

Constitution

Babcock & Brown Residential Land Partners Trust

ARSN 119 613 848

Babcock & Brown Residential Land Partners Services
Limited (**Responsible Entity**)

Consolidated version as at 5 June 2006 incorporating amendments from:

- 1. Supplemental deed dated 15 May 2006**
- 2. Supplemental deed dated 5 June 2006**

MinterEllison

L A W Y E R S

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Constitution

Babcock & Brown Residential Land Partners Trust

Terms	8
1. Defined terms & interpretation	8
1.1 Defined terms	8
1.2 Interpretation	12
1.3 Headings	13
1.4 Corporations Act expressions	13
1.5 Conflicts	13
1.6 Listing requirements	13
1.7 Inconsistency with Stapling Provisions	13
1.8 Extent of Stapling Provisions	13
1.9 Stapling	13
2. The Trust	14
2.1 Unit trust	14
2.2 Benefit of the trust	14
2.3 Responsible Entity	14
2.4 Deed binding	14
2.5 Separate fund	14
2.6 Vesting	14
2.7 Duration	14
3. Commencement	14
3.1 Initial Unitholders	14
3.2 Initial Units	14
4. Units	14
4.1 Beneficial interest	14
4.2 Rights of Holders	15
4.3 Dealing with Units	15
4.4 Consolidation, division and issue of Units and Options	15
4.5 Parts of Units	15
4.6 Holders not to interfere	15
5. Classes of Units	15
5.1 Fees, expenses or tax referable to a class	15
5.2 No limitation of class rights or obligations	16
5.3 Determination of variables in relation to a class	16
5.4 Value of class Units	16
6. Transfers of Units and Options	16
6.1 Transfer	16
6.2 Acceptance of transfers	16
6.3 Refusal to register	17
6.4 Certificates for Units	17
6.5 Electronic settlement	17
6.6 Transfer instruments	18

6.7	Timing of transfer	18
7.	Proportional Takeover Bid	18
7.1	Transfers	18
7.2	Voting entitlements	18
7.3	Meeting	18
7.4	Voting threshold	19
7.5	Meeting rules	19
7.6	Notice of vote outcome	19
7.7	No vote	19
7.8	Cessation of clause	19
8.	Specified Time	19
8.1	Applications, issues and redemptions	19
8.2	Record date	19
9.	Applications	20
9.1	Application for Units	20
9.2	Payment in kind	20
9.3	Responsible Entity may deduct	20
9.4	Separate bank account	20
9.5	Responsible Entity may set Investment minimums	20
9.6	Amount or value of consideration for Units	20
9.7	Responsible Entity may reject applications	20
9.8	Issue of Units	20
9.9	Overseas Unit Holders	21
10.	Valuation	21
10.1	Responsible Entity's expertise	21
10.2	Time of calculation	21
10.3	Calculation of Net Trust Value	21
10.4	Value	21
10.5	Determining value	21
10.6	Revaluation	21
11.	Issue	21
11.1	Initial Units	21
11.2	Issue Price	22
11.3	Calculating Issue Price for Units that are Stapled	22
11.4	Rights issues and purchase or re-investment plans	22
11.5	Application Transaction Costs	22
11.6	Corresponding offer and issue of Units and Attached Securities	23
11.7	Restriction on issue and redemption of Units	23
12.	Options	23
12.1	Issue of Options	23
12.2	Interest of Option Holders	24
12.3	Voting rights of Option Holders	24
13.	Partly paid Units	24
13.1	Issue of partly paid Units	24
13.2	Calls	24
13.3	Notice of calls and liability to pay calls	24
13.4	Liability to pay calls	24

13.5	Payment of calls in advance	25
13.6	Effect of Stapling	25
13.7	Interest on unpaid calls	25
13.8	Default	25
13.9	Failure to comply with Default Notice	26
13.10	Disposal of Units	26
13.11	Liability of former Holder	27
13.12	Other terms	27
14.	Redemption of Units	27
14.1	Responsible Entity may offer to redeem Units	27
14.2	Redemption request while Trust is liquid	27
14.3	Situation where Trust is not liquid	27
14.4	Redemption Price	28
14.5	Redemption Transaction Costs	28
14.6	Deduction of exit fee and Taxes	28
14.7	Determination of Minimum Redemption Amount	28
14.8	Redemption Requests for less than the Minimum Redemption Amount	28
14.9	Deemed Redemption Request for all Units	28
14.10	Transfer of assets on redemption	28
14.11	Redemption of Stapled Units	28
15.	Small holdings	29
15.1	Power to redeem Units that are not Officially Quoted	29
15.2	Power to sell or redeem Units that are Officially Quoted	29
15.3	Proceeds	29
15.4	Takeovers	29
15.5	Redemption price	29
16.	Suspension or refusal of redemption	29
16.1	Responsible Entity may suspend or refuse redemption	29
16.2	Redemption Requests during suspension	30
17.	Stapling	30
17.1	Stapling commencement	30
17.2	Issues	30
17.3	Responsible Entity obligations	30
17.4	Cessation of Stapling Provisions	30
17.5	Stapled Security Register	31
18.	Amendment to Stapling Provisions	31
19.	Responsible Entity's Powers	31
19.1	General powers	31
19.2	Responsible Entity may delegate powers	32
19.3	Buy Back of Units	32
19.4	Discretion	32
19.5	Independent rights	32
19.6	Stapled Entity benefits	32
20.	Management of the Trust	32
20.1	Responsible Entity to manage Trust	32
20.2	Responsible Entity may engage advisers	33
20.3	Reliance by Responsible Entity	33

20.4	Equality of treatment	33
21.	Limitation of liability and indemnity	33
21.1	Responsible Entity's liability	33
21.2	Indemnity	34
21.3	Best interests	34
22.	Investment policy	34
23.	Register	34
23.1	Unit register	34
23.2	Branch registers	34
23.3	Notice of trust	34
23.4	Registered Holder is owner	34
23.5	Classes	35
24.	Mortgage	35
24.1	Recording of mortgagee	35
24.2	Payments to mortgagees	35
24.3	Transfer of mortgaged Units	35
24.4	Responsible Entity not have notice of mortgage or charge	35
25.	Death and insolvency	35
26.	Termination	35
26.1	Responsible Entity may terminate	35
26.2	Holders may terminate	35
26.3	Issue and redemption stops	35
26.4	Action on termination	36
26.5	Realisation of Trust Property	36
26.6	Distributable Income	36
26.7	Auditing of winding-up accounts	36
26.8	Notice to Manager	36
27.	Restructure	36
28.	Responsible Entity's fees	37
28.1	General	37
28.2	Base Fee	37
28.3	Securities in satisfaction of Base Fee	37
28.4	Responsible Entity may receive less fees	37
28.5	Responsible Entity may defer fees	37
28.6	GST	38
29.	Outgoings	38
29.1	Expenses	38
29.2	Deferral	40
30.	Recoveries	40
30.1	Holders' liabilities	40
30.2	Responsible Entity may withhold or recover	40
31.	Distributions	40
31.1	Distributable Income	40
31.2	Distributions	40

31.3	Change in the law	41
31.4	Income categories	41
31.5	Distribution reinvestment plan	41
32.	Payments	41
32.1	Means of payment	41
32.2	If payment not effective	42
33.	Auditor	42
34.	Meetings	42
34.1	Convening Meetings	42
34.2	Notices	42
34.3	Proxies	42
34.4	Other types of Units	43
35.	Conduct of meetings	43
35.1	Chairperson may adjourn Meeting	43
35.2	Closing of Register	43
35.3	Joint Holders	43
35.4	Resolutions	43
35.5	Minutes	43
35.6	Postal ballot	43
35.7	Destruction of proxy forms and ballot papers	43
35.8	Right to attend and be heard	44
35.9	Certain polls	44
35.10	Other types of Units	44
36.	Responsible Entity's retirement or removal	44
37.	Liability of Holders	44
38.	Complaints	44
39.	Corporations Act	45
39.1	Compliance with Relief and things required to be in this constitution	45
39.2	Matters required to be in this constitution	45
40.	Amendments to deed	45
41.	Calculations	45
42.	Notices	45
42.1	Notices sent by mail	45
42.2	Notices sent by email or facsimile	45
43.	Governing law	46
44.	Listing Rules	46
45.	Restricted Securities	46
46.	Change of manager	47
46.1	Change of name	47
46.2	Amending this clause	47

Details

Date

Party

Name	Babcock & Brown Residential Land Partners Services Limited
Short form name	Responsible Entity
ACN	118 364 499
Notice details	Level 39 The Chifley Tower, 2 Chifley Square Sydney NSW 2000 Attention: Chief Executive Officer Babcock & Brown Residential Land Partners

Terms

1. Defined terms & interpretation

1.1 Defined terms

In this constitution:

Accrual Time means the time determined by the Responsible Entity when the number of Units on issue is calculated for the purpose of making a distribution under **clause 31.2**.

Application Transaction Costs has the meaning given to it in **clause 11.5**.

Approving Resolution means a resolution passed in accordance with **clause 7**.

Approving Resolution Deadline in relation to a Proportional Takeover Bid means the day that is the 14th day before the last day of the Bid Period.

ASIC means the Australian and Securities Investments Commission.

ASTC has the same meaning as in the *Corporations Regulations 2001* (Cth).

ASTC-regulated Transfer has the same meaning as in the *Corporations Regulations 2001* (Cth).

ASTC Settlement Rules means the operating rules of ASTC.

ASX means Australian Stock Exchange Limited ACN 008 624 691.

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 of the Trust.

Bid Class has the same meaning as in the Corporations Act.

Bidder has the same meaning as in the Corporations Act.

Bid Period has the same meaning as in the Corporations Act.

BBRP means the Babcock & Brown Residential Land Partners Group (or as otherwise named from time to time) comprising the Stapled Entities.

BBRPL means Babcock & Brown Residential Land Partners Limited ACN 119 517 985.

BBRPL Share means a share in the share capital of BBRPL.

