

22 November 2011

Company Announcements Platform
ASX Limited
Level 4, Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

Dear Sir/Madam

Re: Cromwell Property Group – Constitutional Amendment
Cromwell Diversified Property Trust

Under Listing Rule 15.4.2, the Cromwell Property Group (ASX: CMW) advises that Cromwell Property Securities Limited ACN 079 147 809 AFSL 238052, as responsible entity of the Cromwell Diversified Property Trust ARSN 102 982 598 (DPT), has amended DPT's constitution by a supplemental deed dated 22 November 2011. The supplemental deed was lodged with the Australian Securities and Investment Commission on 22 November 2011.

Attached is a consolidated copy of DPT's constitution identifying the amendments that have been made to clause 1.1, clause 3.1 and clause 3.3, together with a copy of the relevant supplemental deed.

Yours faithfully

CROMWELL PROPERTY GROUP



NICOLE RIETHMULLER
COMPANY SECRETARY

Supplemental Deed

Cromwell Diversified Property Trust
ARSN 102 982 598

Cromwell Property Securities Limited ACN 079 147 809
(Responsible Entity)

MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123
www.minterellison.com

Supplemental Deed

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Details

Date 22 November 2011

Parties

Name	Cromwell Property Securities Limited in its capacity as responsible entity of Cromwell Diversified Property Trust ARSN 102 982 598
ACN	079 147 809
Short form name	Responsible Entity

Background

- A The Responsible Entity is the responsible entity of the registered managed investment scheme known as the Cromwell Diversified Property Trust ARSN 102 982 598 (**Trust**). The Trust was established pursuant to a constitution dated 27 November 2002, as subsequently amended from time to time (**Constitution**).
- B Clause 21.1 of the Constitution provides that the Constitution may be modified, or repealed and replaced with a new constitution in accordance with the *Corporations Act 2001* (Cth) (**Corporations Act**).
- C Under paragraph 601GC(1)(b) of the Corporations Act, the constitution of a registered scheme may be modified by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members' rights.
- D The Responsible Entity does not consider that the amendments contained in this deed adversely affects the rights of members of the Trust.
- E The amendments to the Constitution contained in this deed are accordingly made in accordance with the Constitution and the Corporations Act and will take effect when a copy of this deed is lodged with the Australian Securities and Investments Commission (**ASIC**).

Terms

1. Defined terms and interpretation

In this deed, unless a contrary intention is expressed or implied, words and expressions defined in the Constitution have the same meanings when used in this deed.

2. Amendment of the Constitution

By this deed the Responsible Entity, pursuant to its powers under the Constitution and the Corporations Act, amends the Constitution as follows:

- (a) clause 1.1 is amended by:
 - (i) inserting the words 'and 21 November 2011' after the words '4 November 2011' in the definition of "November 2011 Placement"; and
 - (ii) inserting in alphabetical order the following definitions:
 - (A) **"November 2011 Entitlement Offer"** means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 21 November 2010 involving a non-renounceable entitlement offer where Unitholders will be invited to participate in the offer on a pro-rata basis according to their holding of Stapled Securities as at a record date determined by the Manager;"; and
 - (B) **"November 2011 Top Up Offer"** means, to the extent that Unitholders do not take up their entitlement under the November 2011 Entitlement Offer, the Manager and any Stapled Entity may issue the Stapled Securities, to which those Unitholders who did not take up their entitlement were entitled, to other eligible persons as determined by the Manager, which may include eligible Unitholders, institutional investors and any underwriters and sub-underwriters of the November 2011 Entitlement Offer;";
- (b) clause 3.1 is amended by inserting a new sub-clause (ad) immediately after sub-clause (ac) as follows:

"for each Unit to be issued under each of the November 2011 Entitlement Offer and November 2011 Top Up Offer, \$0.68, less the issue prices of each Attached Security, as determined in accordance with clause 3.2; or"; and
- (c) clause 3.3 is amended by:
 - (i) in sub-clause (a), replacing the words 'clause 3.1(ab)' at the beginning of the clause with 'clauses 3.1 (ab) and (ad)'; and
 - (ii) replacing sub-clause (e) with the following words:

"The Manager may structure the June 2010 Entitlement Offer, June 2010 Top Up, November 2011 Entitlement Offer and November 2011 Top Up

in any manner consistent with the Law (as notionally modified by any applicable Relief), despite anything else in this clause 3.3."

3. Operation of this deed

This deed will take effect on the date it is lodged with ASIC in accordance with subsection 601GC(2) of the Corporations Act.

4. No redeclaration etc

The Responsible Entity confirms that it is not, by clause 2 of this deed:

- (a) redeclaring the Trust;
- (b) resettling the Trust;
- (c) causing the transfer, vesting or accruing of property in any person; or
- (d) entering into a new constitution.

Other than the amendments made in this deed, the Constitution continues in full force and effect.

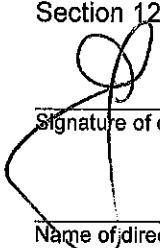
5. Governing law and jurisdiction

This deed is governed by the laws of Queensland. The Responsible Entity irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

Signing page

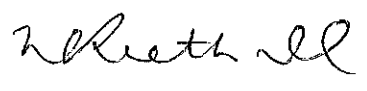
EXECUTED as a deed poll.

**Executed by Cromwell Property
Securities Limited** in accordance with
Section 127 of the *Corporations Act 2001*



Signature of director

Name of director (print)

←  ←

Signature of director/company secretary
(Please delete as applicable)

Nicole Bethmiller

Name of director/company secretary (print)

Signing page

EXECUTED as a deed poll.

Executed by **Cromwell Property Securities Limited** in accordance with Section 127 of the *Corporations Act 2003*



Signature of director

DARYL JOHN WILSON

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Nicole Rethinell

Name of director/company secretary (print)

Cromwell Diversified Property Trust

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Consolidated Constitution

Cromwell Property Securities Limited

This is an unexecuted consolidated working copy of the Constitution of the Cromwell Diversified Property Trust. It consists of the Constitution dated 27 November 2002 as subsequently amended by deeds of amendment:

1. dated 18 December 2002;
2. undated in 2004;
3. dated 23 October 2006;
4. 7 December 2006;
5. 1 June 2007;
6. 22 November 2007;
7. 24 January 2008;
8. 13 November 2009;
9. 11 June 2010;
10. 7 July 2010;
11. 12 July 2010;
12. 22 December 2010;
13. 12 May 2011;
14. 27 June 2011;
15. [\[14\] November 2011; and](#)
16. [\[\] November 2011](#)

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[ME_94658467_4 \(W2003\)](#)

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CROMWELL DIVERSIFIED PROPERTY TRUST

THIS DEED is made this 27th day of November 2002.

BY CROMWELL PROPERTY SECURITIES LIMITED (ACN 079 147 809) of
Level 19, 200 Mary Street, Brisbane in the State of Queensland
("the Manager")

RECITALS

- A. This Constitution establishes the Trust to be called the "Cromwell Diversified Property Trust".
- B. The Manager intends to invite investment in the Trust from investors.
- C. This Constitution is made with the intent that the Manager and each Unitholder will be bound by it and that this Constitution will be legally enforceable by the Manager and each Unitholder.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 Defined Terms

In this Constitution unless the context otherwise requires:

"Accounting Standards" has the meaning given to that term in Section 9 of the Law;

"Acquisition Costs" means all of the costs ordinarily associated with the acquisition of the Assets of the Trust and includes without limitation any Manager's Remuneration relating to any such acquisition.

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“ADI” means an authorised deposit-taking institution under the Banking Act 1959 (as amended);

“Applicant” means a person which may include the Manager and/or its Associates, who has completed and lodged an Application with the Manager, and where applicable, has paid the Application Monies to which the Application refers;

“Application” means an application for Units in a form determined by the Manager from time to time;

“Application Account” means the Bank account established by the Manager under clause 3.3;

“Application Monies” means any form of valuable consideration received by the Manager for Units and any other monies paid or payable upon Application for any Units;

“Application Transaction Costs” has the meaning given to it in clause 3.4;

“Approved Valuer” means any person or firm appointed by the Manager to value any real property and who is independent of the Manager and includes a person employed or engaged by a company or firm and who:

- (a) is authorised under any law of the State or Territory where the valuation takes place to practice as a valuer; and
- (b) has at least 5 years continuous experience of valuation.

“APX” means Australian Property Exchange Limited;

“ASIC” mean Australian Securities and Investments Commission;

“ASIC Relief” means any exemption, modification or similar relief granted by ASIC from a requirement of the Law;

“Assets” means all the assets of the Trust Fund which are, or would be, recognised as assets of the Trust Fund by the application of generally accepted accounting principles;

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“Associate” has the meaning given to that term in the Law;

“ASTC” has the same meaning as in the Regulations;

“ASTC-regulated Transfer” has the same meaning as in the Regulations;

“ASTC Settlement Rules” means the operating rules of ASTC;

“ASX” means Australian Stock Exchange Limited;

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

“Attached Security” means each of a unit, interest or security which is from time to time Stapled or to be Stapled to a Unit (together the **Attached Securities**);

“Auditor” means the auditor for the Trust;

“Authorised Investments” means:

- (a) deposits at call for a term with any ADI;
- (b) bills of exchange (including commercial bills) issued, drawn, accepted or endorsed by any Bank or negotiable certificates of deposit issued by any Bank;
- (c) interests in any managed investment scheme including any scheme of which the Manager acts as Manager;
- (d) real property;
- (e) any Authorised Investment as defined in section 21 of the *Queensland Trusts Act* 1973; and
- (f) any property of any kind.;

“Bank” has the meaning given to that term in section 5 of the *Banking Act* 1959 and also includes a bank constituted by or under a law of the State or Territory and a "foreign bank" as that term is defined in section 5 of the *Banking Act* 1959;

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“Business Day” means any day on which trading banks in Brisbane are generally open for business;

“CCL” means Cromwell Corporation Limited ACN 001 056 980;

“CCL Shares” means ordinary shares in the issued share capital of CCL;

“Certificate” means a certificate of title to or other investment confirmation of a Unit issued under this Constitution;

“Commencement Date” means the date on which this Constitution is executed;

“Company Held Units” means those Units registered in the name of Cromwell Corporation Limited (or its custodian or nominee) immediately prior to Stapling;

“Compliance Plan” means the compliance plan for the Trust, registered by the Commission and includes any approved amendments to the Compliance Plan from time to time;

“Controlled Entity” means an entity that is or may become controlled by the Trust;

“Constitution” means the constitution established by this Constitution;

“Cromwell Group Performance Rights Plan” means the employee incentive scheme by the name of Cromwell Group Performance Rights Plan approved by Stapled Security holders at a meeting held on 22 November 2007.

“CS Facility Rules” means the operating rules of an applicable CS facility licensee;

“Current Market Value” of a Security on a particular day is:

- (a) in the case of a Security not Officially Quoted, an amount equal to the aggregate of Net Value of the Assets after the receipt of the consideration for the Units adjusted for Application Transaction Costs (if any) divided by the number of Units on issue and the average Paid Up Proportion of Securities (to the extent that unpaid calls are not included in Trust Property) in that class of Security;
- (b) in the case of a Security that is Officially Quoted, the average of the daily volume weighted average price for all Security sales (including sales that are special crossings) on the ASX during the previous 10 Trading Days immediately preceding that day divided by the average Paid Up Proportion of Securities in that class of Security; or

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- (c) (i) if no sales of Securities have occurred on the ASX in the previous 10 Trading Days;
- (ii) the relevant class of Securities have not traded on the ASX for more than 10 consecutive Trading Days; or
- (iii) in the Manager's opinion, the price of the Security calculated with reference to paragraphs (a) or (b) above (as applicable) would not reflect fair value of that Security,

the amount per Security that is calculated in accordance with the Law, the ASX Listing Rules and which is capable of being independently verifiable as the fair value for that Security;

“Custodian” means:-

- (a) where the Manager is required to use a custodian under the terms of the Licence, the Constitution or the Law the person who is appointed as custodian of the Assets; and
- (b) where no appointment is required, where the context requires, the Manager.

“Debt Funding” means the funding to be procured by the Manager to provide balance funds to enable acquisition of the Assets;

“Direct Vote” means a vote of a member of the Trust (including by proxy) delivered to the Manager, or a person appointed by the Manager to receive such votes on behalf of the Manager, by fax or electronic communication;

“Disclosure Document” means a prospectus, product disclosure document, explanatory memorandum, information memorandum or other disclosure document issued by the Manager in relation to the Trust and includes if applicable any offer to wholesale clients;

“Distributable Amount” means the amount comprising Income, plus any amounts of capital as determined by the Manager from time to time, to be distributed to the Unitholders in accordance with this Constitution.;

“Distribution Period” means the period referred to in clause 9.2;

“Entity” has the meaning given to that term in the Law;

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“Expert” includes solicitors, barristers, accountants, bankers, financial advisers, valuers and other professionally qualified consultants;

“Extraordinary Resolution” has the same meaning as under the Law.

“Financial Statements” has the meaning given to that term in section 9 of the Law;

“Financial Year” means the period of 12 months ending on 30 June in each year during the continuance of this Constitution and includes the period commencing on the Commencement Date and expiring on the next succeeding 30 June and any period between 30 June last occurring before the termination of the Trust;

“GST” means a goods and services tax or similar value added tax;

“Holder” means:

- (a) in the case of a Unit that forms part of a Stapled Security, a person for the time being shown on the Stapled Security Register as the holder of the Stapled Security; and
- (b) in the case of a Unit that does not form part of a Stapled Security, a Unitholder;

“Income” means net income' as defined in section 95 of the Tax Act, though not including 'net capital gains' as defined in the Tax Act, and not including amounts that have not been realised or received by the Manager during the relevant period.;

“Internal Rate of Return” means the effective rate of return on an investment and equals the discount rate which when applied to the cash flows received from an investment would produce a present value exactly equal to the initial acquisition price.

“Issue Price” means the consideration that is to be paid to acquire a Unit in the Trust;

“July 2010 Entitlement Offer” means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 12 July 2010 involving a non-renounceable entitlement offer where Unitholders will be invited to participate in the offer on a pro-rata basis according to their holding of Stapled Securities as at a record date determined by the Manager;

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“July 2010 Placement” means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 12 July 2010 involving an institutional placement of Stapled Securities;

“July 2010 Top Up Offer” means, to the extent that Unitholders do not take up their entitlement under the July 2010 Entitlement Offer, the Manager and any Stapled Entity may issue the Stapled Securities, to which those Unitholders who did not take up their entitlement were entitled, to other eligible Unitholders;

“Law” means the *Corporations Act 2001 (Cth)*;

“Liabilities” include borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions the Manager decides to make (including, but not limited to, a provision for accrued management fees), unpaid distributions due to Unitholders and other unpaid remuneration (if any) due to the Manager but excluding any amount on account of unitholder equity, application monies or any other amount representing the value of rights attaching to Units whether or not redeemable. For avoidance of doubt the definition of Liabilities is not intended to affect any other meaning of 'liabilities' of the Trust which the Manager may be required to adopt for financial reporting purposes;

“Licence” means the Australian financial services licence from ASIC held by the Manager;

“Liquid” has the meaning given to that term in the Law;

“Listed” means in respect of an entity, admitted to the official list of the ASX and in respect of a Unit (including where a Unit is Stapled to an Attached security), Officially Quoted;

“Manager” means Cromwell Property Securities Limited (ACN 079 147 809) or any other person for the time being acting as manager of the Trust, provided that at all times the Manager is a responsible entity as defined in section 9 of the Law;

“Manager’s Remuneration” means the remuneration of the Manager as set out in clause 22;

“Manager’s Units” means any Units applied for by and issued to the Manager;

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

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“Net Value of the Assets” means the Value of the Assets less any accrued expenses and other Liabilities of the Trust;

“November 2011 Entitlement Offer” means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 21 November 2010 involving a non-renounceable entitlement offer where Unitholders will be invited to participate in the offer on a pro-rata basis according to their holding of Stapled Securities as at a record date determined by the Manager;

“November 2011 Placement” means the fundraising to be undertaken by the Manager described in an announcement to the ASX on or about 4 November 2011 and 21 November 2011 involving an institutional placement of Stapled Securities;

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“November 2011 Top Up Offer” means, to the extent that Unitholders do not take up their entitlement under the November 2011 Entitlement Offer, the Manager and any Stapled Entity may issue the Stapled Securities, to which those Unitholders who did not take up their entitlement were entitled, to other eligible persons as determined by the Manager, which may include eligible Unitholders, institutional investors and any underwriters and sub-underwriters of the November 2011 Entitlement Offer;

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

“Officer” means a person who is a director, secretary or executive officer of the Manager;

“Official Quotation” or **“Officially Quoted”** means quotation on the official list of the ASX, including where quotation has been suspended for not more than 60 days;

“Operating Rules”, in relation to a Prescribed CS Facility, has the same meaning as in Chapter 7 of the Law;

“Option” means an option to subscribe for a Unit;

“Option Holder” means the registered holder of any Option and includes persons jointly registered;

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“Outgoings” means all expenses and outgoings paid or payable or incurred in relation to the management, operation, maintenance, marketing, repair and insurance of the Assets of the Trust and the provision of services to or in the Assets of the Trust and includes without limitation;

- (a) Taxes in the nature of a tax on land excluding land tax levied under any federal or state or local law;
- (b) rates and charges payable in respect of provision of sewerage and drainage services;
- (c) levies, contributions and other amounts payable to any local or other authority on account of fire protection services;
- (d) all rates, taxes, charges, assessments, outgoings and impositions, whether parliamentary, municipal or otherwise and whether assessed charged or imposed by or under federal or state law or by federal, state or local authorities and whether on a capital, revenue, value or any other basis and even though of a novel character or introduced or imposed after the date of this Constitution, which may be or are assessed, charged, levied or imposed in respect of the Assets of the Trust Fund or any part of the Assets or any service to the Assets of the Trust Fund;
- (e) all costs of effecting any insurances;
- (f) all costs, fees and expenses of obtaining a valuation by an Approved Valuer;
- (g) the reasonable proportion of any professional indemnity insurance payable by the Manager as a condition of any licence which it is required to hold to undertake the management of the Trust attributable to the management by the Manager of the Trust;
- (h) the expenses and fees of any auditor required by the Law;
- (i) the Manager’s Remuneration; and
- (j) any other costs reasonably incurred by the Manager in relation to the Trust.

