



**RECOMMENDED MERGER OF FOLKESTONE EDUCATION TRUST
WITH FOLKESTONE SOCIAL INFRASTRUCTURE TRUST - MERGER
IMPLEMENTATION DEED**

Further to the announcement made earlier today in relation to the merger of Folkestone Education Trust (ASX:FET) with Folkestone Social Infrastructure Trust (ASX:FST), please find attached a copy of the Merger Implementation Deed.

SCOTT MARTIN
Company Secretary

Folkestone Education Trust

The Folkestone Education Trust is the largest Australian ASX listed (ASX:FET) real estate investment trust (A-REIT) that invests in early learning properties. www.educationtrust.folkestone.com.au

About Folkestone

Folkestone (ASX:FLK) is an ASX listed real estate funds manager and developer providing real estate wealth solutions. Folkestone's funds management platform, with over \$800 million under management, offers listed and unlisted real estate funds to private clients and select institutional investors, while its on balance sheet activities focus on value-add and opportunistic (development) real estate investments. www.folkestone.com.au

Merger Implementation Deed

Folkestone Real Estate Management Limited
as responsible entity of the Folkestone Social Infrastructure Trust

Folkestone Investment Management Limited
as responsible entity of the Folkestone Education Trust

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 15387/15435/80160444

Contents

1.	Definitions and interpretations	1
1.1	Definitions	1
1.2	Interpretation	11
1.3	Best and reasonable endeavours	12
1.4	Business Day	13
2.	Obligations in relations to Trust Scheme	13
2.1	Agreement to propose Trust Scheme	13
2.2	Co-ordination and timing	13
3.	Conditions	13
3.1	Conditions to implementation of the Trust Scheme	13
3.2	Obligations in relation to Conditions	14
3.3	Notice in relation to satisfaction of Conditions	14
3.4	Benefit and waiver of Conditions	15
3.5	Condition not met	15
3.6	Termination	16
4.	Implementation of Trust Scheme	16
4.1	FREML's obligations	16
4.2	FIML's obligations	18
4.3	Explanatory Memorandum preparation principles	19
4.4	Further Information	20
4.5	Tax Ruling	20
4.6	Quarterly Distributions	20
4.7	Good faith co-operation	21
5.	Conduct of business	21
6.	Recommendation, intentions and announcements	21
6.1	FST Representative Directors recommendation	21
6.2	Announcements	22
7.	Representations, warranties and indemnities	22
7.1	FIML representations and warranties	22
7.2	FIML indemnity	23
7.3	Qualification	23
7.4	FREML representations and warranties	23
7.5	FREML indemnity	24
7.6	Qualification	24
7.7	Notifications	24
7.8	Status of representations and warranties	24
7.9	Status and enforcement of indemnities	24
8.	Due diligence	25
8.1	Due diligence investigations	25
8.2	Forward looking information	25
8.3	Acknowledgements	25
9.	Removal of FREML as responsible entity	25
10.	Reimbursement Fee	26
10.1	Background	26
10.2	Payment by FREML to FIML of Reimbursement Fee	26
10.3	Refund of Reimbursement Fee	27
10.4	Compliance with law	27
10.5	Survival	27
11.	Termination	27

11.1	Termination by FIML	27
11.2	Termination by FREML	28
11.3	Effect of termination	28
12.	Confidentiality	28
13.	Costs and stamp duties	29
13.1	Costs	29
13.2	Stamp duties	29
14.	Notices	29
14.1	How notice to be given	29
14.2	When notice taken to be received	30
15.	FREML limitation of liability	30
16.	FIML limitation of liability	30
17.	General	31
17.1	Amendments	31
17.2	Waiver	31
17.3	Further acts and documents	31
17.4	Consents	31
17.5	GST	32
17.6	Counterparts	32
17.7	Entire agreement	32
17.8	No assignment	32
17.9	No representation or reliance	32
17.10	Governing law	33
17.11	Jurisdiction	33
	Schedule 1 - Indicative Timetable	34
	Schedule 2 - Resolutions	35
	Annexure A - Deed Poll	37
1.	Definitions and Interpretation	41
1.1	Definitions	41
1.2	Interpretation	41
2.	Enforceability	41
3.	Conditions precedent and termination	41
3.1	Conditions precedent	41
3.2	Termination	41
3.3	Consequences of termination	42
4.	Implementation of Scheme	42
5.	Representations and warranties	42
5.1	Representations	42
5.2	Survival of representations	43
6.	FIML limitation of liability	43
7.	Continuing obligations	43
8.	Notices	43
8.1	How notice to be given	43
8.2	When notice taken to be received	44
8.3	Addresses for notices	44
9.	Amendment	44
10.	General	44

10.1 Governing law 44
10.2 Jurisdiction 44
10.3 Further acts and documents 45
10.4 Waiver of rights 45
10.5 Operation of this deed 45
Annexure B - Supplemental Deed 47

Merger Implementation Deed

Date 13TH NOVEMBER 2014

Parties

Folkestone Real Estate Management Limited ABN 29 094 185 092 of Level 12, 15 William Street, Melbourne VIC 3000 (**FREML**) as responsible entity of Folkestone Social Infrastructure Trust ARSN 094 614 874 (**FST**)

Folkestone Investment Management Limited ABN 46 111 338 937 of Level 12, 15 William Street, Melbourne VIC 3000 (**FIML**) as responsible entity of Folkestone Education Trust ARSN 102 955 939 (**FET**)

Background

- A. FIML proposes to acquire all of the Scheme Units pursuant to the Trust Scheme.
- B. FREML and FIML have agreed to implement the Trust Scheme on the terms and conditions of this document.

Operative provisions

1. Definitions and interpretations

1.1 Definitions

In this document:

Acquisition Resolution means an ordinary resolution of FST Unitholders made in accordance with section 611 item 7 of the Corporations Act and substantially in the form set out in item 1 of Schedule 2.

Adviser means, in relation to an entity, its financier, legal adviser, financial adviser or technical, other expert advisers (not including the Independent Expert) or consultants who provide advisory services in a professional capacity.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given to that term in section 12 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this document and FREML, FIML or the relevant Third Party (as applicable) was the designated body.

ASX means ASX Limited ABN 98 008 624 691 or, as the context requires, the financial market conducted by it.

ATO means the Australian Taxation Office.

Business Day has the meaning given in the Listing Rules.

Constitutional Amendment Resolution means a special resolution of FST Unitholders made in accordance with section 601GC of the Corporations Act and substantially in the form set out in item 2 of Schedule 2.

Control has the meaning given to it in section 50AA of the Corporations Act.

Controlled Entity means, in relation to a person, any entity which the person Controls.

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

Deed Poll means a deed poll to be executed by FIML in favour of Scheme Unitholders, substantially in the form set out in Annexure A or in such other form as the parties agree in writing.

Distributable Income:

- (a) in respect of FET, has the same meaning as "Distributable Amount" in the constitution of FET; and
- (b) in respect of FST, has the meaning given to that term in the FST Constitution.

Effective means, in relation to the Trust Scheme, the point in time when FREML lodges the Supplemental Deed with ASIC and the amendments to the FST Constitution contemplated in the Supplemental Deed become binding on FREML and FST Unitholders.

Effective Date means the date on which FREML lodges the Supplemental Deed with ASIC.

End Date means 31 January 2015 or such later date agreed by the parties in writing.

Explanatory Memorandum means the explanatory memorandum to be prepared by FREML in respect of the Trust Scheme and dispatched to FST Unitholders.

FET Announcement means the initial announcement to be made by FET in relation to the proposed Trust Scheme in the form agreed by FIML and FREML.

FET Competing Proposal means a proposed transaction or arrangement:

- (a) pursuant to which a Third Party (either alone or together with an Associate) would, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:
 - (i) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a substantial part of the business or assets of FET;
 - (ii) acquire (whether directly or indirectly) a Relevant Interest in, or Voting Power in, or become the holder of, or otherwise acquire, have a right to acquire or have, a legal, beneficial or economic interest in 20% or more of all of the FET Units on issue or otherwise acquire Control of FET;
 - (iii) otherwise acquire or merge with FET;
 - (iv) enter into any agreement, arrangement or understanding (whether directly or indirectly) requiring FET to abandon, or otherwise fail to proceed with, the Trust Scheme; or
- (b) which would be likely to result in FIML ceasing to be the responsible entity of FET,

whether by way of takeover offer, scheme of arrangement, member approved acquisition, capital reduction, security buy back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure or other synthetic merger or any other transaction or arrangement.

FET Information means the information regarding FET, or the Merged Group (other than any information provided by FREML to FIML or obtained from FST's public filings on ASX and ASIC regarding FST contained in, or used in the preparation of, the information regarding the

Merged Group) provided by FIML to FREML in writing for inclusion in the Explanatory Memorandum. For the avoidance of doubt, the FET Information does not include information about FST (except to the extent it relates to any statement of intention made by FIML relating to FST following the Effective Date).

FET Material Adverse Change means any matter, event or circumstance that occurs on or after the date of this document, or is likely to occur on or after the date of this document, (each a **FET Specified Event**) which individually, or when aggregated with any other matters, events or circumstances of a like kind or category (including, without limitation, the loss of existing development rights) which has resulted in or could reasonably be expected to result in:

- (a) diminution or reduction of:
 - (i) the Distributable Income of FET by 10% or more compared to what it would reasonably have been expected to have been but for such FET Specified Event; or
 - (ii) the Net Assets of FET by 10% or more compared to what it would reasonably have been expected to have been but for such FET Specified Event; or
- (b) FET being unable to carry on its business in substantially the same manner as carried on at the date of this document; or
- (c) FET's primary financiers fail to provide any waiver or consent required to ensure that implementation of the Scheme does not cause FIML to breach any covenant under the financing agreements with that financier,

other than any matter, event or circumstance that arises from any change occurring, directly or indirectly, as a result of any matter, event or circumstance required or permitted by this document, the Trust Scheme, the Supplemental Deed, the Deed Poll or the transactions contemplated by them, including any cost or expense associated therewith.