BBRPS means Babcock & Brown Residential Land Partners Services Limited ACN 118 364 499.

Business Day has the same meaning as in the Listing Rules.

Business Hours means 9.00am to 5.00pm on a Business Day.

Buy Back has the meaning given in **clause 19.3**.

CHESS has the same meaning as in chapter 21 of the ASTC Settlement Rules.

CHESS Holding has the same meaning as in the ASTC Settlement Rules.

Corporations Act means the *Corporations Act 2001* (Cth) and includes any regulations made under that Act and any exemption or modification to that Act which applies to the Trust or the Responsible Entity.

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 Trust Value after the receipt of the consideration for the Units plus any 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 15 Trading Days immediately preceding that day divided by the average Paid Up Proportion of Securities in that class of Security; or
- (c)
 - (i) if no sales of Securities have occurred on the ASX in the previous 15 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 Responsible Entity'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 Corporations Act, the Listing Rules and which is capable of being independently verifiable as the fair value for that Security.

Disclosure Document means information memorandum, product disclosure statement or any other similar document issued by the Responsible Entity relating to the issue of Units in the Trust.

Distributable Income means the distributable income of the Trust determined under **clause 31.1**.

Final Call Date means the date specified in the first Disclosure Document of the Trust as being the last date by which the Responsible Entity may make calls on Holders.

First Closing Date means the closing date in the first Disclosure Document pursuant to which Units or Stapled Securities are first offered to the public or such other date as determined by the Responsible Entity.

GST has the meaning given to it in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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 person for the time being appearing on the Register as a holder of a Unit; and
- (c) in all other cases, where required by the Corporations Act, a person determined under the Corporations Act for the time being as a member of Trust.

Initial Minimum Investment means the amount determined by the Responsible Entity from time to time as the minimum number of Units or value of Units for which application may be made by a new Holder.

Initial Unit means a Unit issued pursuant to **clause 3.1** or offered under the first Disclosure Document.

Initial Unitholder has the meaning given in **clause 3.1**.

Issue Price means the price at which a Unit is issued.

Issuer Sponsored Holding has the same meaning as in the ASTC Settlement Rules.

Listing Rules means the Listing Rules of ASX and any other rules of ASX which are applicable while securities of the Trust are 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.

Listed means in respect of an entity, admitted to the official list of the ASX and in respect of Units, Officially Quoted.

Manager means the investment manager from time to time of a Stapled Entity.

Marketable Parcel has the same meaning as in the business rules of ASX in force from time to time.

Meeting means a meeting of Holders or a class of Holders.

Minimum Balance means the amount determined by the Responsible Entity from time to time as the minimum number of Units or value of Units to be held by a Holder.

Minimum Redemption Amount means an amount determined by the Responsible Entity from time to time as the minimum number of Units or value of Units for which a Redemption Request may be made by a Holder.

Net Income is the 'net income' of the Trust as defined by Subsection 95(1) of the Income Tax Assessment Act (1936).

Net Trust Value means the total value of the Trust Property less the Trust Liabilities.

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 Corporations Act.

Option means an option to subscribe for a Unit.

Option Holder means a person registered as the holder of an Option and includes persons jointly registered.

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 Responsible Entity 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 Corporations Act.

Proper ASTC Transfer has the same meaning as in the *Corporations Regulations 2001* (Cth).

Proportional Takeover Bid has the same meaning as in the Corporations Act.

Redemption Price means the price payable on the redemption of a Unit calculated under **clause 14.4**.

Redemption Request means a request by a Holder to the Responsible Entity to redeem Units.

Redemption Transaction Costs has the meaning given to it in **clause 14.5**.

Register means the register of Holders referred to in **clause 23**.

Relevant Financial Market has the same meaning as in the Corporations Act.

Relief means any declaration made or exemption granted by ASIC that is applicable to the Trust and that is in force.

Reporting Agency means Standard & Poor's or if it does not calculate the indices referred to in the definition of Benchmark Return, then any person selected by the Manager who calculates and/or reports the indices.

Responsible Entity means the body named in this constitution as Responsible Entity while it remains responsible entity of the Trust and also means any subsequent responsible entity of the Trust from time to time.

Restricted Securities has the same meaning as in the Listing Rules.

Security means:

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

Specified Time means a time specified by the Responsible Entity from time to time under **clause 8** for the purpose of accepting applications for, issuing or redeeming Units.

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 17.5**.

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 Responsible Entity.

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 1.7 to 1.9** (inclusive), **6.2(c) to (e)** (inclusive), **11.3, 11.6, 13.6, 17** and **18** (together the **Stapling Provisions**).

Subsequent Minimum Investment means the amount determined by the Responsible Entity from time to time as the minimum number of Units or value of Units for which application may be made by an existing Holder.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth) (as applicable).

Taxes means all taxes, including without limitation income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, withholding, GST and wealth taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

Termination Date means the date specified by the Responsible Entity in the notice terminating the Trust under **clause 26.1**, or the effective date of termination of the Trust under **clause 26.2**, as appropriate.

Trading Day has the same meaning as in the Listing Rules.

Trust means the trust constituted by and under this constitution.

Trust Liabilities include borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions the Responsible Entity decides to make (including, but not limited to, a provision for accrued management fees), unpaid distributions due to Holders and other unpaid remuneration (if any) due to the Responsible Entity 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 Trust Liabilities is not intended to affect any other meaning of 'liabilities' of the Trust which the Responsible Entity may be required to adopt for financial reporting purposes.

Trust Property means all property, rights and income of the Trust.

Unit means an undivided beneficial interest in the Trust.

Valuation Time means a time the Responsible Entity calculates the Net Trust Value under **clause 10.2**.

1.2 Interpretation

In this constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this constitution, and a reference to this constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **AS, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, New South Wales, Australia time;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this constitution or any part of it; and
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Corporations Act expressions

Unless the contrary intention appears in this constitution, an expression in a clause of this constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this constitution, that expression has the same meaning as in that provision.

1.5 Conflicts

For the purposes of this constitution, if the provisions of the Corporations Act and the Listing Rules, CS Facility Rules or this constitution, conflict on the same matter, the provisions of the Corporations Act prevail.

1.6 Listing requirements

Before the Trust or any Unit is Listed, a provision of this constitution subject to or in any way restricted by the 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 Listing Rules or the CS Facility Rules.

1.7 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 Corporations Act 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.

1.8 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.

1.9 Stapling

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

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

2. The Trust

2.1 Unit trust

By this constitution the Responsible Entity constitutes a unit trust called *Babcock & Brown Residential Land Partners Trust* or such other name as determined by the Responsible Entity from time to time.

2.2 Benefit of the trust

The Trust is constituted for the benefit of Holders.

2.3 Responsible Entity

The Responsible Entity is the trustee of the Trust and the responsible entity of the Trust for the purposes of the Corporations Act.

2.4 Deed binding

This is the constitution of the Trust for the purposes of the Corporations Act and it binds the Holders and the Responsible Entity.

2.5 Separate fund

The Responsible Entity must hold the Trust as a separate fund which is not available to meet liabilities of any other trust. The Responsible Entity may mingle Trust Property with other property to the extent legally permitted.

2.6 Vesting

The Trust Property vests in the Responsible Entity on trust for the Holders.

2.7 Duration

The Trust ends on the earlier of the time provided by this constitution or by law.

3. Commencement

3.1 Initial Unitholders

The Trust commences when the first investor or investors (**Initial Unitholders**) pays an amount (or the first instalment in the case of partly paid Units) to the Responsible Entity to subscribe for Units. The Responsible Entity must issue the Initial Unitholders with these Initial Units in return for payment of the issue price for the Initial Units as provided for in **clause 11.1**.

3.2 Initial Units

The Responsible Entity may determine the period and terms and conditions under which an investor will be taken to be an Initial Unitholder and be taken to have subscribed for Initial Units.

4. Units

4.1 Beneficial interest

The beneficial interest in the Trust is divided into Units.

4.2 Rights of Holders

A Unit confers on its Holder an undivided absolute, vested and indefeasible beneficial interest in the Trust as a whole, subject to Trust Liabilities, not in parts or single assets. All Units confer identical interests and rights except as otherwise provided in this constitution or by their respective terms of issue. Each partly paid Unit shall carry the Paid Up Proportion of the rights attaching to a fully paid Unit.

4.3 Dealing with Units

A Holder must not dispose of or otherwise deal with its Units other than in accordance with this constitution. Any disposal or other dealing in a Holder's Units other than in accordance with this constitution has no effect unless the Responsible Entity determines otherwise.

4.4 Consolidation, division and issue of Units and Options

- (a) The Responsible Entity may at any time consolidate, divide, issue or create Units or Options.
- (b) The Responsible Entity may at any time issue different classes of Units or Options provided that in doing so, where Stapling applies, **clause 17.1** is complied with.
- (c) Where units of different classes are issued, the Responsible Entity may, if it decides, incorporate any or all of the terms of issue or rights and entitlements in this constitution or in a schedule to this constitution.

4.5 Parts of Units

A part of a Unit may be created and issued and dealt with in the proportion that the part bears to a whole Unit.

4.6 Holders not to interfere

A Holder may not interfere with, or exercise powers of, the Responsible Entity in respect of any Trust Property, Trust Liability or obligation and has no right to lodge a caveat affecting any Trust Property.

5. Classes of Units

5.1 Fees, expenses or tax referable to a class

If a class of Units is created in accordance with this constitution and Units in the class have at any time:

- (a) a fee that is referable to that class that is different to the fees that are referable to another class; or
- (b) a type or a particular expense or tax or a proportion of a particular expense or tax referable to that class,

the Responsible Entity must:

- (c) calculate each Holder's share of income of the Trust, Distributable Income or amount distributed under this constitution by first calculating for each class of Unit held by the Holder that proportion of the variables in **clause 31** that the Responsible Entity determines is properly referable to the class and the Units held by the Holder and then aggregating those amounts; and
- (d) determine the proportion of net proceeds of realisation under **clause 26.4** that is properly referable to each class and each proportion referable to each class must be distributed pro rata to Holders according to the number of Units in that class they hold.

