) if Units are not admitted to the Official List, 100 Units or such other number as the Responsible Entity determines from time to time; or
- (2) if Units are admitted to the Official List, such number of Units as may from time to time constitute a Marketable Parcel; and
- (3) in relation to Options, such number of Options (if any) as is specified in the Terms of Offer or Terms of Issue;

month means calendar month;

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

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

and for the avoidance of doubt when calculating the Net Asset Value no amount is deducted from, or is deemed to be deducted from, the Gross Asset Value for any amount which is, or may be, regarded as a liability to Unitholders under the Australian Accounting Standards other than:

- (1) the amount of any Distributable Amount payable, but not yet paid, to Unitholders; or

- (2) the amount payable to a Unitholder in relation to a sale of its Units under clause 16 but not yet paid to that Unitholder;

Official List means the official list of ASX;

Official Quotation or **Officially Quoted** means official quotation by ASX of the Units or Options, as the case requires;

Option means an option granted by the Responsible Entity in respect of unissued Units;

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

Ordinary Resolution means:

- (1) a resolution passed at a Meeting held in accordance with the provisions of this deed:
- (A) on a show of hands by a majority of Unitholders or persons representing Unitholders, present and voting at that Meeting; and
 - (B) if a poll is validly demanded then, by a majority of the votes cast on the poll; or
- (2) a resolution in writing signed by the Holder or Holders of a majority of the Units on issue;

Paid-up Proportion in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

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

PDS means a product disclosure statement lodged under part 7.9 of the Corporations Act in respect of an issue of Units or Options;

Proper ASTC Transfer has the meaning given to that term in the *Corporations Regulations 2001 (Cth)*;

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

Quotation Date means the first date on which Units are admitted to the Official List;

Redemption Price at any time means, for a Unit, the amount calculated as follows:

$$RP = CUV \times PP$$

where:

RP is Redemption Price

CUV is Current Unit Value

PP is the Paid-up Proportion of the Unit;

Register means the register of Unitholders maintained by the Responsible Entity pursuant to clause 15.1 and Chapter 2C~~section 168~~ of the Corporations Act and a register of Optionholders maintained in the same manner;

Responsible Entity means BWP Management Limited or any other person appointed or acting as responsible entity in accordance with this constitution;

Special Resolution means:

~~(1) — a resolution passed at a Meeting held in accordance with the provisions of this deed;~~

~~(A) — on a show of hands by a majority of not less than 75% of the votes cast by the Unitholders, present and voting, at the meeting; or~~

~~(B) — if a poll is validly demanded, by a majority of not less than 75% of the votes cast on the poll; or~~

~~(2) — a resolution in writing signed by the holders of not less than 75% of the Units on Issue;~~

Tax means any income tax, duty, (including financial institutions duty paid or reimbursed to other financial institutions), or any other taxes, duties, levies, imposts, deductions and charges and any interest, penalties or fines imposed in connection with any of them;

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

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

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

Total Tangible Assets means Gross Asset Value less the value of those Assets (if any) which in the reasonable opinion of the Auditor should properly be classified as intangible assets having regard to generally accepted accounting principles from time to time;

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

Transmission Event means:

(1) in respect of a Holder who is an individual – the Holder's death, the Holder's bankruptcy, or a Holder becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and

(2) in respect of a Holder which is a body corporate – the dissolution of the Holder or the succession by another body corporate to the assets and liabilities of the Holder;

Trust means the trusts constituted under this constitution;

Unit means an undivided interest in the Trust as provided for in this constitution;

Unitholder means a person registered as the holder of a Unit, including any persons jointly registered;

Unit Holding means the total number of Units held by a Unitholder; ~~and~~

Units on Issue means the number of Units created under this constitution and not cancelled; and

VWAP means the volume weighted average traded price for a Unit for all sales on the ASX and Chi-X automated trading systems (and/or such other trading system as the Responsible Entity may determine from time to time), excluding Units which are sold otherwise than in the ordinary course of trading (which include but are not limited to transactions defined in the ASX Market Rules as special crossings, crossings prior to the commencement of the open session state, portfolio special crossings, equity combinations, crossings during overnight trading, overseas trades or trades pursuant to the exercise of an Option) and any other sales that the Responsible Entity determines should be excluded on the basis that they are not fairly reflective of genuine supply and demand.

- (b) terms defined in the Corporations Act are used in this constitution with the same defined meaning.

1.2 Interpretation

In this constitution, unless the context otherwise requires:

- (a) headings, bold and underlinings are for convenience only and do not affect the interpretation of this constitution;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any ~~governmental~~ Governmental or semi-governmental agency Agency as well as an individual;
- ~~(e)~~ (f) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- ~~(e)~~ (f) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this constitution and a reference to this constitution includes any schedule;
- ~~(f)~~ (g) a reference to any statute, ~~or~~ regulation, proclamation, ordinance or by-law includes all statutes, ~~and~~ regulations proclamations, ordinances or by-laws amending, consolidating or replacing them, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- ~~(g)~~ (h) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;

- ~~(h)(i)~~ where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- ~~(i)(i)~~ a reference to cash includes cheques, bank cheques and Payment Orders whether in Australian dollars or not;
- (k) a reference to “\$” is to Australian dollars; and
- (l) a reference to a body, other than the Responsible Entity (including an institute, association or authority), whether statutory or not:
- (1) which ceases to exist; or
- (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions.~~and~~
- ~~(j)(m) subject to clause 8.1, where a valuation is to be performed of any Asset or the determination of the Net Asset Value of the Trust and the number of Units on Issue is to be made it is to be performed or determined as at a time determined by the Responsible Entity. [deleted]~~

1.3 [Deleted]

1.4 Market Price

- (a) The “Market Price” for a Unit on any Business Day is the average daily VWAP (rounded down to the nearest cent) for the relevant Calculation Period (whether or not a sale was recorded on any particular day).
- (b) [deleted]
- (c) The “Market Price” of an Option on any Business Day must be determined in the same manner as the Market Price for a Unit is determined.
- (d) [deleted]

1.5 [Deleted]

1.6 Inconsistency with the Listing Rules

- (a) [Deleted]
- (b) If the Trust is admitted to the Official List of ASX, the following clauses apply:
- (1) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act ~~must~~shall not be done;
- (2) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (3) 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);
- (4) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;

- (5) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
- (6) if any provision of this constitution⁵ is or becomes inconsistent with the Listing Rules², this constitution⁵ is deemed not to contain that provision to the extent of the inconsistency.

1.7 Additional Listing Rule requirements

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

- (a) the Responsible Entity must not remove or change the rights of a Unitholder to vote or receive distributions in respect of a Unit except in any of the following cases:
 - (1) an Instalment which is due and payable on that Unit under part 3 has not been paid;
 - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with clause 13 of schedule 2;
 - (3) in the case of the voting right, the Unitholder became the holder of that Unit after the time determined under regulation 7.11.38 of the *Corporations Regulations 2001* (Cth) as the “specified time” for deciding who held the Unit for the purpose of the meeting;
 - (4) the right is removed or changed under Australian legislation or under a provision in this constitution that must be included to comply with Australian legislation;
 - (5) the right is removed or changed under a provision in this constitution that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
 - (6) the right is removed or changed under a court order.
- (b) a holder of a Unit must not be divested of that Unit except in any of the following cases:
 - (1) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or is approved by ASX as appropriate and equitable;
 - (2) the divestment is under a provision in this constitution that must be included to comply with Australian legislation;
 - (3) the divestment is under a provision in this constitution that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
 - (4) the divestment is under a court order; or
 - (5) the divestment is under clause 3.9.
- (c) the Responsible Entity must not divest a Unitholder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the ASX Settlement Operating Rules. Without limitation to clause 1.6,

at all times that the Trust is admitted to the Official List the Responsible Entity must comply with ASX Settlement Operating Rule 5.12.

1.8 Clauses to prevail

Clauses 1.6 and 1.7 prevail over all other provisions of this constitution including any that are expressed to prevail over them.

2 The Trust

2.1 [Deleted]

2.2 Responsible Entity

BWP Management Limited ACN 082 856 424 is appointed and has agreed to act as responsible entity of the Trust.

2.3 Vesting of Assets in Responsible Entity

Each Asset is vested in, and held by or on behalf of, the Responsible Entity on trust for the Unitholders.

2.4 Name of Trust

The Trust established under this constitution is the BWP Trust. The Responsible Entity may change the name of the Trust.

3 Interest of Unitholder

3.1 Division into Units

The beneficial interest in the Assets is divided into Units. No Unit confers an interest in a particular part of the Trust or the Assets.

3.2 Fractions and splitting

- (a) Units may be issued or redeemed in fractions at the discretion of the Responsible Entity, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the Responsible Entity may consolidate such fractions.
- (c) The Responsible Entity may consolidate or split the Units. The Responsible Entity must in respect of any such consolidation or split:
 - (1) immediately amend the Register to record the consolidation or split;
 - (2) notify the Unitholder within 30 days of the consolidation or split; and
 - (3) ensure that each Unit is consolidated or split on the same basis as each other Unit.

3.3 Issue of Partly Paid Units

- (a) The Responsible Entity may offer any Units which are offered for subscription as Partly Paid Units, the Issue Price of which is payable on issue and by Instalments.
- (b) The Responsible Entity must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust and the Responsible Entity must ensure that this is stated in the Terms of Issue.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue of the Partly Paid Unit and in accordance with this constitution.

3.4 Joint Holders

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

- (a) except where otherwise required under the ASX Settlement Operating Rules, the Responsible Entity is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Responsible Entity will recognise as having any title to the Unit or Option, but the Responsible Entity may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Responsible Entity in respect of any payment or distribution;
- (e) the joint holders ~~of a Unit~~ are counted as a single Holder of the Unit or Option for the purposes of calculating the number of ~~Unitholders~~ Holders or requisitionists who have:
 - (1) requested a meeting of Holders under section 252B of the Corporations Act;
 - (2) given the Responsible Entity notice of a special or extraordinary resolution they propose to move at a meeting of Holders under section 252L of the Corporations Act;
 - (3) request that a statement be distributed to Holders under section 252N of the Corporations Act; or
 - (1)(4) demanded a poll under section 253L of the Corporations Act ~~applied for a meeting of Unitholders~~; and
- ~~(e)(f)~~ only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other

communications from the Responsible Entity, and any notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

3.5 Classes of Units

- (a) The Responsible Entity may at any time issue Units in two or more classes.
- (b) The Responsible Entity may, at the request of a Unitholder, convert the Unitholder's Units from one class to another class or reclassify Units from one class to another provided that the conversion is either:
 - (1) not in the opinion of the Responsible Entity prejudicial to the interests of other Unitholders; or
 - (2) approved by an Ordinary Resolution of each class of Unitholder prejudiced.
- (c) The Responsible Entity must enter on the Register the class or Terms of Issue of Units held by a Unitholder.