FET Material Contract means a contract or commitment:

- (a) requiring total payments in excess of \$4,000,000 by FET; and
- (b) entered into by FET, other than in the ordinary course of business and under which a person does not have an unconditional right to terminate within two years of entry into the contract or commitment,

but excludes this document.

FET Prescribed Occurrence means the occurrence of any of the following events on or after the date of this document:

- (a) FET converts all or any of its units into a larger or smaller number of units;
- (b) FET resolves to reduce its capital in any way or resolves to reclassify, combine, split, redeem or repurchase directly or indirectly any FET Units;
- (c) FET declares, pays or distributes any distribution, bonus or other share of its profits or assets or returns or agrees to return any capital to its members;
- (d) FET makes any change or amendment to its constitution;
- (e) FET:
 - (i) enters into a buy-back agreement; or

- (ii) resolves to approve the terms of a buy-back agreement in relation to FET Units;
- (f) FET issues units or other instruments convertible into units, or grants an option over its units, or agrees to make such an issue or grant such an option;
- (g) FET:
 - (i) acquires or disposes of;
 - (ii) agrees to acquire or dispose of; or
 - (iii) offers, proposes, announces a bid or tenders for, other than in the ordinary course of business, any securities, business, assets, interests in a joint venture, entity or undertaking, the value of which exceeds \$20,000,000;
- (h) other than liens and statutory encumbrances arising in the ordinary course of business, FET creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property;
- (i) FET or FIML:
 - (i) enters into or agrees to enter into an FET Material Contract;
 - (ii) changes the terms of any FET Material Contract;
 - (iii) pays, discharges or satisfies any claims, liabilities or obligations under any FET Material Contract otherwise than in accordance with its terms and consistently with past practice; or
 - (iv) waives any material claims or rights under, or waives the benefit of, any provisions of any FET Material Contract;
- (j) an Insolvency Event occurs in relation to FET or FIML; or
- (k) FIML or FET Unitholders authorising, committing or agreeing to do any of the matters set out above,

provided that an FET Prescribed Occurrence will not include:

- (l) a matter required to be done or procured by FET pursuant to, or which is otherwise contemplated by, this document, the Trust Scheme, the Supplemental Deed, the Deed Poll or the transactions contemplated by them;
- (m) a matter the undertaking of which FREML has approved in writing; or
- (n) the FET Quarterly Distribution.

FET Quarterly Distribution means a distribution by FIML to FET Unitholders of an amount of no more than \$0.03175 per FET Unit to be paid in respect of the quarter ending 31 December 2014.

FET Unit means a fully paid ordinary unit in FET.

FET Unit Sale means the proposed sale by FREML of 9,035,268 FET Units to FLK.

FET Unit Sale Resolution means an ordinary resolution of FST Unitholders in connection with the FET Unit Sale and substantially in the form set out in item 3 of Schedule 2.

FET Warranties means the representations and warranties made by FIML in clause 7.1.

FIML Board means the board of directors of FIML.

FLK means Folkestone Limited ABN 21 004 715 226.

FREML Board means the board of directors of the FREML.

FREML Director means a director of FREML.

FST Announcement means the initial announcement to be made by FST in relation to the proposed Trust Scheme in the form agreed by FIML and FREML.

FST Competing Proposal means a proposed transaction or arrangement:

- (a) pursuant to which a Third Party (either alone or together with an Associate) would, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:
 - (i) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a substantial part of the business or assets of FST;
 - (ii) acquire a Relevant Interest in, or Voting Power in, or become the holder of, or otherwise acquire, have a right to acquire or have, a legal, beneficial or economic interest in, or control of, 20% or more of all of the FST Units on issue or otherwise acquire Control of FST;
 - (iii) otherwise acquire or merge with FST;
 - (iv) enter into any agreement, arrangement or understanding (whether directly or indirectly) requiring FET to abandon, or otherwise fail to proceed with, the Trust Scheme; or
- (b) which would be likely to result in FREML ceasing to be the responsible entity of FST,

whether by way of takeover offer, scheme of arrangement, member approved acquisition, capital reduction, security buy back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure or other synthetic merger or any other transaction or arrangement.

FST Constitution means the constitution establishing FST dated 21 September 2000 as amended from time to time.

FST Information means all information included in the Explanatory Memorandum, other than:

- (a) the FET Information; and
- (b) the Independent Expert's report that is included in or accompanies the Explanatory Memorandum.

FST Material Adverse Change means any matter, event or circumstance that occurs on or after the date of this document, or is likely to occur on or after the date of this document, (each a **FST Specified Event**) which individually, or when aggregated with any other matters, events or circumstances of a like kind or category (including, without limitation, the loss of existing development rights) which has resulted in or could reasonable be expect to result in:

- (a) diminution or reduction of:
 - (i) the Distributable Income of FST by more than 10% or more compared to what it would reasonably have been expected to have been but for such FST Specified Event; or
 - (ii) the Net Assets of the FST by 10% or more compared to what it would reasonably have been expected to have been but for such FST Specified Event; or
- (b) FST being unable to carry on its business in substantially the same manner as carried on at the date of this document; or
- (c) FST's primary financiers fail to provide any waiver or consent required to ensure that implementation of the Scheme does not cause FREML to breach any covenant under the financing agreements with that financier,

other than any matter, event or circumstance that arises from any change occurring, directly or indirectly, as a result of any matter, event or circumstance required or permitted by this document, the Trust Scheme, the Supplemental Deed, the Deed Poll or the transactions contemplated by them, including any cost or expense associated therewith.

FST Material Contract means a contract or commitment:

- (a) requiring total payments in excess of \$1,000,000 by FST; and
- (b) entered into by FREML, other than in the ordinary course of business and under which a person does not have an unconditional right to terminate within two years of entry into the contract or commitment,

but excludes this document.

FST Permitted Transactions means:

- (a) the sale by FREML of the Sale Property;
- (b) the FET Unit Sale;
- (c) the FST Quarterly Distribution; and
- (d) the Implementation Distribution.

FST Prescribed Occurrence means the occurrence of any of the following events on or after the date of this document:

- (a) FST converts all or any of its units into a larger or smaller number of units;
- (b) FST resolves to reduce its capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any FST Units;
- (c) FST:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement,
 in relation to FST Units;
- (d) FST declares, pays or distributes any dividend, distribution, bonus or other share of its profits or assets or returns or agrees to return any capital to its members;

- (e) FST issues units, or grants an option over its units, or agrees to make such an issue or grant such an option;
- (f) FST issues or agrees to issue, securities or other instruments convertible into units;
- (g) FST makes any change or amendment to its constitution;
- (h) FST:
 - (i) acquires or disposes of;
 - (ii) agrees to acquire or dispose of; or
 - (iii) offers, proposes, announces a bid or tenders for,

other than in the ordinary course of business, any securities, business, assets, interests in a joint venture, entity or undertaking, the value of which exceeds \$5 million;
- (i) other than liens and statutory encumbrances arising in the ordinary course of business, FST creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property;
- (j) FST or FREML:
 - (i) enters into or agrees to enter into a Material Contract;
 - (ii) changes the terms of any Material Contract;
 - (iii) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract otherwise than in accordance with its terms and consistently with past practice; or
 - (iv) waives any material claims or rights under, or waives the benefit of, any provisions of any Material Contract,
- (k) an Insolvency Event occurs in relation to FST;
- (l) FREML, making or permitting any change to the terms and conditions of the current employment contracts of its officers, directors, executives, senior management or employees or otherwise increasing compensation or benefits or accelerating compensation or benefits for any of the above;
- (m) FST providing any financial accommodation other than in the ordinary course of business; or
- (n) FIML or FET Unitholders authorising, committing or agreeing to do any of the matters set out above,

provided that a FST Prescribed Occurrence will not include:

- (o) a matter required to be done or procured by FST or FREML pursuant to, or which is otherwise contemplated by, this document or the Trust Scheme, the Supplemental Deed, the Deed Poll or the transactions contemplated by them;
- (p) an FST Permitted Transaction; or
- (q) a matter which FIML has approved in writing.

FST Quarterly Distribution means a distribution by FREML to FST Unitholders of an amount of no more than \$0.0525 per FST Unit to be paid in respect of the quarter ending 31 December 2014.

FST Representative Directors means Warner Bastian and Michael Johnstone who are members of the Scheme Subcommittee of the FREML Board.

FST Unit Register means the register of FST Unitholders from time to time, administered by the FREML.

FST Unitholder means a person who is registered in the FST Unit Register as a holder of FST Units.

FST Units means fully paid ordinary units in FST.

FST Warranties means the representations and warranties made by FREML in clause 7.4.

Government Authority means any government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity.

Implementation Date means the 4th Business Day after the Record Date or such other date as the parties agree in writing.

Implementation Distribution means a distribution of \$0.675 per FST Unit to be paid by FREML in accordance with the terms of the Scheme.

Independent Expert means the independent expert to be engaged by FREML in accordance with clause 4.1(e) to express an opinion on whether the Trust Scheme is fair and reasonable and in the best interests of FST Unitholders and to prepare a report for the Explanatory Memorandum in accordance with the Corporations Act and Regulatory Guides.

Ineligible Overseas Unitholder means a Scheme Unitholder whose address as shown in the FST Unit Register as at the Record Date is a place outside Australia and its external territories, New Zealand, and such other jurisdictions as FREML and FIML agree in writing or as may be required by any applicable Regulatory Modification.

Insolvency Event means:

- (a) a **controller** (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;

- (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
- or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
 - (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
 - (g) the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice;
 - (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts; or
 - (i) anything analogous to anything referred to in paragraphs (a) to (h) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law of any jurisdiction.

Listing Rules means the official listing rules of ASX.

Material Contract means an FET Material Contract or an FST Material Contract as the case may be.

Merged Group means FET following implementation of the Trust Scheme, being the economic entity resulting from the acquisition by FIML of all FST Units in accordance with the Trust Scheme.

Net Assets means, in respect of a party, the excess of total assets over total liabilities of that party on a consolidated basis.

New FET Unit means a fully paid ordinary unit in FET to be issued under the Trust Scheme.