5.2 No limitation of class rights or obligations

Clause 5.1 does not limit the extent to which a class:

- (a) may have rights, obligations or restrictions other than or in addition to those specified in **clause 5.1** different from any other class; or
- (b) may have different rights, obligations or restrictions because of a determination by the Responsible Entity under this constitution, including in relation to issue and redemption prices applicable to different classes of Units.

5.3 Determination of variables in relation to a class

The Responsible Entity in making any determination of variables properly referable to a class under this constitution must ensure that any variable which relates:

- (a) only to a particular class is solely referable to that class; and
- (b) to more than one class, is apportioned between those classes in the same proportions as the aggregate value of Units on issue in each class as at the most recent Valuation Time bears to the aggregate value of Units in all classes on issue at that Valuation Time, to which the variable relates.

5.4 Value of class Units

In **clause 5.3**, the value of a Unit in a class is the mid-point between the applicable Issue Price and Redemption Price for Units in that class at the most recent Valuation Time.

6. Transfers of Units and Options

6.1 Transfer

Subject to this constitution and the ASTC Settlement Rules in respect of an ASTC-regulated Transfer, a Holder may only transfer Units or Options in the manner the Responsible Entity from time to time prescribes.

6.2 Acceptance of transfers

- (a) Subject to the Listing Rules and this constitution, the Responsible Entity may, in its absolute discretion, refuse to register any transfer of Units or Options that are Officially Quoted.
- (b) The Responsible Entity is not obliged to register a transfer of Units or Options that are not Officially Quoted where:
 - (i) the transferee does not meet the Responsible Entity'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 Responsible Entity; or
 - (iii) any amount payable by the transferee to the Responsible Entity 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 5**, 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 Listing Rules, while Stapling applies, the Responsible Entity 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 6.2(c)** or a copy of such a transfer for the relevant Attached Securities to which a Unit is Stapled will:
 - (i) be taken to authorise the Responsible Entity 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 6.2(c)** relating to the other Attached Securities is also provided.

6.3 Refusal to register

- (a) The Responsible Entity 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 Listing Rules or any restriction agreement entered into by the Responsible Entity under the Listing Rules in relation to the Units; and
 - (ii) refuse to register any transfer where the Responsible Entity is required to do so by the Listing Rules.
- (b) Despite **clauses 6.2(a)** and **6.3(a)**, the Responsible Entity 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 Responsible Entity has refused to register, the Responsible Entity 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 6.3(b)**, Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX. The Responsible Entity will refuse to acknowledge a disposal of Restricted Securities to the extent required under the Listing Rules.

6.4 Certificates for Units

The Responsible Entity is under no obligation to and may decline to issue certificates for Units or Options. The Responsible Entity at any time may send a Holder details of Units or Options held by, Unit or Option transactions of, or distributions to, the Holder.

6.5 Electronic settlement

- (a) The Responsible Entity 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 Corporations Act, the 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 Responsible Entity in relation to the Trust participates in a system of the kind described in **clause 6.5(a)**, then despite any other provision of this constitution:
 - (i) Units may be transferred, and transfers may be registered, in any manner required or permitted by any one or more of the 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 Responsible Entity must, in relation to the Trust, comply with and give effect to those rules; and
- (iii) the Responsible Entity 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).

6.6 Transfer instruments

A written transfer instrument must be:

- (a) executed by the transferor or (where the Corporations Act permits) stamped by the transferor's broker;
- (b) unless the Responsible Entity decides otherwise in the case of a fully paid Unit, executed by the transferee or (where the Corporations Act permits) stamped by the transferee's broker; and
- (c) 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.

Subject to the Corporations Act, the written transfer instrument may comprise more than one document.

6.7 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.

7. Proportional Takeover Bid

7.1 Transfers

Registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid is prohibited unless and until an Approving Resolution approving the Proportional Takeover Bid is passed.

7.2 Voting entitlements

A person (other than the Bidder or an associate of the Bidder) who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held Bid Class Units:

- (a) is entitled to vote on an Approving Resolution; and
- (b) has one vote for each Bid Class Unit held.

7.3 Meeting

Where offers have been made under a Proportional Takeover Bid, the Responsible Entity must ensure that an Approving Resolution is voted on at a meeting of the persons described in **clause 7.2** before the Approving Resolution Deadline.

7.4 Voting threshold

An Approving Resolution is passed if more than 50% of the votes cast on the resolution are cast in favour of the resolution, and otherwise is taken to have been rejected.

7.5 Meeting rules

The provisions of this constitution that apply to a meeting of the Trust apply, with such modifications as the circumstances require, to a meeting that is called under this clause as if the meeting was a meeting of the Trust.

7.6 Notice of vote outcome

If an Approving Resolution to approve the Proportional Takeover Bid is voted on in accordance with this clause before the Approving Resolution Deadline, the Trust must, on or before the Approving Resolution Deadline, give:

- (a) the Bidder; and
- (b) each Relevant Financial Market,

a written notice stating that an Approving Resolution to approve the Proportional Takeover Bid has been voted on and whether it was passed or rejected.

7.7 No vote

If no resolution has been voted on in accordance with this clause as at the end of the day before the Approving Resolution Deadline, a resolution to approve the Proportional Takeover Bid is taken, for the purposes of this clause, to have been passed in accordance with this clause.

7.8 Cessation of clause

This **clause 7** will automatically cease to have effect upon three years from the date this Trust constituted under this constitution unless renewed in accordance with the Corporations Act prior to that date.

8. Specified Time

8.1 Applications, issues and redemptions

The Responsible Entity may determine (and whenever it elects, vary) one or more times during each Business Day for the purposes of any or all of:

- (a) applications for Units;
- (b) the issue of Units; and
- (c) Redemption Requests,

different times being applicable to different locations or methods of communication or payment. The times relevant to applications, issues and to Redemption Requests may differ.

8.2 Record date

Unless this constitution otherwise provides, the Responsible Entity will determine the record or similar date for determining Holders' entitlements including their entitlements to participate in new issues and distributions of income and capital.

9. Applications

9.1 Application for Units

Except as otherwise provided in this constitution, a person intending to subscribe for Units must:

- (a) give the Responsible Entity an application in a form and manner approved by the Responsible Entity; and
- (b) pay the application money or transfer other property (or in the case of partly paid Units, that part of the Issue Price payable on application) to the Responsible Entity or custodian (where there is one) by way of subscription for Units.

9.2 Payment in kind

A person intending to subscribe for Units may only transfer property (other than money) to pay for those Units, if the:

- (a) Responsible Entity permits;
- (b) property is in a form permitted by the Responsible Entity; and
- (c) property is accompanied by a valuation of it that is acceptable to the Responsible Entity, unless otherwise determined by the Responsible Entity.

9.3 Responsible Entity may deduct

The Responsible Entity or custodian may deduct Taxes and Application Transaction Costs incurred in receiving, and in calculating the value of, consideration for Units.

9.4 Separate bank account

The Responsible Entity or custodian may hold application money for Units in a single account containing application money for one or more trusts or bodies corporate.

9.5 Responsible Entity may set Investment minimums

The Responsible Entity from time to time may determine and may vary the current Initial Minimum Investment, Subsequent Minimum Investment and Minimum Balance.

9.6 Amount or value of consideration for Units

The amount or value of the consideration for Units on application must equal or exceed the Initial Minimum Investment (or in the case of a subsequent investment, Subsequent Minimum Investment) except if the:

- (a) consideration is paid by the Responsible Entity on behalf of a Holder; or
- (b) Responsible Entity elects to accept lower consideration.

9.7 Responsible Entity may reject applications

The Responsible Entity may reject an application for Units without giving a reason.

9.8 Issue of Units

Units are created and issued when the Responsible Entity has received both the Application (if relevant) and either the consideration or a commitment in a form acceptable to the Responsible Entity to provide the consideration. Units issued against consideration paid other than in cleared funds are void if the funds are not subsequently cleared or the consideration is not provided or transferred at or within the time specified by the Responsible Entity.

9.9 Overseas Unit Holders

Subject to the Listing Rules during such periods as the Trust or Units are Listed, the Responsible Entity may, in relation to an offer of Units or Options to Holders, elect to offer Units or Options only to Holders with registered addresses in Australia and New Zealand and such other countries (if any) as the Responsible Entity determines, and for the purposes of this constitution, such offer will be deemed to have been made to all relevant Holders.

10. Valuation

10.1 Responsible Entity's expertise

The Responsible Entity does not have any special expertise in valuing property.

10.2 Time of calculation

The Responsible Entity may calculate the Net Trust Value at any time determined by the Responsible Entity (**Valuation Time**), but must do so, other than when Redemption or other transactions are suspended, at least once each calendar year quarter on the basis of the most recent valuation of each item of Trust Property and determination of Trust Liabilities. The Responsible Entity may calculate Net Trust Value more than once a day.

10.3 Calculation of Net Trust Value

The Responsible Entity must calculate the Net Trust Value by deducting the value of the Trust Liabilities from the value of the Trust Property (determined on the basis of the most recent valuation of each item), each as at the Valuation Time.

10.4 Value

Subject to **clauses 10.2 and 10.6**, the value of any property is the market value, the net fair value, any other value appropriate to the nature of the property and the nature of the Trust (from time to time) or any other value permitted under any Relief. Property acquired must be valued at cost as determined by the Responsible Entity until revalued.

10.5 Determining value

Subject to **clauses 10.2 and 10.6**, the value of any Trust Property must be determined by:

- (a) a valuer who is independent of the Responsible Entity; or
- (b) a person using a method determined by a person who is independent of the Responsible Entity; or
- (c) the Responsible Entity using any other appropriate method the Responsible Entity decides to adopt (including estimates of value based on objective criteria where actual figures are not available) which is capable of being verified independently by a valuer independent of the Responsible Entity.