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“Paid Up Proportion” means the proportion which the total of all amounts paid up on a partly paid Unit represent of the aggregate of the amounts which have been paid and which remain to be paid for that partly paid Unit to become a fully paid Unit;

“Placement Resolution” means a special resolution in relation to the approval or ratification by Holders of a placement of Units by the Manager where:

- (a) votes are only cast in respect of Units (or other interests) (the **Eligible Interests**):
 - (i) that are held by a Holder who will not acquire any of the Units that are to be issued; or
 - (ii) that are held by a Holder for the benefit of another person who will not obtain any beneficial ownership of any of the Units that are to be issued; and
- (b) the value of the Eligible Interests held by the Holders who vote represents at least 25% of the total value of Eligible Interests;

“Prescribed CS Facility” has the same meaning as in Chapter 7 of the Law;

“Proper ASTC Transfer” has the same meaning as in the Regulations;

“PRP Option” means a Option issued by the Manager pursuant to the Cromwell Group Performance Rights Plan;

“Quarter” means each period of 3 months ending on the last days of March, June, September and December in each year;

“Register” mean any register established and kept by the Manager under this Constitution or any applicable law;

“Regulations” means the Corporations Regulations 2001 (Cth);

“Related Party” has the meaning given to that term in the Law;

“Relief” means any declaration made or exemption granted by ASIC that is applicable to the Trust or the Manager (in its capacity as responsible entity of the Trust) and that is in force;

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“Respective Proportions” means the proportions which the number of a Unitholder’s Units in the Trust bears to the number of Units on issue;

“Responsible Entity” means the person appointed as responsible entity of the Trust;

“Restricted Securities” has the same meaning as in the ASX Listing Rules;

“Security” means:

- (a) in the case of Unit that is Stapled, a Stapled Security; and
- (b) in all other cases, a Unit;

“Special Resolution” has the same meaning as under the Law;.

“Stapled Entity” means each of the Trust and any trust, managed investment scheme or corporation of which its units, interests or securities (as applicable) are Attached Securities (together the **Stapled Entities**);

“Stapled Security” means a Unit and one each of the Attached Securities linked together to form a single security registered in the name of the Holder;

“Stapled Security Register” means the register of Stapled Securities to be established and maintained in accordance with clause 30.9;

“Stapling” or **“Stapled”** means the linking together of a Unit and Attached Securities so that they are dealt with as a single security;

“Stapling Commencement Date” means the date that the Units and Attached Securities are first Officially Quoted or such other time as determined by the Manager;

“Stapling Provision” means a provision of this Constitution primarily relating to Stapling and any reference in another provision connected to Stapling and for the avoidance of doubt includes clauses 12.1A, 30 and 31 (together the **Stapling Provisions**);

“Tax Act” means the Income Tax Act of 1936 and the Income Tax Assessment Act 1997; and

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“Taxes” includes, without limitation, any:

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

and all such taxes and imposts to include, without limitation, all imposts made pursuant to the Tax Act, financial institutions duty, debits tax, withholding tax, stamp or documentary taxes, a consumption tax, value added tax or goods and services tax or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction from, or to, which a payment is made by, or on behalf of a Unitholder or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing.

“Total Assets” means the aggregate value of the assets (including the Assets) of the Trust and its controlled entities on a consolidated basis, without taking into account

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the accrued expenses and other Liabilities of the Trust including without limitation any Financial Accommodation. For the avoidance of doubt, where the Manager takes into account the value of assets in a controlled entity, it will disregard the investment value of the ownership interests (whether shares, units, partnership interests or otherwise) in that controlled entity. Applicable Accounting Standards are to guide classification of assets, controlled entities and the basis of consolidation;

"Trading Day" has the same meaning as in the ASX Listing Rules;

"Trust" means the Cromwell Diversified Property Trust.

"Trust Fund" means:

- (a) the amount lodged and held by the Manager in accordance with clause 2.4;
- (b) all moneys paid to and accepted by the Manager upon the issue of Units pursuant to clause 3 of this Constitution;
- (c) any further or additional property which any person, company or corporation may donate to, assign to, transfer or vest in or cause to be vested in the Manager to be held upon trust and subject to the powers and provisions of this Trust;
- (d) all other property which may from time to time be held by the Manager upon and subject to the trust herein contained and the proceeds of sale, redemption or repayment of any such property;
- (e) the proceeds of any borrowings in pursuance of the powers so to do herein contained;
- (f) any income of the Trust Fund accumulated by the Manager pursuant to the powers to do so hereinafter contained.

The corpus of the Trust Fund shall include items (a) to (f) inclusive of this definition.

"Unit" means a Unit created pursuant to this Constitution.

"Unitholder" means a person who is for the time being registered under the provisions of this Constitution as the holder of a Unit and includes persons jointly so

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registered;

“**Value**” means the value determined by the person making a valuation in accordance with this Constitution as included in the Asset Register;

“**Year**” means each 12 month period from 30 June but:-

- (a) the first will be the period between the Commencement Date and the next occurring 30 June; and
- (b) the last will be the period between the last occurring 1 July and finishing on the date on which the Trust terminates pursuant to clause 10.1.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) words expressing the singular include the plural and vice versa;
- (b) words denoting a natural person including corporations and body corporates and vice versa;
- (c) words denoting gender include all genders;
- (d) a reference to a part, clause, paragraph or schedule is a reference to a part, clause, paragraph or schedule of this Constitution;
- (e) references to this Constitution are references to this Constitution as amended, supplemented or varied from time to time;
- (f) a reference to writing includes printing, engraving, typewriting, lithography, photography and any other mode of reproducing words in a visible form;
- (g) a reference to a thing or matter includes a reference to a part of the thing or matter;
- (h) headings are included for convenience only and shall not affect interpretation;
- (i) references to a party to this Constitution include the party’s successors and

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permitted assigns;

- (j) references to a document or agreement include references to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (k) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (l) references to dollars and '\$' refer to amounts in Australian currency;
- (m) the schedules to this Constitution form part of this Constitution;
- (n) where any word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form of that word or phrase shall have a corresponding meaning; and
- (o) A reference to the Law or to a section of the Law, is a reference to the Law as modified by any Relief instrument.

1.3 Listing requirements

Before the Trust or any Unit is Listed, a provision of this Constitution subject to or in any way restricted by the ASX Listing Rules or the CS Facility Rules is to be construed as if the provision were not expressed to be subject to or restricted by the ASX Listing Rules or the CS Facility Rules.

2. FORMATION AND DURATION OF TRUST

2.1 Formation of the Trust

This Constitution establishes the Cromwell Diversified Property Trust which commences on the Commencement Date and which shall operate until a date determined by the Manager in accordance with clause 10, or at any earlier time provided by this Constitution or by law. The Manager may after giving reasonable notice to the Unitholders, change the name of the Trust from time to time.

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2.2 **Manager holds the Assets on trust**

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The Manager declares that it holds and will at all times hold the Assets of the Trust Fund on trust for the Unitholders subject to the provisions of this Constitution and the Law. If the Manager appoints a third party Custodian to hold the Assets of the Trust Fund, the Manager declares that it holds and will at all times hold the right to recover the Assets of the Trust Fund from the Custodian and the right to any indemnity from the Custodian on trust for the Unitholders of the Trust.

2.3 **Manager to act as responsible entity of Trust**

The Manager is appointed as Manager of the Trust. The Manager:-

- (a) accepts its appointment;
- (b) agrees to operate the Trust as the responsible entity for the Trust in accordance with the Law; and
- (c) agrees to manage the Trust upon and subject to the terms and conditions contained in this Constitution.

2.4 **Manager to establish Fund**

The Manager shall, on the execution of this Constitution, lodge and hold the sum of \$100 to establish and constitute the Trust Fund for which the Manager and/or its nominees will receive Manager's Units in the Trust at the Issue Price. The Manager may, from time to time, cause or cause to be received more cash or other property by way of additional funding for the Trust Fund to be held on trust in accordance with this Constitution.

2.5 **Commencement and Termination of Trust**

- (a) The Trust will commence on the Commencement Date.
- (b) The Trust will terminate in any of the circumstances set out in clause 10.

2.6 **Additional Funds**

The Manager may, at any time and from time to time, receive or cause to be received

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and added to the Trust Fund of the Trust:-

- (a) cash; and/or
- (b) Authorised Investments,

in consideration for the issue by the Manager to the Unitholder of Units equal in value (as determined by an Approved Valuer, if applicable) to the cash or Authorised Investments including Acquisition Costs if applicable received by the Manager.

2.7 Units

The beneficial interest in the Trust Fund is divided into Units and the beneficial interest in the Trust Fund as originally constituted and as existing from time to time, shall be held by the Unitholders for the time being in their Respective Proportions.

2.8 Units of Equal Value

Subject to this Constitution, every Unit into which the beneficial interest in the Trust Fund is for the time being divided shall be of equal value and confer an equal interest in the Trust Fund but shall not confer upon any Unitholder any interest in any particular part of the Trust Fund or any particular investment or investments and no Unitholder shall be entitled to the transfer to him any of the Assets of the Trust Fund.

2.9 Nature of Beneficial Interest

A Unitholder is entitled as herein provided or as provided by the law to a beneficial interest in the Trust Fund but such interest does not entitle the Unitholder other than as provided by this Constitution:

- (a) to interfere with the rights or powers of the Manager in its dealings with the Trust Fund or any part thereof; or
- (b) to exercise any rights, powers or privileges in respect of any Authorised Investment.

2.10 Rights attaching to Units

The Manager may issue Units with special rights or restrictions and those rights and

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restrictions prevail over any inconsistent provisions of this Constitution. The special rights or restrictions may be preferred or deferred and may relate but are not limited to the entitlement of Unitholders to share in the Trust Fund, the participation by Unitholders in distributions of income and capital and participation on a dissolution of the Trust. Unitholders hold Units subject to the rights, restrictions and obligations attaching to those Units.

2.11 No Fractions

- (a) The Manager may not issue fractions of Units and where any calculation under this Constitution would otherwise result in the issue of a fraction of a Unit, the number of Units to be issued is to be rounded down or up respectively to the nearest whole Unit.
- (b) Any excess Application Monies or other monies or property which result from rounding become an Asset of the Trust.

2.12 Consolidation and Division of Units

The Manager may consolidate or divide Units as it determines from time to time.

2.13 Unit Certificate

The Manager is under no obligation to and may decline to issue Certificates. The Manager at any time may send a Unitholder details of Units held by, Unit transactions of, or distributions to, the Unitholder.

2.14 Binding Effect of Constitution (Section 601 GB(4))

This Constitution is binding on the Manager and each Unitholder and all persons claiming through them as if they were parties to this Constitution and each Applicant by signing the Application, agrees and acknowledges that he is bound by the provisions of this Constitution.

2.15 ASX Listing Rules

Notwithstanding anything contained in this Constitution, for so long as the Trust or Units are Listed:

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

2.16 Restricted Securities

- (a) Clauses 2.16(b) and 2.16(c) only operate:
 - (i) while Units are Officially Quoted; and
 - (ii) to the extent that it is not inconsistent with the Law.
- (b) During a breach of the ASX Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Holder who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.
- (c) While the Trust or Units are Listed, during any applicable escrow period:
 - (i) a Holder may not transfer Restricted Securities; and
 - (ii) the Manager will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities,

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except as permitted by the ASX Listing Rules or ASX'.

2A Options

2A.1 Issue of Options

The Manager may, subject to the Law, the ASX Listing Rules and any Relief, issue Option on such terms and conditions as it determines, provided that the issue price of Options shall be such price (including nil) as the Manager determines in its discretion.

2A.2 Issue of Units pursuant to Options

Notwithstanding clause 3, the Manager may:

- (a) subject to the Law, the ASX Listing Rules and any Relief, determine the Issue Price of a Unit on the exercise of an Option, provided that:
 - (i) the Issue Price shall be an amount not less than 50% of the Current Market Value of that Unit on the date of issue of the Option; and
 - (ii) in the case of a pro rata offer of Options to all Unitholders, the Issue Price of a Unit pursuant to the exercise of the Option, shall be determined by the Manager provided that during such periods as the Units are Officially Quoted, the Issue Price shall be an amount greater than 50% of the Current Market Value of Units on the date of issue of the Option;
- (b) in relation to the Cromwell Group Performance Rights Plan, issue to officers and employees of Cromwell Corporation Limited (or any subsidiary of Cromwell Corporation Limited) on such terms and conditions and with such entitlements determined by the Manager for nil consideration:
 - (i) class A PRP Options that are exercisable into Units at an Issue Price of nil consideration;
 - (ia) class A₁ PRP Options that are exercisable into Units at an Issue Price of \$0.10 per Stapled Security (comprising an Issue Price per Unit and an issue price per Attached Security determined at the time of the issue

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of the Stapled Security in accordance with clause 3.2);

- (ib) class A₂ PRP Options that are exercisable into Units at an Issue Price of \$0.20 per Stapled Security (comprising an Issue Price per Unit and an issue price per Attached Security determined at the time of the issue of the Stapled Security in accordance with clause 3.2);
- (ii) class B PRP Options that are exercisable into Units at an Issue Price being the Current Market Value for the 5 Trading Days prior to the grant of the Option less the price of the Attached Security, less a discount of 2%;
- (iii) class C PRP Options that are exercisable into Units at an Issue Price determined by the Manager in accordance with the Law, the ASX Listing Rules and any Relief;
- (iv) 1,108,600 class D PRP Options to Paul Weightman and 516,300 class D Options to Daryl Wilson that are exercisable into Units at an issue price of \$1.21 per Stapled Security (comprising an Issue Price of Units at \$1.1829 per Unit and an issue price of the Attached Security of \$0.0271 per Attached Security); and
- (v) class E PRP Options to Paul Weightman and class E PRP Options to Daryl Wilson that are exercisable into Units at an issue price of \$0.50 per Stapled Security (comprising an Issue Price per Unit and an issue price per Attached Security determined at the time of the issue of the Stapled Security in accordance with clause 3.2).

2A.3 Option terms

Options may only be dealt with, exercised or reorganised in accordance with their Terms of Issue.

2A.4 Interest of Option Holders

- (a) An Option shall not, except as otherwise provided by the Law confer any interest in the Trust or any right to participate in the income or capital of the Trust.

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- (b) Each Option Holder agrees not to:
 - (i) interfere with any rights or powers of the Manager under this Constitution;
 - (ii) exercise or purport to exercise a right in respect of the Trust Fund or claim any interest in the Trust Fund (for example, by lodging a caveat affecting any particular item of the Trust Fund); or
 - (iii) requiring any item of the Trust Fund to be transferred to them or any other person.
- (c) Subject to the terms of issue of the Option and the Law, an Option Holder who is not a Unitholder is not entitled to any other rights of a Unitholder.