Officer means, in relation to an entity, its directors, officers and employees or any of the entity's Related Bodies Corporate.

Panel Guidance Note means the Takeovers Panel Guidance Note 15: *Trust Scheme Mergers* issued by the Takeovers Panel of Australia (as amended from time to time).

Record Date means 7.00 pm (Sydney time) on 31 December 2014 or such other date (after the Effective Date) as the parties agree in writing.

Regulatory Guides means all relevant regulatory guides, policy statements and practice notes published by ASIC and in force at the date of this document including ASIC Regulatory Guide 74 *Acquisitions Approved by Members*, ASIC Regulatory Guide 60 *Schemes of Arrangement* and ASIC Regulatory Guide 142 *Schemes of Arrangement and ASIC Review*.

Regulatory Modifications means:

- (a) a modification by ASIC of Item 7 of section 611 of the Corporations Act, allowing FST Unitholders to vote in favour of the Section 611 Item 7 Resolution;
- (b) a modification by ASIC of, or exemption by ASIC from, section 601FC(1)(d) of the Corporations Act to permit FREML to treat Ineligible Overseas Unitholders differently when implementing the Trust Scheme;
- (c) a modification by ASIC of, or exemption by ASIC from, section 941A(1) of the Corporations Act, permitting the Explanatory Memorandum to be provided to FST Unitholders without a financial services guide;
- (d) a modification by ASIC of, or exemption by ASIC from, sections 1016A(2), 1013B(1) and 1015C, Division 5A of Part 7.9 and Division 2 of Part 7.7 of the Corporations Act, allowing for the offer of New FET Units under the Trust Scheme;
- (e) a waiver of Listing Rules 7.1 and 10.11 by ASX allowing for the issue of New FET Units under the Trust Scheme; and
- (f) any other modifications, exemptions or waivers from ASIC or ASX which are necessary to allow the Trust Scheme to be implemented in accordance with this document.

Reimbursement Fee means an amount equal to the reasonable costs and expenses incurred by FIML in connection with the Trust Scheme up to an amount of \$350,000 (exclusive of any applicable GST).

Related Body Corporate has the meaning of section 50 of the Corporations Act.

Relevant Interest has the meaning given by sections 608 and 609 of the Corporations Act.

Relevant Period means the period commencing on and from the date of this document and expiring on the earlier of:

- (a) the Implementation Date;
- (b) the termination of this document in accordance with its terms; and
- (c) the End Date.

Representative means, in respect of a party, each Officer, Adviser, agent or representative of that party.

Resolutions means:

- (a) the Constitutional Amendment Resolution;
- (b) the Acquisition Resolution; and
- (c) the FET Unit Sale Resolution.

Revenue Authority means ATO or any State Revenue Authority.

Sale Property means the storage facility located at 2A York Street, Glen Iris, Victoria.

Scheme Consideration means 1.32 New FET Units for every 1 FST Unit held by a Scheme Unitholder.

Scheme Meeting means the meeting of FST Unitholders to be convened to consider and vote on the Resolutions and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Subcommittee of the FREML Board means a subcommittee of the FREML Board comprising Warner Bastian and Michael Johnstone convened to evaluate the proposed Trust Scheme.

Scheme Unit means an FST Unit on issue on the Record Date.

Scheme Unitholders means all FST Unitholders as at the Record Date.

State Revenue Authority means a taxation authority of a State or Territory.

Superior Proposal means an FST Competing Proposal which:

- (a) is bona fide;
- (b) is proposed in writing by or on behalf of a Third Party who the FREML Board considers is of reputable commercial standing;
- (c) in the determination of the FREML Board acting in good faith (having taken appropriate legal and financial advice), is reasonably capable of being valued and completed, taking into account both the nature of the FST Competing Proposal including any timing considerations, any conditions precedent and the person or persons making it; and
- (d) in the determination of the FREML Board acting in good faith and in order to satisfy what the FREML Board considers to be its fiduciary or statutory duties (having taken appropriate legal advice) would, if completed substantially in accordance with its terms, be more favourable to FST Unitholders (as a whole) than the transactions contemplated by this document, taking into account all terms and conditions of the FST Competing Proposal.

Supplemental Deed means a deed poll under which FREML will amend the FST Constitution, the form of which is contained in Annexure B, with any alterations or conditions agreed in writing by FIML and FREML.

Tax Ruling means a class ruling that will be sought from the ATO by FREML in relation to the applicability of capital gains tax rollover relief pursuant to Division 124-M of the *Income Tax Assessment Act 1997* (Cth).

Third Party means a person other than FIML, FREML or their respective Associates (as applicable).

Timetable means the indicative timetable in relation to the Trust Scheme, as set out in Schedule 1, subject to any amendments as may be agreed in writing by the parties.

Trust Scheme means the arrangement, in accordance with the Panel Guidance Note, under which FIML acquires all of the FST Units from Scheme Unitholders facilitated by amendments to the FST Constitution as set out in the Supplemental Deed, subject to the requisite Unitholder approvals.

Voting Power has the meaning given in section 610 of the Corporations Act.

1.2 Interpretation

In this document headings and words in bold are for convenience only and do not affect the interpretation of this document and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this document, and a reference to this document includes all schedules, exhibits, attachments and annexures to it;
- (h) a reference to a statute includes any regulations or other instruments made under it and a reference to a statute or any regulation or other instrument made under it or a provision of any such statute, regulation or instrument includes consolidations, amendments, re-enactments and replacements;
- (i) a reference to a **liability** incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person;
- (j) a reference to a **loss** incurred by any person includes any loss, liability, damage, cost, charge, expense which the person pays, incurs or is liable for and any other diminution of value of any description which the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all legal expenses (on a full indemnity basis without necessity of taxation) and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) a reference to any time is a reference to that time in Melbourne, Victoria, Australia; and
- (m) this document must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Best and reasonable endeavours

Any provision of this document which requires a party to use best endeavours or reasonable endeavours to procure that something is performed or occurs does not include any obligation:

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person; or

- (b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Authority,

except where that provision expressly specifies otherwise.

1.4 Business Day

Except where otherwise expressly provided, where under this document the day on which any act, matter or thing is to be done is a day other than a Business Day, such act matter or thing shall be done on the immediately preceding Business Day.

2. Obligations in relations to Trust Scheme

2.1 Agreement to propose Trust Scheme

- (a) FREML agrees to propose and implement the Trust Scheme on and subject to the terms and conditions of this document.
- (b) FIML agrees to assist FREML in proposing and implementing the Trust Scheme on and subject to the terms and conditions of this document.

2.2 Co-ordination and timing

FREML and FIML must each use all reasonable endeavours and utilise all necessary resources (including management, unitholder, marketing and corporate relations resources, as well as the resources of external advisers) to produce the Explanatory Memorandum and implement the Trust Scheme as soon as reasonably practicable and in accordance with the Timetable (unless otherwise agreed by the parties acting reasonably and in good faith) subject to compliance with their respective obligations, powers and duties under this document and all applicable laws and the proper performance by the directors of each of FREML and FIML of their fiduciary duties.

3. Conditions

3.1 Conditions to implementation of the Trust Scheme

The Trust Scheme will not become Effective and the obligations of the parties under the Trust Scheme (including the obligations of FIML to issue the Scheme Consideration) will not be binding unless each of the following conditions has been satisfied or waived in accordance with clause 3.4:

- (a) the Resolutions are approved by FST Unitholders at the Scheme Meeting by the requisite majority under the Corporations Act, the Listing Rules and in accordance with the Panel Guidance Note (subject to any Regulatory Modifications);
- (b) before 8:00am on the Effective Date, the Regulatory Modifications have been granted, and such Regulatory Modifications remain in full force and effect in all respects and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same;
- (c) no FST Material Adverse Change occurs, or is discovered, announced, disclosed or otherwise becomes known to FIML between and including the date of this document and 8.00 am on the Effective Date;
- (d) no FST Prescribed Occurrence occurs between and including the date of this document and 8.00 am on the Effective Date;

- (e) no FET Material Adverse Change occurs, or is discovered, announced, disclosed or otherwise becomes known to FREML between and including the date of this document and 8.00 am on the Effective Date;
- (f) no FET Prescribed Occurrence occurs between and including the date of this document and 8.00 am on the Effective Date;
- (g) the Independent Expert issues its Independent Expert's report which concludes that the Trust Scheme is fair and reasonable and in the best interests of the FST Unitholders and the Independent Expert does not change or withdraw its recommendation prior to 8:00 am on the Effective Date;
- (h) no FET Competing Proposal is publicly announced between the date of this document and 8:00 am on the Effective Date;
- (i) no material breach of this document by either party has occurred (which has not been remedied to the satisfaction of the other party) before 8:00 am on the Effective Date;
- (j) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or Government Agency or other material legal restraint or prohibition preventing or delaying the Trust Scheme is in effect at 8:00 am on the Effective Date; and
- (k) completion of the FET Unit Sale has occurred by 8:00am on the Effective Date or such other time prior to the Implementation Date as the parties agree.

3.2 Obligations in relation to Conditions

- (a) FREML must use its reasonable endeavours to procure that:
 - (i) each of the conditions in clause 3.1 (other than clauses 3.1(e), (f), (g), (h) and, in respect of a material breach by FIML, (i)) are satisfied as soon as practicable after the date of this document or continue to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
 - (ii) there is no occurrence within the reasonable control of FREML that would prevent the conditions precedent in clause 3.1 (other than clauses 3.1(e), (f), (g), (h) and, in respect of a material breach by FIML, (i)) being satisfied.
- (b) FIML must use its reasonable endeavours to procure that:
 - (i) each of the conditions in clauses 3.1 (other than clauses 3.1(c), (d), (g) and, in respect of a material breach by FREML of this document, (i)) are satisfied as soon as practicable after the date of this document or continue to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
 - (ii) there is no occurrence within the reasonable control of FIML that would prevent the conditions precedent in clauses 3.1 (other than clauses 3.1(c), (d), (g) and, in respect of a material breach by FREML of this document, (i)) being satisfied.