10.6 Revaluation

The Responsible Entity may cause some or all Trust Property to be revalued whenever it sees fit and shall do so from time to time having regard to the nature of the property.

11. Issue

11.1 Initial Units

The Issue Price for Initial Units is \$0.99.

11.2 Issue Price

Subject to the other provisions of this **clause 11**, the Issue Price for a Unit (other than an Initial 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 Responsible Entity in accordance with **clause 11.3**; or
- (b) where permitted by any Relief and the Listing Rules, such other price as the Responsible Entity determines in its discretion provided that, if Holder approval or ratification of the issue is sought, then:
 - (i) Holders who hold Units in the same class approve the proposed placement by a Placement Resolution;
 - (ii) unless the Responsible Entity reasonably considers that the proposed placement will not adversely affect the interests of Holders holding Units in another class – Holders holding Units in that other class approve the proposed placement by a Placement Resolution; and
 - (iii) 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 proposed placement.

11.3 Calculating Issue Price for Units that are Stapled

Subject to the Corporations Act, the 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 Responsible Entity and the other Stapled Entities.

11.4 Rights issues and purchase or re-investment plans

- (a) In the case of an offer of interests in the Trust to all Holders registered on a date determined by the Responsible Entity, the Issue Price of a Unit must be equal to or greater than 60% of the Issue Price that would otherwise apply under **clause 11.2** and **11.3**.
- (b) For the purposes of this **clause 11.4**, an offer will be deemed to be to all Holders where it is not offered to certain Holders and Relief permits the offer not to be made to those certain Holders.
- (c) Where any offer of Units is made to Holders and certain Holders do not acquire the Units, to the extent permitted by any Relief, the Units not acquired may be acquired by other persons (including existing Holders).
- (d) An offer of Units pursuant to this **clause 11.4** must be made in accordance with requirements of any Relief applying to such an offer.

11.5 Application Transaction Costs

The Application Transaction Costs are:

- (a) an estimate by the Responsible Entity (but which is independently verifiable) of the total transaction costs the Trust would incur to acquire afresh the Trust Property; or

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

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

11.6 Corresponding offer and issue of Units and Attached Securities

While Stapling applies, the Responsible Entity 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.

11.7 Restriction on issue and redemption of Units

No Units may be issued or redeemed after the 80th anniversary of the day the Trust commenced if to do so would cause a contravention of an applicable rule against perpetuities or any other applicable rule of law or equity.

11.8 Issues in the first 12 months

Without limiting and notwithstanding, any other provision of this constitution, within the first 12 months after the date of this constitution:

- (a) if as set out in the first Disclosure Document, the Responsible Entity, Stapled Entity or a wholly owned entity of either of those enters into legally binding arrangements to receive a return from certain projects being undertaken by that person (**Developer**), whether alone or in conjunction with other persons;
- (b) then pursuant to such an arrangement the Responsible Entity may:
 - (i) provide financial accommodation to a Stapled Entity or a wholly owned entity of the Trust or a Stapled Entity; and
 - (ii) issue up to 15,000,000 Units to the Developer or its nominated recipient,

and the Issue Price of such Units is \$0.99.

12. Options

12.1 Issue of Options

The Responsible Entity may, subject to the Corporations Act, the Listing Rule and any Relief, issue Options on such terms and conditions as it determines, provided that:

- (a) subject to **paragraphs 12.1(b) and 12.1(c)**, the issue price of Options shall be such price (including nil) as the Responsible Entity determines in its discretion;
- (b) the Issue Price of a Unit, to be issued pursuant to the exercise of the Option, is not less than 60% of the Issue Price that would otherwise apply under **clause 11.2 and 11.3** for a Unit issued on the date not more than 5 Trading Days prior to the date of issue of the Option; and
- (c) in the case of a pro rata offer of Options to all Unit Holders, the issue price of an Option and Issue Price of a Unit pursuant to the exercise of the Option, shall be determined by the Responsible Entity provided that during such periods as the Units are Officially Quoted, the Issue Price of the Unit shall be an amount greater than 60% of the Issue Price that

would otherwise apply under **clause 11.2** and **11.3** for a Unit issued on the date not more than 5 Trading Days prior to the date of issue of the Option.

12.2 Interest of Option Holders

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

12.3 Voting rights of Option Holders

Option Holders shall be entitled to receive notices of, and to attend meetings of Unit Holders but shall not, subject to the Corporations Act, any exemption made thereunder or the terms of issues of the Options, be entitled to speak or vote at any such meeting.

13. Partly paid Units

13.1 Issue of partly paid Units

The Responsible Entity may offer and issue Units (including as part of a Stapled Security) on terms that the Issue Price is payable by one or more instalments of such amounts payable at such times as the Responsible Entity determines, provided that if the Units are to be Stapled, the:

- (a) corresponding Attached Securities are also issued on a partly paid basis; and
- (b) terms of the Units and the Attached Securities are:
 - (i) consistent with the provisions of this constitution relating to payments, calls and forfeiture, as they apply to the Units; and
 - (ii) otherwise compatible.

13.2 Calls

The Responsible Entity may from time to time in accordance with this **clause 13** make calls on Holders of partly paid Units for any or all money unpaid on the Holder's Units. Any call must be pro rata as between all Holders of a particular class of Units and the Responsible Entity may at any time by notice in writing to Holders revoke or postpone a call. From the Final Call Date:

- (a) the Responsible Entity must not make any further calls; and
- (b) the liability of a Holder in relation to the Holder's Units will be deemed to be equal to the aggregate of any amounts called in respect of the Holder's Units before the Final Call Date that has not been paid by the Holder.

13.3 Notice of calls and liability to pay calls

Holders on whom a call is made must be given at least 21 days' notice in writing specifying the amount of the call and due date for payment.

13.4 Liability to pay calls

- (a) Holders on whom a call is made in accordance with this **clause 13** must pay to the Responsible Entity the amount called at the time or times and place specified and if and while an amount called remains unpaid, all voting rights and entitlements to distributions of income and capital are suspended until reinstated by the Responsible Entity.
- (b) Where a Holder has paid the amount of a call, the Unit will be deemed to have been paid up to the amount called on the due date for the payment of the call.

13.5 Payment of calls in advance

- (a) The Responsible Entity may accept from a Holder the whole or part of the amount unpaid on a Share before the amount accepted has been called.
- (b) The Responsible Entity may subject to the Corporations Act:
 - (i) pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Holder and the Responsible Entity; and
 - (ii) subject to any contract between the Responsible Entity and the Holder, repay all or any of the amount accepted in excess of the amount called on the Unit.
- (c) Payment of an amount in advance of a call does not entitle the paying Holder to any:
 - (i) distribution, benefit or advantage, other than the payment of interest under this **clause 13.5**; or
 - (ii) voting right,to which the Holder would not have been entitled if it had paid the amount when it became due.

13.6 Effect of Stapling

- (a) A call or any other amount due in respect of a partly paid Unit that comprises part of a Stapled Security will not be considered to be paid unless any amounts payable in respect of the corresponding Attached Securities are also paid.
- (b) If a Unit which is Stapled is forfeited or sold under this **clause 13**, the Unit:
 - (i) may only be forfeited or sold if the corresponding Attached Securities are also simultaneously sold; and
 - (ii) must be sold at a price (with the sale price being allocated between the Attached Securities) as determined by the Responsible Entity.

13.7 Interest on unpaid calls

Without limiting the other provisions of this constitution concerning default, if a sum called in respect of a Unit is not paid before or on the day appointed for payment, the Holder must pay interest on the sum from the day appointed for payment of the sum called to the time of actual payment at a rate not exceeding 20% per annum determined by the Responsible Entity in its absolute discretion.

13.8 Default

- (a) The Responsible Entity may give notice requiring the Holder to pay any unpaid call together with any interest which may have accrued (**Default Notice**) if a Holder fails to pay a call in respect of its Units or (while Stapling applies) Attached Securities on the day when it is due for payment.
- (b) The Default Notice must:
 - (i) specify a further day (not less than 7 days after the date of the notice) on or before which the payment required by the Default Notice is to be made; and
 - (ii) state that, in the event of non-payment at or before the time appointed, the Units and Attached Securities (while Stapling applies) in respect of which the call was made will be liable to be forfeited and redeemed in accordance with this constitution.

13.9 Failure to comply with Default Notice

- (a) If a Default Notice is issued, and:
- (i) the requirements of a Default Notice are not complied with in the time specified in the Default Notice; or
 - (ii) the requirements of a Default Notice are complied with, but are complied with after the time specified in the Default Notice,
- then any Units (and while Stapling applies, corresponding Attached Securities) in respect of which the Default Notice has been given will be forfeited. A Unit which is Stapled, may only be forfeited if the corresponding Attached Securities are also simultaneously forfeited. All unpaid distributions in respect of the forfeited Units (and distributions and dividends as applicable for any Attached Securities) will also be forfeited.
- (b) Upon a Holder's Units being forfeited under this **clause 13**, that Holder ceases to be a Holder and also simultaneously ceases to be a member of each Stapled Entity in respect of any corresponding Attached Securities (if any) and ceases to have all entitlements and rights (including for distributions and dividends) in respect of those Units and Attached Securities.
- (c) On forfeiture, Units become the Trust Property and forfeited Units must be:
- (i) if the Listing Rules permit, sold, disposed of, or redeemed on terms determined by the Responsible Entity; or
 - (ii) offered by public auction in accordance with any requirements of the Listing Rules.
- (d) The Responsible Entity may, at any time before a forfeited Unit is sold, disposed of or redeemed, annul the forfeiture of the Unit on conditions determined by it.
- (e) Promptly after a Unit has been forfeited:
- (i) notice of the forfeiture must be given to the Member in whose name the Unit was registered immediately before its forfeiture; and
 - (ii) the forfeiture and its date must be noted in the Register,
- however omission or neglect to do this will not invalidate a forfeiture.