3.6 Benefits and obligations of Unitholders and Optionholders

- (a) Except where expressly provided in this constitution to the contrary, all benefits and obligations contained in this constitution apply for the benefit of and bind each Unitholder to the extent provided in this constitution.
- (b) Except where expressly provided in this constitution to the contrary, all obligations contained in this constitution bind each Optionholder to the extent provided in this constitution. The benefits contained in this constitution only apply for the benefit of Optionholders where expressly provided in this constitution. Subject to the Corporations Act, ~~Where~~ where the interests of Optionholders and Unitholders conflict, the Responsible Entity must prefer the interests of Unitholders. For the avoidance of doubt, Optionholders have no entitlement (in that capacity) to participate in any income or capital distribution by the Trust.

3.7 No further liability

- (a) Clauses 3.7(b) and (c) are subject to any separate agreement between a Unitholder and the Responsible Entity and to clause 1.6 and to any call on Partly Paid Units which the Responsible Entity is entitled to make under clauses 3.3 and 3.8 to 3.15 and otherwise apply notwithstanding any other provision of this constitution.
- (b) No Unitholder will, by reason alone of being a Unitholder or of the relationship created under this constitution with the Responsible Entity, be personally liable or under any personal obligation to indemnify the Responsible Entity or any creditor of either or both of them in the event that the Assets are less than the Liabilities of the Trust or in any other circumstances. The right (if any) of the Responsible Entity or of a creditor to seek indemnity is limited in all cases to having recourse to the Assets of the Trust.
- (c) The Responsible Entity will not make any claim or take any action or legal proceedings against any Unitholder (in the Unitholder's capacity as a

Unitholder) in the event of there being a deficiency of Assets as described in clause 3.7(b) or in any other circumstances.

- (d) If the Responsible Entity in any action against a Unitholder pleads or claims in breach of clause 3.7(c), the Unitholder may plead clause 3.7(c) as an absolute bar to the pleading or claim.
- (e) Except as provided in clauses 3.9(a) and 3.13(h), nothing in or under this constitution makes the Responsible Entity the agent of a Unitholder nor does it create any relationship other than that of beneficiary and responsible entity.

3.7A Taxes payable by Unitholder

Each Unitholder must pay all Taxes which are payable by the Responsible Entity in respect of the issue of its Units, the payment of any Distribution Entitlement or arising out of or in connection with its holding of Units.

3.8 Failure to pay Instalment on Partly Paid Unit

- (a) The Responsible Entity must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days prior to the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Responsible Entity or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.
- (b) If a Unitholder does not pay an Instalment on the due date, the Responsible Entity must serve the Unitholder with a notice not later than 7 days after the due date containing:
 - (1) a demand for payment of all Instalments due and payable in respect of the Partly Paid Units and any interest payable;
 - (2) a statement that interest:
 - (A) runs from the due date of the Instalment until the date the Responsible Entity receives payment of the overdue amount in full; and
 - (B) is payable at a fair market rate determined by the Responsible Entity;
 - (3) a further due date for payment which may not be earlier than the expiration of 7 days after the date of service of the notice; and
 - (4) a warning that if payment in full is not received by the due date specified in the notice, the Partly Paid Unit is forfeited and the Responsible Entity may offer the Forfeited Unit for sale.

The omission to give such notice by the Responsible Entity or the non-receipt of such notice by the Unitholder does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (c) If payment in full is not received by the due date specified in the notice issued under clause 3.8(b), the Partly Paid Unit is forfeited and the Responsible Entity may offer the Forfeited Unit for sale.

- (d) Until a Forfeited Unit is sold pursuant to clause 3.9 or has its forfeiture cancelled pursuant to clause 3.12, it carries no voting rights.

3.9 Sale of Forfeited Unit

- (a) Notwithstanding clause 3.7(e), if the Responsible Entity offers a Forfeited Unit for sale it does so as agent for the Holder of the Forfeited Unit.
- (b) If the Responsible Entity sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Responsible Entity.
- (c) The Responsible Entity may set the price for the sale of Units that have, in accordance with clause 3.8 above, been forfeited to the Responsible Entity on trust for Unitholders where part (the **Outstanding Amount**) of the issue price of the Unit has not been paid when called and both of the following apply:
 - (1) on payment of the Outstanding Amount, the Unit would be in a class of Units that are quoted on the financial market of the ~~Australian Stock Exchange Limited~~ ASX; and
 - (2) the sale of the Forfeited Unit is in accordance with section 254Q of the Corporations Act, other than subsections (1), (9), (10) and (13), as if the Units were shares, the Trust was the company and the Responsible Entity was each director of the company.
- (d) The Responsible Entity is not liable to the Unitholder for any loss suffered by the Unitholder as a result of the sale.

3.10 Income and Capital of a Forfeited Unit

Distribution of income and capital under part 9:

- (a) to which the Holder of a Forfeited Unit is otherwise entitled; and
 - (b) which have not been paid to the Holder prior to forfeiture,
- must be applied in accordance with clause 3.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

3.11 Notice of sale of Forfeited Unit

At least 7 days but no more than 14 days before the date appointed for sale under clause 3.9(b), the Responsible Entity must give notice of the sale of a Forfeited Unit:

- (a) to all Unitholders in writing; and
- (b) by placing an advertisement in a daily newspaper circulating generally throughout Australia.

3.12 Cancellation of Forfeiture

The Responsible Entity must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Responsible Entity the full amount of the Instalment due together with any other amount payable in respect of the forfeiture.

3.13 Consequences of sale and continuing liability

- (a) On completion of the sale of the Forfeited Unit, the Holder ceases to be the Holder of that Unit but remains liable to the Responsible Entity for the total amount set out in the notice served under clause 3.8(b).
- (b) The Unitholder's liability under this clause ceases as soon as the Responsible Entity receives:
 - (1) payment in full of the amount set out in the notice under clause 3.8(b) (excluding any amount paid by an underwriter pursuant to an underwriting agreement entered into under clause 5.2);
 - (2) the Costs associated with the forfeiture; and
 - (3) the Costs of all proceedings instituted against the Unitholder to recover the amount due.
- (c) A statement signed by a director or secretary of the Responsible Entity setting out:
 - (1) that a Partly Paid Unit has been forfeited; and
 - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale consideration paid for a Forfeited Unit must be applied in accordance with clause 3.14.
- (e) If the Responsible Entity executes a transfer of a Forfeited Unit, the Responsible Entity must register the transferee as the Holder of the Forfeited Unit and the Forfeited Unit is no longer forfeited.
- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Responsible Entity is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

3.14 Proceeds of sale of Forfeited Unit

- (a) If a Forfeited Unit is sold under clause 3.9, the Responsible Entity must apply the proceeds of the sale in the following order and manner:
 - (1) by paying any Costs incurred by the Responsible Entity in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
 - (2) by paying any Costs incurred by the Responsible Entity in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit to recover unpaid Instalments;
 - (3) by holding as an Asset, the interest accrued in respect of the outstanding Instalments calculated under clause 3.8(b);

- (4) by holding as an Asset, the balance of all Instalments owing in respect of the Forfeited Units; and
- (5) by paying the balance to the Unitholder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Responsible Entity must pay the expenses listed in clause 3.14(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
- (c) Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

3.15 Lien for Amounts Owing

The Responsible Entity has a first and paramount lien over Units for any amounts owing to the Responsible Entity in respect of Units registered in the name of a Unitholder, including any fees or unpaid calls which are payable to the Responsible Entity in respect of those Units and also for such amounts as the Responsible Entity may be called upon by law to pay and has paid in respect of the Units of such Unitholders. The lien extends to distributions from time to time declared in respect of such Units but if the Responsible Entity registers any transfer of any Units upon which the Responsible Entity has a lien, those Units are freed and discharged from the lien.

4 Issue of Options and Units

4.1 Number of Units issued

- (a) If the Responsible Entity accepts an Application for Units in whole or in part, the number of Units issued is the number determined by the Responsible Entity by dividing the relevant Application Moneys by the Issue 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 Issue Price 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.

4.2 Application for Units or Options

A person who wishes to subscribe for Units or Options must:

- (a) complete an Application in the form determined by the Responsible Entity;
- (b) lodge the Application at the place specified by and in the manner approved by the Responsible Entity; and
- (c) include with the Application the Application Moneys in the form specified by the Responsible Entity or by the transfer of property to be vested in the Responsible Entity.

4.3 Payments to the Responsible Entity

- (a) All payments or transfers of property from an applicant for Units or Options must be in favour of or to the Responsible Entity. If the

Responsible Entity intends to accept property as Application Moneys it must obtain a current valuation of the property stating its current market value.

- (b) If on Application for Units or Options the payment received or property to be transferred to the Responsible Entity is such that the number of Units or Options which would otherwise be issued would be less than the Minimum Holding the Responsible Entity must hold the payment or property received on trust for the applicant until the Responsible Entity has accepted or rejected the Application which the Responsible Entity must do within 30 days after the receipt by it of the Application.
- (c) If an applicant is to transfer property to the Responsible Entity, the Responsible Entity must not accept the Application unless the Responsible Entity has an effective transfer of the title to the property in favour of the Responsible Entity.
- (d) Unless the applicant has paid all amounts payable in respect of the transfer of property to the Responsible Entity prior to the Responsible Entity accepting the Application, the Responsible Entity must deduct those amounts before determining the number of Units to be issued under clause 4.1.
- (e) If any payment for Units or Options is not cleared the Units or Options issued are cancelled and are deemed not to have been issued and the Responsible Entity may amend the Register accordingly.
- (f) Applications Moneys for Units or Options issued pursuant to a PDS must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:
 - (1) the minimum subscription, if any (to be specified in the PDS) has been reached and the Responsible Entity decides to proceed to allotment of Units; or
 - (2) the date by which the Application Moneys would need to be repaid under the Corporations Act.