3.3 Notice in relation to satisfaction of Conditions

Each party must in relation to any condition in clauses 3.1 notify the other party in writing upon becoming aware of:

- (i) the satisfaction of that condition, in which case the notifying party must also provide reasonable evidence that the condition has been satisfied or, in the case of the conditions precedent in clauses 3.1(c), (d), (e), (f) and (j), a certificate signed by two directors of each notifying party (or a director and secretary of each notifying party); and
- (ii) any fact or circumstance which results in that condition becoming incapable of satisfaction or may result in that condition not being satisfied in accordance with its terms.

3.4 Benefit and waiver of Conditions

Other than in respect of the condition in clause 3.1(a) which is for the benefit of both parties but cannot be waived:

- (a) the conditions in clauses 3.1(e), (f), (h), in respect of a material breach by FIML of this document, (i) and (k) are for the benefit of the FST and may only be waived by FREML by notice in writing to FIML;
- (b) the conditions in clauses 3.1(c), (d) and, in respect of a material breach by FREML of this document, (i) are for the benefit of FET and may only be waived by FIML by notice in writing to FREML; and
- (c) the conditions in clauses 3.1(b), (g), and (j) are for the benefit of both parties and may only be waived with the written consent of both parties.

3.5 Condition not met

- (a) If:
 - (i) any of the conditions contained in clause 3.1 are not satisfied or waived by the date specified in this document for its satisfaction (or an event occurs which would prevent a condition precedent being satisfied by the date specified in this document); or
 - (ii) the Trust Scheme has not become Effective by the End Date,
 then the parties will consult in good faith with a view to determining whether:
 - (iii) the Trust Scheme, or a transaction which results in FET acquiring all the FST Units, may proceed by way of alternative means or methods; or
 - (iv) to extend the date for satisfaction of the relevant condition in clause 3.1 or the End Date.
- (b) If the parties are unable to reach agreement under clause 3.5(a) within 5 Business Days after:
 - (i) becoming aware that a condition contained in clause 3.1 has not been satisfied by the date specified in this document for its satisfaction (or of the relevant event that would prevent a condition contained in clause 3.1 being satisfied); or
 - (ii) the End Date,
 (as applicable), then unless:
 - (iii) the relevant condition is waived in accordance with clause; or

- (iv) the party entitled to waive the relevant condition in accordance with clause 3.4 confirms in writing to the other party that it will not rely on the event that would or does prevent the relevant condition from being satisfied,

any party may (subject to clause 11.3) terminate this document without any liability to any other party by reason of that termination alone but without limiting either party's rights in respect of a breach of this document prior to its termination. For the avoidance of doubt, nothing in this clause 3.5(b) or clause 3.6 affects the obligation of FREML to pay the Reimbursement Fee if it is required to do so under clause 10.

3.6 Termination

A party may not terminate this document under clause 3.5(b) if:

- (a) the relevant condition in clause 3.1 has not been satisfied, or is incapable of being satisfied, or there is an occurrence that will prevent the relevant condition being satisfied by the date specified in this document for its satisfaction, as a result of an act or omission by that party which:
 - (i) results in a material breach of this document; and
 - (ii) either alone or together with other circumstances prevents that condition being satisfied or capable of being satisfied; or
- (b) the relevant condition in clause 3.1 is stated in clause 3.4 to be for the sole benefit of the other party.

4. Implementation of Trust Scheme

4.1 FREML's obligations

FREML must take all steps reasonably necessary to implement the Trust Scheme as soon as is reasonably practicable after the date of this document and substantially in accordance with the Timetable, and in particular FREML must:

- (a) issue the FST Announcement in accordance with clause 6.2(a)(ii);
- (b) prepare and despatch the Explanatory Memorandum which:
 - (i) complies with all applicable Australian laws, the Corporations Act, the Listing Rules, the Regulatory Guides and the Panel Guidance Note;
 - (ii) includes the Supplemental Deed, notice of meeting and proxy form for the Scheme Meeting;
 - (iii) contains a statement that all of the FREML Directors intend to vote any FST Units in which they have a Relevant Interest in favour of the Resolutions, in the absence of a Superior Proposal;
 - (iv) is updated, through the publication of a supplementary explanatory memorandum or through an announcement on the ASX, if FREML becomes aware of any of the following between the date of the Explanatory Memorandum and the date the New FET Units are quoted on ASX:
 - A. a material statement in the Explanatory Memorandum is misleading or deceptive there is a material omission from the Explanatory Memorandum;

- B. there is a material omission from the Explanatory Memorandum;
 - C. there has been a significant change affecting a matter included in the Explanatory Memorandum; or
 - D. a significant new circumstance has arisen and it would have been required to be included in the Explanatory Memorandum;
- (c) state in the Explanatory Memorandum (on the basis of statements made to FREML by each FST Representative Director) that the FST Representative Directors unanimously recommend to FST Unitholders that the Trust Scheme and Resolutions be approved in the absence of a Superior Proposal unless the Independent Expert concludes that the Trust Scheme is not fair and reasonable and not in the best interests of Scheme Unitholders;
- (d) use its best endeavours to procure that:
- (i) each FREML Director votes any FST Units in which they have a Relevant Interest in favour of the Resolutions and any other resolution submitted to FST Unitholders for their approval in connection with the Trust Scheme, in the absence of a Superior Proposal; and
 - (ii) each FREML Director does not change that voting intention, unless:
 - A. the Independent Expert opines, to the effect, that the Trust Scheme is not in the best interest of Scheme Unitholders; or
 - B. it would be unlawful for the FREML Director to vote the FST Units in which they have a Relevant Interest on any other basis, including any likely breach of a director's fiduciary duty or statutory obligation;
- (e) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report for inclusion in the Explanatory Memorandum;
- (f) as soon as practicable after the date of this document, apply to ASIC for the Regulatory Modifications in paragraphs (b) and (c) of the definition of Regulatory Modifications, provide a copy to FIML of all such applications and take all steps it is responsible for as part of the approval process for the Regulatory Modifications (including responding to requests for information at the earliest practicable time);
- (g) provide to FIML advanced drafts of the Explanatory Memorandum and the report of the Independent Expert (so that FIML has a reasonable opportunity to review and comment on those drafts);
- (h) consult with FIML in relation to the content of the drafts of the Explanatory Memorandum and the report of the Independent Expert provided to FIML and consider in good faith, for the purpose of amending those drafts (as to content and presentation), comments received from FIML and its Representatives on those drafts;
- (i) as soon as practicable after conclusion of ASIC's review of the proposed final draft of the Explanatory Memorandum, procure a meeting of the FREML Board to be convened to consider and if thought fit approve the Explanatory Memorandum for dispatch to the FST Unitholders;
- (j) lodge the Explanatory Memorandum with ASIC and ASX in accordance with the Corporations Act and Listing Rules;

- (k) use reasonable endeavours to complete each FST Permitted Transaction (other than the FST Quarterly Distribution which is not conditional or subject to the Trust Scheme);
- (l) take all reasonable steps necessary to dispatch the Explanatory Memorandum to FST Unitholders and convene and hold the Scheme Meeting in accordance with the FST Constitution, Panel Guidance Note and the Corporations Act;
- (m) if the Resolutions and any other resolution submitted to FST Unitholders for their approval in connection with the Trust Scheme are passed by the majorities required and, therefore, the Trust Scheme is approved:
 - (i) lodge with ASIC as soon as practicable a copy of the executed Supplemental Deed;
 - (ii) pay the Implementation Distribution from the assets of FST;
 - (iii) close the FST Unit Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Trust Scheme;
 - (iv) provide all necessary information about FST Unitholders to FIML which FIML requires in order to assist FIML to identify the Scheme Unitholders; and
 - (v) promptly register all transfers of Scheme Units to FIML in accordance with the Trust Scheme;
- (n) co-operate with FIML and provide reasonable assistance in connection with obtaining consents, approvals and confirmations as may be required by FIML in relation to, or under or in connection with this document and the transactions contemplated by it including applications for regulatory, ASX approval and other assistance reasonably requested by FIML; and
- (o) promptly do all other things contemplated by or necessary to give effect to the Trust Scheme.

4.2 FIML's obligations

FIML must take all steps reasonably necessary to assist FREML to implement the Trust Scheme as soon as is reasonably practicable and substantially in accordance with the Timetable, and in particular FIML must:

- (a) issue the FET Announcement in accordance with clause 6.2(a)(i);
- (b) as soon as practicable after the date of this document, apply to ASIC and ASX (as the case may be) for the Regulatory Modifications in paragraphs (a), (d) and (e) of the definition of Regulatory Modifications, provide a copy to FREML of all such applications and take all steps it is responsible for as part of the approval process for the Regulatory Modifications (including responding to requests for information at the earliest practicable time);
- (c) provide to FREML the FET Information in a form appropriate for inclusion in the Explanatory Memorandum which information must contain all information regarding FET necessary to ensure that the Explanatory Memorandum complies with all applicable laws including the Corporations Act, the Listing Rules, the Regulatory Guides and the Panel Guidance Note;
- (d) upon being provided with drafts of the Explanatory Memorandum, promptly provide any comments in relation to such drafts to FREML for its consideration;

- (e) promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Explanatory Memorandum;
- (f) procure that meetings of the FIML Board are convened to:
 - (i) consider and if thought fit approve the FET Information in the form and context in which it appears in the Explanatory Memorandum as being in a form appropriate for dispatch to the FST Unitholders; and
 - (ii) approve the issue of the Scheme Consideration;
- (g) immediately before the Scheme Meeting, execute the Deed Poll; and
- (h) if the Trust Scheme becomes Effective:
 - (i) lodge an Appendix 3B *New issue announcement, application for quotation of additional securities and agreement* with ASX in respect of the New FET Units to be issued as Scheme Consideration in accordance with the Timetable; and
 - (ii) provide the Scheme Consideration on the Implementation Date in accordance with the Trust Scheme and the provisions of the Supplemental Deed.