13.10 Disposal of Units

- (a) The Responsible Entity may:
- (i) receive the consideration (if any) given for a forfeited Unit or Attached Securities (to the extent permitted by any constitution of a Stapled Entity) on any sale or disposition of the Unit or Attached Securities under this **clause 13**; and
 - (ii) effect a transfer of a Unit and Attached Securities (if any) in favour of a person to whom they are sold or disposed of.
- (b) The purchaser of a forfeited Unit:
- (i) is not bound to check the regularity of the sale or the application of the purchase price;
 - (ii) obtains title to the Unit despite any irregularity in the sale; and
 - (iii) will not be subject to complaint or remedy by the former holder of the Unit in respect of the purchase.

- (c) Subject to the terms on which a Unit is on issue, the net proceeds of any sale of a forfeited Unit must be applied in the following order:
 - (i) in payment of the costs of the sale;
 - (ii) in payment of all calls or other amounts that were payable in respect of the forfeited Unit and Attached Securities (if any); and
 - (iii) in payment of any surplus to the former Holder of the Unit.

13.11 Liability of former Holder

- (a) A person whose Units have been forfeited, sold, redeemed or otherwise disposed of, ceases to be a Holder in respect of the forfeited Units but remains liable to pay to the Responsible Entity:
 - (i) all money (including interest and expenses) that, at the date of forfeiture, was payable by it to the Responsible Entity in respect of the Units; and
 - (ii) all money that would have become payable by it to the Responsible Entity in respect of the forfeited Units; and
 - (iii) interest due from the date of forfeiture until payment of the money referred to in **clause 13.11(a)(i)** at a rate determined by the Responsible Entity (not exceeding 20% per annum).
- (b) A former Holder's liability to the Trust and Responsible Entity ceases if and when the Responsible Entity receives payment in full of all money (including interest and expenses) payable by the former Holder in respect of the Units. The liability may only be released or waived in accordance with the Listing Rules.

13.12 Other terms

The Responsible Entity may issue partly paid Units on such other terms and conditions as it decides.

14. Redemption of Units

14.1 Responsible Entity may offer to redeem Units

In no circumstances is the Responsible Entity obliged to:

- (a) redeem Units; or
- (b) pay any part of the Redemption Price out of its own funds.

14.2 Redemption request while Trust is liquid

If the Trust is liquid, the Responsible Entity may, but is under no obligation to, redeem Units the subject of a Redemption Request at the Redemption Price from capital and/or income of the Trust.

14.3 Situation where Trust is not liquid

If the Trust is not liquid, a Holder may request for the Responsible Entity to redeem the Holder's Units only in accordance with the terms of any current withdrawal offer made by the Responsible Entity in compliance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Holders, a Holder has no right to make a Redemption Request. The Responsible Entity does not have to make a withdrawal offer.

14.4 Redemption Price

The Redemption Price per Unit for all Units (other than in the circumstances provided for in **clauses 14.3 and 15**), is the sum of:

- (a) the Net Trust Value as at the first Valuation Time after the next applicable Specified Time following communication to the Responsible Entity of a Holder's Redemption Request; less
- (b) any Redemption Transaction Costs,

divided by the number of Units on issue at that Valuation Time. In the case of a partly paid Unit, any uncalled amount in respect of that Unit is to be deducted from the Redemption Price and if the uncalled amount is greater than the Redemption Price, then the Holder must pay the amount of that excess to the Responsible Entity before redemption of the Unit.

14.5 Redemption Transaction Costs

The Redemption Transaction Costs are:

- (a) an estimate by the Responsible Entity (which must be independently verifiable) of the total transaction costs the Trust would incur to sell the Trust Property; or
- (b) if appropriate having regard to the actual cost which would be incurred because of the redemption, the Responsible Entity's estimate (but which must be independently verifiable) of the total transaction costs, which may be zero;

unless the Responsible Entity makes no estimate, in which case the Redemption Transaction Costs are zero.

14.6 Deduction of exit fee and Taxes

The Responsible Entity may deduct any amount referred to in **clause 29.1(x)** from the Redemption Price.

14.7 Determination of Minimum Redemption Amount

The Responsible Entity may from time to time determine or vary the Minimum Redemption Amount.

14.8 Redemption Requests for less than the Minimum Redemption Amount

The Responsible Entity may reject a Redemption Request if the amount payable to the Holder is less than the Minimum Redemption Amount for the Trust.

14.9 Deemed Redemption Request for all Units

If a Redemption Request would leave a holding worth, at the Redemption Price, less than the current Minimum Balance, the Responsible Entity may treat the Redemption Request as applicable to all Units held by that Holder.

14.10 Transfer of assets on redemption

The Responsible Entity may satisfy the amount payable on a redemption of Units (partly or fully) by transferring those assets in specie as the Responsible Entity in its discretion may select, to be credited at asset values determined as at the same time the Redemption Price is determined, without deduction for any costs or Taxes payable by the Holder in respect of the transfer.

14.11 Redemption of Stapled Units

While Stapling applies, a Unit that is Stapled must not be redeemed unless the corresponding Attached Securities are simultaneously redeemed or bought back and cancelled (as applicable).

15. Small holdings

15.1 Power to redeem Units that are not Officially Quoted

The Responsible Entity may redeem Units that are not Officially Quoted and held by a Holder where the total amount of Units held by that Holder is less than the Minimum Redemption Amount, without a Redemption Request from the Holder, provided that:

- (a) the Responsible Entity notifies in writing any such intention to redeem the Units; and
- (b) within 6 weeks of providing the notice to the Holder under **clause 15.1(a)** the Responsible Entity does not redeem the Units; and
- (c) the Trust pays any costs of redemption; and
- (d) while Stapling applies, there is a simultaneous sale or redemption (as the case may be) of the same number of each Attached Security.

15.2 Power to sell or redeem Units that are Officially Quoted

Subject to the remaining provisions of this **clause 15**, while the Trust or Units are Officially Quoted, the Responsible Entity may on one occasion in any 12 month period sell or redeem any Officially Quoted Units held by Holders which comprise less than a Marketable Parcel, without request from the Holder provided that:

- (a) the Responsible Entity notify in writing any such intention to sell or redeem (as the case may be), the Units;
- (b) within 6 weeks of providing the notice to the Holder under **clause 15.2(a)** neither the:
 - (i) Responsible Entity may sell or redeem the Units; nor
 - (ii) Holder advises the Responsible Entity that the Holder wishes to retain the Units;
- (c) the Trust or the purchaser of such Units pays any costs of sale or redemption; and
- (d) while Stapling applies, there is a simultaneous sale or redemption (as the case may be) of the same number of each Attached Security.

15.3 Proceeds

The proceeds of any sale or redemption proceeds under this **clause 15** will not be sent until the Responsible Entity has received a certificate or other proof of title acceptable to the Responsible Entity relating to the Units (or is satisfied that the certificate has been lost or destroyed).

15.4 Takeovers

The Responsible Entity's powers to sell or redeem Units under this **clause 15** lapse following the announcement of a full takeover bid of the Trust. The powers will apply again once such takeover offer closes.

15.5 Redemption price

If a Unit is redeemed under this **clause 15**, the redemption price for the Unit is its Current Market Value.

16. Suspension or refusal of redemption

16.1 Responsible Entity may suspend or refuse redemption

The Responsible Entity at any time may in its absolute discretion:

- (a) suspend the Redemption of Units in the Trust; or
- (b) refuse to redeem Units in accordance with a Redemption Request.

16.2 Redemption Requests during suspension

A Holder's Redemption Request lodged during any period of suspension is taken to be lodged immediately after the end of the period.

17. Stapling

17.1 Stapling commencement

From the Stapling Commencement Date each:

- (a) ordinary Unit must be Stapled to one of each ordinary Attached Security to form a Stapled Security;
- (b) 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; and
- (c) Initial Unit issued prior to that date may be transferred otherwise than as part of a Stapled Security for the purposes of the Initial Unit becoming Stapled to Attached Securities.

17.2 Issues

While Stapling applies, the number of issued Units must equal the number of issued Attached Securities at that time.

17.3 Responsible Entity obligations

- (a) The Responsible Entity 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 17.4 or 18**. In particular, the Responsible Entity must not reorganise (within the meaning given in 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.
- (b) While Stapling applies, the Responsible Entity must use reasonable endeavours to ensure that Units are dealt with consistently with the constitutions of the other Stapled Entities.
- (c) Subject to the Corporations Act, Listing Rules and any agreement with the other Stapled Entities, the Responsible Entity 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; and
 - (ii) 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 Corporations Act, Holders are deemed to have agreed to becoming members of the entity.

17.4 Cessation of Stapling Provisions

- (a) Each issued 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 Responsible Entity 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 **clause 17.4(b)** above from such time as determined under the special resolution (in the case of **paragraph 17.4(b)(i)**) or by the Responsible Entity in its absolute discretion (in the case of **paragraph 17.4(b)(ii)**).

17.5 Stapled Security Register

- (a) The Stapled Securities must be registered in the Stapled Security Register and subject to this constitution, the Responsible Entity must issue a certificate, or a holding statement in accordance with the requirements of the Listing Rules and the CS Facility Rules, in respect of the Stapled Securities, identifying the Stapled Securities to which the certificate relates.
- (b) The Responsible Entity 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 Corporations Act, the Listing Rules or by the Responsible Entity 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.

18. Amendment to Stapling Provisions

Without limitation to any other provision of this constitution or the Corporations Act, no Stapling Provision (including this **clause 18**) may be deleted or amended without the approval of a special resolution of the Holders of Units that are Stapled.

19. Responsible Entity's Powers

19.1 General powers

- (a) Subject to this constitution, the Responsible Entity has within and outside Australia all the powers in relation to the Trust, its Trust Property and Trust Liabilities, that it is legally possible for a natural person, corporation or trustee to have, including to invest in real or personal property of any nature (including derivatives), to borrow or raise money (in whatever proportion to Trust Property), to give guarantees and incur liabilities and obligations of any kind, to fetter its own discretion and to cause the Trust or Securities to be Officially Quoted, as if it were the absolute and beneficial owner of all Trust Property. Without limiting this **clause 19.1** and subject to the Corporations Act, the Responsible Entity has power to mix and mingle Trust Property with the property of other co-investors (in which case it must keep appropriate records of the Trust's interests in the co-investments).