Until the Responsible Entity decides to proceed to the allotment of Units in accordance with this part 4, the Responsible Entity holds such Application Moneys upon bare trust for the applicant and the Responsible Entity covenants that it will comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. Where Application Moneys are repayable under sections 1016D(2) and 1016E of the Corporations Act, no interest is payable on that money.

4.4 Allotment

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or Option until it is granted.

4.5 Responsible Entity's discretion on Application

The Responsible Entity may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than

on the exercise of an Option). Subject to the Listing Rules, the Responsible Entity is not required to assign any reason or ground for such refusal.

4.6 Certificates

If it is not contrary to the Corporations Act and the Listing Rules, the Responsible Entity may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

4.7 Foreign Unitholders

Notwithstanding any provision of this constitution (and if Units are Officially Quoted, subject to the Listing Rules), the Responsible Entity may determine that Unitholders whose addresses appearing in the Register are in any one or more countries outside Australia or New Zealand (“Foreign Unitholders”) are not to be offered Units or Options pursuant to a rights issue under part 5 but rather

- (a) the rights that the Foreign Unitholders would have been entitled to but for the fact they are Foreign Unitholders (“Foreign Interests”) are offered to a nominee approved:
 - (1) if the Trust is admitted to the Official List, by the ASX; or
 - (2) if the Trust is not admitted to the Official List, by the ~~Commission~~ASIC;
- (b) the nominee is to cause the Foreign Interests to be offered for sale and sold in such manner, at such price and on such other terms and conditions as are approved by the Responsible Entity;
- (c) the nominee is to pay to each of the Foreign Unitholders the amount calculated as follows:

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

where:

AF is the amount to be paid to that Holder;

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

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Responsible Entity by the nominee in respect of the Foreign Interests; and
- (3) any amounts the Responsible Entity would be required by law or otherwise entitled to deduct or withhold pursuant to this constitution-;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Unitholder would otherwise have been entitled.

5 Power to issue Units and Options

5.1 Powers Cumulative

- (a) The Responsible Entity may issue Units:
 - (1) ~~prior to the Approval Date, at any time at any Issue Price to any person; and [deleted]~~
 - (2) ~~on and from the Approval Date,~~ only in accordance with this part 5 and subject to this constitution.
- (b) No clause of this part 5 (other than this clause 5.1) limits any other such clause.

5.2 Underwriting of Issue

- (a) The Responsible Entity may arrange for an offer for sale, subscription or issue of Units or Options or payment of Instalments in respect of Partly Paid Units or exercise of Options to be underwritten by an underwriter, who may be the Responsible Entity or any Related Body Corporate of the Responsible Entity on terms determined by the Responsible Entity and such underwriter may take up any Units or Options not subscribed for.
- (b) The Responsible Entity may issue Units and Options pursuant to clause 5.2(a) 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.

5.3 Issues of Options

The Responsible Entity may offer Options for subscription in accordance with the Terms of Offer and Terms of Issue.

5.4 Issue price

In addition to any other power the Responsible Entity has to issue Units or Options under this constitution and subject always to compliance with the Corporations Act, the Responsible Entity may issue Units or Options at any time to any person by way of issue, placement, rights issue, distribution reinvestment arrangement or unit purchase plan as follows:

- (a) prior to the Trust being admitted to the Official List, Units at \$1.00 per Unit;
- (b) where Units have been suspended from Official Quotation or the Trust has been removed from the Official List (other than temporarily) or have otherwise ceased to have been Officially Quoted, Units at the Current Unit Value on the Business Day prior to the day the offer to issue the Units is made;
- (c) where Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), at an Issue Price determined by the Responsible Entity; [Deleted]
- (d) where Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), Options, where:

- (1) the Units to be issued pursuant to the Options are to be issued at Market Price of a Unit immediately prior to the date upon which the Option is issued; and
- (2) the Options are issued at the issue price determined in accordance with the Terms of Offer and Terms of Issue; and
- (3) Units pursuant to Options issued under clause 5.4(d)(1).

5.5 Issue of Units pursuant to Options

The Responsible Entity may issue a Unit or Units in accordance with the Terms of Offer and Terms of Issue of an Option.

5.6 Other issues of Units and Options

- (a) Subject to compliance with any instruments issued by ~~the Commission~~ASIC (which are taken to be incorporated into this constitution) and the Listing Rules, the Responsible Entity may issue Units or Options (including Units on the exercise of an Option) at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clauses 5.2 and 5.4.
- (b) [deleted]

5.7 [Deleted]

5.8 [Deleted]

5.9 Restriction on issue and redemption of units

No Units may be issued, or redeemed, after the 80th anniversary of the day on which the Trust commenced if that issue, or that redemption, would cause a contravention of the rule against perpetuities or any other rule of law or equity.

6 Management of the Trust

6.1 Responsible Entity to manage Trust

- (a) The Responsible Entity has full and complete powers of management and must manage the Trust (including all Assets and Liabilities of the Trust) for the benefit of the Unitholders. The Responsible Entity's obligations under this clause 6.1(a) do not cease on termination of the Trust.
- (b) A Unitholder may not:
 - (1) interfere or seek to interfere with the rights, powers, authority or discretion of the Responsible Entity;
 - (2) claim or exercise any right in respect of any Asset or lodge any caveat or other notice affecting any Asset; or
 - (3) require that any Asset be transferred to a Unitholder.
- (c) The Responsible Entity must keep proper books and records relating to the Trust. The Responsible Entity may establish such accounts and records as it may determine.

- (d) Holders may not give any directions to the Responsible Entity (whether at a meeting convened pursuant to the Corporations Act or otherwise) if it would require the Responsible Entity to do or omit doing anything which may result in:
- (1) the Trust ceasing to comply with the Listing Rules or the Responsible Entity acting inconsistently with clause 4.7; or
 - (2) the exercise of any discretion expressly conferred on the Responsible Entity by this constitution.

6.2 ~~Delegation by Responsible Entity[Deleted]~~

- ~~(a) The Responsible Entity may appoint a person, including an Associate of the Responsible Entity, as its delegate, attorney, agent or sub-agent to exercise its powers and perform its obligations. Except to the extent that the fees, charges and expenses of such delegates, attorneys, agents or sub-agents are reimbursable under this constitution, the Responsible Entity is liable for the payment of such fees, charges and expenses.~~

6.3 Voting rights exercisable by Responsible Entity

The Responsible Entity has absolute discretion in determining how any voting rights conferred by any Asset are to be exercised. The Responsible Entity is not liable in respect of any vote, action taken or consent given by the Responsible Entity in person or by proxy or attorney.

6.4 Insurance Arrangements

The Responsible Entity must cause all Assets of an insurable nature and which in the opinion of the Responsible Entity are in the normal course of business usually insured, to be adequately insured, including insurance against fire, loss of rent and any other risks which the Responsible Entity considers prudent, in the name of the Responsible Entity or any other person having an insurable interest in them as the Responsible Entity thinks fit.

7 Investment of Assets

7.1 Responsible Entity's discretion ~~on investment~~

Subject to clause 7.3 the Responsible Entity has absolute discretion as to:

- (1) the entering into and performance of any transaction or contract;
- (2) the investment of any part of the Assets;
- (3) the purchase, design, construction, repair, maintenance, financing, yielding up, commissioning, building, ownership, leasing, planning, carrying out of works, sale, transfer, exchange, alteration, surrender, abandonment, operation or utilisation of any of the Assets; and
- (4) the procurement of any of the above.

7.2 Investment proposals

- (a) For each proposed investment that is a Direct Property Investment the Responsible Entity must prepare a written investment proposal which must:
- (1) contain a description of the proposed transaction and the price, cost or value, or estimated price, cost or value, at which the transaction is to occur;
 - (2) if the proposal is for the acquisition or disposition of real estate, be accompanied by the valuation of an Approved Valuer made not more than 3 months prior to the date of the proposal; and
 - (3) if the proposal is for extensions, additions or alterations to existing Assets or the erection of new improvements, be accompanied by a valuation or commercial appraisal thereof of an Approved Valuer made not more than 3 months prior to the date of the proposal.
- (b) For any expenditure and for each proposed investment that is not a Direct Property Investment, the Responsible Entity will determine the process by which a decision will be made to approve of the expenditure or make the investment.

7.3 Adoption of proposal

Any proposed ~~transaction, contract or investment involving the acquisition of property~~expenditure or investment may be ~~adopted~~made by the Responsible Entity unless in the opinion of the Responsible Entity:

- (1) the proposal would require or result in borrowing such that the Liabilities upon completion of the proposal would exceed the limit set out in clause 13.4;
- (2) the proposal has not been prepared in accordance with clause 7.2(a) or clause 7.2(b), as applicable;
- (3) the proposal is contrary to law or in breach of this constitution; or
- (4) the proposed acquisition or disposal is not in the interests of Unitholders.

7.4 [Deleted]

7.5 [Deleted]

7.6 [Deleted]

7.7 [Deleted]

8 Valuation of Assets

8.1 Valuation of assets

- (a) The Responsible Entity may at any time cause the valuation of any Asset by a qualified valuer, including an independent securities pricing service, who is independent of the Responsible Entity.

- (b) In determining whether a valuation accurately reflects the current value of an Asset, the Responsible Entity is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of Assets.
- (c) Each Asset must be valued at its market value unless the Responsible Entity certifies in respect of an Asset that:
 - (A) there is no market in respect of the Asset; or
 - (B) the market value does not represent the fair value of the Asset,

in which case, the method of valuation for the Asset must be determined by the Responsible Entity and that method must be consistent with ordinary commercial practice for valuing that type of asset.
- (d) Where any Asset is to be valued or the Net Asset Value of the Trust and the number of Units on issue is to be determined, the valuation or determination is to be as at a time determined by the Responsible Entity.~~[Deleted]~~
- (e) The valuer must be appointed by the Responsible Entity.