2A.4 Voting rights of Option Holders

Option Holders shall be entitled to receive notices of, and to attend meetings of Unitholders but shall not, except as otherwise provided for by the Law, any exemption made thereunder or the terms of issue of the Options, be entitled to speak or vote at any such meeting.

3. APPLICATION PROCEDURES

3.1 Issue Price

Subject to the other provisions of this **clause 3**, the Issue Price for a Unit (other than a Manager's Unit) will be equal to:

- (a) the Current Market Value of the Security on the date not more than 5 Trading Days prior to the date of issue or sale **less** in the case of a Security that is Stapled, the issue prices for each of the Attached Securities or such other amount determined by the Manager in accordance with clause 3.2; or
- (aa) for each Unit to be issued under the July 2010 Placement, \$0.75, less the issue prices of each Attached Security, as determined in accordance with clause 3.2; or

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- (ab) for each Unit to be issued under the July 2010 Entitlement Offer and July 2010 Top Up Offer, \$0.72, less the issue prices of each Attached Security, as determined in accordance with clause 3.2; or
- (ac) for each Unit to be issued under the November 2011 Placement, \$0.68, less the issue prices of each Attached Security, as determined in accordance with clause 3.2; or
- (ad) for each Unit to be issued under each of the November 2011 Entitlement Offer and November 2011 Top Up Offer, \$0.68, less the issue prices of each Attached Security, as determined in accordance with clause 3.2; or
- (b) where permitted by any Relief and the ASX Listing Rules, such other price as the Manager determines in its discretion.

3.1A Where:

- (a) Holder approval or ratification of an issue made pursuant to clause 3.1(b) is sought; and
- (b) any Relief relied upon to make that issue requires that Holder approval or ratification of that issue for the purposes of that Relief be done via a Placement Resolution,

then Holder approval or ratification of that issue will only be effective for the purposes of that Relief if:

- (c) Holders who hold Units in the same class approve the proposed placement by a Placement Resolution;
- (d) unless the Manager reasonably considers that the proposed placement will not adversely affect the interests of Holders holding Units in another class – Holders in that other class approve the proposed placement by a Placement Resolution; and
- (e) any notice convening a meeting to vote on a proposed Placement Resolution contains particulars of the use to be made of the money raised by the issue.

This clause does not limit the way in which an issue made pursuant to clause 3.1(b)

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may be effectively approved or ratified for any other purpose.

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3.2 Apportioning Issue Price for Units that are Stapled

Subject to the Law, the ASX Listing Rules and any Relief, the issue price for a Stapled Security will be apportioned between the Issue Price for the Unit and the issue prices for each of the Attached Securities, calculated on the basis of the fair value for each of the Unit and the Attached Securities as determined by and agreed between, the Manager and the other Stapled Entities.

3.3 Rights issues and purchase or re-investment plans

- (a) Subject to [clauses 3.1 \(ab\) and \(ad\)](#), in the case of an offer of Units in the Trust to all Unitholders registered on a date determined by the Manager, including by way of rights issue or re-investment of income, the Issue Price of a Unit must be equal to or greater than 60% of the Issue Price that would otherwise apply under clause 3.1(a) and 3.2.
- (b) For the purposes of this clause 3.3, an offer will be deemed to be to all Holders where it is not offered to certain Unitholders and Relief permits the offer not to be made to those certain Unitholders.
- (c) Where any offer of Units is made to Unitholders and certain Unitholders do not acquire the Units, to the extent permitted by any Relief, the Units not acquired may be acquired by other persons (including existing Unitholders).
- (d) An offer of Units pursuant to this clause 3.3 must be made in accordance with requirements of any Relief applying to such an offer.
- (e) [The Manager may structure the June 2010 Entitlement Offer, June 2010 Top Up, November 2011 Entitlement Offer and November 2011 Top Up in any manner consistent with the Law \(as notionally modified by any applicable Relief\), despite anything else in this clause 3.3.](#)

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3.4 Application Transaction Costs

The Application Transaction Costs are:

- (a) an estimate by the Manager (but which is independently verifiable) of the total

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transaction costs the Trust would incur to acquire afresh the Trust Fund; or

- (b) if appropriate having regard to the actual cost which would be incurred because of the issue or sale of the Units, the Manager's estimate (but which is independently verifiable) of a portion of the total transaction costs, which may be zero,

unless the Manager makes no estimate, in which case the Application Transaction Costs are zero.

3.5 Reinvestment

- (a) The Manager may offer existing Unitholders on terms and conditions set out in a Disclosure Document or by notice in writing to all Unitholders or both, the right to reinvest income distributions of the Unitholders in additional Units of the Trust;
- (b) Each Unit issued upon reinvestment of distributions will be issued at the Issue Price less any discount, if any, not exceeding 10% as the Manager may determine.

3.6 Income Entitlement of Units

Except as otherwise expressly provided in this Constitution, the Manager may in its discretion issue Units on terms that such Units:-

- (a) participate fully in the allocation of the distribution in respect of the Distribution Period in which they are issued;
- (b) do not entitle the holder of such Units to receive a share of the distribution in respect of the Distribution Period in which such Units are issued; or
- (c) entitle the holder of such Units to receive a share of the distribution in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the distribution to which a Unitholder holding a Unit during the whole of that Distribution Period is entitled multiplied by the number of days from and including the date of allotment of those Units to the end of the Distribution Period divided by the total number of days in that Distribution Period.

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3.7 Applications

- (a) A person who wishes to invest in the Trust must make an application in the manner specified by the Manager from time to time.
- (b) The Application must be accompanied by either:
 - (i) the appropriate Application Monies; or
 - (ii) an effective transfer to the Manager of the other consideration the Manager proposes to accept as Application Monies (including an amount to cover any expenses the Manager may incur in respect of the transfer).

3.8 Corresponding offer and issue of Units and Attached Securities

Except in relation to any Company Held Units, while Stapling applies, the Manager may not offer, allot or issue a Unit unless, at the same time, one of each of the Attached Securities are also offered, allotted or issued (as applicable) to the same person, to form a Stapled Security. This applies regardless of whether the Units are allotted or issued upon the exercise of an option, under a rights issue, plan for the reinvestment of dividends or distributions or otherwise.

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3.10 Deleted

3.11 Deleted

3.12 Manager's Discretion

The Manager has the sole discretion to determine whether to accept or reject an Application in whole or in part without giving reasons. The Manager must within a reasonable time refund to the Applicant the Application Monies relating to the whole or part of the Application rejected by the Manager.

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3.15 **Date of Issue of Units**

A Unit is taken to be issued at a time which is the earlier of:

- (a) the time the issue of Units is recorded in the Register; and
- (b) the later of the date:
 - (i) the Manager has accepted an Application; and
 - (ii) the Manager or its agent receives the Application Monies (even if paid into an account held for the purposes of section 1017E of the Law).

3.16 **Maximum or Minimum Application**

The Manager may set a minimum or maximum amount (or both) for an Application to be made. The Manager may also set a minimum or maximum amount (or both) for the number of Units or the percentage of Units on issue, which may be issued to or held by any one Unitholder.

3.17 **Expenses Associated with Becoming a Unitholder**

A Unitholder must pay any expenses that are referable to an Application and the Manager may refuse to act in relation to that Application if those expenses are not paid.

4. **CERTIFICATES**

4.1 **Deleted**

4.2 **Deleted**

4.3 **Title to Units**

Subject to clause 4.8, the Manager need only recognise a Unitholder and the Unitholder's executors or administrators as the legal owner of the Units in respect of which the Unitholder is registered. The Manager is not, except as otherwise provided in this Constitution or by statute or as ordered by a court of competent jurisdiction,

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bound to take notice of any trust or equity whether express, implied or constructive, or of any other interest affecting the ownership of any unit or the rights incidental to the ownership of a unit.

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4.6 Foreign Ownership of Land Register Act 1988

In this clause 'Foreign Person' has the meaning given to that term in the *Foreign Ownership of Land Register Act 1988* ('Act') and for the purpose of enabling the Manager to comply with that Act:

- (a) an Applicant, or transferee named in a transfer of Units, must advise the Manager if it is a Foreign Person;
- (b) a Unitholder must advise the Manager in writing immediately they become or cease to be a Foreign Person; and
- (c) an Applicant, a transferee named in a transfer of Units, and a Unitholder must within 5 Business Days comply with a request in writing by the Manager for information required by the Manager for the purposes of the Act.

4.7 Unitholder to Inform Manager of Charge

Any Unitholder who provides its Units as security for any loan, whether by way of mortgage, charge or any other security, must give to the Manager sufficient details of the identity of the mortgagee and the number of Units affected for the Manager to make an entry on the Register under clause 4.8.

4.8 Mortgage of Units

- (a) The Manager will on receiving a notice under clause 4.7 record in the Register against the Units specified the details contained in the notice and, upon the mortgagee so directing in writing, the Manager will recognise the mortgagee to the exclusion of the Unitholder as the person entitled to exercise all of the rights of the Unitholder under this Constitution.

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- (b) A mortgagee whose details have been registered and who has given a written direction to the Manager under this clause, will be required to give a good and sufficient discharge to the Manager for any moneys paid to it.

5. RESPONSIBILITIES, POWERS AND DUTIES OF MANAGER

5.1 Powers of the Manager (Section 601 GA(1)(b) and 601 GA(3))

- (a) Subject to the provisions of this Constitution and the Law, the Manager has absolute and uncontrolled discretion as to the exercise of its powers, authorities and duties, in relation to the manner, mode and time of exercise of those powers, authorities and duties.
- (b) The Manager has all the powers and responsibilities of a natural person and a body corporate, including the power to invest and to borrow or raise money for the purpose of the Trust and on security of the Assets of the Trust Fund.
- (c) Without limiting the generality of paragraph 5.1(b), the Manager has the power to enter into, grant, acquire, participate in or deal with in any manner (including for the purpose of risk management, enhancing investment return or substitution for physical holdings) any financial arrangement including without limitation any interest rate cap/collar/floor agreement, interest rate swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, futures contract or any other like contract and any hedging, swapping or like arrangement whether or not related to any other property forming part of the Trust Fund and including any instrument under which a right or option in respect of a financial arrangement may be exercised.

5.2 Power to Appoint Agent (Section 601FB(2))

- (a) The Manager has the power to appoint an agent, or otherwise engage or appoint a person including, without limitation, appointing a third party custodian to hold the Assets of the Trust Fund, to do anything that it is authorised to do in connection with the Trust Fund.
- (b) For the purpose of determining whether:
 - (i) there is a liability to the Unitholders; or

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- (ii) the Manager has properly performed its duties for the purposes of section 601GA(2) of the Law;

the Manager is taken to have done (or failed to do) anything that the agent or person has done (or failed to do) because of the appointment or engagement, even if the agent or person was acting fraudulently or outside the scope of their authority or engagement.

5.3 Authority for Agent (Section 601FB(3))

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

- (a) the agent or person referred to in clause 5.2; or
- (b) a person who is taken under this clause to be an agent of the Manager to do anything that the Manager is authorised to do in connection with the Trust Fund,

is taken to be an agent or person engaged or appointed by the Manager to do that thing for the purposes of clause 5.2.

5.4 Liability of Agent (Section 601FB(4))

If:

- (a) an agent or person holds any Assets of the Trust Fund on behalf of the Manager; and
- (b) the agent or person is liable to indemnify the Manager against any loss or damage that:
 - (i) the Manager suffers as a result of a wrongful or negligent act or omission of the agent or person; and
 - (ii) relates to a failure by the Manager to perform its duties in relation to the Trust Fund;

then any amount recovered under the indemnity forms part of the Assets of the Trust Fund.

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5.5 Duties of Manager (Section 601FC)

Except as otherwise provided for under the Law as modified by any Relief, in exercising its powers and carrying out its duties, the Manager must:

- (a) act bona fide in the interests of the Unitholders of the Trust as a whole;
- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the Manager's position;
- (c) act in the best interests of the Unitholders and, if there is a conflict between the Unitholders' interests and the Manager's own interests, give priority to the Unitholders' interests;
- (d) treat the Unitholders who hold Units of the same class equally and Unitholders who hold Units of different classes fairly;
- (e) not make use of information acquired through being the Manager in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the Unitholders of the Trust;
- (f) ensure that the Constitution meets the requirements of Sections 601GA and 601GB of the Law;
- (g) ensure that the Compliance Plan meets the requirements of Section 601HA of the Law;
- (h) comply with the Compliance Plan;
- (i) ensure that the Assets of the Trust Fund are:
 - (i) clearly identified as Assets of the Trust Fund; and
 - (ii) held separately from property of the Manager, and property of any other managed investments scheme;

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- (j) ensure that the Assets of the Trust Fund are valued at regular intervals appropriate to the nature of the Assets;
- (k) ensure that all payments out of the Assets of the Trust Fund are made in accordance with the Constitution and the Law;
- (l) report to the Commission any breach of the Law by the Manager that:
 - (i) relates to the Trust; and
 - (ii) has had, or is likely to have a materially adverse effect on the interests of Unitholders;as soon as practicable after the Manager becomes aware of the breach; and
- (m) carry out or comply with any other duty, not inconsistent with the Law, that is conferred on the Manager by the Constitution.

6. DUTIES OF UNITHOLDERS

6.1 Duties of Unitholders (Section 601FD(1))

The Applicants to the Trust must comply with this Constitution and the Law.

7. INDEMNITIES AND REIMBURSEMENTS OF EXPENSES (Section 601GA)

7.1 Indemnity

The Manager is indemnified out of the Assets of the Trust Fund for all debts, liabilities, damages, costs, Taxes, charges, expenses and Outgoings reasonably and properly incurred by it in the proper performance of its functions and duties and exercising its powers under this Constitution or at law, except in the case of debts, liabilities, damages, costs, Taxes, charges, expenses or Outgoings incurred or payable in respect of or as a result of gross neglect, deceit or a material breach of covenant of the Manager.

7.2 Limitation of liability

Subject to any contrary provision in the Law (and except in the case of gross neglect,

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fraud, deceit or material breach of covenant), the Manager will not be liable to account to nor to indemnify the Trust Fund or Unitholder or person claiming under or on behalf of a Unitholder, for anything done in good faith in the performance of its functions and duties and the exercise of its powers under this Constitution or at law including:

- (a) a failure to perform or do an act or thing which or the Manager is hindered, prevented or forbidden from doing or performing by reason of any present or future law (statutory or otherwise);
- (b) payments made by the Manager in good faith to a duly empowered fiscal authority of the Commonwealth, a State or Territory for Taxes or other charges on the Trust Fund, an Authorised Investment or a Certificate, or with respect to any transaction reasonably and properly entered into under this Constitution, although the payment as a matter of law ought or need not have been made;
- (c) anything done in good faith relying upon advice from an Expert instructed or appointed by the Manager and independent of the Manager; or
- (d) anything done in good faith by the Manager in respect of a transfer form, Application or notice on which there is a forged signature or inaccurate details provided that there were at the time of the doing of the act, matter or thing no reasonable grounds to believe that the signature or detail was not genuine or accurate.

7.3 Further Limitation of Liability of the Manager

Subject to any contrary provision in the Law (and except in the case of gross neglect, fraud, deceit or material breach of covenant), the Manager is not liable to Unitholders to any extent greater than the extent of the Assets of the Trust Fund vested in the Manager or received and/or held by it in accordance with the provisions of this Constitution.

7.4 Transactions Involving the Trust Fund

The Manager is entitled, in any capacity other than as Manager of the Trust, to contract with Unitholders, the Trust or any Authorised Investment or any property

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proposed to be acquired as an Asset of the Trust Fund, without any liability to account to the Unitholders of the Trust Fund only if:

- (a) the transaction is not in breach of any covenant contained in this Constitution;
and
- (b) the Manager acts in the transaction with good faith to the Unitholders.

7.5 Further Indemnity

If the Manager acquires an asset the holding of which exposes or may expose the Manager to personal liability or if the Manager enters into any contract, credit facility or other transaction on behalf of the Trust which exposes or may expose the Manager to any personal liability, the Manager has a right of indemnity out of the Assets of the Trust Fund in respect of that liability.

7.6 General Compliance Related Party Transactions

The Manager must comply with Part 5C.7 of the Law in respect of all Related Party transactions.