- (b) The Responsible Entity has power to remove effect to or vary the Stapling Provisions only in accordance with **clauses 17.4 or 18.**

19.2 Responsible Entity may delegate powers

The Responsible Entity, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including, but not limited to, holding any Trust Property and executing documents on its behalf.

19.3 Buy Back of Units

The Responsible Entity may, but is under no obligation to, offer to acquire Units as Trust Property. The Responsible Entity may elect that Units so acquired may be retained as Trust Property, sold or redeemed.

19.4 Discretion

The Responsible Entity may determine whether to exercise, and the manner, mode and time of exercise of its powers, in its absolute discretion.

19.5 Independent rights

Subject to the Corporations Act, the Responsible Entity, and any related body corporate or other associate of the Responsible Entity, may (whether in its personal capacity or as trustee of any trust), subject always to acting in good faith to Holders:

- (a) hold Units, Options or Stapled Securities;
- (b) represent or act for, or contract with, individual Holders;
- (c) deal in any capacity with the Responsible Entity, a Stapled Entity or with any related body corporate or associate of the Responsible Entity or a Stapled Entity or with any trust;
- (d) act in any capacity in relation to any other trusts or Stapled Entity; or
- (e) receive and retain profits or benefits of any nature, in connection with the Trust or otherwise, including buying or selling Trust Property from or to itself in another capacity, without being liable to account to the Trust, to the Responsible Entity, or to a Holder.

19.6 Stapled Entity benefits

Without limiting any other provision of this constitution, the Responsible Entity 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.

20. Management of the Trust

20.1 Responsible Entity to manage Trust

The Responsible Entity must manage the Trust and its Trust Property and Trust Liabilities while any remain.

20.2 Responsible Entity may engage advisers

The Responsible Entity may, as it sees fit, in connection with performance of its duties, engage (whether or not related to or associated with the Responsible Entity) investment managers, property managers, administrators, custodians and any advisers, agents, brokers, contractors, underwriters or other persons.

20.3 Reliance by Responsible Entity

The Responsible Entity may, in relation to the Trust, rely and act on any:

(a) advice, opinion or other information provided to the Responsible Entity by a person of a category listed in **clause 20.2** above; and

(b) document which it is reasonable for the Responsible Entity to rely upon,

if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise (as the case may be).

20.4 Equality of treatment

The Responsible Entity, to the extent permitted by any Relief, does not have to treat all Holders equally, including by:

(a) not making a pro rata offer to Holders to certain Holders; or

(b) treating wholesale clients differently from other persons.

21. Limitation of liability and indemnity

21.1 Responsible Entity's liability

To the extent legally permitted, where the Responsible Entity acts without fraud, negligence or a breach of trust involving a failure to show the degree of care and diligence required of it having regard to the powers, authorities or discretions conferred on it by this constitution, the Responsible Entity is not liable to any future trustee, any Holder or any other person:

(a) for loss caused by:

(i) the Responsible Entity's acts or omissions in reliance on:

(A) the Register;

(B) the authenticity of any document;

(C) the opinion, advice or information of any barrister, lawyer, accountant, valuer or other expert instructed by the Responsible Entity; or

(D) information from any banker or the auditor of the Trust;

if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise;

(ii) any act, omission, neglect or default of another person;

(iii) any act or omission required by law or by a court of competent jurisdiction;

(iv) any particular price or reserve not having been realised;

(v) any unnecessary payment having been made to a fiscal authority;

- (vi) any act or omission of an operator of a securities title, transfer or holding system;
or
 - (vii) another reason; or
- (b) in any event, to a greater extent than the investments, cash and other property to which the Responsible Entity is entitled and does recover through its right of indemnity from Trust Property actually vested in the Responsible Entity in accordance with this constitution.

21.2 Indemnity

- (a) Subject to the Corporations Act, the Responsible Entity is indemnified out of the Trust Property for any liability incurred by it, in its own capacity or through an agent, manager, advisor or delegate, performing properly any of its duties or exercising any of its powers in relation to the Trust or attempting to do so.
- (b) The Responsible Entity is not required to do anything for which it does not have a full right of indemnity out of Trust Property available for that purpose.
- (c) Any indemnity to which the Responsible Entity is entitled under this constitution is in addition to any indemnity legally permitted.
- (d) When calculating the amount of any liability incurred or to be incurred by the Responsible Entity for which it is entitled to be reimbursed or indemnified under this constitution, the Responsible Entity must deduct an amount equal to any input tax credit (as defined in the GST Act) to which the Responsible Entity is entitled in connection with the liability.

21.3 Best interests

While Stapling applies, the Responsible Entity will not be in breach of trust or duty where the Responsible Entity acts in the best interests of Holders, having regard to both their interests as holders of Units and their interests as members of other Stapled Entities.

22. Investment policy

The Responsible Entity will determine the investment policy for the Trust and may vary its investment policy from time to time.

23. Register

23.1 Unit register

The Responsible Entity must establish the Register.

23.2 Branch registers

The Responsible Entity may establish branch unit registers anywhere in Australia.

23.3 Notice of trust

The Responsible Entity need not enter notice of any trust on the Register.

23.4 Registered Holder is owner

The Responsible Entity may treat a registered Holder as the holder and absolute owner of Units registered in the Holder's name on the Register and is not bound to take notice of any trust or equity affecting a Unit. Entry on the Register is conclusive evidence of a Holder's title to Units.

23.5 Classes

The Responsible Entity must maintain in accordance with the Corporations Act a Register recording details of any class of Units or Options.

24. Mortgage

24.1 Recording of mortgagee

On the Holder's written request, the Responsible Entity may, but is under no obligation to, record a mortgagee (sole or joint) of Units in the Register and on the mortgagee's written request may delete that record.

24.2 Payments to mortgagees

Redemption proceeds of Units, capital distributions (not representing part of Distributable Income) and distributions after termination of the Trust must be paid to the recorded mortgagee of the Units in the Register (unless it directs otherwise in writing).

24.3 Transfer of mortgaged Units

A transfer of Units is subject to any existing mortgagee record so that Units in respect of which a mortgagee is recorded on the Register cannot be transferred without the written consent of the mortgagee.

24.4 Responsible Entity not have notice of mortgage or charge

The Responsible Entity is not taken to have notice of the terms of any mortgage or charge and has no liability to a mortgagee of Units.

25. Death and insolvency

The Responsible Entity only recognises the following persons as having an interest in a Holder's Units in the following circumstances:

- (a) if a Holder dies, or becomes subject to a legal disability, the Holder's legal personal representative;
- (b) if a joint Holder dies, the surviving joint Holder or Holders; and
- (c) if a Holder becomes bankrupt or enters into liquidation, the person legally entitled to the Holder's Units consequent on bankruptcy or liquidation.

26. Termination

26.1 Responsible Entity may terminate

Subject to the Corporations Act and, while the Trust or Units are Listed, the Listing Rules, the Responsible Entity at any time may terminate the Trust by written notice to the Holders with effect from the Termination Date specified in the notice.

26.2 Holders may terminate

The Holders may at any time terminate the Trust in accordance with the Corporations Act.

26.3 Issue and redemption stops

From the date on which the notice is given, the issue and redemption of Units ceases.

26.4 Action on termination

The Responsible Entity must, subject to the terms of issue of any particular class of Unit:

- (a) realise all Trust Property;
- (b) pay, discharge or provide for all Trust Liabilities and expenses of termination; and
- (c) distribute the net proceeds among Holders pro rata to the number of Units held (subject however to the terms of issue of any class of Units) on the Termination Date. Where there are both fully paid and partly paid Units in issue, the entitlement of the partly paid Unit will be proportionate to the Paid Up Proportion applicable to the partly paid Unit.

26.5 Realisation of Trust Property

The Responsible Entity may postpone realising Trust Property and is not responsible for any resulting loss unless caused by its negligence or breach of trust.

26.6 Distributable Income

Each Holder registered on the Termination Date continues to be entitled to their proportionate share of Distributable Income during the winding up period. The Responsible Entity may make partial distributions of Trust proceeds during the winding up period.

26.7 Auditing of winding-up accounts

The Responsible Entity must, if ASIC policy so requires, cause the accounts of the winding-up to be independently checked and signed-off by a registered company auditor or firm of chartered accountants of which at least one partner is a registered company auditor, and in either case independent of the previous auditor of the Trust.

26.8 Notice to Manager

The Responsible Entity must, not less than 7 days before the winding up of the Trust, give the Manager and each other Stapled Entity written notice that the Trust is to be wound up.

27. Restructure

The Responsible Entity may convene a Meeting to consider special resolutions to amend this constitution or approve other proposed actions for the purpose of facilitating a restructure of the Trust by merging or combining the Trust with one or more other managed investment schemes or corporations, including:

- (a) convert the Trust to a corporation;
- (b) for the Trust to acquire assets of other schemes or corporations;
- (c) to issue Units to holders of units in other schemes at a price different from the price then provided for in the constitution;
- (d) to authorise the Responsible Entity on behalf of each Holder to subscribe for units in other schemes;
- (e) to cancel or redeem some or all existing Units;
- (f) to terminate the Trust (but without limiting any other rights of the Responsible Entity in respect of termination); or
- (g) otherwise to authorise actions that the Responsible Entity proposes in order to facilitate the proposed restructure, including treating Holders resident outside Australia on a

different basis where it is impractical or unduly expensive to treat them on the same basis as other Holders.