8.2 Currency Conversion

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

8.3 ~~Net Asset~~Current Unit Value

The Responsible Entity may determine the Current Unit Value at any time.

9 Income and Distributions

9.1 Responsible Entity to collect

The Responsible Entity must collect and receive all moneys, rights and property paid or receivable in respect of the Trust.

9.2 Determination of income and reserves

The Responsible Entity is to determine ~~having regard to generally accepted accounting principles~~ whether any item is income or capital and the extent to which reserves or provisions need to be made and the extent to which an income reserve will be made for the purposes of holding Income which is to be distributed in a subsequent Distribution Period or Distribution Periods or if that Income is not distributed by the end of the Financial Year, added to a capital reserve for accounting purposes.

9.3 Distribution of income

- (a) For each Distribution Period, the Responsible Entity must:
 - (1) determine the Distributable Amount for the Distribution Period and any reserve prior to:

- (A) ~~w~~Where the Trust is an AMIT in respect of the Distribution Period, prior to the date that is two months after the end of the relevant Financial Year; otherwise:
- (B) the end of the Financial Year; and
- (2) calculate and distribute each Unitholder's Distribution Entitlement.
- (b) If no determination is made or to the extent to which no determination is made under clause 9.3(a) as required, the Distributable Amount for that Distribution Period is equal to the Income of the Trust for that Distribution Period.

9.3A Responsible Entity discretion

In making a determination under clauses 9.2 or 9.3 the Responsible Entity does not have to take into account accounting standards or generally accepted accounting principles and practices which apply to trusts. The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination that an item is income or capital or that a reserve or provision is needed, or as a determination of the method for calculating the Distributable Amount of the Trust.

9.4 Distribution Entitlement

- (a) "Distributable Amount" for a period is to be determined in accordance with the following formula:

$$DA = I + C - R$$

Where:

 - DA is the amount of Distributable Amount
 - R is any amount credited to a reserve in accordance with clause 9.2
 - I is the Income of the Trust
 - C is any additional amount (including capital and amounts previously credited to a reserve in accordance with clause 9.2) which the Responsible Entity has determined is to be distributed.
- (b) Subject to the Terms of Issue of any class of Units, each Unitholder's Distribution Entitlement is to be determined on a pro rata basis taking into account:
 - (i) the Paid-up Proportion of each relevant Unit Holding of the Unitholder that has been on issue during the relevant Distribution Period; and
 - (ii) the number of days each relevant Unit Holding of the Unitholder has been on issue during the relevant Distribution Period. Units issued or transferred under a distribution reinvestment arrangement referred to in clause 9.8 shall be taken to have been issued or transferred on the day after the last day of the relevant Distribution Period to which the reinvested distribution relates.

9.5 Distribution of Entitlement

- (a) The Responsible Entity must pay to each Unitholder its Distribution Entitlement on or before the Distribution Date. It is acknowledged by Unitholders that such payments of Distributable Amounts shall be good and complete discharge to the Responsible Entity in respect of any liability to any person in respect of an entitlement to such Distributable Amount.
- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution Period, the persons who are Unitholders on the books close date for that Distribution Period have an absolute, vested and indefeasible interest in the Income of that Distribution Period, less any amount credited to a reserve in accordance with clause 9.2, in proportion to a Unitholders Distribution Entitlement as calculated in accordance with clause 9.4.
- (c) The Responsible Entity must deduct from each Unitholder's Distribution Entitlement all amounts which:
 - (1) are necessary to avoid distributing a fraction of a cent;
 - (2) the Responsible Entity determines it is not practical to distribute on a Distribution Date;
 - (3) equal any amount of Tax which has been paid or which the Responsible Entity determines is or may be payable by the Responsible Entity in respect of the Unitholder on the amount of the distribution otherwise distributable to that Unitholder; or
 - (4) are required to be deducted by law or this constitution.
- (d) The Responsible Entity must determine how any sum so retained is to be treated.
- (e) Until a Forfeited Unit is sold pursuant to clause 3.9 or has its forfeiture cancelled pursuant to clause 3.12, it carries no entitlement to a Distribution Entitlement. In the case of cancellation of forfeiture of a Forfeited Unit, the Unit will carry an entitlement to Distribution Entitlements as if it had not been forfeited.

9.6 Composition of distribution

Following the end of each Financial Year, the Responsible Entity must notify the Unitholders of the extent to which a distribution under this part 9 is composed of, and the types of, income and capital.

9.7 Categories and sources of income

- (a) For any category or source of income the Responsible Entity may keep separate accounts and allocate the income from any category or source to any Unitholder.
- (b) The Responsible Entity may cause the distribution of any amount recorded in an account or record kept under clause 6.1(c) before the distribution of any other amount.

9.8 Distribution Reinvestment Arrangements

- (a) The Responsible Entity may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in an arrangement under which Unitholders may request that all or a proportion of specified distributions due to them be satisfied by the issue or transfer of further Units.
- (b) If the Responsible Entity decides to allot Units to participating Holders by transferring existing Units in accordance with the distribution reinvestment arrangements referred to in clause 9.8(a) (if any), participating Holders agree to appoint a trustee nominated by the Responsible Entity as the participating Holders' agent to acquire Units on market.

9.9 Trust taxed as a company

Notwithstanding clauses 9.5 and 9.6, if in any Financial Year the Responsible Entity in its capacity as responsible entity becomes taxable pursuant to Division 6C of Part III of the Tax Act or 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:
 - (1) the Distributable Amount for that Financial Year; or
 - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unitholders on the Distribution Date.
- (b) Each Unitholder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 9.9(a)) is to be determined in accordance with clause 9.4(a).
- (c) The Responsible Entity must pay the Distribution Entitlement for a Distribution Period to the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period on or before the first Distribution Date following that Distribution Period.
- (d) The Responsible Entity may take all steps necessary or desirable in relation to distributions, including the franking of distributions.

10 Remuneration of Responsible Entity

10.1 Responsible Entity's remuneration

- (a) The Responsible Entity is entitled to receive out of the Assets of the Trust a fee calculated at the rate of 0.1375% per Quarter of the Gross Asset Value of the Trust plus a further fee being the greater of:
 - (1)
 - (A) a fee calculated at the rate of 0.0125% per Quarter of the Gross Asset Value of the Trust (after deducting the aggregate amount of all uncalled Instalments in relation to Partly Paid Units) up to \$200,000,000;
 - (B) a fee calculated at the rate of 0.00875% per Quarter of the amount by which the Gross Asset Value of the Trust (after

deducting the aggregate amount of all uncalled Instalments in relation to Partly Paid Units) exceeds \$200,000,000; and

- (2) \$10,000 per Quarter increased in the proportion that the Consumer Price Index All Groups Perth last published before the date on which the relevant determination is to be made bears to the Consumer Price Index All Groups Perth last published in the previous Quarter. If the Consumer Price Index All Group Perth ceases to be published or the method of its calculation substantially alters, then the Consumer Price Index All Groups Perth is to be replaced with the nearest equivalent index (as determined by the Responsible Entity).
- (b) The Responsible Entity's fee, which is payable in arrears, accrues daily, is calculated as at the end of each Quarter, and must be paid within 21 days of the end of each Quarter.

10.2 [Deleted]

10.3 Waiver of remuneration

The Responsible Entity may waive the whole or any part of the remuneration to which it would otherwise be entitled. Such waiver may be revoked.

10.4 Priority of Responsible Entity's remuneration

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

10.5 Establishment and administration costs

In addition to any other right of indemnity which they may have under this constitution or at law, the Responsible Entity and the agents and delegates of the Responsible Entity are each indemnified and entitled to be reimbursed out of or have paid from the Assets for all losses, damages and Costs incurred in the course of their office or in relation to the administration or management of the Trust. Without limitation this includes the amounts specified in schedule 1.

10.6 [Deleted]

11 Options

11.1 Terms and Subscription

- (a) This part 11 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Responsible Entity.

11.2 Nominees

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.

- (b) An Option may be exercised by a nominee of the Optionholder unless the Terms of Issue provide otherwise.

11.3 Exercise

- (a) An Optionholder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination of winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Optionholder on the termination or winding up of the Trust, the liabilities of the Responsible Entity cease in respect of each Option.

11.4 Optionholder's Rights and Interest

- (a) An Option does not confer on the Optionholder any interest in the Assets. Optionholders have only those rights conferred on them by this constitution, their Terms of Offer and Terms of Issue and the Listing Rules (if applicable).
- (b) Optionholders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Subject to clauses 22.4 and 22.5, Optionholders are entitled:
 - (1) to inspect any document which may be inspected by; and
 - (2) to be sent any document which is sent to, Unitholders in similar circumstances.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Responsible Entity is appointed under this constitution, it must execute any documents and do all things reasonably required by the outgoing Responsible Entity to ensure that it assumes the covenants and obligations of the outgoing Responsible Entity under those Options.
- (e) The Responsible Entity must credit all payments of the Issue Price and exercise price to the Responsible Entity Trust before the end of the following Business Day.

11.5 Redemption or Repurchase

- (a) The Responsible Entity may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Responsible Entity must make any payment to an Optionholder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 11.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Responsible Entity and the Responsible Entity may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 11.5(a) will form part of the Assets and the Responsible Entity must be recognised as the Holder and must exercise, reissue, resell and otherwise deal with them as the Responsible Entity determines. The Responsible Entity will retain title

in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

- (c) [Deleted]

12 Audit

12.1 Appointment of Auditor

- (a) The Responsible Entity must appoint a Registered Company Auditor or a firm at least one of whose members is a Registered Company Auditor to be auditor of the Trust.
- (b) The Responsible Entity may, with the consent of the ASIC, remove the Auditor.
- (c) The Auditor may, with the consent of the ASIC and by giving not less than 3 months' notice to the Responsible Entity (or such shorter notice agreed to by the Responsible Entity), retire as Auditor.
- (d) The remuneration of the Auditor must be set by the Responsible Entity.