7.7 Prohibited Financial Benefits to Manager and Related Party

- (a) The Manager must not give a financial benefit:
 - (i) to itself, or to Related Party, out of the Assets of the Trust Fund; or
 - (ii) that could diminish or endanger the Assets of the Trust Fund;unless Division 2 or 3 of Part 2E.1 as amended by sections 601 LA to 601 LE of the Law (including as modified by any applicable Relief) permits the benefit to be given.
- (b) A child entity of the Manager must not give a financial benefit:
 - (i) to itself, to the Manager or to a Related Party of the Manager, out of the Assets of the Trust Fund; or
 - (ii) that could diminish or endanger the Assets of the Trust Fund;

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unless Division 2 or 3 of Part 2E.1 as amended by sections 601 LA to 601 LE of the Law (including as modified by any applicable Relief) permits the benefit to be given.

- (c) Paragraphs (a) and (b) do not prevent the Manager from paying itself fees, and exercising rights to an indemnity, to which it is entitled in accordance with this Constitution or at law.

7.8 Dealings by the Manager

Nothing in this Constitution prevents the Manager or its Associates from being a Unitholder.

7.9 Manager Expenses

The Manager will be paid or reimbursed on a full indemnity basis out of the Assets of the Trust Fund for all expenses and liabilities which the Manager may incur in connection with the Trust or in performing its obligations or exercising its powers under the Constitution including but not limited to the following:

- (a) all costs, charges and expenses incurred in connection with the acquisition or proposed acquisition, maintenance, improvement, custody, transfer, financing, proposed disposal or disposal of or any other dealing with the Assets or any assets proposed to be acquired, including commissions, procurement fees, brokerage, legal fees, Bank charges, stamp duty and due diligence expenses;
- (b) the fees and expenses of the Auditors or any other auditor appointed by ASIC to audit the Trust including any audit of the Register and any reasonable expenses of the auditor sustained in the course of the performance of the duty of auditor and the provision of taxation advice and the fees, if any, charged by a registered tax agent for preparation and lodgement of taxation returns;
- (c) stamp duty on cheques;
- (d) all costs, charges and expenses incurred in connection with the borrowing of money on behalf of the Trust or in connection with the Assets including stamp duty, establishment fees, legal fees and interest together with discount and

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acceptance fees in respect of bill facilities;

- (e) all Taxes (save those payable in respect of the income (as determined by, or recognised in accordance with, generally accepted accounting principles) of the Manager) whether payable or which may become payable in respect of the Trust;
- (f) fees and charges of any regulatory authority including, without limitation, local government, titles office, stamps office and the ASIC;
- (g) fees and expenses of any Approved Valuer and of any Expert from time to time employed by the Manager in the discharge of its duties under this Constitution but no reimbursement of the fees and expenses of such Expert will be paid from the Trust where such expert is appointed to perform the functions of the Manager;
- (h) all costs, charges and expenses of and incidental to the preparation, execution and stamping of any deeds supplemental hereto;
- (i) the costs of convening and holding any meeting of Unitholders;
- (j) costs of printing, postage and other fees in respect of all electronic transfers or cheques, accounts, distribution statements, notices and other documents posted to all or any Unitholders in accordance with provisions of this Constitution including envelopes enclosing same;
- (k) all costs charges and expenses incurred in relation to the preparation, and the distribution of any periodical or other report or document required by law to be prepared in respect of the Trust or prepared by the Manager in good faith in respect of the Trust;
- (l) expenses in connection with the keeping and maintaining of financial records and registers (including the Register);
- (m) all agents' fees and expenses;
- (n) any monies advanced by the Manager (or any other person) to secure the Assets including option fees and deposits;

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- (o) costs and disbursements incurred by or on behalf of the Manager in connection with the retirement of or the appointment of a substitute responsible entity or agent;
- (p) all costs, charges and expenses and disbursements paid or payable by the Manager to any third party custodian appointed by the Manager to hold the Assets of the Trust Fund;
- (q) costs and disbursements incurred by the Manager in the initiation, conduct and settlement of any court proceedings to enforce any provisions of the Constitution;
- (r) insurance premiums involved in insuring any Asset of the Trust Fund;
- (s) costs and disbursements incurred in the preparation and lodgement of returns under the Law or any other statute;
- (t) costs of acquiring, establishing and developing computer software systems required for the administration of the Trust;
- (u) all other costs and disbursements and Outgoings in connection with the management and administration of the Assets of the Trust Fund and the performance of the functions and duties of the Manager under the Constitution;
- (v) all costs, charges and expenses (including legal, accounting, tax, financial and other services) of establishing the Trust including all costs of preparation, execution and stamping of this Constitution and any constitution supplemental thereto and including the preparation, due diligence, registration, promotion and distribution of a Disclosure Document and the preparation, registration, distribution, due diligence and promotion of any other document prepared in respect of the Constitution or the Trust;
- (w) the fees and expenses of the compliance committee of the Trust, including premiums for any liability insurance for the members of the compliance committee;
- (x) all fees and expenses in connection with any audit of the Compliance Plan, in connection with compliance education and training and the costs of

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- membership of any compliance organisations;
- (y) the cost of all insurances effected in connection with the Trust and the Assets including the proportion of any premiums for all insurances which the Manager is required by law to hold and any directors and Officers insurance which the Manager effects;
- (z) all costs and expenses (including legal, accounting, tax, financial and other) in connection with:
 - (i) preparing and dealing with Applications for the transfer or transmission of Units;
 - (ii) joining and maintaining membership of the ASX, APX or any other exchange for Units determined by the Manager; and
 - (iii) applying to have the Units listed on ASX, including without limitation application fees payable, costs of preparation of any Disclosure Document required, convening any Unitholders' meeting (if any), amending the Constitution (if required) and any printing, advertising and promotion expenses incurred in relation thereto;
- (aa) any underwriting fees in respect of the issue of any Units and any other costs incurred in connection with any issue of Units including underwriting fees and other costs payable to the Manager as consideration for the Manager's subscribing for any shortfall of Units under an offer as set out in a Disclosure Document; and
- (bb) all costs and expenses incurred in or in connection with the implementation of the provisions of the Law relating to collective investment schemes or complying with any other legal requirement in respect of the Trust including, without limitation, fees and penalties payable to ASIC or other statutory, regulatory or industry body (including any complaints resolution body) in respect of the Trust.

8. ASSETS AND INVESTMENT

8.1 Assets and Investments

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- (a) The principal investment policy of the Manager in relation to the Trust is investment in real property in Australia other than residential property and the making of such other investments with the Assets which in the Manager's opinion are from time to time required for the purpose.
- (b) The Manager must keep an Asset Register containing the information in relation to the Assets that the Manager considers necessary or desirable.

8.2 Valuation of Assets

- (a) The Manager must record in the Asset Register the most recent valuation of an Asset. Subject to an applicable law, the value of an Asset will be the current market Value of that Asset determined having regard to an applicable law, the nature and characteristics of the Asset and the market for that Asset at the time of valuation and the basis of that determination.
- (b) The valuation of an Asset will be made at a time the Manager considers necessary or desirable but must be made every 2 years on or about 30 June in each Year except where a real property Asset is acquired after 1 January in any Year in which case the valuation will not be required until 30 June in the third year following acquisition excluding the Financial Year in which the acquisition occurred. The valuation may be made by an approved valuer or other advisor appointed by the Manager or by the Manager itself where in its reasonable opinion it is not necessary for a valuer to value the Asset.

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9. INCOME OF THE TRUST

9.1 Manager to Collect Income

The Manager or the Custodian (whichever the case may be) will collect, receive and get in the income (as determined by, or recognised in accordance with, generally accepted accounting principles) of the Trust Fund and pay it into the operating accounts of the Trust Fund. The Manager will (or direct the Custodian to) make all payments relating to the Trust Fund from its operating accounts.

9.2 Distribution Period

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The Distribution Period for the Trust is either:

- (a) that period ending on the last day of each calendar quarter in each Year; or
- (b) such other period nominated by the Manager from time to time.

9.3 Capital or Income

Subject to any express provisions in this Constitution to the contrary, if any question arises as to whether any Asset constitutes Income or capital the same will be determined by the Manager in consultation with the Auditor in accordance with this Constitution and having regard to generally accepted accounting principles and to any provisions of the Tax Act which operate to treat receipts and dispositions otherwise than in accordance with generally accepted accounting principles and if any question arises as to whether any expense is chargeable against Income or capital (or at all) such question will be determined in accordance with this Constitution. If any dispute under this clause arises between the Manager and the Auditor the decision of the Manager will be final.

9.4 Determination of Distributable Amount

The Distributable Amount for a Distribution Period or any other period will be such amount as the Manager determines. If for a period ending on the last day of a Financial Year, the Manager has not made a determination for the purpose of this clause 9.4, then the Distributable Amount of the Trust Fund for the relevant period will be the Net Income of the Trust Fund for that period.

9.5 Apportionment and Distribution of Amount Categories

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

9.6 Income Equalisation Reserve

The Manager may withhold from distribution to Unitholders during a Distribution Period an amount which the Manager considers is necessary to minimise variability in Distributable Amounts over Distribution Periods. The Manager will keep the Auditor informed of all amounts that are withheld under this clause and will hold such monies

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to the credit of a reserve created for the purpose. Any income (as determined by, or recognised in accordance with, generally accepted accounting principles) earned from investment of the reserve will form part of the Trust Fund.

9.7 Time for Distribution of Distributable Amount Distributions

The Distributable Amount for a Distribution Period must be distributed by the Manager to Unitholders no later than the date nominated pursuant to clause 9.2.

9.8 Income Entitlement

The Distributable Amount for any Distribution Period, after payment of all Taxes and all other payments permitted or required under this Constitution and the Law, will be distributed to Unitholders registered at the record date for the the Distribution Period to which the distribution relates, in proportion to the number of Units held in the Trust at that date to all Units on issue . Subject to the terms of any issue and clause 33, where a Unit is created during a Distribution Period, that Unit participates in the Distributable Amount in respect of that Distribution Period in the proportion that the part of the Distribution Period (calculated in days) for which the Unit ranks for distribution of Distributable Amount bears to the total number of days in the Distribution Period.

9.9 Present Entitlement to Distributable Amount of the Trust

Persons registered as Unitholders at midnight on the last day of each Distribution Period are presently entitled (within the meaning of the Tax Act) to the Distributable Amount in accordance with clause 9.8 for that Distribution Period. The Unitholders registered at midnight on the last day of each Financial Year, are presently entitled to a share of the Net Income derived during the Financial Year not previously distributed in the proportion of the number of Units held to the number of Units in the Trust on issue.

9.10 Distributions of Income or Capital

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

9.11 Re-Investment of Income

- (a) A Unitholder is entitled if the right of reinvestment of income has been offered

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under a Disclosure Document or by notice in writing to all Unitholders or both by giving notice to the manager (in the form determined by the Manager from time to time) to request that the Manager retain and reinvest in Units the monies or part of the monies the Unitholder is entitled to receive under any distribution.

- (b) A Unitholder may by notice in writing to the Manager (in the form determined by the Manager from time to time) received not later than the last day of the relevant Distribution Period (or such later time as determined by the Manager) cancel any notice given under the proceeding paragraph. The Unitholder is entitled to give a further notice under the proceeding paragraph at any time in respect of any subsequent Distribution Period provided that the Manager has not previously cancelled the right of reinvestment of income.
- (c) The Manager may by notice in writing to all Unitholders, posted or otherwise sent on or before the last day of any relevant Distribution Period, cancel any right of reinvestment of income. The Manager may at any time and from time to time reoffer the right of reinvestment of income to all Unitholders by notice in writing of the Disclosure Document or both.
- (d) In the event that a notice for the reinvestment of income has been given to the Manager by a Unitholder not later than the last day of the relevant Distribution Period and has not been cancelled by the Unitholder, the Manager is entitled, but not obliged, out of any monies to be distributed to the relevant Unitholder in respect of the relevant Distribution Period to retain all or part of the amounts specified in accordance with the notice and reinvest those monies on behalf of the Unitholder in Units.
- (e) If the amount to be reinvested in Units results in a fraction of a Unit, the monies representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Unitholder unless the Unitholder cancels the relevant notice in which case the monies representing the fraction is to be paid to the Unitholder as part of the Unitholder's distribution in respect of the Distribution Period current at the date of cancellation.
- (f) Whenever under this Constitution or by law, monies are held on behalf of the Unitholder for future reinvestment, the monies so held may be aggregated and when sufficient for the purpose the aggregated amount will be applied on the purchase of new Units for issue to the Unitholder in accordance with this

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clause.

- (g) Where a Unitholder has made a request for reinvestment, the Unitholder is to be provided by the Manager with a notice that the whole or part of the distribution to which the Unitholder would otherwise have been entitled has been reinvested on the Unitholder's behalf and the amount of any Tax withheld by the Manager. The notice is to be given by the Manager upon the issue of the Units.
- (h) The Units will be deemed to be issued on a date determined by the Manager.
- (i) For all purposes the Net Income to be distributed to the Unitholder is deemed to have been received by the Unitholder on a reinvestment of that income in Units under the terms of this clause.

10. TERMINATION OF THE TRUST

10.1 Termination of the Trust

(a) Manager to ensure Termination

The Manager must ensure that the Trust is terminated in accordance with this Constitution and any orders under subsection 601NF(2) of the Law if:

- (i) the Unitholders pass an Extraordinary Resolution directing the Manager to terminate the Trust; or
 - (ii) pursuant to clause 10.3 and/or subsection 601NF(2), the Court makes an order directing the Manager to terminate the Trust; or
 - (iii) the Unitholders pass an Extraordinary Resolution to remove the Manager but do not, at the same meeting, pass an Extraordinary Resolution choosing a company to be the new responsible entity that consents to becoming the Trust's responsible entity.
- (b) No Units may be issued after the 80th anniversary of the Commencement Date if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity.

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10.2 **Termination If Trust's Purpose Accomplished or Cannot Be Accomplished**

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(a) **Manager May Terminate Trust**

If the Manager considers that the purpose of the Trust:

- (i) has been accomplished; or
- (ii) cannot be accomplished

it may take steps to terminate the Trust in accordance with sub-clauses 10.2(b) and 10.2(c).

(b) **Notice of Proposal to Terminate**

The Manager must give to the Unitholders and to ASIC a notice in writing:

- (i) explaining the proposal to terminate the Trust, including explaining how the Trust's purpose has been accomplished or why that purpose cannot be accomplished;
- (ii) informing the Unitholders of their rights to take action under Division 1 of Part 2G.4 for the calling of a Unitholders' meeting to consider the proposed termination of the Trust and to vote on any Extraordinary Resolution Unitholders proposed about the termination of the Trust; and
- (iii) informing the Unitholders that the Manager is permitted to terminate the Trust unless a meeting is called to consider the proposed termination of the Trust within 28 days of the Manager giving notice to the Unitholders.

(c) **Where No Meeting Called**

If no meeting is called within that 28 days to consider the proposed termination the Manager may terminate the Trust.

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10.3 Termination by Order of the Court

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(a) Court Order

The Court may, by order, direct the Manager of the Trust to terminate the Trust if:

- (i) the Court thinks it is just and equitable to make the order; or
- (ii) within 3 months before the application for the order was made, execution or other process was issued on a judgment, decree or order obtained in a court (whether an Australian court or not) in favour of a creditor of, and against the Manager in its capacity as the Trust's Manager and the execution process has been returned unsatisfied.

(b) Application to Court

An order based on sub-clause 10.3(a)(i) may be made on the application of the Manager, a director of the Manager, a Unitholder or ASIC.

(c) Application by Creditor

An order based on sub-clause 10.3(a)(ii) may be made on the application of a creditor of the Manager in its capacity as the Trust's responsible entity.

10.4 Other Orders About Termination

The Manager or a director of the Manager, or a Unitholder or ASIC may make an application to the Court under subsection 601NF(1) or subsection 601NF(2) of the Law in respect of terminating the Trust.

10.5 Termination Before Contracting or Acquiring Real Property Assets

If the Trust is required to be terminated prior to the acquisition of any real property Assets, then the Manager must:

- (a) calculate interest accrued on money held in the Application Account to the credit of each of the Unitholders (if any);

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- (b) deduct expenses paid or payable which are able to be deducted under this Constitution (if any); and
- (c) distribute the balance money in the Application Account to each of the Unitholders directly in proportion to their Application Monies paid plus interest attributable to each of the Unitholders (if any), within 14 days of the termination.