28. Responsible Entity's fees

28.1 General

- (a) Before and after termination of the Trust, the Responsible Entity is entitled to (but for any Holder or Holders within a particular class of Unit, for which it may elect to receive less than) the Base Fee as provided in this **clause 28**. The Trust will have a presently existing liability to pay the Base Fee where that fee is payable. Subsequent to the liabilities arising, the Responsible Entity or the Manager may direct that those liabilities be satisfied by the issue of Stapled Securities in accordance with this constitution.
- (b) Fees are to be pro rated for partial periods.
- (c) All fees as stated are exclusive of GST.

28.2 Base Fee

The **Base Fee** is 2% per annum of the value of the Trust Property calculated and payable in arrears on the last Business Day of each calendar quarter.

28.3 Securities in satisfaction of Base Fee

The Responsible Entity, its nominee or the Manager may (when entitled to a Base Fee), subject to the Corporations Act and the Listing Rules, subscribe for that number of Units (or while Stapling applies, that number of Stapled Securities) equal to the amount of Base Fee divided by the volume weighted average trading price of all Units or Stapled Securities (as the case may be) traded on the ASX during the first 15 Trading Days after the end of the relevant Financial Year and applying the Base Fee as payment of the Issue Price of those securities. The Units or Stapled Securities must be issued as soon as reasonably practical after the end of the Financial Year. To the extent that the Base Fee is entitled under this **clause 28** but is not applied for the subscription of Units or Stapled Securities, it may be paid in cash to the Responsible Entity, its nominee or the Manager (as the case may be) out of the Trust Property.

28.4 Responsible Entity may receive less fees

- (a) The Responsible Entity in its discretion may, subject to **paragraph (b)** below, from time to time elect to receive less than the fees specified above in respect of all or any Units or class of Units (whether determined by reference to a minimum balance or on another basis and whether for the life of a particular Disclosure Document or otherwise) and may pay a Holder or Holders within a particular class, from its own resources, any amount which it in its discretion so determines by way of offset or rebate of fees.
- (b) The Responsible Entity may only exercise the discretion set out in **paragraph (a)** above if the lesser fees payable, or the offset or rebate of fees, are set out in the relevant Disclosure Document or otherwise agreed with the Holder or Holders, prior to the issue of those Units.

28.5 Responsible Entity may defer fees

The Responsible Entity in its discretion may elect to defer receipt of the fees specified above in respect of all or any Units or class of Units for an agreed period. Where receipt of fees is deferred, the fee accrues daily plus a rate equal to the aggregate of the UBS Australian Bank Bill Index (or if replaced, an approximate equivalent index) plus 2% per annum of those fees calculated daily until paid.

28.6 GST

If the Responsible Entity is liable for GST on any Supply (as defined in the GST Act) made under or in connection with this constitution (including the supply of any goods, services, rights, benefits or things), the Responsible Entity is entitled to receive, unless otherwise provided, in addition to any Management Fee, or any other fee, amount or consideration, an additional amount on account of GST, equal to the GST payable, and the Responsible Entity is entitled to be reimbursed or indemnified for the amount out of the Trust Property.

29. Outgoings

29.1 Expenses

All costs, charges, expenses and outgoings reasonably and properly incurred by the Responsible Entity in the proper performance of its duties, including in connection with the following matters or of the following nature in relation to the Trust, are payable or reimbursable out of Trust Property (and if referable to more than one trust, apportioned in a manner determined by the Responsible Entity):

- (a) preparation, approval, stamping, execution and printing of this constitution and any deed amending this constitution;
- (b) retirement and appointment of the Responsible Entity and any custodian;
- (c) institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to this constitution or the Trust (but the Responsible Entity must repay to the Trust any amount it has been advanced in respect of outgoings in connection with proceedings in which it is found by a court to be liable for its own negligence, fraud, breach of trust or breach of duty);
- (d) convening and holding a meeting of Holders and implementing a resolution of the meeting;
- (e) bank fees, interest, discount and acceptance fees for bill facilities and like amounts;
- (f) Taxes;
- (g) any actual or proposed investment, acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Trust Property;
- (h) fees payable to a person authorised by the Responsible Entity to hold Trust Property;
- (i) expenses in connection with the establishment and conduct of any compliance committee including:
 - (i) remuneration of committee members,
 - (ii) the expenses of independent legal, accounting or other professional advice or assistance properly commissioned by the compliance committee,to the extent permitted by the Corporations Act, directly or indirectly, indemnifying or insuring a person who has been a compliance committee member for or against any liability, including costs, expenses and liabilities incurred by the person in defending civil or criminal proceedings;
- (j) fees payable to ASIC or another regulatory authority;

- (k) establishing and maintaining the Register, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (l) preparing and printing accounts, cheques and documents, posting them to Holders, or paying Holders;
- (m) any offer or invitation in respect of Units or other interests, including preparation, lodgment, registration, distribution and promotion of a Disclosure Document including for the avoidance of doubt in relation to the first Disclosure Document;
- (n) amounts payable to the Manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, property managers, investment managers, underwriters or other persons engaged by the Responsible Entity under the deed (including legal costs on a full indemnity basis), which may include a related body corporate or associate of the Responsible Entity;
- (o) fees incurred by an auditor of the Trust;
- (p) preparation and lodgment of taxation and other returns for the Trust or the compliance plan;
- (q) commissions, holding fees and other amounts payable to an Australian financial services licensee or its representatives in relation to the Trust including in relation to a Disclosure Document (including the first) and any offer made thereunder;
- (r) terminating and winding up of the Trust;
- (s) entering the Trust in a survey;
- (t) fees payable to a ratings organisation;
- (u) fees payable to a securities system authorised by the Responsible Entity to hold Trust Property;
- (v) performance of the Responsible Entity's duties, exercise of the Responsible Entity's rights or powers, compliance with the law or administration of the Trust;
- (w) establishment, development, maintenance and operation of computer facilities, both software and hardware for the administration of the Trust;
- (x) dealing with applications for and redemption of Units or other interests, and determining the Issue Price and Redemption Price;
- (y) any restructuring or listing of the Trust;
- (z) fees payable to a related body corporate or other associate of the Responsible Entity for services provided to the Responsible Entity in connection with the Trust, where if these expenses had been properly incurred by the Responsible Entity, the expenses would be reimbursable out of the Trust Property under this **clause 29**; and
- (aa) all expenses in connection with matters referred to in this **clause 29**, including but not limited to costs of appointing and maintaining staff, costs of computers and other systems to support these staff and costs of premises where staff and systems are located in connection with these matters.

Where more than one class of Units is on issue, the Responsible Entity may make a determination that any particular cost, charge, expense or outgoing (or part or class of cost, charge, expense or outgoing) is referable to a particular class of Units.

29.2 Deferral

The Responsible Entity may in its discretion defer reimbursement for an agreed period or any or all expenses or any part thereof under **clause 29.1**. Where reimbursement is deferred, the expense accrues daily until paid.

30. Recoveries

30.1 Holders' liabilities

Each Holder is liable for:

- (a) fees, Taxes and costs in relation to the Holder's entitlement to, or payment of, income or capital to the Holder;
- (b) any act its requests;
- (c) for its unpaid amounts; and
- (d) fees determined and chargeable by the Responsible Entity from time to time for any act or work carried out at the Holder's request which goes beyond the Responsible Entity's duties under the deed, charged at market rates for the services provided.

30.2 Responsible Entity may withhold or recover

The Responsible Entity may:

- (a) withhold payment of any money payable to a Holder until the liability is discharged; or
- (b) meet the liability and recover the amount:
 - (i) from any money or property held for the Holder;
 - (ii) from any distribution or other payment payable to the Holder; or
 - (iii) by redeeming any or all of the Holder's Units.

31. Distributions

31.1 Distributable Income

The Distributable Income of the Trust is at least the minimum amount the Responsible Entity must distribute if it is not to be assessable or liable to pay more than the lowest amount of tax properly assessable in respect of a year of income under the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), except if before the end of the tax year the Responsible Entity determines in its discretion that the distributable income of the Trust is another amount equal to or greater than the Net Income and equal to or less than the income of the Trust for accounting purposes for the year of income as defined by the Tax Act.

31.2 Distributions

Before and after termination of the Trust, the Responsible Entity at any time may elect that, subject to the terms of issue of any class of Units, an amount (capital or income) be distributed from the Trust to Holders pro rata to the number of Units held to the number of Units on issue as at an Accrual Time or in accordance with this constitution.

Each Holder registered at midnight on the last day of each year of income (as defined by the Tax Act) is presently entitled to a share of the Distributable Income for that year not previously distributed in the proportion of the number of Units held to all Units then on issue in the Trust (subject however to the terms of issue of any class of Units).

In calculating the 'number of Units held' by a Holder and the number of Units 'on issue', each partly paid Unit is to be counted as a Unit multiplied by the Paid Up Proportion applicable to the partly paid Unit.

31.3 Change in the law

If the law changes in respect of Taxes so that the Trust or the Responsible Entity becomes subject to Taxes on income and gains derived by the Trust even where all available income is distributed to Holders, or regardless of the present entitlement of the Holders, then the Responsible Entity does not have to make distributions in accordance with this **clause 31** and instead the Responsible Entity, at its discretion, may choose when to make distributions of profits, income, capital or any taxation or imputation credits that have become available in relation to the Trust and the amounts of those distributions.

31.4 Income categories

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

31.5 Distribution reinvestment plan

- (a) The Responsible Entity may decide whether to permit or require the Holder to reinvest some or all of any distribution to acquire a Unit.
- (b) If the Responsible Entity decides to permit or require reinvestment, then it must notify Holders of the procedure for reinvestment and any change in the procedure.
- (c) For reinvestment in respect of Units, the Responsible Entity is deemed to have received an application to reinvest distributions on the first Business Day after the distribution is paid at an Issue Price determined in the same way as if it were being determined in accordance with:
 - (i) in respect of Units that are Officially Quoted, **clause 11**; and
 - (ii) in respect of Units that are not Officially Quoted, **clause 11** except that Issue Price will exclude Application Transaction Costs,and subject to the terms of the relevant distribution reinvestment plan.
- (d) For the avoidance of doubt, a Unit issued on reinvestment will not have a right to distributions in respect of the period to which the reinvested distribution relates.