13 Responsible Entity's Powers

13.1 General powers of Responsible Entity

- (a) Subject to this constitution, the Responsible Entity has all the powers of a natural person acting in his or her personal capacity. These powers include, without limitation, the Responsible Entity's powers to deal with and invest the Assets, grant indemnities, enter joint venture arrangements and fetter future discretions.
- (b) In the exercise of its powers the Responsible Entity may acquire or dispose of any real or personal property and borrow or raise money or incur any liability.
- (c) In the exercise of its powers and authorities, the Responsible Entity may obtain reports, advice, opinions, statements or recommendations of any person, including solicitors, bankers, agents, architects, engineers, designers, builders, constructors or accountants.

13.2 [Deleted]

13.3 Delegation by Responsible Entity

- (a) The Responsible Entity may appoint a person, including an Associate of the Responsible Entity, as its agent or delegate to exercise its powers and perform its obligations other than the power to exercise a discretion.
- (b) The Responsible Entity may appoint an agent, custodian or other person, including an Associate of the Responsible Entity (each of whom may, with the approval of the Responsible Entity, who may sub-delegate to any person any of its functions ~~any sub-custodian any of its custodial functions~~ as it thinks fit), ~~or other person~~ to acquire, hold title to, dispose of or otherwise deal with any Asset on behalf of the Responsible Entity and

perform any action incidental or ancillary thereto or otherwise approved by the Responsible Entity.

(c) The Responsible Entity:

(1) [Deleted]

(2) is liable for the acts of any agent or custodian as if the agent's or custodian's acts were the Responsible Entity's own.

(3) [Deleted]

(d) Except to the extent that the fees, charges and expenses of such delegates, attorneys, agents or sub-agents are reimbursable under this constitution, the Responsible Entity is liable for the payment of such fees, charges and expenses.

13.4 Limitation on Liabilities

The Responsible Entity must ensure that the total borrowings and liabilities of the Trust do not exceed sixty per cent (60%) of the Total Tangible Assets of the Trust.

13.5 Buy-back of Units

(a) While the Trust is admitted to the Official List, the Responsible Entity may buy-back Units, subject to and in accordance with the Corporations Act (as modified from time to time) and any requirements under the Listing Rules.

(b) Immediately after the registration of a transfer of a Unit following a buy-back under this clause 13.5 the Units purchased are cancelled.

(c) The purchase price payable for a Unit purchased under this clause 13.5 will be determined by the Responsible Entity (or its nominee) as follows:

(1) any period in which a purchase may be made, the Responsible Entity (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Indicative Buy-Back Price for that day by more than 5%; and

(2) the purchase must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.

~~(a)~~(d) The Responsible Entity may determine that part of the purchase price payable for a Unit purchased under this clause 13.5 includes an amount which represents a distribution of Distributable Amount.

14 Responsible Entity's responsibilities and indemnities

14.1 No limitation of other undertakings

This part 14 does not limit or affect any other indemnities given to the Responsible Entity in this constitution or at law.

14.2 Limitation of liability

- (a) The Responsible Entity and each director and officer of the Responsible Entity are not personally liable to a Holder or any other person in connection with the office of the Responsible Entity or director or officer of the Responsible Entity~~either~~, except for their own fraud, negligence, breach of trust or breach of duty.
- (b) The liability of the Responsible Entity to any Holder or any other person is limited to the extent to which the liability is able to be satisfied out of the Assets of the Trust from which the Responsible Entity is entitled to be and is in fact, indemnified except for its own fraud, negligence, breach of trust or breach of duty.

14.3 Interested dealings by Responsible Entity

Subject to Part 5C.7 of the Corporations Act, the Responsible Entity or an officer or employee or Associate of the Responsible Entity may:

- (a) (subject to section 601FG of the Corporations Act) be a Holder;
- (b) act in any fiduciary, vicarious or professional capacity, including without limitation as a banker, accountant, auditor, valuer, solicitor, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Responsible Entity or any Holder or as an executor, administrator, receiver or trustee;
- (c) have an interest in or enter into a contract or transaction with:
 - (1) the Responsible Entity or an Associate of the Responsible Entity;
 - (2) any Holder; or
 - (3) any other person, including one whose shares or other securities form an Asset; or
- (d) hold or deal in or have any other interest in an Asset,

and may retain and is not required to account for any benefit derived by doing so. The doing of any act or acting in any capacity contemplated by this clause 14.3 is not a breach of any of the obligations arising out of the fiduciary relationship between the Responsible Entity and the Holders established by this constitution or imposed by law.

14.4 [Deleted]

14.5 Indemnities and liability

Without prejudice to any indemnity given by law to the Responsible Entity but subject to this deed the Responsible Entity is indemnified in full and entitled to be reimbursed out of or have paid from the Assets of the Trust from and against any expense and liability (including legal costs on a full indemnity basis) that may be incurred in prosecuting or defending any action, suit, arbitration or other dispute resolution procedure in respect of the provisions of this deed, or in respect of the Trust except to the extent that such expense or liability arises out of its own fraud, negligence, breach of trust or breach of duty.

This right of indemnity applies in addition to any other right of indemnity allowed by law.

The Responsible Entity is not responsible for:

- (a) [Deleted];
- (b) any Cost incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
- (c) Costs if a person fails to carry out an agreement with the Responsible Entity^{5.2}

except to the extent that such loss is attributable to its own fraud, negligence, breach of duty or breach of trust^{5.2}.

The Responsible Entity is entitled to rely on any third party as to the validity and due authorisation of document or communication except to the extent of its own fraud, negligence, breach of duty or breach of trust.

The Responsible Entity will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:

- (a) any provision of any present or future law or statute of Australia or any State or Territory; or
 - (b) of any decree, order or judgement of any competent court,
- the Responsible Entity is prevented, forbidden or hindered from doing or performing.

14.6 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 (whether or not addressed to 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 a Trust or any other matter in connection with the Trust; and
- (b) the opinion, 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 in good faith to be expert in relation to the matters upon which they are consulted,

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.

14.7 Responsible Entity not obliged to notify Unitholders of breaches

Nothing in this constitution requires the Responsible Entity to notify the Holders of or summon a Meeting in relation to any breach by the Responsible Entity of any of the covenants or obligations binding upon the Responsible Entity under this constitution.

14A Indemnity and insurance

14A.1 Persons to whom clauses 14A.2 and 14A.4 apply

Clauses 14A.2 and 14A.4 apply to each person who is or has been a member of the Trust's Compliance Committee (if any).

14A.2 Indemnity

The Responsible Entity may, from the Assets indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 14A.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

14A.3 Extent of indemnity

The indemnity in clause 14A.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 14A.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

14A.4 Insurance

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

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

for any person to whom this clause 14A.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

14A.5 Savings

Nothing in clauses 14A.2 or 14A.4:

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

15 Register and Transfers

15.1 Register

The Responsible Entity will keep and maintain or cause to be kept and maintained an up to date Register.

15.2 Transfer

- (a) Prior to the Trust being admitted to the Official List or at any time after the Trust has ceased to be so admitted, all transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units or Options under this clause 15.2(a) unless the instrument of transfer:

- (1) is duly stamped; and
- (2) is accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor.

- (b) While the Trust is admitted to the Official List all transfers of Units or Options must be effected in accordance with the Listing Rules.

- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options.

(d) The Responsible Entity must not charge a fee for registering a transfer of Units or Options unless:

- (1) the Trust is not admitted to the Official List; or
- (2) the fee is permitted by the Listing Rules.

15.3 Transaction advice after transfer

If the Responsible Entity accepts a transfer under this part, the Responsible Entity may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and
- (b) the balance of any Units or Options which were not transferred.

15.4 No General Restriction on Transfer

- (a) There will be no restriction on the transfer of Units and, subject to clause 15.5, the Responsible Entity may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 15.2(b).
- (b) Except as otherwise set out in this part 15, there will be no restriction on any other transfer of Units or Options.

15.4A Power to decline to register transfers

(a) The Responsible Entity may decline to register, or prevent registration of, a transfer of Units or Options or apply a holding lock to prevent a transfer in accordance with the Corporations Act or the Listing Rules where:

- (1) the transfer is not in registrable form;

- (2) the Responsible Entity has a lien on any of the Units transferred;
- (3) registration of the transfer may breach a law of Australia;
- (4) the transfer is paper based and registration of the transfer will result in a holding which, at the time the transfer is lodged, is less than a marketable parcel;
- (5) the transfer is not permitted under the terms of an employee Unit or Option plan; or
- (6) the Responsible Entity is otherwise permitted or required to do so under the Listing Rules or, except for a Proper ASTC Transfer, under the terms of issue of the Units or Options.
- (b) If the Responsible Entity declines to register a transfer, the Responsible Entity must give notice of the refusal as required by the Corporations Act and the Listing Rules. Failure to give that notice will not invalidate the decision of the Responsible Entity to decline to register the transfer.
- (c) The Responsible Entity may delegate its authority under this clause 15.4A to any person.

15.5 Restricted Securities

Notwithstanding any other provisions of this constitution:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASX Settlement Operating Rules in respect of CHESS Approved Securities, the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) during a breach of the Listing Rules in relation to Units which are restricted securities, the Unitholder holding the Units in question ceases to be entitled to any distributions and to any voting rights in respect of those Units.

15.6 ~~Death, legal disability~~Transmission

- (a) If a Holder ~~is subject to a Transmission Eventdies, becomes subject to a legal disability, becomes bankrupt or is liquidated~~ the person entitled to Units as a result of the Transmission Eventsurvivor (in the case of joint Holders), legal personal representative or the person entitled to Units as a result of bankruptcy or liquidation, will be recognised as having a claim to Units or Options registered in the Holder's name.
- (b) Subject to the Listing Rules the Responsible Entity need not register any transfer or transmission pursuant to this clause 15.6 unless the transferee provides an indemnity in favour of the Responsible Entity in a form determined by or satisfactory to the Responsible Entity in respect of any consequence arising from the transfer or transmission.

15.7 Recognition of Holder

- (a) The Responsible Entity:

- (1) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
 - (2) except as required by law or this constitution, need not recognise any claim or interest in any Unit or Option by any other person.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.