10.6 Termination After Acquiring Real Property Assets

If the Trust is required to be terminated after real property Assets have been acquired, then the Manager must realise the Assets and in doing so must do each of the following (according to priorities at law in respect of secured or unsecured liabilities of the Trust and not necessarily in the order set out below).

- (a) not accept any Application for Units or issue any Units;
- (b) call in and sell the Assets;
- (c) apply the Assets, or their proceeds, to pay any Liabilities and expenses of the Trust;
- (d) retain whatever part the Manager reasonably thinks appropriate of the Assets or their proceeds for contingent or prospective expenses and Liabilities of the Trust;
- (e) distribute any remaining Assets or their proceeds to Unitholders of the Trust pro rata to their holding of Units at the date of termination of the Trust or a later date selected by the Manager;
- (f) defer termination of the Trust in accordance with its rights and obligations under this clause; and
- (g) with the final distribution to Unitholders on termination of the Trust send to Unitholders a copy of the audit report prepared by a registered company auditor in accordance with clause 10.7.

10.7 Audit of Final Accounts After Termination

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After the Trust is terminated, the Manager must engage a registered company auditor to conduct an independent audit of the final accounts of the Trust. The audit must be conducted in accordance with Division 3 of Part 2M.3 of Chapter 2M of the Law and must provide an auditor's report.

10.8 Unclaimed Money

If, on completion of the termination of the Trust, the Manager has in its possession or under its control any unclaimed or undistributed monies or Assets that were part of the Trust's income (as determined by, or recognised in accordance with, generally accepted accounting principles) and Assets the Manager must, as soon as practical, pay the monies or transfer the Assets to ASIC to be dealt with under Part 9.7 of the Law.

10.9 Manager's Decision Final and Binding

The decision of the Manager as to the amount available to be distributed to Unitholders is final and binding upon all Unitholders.

10.10 Fees to the Manager

All fees and expenses to which the Manager is entitled continue to accrue and to be payable to it until its duties and responsibilities under this Constitution finally come to an end.

11. SALE OF THE PROPERTY

11.1 Method

If the Trust is required to be terminated in accordance with the provisions set out in clause 10, the Assets must be sold by the Manager on behalf of the Unitholders. The Manager will arrange for the marketing of the Assets in the manner which in the reasonable opinion of the Manager, will achieve the best possible sale price for the Assets. The Manager shall market and attempt to sell the Assets as soon as reasonably practicable having regard to the nature of the Assets to be sold and the market conditions which prevail at the time.

11.2 Manager may Postpone Sale

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The Manager may postpone the sale calling in and conversion of any part of the Assets and hence the termination of the Trust for such time as it thinks it is desirable to do so in the interests of the Unitholders and shall not be responsible for any loss attributable to such postponement.

12. TRANSFER OR TRANSMISSION OF UNITS

12.1 Transfer

Subject to this Constitution and the ASTC Settlement Rules in respect of an ASTC-regulated Transfer, a Holder may only transfer Units in the manner the Manager from time to time prescribes.

12.1A Acceptance of transfers

- (a) Subject to the Listing Rules and this Constitution, the Manager may, in its absolute discretion, refuse to register any transfer of Units that are Officially Quoted.
- (b) The Manager is not obliged to register a transfer of Units that are not Officially Quoted where:
 - (i) the transferee does not meet the Manager's criteria for a Holder;
 - (ii) the transfer is not duly stamped (where required) or otherwise is inconsistent with the form of transfer prescribed by the Manager; or
 - (iii) any amount payable by the transferee to the Manager in respect any of the transferor's Units remains unpaid.
- (c) While Stapling applies, a transfer of a Unit will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this **clause 12**, the transfer relates to or is accompanied by a transfer or a copy of a transfer for each of the corresponding Attached Securities to which the Unit is Stapled in favour of the same transferee.
- (d) Subject to the ASTC Settlement Rules and the ASX Listing Rules, while Stapling applies, the Manager must not register a transfer of a Unit unless the relevant Attached Securities are also to be transferred, or is capable of transfer, simultaneously.
- (e) A person who attempts to transfer a Unit which is not accompanied by the transfers referred to in clause 12.1A(c) or a copy of such a transfer for the relevant Attached Securities to which a Unit is Stapled will:

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- (i) be taken to authorise the Manager as agent for the transferor to effect a transfer of the relevant Attached Securities in accordance with the constitutions of each other Stapled Entity, to the same transferee; and
- (ii) cause all rights to distributions attached to that Unit to be suspended until the transfers referred to in clause 12.1A(c) relating to the other Attached Securities is also provided.

12.1B Refusal to register

- (a) The Manager must:
 - (i) except as permitted by ASX, refuse to register any transfer of Units or other securities which are Restricted Securities if that transfer is or might be in breach of the ASX Listing Rules or any restriction agreement entered into by the Manager under the ASX Listing Rules in relation to the Units; and
 - (ii) refuse to register any transfer where the Manager is required to do so by the ASX Listing Rules.
- (b) Despite clauses 12.1A(a) and 12.1B(a), the Manager must not refuse or fail to register or give effect to, or delay or in any way interfere with, a Proper ASTC Transfer of Units or other securities quoted by ASX.
- (c) If a person has lodged a transfer which the Manager has refused to register, the Manager must, within five Business Days after the date of lodgement, give to the lodging person written notice of the refusal and the reasons for it.
- (d) Subject to clause 12.1B(b), Restricted Securities cannot be disposed of during the escrow period except as permitted by the ASX Listing Rules or ASX. The Manager will refuse to acknowledge a disposal of Restricted Securities to the extent required under the ASX Listing Rules.

12.1C Electronic settlement

- (a) The Manager may in relation to the Trust participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Law, the ASX Listing Rules and the Operating Rules of a Prescribed CS Facility, or corresponding laws or securities exchange rules in any other country.
- (b) If the Manager in relation to the Trust participates in a system of the kind described in clause 12.1C(a), then despite any other provision of this Constitution:

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- (i) Units may be transferred, and transfers may be registered, in any manner required or permitted by any one or more of the ASX Listing Rules, or the Operating Rules of a Prescribed CS Facility, as applicable (or corresponding laws or securities exchange rules in any other country) applying in relation to the system;
- (ii) the Manager must, in relation to the Trust, comply with and give effect to those rules; and
- (iii) the Manager may, in accordance with those rules, decline to issue certificates for holdings of Units that are Officially Quoted (whether as part of a Stapled Security or otherwise).

12.1D Transfer instruments

- (a) A written transfer instrument must be:
 - (i) executed by the transferor or (where the Law permits) stamped by the transferor's broker;
 - (ii) unless the Manager decides otherwise in the case of a fully paid Unit, executed by the transferee or (where the Law permits) stamped by the transferee's broker; and
 - (iii) in the case of a transfer of partly paid Units, endorsed or accompanied by an instrument executed by the transferee or by the transferee's broker to the effect that the transferee agrees to accept the Units subject to the terms and conditions on which the transferor held them, to become a Holder and to be bound by the Constitution.
- (b) Subject to the Law, the written transfer instrument may comprise more than one document.

12.1E Timing of transfer

Except as required by the CS Facility Rules a:

- (a) transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units; and
- (b) transfer of Units does not pass the right to any distributions on the Units until such registration.

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12.2 Transmission

Subject to the provisions of this Constitution:

- (a) in the case of the death of any Unitholder the survivor or survivors (where the deceased was a joint holder) or the executors or administrators (where the deceased was the sole holder) are the only persons recognised by the Manager as having any title to or interest in the Units registered in the deceased's name;
- (b) any person becoming entitled to any Units in consequence of the death or bankruptcy of a Unitholder may upon:
 - (i) producing to the Manager evidence of the capacity in which they propose to act under the provisions of this clause or of their title to the Units as the Manager deems sufficient; and
 - (ii) in the case of the death of the Unitholder, producing to the Manager evidence of payment of any duties the Manager may require,be registered as the holder of the Units ;
- (c) any person becoming entitled to any Units because of the death or bankruptcy of a Unitholder may give a good and sufficient discharge to the Manager for any money paid to them but are not entitled to receive notices of or to attend or vote at any meetings of Unitholders until they have become registered as a Unitholder in respect of such Units.

12.3 Redemption of Units

- (a) Subject to the Law and this Constitution, the Manager is entitled, but not obliged, to redeem Units whether the Trust is Liquid or not Liquid. Redemption of any Unit will only be available to a Unitholder where redemption has been offered to the Unitholder under a Disclosure Document through which the Unitholder applies for Units and the Unitholder consents to the redemption taking place.
- (b) The Manager will only redeem all of a Unitholder's Units:

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- (i) if the Trust is Liquid, if the redemption is made in accordance with the terms offered in the Disclosure Document and as otherwise required;
 - (ii) if the Trust is not Liquid, if the redemption is made in accordance with the provisions of this Constitution and Part 5C of the Law:-
- (c) The Manager must make a determination as to whether the Trust is Liquid or not Liquid prior to conducting any redemption. In making this determination the period for satisfying withdrawal requests as contemplated by section 601KA(4) of the Law must not be less than the minimum required under the Law (presently being 21 days after the redemption offer is made) nor longer than 3 months.
- (d) If the Manager determines that the Trust is not Liquid, then:-
 - (i) The Manager may make an offer in writing to all Unitholders to redeem their Units in the Trust specifying the number of Units proposed to be redeemed, the amount or the proceeds which the Manager proposes that the Unitholders receive from the redemption and the other terms of the offer;
 - (ii) The offer and any redemption must be made and conducted in accordance with this clause and Part 5C of the Law (in particular sections 601KB to 601KE); and
 - (iii) The Manager may upon acceptance by a Unitholder of its offer then redeem the Units in question, subject to compliance with Part 5C of the Law (in particular sections 601KB to 601KE).
- (e) The Manager will cancel Units which have been redeemed and will record the cancellation in the Register.
- (f) To fund the redemption of Units, the Manager may:
 - (i) apply cash which the Manager has procured from Applicants pursuant to Applications for Units received under a Disclosure Document which has been issued for a purpose which includes the redemption of those Units;

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- (ii) apply or realise part of the Assets;
- (iii) obtain Debt Funding or other financial accommodation; or
- (iv) satisfy the amount payable in respect of the redemption wholly or in part by the transfer of Assets at their Value. Any expenses incurred by the Trust in respect of the transfer must be paid by the Unitholder,

or any combination of the above.

- (g) Unless the Manager otherwise determines, the amount paid on a redemption of a Unit, paid to a Unitholder will comprise capital only. The Manager may however determine in its discretion that the amount so paid will include any Net Income which the Manager has deemed will be available to be distributed to Unitholders in the Distribution Period in which the redemption occurs.
- (h) The Manager may repurchase Units out of its own funds and any Units repurchased by the Manager will remain in existence and may be sold by the Manager.
- (i) The Manager is not under any obligation to redeem Units.

12.4 Buy Back

The Manager may buy back interests in the Trust (including Units) in accordance with this Constitution and any requirements set out in the Law and any applicable Relief.

13. UNITHOLDERS' REGISTER

13.1 Unitholders' Register

The Manager covenants that it will keep and maintain an up-to-date Register in such form and containing such particulars as are required by the Law or any declaration, exemption or ruling granted or made thereunder, and such other particulars as the Manager may from time to time consider appropriate.

13.2 Details on Register

Subject to clause 13.1, there will be entered in the Register:

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- (a) the names and addresses of the Unitholders from time to time;
- (b) the Units (including the monetary value of each unit) from time to time held by each Unitholder;
- (c) the date on which the name of each Unitholder was entered in the Register in respect of their Units; and
- (d) the date on which any person ceased to be the holder of Units.

13.3 Expunging Information

The information relating to a Unitholder (or any of it) may be expunged from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Unitholder ceased to be the holder of any Units.

13.4 Inspection of Register

The Manager need not allow inspection of the Register or any part thereof by any person except where:

- (a) the person seeking inspection is a Unitholder or representative of a Unitholder and the inspection relates to that part of the Register that contains particulars of the Unitholder's Units relevant to that person; or
- (b) the person provides to the Manager a written undertaking duly signed by the person and to the effect that inspection of the Register will not be used for any purpose other than the purpose of:
 - (i) calling a meeting of Unitholders;
 - (ii) seeking to acquire the Unitholders' Units;
 - (iii) notifying a Unitholder of a matter relating to the carrying out by the Manager of its functions and duties under the provisions of the Law or this Constitution;
 - (iv) undertaking bona fide research or statistical analysis; or

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- (v) any other purpose approved in writing by ASIC.

13.5 Copies of Register

- (a) If any person has the right to inspect the Register then that person also has the right to obtain copies of those parts of the Register inspected. The costs of copying and handling will be a rate set by the Manager and shall not exceed \$2.50 per page.
- (b) Clause 13.4 does not require the Manager to make available or provide copies of the Register in excess of its obligations to do so under the Law having regard to any declaration or exemption made or given by ASIC.

13.6 Closure of Register

The Manager may close the Register or part of the Register for any time or times but so that no part of the Register may be closed for more than 30 days in the aggregate in each calendar year.

13.7 Change of Unitholder Details

Each Unitholder will give the Manager notice of any change of name or address on the part of such Unitholder and the Manager, upon receiving such notification, will alter the Register accordingly.

14. UNITHOLDER MEETINGS (PART 2G.4)

14.1 Managers Power to call Unitholder Meeting (Section 252A)

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

14.2 Unitholders power to call a meeting (Section 252B)

- (a) The Manager must call and arrange to hold a meeting of the Unitholders to consider and vote on a proposed Special or Extraordinary Resolution on the request of:
 - (i) Unitholders with at least 5% of the votes that may be cast on the

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resolution; or

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

14.3 Failure of Manager to call meeting of the Unitholders (Section 252C)

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- (a) Unitholders with more than 50% of the votes carried by Units held by the Unitholders who make a request under section 252B of the Law may call and arrange to hold a meeting of the Unitholders and distribute the statement (if any) if the Manager does not do so within 21 days after the request is given to the Manager.
- (b) The meeting must be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the Unitholders may be called by the Manager and information is distributed to Unitholders by the Manager. The meeting must be held no later than 3 months after the request is given to the Manager.
- (c) To call the meeting the Unitholders requesting the meeting may ask the Manager for a copy of the Register. The Manager must give the Unitholders requesting the meeting the copy of the Register without charge.
- (d) The Manager must pay the reasonable expenses the Unitholders incurred because the Manager failed to call and arrange to hold the meeting and to make the distribution (if any). The Manager must not pay or be reimbursed those expenses from the Assets of the Trust Fund.

14.4 Calling of meetings of Unitholders by Unitholders (Section 252D)

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

15. HOW TO CALL MEETINGS OF UNITHOLDERS

15.1 Notice of meetings (Section 252F)

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At least 21 days notice must be given of a meeting of Unitholders.

15.2 Notice of meetings of Unitholders to Unitholders, directors and auditors (Section 252G)

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

15.3 Auditors entitled to other communications (Section 252H)

The Manager must give the Auditor and the auditor of the Compliance Plan all

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communications relating to the meeting that a Unitholder is entitled to receive.

15.4 Contents of notice of meetings of Unitholders (Section 252J)

A notice of a meeting of Unitholders must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a Special or Extraordinary Resolution is to be proposed at the meeting, set out an intention to propose the Special or Extraordinary Resolution and state the resolution; and
- (d) contain a statement setting out the following information:
 - (i) that the Unitholder has a right to appoint a proxy;
 - (ii) that the proxy does not need to be a Unitholder; and
 - (iii) that if the Unitholder appoints 2 proxies the Unitholder may specify the proportion or number of votes each of the proxies is appointed to exercise.

15.5 Notice of adjourned meetings (Section 252K)

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

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

16.1 Unitholders' resolutions (Section 252L)

- (a) The following Unitholders may give the Manager notice of a Special or Extraordinary Resolution that they propose to move at a meeting of Unitholders;

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

16.2 **Manager giving notice of Unitholders' resolutions (Section 252M)**

- (a) If a Manager has been given notice of a Special or Extraordinary Resolution under Section 252L of the Law, the resolution is to be considered at the next meeting of Unitholders that occurs more than 2 months after the notice is given.
- (b) The Manager must give all the Unitholders notice of the resolution at the same time, or as soon as practicable afterwards and in the same way as it gives notice of a meeting.
- (c) The Manager is responsible for the cost of giving Unitholders notice of the resolution if the Manager receives the notice in time to send it out to Unitholders with the notice of meeting.
- (d) The Unitholders requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Manager in giving Unitholders notice of the resolution if the Manager does not receive the Unitholders' notice in time to send it out with the notice of meeting. A resolution may be passed at a

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meeting of Unitholders that the Manager is to meet the expenses out of the Trust Fund.