32. Payments

32.1 Means of payment

Any money payable by the Responsible Entity to a Holder may:

- (a) be paid by cheque;
- (b) be deposited into an account with a bank or other financial institution approved by the Responsible Entity and nominated by the Holder; or
- (c) applied in another manner as the Responsible Entity is directed in writing by the Holder (if the Responsible Entity agrees).

The obligations of the Responsible Entity are fully discharged in respect of any money so paid.

32.2 If payment not effective

If a distribution cheque or a cheque issued in payment of a Redemption Request is returned unclaimed, or is not presented for payment within a reasonable period (which the Responsible Entity may determine from time to time), or an attempted deposit is rejected, the Responsible Entity must reinvest the relevant amount for the Holder in the Trust as from the date the Responsible Entity selects as appropriate including in Units or while Stapling applies Stapled Securities (including Attached Securities).

33. Auditor

The Responsible Entity must appoint and may at any time replace as auditor of the Trust either a registered company auditor, or a firm of chartered accountants of which at least one partner is a registered company auditor.

34. Meetings

34.1 Convening Meetings

- (a) The Responsible Entity may at any time convene and conduct a Meeting and must do so in accordance with this constitution and the Corporations Act.
- (b) A Meeting may be held at two or more venues simultaneously using technology that gives the Holders as a whole a reasonable opportunity to participate.
- (c) While Stapling applies, a Meeting may be convened and conducted in conjunction with a meeting of any members of another Stapled Entity.

34.2 Notices

- (a) Notice of a Meeting must be given in accordance with and contain the information required by, the Corporations Act.
- (b) A notice of Meeting given to a Holder in relation to its Stapled Securities:
 - (i) must be given consistently with (but need not be the same as) the requirements under the constitution of each Stapled Entity; and
 - (ii) may be the same notice for a meeting of members of another Stapled Entity.
- (c) Each of the following are entitled to receive notice of a general meeting:
 - (i) every Holder;
 - (ii) every Director;
 - (iii) ASX;
 - (iv) the Auditor;
 - (v) the Manager (if any); and
 - (vi) each Stapled Entity.

34.3 Proxies

- (a) A proxy may attend, speak and vote for a Holder even if the Holder is present at the Meeting.
- (b) An appointment of a proxy is valid even if it does not include the Holder's address or the Trust's name. An appointment of a proxy for a Meeting is effective if received by the

Responsible Entity by a time before the time the Meeting is due to start that the Responsible Entity considers appropriate.

- (c) Subject to the Corporations Act, the form of proxy used by a Holder may be the same form as the Holder uses to appoint a proxy in respect of its Attached Securities (if any).

34.4 Other types of Units

Clause 34 applies also, to the extent appropriate, to meetings of Holders of any type or class of Unit.

35. Conduct of meetings

35.1 Chairperson may adjourn Meeting

The chairperson may adjourn a Meeting to a time and place as the chairperson sees fit and must do so if the meeting directs him or her to do so. The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

35.2 Closing of Register

When a Meeting is to be held the Responsible Entity must subject to the Listing Rules and CS Facility Rules close the Register at an appropriate date and time to determine those Holders entitled to vote at the Meeting, and entitled to notification of the meeting.

35.3 Joint Holders

The first named of joint Holders shown in the Register (or if that person does not vote, the next named joint Holder, or if that person does not vote, the next named, and so forth) may exercise the voting rights of jointly-held Units.

35.4 Resolutions

- (a) The chairperson's declaration of the validity of any vote and the result of voting is conclusive.
- (b) A resolution duly passed binds all Holders, whether or not present at the Meeting.
- (c) A resolution in writing signed by all Holders will be deemed to have been duly passed at a meeting.

35.5 Minutes

Minutes of a Meeting signed by the chairperson constitute conclusive evidence of the proceedings of the Meeting.

35.6 Postal ballot

A Meeting may be conducted by postal ballot in accordance with arrangements the Responsible Entity may determine reflecting, as closely as may be practicable, the provisions of this constitution.

35.7 Destruction of proxy forms and ballot papers

In the absence of any resolution to the contrary, all proxy forms and ballot papers may be destroyed 14 days after the closure of a Meeting.

35.8 Right to attend and be heard

The Auditor, Manager (if any) and while Stapling applies, representatives of any Stapled Entity are entitled to:

- (a) attend any general Meeting of Holders;
- (b) be heard at any general Meeting of Holders on any part of the business of the Meeting that concerns them in their respective capacity, even if:
 - (i) the Auditor or Manager retires at the general Meeting; or
 - (ii) Holders pass a resolution to remove the Auditor (from office) or vary or remove effect to the Stapling Provisions; and
- (c) authorise a person in writing to attend and speak at any general Meeting as their representative.

35.9 Certain polls

A poll demanded on any resolution concerning the election of the chairperson of a general meeting or to adjourn the meeting must be taken immediately.

35.10 Other types of Units

This clause applies also, to the extent appropriate and with the necessary amendments, to meetings of Holders of any type or class of Unit or Option.

36. Responsible Entity's retirement or removal

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may retire as trustee of the Trust by giving not less than one month's prior notice to the Holders, effective on the appointment of a replacement Responsible Entity.
- (b) The Responsible Entity must retire as trustee of the Trust if permitted and when required, under the Corporations Act. The Responsible Entity must retire when required by law.
- (c) Subject to the law, the Responsible Entity may agree with an incoming trustee of the Trust to (and may) receive a benefit from that person, in relation to its retirement as trustee of the Trust and is not required to account to Holders for such.

37. Liability of Holders

Subject to this constitution, the liability of each Holder is limited to the amount subscribed, or agreed to be subscribed by the Holder, for Units. Recourse of the Responsible Entity and Trust creditors is limited to Trust Property. Any relationship of partnership or agency between the Responsible Entity and a Holder in relation to the Trust, this constitution or anything done under this constitution, is expressly excluded.

38. Complaints

The Responsible Entity must:

- (a) within 30 days acknowledge any complaint received from a Holder;
- (b) act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties; and

- (c) within a further 45 days after receipt by the Responsible Entity of the complaint, communicate its decision to the Holder, at the same time informing the Holder of remedies available to the Holder of which the Responsible Entity is aware and any available avenue of appeal against the decision to an external industry complaints tribunal or other body.

39. Corporations Act

39.1 Compliance with Relief and things required to be in this constitution

The Responsible Entity and each Holder must, subject to the Corporations Act 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.

39.2 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 Corporations Act 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 Corporations Act provision (as applicable) applies.

40. Amendments to deed

The Responsible Entity may by supplemental deed modify, add to or delete from, this constitution.

41. Calculations

Any calculation for the purposes of this constitution must be to the fourth decimal place or, in any case, as otherwise determined by the Responsible Entity from time to time.

42. Notices

42.1 Notices sent by mail

Subject to **clause 42.2**, any consent, notice, report, statement given, or required to be given, in writing, or cheque may be sent to a Holder or joint Holders by prepaid post to the address of the Holder, or of the first named of joint Holders, shown in the Register and is taken to be received on the next Business Day after posting.

42.2 Notices sent by email or facsimile

If a Holder, or the first named of joint Holders shown on the Register, has given its electronic address or facsimile number to the Responsible Entity, any consent, notice, report or statement given or required to be given in writing may be sent to the Holder or joint Holders electronically at the address of number given to the Responsible Entity from time to time, and is taken to be received on the Business Day it was sent but if it is sent before or after Business Hours, it is taken to be received on the next Business Day.

43. Governing law

This constitution is governed by the law of the State of New South Wales, Australia.

44. Listing Rules

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

- (a) If the 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 Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision.
- (e) If the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision.
- (f) If any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

45. Restricted Securities

- (a) **Clauses 45(b) and 45(c)** only operate:
 - (i) while Units are Officially Quoted; and
 - (ii) to the extent that it is not inconsistent with the Corporations Act.
- (b) During a breach of the 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 the applicable escrow period:
 - (i) a Holder may not transfer Restricted Securities; and
 - (ii) the Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities,except as permitted by the Listing Rules or ASX.

Manager

46. Change of manager

46.1 Change of name

If at any time neither the Responsible Entity nor the Manager is BBRPS or a related body corporate of BBRPS, then:

- (a) name of the Trust the name of the Trust must cease to include the words '*Babcock & Brown*' or any word deceptively similar or likely to be confused with that name; and
- (b) the Responsible Entity must immediately give effect to such a change including to procure the:
 - (i) amendment of this constitution; and
 - (ii) change of name on any relevant ASIC registers,to reflect the change of name.

46.2 Amending this clause

Subject to the Corporations Act, this **clause 46** can only be amended or deleted upon BBRPS giving its consent in writing to the Responsible Entity to the proposed amendment(s) or deletion before the amendment(s) is made.

Signing page

EXECUTED as a deed poll.

Date:

Executed by Babcock & Brown Residential Land Partners Services Limited in accordance with its constitution in the presence of

Signature of director

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

Name of director (print)

Name of director/company secretary (print)

Babcock & Brown Residential Land Partners Trust - Legislation guide

This list has been prepared to assist in identifying the provisions of the Babcock & Brown Residential Land Partners Trust relating to requirements under the *Corporations Act 2001* (Cth) (**Corporations Act**) for constitutions of registered managed investment schemes.

Corporations Act provision	Constitution provision
601GA (1)(a)	Clause 10.1
601GA (1)(b)	Clauses 18.1(a) and 21
601GA (1)(c)	Clause 37
601GA (1)(d)	Clause 25
601GA (2)(a)	Clauses 20.1, 20.2, 27 and 28
601GA (2)(b)	Clauses 20.1, 20.2(a), and 28.1
601GA (3)	Clause 18.1(a)
601GA (4)(a)	Clause 13.1
601GA (4)(b)	Clause 13.2
601GA (4)(c)	Clause 13.3
601GB	Clause 2.4