15.8 Participation in Transfer Systems

The Responsible Entity may determine that Units or Options which are Officially Quoted will participate in the “Clearing House Electronic Sub-register System” or any other computerised or electronic system of transfer or registration. The Responsible Entity may with the approval of ASX, create rules to facilitate such participation which may be additional to or may override this part 15.

16 Unmarketable parcels

16.1 Application of clause

If the Trust is admitted to the Official List of ASX, this clause applies.

16.2 Definitions

In this clause:

Unitholder means a Unitholder or that Unitholder's legal personal representative; and

Purchaser means the person whether or not a Unitholder whose offer to purchase Units is accepted by the Responsible Entity.

16.3 Unitholder's Units less than Marketable Parcel

If at any time the number of Units registered in the name of a Unitholder including Units to which the Unitholder is jointly entitled is less than a Marketable Parcel, the Responsible Entity may serve a notice in writing in accordance with this clause on all persons named in the Register as the holder of the Units the subject of that notice:

- (a) requiring that Unitholder to advise the Responsible Entity by a date being not less than FORTY-TWO (42) days after the date of service of that notice if that Unitholder elects that this clause not apply to the Units registered in that Unitholder's name; and
- (b) stating that unless the Unitholder advises the Responsible Entity by the date referred to in the notice that this clause is not to apply to the Units registered in that Unitholder's name, those Units will be liable to be sold and the proceeds dealt with in accordance with clause 16.11.

16.4 Responsible Entity may sell Units

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

16.5 Procedures for sale

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

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

16.6 Validity of sale

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

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

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

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

16.7 Costs of sale

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

16.8 Consideration

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

16.9 Instrument of transfer

Where:

- (a) all the Units of each Unitholder to whom this clause applies are sold to one Purchaser at one time; or
- (b) all the Units of two or more Unitholders to whom this clause applies are sold to one Purchaser at one time,

the transfer may be effected by one instrument of transfer.

16.10 Title of transferee

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

16.11 Proceeds of sale

The Responsible Entity:

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

16.12 Certificate is evidence

A certificate in writing under the hand of any TWO (2) Directors or any ONE (1) Director and a Secretary of the Responsible Entity that:

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

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

16.13 ~~Duration of clause~~[Deleted]

~~So long as it is a requirement of the Listing Rules, this clause ceases to have effect TWELVE (12) months after the date on which this clause was adopted or re-adopted by the Responsible Entity.~~

16.14 Effect of clause following announcement of takeover

This clause ceases to have effect following the announcement of a takeover offer or takeover announcement made under Chapter 6 of the Corporations Act but, notwithstanding clause 16.15 the procedure may be recommenced following the close of the offer period.

16.15 Frequency of invoking clause

This clause may be invoked only once in any TWELVE (12) months after the date on which this clause was adopted or re-adopted by the Responsible Entity.

16.16 ~~Evidence of adoption or re-adoption~~[Deleted]

- ~~(a) A statement in writing indicating the Responsible Entity has resolved to adopt or re-adopt clause 16 signed by a Director or Secretary of the Responsible Entity shall be sufficient evidence of that fact.~~

- ~~(b) [Deleted]~~

17 Retirement or removal of Responsible Entity

17.1 Retirement and removal of Responsible Entity

(a) Despite any other law, the Responsible Entity may only retire as responsible entity of the Trust in accordance with section 601FL of the Corporations Act.

~~(a)(b)~~ The Responsible Entity may only be removed as Responsible Entity of the Trust in accordance with section 601FM of the Corporations Act.

17.2 Appointment of new Responsible Entity

On retirement or removal the Responsible Entity must give the new responsible entity all books, documents and records relating to the Trust.

17.3 Name of Trust to be changed

- (a) If BWP Management Limited has retired or is removed as Responsible Entity, the new responsible entity must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with BWP Management Limited or any of its Associates from the title of the Trust and this constitution and such letters, words or expressions must not be used in any connection with the Trust or this constitution.
- (b) Clause 17.3(a) does not apply if the new responsible entity obtains the consent of BWP Management Limited not to take the action there set out.

18 [Deleted]

19 Redemption and Cancellation of Units

The Responsible Entity has no obligation to purchase or repurchase or buy-back a Unit or Option.

20 Alterations to Trust

20.1 [Deleted]

20.2 Variation of this constitution

Subject to the Corporations Act and any approval required by law, the Responsible Entity may by deed replace or amend this constitution (including this clause).

21 Term of Trust and termination of Trust

21.1 Term of Trust

The term of the Trust ends the date on which the Trust is terminated under this constitution or by law including, without limitation, in accordance with sections 601NB, 601NC or 601ND of the Corporations Act.

21.2 Automatic Termination

- (a) ~~If the Trust is not included in the Official List 90 days after the first to occur of:
 - (1) the first PDS is issued in which it is stated that application will be made for the Trust to be included in the Official List; and
 - (2) the Unitholders, in accordance with the provisions of this constitution and the applicable provisions (if any) of the Corporations Act, pass a resolution in favour of listing the Trust on the Official List,the Trust will, notwithstanding any rights, powers or duties of the Responsible Entity and any directions given by or resolutions of Unitholders, immediately determine and its winding up will immediately commence upon the end of that period.~~[Deleted]
- (b) If at any time after the Quotation Date, the Units are unconditionally suspended from Official Quotation and not readmitted for Official Quotation within a continuous period of 60 days after such suspension the Trust will, notwithstanding any rights, powers or duties of the Responsible Entity and directions given by or resolutions of Unitholders, immediately determine and its winding up will immediately commence upon the end of such 60 days.
- (c) If at any time the Trust is removed from the Official List the Trust will, notwithstanding any rights, powers or duties of the Responsible Entity and any directions given by or resolutions of Unitholders, immediately determine and its winding up will immediately commence upon such removal.
- (d) [Deleted]

21.3 Procedure on winding up of Trust

- (a) In winding up the Trust the Responsible Entity must, -subject to clause 21.3(b), sell and realise all realisable Assets and, after payment of or provision for Liabilities and Costs (actual or contingent), distribute to the Unitholders pro rata in accordance with the Paid-up Proportion of Units held by Unitholders, all net cash proceeds derived from the realisation of the Assets and any other cash of the Trust.
- (b) The Responsible Entity is entitled to:
 - (1) be paid from the proceeds all costs, charges and expenses incurred:
 - (A) by the Responsible Entity in connection with the winding up of the Trust;
 - (B) by or on behalf of any creditor of the Responsible Entity in relation to the Trust;
 - (C) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Responsible Entity in connection with the winding up of the Trust;
 - (2) an indemnity against the amounts set out in clause 21.3(b)(1); and

- (3) following the termination of the Trust and until the winding up is completed, their remuneration provided for in part 10.
- (c) The Responsible Entity may make a distribution only if the Unitholder delivers to the Responsible Entity any evidence of title required by the Responsible Entity together with any form of receipt and discharge required by the Responsible Entity.
- (d) The Responsible Entity must ensure that the final accounts of the Trust following the winding-up are audited by a Registered Company Auditor, or a firm at least one of whose members is a Registered Company Auditor, who is independent of the Responsible Entity.
- (e) The Responsible Entity may distribute an Asset to a Unitholder in specie. Any costs payable on an in specie distribution must be paid by the Unitholder before the distribution is made.
- (f) For the purpose of distributing an asset in accordance with clause 21.3(e), such Asset must be valued at its market value unless the Responsible Entity determines:
 - (1) there is no market in respect of the Asset; or
 - (2) the market value does not represent the fair value of the Asset.
- (g) Where the Responsible Entity makes a determination under clause 21.3(f), the Responsible Entity must at the same time determine the method of valuation of the Asset consistent with ordinary commercial practice for valuing that type of asset.
- (h) The Responsible Entity may postpone the realisation of the Assets for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (i) The Responsible Entity may retain for as long as it thinks fit any part of the Assets which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this deed, including but not limited to under clause 21.3(b).
- ~~(e)(i)~~ The Responsible Entity must distribute among the Unitholders in accordance with clause 21.3(a) anything retained under clause 21.3(i) which is subsequently not required.

22 Meetings of Unitholders

22.1 Meetings of Unitholders

- (a) The Responsible Entity may at any time convene a Meeting.
- (b) A Meeting may be called and arranged to be held only:
 - (1) as provided by clause 22.1(a); or
 - (2) as otherwise required by the Corporations Act.
- (c) The Responsible Entity may, by notice to the ASX, change the venue for, postpone or cancel a Meeting, but:

(1) a Meeting that is called in accordance with a members' requisition under the Corporations Act; and

(2) any other Meeting that is not called by the Responsible Entity,

may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

~~(b)~~(d) The provisions of schedule 2 and the Corporations Act (if applicable) apply to any meeting of Unitholders.

22.2 Resolution by Postal Ballot

- (a) A resolution of Unitholders of the Trust may be passed by the Unitholders completing, signing and returning copies of a written resolution, which has been sent by the Responsible Entity within a period specified by the Responsible Entity.
- (b) In respect of such a resolution each Unitholder is entitled to have that fraction of a vote equivalent to the Paid-up Proportion for each Unit held with the right to vote.
- (c) Paragraphs 7, 8 and 9 of schedule 2 apply to voting by Unitholders in accordance with this clause 22.2.

22.3 Passing of resolution

A resolution passed at a meeting of Holders held in accordance with this constitution is binding on all Holders.

22.4 Optionholders

- (a) Subject to clause 22.5, Optionholders do not have any right to convene, attend, vote at, speak at or be given notice of any Meeting.
- (b) Any meeting of Optionholders must be held in accordance with schedule 2 with such changes as are necessary.

22.5 Statutory Meetings

The provisions of this part 22 and schedule 2 apply so far as is practicable to any meeting of Unitholders, of Optionholders or of both, and Optionholders shall have the rights in respect of Options that Unitholders have in respect of Units.