- (e) The Manager need not give notice of the resolution:
 - (i) if it is more than 1,000 words long or defamatory; or
 - (ii) if the Unitholders making the request are to bear the expenses of sending the notice out, unless the Unitholders given the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

16.3 Unitholders' statements to be distributed (Section 252N)

- (a) Unitholders may request a Manager to give to all its Unitholders a statement provided by the Unitholders making the request about:
 - (i) a resolution that is proposed to be moved at a meeting of Unitholders; or
 - (ii) any other matter that may be properly considered at a meeting of Unitholders.
- (b) The request must be made by:
 - (i) Unitholders with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Unitholders who are entitled to vote at the meeting.
- (c) The request must be:
 - (i) in writing; and
 - (ii) signed by the Unitholders making the request; and
 - (iii) given to the Manager.
- (d) Separate copies of a document setting out the request may be used for signing

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by Unitholders if the wording of the request is identical in each copy.

- (e) The percentage of the votes that Unitholders have is to be worked out as at the midnight before the request is given to the Manager.
- (f) After receiving the request, the Manager must distribute to all the Unitholders a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives a notice of a meeting.
- (g) The Manager is responsible for the cost of making the distribution if the Manager receives the statement in time to send it out to Unitholders with the notice of meeting.
- (h) The Unitholders making the request are jointly and individually liable for the expenses reasonably incurred by the Manager in making the distribution if the Manager does not received the statement in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the Unitholders that the Manager is to meet the expenses out of the Trust Fund.
- (i) The Manager need not comply with the request:
 - (i) if the statement is more than 1,000 words long or defamatory; or
 - (ii) if the Unitholders making the request are responsible for the expenses of the distribution, unless the Unitholders give the Manager a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

17. HOLDING MEETINGS OF UNITHOLDERS

17.1 Time and place for meetings of Unitholders (Section 252P)

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

17.2 Technology (Section 252Q)

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

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17.3 Quorum (Section 252R)

- (a) The quorum for a meeting of Unitholders is 3 Unitholders and the quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, these proxies or representatives only count as one person. If an individual is attending both as a Unitholder and as a proxy or body corporate representative they shall all only be counted as one individual.
- (c) A meeting of Unitholders that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the Manager specifies. If the Manager does not specify one or more of those things, the meeting is adjourned:
 - (i) if the date is not specified - to the same day in the next week; and
 - (ii) if the time is not specified - to the same time; and
 - (iii) if the place is not specified - to the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is terminated.

17.4 Chairing meetings of Unitholders (Section 252S)

- (a) The Manager may, in writing, appoint an individual to chair a meeting called under Section 252A or 252B of the Law.
- (b) The Unitholders present at a meeting called under Section 252A or 252B of the Law must elect a Unitholder present to chair the meeting (or part of it) if:
 - (i) a chair has not previously been appointed to chair the meeting; or
 - (ii) a previously appointed chair is not available, or declines to act for the

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meeting (or part of the meeting).

- (c) Unless a court has otherwise directed, the Unitholders present at a meeting called under Sections 252C, 252D or 252E of the Law must elect a Unitholder present to chair the meeting.

17.5 **Auditors' Right to be Heard at Meetings of Unitholders (Section 252T)**

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

17.6 **Adjourned Meetings (Section 252U)**

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

18. **PROXIES AND BODY CORPORATE REPRESENTATIVES**

18.1 **Who can Appoint a Proxy (Section 252V)**

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

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the votes.

- (d) Fractions of votes resulting from the application of paragraphs (b) and (c) are to be disregarded.

18.2 **Rights of Proxies (Section 252W)**

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

18.3 **Manager Sending Appointment Forms or Lists of Proxies Must Send to all Unitholders (Section 252X)**

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

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

18.4 **Appointing a Proxy (Section 252Y)**

- (a) An appointment of a proxy is valid if it is signed by the Unitholder (unless it is a Direct Vote, which does not need to be signed) making the appointment and contains the following information:

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- (i) the Unitholder's name and address;
 - (ii) the Trust's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used.
- (b) An appointment of a proxy remains valid even if paragraph (a) is not strictly complied with, provided in the reasonable opinion of the Manager the intentions of the Unitholder is clear.
- (c) An undated appointment is taken to have been dated on the date it is given to the Manager.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
 - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands; and
 - (iii) if the proxy is the chairperson, the proxy must vote on a poll and must vote that way; and
 - (iv) if the proxy is not the chairperson, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) The appointment of a proxy does not have to be witnessed.
- (f) The later appointment of a proxy revokes an earlier appointment, if both appointments could not be validly exercised at the meeting.

18.5 Proxy Documents (Section 252Z)

- (a) For an appointment of a proxy for a meeting of Unitholders to be effective, the

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following documents must be received by the Manager at least 48 hours before the meeting:

- (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Unitholders has been adjourned, an appointment and any authority received by the Manager at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) A Manager receives an appointment authority when it is received at any of the following:
- (i) the Manager's registered office;
 - (ii) a fax number at the Manager's registered office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) An appointment of a proxy is ineffective if:
- (i) the Manager receives either or both the appointment or authority at a fax number or electronic address; and
 - (ii) a requirement (if any) in the notice of meeting that:
 - (A) the transmission be verified in a way specified in the notice; or
 - (B) the proxy produce the appointment and authority (if any) at the meeting;
- is not complied with.

18.6 Validity of Proxy Vote (Section 253A)

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- (a) Unless the Manager has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Unitholder dies; or
 - (ii) the Unitholder is mentally incapacitated; or
 - (iii) the Unitholder revokes the proxy's appointment; or
 - (iv) the Unitholder revokes the authority under which the proxy was appointed by a third party; or
 - (v) the Unitholder transfers the unit in respect of which the proxy was given.
- (b) A proxy who is not entitled to vote on a resolution as a Unitholder may vote as a proxy for another Unitholder who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

18.7 **Body Corporate Representative (Section 253B)**

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

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19. VOTING AT MEETINGS OF UNITHOLDERS

19.1 How Many Votes A Unitholder Has (Section 253C)

- (a) On a show of hands, each Unitholder has one vote.
- (b) On a poll, each Unitholder has one vote for each dollar of the value of the total Units they have in the Trust.

19.2 Jointly Held Units (Section 253D)

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

19.3 Manager And Associates Cannot Vote (Section 253E)

The Manager and its Associates are not entitled to vote on a resolution at a meeting of Unitholders if they have an interest in a resolution or matter other than as a Unitholder. However, if the Trust is listed, the Manager and its Associates are entitled to vote their Units on resolutions to remove the Manager and choose a new Manager.

19.4 How To Work Out The Value Of A Unit (Section 253F)

For the purposes of this clause 19, the value of a Unit in the Trust is to be determined in accordance with the Law.

19.5 Objections To A Right To Vote (Section 253G)

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

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

19.6 Votes Need Not All Be Cast In The Same Way (Section 253H)

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

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

19.7 How Voting Is Carried Out (Section 253J)

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

19.8 Matters On Which A Poll May Be Demanded (Section 253K)

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

19.9 When A Poll Is Effectively Demanded (Section 253L)

- (a) At a meeting of Unitholders, a poll may be demanded by:
 - (i) at least 5 Unitholders present entitled to vote on the resolution; or
 - (ii) Unitholders present with at least 5% of the votes that may be cast on the resolution on a poll; or

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- (iii) the chair.
- (b) The poll may be demanded:
 - (i) before a vote is taken; or
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that Unitholders have is to be worked out as at close of business on the day before the poll is demanded.

19.10 Direct Voting

The Manager:

- (a) may determine that, in respect of any meeting of members of the Trust, a member who is entitled to attend that meeting is entitled to submit a Direct Vote; and
- (b) if the Manager makes a determination pursuant to clause 19.10(a), must specify the form, method and timing of how a member may give a Direct Vote in:
 - (i) the notice of meeting in respect of the meeting referred to in clause 19.10(a);
 - (ii) an explanatory memorandum in respect of that meeting; or
 - (iii) any other document accompanying the notice of meeting for that meeting.

20. MINUTES AND UNITHOLDERS' ACCESS TO MINUTES

20.1 Minutes (Section 253M)

- (a) A Manager must keep minute books in which it records within one month:

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

20.2 Unitholders' Access To Minutes (Section 253N)

- (a) The Manager must ensure that the minute books for the meetings of Unitholders are open for inspection by Unitholders free of charge.
- (b) A Unitholder may ask the Manager in writing for a copy of any minutes of a meeting of the Unitholders or an extract of the minutes.
- (c) The Manager is entitled to charge a Unitholder a copying fee of not more than \$2.50 per page or an amount not exceeding any amount prescribed, whichever is the lesser.
- (d) If the Manager requires payment for the copy, the Manager must send it:
 - (i) within 14 days after the Manager receives the payment; or
 - (ii) within any longer period that the Commission approves.

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21. **CHANGING THE CONSTITUTION (SECTION 601 GC)**

- 21.1 The Constitution may be modified, or repealed and replaced with a new constitution in accordance with the Law.
- 21.2 The Manager must lodge with the Commission a copy of the modification or the new Constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.
- 21.3 The Manager must:-
- (a) lodge with the Commission a consolidated copy of the Trust's Constitution, if so requested by the Commission; and
 - (b) send a copy of the Trust's Constitution to a Unitholder if the Unitholder so requests in writing and pays any fee up to the prescribed amount required by the Manager.

22. **MANAGER'S REMUNERATION**

22.1 **Fees**

In consideration of the Manager properly performing its duties under the Constitution and the Law, the Manager and/its Associates are entitled to the following fees out of the Trust:

- (a) a management fee being 0.65% per annum of the Total Assets from time to time, payable for each Year (and pro-rata for part thereof) and payable monthly in arrears, or at other times as the Manager in its discretion may determine out of Trust income, but if the Trust income is insufficient then out of Trust capital;
- (b) in the case of any new acquisition by the Trust an acquisition fee of up to 5% of the purchase price of any real property Asset or any company, trust or managed investment scheme which owns any real property Asset. This fee is payable on completion of the acquisition or as otherwise disclosed in the relevant Disclosure Document;
- (c) a bonus performance fee on completion of any sale of a real property Asset or

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any company, trust or managed investment scheme which owns any real property Asset comprising up to 10% of the amount by the which the Internal Rate of Return on the investment in the Asset exceeds 11.5%. This bonus performance fee is payable upon completion of the sale of the real property Asset or company trust or managed investment scheme which owns the real property Asset;

- (d) a fee of up to 1% of the sale price of any real property Asset or of any Controlled Entity of the Trust which owns any real property Asset where an Associate of the Manager is appointed the selling agent, payable on completion of the sale; and
- (e) other fees as specified in a Disclosure Document so long as those fees are only payable out of amounts successfully raised pursuant to that Disclosure Document including without limitation a fee for financial, property and other due diligence services provided to the Manager by an Associate of the Manager in respect of the successful acquisition of any real property Asset or any company, trust or managed investment scheme which owns any real property Asset. This fee may only be paid on completion of the acquisition.

22.2 Waiver or reduction of fees

The Manager may waive remuneration for any period, or reduce the amount of remuneration, or defer payment of remuneration to which it is entitled under this clause.

22.3 Payment of Fees

The Manager's fees are payable first out of income of the Trust, then out of capital of the Trust. The entitlement continues until the Trust is wound up. Neither the termination nor the winding up of the Trust affects the right of the Manager to be paid any unpaid fees in relation to it.

22.4 Payments to Partners or Joint Venturers

Where any real property Asset is leased, purchased or sold by or in conjunction with any party with whom the Trust has entered into a partnership or joint venture for the purpose, such fees as may be reasonable and properly payable to such party will be paid by the Manager out of the Trust.

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22.5 Managing agent fees

The Manager is entitled to be paid managing agent's fees out of the Trust which are reasonable and properly payable, where managing agent's services are being provided in respect of any Asset. These fees shall be payable whether the Asset is managed by an independent managing agent paid by the Manager or by an Associate of the Manager acting in the capacity of managing agent and will be paid out of the Trust in addition to any other remuneration payable to the Manager.

22.6 Services which may be provided by the Manager or its Associates

The Manager or its Associates, may provide the following services to the Trust for a fee at standard market rates:-

- (a) project management, development management or other management services in respect of any Assets; and
- (b) accounting services and financial reporting for the Trust and its Unitholders.

22.7 Goods and services tax

The fees payable to the Manager under this Constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

22.8 Remuneration on Early Termination

If a Trust is terminated other than on a date fixed for the payment of fees and remuneration as set out in this clause 22 any fees paid in advance to the Manager will be adjusted pro-rata to the date of termination, and any fees in excess of those due to the Manager at the date of termination will be refunded by the Manager within 7 days

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of the date of termination.

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22.9 **Remuneration to Accrue from Day to Day**

The Manager's Remuneration accrues from day to day.

22.10 **Remuneration is Additional to other Payments**

The Manager's Remuneration is to be paid in addition to all other amounts to which it is entitled under the Constitution by way of reimbursement or indemnity.

23. **RETIREMENT, REMOVAL OR LIQUIDATION OF MANAGER**

23.1 **Retirement of the Manager (Section 601FL)**

- (a) If the Manager wants to retire, it must call a Unitholders' meeting to explain its reasons for wanting to retire and to enable Unitholders to vote in accordance with the Law to choose a new Manager.
- (b) If the Unitholders choose a manager and that person has consented, in writing, to becoming Manager:
 - (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the current Manager must lodge a notice with the Commission asking it to alter the record of the Trust's registration to the name of the new Manager;
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i) the person chosen by the Unitholders to be the new Manager may lodge that notice.
- (c) If the Unitholders do not choose a person to be the new Manager, or the person they choose does not consent to becoming the Trust's Manager, the current Manager may apply to the court for the appointment of a temporary Manager under section 601FP of the Law.

23.2 **Removal of the Manager by Unitholders (Section 601FM)**

- (a) If the Unitholders want to remove the Manager, they must take action under

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clause 15 for the calling of a Unitholders' meeting to consider and vote on:

- (i) an Extraordinary Resolution that the current Manager should be removed; and
 - (ii) an Extraordinary Resolution choosing a person to be the new Manager.
- (b) If the Unitholders vote to remove the Manager and, at the same meeting, choose a person to be the new Manager that consents, in writing, to becoming the Trust's Manager:
- (i) as soon as practicable and in any event within 2 Business Days after the resolution is passed, the Manager must lodge a notice with the Commission asking it to alter the record of the Trust's registration to name the person chosen as the Trust's Manager; and
 - (ii) if the current Manager does not lodge the notice required by paragraph (b)(i), the person chosen by the Unitholders to be the new Manager may lodge that notice.

24. CONSEQUENCES OF CHANGE OF MANAGER

24.1 Former Manager To Hand Over Books And Provide Reasonable Assistance (Section 601FR)

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

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

24.2 Rights, Obligations And Liabilities Of Former Manager (Section 601FS)

- (a) If the Manager of the Trust changes, the rights, obligations and liabilities of the former Manager in relation to the Trust become rights, obligations and liabilities of the new Manager.

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

25. NOTICES

25.1 Notices to be in writing

Notices given under or for the purpose of this Constitution must be written in the English language.

25.2 Notices to the Manager

Notices to the Manager may be addressed to the address set out in this clause and notices to Unitholders may be addressed to them at their respective addresses in the Register, and notices may be served at those addresses.

25.3 Joint Unitholders

Notices to a joint Unitholder may be addressed to the Unitholder whose name first appears in the Register, at that Unitholder's address shown in the Register and may be served at that address.

25.4 Form of Notice

A notice may be delivered by hand, by prepaid post or by facsimile transmission.

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25.5 **Time of Delivery**

If, before 5.00 pm local time on a Business Day in the place of delivery, a party delivers a notice:

- (a) by hand; or
- (b) by facsimile transmission and the party completes transmission,

the notice will be taken as given on the day of delivery or transmission and in any other case on the next following Business Day.

25.6 **Notices by Post**

If a party gives a notice by prepaid post the notice will be taken as given on the second Business Day after the notice is posted.

25.7 **Incomplete Facsimile Transmission**

If a party gives a notice by facsimile transmission and the transmission is not fully legible, the party giving the notice may not rely on this clause to prove the giving of the notice.

25.8 **Facsimile Transmission Reasonably Believed To Be Unintelligible**

A facsimile transmission may not be relied upon if the party giving the notice has reason to believe that the transmission or part of the transmission is illegible, or not an accurate representation of the original document.