4.3 Explanatory Memorandum preparation principles

- (a) FREML must take all reasonable steps (including appropriate due diligence and verification processes) to ensure that the FST Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Memorandum is dispatched to FST Unitholders.
- (b) FIML must take all reasonable steps (including appropriate due diligence and verification processes) to ensure that the FET Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Memorandum is dispatched to FST Unitholders.
- (c) The responsibility statement to appear in the Explanatory Memorandum, in a form to be agreed by the parties, will contain words to the effect that:
 - (i) FREML has provided, and is responsible for, the FST Information in the Explanatory Memorandum and is also responsible for information provided by FREML to FIML regarding FST contained in, or used in the preparation of, the information regarding the Merged Group following implementation of the Trust Scheme, and that FIML and its Representatives do not assume responsibility for the accuracy or completeness of the FST Information;
 - (ii) FIML has provided, and is responsible for, the FET Information in the Explanatory Memorandum (other than any information provided by FREML to FIML regarding FST contained in, or used in the preparation of, the information regarding the Merged Group following implementation of the Trust Scheme), and that FREML and its Representatives do not assume responsibility for the accuracy or completeness of the FET Information; and
 - (iii) the Independent Expert has provided and is responsible for the Independent Expert's report, and that:

- A. FREML and its Representatives do not assume any responsibility for the accuracy or completeness of the Independent Expert's report; and
- B. FIML and its Representatives do not assume any responsibility for the accuracy or completeness of the Independent Expert's report.

4.4 Further Information

- (a) FREML must provide to FIML all such further or new information of which FREML becomes aware after the Explanatory Memorandum has been dispatched until the date on which the New FET Units are quoted on ASX where this may be necessary to ensure that the FST Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) FIML must provide to FREML all such further or new information of which FIML becomes aware after the Explanatory Memorandum has been dispatched until the date on which the New FET Units are quoted on ASX where this may be necessary to ensure that the FET Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (c) If FIML or FREML provide any further or new information under paragraphs (a) or (b) of this clause, the parties must consult in good faith to determine the form of any supplementary disclosure to FST Unitholders.
- (d) The parties must promptly inform the other if they have any reason to believe that any information in the Explanatory Memorandum is misleading or deceptive in any material respect (whether by omission or otherwise).

4.5 Tax Ruling

- (a) FREML must promptly apply for the Tax Ruling and take all steps for which it is responsible as part of the Tax Ruling application process, including responding to requests for information at the earliest practicable time.
- (b) Each party must consult as far as practicable with the other in advance in relation to all communications (whether written or oral, and whether direct or through agents or advisers) with a Revenue Authority relating to the Tax Ruling. In particular as far as practicable, each party must:
 - (i) give the other party drafts of any material written communications to be sent to a Revenue Authority and make such changes to those communications as the other party reasonably requests; and
 - (ii) give the other party copies of any written communications sent to, or received from, a Revenue Authority promptly on sending or receiving them (as the case may be).
- (c) Each party is entitled to be represented and to make submissions to any meeting with any Governmental Authority, including a Revenue Authority, relating to the Tax Ruling.

4.6 Quarterly Distributions

- (a) FREML acknowledges that FIML will make the FET Quarterly Distribution on, or shortly after, 31 December 2014 regardless of whether or not the Trust Scheme becomes Effective.

- (b) FIML acknowledges that FREML will make the FST Quarterly Distribution on, or shortly after, 31 December 2014 regardless of whether or not the Trust Scheme becomes Effective.

4.7 Good faith co-operation

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Trust Scheme and to prepare all documents required relating to the Trust Scheme.

5. Conduct of business

- (a) From the date of this document until (and including) the Implementation Date, each party must in all material respects conduct its business in the ordinary course except in relation to any matter required to be done or procured by a party pursuant to, or which is otherwise permitted by, this document or the Trust Scheme or with the written consent of the other parties.
- (b) From the date of this document until (and including) the Implementation Date, FREML must not without the written consent of FIML:
- (i) do or fail to do anything as a result of which any of the warranties provided by FREML in clause 7.4 are breached or are false, inaccurate or misleading; or
 - (ii) do any other act or thing which would result in, or would be reasonably expected to give rise to, an FST Prescribed Occurrence or an FST Material Adverse Change,
- except as expressly permitted under this document or the Trust Scheme.
- (c) From the date of this document until (and including) the Implementation Date, FIML must not without the written consent of FREML:
- (i) do or fail to do anything as a result of which any of the warranties provided by FIML in clause 7.1 are breached or are false, inaccurate or misleading; or
 - (ii) do any other act or thing which would result in, or would be reasonably expected to give rise to, an FET Prescribed Occurrence or an FET Material Adverse Change,
- except as expressly permitted under this document or the Trust Scheme.

6. Recommendation, intentions and announcements

6.1 FST Representative Directors recommendation

FREML will procure that the FST Representative Directors recommend that FST Unitholders vote in favour of the Resolutions and will not withdraw, modify or qualify that recommendation unless:

- (a) a Superior Proposal is made; or
- (b) the Independent Expert concludes that the Trust Scheme is not fair and reasonable or not in the best interests of Scheme Unitholders; or

- (c) an FST Representative Director, acting in good faith, determines having (taken appropriate legal advice) that he is, by virtue of his fiduciary or statutory duties, required to withdraw, modify or qualify that recommendation.

6.2 Announcements

- (a) Immediately after the execution of this document:
- (i) FIML must issue the FET Announcement to the ASX; and
 - (ii) FREML must issue the FST Announcement to the ASX.
- (b) Subject to clause 6.2(c), each party must consult with the other prior to making any other public announcements in connection with the Trust Scheme and must not make any public announcements in connection with the Trust Scheme other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.
- (c) Where a party is required by law, the Listing Rules or any other applicable stock exchange regulation to make any announcement or make any disclosure relating to the Trust Scheme, it must use all reasonable endeavours, to the extent practicable, lawful and otherwise in accordance with applicable securities laws and the Listing Rules (as applicable), to consult with the other party prior to making the relevant disclosure and take account of any reasonable comments received from the other party (in a timely fashion) in relation to the form and content of the announcement or disclosure.

7. Representations, warranties and indemnities

7.1 FIML representations and warranties

FIML represents and warrants to FREML (on its own behalf and separately as trustee for each Representative of FREML):

- (a) as at the date of this document, the date of despatch of the Explanatory Memorandum and the Effective Date, that:
- (i) FIML is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this document by FIML has been properly authorised by all necessary corporate action and FIML has full corporate power and lawful authority to execute and deliver this document and subject to the Regulatory Modifications being made, to perform or cause to be performed its obligations under this document;
 - (iii) subject to the Regulatory Modifications being made, this document constitutes legal, valid and binding obligations on FIML and this document does not result in a breach of or default under the constitution of FET, the constitution of FIML or any material term or provision of any material agreement (including financing arrangement) to which FIML or FET is a party or subject;
 - (iv) FIML is aware that FREML and its Representatives will rely on the FET Information for the purposes of preparing the Explanatory Memorandum and proposing the Trust Scheme in accordance with the requirements of the Corporations Act;
 - (v) the FET Information contained in the Explanatory Memorandum, as at the date the Explanatory Memorandum is despatched to FST

Unitholders, will not be false, misleading or deceptive in any material respect (whether by omission or otherwise);

- (vi) FIML has taken all reasonable steps to ensure that all due diligence information provided by it or its Representatives to FREML or its Representatives in connection with the Trust Scheme and any other transactions contemplated by this document is not false, misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (vii) no Insolvency Event has been declared, commenced or threatened with respect to FIML or FET and no regulatory action of any nature has been taken that would prevent, inhibit or otherwise have any adverse and material effect on FIML's ability to fulfil its obligations under this document; and
- (b) as at the date of this document and the date of dispatch of the Explanatory Memorandum, FET is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.

7.2 FIML indemnity

Subject to clause 7.3, FIML indemnifies FREML and each Representative of FREML against all loss suffered or incurred by reason of any breach of any of the representations and warranties of FIML in clause 7.1.

7.3 Qualification

FIML is not liable in respect of any claim for breach of a FET Warranty, if the fact, matter or circumstance giving rise to the claim was fairly disclosed in writing by FIML to FREML or its Representatives prior to the execution of this document.

7.4 FREML representations and warranties

FREML represents and warrants to FIML (on its own behalf and separately as trustee for each Representative of FIML):

- (a) as at the date of this document, the date of dispatch of the Explanatory Memorandum and the Effective Date, that:
 - (i) FREML is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this document by FREML has been properly authorised by all necessary corporate action and FREML has full corporate power and lawful authority to execute and deliver this document and, subject to the Regulatory Modifications being made, to perform or cause to be performed its obligations under this document;
 - (iii) subject to the Regulatory Modifications being made, this document constitutes legal, valid and binding obligations on FREML and this document does not result in a breach of, or default under, the constituent documents of FREML or FST or any material term or provision of any material agreement (including financing arrangement) to which FREML or FST is a party or subject;
 - (iv) the FST Information contained in the Explanatory Memorandum, as at the date the Explanatory Memorandum is despatched to FST

Unitholders, will not be false, misleading or deceptive in any material respect (whether by omission or otherwise); and

- (v) FREML has taken all reasonable steps to ensure that all due diligence information provided by it or its Representatives to FIML or its respective Representatives in connection with the Trust Scheme and any other transactions contemplated by this document is not false, misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (vi) no Insolvency Event has been declared, commenced or threatened with respect to FREML or FST and no regulatory action of any nature has been taken that would prevent, inhibit or otherwise have any adverse and material effect on FREML's ability to fulfil its obligations under this document;
- (b) as at the date of this document, the only units and other securities that FST has on issue, or has agreed to issue, are 28,499,729 FST Units; and
 - (c) as at the date of this document and the date of dispatch of the Explanatory Memorandum, FREML is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.

7.5 FREML indemnity

Subject to clause 7.6, FREML indemnifies FIML and each Representative of FIML against all loss suffered or incurred by reason of any breach of any of the representations and warranties of FREML in clause 7.4.

7.6 Qualification

FREML is not liable in respect of any claim for breach of a FST Warranty, if the fact, matter or circumstance giving rise to the claim was fairly disclosed in writing by FREML to FIML or its Representatives prior to the execution of this document.