23 [Deleted]

24 General

24.1 Service of notices

- (a) Any application, notice or other communication to or by the Responsible Entity or a Holder:
 - (1) must be in legible writing and in English addressed:
 - (A) if to the Responsible Entity, to its registered office or the electronic address at investorrelations@bwptrust.com.au;

- (B) if to a Holder, to the Holder's address specified in the register of Unitholders or Optionholders;
 - (C) [Deleted]
- or as specified to the sender by any party by notice;
- (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender;
 - (3) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee; or
 - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee; or
 - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 3 hours after transmission is received, the facsimile transmission is regarded as not given or received;
 - (D) if sent by electronic messaging system, when the electronic message is received by the addressee,

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and
 - (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A notice or other communication to joint Holders is validly given if it is given only to the joint Holder whose name appears first on the Register.
 - (c) The Responsible Entity may give a notice to a person entitled to a Unit or Option as a result of a Transmission Event by delivering it or sending it in the manner authorised by clause 24.1(a)(1) addressed to the name or title of the person, to:
 - (1) the address that person has supplied to the Responsible Entity for giving notices to that person; or
 - (2) if that person has not supplied an address to the address to which the notice might have been sent if that Transmission Event had not occurred.
 - (d) A notice given to a Holder under clauses 24.1(a)(1) or 24.1(b) is, even if a Transmission Event has occurred and whether or not the Responsible Entity has notice of that occurrence:
 - (1) duly given for any Units or Options registered in that person's name, whether solely or jointly with another person; and
 - (2) sufficiently served on any person entitled to the Units or Options because of the Transmission Event.

- (e) A notice given to a person who is entitled to a Unit or Option because of a Transmission Event is sufficiently served on the Holder in whose name the Unit or Option is registered.
- (f) A person who, because of a transfer of Units or Options, becomes entitled to any Units or Options registered in the name of a Holder, is taken to have received every notice which, before that person's name and address is entered in the Register for those Units or Options, is given to the Holder complying with this clause 24.1.
- (g) Any notice required to be given to a Holder is deemed to have properly been given if it is in writing and either delivered or sent by post to such Holder at the address of the Holder appearing in the Register.
- (h) Where a Holder does not have a registered address or where the Responsible Entity believes that Holder is not known at the Holder's registered address, all notices are taken to be:
- (1) given to the Holder if the notice is exhibited in the Responsible Entity's registered office for a period of 48 hours; and
- (2) served at the commencement of that period,
- unless and until the Holder informs the Responsible Entity of the Holder's address.

24.2 Method of payment, repayment or redemption

- (a) Any money payable by the Responsible Entity to a ~~Unitholder~~ Holder under this constitution may be paid by a crossed "not negotiable" cheque made payable to the ~~Unitholder~~ Holder and posted to the ~~Unitholder's~~ Holder's registered address.
- (b) A ~~Unitholder~~ Holder, with the consent of the Responsible Entity, may nominate in writing (or in such other manner approved by the Responsible Entity) that money owing to it under this constitution be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a ~~Unitholder~~ Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Responsible Entity in respect of the payment.
- (d) The Responsible Entity may determine that any cheque not presented within 9 months is cancelled. If the Responsible Entity so determines the amount of the cheque ~~is to be reinvested in Units. The reinvestment is deemed to be made on the day the cheque is cancelled~~ is to be held by the Responsible Entity for the relevant Holder until the Holder claims the amount payable or nominates an account into which the amount may be paid. Any interest or other earnings on that amount shall be retained by the Responsible Entity as an Asset.

24.3 Binding conditions

The terms and conditions of this constitution and each supplemental deed are binding on the Responsible Entity, each relevant Holder and any other person

claiming through any of them as if each was a party to this constitution and each supplemental deed.

24.4 Governing law and jurisdiction

The rights, liabilities and obligations of the Responsible Entity and the Holders are governed by the law of the Australian Capital Territory.

24.5 Inspection of deed

The Responsible Entity:

- (a) must make a copy of this constitution available to any Holder for inspection during usual business hours at its registered office or principal place of business; and
- (b) may require a reasonable charge to be paid to it for providing a copy of this constitution to a Holder.

24.6 Severability

If any provision of this constitution is held or found to be void, invalid or otherwise unenforceable so much hereof as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this constitution will remain in full force and effect.

25 Complaints

The Responsible Entity must establish and maintain a procedure for dealing with complaints by Unitholders which meets the requirements of section 912A(2) of the Corporations Act.

~~25.1 Making complaints~~

- ~~(a) Any complaint made by a Complainant in respect of its rights and entitlements under the Trust must be made to the Responsible Entity in writing and in the form as prescribed by the Responsible Entity from time to time.~~
- ~~(b) For the purposes of clause 25.1(a), the Complainant must attach to the complaint form copies of all or part of the documents which the Complainant considers relevant to the complaint and which are in the Complainant's possession or control.~~

~~25.2 Responding to complaints~~

- ~~(a) The Responsible Entity must:~~
 - ~~(1) within 5 Business Days of receiving the complaint, notify the Complainant that it has received the complaint and is considering it; and~~
 - ~~(2) within 30 Business Days of receipt of the complaint, determine and notify in writing to the Complainant its decision regarding the complaint.~~

- ~~(b) — The Responsible Entity must give reasons for any of its decisions made under this clause 25.2 within 10 Business Days of receipt of a request from the Complainant.~~

25.3 — Power to obtain further information

- ~~(a) — For the purposes of clause 25.2, the Responsible Entity may require the Complainant to provide all relevant information as the Responsible Entity determines to be necessary to determine the complaint made by the Complainant.~~
- ~~(b) — If the Responsible Entity makes a request under clause 25.3(a), the Complainant must comply with the request within 10 Business Days from the date of receipt of the request from the Responsible Entity.~~

25.4 — Withdrawal of complaint

- ~~(a) — A Complainant may withdraw the complaint at any time before a decision regarding the complaint is made by the Responsible Entity.~~
- ~~(b) — A withdrawal of complaint under clause 25.4(a) is effective from the date the Responsible Entity receives the request to withdraw the complaint in writing from the Complainant.~~

25.5 — Dispute resolution

~~If the Complainant is not satisfied with the decision of the Responsible Entity under clause 25.2, the Complainant must participate in alternative dispute resolution procedures with the Responsible Entity before the dispute can be brought in proceedings before the Court.~~

26 Plebiscite to approve proportional takeover bids

26.1 Definitions

The meanings of the terms used in this clause 26 are set out below.

Approving Resolution means in relation to a Proportional Takeover Bid, a resolution to approve the Proportional Takeover Bid passed in accordance with clause 26.3.

Approving Resolution Deadline means in relation to a Proportional Takeover Bid, the day that is 14 days before the last day of the bid period and during which the offers under the Proportional Takeover Bid remain open or a later day allowed by ASIC.

Proportional Takeover Bid means a takeover bid that is made or purports to be made under section 618(1)(b) of the Corporations Act in respect of Units included in a class of Units of the Trust.

Relevant Class means in relation to a Proportional Takeover Bid, the class of Units of the Trust in respect of which offers are made under the Proportional Takeover Bid.

26.2 Transfers not to be registered

Despite clause 15.4, a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid must not be

registered unless an Approving Resolution has been passed or is taken to have been passed in accordance with clause 26.3.

26.3 Approving Resolution

- (a) Where offers have been made under a Proportional Takeover Bid, the Responsible Entity must:
 - (1) convene a meeting of the persons entitled to vote on the Approving Resolution for the purpose of considering and, if thought fit, passing a resolution to approve the Proportional Takeover Bid; and
 - (2) ensure that the resolution is voted on in accordance with this clause 26.3,before the Approving Resolution Deadline.
- (b) The provisions of this constitution relating to general meetings apply (with any necessary changes) to a meeting that is convened under clause 26.3(a)(1), as if that meeting were a general meeting of the Unitholders.
- (c) The bidder under a Proportional Takeover Bid and any associates of the bidder are not entitled to vote on the Approving Resolution and if they do vote, their votes must not be counted.
- (d) Subject to clause 26.3(c), a person who held units of the relevant class as at the end of the day on which the first offer under the Proportional Takeover Bid was made is entitled to vote on the Approving Resolution.
- (e) An Approving Resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (f) If an Approving Resolution has not been voted on in accordance with this clause 26.3 as at the end of the day before the Approving Resolution Deadline, an Approving Resolution will be taken to have been passed in accordance with this clause 26.3 on the Approving Resolution Deadline.

26.4 Sunset

Clauses 26.1, 26.2 and 26.3 cease to have effect at the end of 3 years beginning:

- (a) where those clauses have not been renewed in accordance with the Corporations Act, on the date those clauses were adopted by the Unitholders; or
- ~~(a)~~(b) where those clauses have been renewed in accordance with the Corporations Act, on the date those clauses were last renewed.

Schedule 1 - Establishment and Administrative Costs (clause 10.5)

All Costs in connection with:

- (a) the preparation, approval, execution and stamping of this constitution and any amending deeds;
- (b) the underwriting any issues of Units or Options, the preparation, registration, printing, promotion and distribution of any prospectus or product disclosure statement issued by the Responsible Entity in respect of Units or Options or other rights or interests in relation to the Trust and the preparation, registration, printing, promotion and distribution of any document required by law or this constitution to be prepared in respect of the Trust;
- (c) the investigation, negotiation, acquisition, development, registration, custody, holding, management, supervision, repair, maintenance, valuation, sale of or other dealing with an Asset (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (d) raising money or otherwise obtaining financial accommodation, including but not limited to, interest on borrowings and discounts and fees in respect of bill facilities and any Taxes payable in respect of such raising of money or obtaining financial accommodation;
- (e) convening and holding Meetings of Holders and carrying out the directions of the Meetings;
- (f) the retirement or removal of the Responsible Entity and the appointment of another in its place;
- (g) the establishment and maintenance of accounts (including bank accounts in respect of the Trust), the Register, registry services and the calculation of the Distribution Entitlements;
- (h) the establishment and administration of the Trust including:
 - (1) computer operation and development and data processing;
 - (2) computer experts' fees and expenses; and
 - (3) office expenses including the cost of postage, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unitholder or Optionholder under this constitution;
- (i) any custodian, actuary, adviser, expert, agent, delegate, solicitor, barrister, contractor, valuer, accountant or auditor, including any who is an Associate of the Responsible Entity;
- (j) all Taxes;
- (k) all fees payable to the Commission, ASX, or other regulatory authority in respect of the Trust, Units or Options and other expenses incurred by the Responsible Entity in respect of the admission of the Trust to the Official List of ASX or in respect of the Official Quotation of any Units or Options;
- (l) all costs (including costs of obtaining advisory opinions and legal costs on a full indemnity basis) in anticipation of or in connection with any action, suit or proceeding relating to the interpretation and construction of this constitution or any provision of this constitution or against the Responsible Entity;
- (m) preparation and lodgement of tax returns;

- (n) termination of the Trust;
- (o) costs of responding to enquiries in respect of Unitholdings, preparing and printing accounts, causing the preparation and distribution of accounts, distribution statements, reports, confirmations and cheques in respect of the Trust;
- (p) the establishment of the Trust, the admission of the Trust to the Official List of the ASX or in respect of the Official Quotation of any Units or Options;
- (q) maintaining the Trust on the Official List of ASX or any ability to trade Units or Options or in connection with or arising out of any removal of the Trust from the Official list or suspension of any Units or Options from trading by ASX;
- (r) the services of asset managers, property managers, project managers and collection agents appointed in relation to Assets, notwithstanding such asset managers, property managers project managers and collection agents may be the Responsible Entity or a Related Body Corporate of the Responsible Entity; and
- (s) rates, development, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants and costs of leasing any Asset.