25.9 **Request for Re-transmission**

A party is not entitled to object to a facsimile as being not fully legible or accurate unless the party requests re-transmission within 2 hours (being hours between 9.00am and 5.00pm local time on a Business Day at the place of receipt) of completion of transmission; if a facsimile transmission is made within 2 hours before 5.00pm on a Business Day and is unintelligible, the receiving party has until 10.00 am local time on the next Business Day at the place of receipt to request re-transmission.

25.10 **Signatures**

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A notice given by the Manager must be signed by an Officer of the Manager.

25.11 Address for Service

The Manager's address and facsimile number for service are as follows:

Notices to the Manager: Cromwell Property Securities Limited
Level 19, 200 Mary Street, Brisbane

Phone: (07) 3225 7777
Fax: (07) 3225 7788

25.12 Address for Applicants

The address for service of an Applicant is the address shown in its Application until it notifies the Manager of another address in accordance with this clause.

25.13 Address for Unitholders

The address for service of a Unitholder is the address shown in the Register, or in the case of joint Unitholders, the address shown in the Register of the joint Unitholder who is first named in the Register.

25.14 Changes of Address for Service of the Manager

The Manager may by notice to the Commission, change its address or facsimile number for service under this clause.

26. FINANCIAL STATEMENTS

26.1 Preparation of Financial Statements (Section 292)

A financial report and directors' report for the Trust must be prepared for each Financial Year in accordance with the requirements of the Law.

In addition to this, the Manager will prepare quarterly financial statements listing all receipts, expenditure and fees relating to the Property in respect of the previous quarter.

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26.2 Compliance with Accounting Standards and Regulations (Section 296)

- (a) The financial report for a Financial Year must comply with the Accounting Standards.
- (b) The financial report must comply with any further requirements in the Regulations.

26.3 True and Fair View (Section 297)

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

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

26.4 Audit of Annual Financial Report (Section 301)

The Trust must have the financial report for the Financial Year audited in accordance with Division 3 of Part 2M.3 of Chapter 2M of the Law and obtain an Auditors report.

26.5 Annual Financial Report to Unitholders (Section 314)

The Manager must report to Unitholders in accordance with the Law.

26.6 Unitholders choices for Annual Financial Information (Section 316)

- (a) A Unitholder may request the Manager:
 - (i) not to send them the annual financial reports; or
 - (ii) to send them a full financial report and the directors' report and Auditors report.

A request may be a standing request or for a particular Financial Year. The Unitholder is not entitled to a report for a Financial Year earlier than the one

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before the Financial Year in which the request is made.

(b) The time for complying with a request under paragraph (a)(ii) is:

(i) 7 days after the request is received; or

(ii) 3 months after the end of the Financial Year;

whichever is later.

(c) A full financial report, directors' report and Auditor's report are to be sent free of charge unless the Unitholder has already received a copy of them free of charge.

26.7 Application

Notwithstanding any other provision of this Constitution, where:

(a) the effect of this Constitution is that any of the amounts referred to in paragraph (b) are required to be calculated by reference to the:

(i) value of Trust Property, or

(ii) amount of any liability that under the Constitution may be discharged from Trust Property, or

(iii) the income of the Trust,

and the effect of the Constitution is that the value or amount is to be worked out by applying generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time; and

(b) the relevant amounts include the:

(i) consideration that is to be paid to acquire a Unit;

(ii) amount to be paid on a withdrawal from the Trust;

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- (iii) remuneration or fees payable to the Manager, any agent of the Manager or any custodian who holds Trust Property;
- (iv) extent of any limitation on borrowings or on the investment of Trust Property; or
- (v) amount of a distribution payable to Holders,

then, to the extent to which paragraph (a) applies to any of the relevant amounts referred to in paragraph (b), the amounts referred to in paragraph (b) may be calculated instead by applying generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

26.8 Perpetuities

Notwithstanding any other provision of this Constitution, where the effect of current generally accepted accounting principles or methodology set out in an Accounting Standard (including Australian Accounting Standards) as generally accepted or in force from time to time is that the Constitution should be interpreted (whether because of the existence of a perpetuities clause in the Constitution or otherwise) on the basis that liabilities representing interests in, or rights attaching to, Units:

- (a) at any time during the life of the Trust;
- (b) on termination of the Trust; or
- (c) on the vesting of any interest in the Trust,

should be treated as a liability in the accounts of the Trust, then such liabilities shall continue to be treated for Trust operational purposes such as the calculation of the Manager's fees (but not for the purpose of financial reporting) in accordance with the accounting principles or methodology set out in accounting standards generally accepted or in force immediately before 1 January 2005.

26.9 Interpretation of clauses 26.7 and 26.8

For the purposes of clauses 26.7 and 26.8 a reference to:

- (i) Trust Property includes the terms:
 - (A) Trust Fund;

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- (B) assets or property (of the Trust); or
- (C) words of similar import;
- (ii) Holder includes a Unitholder, member, investor or other similar description;
- (iii) Trust includes fund or other similar description; and
- (iv) Manager includes the trustee, manager or other party however described, acting in the capacity of responsible entity.

27. LIMITATION OF UNIT ENTITLEMENT

27.1 Definition

In this clause:-

- (a) the term “securities” where used shall have the meaning given to that term by the Law;
- (b) the term “the prescribed percentage” shall mean 20% of the number of Units on issue in the Trust.

27.2 Not exceed prescribed percentages

Except as provided in this clause, a person shall not, either alone or together with any other person, acquire Units if any person who is not entitled to Units or is entitled to no more than the prescribed percentage would immediately after the acquisition be entitled to more than the prescribed percentage.

27.3 No restriction with consent

The restriction contained in sub-clause 27.2 shall not apply to or in relation to an acquisition or holding of a Unit or Units to which the Manager has given its prior written consent, which it may grant or withhold in its absolute discretion and subject to any conditions which the Manager in its absolute discretion may impose.

27.4 Deemed acquisition

For the purposes of this clause a person shall be taken to acquire a Unit (in this sub-clause 27.4 referred to as “the Unit concerned”) if:-

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

27.5 Certain Units included

For the purposes of this clause the Unit or Units to which a person (in this sub-clause and the next succeeding sub-clause referred to as the “person concerned”) is entitled includes:

Units in which the person concerned has a relevant interest; and

Units in which a person who is an associate of the person concerned has a relevant interest.

27.6 Associate reference

A reference in paragraph 27.5 (b) to a person who is an associate of the person concerned shall be construed a reference to:-

- (a) if the person is a corporation:-
 - (i) a director or secretary of the corporation;
 - (ii) a corporation that is related to the person concerned; or
 - (iii) a director or secretary of such a related corporation;
- (b) a person with whom the person concerned has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied:-
 - (i) by reason of which the first-mentioned person, or the person concerned, may exercise, directly or indirectly control the exercise of

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or may substantially influence the exercise of, any voting power attached to the Units;

- (ii) under which the first-mentioned person may acquire from the person concerned, or the person concerned may acquire from the first-mentioned person, Units; or
- (iii) under which the first-mentioned person, or the person concerned, may be required to dispose of Units in accordance with the directions of the person concerned, or of the first-mentioned person, as the case may be;
- (c) a person in concert with whom the person concerned is acting, or proposes to act, in relation to the acquisition or proposed acquisition of Units;
- (d) a person with whom the person concerned is, or proposes to become, associated, whether formally or informally with a view to controlling or influencing the composition of the board of directors of the Manager, or the conduct of the Trust;
- (e) a person with whom the person concerned is, or proposes to become, associated, whether formally or informally, in any other way in relation to the Units; or
- (f) if the person concerned has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with another person as mentioned in paragraphs (b), (c), (d) and (e) above, that other person.

27.7 Relevant interest

Subject to this sub-clause 27.7, a person has a relevant interest in a Unit for the purposes of this clause if that person has power:-

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

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- (c) a relevant interest in a Unit shall be disregarded:-
 - (i) if the Unit is subject to a trust, the relevant interest is that of a trustee;
and
 - (ii) the trustee is a bare trustee.
- (d) For the purposes of paragraph 27.7(c)(ii) above, a trustee shall not be taken not to be a bare trustee by reason only of the fact that the trustee is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

27.8 Manager may decline transfer

The Manager may, in its absolute discretion, decline to allot or to register any transfer or transmission of a Unit if in the Manager's opinion, the allotment or registration thereof would or might result in or have the effect of causing an infringement or contravention of sub-clause 27.2.

27.9 Manager's power to deal with Units

Where the Manager is satisfied that a person has acquired Units in such circumstances as might or would in the opinion of the Manager result in or have the effect of causing an infringement or contravention of sub-clause 27.2, the Manager may do either or both of the following:-

- (a) by notice in writing to such person, require him to dispose of the Units so acquired, or any part thereof (in this sub-clause 27.8 referred to as the "specified Units") within such time as is specified in the notice, PROVIDED THAT in the absence of any such requirement by the Manager, the person concerned shall not be entitled in any way to set aside or cancel the transaction whereby he acquired the specified Units, nor to claim any refund or to otherwise recover any money paid in respect thereto; and
- (b) prohibit the exercise of any voting or other rights attached to such Units and in the event of an exercise or purported exercise of such rights the same shall be disregarded for all purposes.
- (c) if the requirements of any such notice are not complied with by the person to

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whom the notice is addressed within the time specified in the notice, the Manager may cause the specified Units to be sold on any securities exchange on which they are quoted or, if they are not so quoted, in such other manner as the Manager may determine.

- (d) the Manager may:
 - (i) appoint a person to execute as transferor a transfer in respect of any Units sold, in accordance with the provisions of paragraph 27.9 (c) above and to receive and give good discharge of the purchase money thereof; and
 - (ii) register the transfer notwithstanding that the Certificate for such Units may not have been delivered to the Manager and issue a new Certificate to the transferee, in which event the previous Certificate shall be deemed to have been cancelled.
- (e) Nothing in this sub-clause 27.8 shall render the Manager liable or responsible by reason of any person acquiring Units in contravention of sub-clause 27.2 or failing to comply with the obligations imposed by paragraph 27.8 (b);
- (f) The Manager, before or at any time after allotting any Units, or approving or rejecting any transfer or transmission of Units or at any other time and from time to time, may, by notice in writing to the applicant, allottee, transferee, transmittee or Unitholder, require him (or, where such person is a corporation a competent Officer thereof to furnish to the Manager such information or evidence (on oath or otherwise verified if the Manager should so require) as the Manager may consider likely to be of assistance in determining whether or not such person is eligible to become or to remain an Unitholders.

27.10 **Manager may request information**

The Manager may at any time by notice in writing require an Unitholder within 2 Business Days after service of the notice, to furnish to the Manager:-

- (a) a statement in writing setting out:
 - (i) full particulars of his relevant interests in the Units and of the circumstances by reason of which he has that interest; and

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- (ii) so far as it lies within his knowledge:-
 - (A) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units;
 - (B) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (C) full particulars of the name and address of each person (if any) who has given to the Unitholder instructions in relation to any matter concerning the Units and of those instructions and the date or dates on which those instructions were given; and
- (iii) a true copy of every letter, agreement, declaration of trust, deed and without limitation document in his possession or within his control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units held by him.
- (b) Where the Manager received, pursuant to a notice under paragraph 27.9(a) above given to a Unitholder or pursuant to a notice under this paragraph 27.9(b) information that:-
 - (i) another person has a relevant interest in any of the Units; or
 - (ii) another person has given instructions in relation to any matter concerning the Units;

the Manager may by notice in writing require that other person within 2 Business Days after service of the notice, to furnish to the Manager:-

- (iii) a statement in writing setting out:-
 - (A) full particulars of any relevant interest that the person has in any of the Units and of the circumstances by reason of which he has that interest; and so far as it lies within his knowledge;
 - (B) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units;

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- (C) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (D) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed instructions in relation to any matter concerning the Units and of those instructions and the date or dates on which those instructions were given; and
- (iv) a true copy of every letter, agreement, declaration of trust, deed and without limitation document in his possession or within his control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units.
- (c) If the requirements of any notice referred to in paragraphs 27.9(a) or 27.9(b) above are not complied with within the time so specified, the Manager may:-
 - (i) refuse to register a transfer of the Units;
 - (ii) prohibit the exercise of any voting or other rights attached to the Units and in the event of an exercise or purported exercise of such rights the same shall be disregarded for all purposes;
 - (iii) suspend the payment of any distributions or other monies payable on or in respect of the Units; and
 - (iv) cause the Units to be sold upon any securities exchange or at such place as the Manager determines and at a price which the Manager, acting in good faith, determines or accepts.
- (d) In the event of any Units being sold pursuant to paragraph 27.9(c) above, the Manager may:-
 - (i) appoint a person to execute on behalf of a Unitholder the transfer of the Units and to receive and to give a good discharge for the purchase monies; and
 - (ii) register the transfer notwithstanding that the Certificates for the Units

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may not have been delivered to the Manager and issue a new Certificate to the transferee, in which event the previous Certificate shall be deemed to have been cancelled.

- (e) The purchase monies in respect of the Units so sold less the expenses of sale shall be paid to the person in whose name the Units were registered immediately prior to the sale thereof. After the purchaser's name has been entered into the Register in respect of the Units, the title of the purchaser to the Units shall not be called into question on any legal ground in relation to the terms of this clause

28. GENERAL

28.1 Payment to Unitholders

Any money payable by the Manager to a Unitholder under this Constitution may be paid by any means as directed by the Unitholder from time to time and, in the absence of a direction, may be made by direct or Bank transfer or by crossed not negotiable cheque payable to the Unitholder or order and sent through the post to the Unitholder at its address in the Register, or in the case of joint holders made payable to the joint holders or bearer and sent to the Unitholders at the address shown in the register of the joint holder who is first named in the Register. Payment of a cheque drawn and posted in accordance with this clause is in full satisfaction of the monies payable to the Unitholder and a good discharge to the Manager.

28.2 Retention of Documents

The Manager is to retain, and make available to the Auditor for inspection at reasonable times, for a period of at least 7 years from their respective dates, the following:

- (a) Applications;
- (b) cancelled Certificates; and
- (c) instruments of transfer and transmission.

28.3 Copies of this Constitution

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A copy of this Constitution must be held by the Manager at its principal office and registered office and made available during normal business hours at those places for inspection by Unitholders. A Unitholder is entitled to a copy of this Constitution upon payment to the Manager of the reasonable costs and expenses of preparing a copy.

28.4 **Governing Law and Jurisdiction**

This Constitution is governed by and is to be construed in accordance with the laws of the State of Queensland. The Manager, the Unitholders and Applicants irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.

28.5 **No Waiver**

- 28.6 The failure of a party at any time to require full or partial performance of any provision of this Constitution shall not affect in any way the full right of that party to require that performance subsequently. The waiver by any party of a breach of a provision of this Constitution shall not be deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently. Any waiver of a breach of this Constitution shall be in writing signed by the party granting the waive and shall be effective only to the extent specifically set out in that waiver.

29. **RESOLUTION OF DISPUTES**

29.1 **Complaints Handling**

The Manager must:

- (a) within 5 days acknowledge any complaint received from a Unitholder;
- (b) within 45 days (or longer period as may reasonably be required having regard to the nature of the complaint, the information given by the complainant and the nature and extent of the investigation and other activities necessary to deal fully with the complaint), investigate, properly consider and decide what action (if any) to take or offer regarding the complaint and communicate its decision to the Unitholder;

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- (c) at the same time inform the Unitholder of remedies available to the Unitholder of which the Manager is aware and any available avenue of appeal against the decision to an external industry complaints tribunal or other body; and
- (d) include in any disclosure document an explanation of its procedures for handling complaints.

29.2 Essential Elements

The complaints handling process shall have as a minimum requirements for:

- (a) **(Commitment).** There shall be a commitment to efficient and fair resolution of complaints.
- (b) **(Fairness).** The complaints handling process shall recognise the need to be fair to both the complainant Unitholder and the Manager.
- (c) **(Resources).** There shall be adequate resources for complaints handling with sufficient levels of delegated authority.
- (d) **(Visibility).** The complaints handling process shall be well publicised to Unitholders and staff of the Manager and shall include information to Unitholders about the right to complain.
- (e) **(Access).** The complaints handling process shall be accessible to all Unitholders and information shall be readily available on the details of making and resolving complaints.
- (f) **(Assistance).** Assistance shall be available for Unitholders to formulate and lodge a complaint.
- (g) **(Responsiveness).** Complaints shall be dealt with quickly and the Unitholders shall be treated courteously.
- (h) **(Charges).** Complaints handling shall be at no charge to the particular complaining Unitholder. The Manager shall be entitled to be reimbursed for its costs from Trust Assets in dealing with the particular complaints.
- (i) **(Remedies).** The complaints handling process shall have the capacity to

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determine and implement remedies.