7.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 7.

7.8 Status of representations and warranties

Each representation and warranty in this clause 7:

- (a) is severable;
- (b) will survive the termination of this document; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this document.

7.9 Status and enforcement of indemnities

Each indemnity in this document:

- (a) is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document; and

- (b) is given to the party to which it is expressed to be given, and as trustee for each Representative of that party, and a reference to a loss in an indemnity given to a party includes a loss suffered or incurred by a Representative of that party.

It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.

8. Due diligence

8.1 Due diligence investigations

Without prejudice to FIML's rights, including in respect of any representations and warranties given to FIML and its Representatives under this document, FIML acknowledges that prior to entry into this document, it and its Representatives have undertaken and concluded due diligence investigations in relation to FST and have conducted discussions with FREML and certain of its Representatives.

8.2 Forward looking information

FIML acknowledges that each of FREML and its Representatives (unless otherwise agreed in writing with FREML and its Representatives) makes no representation or warranty in respect of any forward looking information, as to the reasonableness of any such information or the accuracy, completeness or relevance of any assumptions underlying any such information (and FIML expressly acknowledges that all such information is necessarily a matter of opinion, is inherently uncertain and subject to change and, when provided, did not take into account any investment criteria or other considerations that may have determined or influenced the decision of FIML to enter into this document).

8.3 Acknowledgements

- (a) FREML acknowledges and agrees with FIML that:
- (i) the warranties set out in clause 7.1 are the only warranties that FREML requires, and on which FREML has relied, in entering into this document; and
 - (ii) to the extent permitted by law, all other warranties, representations and undertakings (whether express or implied and whether oral in writing) made or given by FIML or any of its Representatives are expressly excluded.
- (b) FIML acknowledges and agrees with FREML that:
- (i) the warranties set out in clause 7.4 are the only warranties that FIML requires, and on which FIML has relied, in entering into this document ; and
 - (ii) to the extent permitted by law, all other warranties, representations and undertakings (whether express or implied and whether oral or in writing) made or given by FREML or any of its Representatives are expressly excluded.

9. Removal of FREML as responsible entity

- (a) As soon as reasonably practicable, and in any case within 2 months, after the Implementation Date, the parties acknowledge that FIML will do all things necessary to:
- (i) remove FREML as responsible entity of FST;

- (ii) appoint FIML (or another person nominated by FIML) as the replacement responsible entity of FST; and
 - (iii) if FST is still registered with ASIC as a managed investment scheme, remove FREML from ASIC's register as responsible entity of FST and include FIML in ASIC's register as the responsible entity of FST.
- (b) FREML will provide all assistance and information as FIML requires in connection with the removal contemplated in clause 9(a).
 - (c) On the date immediately prior to the date of removal of FREML as responsible entity of FST, FIML and FREML each agree to do all things necessary to make payment to FREML from the assets of FST the sum calculated in accordance with clause 4 of schedule 1 to the FST Constitution.

10. Reimbursement Fee

10.1 Background

This clause 10 has been agreed in circumstances where:

- (a) FREML and FIML believe that the Trust Scheme will provide significant benefits to FET Unitholders and FST Unitholders, and FIML and FREML acknowledge that, if they enter into this document and the Trust Scheme is subsequently not implemented, FIML will incur significant costs;
- (b) FIML requested that provision be made for the payment outlined in clause 10.2, without which FIML would not have entered into this document or otherwise agreed to implement the Trust Scheme; and
- (c) the FREML Board believes that the implementation of the Trust Scheme will provide benefits to FST Unitholders and the FREML Board believes that it is appropriate for FREML to agree to the payment referred to in clause 10.2 to secure FIML's participation in the Trust Scheme.

10.2 Payment by FREML to FIML of Reimbursement Fee

- (a) FREML agrees to pay to FIML the Reimbursement Fee if, during the Relevant Period, FREML or any of its Representatives, directly or indirectly, was aware of, becomes aware of or receives from a Third Party, an actual, proposed or potential FST Competing Proposal (for the avoidance of doubt, whether or not such proposal is subject to any preconditions, whether or not such proposal is in writing and whether or not legally binding) and, within 12 months of the announcement of such FST Competing Proposal, the Third Party or any Associate of that Third Party:
 - (i) completes a FST Competing Proposal of a kind referred to in any of paragraphs (a)(i), (a)(ii), (a)(iii) or (b) of the definition of "FST Competing Proposal" in clause 1.1; or
 - (ii) enters into an agreement, arrangement or understanding with FREML or the FREML Board of the kind referred to paragraph (a)(iv) of the definition of "FST Competing Proposal" in clause 1.1.
- (b) FREML must pay the Reimbursement Fee into an account nominated by FIML, without set-off or withholding, within 5 Business Days of receipt by FIML of a written demand for payment from FIML. The demand may only be made after the occurrence of the event referred to in clause 10.2(a).

- (c) Where the Reimbursement Fee becomes payable to FIML under clause 10.2(a) and is actually paid to FIML, FIML cannot make any claim against FREML for payment of any subsequent Reimbursement Fee.
- (d) Notwithstanding the occurrence of any event referred to clause 10.2(a), the Reimbursement Fee is not payable by FREML if the Trust Scheme is implemented.

10.3 Refund of Reimbursement Fee

If FREML has actually paid to FIML the Reimbursement Fee in accordance with clause 10.2(a) and the Trust Scheme is subsequently implemented, then, notwithstanding the occurrence of the relevant event referred to in clause 10.2(a) which resulted in the payment of the Reimbursement Fee by FREML to FIML, FIML must refund the full amount of the Reimbursement Fee into an account nominated by FREML, without set-off or withholding, within 5 Business Days of receipt by FIML of a written demand for payment from FREML.

10.4 Compliance with law

- (a) This clause 10 does not impose an obligation on FREML to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
 - (i) is declared by the Australian Takeovers Panel to constitute unacceptable circumstances; or
 - (ii) is determined to be unenforceable or unlawful by a court,

provided that all proper avenues of appeal and review, judicial and otherwise, have been exhausted.
- (b) The parties must not make or cause, or encourage, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 10.4(a).

10.5 Survival

Any accrued obligations under this clause 10 survive termination of this document.

11. Termination

11.1 Termination by FIML

FIML may terminate this document at any time before the commencement of the Scheme Meeting:

- (a) in accordance with clause 3.5; or
- (b) by notice in writing to FREML if:
 - (i) FREML is in material breach of this document before that time, provided that FIML is only entitled to terminate if it has given notice to FREML setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 7:00 pm on the day before the Scheme Meeting) from the time such notice is received by FREML; or

- (ii) there is a material breach of any of the FST Warranties and clause 7.6 would not apply in respect of any claim for that breach of the FST Warranties.
- (iii) the FST Representative Directors change their recommendation in relation to the Trust Scheme, or if any FST Representative Director otherwise makes a public statement that indicates or suggests that the Trust Scheme is no longer recommended or that he supports a Superior Proposal;
- (iv) an FST Material Adverse Change occurs; or
- (v) an FST Prescribed Occurrence occurs.

11.2 Termination by FREML

FREML may terminate this document at any time before the commencement of the Scheme Meeting by notice in writing to FIML:

- (a) in accordance with clause 3.5; or
- (b) by notice in writing to FIML if:
 - (i) FIML is in material breach of clause 4.2 or clause 4.4 of this document before that time, provided that FREML is only entitled to terminate if it has given notice to FIML setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 7:00 pm on the day before the Scheme Meeting) from the time such notice is received by FIML; or
 - (ii) there is material breach of any of the FET Warranties and clause 7.3 would not apply in respect of any claim for that breach of the FET Warranties;
 - (iii) an FET Material Adverse Change occurs; or
 - (iv) an FET Prescribed Occurrence occurs.

11.3 Effect of termination

In the event of termination of this document by either FREML or FIML pursuant to this clause 11, this document will become void and have no effect, other than:

- (a) this clause 11 and clauses 1, 10, 12, 13, 14, 15, 16 and 17 which shall survive termination; and
- (b) in respect of any liability for an antecedent breach of this document.

12. Confidentiality

No party may disclose the existence or contents of this document except:

- (a) in the FET Announcement;
- (b) in the FST Announcement;
- (c) in the Explanatory Memorandum;

- (d) to a party's professional advisers or financiers; or
- (e) to the extent required by law or the rules of any stock exchange (provided the disclosing party consults with the other party as to the form and content of any disclosure required and uses its best endeavours to minimise the extent of such disclosure).

13. Costs and stamp duties

13.1 Costs

Except as otherwise provided in this document, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this document.

13.2 Stamp duties

FIML:

- (a) must pay all stamp duties and any related fines and penalties in respect of this document, the performance of this document and each transaction effected by or made under this document;
- (b) indemnify FREML against any liability arising from failure to comply with clause 13.2(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 13.2.

14. Notices

14.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this document:

- (a) must be in writing;
- (b) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (c) must be delivered by hand or posted by prepaid post to the following address, or sent by fax to the number, of the addressee (or as otherwise notified by that party to each other party from time to time):

FREML

Name: Folkestone Real Estate Management Limited
 Address: Level 12, 15 William Street, Melbourne VIC 3000
 Fax: (03) 9200 2282
 For the attention of: Mr Mark Stewien
 Email address: mstewien@folkestone.com.au

FIML

Name: Folkestone Investment Management Limited
 Address: Level 12, 15 William Street, Melbourne VIC 3000
 Fax: (03) 9200 2282
 For the attention of: Mr Nick Anagnostou
 Email address: nanagnostou@folkestone.com.au

14.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this document is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day (**working day** meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

15. FREML limitation of liability

- (a) FREML enters into this document only in its capacity as responsible entity of FST.
- (b) A liability arising under or in connection with this document is limited to and can be enforced against FREML only to the extent to which it can be and is in fact satisfied out of property of FST out of which FREML is actually indemnified for the liability. This limitation of FREML's liability applies despite any other provision of this document and extends to all liabilities and obligations of FREML in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (c) The other parties to this document may not sue FREML in any capacity other than as responsible entity of FST, including seeking the appointment of a receiver (except in relation to property of FST) a liquidator, an administrator or any similar person to FREML or proving in any liquidation, administration or arrangement of or affecting FREML (except in relation to property of FST).
- (d) These provisions do not apply to any obligation or liability of FREML to the extent that it is not satisfied because under the constitution establishing FST, or by operation of law, there is a reduction in the extent of FREML's indemnification out of the assets of FST, as a result of FREML's failure to perform its duties as responsible entity of FST.
- (e) Nothing in clause 15 shall make FREML liable to any claim for an amount greater than the amount which FREML would have been able to claim and recover from the assets of FST in relation to the relevant liability if FREML's right of indemnification out of the assets of FST had not been prejudiced by failure to properly perform its duties.
- (f) FREML is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in this clause 15.