Schedule 2 - Meetings of Unitholders (Part 22)

1 Notice of meeting

- (a) At least 21 days notice in writing of any Meeting must be given to the Unitholders by the party calling the Meeting.
- (b) ~~If the Responsible Entity omits to give notice under paragraph 1(a) or if a Unitholder does not receive notice, the Meeting is still valid. A person may waive notice of any Meeting by written notice to the Responsible Entity.~~
- (c) ~~Failure to give a Unitholder or any other person notice of a Meeting or a proxy form, does not invalidate anything done or any resolution passed at the general Meeting if:~~
 - ~~(1) the failure occurred by accident or inadvertent error; or~~
 - ~~(2) before or after the Meeting, the person notifies the Responsible Entity of the person's agreement to that thing or resolution.~~
- (d) ~~A person's attendance at a Meeting waives any objection that person may have to:~~
 - ~~(1) a failure to give notice, or the giving of a defective notice, of the Meeting unless the person at the beginning of the Meeting objects to the holding of the Meeting; and~~
 - ~~(2) the consideration of a particular matter at the Meeting which is not within the business referred to in the notice of the Meeting, unless the person objects to considering the matter when it is presented.~~

2 Who may attend and address meeting of Unitholders

Subject to the Corporations Act and the Listing Rules, each Unitholder is entitled to attend and vote at any meeting of Unitholders. The Responsible Entity, any person invited by the Responsible Entity and the Auditor are each entitled to attend and address a meeting or adjourned meeting of Unitholders.

3 Quorum

- (a) No business may be transacted at any meeting of Unitholders, except the adjournment of the Meeting, unless a quorum of Unitholders is present at the time when the meeting proceeds to business.
- (b) A quorum for any meeting is at least 5 persons holding or representing by attorney, representative or proxy at least 10% of the total number of Units in the Trust on issue with voting rights.
- (c) If a quorum is not present within half an hour from the time appointed for the meeting, the meeting must be adjourned as the chairman directs.
- (d) At an adjourned meeting the Unitholders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

4 Chairman

- (a) A nominee of the Responsible Entity must preside as chairman at a meeting of Unitholders except for a meeting convened for the purpose of passing a resolution to remove the Responsible Entity under the Corporations Act.

- (b) If the Responsible Entity's nominee does not appear within 30 minutes from the time appointed for the meeting, the Unitholders present must elect one of their number to preside as chairman.
- (c) The Unitholders present must by resolution elect any person to preside as chairman of a meeting convened for the purpose of passing a resolution to remove the Responsible Entity under the Corporations Act.

5 Voting

- (a) Subject to paragraph 5(c) and~~Subject~~ to Unitholders being entitled to vote, any question submitted to a Meeting must be decided in the first instance by a show of hands, but a poll will be taken in any case where:
 - (1) it is required by this deed or by law that the question be decided by a majority which is to be measured by a percentage of the votes cast by those present; or
 - (2) either before or immediately after any question is put to a show of hands a poll is demanded by the chairman of the Meeting, the Responsible Entity or at least 5 Unitholders, present personally or by proxy, representative or attorney, holding or representing by proxy, representative or attorney at least 10% of the Units on Issue.
- (b) In the case of equality of votes, the chairman of a meeting of Unitholders has a casting vote in addition to his votes (if any) as a Unitholder both on a show of hands and on a poll.
- (c) The chairperson may determine that any question to be submitted to a Meeting will be determined by a poll without first submitting the question to a show of hands.

6 Votes

At a Meeting:

- (a) on a show of hands each Unitholder present personally or by proxy, attorney or representative with the right to vote at that meeting has one vote;
- (b) on a poll each Unitholder present personally or by proxy, attorney or representative with a right to vote at that meeting is entitled to have that fraction of a vote equivalent to the Paid-up Proportion of that Unit.

7 Voting by joint holders

- (a) If a Unit is held jointly, the most senior Unitholder's vote either in person or by proxy is accepted to the exclusion of the other joint holders.
- (b) The most senior Unitholder is the person whose name appears first on the Register.

8 Voting by corporation

- (a) A corporation who is a Unitholder may vote through a representative authorised in writing.
- (b) The corporation's representative is regarded as a Unitholder and has the same rights as a Unitholder.

9 Voting ~~by person of unsound mind~~ in relation to a Transmission Event

A person entitled to a Unit because of a Transmission Event may vote at a Meeting in respect of that Unit in the same way as if that person were the registered holder of the Unit if, at least 48 hours before the Meeting (or such shorter time as the Responsible Entity determines), the Responsible Entity:

- (a) admits that person's right to vote at that meeting in respect of the Unit; or
- (b) was satisfied of that person's right to be registered as the holder of, or to transfer, the Unit.

Any vote duly tendered by that person must be accepted and the vote of the registered holder of those Units must not be counted. 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, the Unitholder's committee or Responsible Entity or other person who properly has the management of the Unitholder's estate may exercise any rights of the Unitholder in relation to a meeting of Unitholders as if the committee, Responsible Entity or other person were the Unitholder.

10 **Objection to voter's qualification**

- (a) An objection may be raised to the qualification of a voter only at the meeting where the vote objected to is given or tendered.
- (b) An objection must be referred to the chairman whose decision is final.
- (c) The chairman may consult with any representative of the Responsible Entity and Responsible Entity present at the meeting.
- (d) A vote allowed at a meeting is valid for all purposes.

11 **Proxies**

Subject to the Corporations Act and the Listing Rules a Unitholder is entitled to appoint another person as his proxy to attend and vote at a Meeting. Any person including a Unitholder may act as a proxy, and that proxy has the same rights as the appointor to vote whether on a show of hands, to speak, and be reckoned in the quorum.

12 **Proxy instrument**

- (a) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (b) If the appointer of a proxy is a corporation, the instrument of appointment must be:
 - (1) under its common seal; or
 - (2) under the hand of an officer or attorney who has been authorised by the corporation.

13 **Voting authority to be deposited with Responsible Entity**

- (a) The instrument appointing a proxy or a facsimile copy of it and the original or certified copy of the power of attorney or authority under which it is signed or a facsimile copy of it must be deposited with the Responsible Entity or the Responsible Entity's agent at least 48 hours, or any shorter period determined by the Responsible Entity from time to time, before the time appointed for the meeting at which the proxy proposes to vote. The original of any facsimile instrument provided under this paragraph 13(a) must be deposited with the

Responsible Entity or the Responsible Entity's agent before the time appointed for the meeting.

- (b) If paragraph 13(a) is not complied with, the proxy is invalid.
- (c) An instrument appointing a proxy is only valid for 12 months from its execution date.
- (d) The Responsible Entity is not obliged to enquire whether a proxy has been validly given.

14 **Effect of ~~death or insanity~~ Transmission Event on vote under proxy**

- (a) A vote given under an instrument of proxy is valid even though a Transmission Event occurs to the member of the member ~~the principal is insane at the time, has died or~~ has revoked the proxy or the authority under which the proxy was executed.
- (b) Paragraph 14(a) does not apply if the Responsible Entity has notice in writing of the ~~death, insanity~~ Transmission Event or revocation before the meeting at which the proxy is to be used.

15 **Adjournments**

The chairman may adjourn a meeting with the consent of the majority of Unitholders present.

16 **Voting power**

Upon any resolution or question decided by a show of hands, each Unitholder present and each proxy will have one vote and, upon any resolution or question decided by a poll, each Unitholder present in person or by proxy will have:

- (a) one vote for each Fully Paid Unit;
- (b) a fraction of a vote equivalent to the proportion which the Paid-up Proportion bears to the total Issue Price for each Partly Paid Unit.

Where a person votes in several capacities (as a Unitholder and/or as a proxy for one or more Unitholders) on a show of hands that person is entitled to one vote only.

Where there are joint Unitholders only one may vote in respect of their Units and, if there is more than one present, that person will be the person whose name stands first on the Register of Unitholders.

17 **Declaration by chairman of voting**

Unless a poll has been demanded under paragraph 18, a declaration by the chairman that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.

18 **Demand for a poll and manner of poll**

- (a) A poll is to be conducted as directed by the Chairman at the meeting or any adjournment of the meeting.
- (b) The demand for a poll may be withdrawn by the person who demanded it.
- (c) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (d) The result of the poll is regarded as the resolution of the meeting.

19 Poll on election of chairman or question of adjournment

A poll demanded on the election of a chairman or on a question of adjournment must be taken forthwith.

20 Effect of resolution

A resolution passed at a meeting of Unitholders of a Trust held in accordance with this deed is binding upon all the Unitholders of the Trust.

21 Minutes

- (a) The chairman must ensure that minutes of proceedings at every meeting of Unitholders are taken and entered in a minute book provided by the Responsible Entity.
- (b) The signature by the chairman of minutes of a meeting is conclusive evidence of the matters stated in the minutes.
- (c) Unless there is proof to the contrary a minuted meeting is regarded as properly held and a resolution passed at the meeting is regarded as properly passed.