- (j) **(Data collection).** There shall be appropriate systematic recording of complaints by Unitholders and their outcome.
- (k) **(Systematic and recurring problems).** Complaints shall be classified and analysed for the identification and rectification of systematic and recurring problems.
- (l) **(Accountability).** There shall be appropriate reporting on the operation of the complaints handling process against documented performance standards.
- (m) **(Review).** The complaints handling process shall be reviewed annually to ensure that it is sufficiently delivering effective outcomes.

29.3 Remedies

The Manager may, in its discretion, give any of the following remedies to the complainant:

- (a) information and explanation regarding the circumstances giving rise to the complaint;
- (b) an apology;
- (c) compensation for loss incurred by the Unitholder as a direct result of the breach (if any); or
- (d) such other remedies as the Manager considers appropriate.

30. STAPLING

30.1 Stapling

All Units (except Company Held Units) are intended to be Stapled to Attached Securities in the ratio of one to one. It is the intention of the Manager (and as more specifically set out in this Constitution) that for as long as the Stapling Provisions apply:

- (a) CCL Shares will be Attached Securities;
- (b) the Holders holding Units shall be identical to the holders of Attached

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Securities;

- (c) as far as the law permits, a Unit and its Attached Securities shall be treated as one security; and
- (d) no issue or transfer of a Unit is to occur without the corresponding Attached Securities also being issued or transferred (as applicable) at the same time and in respect of the same persons.

30.2 Stapling Commencement

From the Stapling Commencement Date:

- (a) the Stapling Provisions commence operating in this Constituion; and
- (b) each:
 - (i) ordinary Unit (except a Company Held Unit) must be Stapled to one of each ordinary Attached Security to form a Stapled Security; and
 - (ii) other class of Unit issued from time to time must be Stapled to one of each Attached Security of the corresponding non-ordinary class to that Unit, to form a Stapled Security.

30.3 Issues

While Stapling applies, the number of issued Units (other than Company Held Units) must equal the number of issued Attached Securities at that time.

30.4 Manager obligations

- (a) The Manager must not do, nor refrain from doing, anything that would directly or indirectly result in a Unit no longer being Stapled to Attached Securities to form a Stapled Security, except in accordance with clauses 30.5 or 31. In particular, the Manager must not reorganise (within the meaning given in ASX Listing Rules 7.18 to 7.24 (inclusive) and including any consolidation, division, subdivision, cancellation, buy back of any capital) any Units unless at the same time the Attached Securities that are Stapled to those Units are also reorganised so that the person holding Units holds an equal number of Attached Securities.

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- (b) While Stapling applies, the Manager must use reasonable endeavours to ensure that Units are dealt with consistently with the constitutions of the other Stapled Entities.
- (c) Subject to the Law, ASX Listing Rules and any agreement with the other Stapled Entities, the Manager may:
 - (i) from time to time cause any securities, units or interests in another entity to become Stapled so that securities, units or interests (as applicable) in that entity become Attached Securities;
 - (ii) cause the Company Held Units to become Stapled to become and be treated in all respects as an Attached Security; and
 - (iii) without limiting any other provision of this Constitution, effect such Stapling by distributing in specie to Holders the securities, units or interests (as applicable) of such an entity. To the extent permitted under the Law, Holders are deemed to have agreed to becoming members of the entity.

30.5 Cessation of Stapling Provisions

- (a) Each issued Unit (other than a Company Held Unit) will remain Stapled for so long as the Stapling Provisions apply.
- (b) The Stapling Provisions will cease to apply or be suspended, regardless of any other provision of this Constitution, if:
 - (i) Holders of Units that are Stapled approve by Special Resolution; or
 - (ii) an administrator, manager, receiver, liquidator or similar officer is appointed to a Stapled Entity or its property (as the case may be) and the Manager resolves,

that the Stapling Provisions will cease to apply or be suspended (as the case may be).

- (c) The Stapling Provisions will cease to apply or be suspended under

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clause 30.5(b) above from such time as determined under the Special Resolution (in the case of paragraph 30.5(b)(i)) or by the Manager in its absolute discretion (in the case of paragraph 30.5(b)(ii)).

30.6 Stapled Security Register

- (a) The Stapled Securities must be registered in the Stapled Security Register and subject to this Constitution, the Manager must issue a certificate, or a holding statement in accordance with the requirements of the ASX Listing Rules and the CS Facility Rules, in respect of the Stapled Securities, identifying the Stapled Securities to which the certificate relates.
- (b) The Manager must maintain or cause to be maintained the Stapled Security Register which records the names and addresses of the Holders holding Units, the number of Units held, the number of Attached Securities held by the Holders and any additional information required by the Law, the ASX Listing Rules or by the Manager from time to time.
- (c) The Stapled Security Register will, for so long as Stapling applies, be deemed to constitute part of the Register, and in this case all other provisions of this Constitution applicable to the Register will apply only to any part of the Register kept in addition to the Stapled Security Register.

30.7 Extent of Stapling Provisions

Where the Stapling Provisions do not apply or cease to apply, a provision of this Constitution that relates to or is connected with Stapling will continue to apply to the extent that the provision does not relate to Stapling.

30.8 Inconsistency with Stapling Provisions

If there is an inconsistency between any Stapling Provision and any other provision of this Constitution, then the Stapling Provision prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the CS Facility Rules, the Law or any other law. The Stapling Provision prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.

30.9 Stapled Entity Benefits

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Without limiting any other provision of this Constitution, the Manager may while Stapling applies:

- (a) provide or obtain financial accommodation;
- (b) provide a negative pledge, guarantee, indemnity or security or otherwise assume any debt or obligation; or
- (c) otherwise enter into an arrangement,

on behalf of or for the benefit of (whether solely or otherwise), a Stapled Entity.

31. **AMENDMENT TO STAPLING PROVISIONS**

Without limitation to any other provision of this Constitution or the Law, no Stapling Provision (including this clause 31) may be deleted or amended without the approval of a Special Resolution of the Holders of Units that are Stapled.

32. **LAW**

32.1 **Compliance with Relief and things required to be in this Constitution**

The Manager and each Holder must, subject to the Law and to any Relief applicable to the Trust, comply with:

- (a) any conditions of, and any covenants required to be contained in this Constitution as a condition of the Relief, for so long as it applies, and
- (b) all provisions required from time to time to be contained in this Constitution as a condition of any class order applicable to the Trust, for so long as it applies.

32.2 **Matters required to be in this Constitution**

For so long as the Trust is registered as a managed investment scheme any provision required to be contained in this Constitution as a condition of any Relief, class order or the Law is taken to be contained in this Constitution to the extent that they are not specifically set out in this Constitution, for so long as the Relief, class order or the Law provision (as applicable) applies.

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33. RESTRUCTURE

33.1 Definitions for clause 33

Acquired Shares means the ordinary shares in the Stapled Company.

Broker means ABN AMRO Morgans Limited ACN 010 669 726.

Foreign Unitholder means a Unitholder whose address in the Register is a place outside Australia and New Zealand and their respective external territories.

Effective Date means the Effective Date as that term is defined in the Implementation Deed.

Implementation Date means the Stapling Implementation Date as that term is defined in the Implementation Deed.

Implementation Deed means the deed made between CCL and the Manager dated 23 October 2006.

Merger means the merger scheme comprising the arrangement under which the Trust acquires all of the units in any of the Merger Trusts in consideration for the issue of new Units in the Trust as contemplated by, and described in, the Implementation Deed;

Merger Trusts means Cromwell Planned Investment – No 3 ARSN 093 304 888, Cromwell Goulburn Street Planned Investment ARSN 099 644 238, Cromwell Mary Street Planned Investment ARSN 095 353 932, Cromwell Northbourne Planned Investment ARSN 097 712 662, Terrace Office Park Planned Investment ARSN 086 376 258, Cromwell Northbourne Property Trust ARSN 097 712 644, Cromwell Mary Street Property Trust ARSN 095 353 825, Cromwell Goulburn Street Property Trust ARSN 099 644 381, Cromwell Property Trust – No 3 ARSN 093 304 815 and Terrace Office Park Property Trust ARSN 086 376 267.

Merger Trust Member means a registered holder of units in a Merger Trust at the Effective Date.

Proposal means the transactions contemplated and described in the Implementation

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Share Sale Facility means the facility under which Foreign Unitholders are required to transfer their Units and other Unitholders may elect to transfer all or some of their Units to the Broker on the basis that the Broker is entered in the Register in respect of those Units on the Stapling Record Date, and will participate in the Proposal in respect of these Units, receive the Acquired Shares pursuant to the Proposal and sell the required number of the resultant Stapled Securities for cash to pay the Share Sale Price and transfer the remaining Stapled Securities in satisfaction of the Share Sale Price.

Share Sale Facility Participant means each Foreign Unitholder and each Unitholder who has elected to participate in the Share Sale Facility in the manner determined by the Manager.

Share Sale Price means the consideration payable by the Broker to Unitholders, less any brokerage or reasonable transaction costs as consideration for the transfer to it of Units in relation to which it received Acquired Shares under the Proposal pursuant to clause 33.3(a) to (d).

Stapled Company means CCL.

Stapled Company Shareholders means holders of ordinary shares in the Stapled Company on the Stapling Record Date, excluding ordinary shares issued under clause 33.3(c).

Stapled Trust means the Trust.

Stapling Record Date means the Stapling Record Date as that term is defined in the Implementation Deed.

Unitholders means holders of Units in the Stapled Trust on the Stapling Record Date (other than the Stapled Company and its subsidiaries), excluding Units issued under clause 33.3(e).

33.2 Implementation of Proposal

- (a) Subject to section 601FC:
 - (i) at any time upon and after the Effective Date, the Manager has power to do all things which it considers are necessary, desirable or

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reasonably incidental to give effect to the Proposal in accordance with the Implementation Deed, and those powers apply notwithstanding, and are not limited by any other provision of the Constitution; and

- (ii) notwithstanding the amendments to clause 9 made by the supplemental deed inserting this clause 33:

- (A) nothing affects the entitlement to the Distributable Amount of those existing Units on issue (**Existing Units**) prior to issue of new Units under the Proposal (**New Units**). The Existing Units' entitlement to that Distributable Amount is to be determined in accordance with provisions of the former clause 9.8;

- (B) New Units do not rank for any entitlement to Distributable Amounts in respect of any time prior to their issue but otherwise will rank equally with the Existing Units from their time of issue, and

clause 9 is to be read subject to this clause;

- (b) For the avoidance of doubt, and subject to granting of Relief from the requirements of section 601FC(1)(d), the Responsible Entity may treat the Stapled Company, in its capacity as a Unitholder, differently to other Unitholders by not Stapling any Units held by the Stapled Company to Acquired Shares.

33.3 Express powers of the Manager

Without limiting clause 33.2, but subject to clause 33.4 and despite any other provision in this Constitution, the Manager has power:

- (a) to give effect to the Merger of the Trust with any one or more of the Merger Trusts through:
 - (i) the issue of Units in the Trust to Merger Trust Members in exchange for the acquisition of Merger Trust units;
 - (ii) registration of Merger Trust Members as Unitholders of the Trust prior to the Stapling Record Date; and

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- (iii) doing all things necessary to enable Merger Trust Members who become Unitholders to participate in the Proposal as Unitholders, or Share Sale Participants (as the case may be) as described in this clause 33; and
- (b) on the Implementation Date, but subject to (c), to pay each Unitholder (except the Stapled Company), by way of a capital distribution, \$0.00025 per Unit held;
- (c) to apply all the respective distributions paid to each Unitholder under (b) to acquire, on behalf of and in the name of that Unitholder, an equivalent number Acquired Shares on the basis that the subscription price for each Acquired Share will be \$0.00025;
- (d) to procure that the Acquired Shares are registered in the name of the relevant Unitholders with the result that the Unitholder is bound:
 - (i) by the terms of issue of the Acquired Shares (including, without limitation, restrictions which cause a Unitholder's Units to be Stapled to Acquired Shares); and
 - (ii) generally, by the constitution of the Stapled Company and the Stapled Trust;
- (e) to the extent that this will facilitate Unitholders and Stapled Company Shareholders holding an equivalent number of Units and Acquired Shares in each of the Stapled Trust and the Stapled Company, to issue to Stapled Company Shareholders one Unit in respect of each \$0.001 paid by or on that person's behalf in subscription for Units pursuant to the Implementation Deed with such new Units to rank pari passu with all of the existing Units including ranking for full participation in any Distributable Amount for the Distribution Period during which the Units are issued;
- (f) to issue to Unitholders new holding statements or other evidence of entitlement in respect of Units of which the Unitholder is the registered holder after the Proposal is implemented and, in the alternative, to issue or co-operate in the issuing of a single holding statement reflecting the Unitholder's holding of Units and Acquired Shares;
- (g) apply on behalf of each Unitholder who has elected prior to the Implementation Date to participate in the Stapled Trust's distribution re-investment plan (**DRP Participants**), to have future distributions and dividends payable in respect of Units and Acquired Shares held by the DRP Participant to be applied to the acquisition of Stapled Securities; and

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- (h) to execute all documents and do all things which it considers necessary, desirable or reasonably incidental to give effect to the Proposal and to appoint any individual or individuals of its choosing to execute any such documents or do any such things.

33.4 Share Sale Facility

Notwithstanding the foregoing provisions of this clause 33, the Manager must transfer the Units held by the Share Sale Facility Participant, or such number of those Units which are to be the subject of the Share Sale Facility, to the Broker so that the Broker will receive the distribution pursuant to clause 33.3(b) and apply that distribution in accordance with clause 33.3(c) in order to acquire the Acquired Shares which would otherwise have been issued to the Share Sale Facility Participant and be obliged to provide to each Share Sale Participant the Share Sale Price to which it is entitled.

33.5 Appointment as agent and attorney for Unitholders

- (a) At all times on and after the Effective Date, the Manager is irrevocably appointed the agent and attorney for each Unitholder to do all things which the Manager considers are necessary, desirable or reasonably incidental to give effect to the Proposal.
- (b) Without limiting clause 33.5(a), the Manager is irrevocably appointed as the agent and attorney of each Unitholder to:
 - (i) receive and apply the distributions referred to in clause 33.3(b) in the manner contemplated in clause 33.3(c);
 - (ii) apply for the future distributions and dividends of each DRP Participant to be applied in the manner contemplated in clause 33.3(g);
 - (iii) execute an application form (which may be a master application form), in relation to the Acquired Shares;
 - (iv) act in accordance with clause 33.4; and
 - (v) execute transfers of Units which are to be the subject of the Share Sale Facility.

The Manager is authorised to execute the documents and do all things under clauses 33.3 and 33.4 without needing further authority or approval from Unitholders and may do so even if it has an interest in the outcome of such exercise.

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33.6 **Manager's limitation of liability**

Without derogating from any limitation of the Manager's liability in terms of this Constitution, the Manager has no liability to Unitholders of any nature whatsoever beyond the Assets whether arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of any document) in exercising its powers pursuant to this clause 33 in connection with the implementation of the Proposal in accordance with the Implementation Deed.

33.7 **Ratification of the Implementation Deed**

Each Unitholder ratifies the Manager's execution of the Implementation Deed and the Manager's performance of its obligations under the Implementation Deed.

33.8 **Amendments to this Constitution**

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

- (a) did not attend the meeting of Unitholders to consider the Proposal;
- (b) attended the meeting of Unitholders, or whose proxy attended the meeting of Unitholders, to consider the Proposal but did not vote on the Proposal;
- (c) attended the meeting of Unitholders, or whose proxy attended the meeting of Unitholders, to consider the Proposal but voted against the Proposal; and
- (d) were not Unitholders at the time of the meeting.

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Executed as a Deed

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The **COMMON SEAL** of **CROMWELL**)
PROPERTY SECURITIES LIMITED)
(ACN 079 147 809) was hereunto affixed in)
accordance with its Constitution in the)
presence of:

Signature of Director

Signature of *Director/Secretary

Print Full Name of Director

Print Full Name of *Director/Secretary

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CROMWELL PROPERTY SECURITIES LIMITED

ACN 079 147 809

CROMWELL DIVERSIFIED PROPERTY TRUST

CONSTITUTION

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