16. FIML limitation of liability

- (a) FIML enters into this document only in its capacity as responsible entity of FET.

- (b) A liability arising under or in connection with this document is limited to and can be enforced against FIML only to the extent to which it can be and is in fact satisfied out of property of FET out of which FIML is actually indemnified for the liability. This limitation of FIML's liability applies despite any other provision of this document and extends to all liabilities and obligations of FIML in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (c) The other parties to this document may not sue FIML in any capacity other than as responsible entity of FET, including seeking the appointment of a receiver (except in relation to property of FET) a liquidator, an administrator or any similar person to FIML or proving in any liquidation, administration or arrangement of or affecting FIML (except in relation to property of FET).
- (d) These provisions do not apply to any obligation or liability of FIML to the extent that it is not satisfied because under the constitution establishing FET, or by operation of law, there is a reduction in the extent of FIML's indemnification out of the assets of FET, as a result of FIML's failure to perform its duties as responsible entity of FET.
- (e) Nothing in clause 16 shall make FIML liable to any claim for an amount greater than the amount which FIML would have been able to claim and recover from the assets of FET in relation to the relevant liability if FIML's right of indemnification out of the assets of FET had not been prejudiced by failure to properly perform its duties.
- (f) FIML is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in this clause 16.

17. General

17.1 Amendments

This document may only be varied by a document signed by or on behalf of each party.

17.2 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this document by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this document.
- (b) A waiver or consent given by a party under this document is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this document operates as a waiver of another breach of that term or of a breach of any other term of this document.

17.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this document.

17.4 Consents

A consent required under this document from a party may not be unreasonably withheld, unless this document expressly provides otherwise.

17.5 GST

- (a) Any reference in this clause 17.5 to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this document does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this document is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this document but for the application of this clause 17.5(c) for that supply (GST exclusive consideration), an amount equal to the amount of the GST exclusive consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.5(c) does not apply to any taxable supply under or in connection with this document that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.5 will, subject to having received a valid tax invoice from the Supplier, be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

17.6 Counterparts

This document may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this document, and all together constitute one agreement.

17.7 Entire agreement

This document embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties in relation to the subject matter of this document and together supersedes any prior written or other agreement between the parties in relation to that subject matter.

17.8 No assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this document without the prior consent of each other party.

17.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other

party, except for any representation or inducement expressly set out in this document.

- (c) Each party acknowledges and confirms that clauses 17.9(a) and 17.9(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with the ASIC or the ASX.

17.10 Governing law

This document is governed by and must be construed according to the law applying in the state of Victoria, Australia.

17.11 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the state of Victoria, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this document; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.11(a).

Schedule 1 - Indicative Timetable

Event	Date
Issue of the FET Announcement and FST Announcement to the ASX	13 November 2014
Explanatory Memorandum dispatched to FST Unitholders	25 November 2014
Latest day and time for receipt of proxies for Scheme Meeting	17 December 2014
Scheme Meeting (3:00pm)	19 December 2014
FST Units cease trading at close of trading on ASX	22 December 2014
Lodgement of Appendix 3B in relation to New FET Units	by 12:00pm 24 December 2014
New FET Units commence trading on a deferred settlement basis and FET Units commence trading ex distribution entitlement	29 December 2014
Record date for determining entitlement to Scheme Consideration, Implementation Distribution and FST Quarterly Distribution	31 December 2014
Implementation Date	6 January 2015
Dispatch of holding statements	by 6 January 2015
Deferred trading of New FET Units ends	6 January 2015
Commencement of trading of New FET Units on normal basis	7 January 2015

Schedule 2 - Resolutions

Item 1: Resolution 1 - Acquisition Resolution

That the following resolution be considered and, if thought fit, passed as an ordinary resolution:

"That, subject to the passing of Resolutions 2 and 3, for the purposes of Item 7 Section 611 of the Corporations Act 2001 (Cth) and for all other purposes, the acquisition of 100% of the units in the Folkestone Social Infrastructure Trust by Folkestone Investment Management Limited ABN 46 111 338 937, as responsible entity of Folkestone Education Trust ARSN 102 955 939, on the terms set out in the Explanatory Memorandum accompanying this Notice of Meeting is approved."

Item 2: Resolution 2 - Constitutional Amendment Resolution

That the following resolution be considered and, if thought fit, passed as a special resolution:

"That, subject to the passing of Resolutions 1 and 3, in accordance with section 601GC(1)(a) of the Corporations Act 2001 (Cth), the Constitution of the Folkestone Social Infrastructure Trust ARSN 094 614 874 be amended as set out in Annexure 3 to the Explanatory Memorandum."

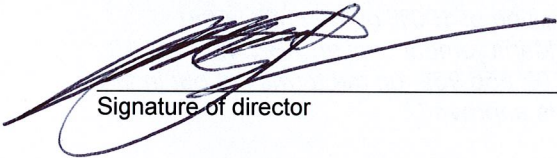
Item 3: Resolution 3 - FET Unit Sale Resolution

That the following resolution be considered and, if thought fit, passed as an ordinary resolution:

"That, subject to the passing of Resolutions 1 and 2, for the purposes of ASX Listing Rule 10.1 and for all other purposes, the disposal by Folkestone Real Estate Management Limited ABN 29 094 185, as responsible entity for the Folkestone Social Infrastructure Trust ARSN 094 614 874, to Folkestone Limited on the terms set out in the Explanatory Memorandum is approved."

Executed as a deed

Executed by Folkestone Real Estate Management Limited ABN 29 094 185 092 as responsible entity of the Folkestone Social Infrastructure Trust ARSN 094 614 874 in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Michael Johnstone

Full name of director


Executed by Folkestone Investment Management Limited ABN 46 111 338 937 as responsible entity of the Folkestone Education Trust ARSN 102 955 939 in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

GRANT HODGETT.


Full name of director



Signature of company secretary/director

Scott Nicholas Martin

Full name of company secretary/director



Signature of company secretary/director

Scott Nicholas Martin

Full name of company secretary/director

CLAYTON UTZ
Annexure A - Deed Poll

Deed poll

Folkestone Investment Management Limited as responsible entity of the
Folkestone Education Trust

Clayton Utz
Lawyers
Level 15 1 Bligh Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T +61 2 9353 4000 F +61 2 8220 6700

www.claytonutz.com

Our reference 15387/17786/80160444

Contents

1.	Definitions and interpretations	1
1.1	Definitions	1
1.2	Interpretation	11
1.3	Best and reasonable endeavours	12
1.4	Business Day	13
2.	Obligations in relations to Trust Scheme	13
2.1	Agreement to propose Trust Scheme	13
2.2	Co-ordination and timing	13
3.	Conditions	13
3.1	Conditions to implementation of the Trust Scheme	13
3.2	Obligations in relation to Conditions	14
3.3	Notice in relation to satisfaction of Conditions	14
3.4	Benefit and waiver of Conditions	15
3.5	Condition not met	15
3.6	Termination	16
4.	Implementation of Trust Scheme	16
4.1	FREML's obligations	16
4.2	FIML's obligations	18
4.3	Explanatory Memorandum preparation principles	19
4.4	Further Information	20
4.5	Tax Ruling	20
4.6	Quarterly Distributions	20
4.7	Good faith co-operation	21
5.	Conduct of business	21
6.	Recommendation, intentions and announcements	21
6.1	FST Representative Directors recommendation	21
6.2	Announcements	22
7.	Representations, warranties and indemnities	22
7.1	FIML representations and warranties	22
7.2	FIML indemnity	23
7.3	Qualification	23
7.4	FREML representations and warranties	23
7.5	FREML indemnity	24
7.6	Qualification	24
7.7	Notifications	24
7.8	Status of representations and warranties	24
7.9	Status and enforcement of indemnities	24
8.	Due diligence	25
8.1	Due diligence investigations	25
8.2	Forward looking information	25
8.3	Acknowledgements	25
9.	Removal of FREML as responsible entity	25
10.	Reimbursement Fee	26
10.1	Background	26
10.2	Payment by FREML to FIML of Reimbursement Fee	26
10.3	Refund of Reimbursement Fee	27
10.4	Compliance with law	27
10.5	Survival	27
11.	Termination	27
11.1	Termination by FIML	27
11.2	Termination by FREML	28

11.3	Effect of termination	28
12.	Confidentiality.....	28
13.	Costs and stamp duties	29
13.1	Costs	29
13.2	Stamp duties	29
14.	Notices.....	29
14.1	How notice to be given.....	29
14.2	When notice taken to be received.....	30
15.	FREML limitation of liability	30
16.	FIML limitation of liability	30
17.	General	31
17.1	Amendments	31
17.2	Waiver	31
17.3	Further acts and documents	31
17.4	Consents	31
17.5	GST	32
17.6	Counterparts	32
17.7	Entire agreement.....	32
17.8	No assignment	32
17.9	No representation or reliance.....	32
17.10	Governing law	33
17.11	Jurisdiction	33
	Schedule 1 - Indicative Timetable	34
	Schedule 2 - Resolutions	35
	Annexure A - Deed Poll	37
1.	Definitions and Interpretation	41
1.1	Definitions	41
1.2	Interpretation	41
2.	Enforceability.....	41
3.	Conditions precedent and termination	41
3.1	Conditions precedent	41
3.2	Termination	41
3.3	Consequences of termination	42
4.	Implementation of Scheme.....	42
5.	Representations and warranties	42
5.1	Representations	42
5.2	Survival of representations	43
6.	FIML limitation of liability	43
7.	Continuing obligations	43
8.	Notices.....	43
8.1	How notice to be given.....	43
8.2	When notice taken to be received.....	44
8.3	Addresses for notices	44
9.	Amendment.....	44
10.	General	44
10.1	Governing law	44
10.2	Jurisdiction	44
10.3	Further acts and documents	45
10.4	Waiver of rights	45

10.5 Operation of this deed..... 45

Annexure B - Supplemental Deed 47

Deed poll dated 2014

Parties **Folkestone Investment Management Limited ABN 46 111 338 937 as responsible entity of the Folkestone Education Trust ARSN 102 955 939 of Level 12, 15 William Street, Melbourne VIC 3000 (FIML)**

In favour of each person registered as a holder of Scheme Units

Background

- A. On 13 November 2014, FIML and Folkestone Real Estate Management Limited ABN 29 094 185 092 as responsible entity of the Folkestone Social Infrastructure Trust ARSN 094 614 874 (FREML) entered into a Merger Implementation Deed (**Merger Implementation Deed**).
- B. In the Merger Implementation Deed, FIML agreed to enter into this deed.
- C. FIML is entering into this deed to covenant in favour of the Scheme Unitholders to perform its obligations under the Scheme.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

- (a) **Supplemental Deed** means the deed poll in the form contained in Annexure B to the Merger Implementation Deed, subject to any alterations or conditions agreed in writing by FIML and FREML; and
- (b) unless otherwise defined or the context requires otherwise, capitalised terms used in this deed have the meanings given to them in clause 3.1(c) of the Supplemental Deed.

1.2 Interpretation

Except as otherwise provided in this deed, clause 2 of the Supplemental Deed applies to this deed.

2. Enforceability

FIML acknowledges that this deed may be relied on and enforced by any Scheme Unitholder, or by FREML as duly appointed agent and attorney of the Scheme Unitholders, in accordance with its terms notwithstanding that Scheme Unitholders and FREML are not party to it.

3. Conditions precedent and termination

3.1 Conditions precedent

The obligations of FIML under this deed are subject to the Scheme becoming Effective.

3.2 Termination

The obligations of FIML under this deed terminate:

- (a) on the termination of the Merger Implementation Deed in accordance with its terms; or
- (b) if the Scheme is not Effective on or before 31 January 2015 or such later date agreed by FIML and FREML in writing,

unless FIML and FREML otherwise agree in writing.

3.3 Consequences of termination

If this deed terminates pursuant to clause 3.2, in addition and without prejudice to any other rights, power of remedies available to FIML or the Scheme Unitholders:

- (a) FIML is released from any obligation to perform its obligations under this deed, except those obligations which by their nature survive termination; and
- (b) Scheme Unitholders retain any rights they have against FIML in respect of any obligation which accrued under, or by reason of, any breach of any obligation imposed by, this deed before it was terminated.

4. Implementation of Scheme

- (a) Subject to the provisions of this deed, FIML undertakes in favour of each Scheme Unitholder to:
 - (i) provide the Scheme Consideration to each Scheme Unitholder; and
 - (ii) undertake all other actions attributed to it under the Scheme, subject to and in accordance with the provisions of the Scheme and the Supplemental Deed.
- (b) FIML covenants in favour of each Scheme Unitholder that the New FET Units which are issued in accordance with the Scheme will:
 - (i) rank equally with all existing units on issue in FET on the Implementation Date; and
 - (ii) be issued free from any mortgage, charge, lien or other encumbrance.

5. Representations and warranties

5.1 Representations

FIML represents and warrants for the benefit of each Scheme Unitholder that:

- (a) FIML is a validly existing corporation registered under the laws of its place of incorporation.
- (b) The execution and delivery of this deed by FIML has been properly authorised by all necessary corporate action and FIML has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed.
- (c) This deed constitutes legal, valid and binding obligations of FIML and this deed does not result in a breach of or default under any of the constituent documents of FIML or FET.
- (d) FIML has been properly appointed as responsible entity of FET.

- (e) No action has been taken or proposed to remove FIML as responsible entity of FET.
- (f) FIML and FET are solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against either of them for their winding-up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of their assets.
- (g) The New FET Units comprising the Scheme Consideration will be validly issued and, as from time of issue, be fully paid up.

5.2 Survival of representations

Each representation and warranty in clause 5.1:

- (a) is severable;
- (b) will survive termination of this deed; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

6. FIML limitation of liability

This clause 6 applies notwithstanding any other provision of this deed.

- (a) FIML enters into this deed only in its capacity as responsible entity of FET and in no other capacity. Any liability arising under or in connection with this deed can be enforced against FIML only to the extent to which it can be satisfied out of the property of FET out of which FIML is actually indemnified for the liability.
- (b) The limitations on FIML's liability contained in this clause 6 extend to all liabilities of FIML in any way connected with any representation, warranty, conduct, omission, agreement or transaction under this deed.
- (c) No other party to this deed may claim against the personal assets of FIML or against FIML in its personal capacity or seek the appointment of a liquidator, administrator, receiver or similar person to FIML or prove in any liquidation, administration or arrangement of or affecting FIML.
- (d) The provisions of this clause 6 shall not apply to any obligation or liability of FIML to the extent that it is not satisfied because under the constitution establishing FET or by operation of law there is a reduction in the extent of FIML's indemnification out of the assets of FET as a result of FIML's failure to properly perform or exercise any of its powers or duties in relation to FET.

7. Continuing obligations

Subject to clause 3, this deed is irrevocable and remains in full force and effect until FIML has completely performed its obligations under this deed and the Scheme.

8. Notices

8.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (c) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 8.3.

8.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day (**working day** meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

8.3 Addresses for notices

For the purpose of this clause 8, the address of a person is the address set out below or another address of which that person may from time to time give notice to each other person:

FIML:

Address: Level 12, 15 William Street, Melbourne VIC 3000

Fax Number: (03) 9200 2282

Attention: Nick Anagnostou

9. Amendment

A provision of this deed may be varied by supplemental deed poll made in favour of the Scheme Unitholders, but only if the variation is agreed to in writing by FREML.

10. General

10.1 Governing law

This deed is governed by and must be construed according to the law applying in the state of Victoria, Australia.

10.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the state of Victoria, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.2(a).

10.3 Further acts and documents

FIML must promptly do all further acts and execute and deliver all further documents necessary to give full effect to this deed and the transactions contemplated by it.

10.4 Waiver of rights

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by FIML or a Scheme Unitholder does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by FIML or a Scheme Unitholder under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

10.5 Operation of this deed

- (a) Any right that FIML or an Scheme Unitholder may have under this deed is in addition to, and does not replace or limit, any other right that FIML or the Scheme Unitholder may have.
- (b) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

Executed as a deed poll.

Executed by Folkestone Investment Management Limited ABN 46 111 338 937 as responsible entity of the Folkestone Education Trust ARSN 102 955 939 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Annexure B - Supplemental Deed

Supplemental Deed

Folkestone Real Estate Management Limited

ABN 29 094 185 092
Responsible Entity

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 15387/17786/80160444

Supplemental Deed

Date 2014

Party Folkestone Real Estate Management Limited ABN 29 094 185 092 as responsible entity of the Folkestone Social Infrastructure Trust ARSN 094 614 874 of Level 12, 15 William Street, Melbourne VIC 3000 (Responsible Entity)

Background

- A. Folkestone Social Infrastructure Trust ARSN 094 614 874 (**Trust**) was established by trust deed dated 21 September 2000. The constitution for the Trust, as amended from time to time, is referred to in this Supplemental Deed as the "**Constitution**".
- B. The Trust is registered by the Australian Securities and Investments Commission (**ASIC**) as a managed investment scheme pursuant to section 601EB of the *Corporations Act 2001* (Cth) (**Corporations Act**) and the Responsible Entity is appointed as the responsible entity of the Trust.
- C. Pursuant to clause 51.1(1) of the Constitution and section 601GC(1)(a) of the Corporations Act, the Constitution may be modified by a special resolution of members of the Trust.
- D. On [19 December] 2014, the members of the Trust approved a special resolution to modify the Constitution as set out in this Supplemental Deed.

Operative provisions

1. Definitions

In this Supplemental Deed, words defined in the Constitution shall (unless defined in this Supplemental Deed) have the same meaning when used in this Supplemental Deed.

2. Interpretation

Except as otherwise provided in this Supplemental Deed, clause 1.2 of the Constitution applies of this Supplemental Deed.

3. Operative provisions

3.1 Specific modifications

Subject to clause 6 of this Supplemental Deed, the Constitution is amended by:

- (a) inserting a new clause 55 as follows:

"55 Scheme

55.1 Implementation of the Scheme

- (1) Each Scheme Unitholder and the Responsible Entity must do all things and execute all deeds, instruments, transfer or other documents as the Responsible Entity considers are necessary or desirable to give effect to the Scheme and the transactions contemplated by it.

- (2) Without limiting the Responsible Entity's other powers under this clause 55, the Responsible Entity has power to do all things that it considers necessary or desirable to give effect to the Scheme.
- (2) The Responsible Entity and FIML, or any of their respective directors, officers, employees or associates, may do any act, matter or thing pursuant to this clause 55 notwithstanding that they have an interest in the act, matter or thing or any consequence thereof.
- (3) Subject only to clauses 1.5 and 51.1, this clause 55:
 - (a) binds the Responsible Entity and all Investors from time to time, including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolutions at the Scheme Meeting; and
 - (b) has effect notwithstanding any other provision of this Constitution and any provision of this Constitution which is inconsistent with this clause 55 does not operate to the extent of any inconsistency.

55.2 Dealings in Units

- (1) For the purpose of establishing the persons who are Scheme Unitholders and the Units that are Scheme Units, dealings in Units will only be recognised if:
 - (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Units by the Record Date; and
 - (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Responsible Entity (or by any agent that the Responsible Entity has appointed to maintain the Register on behalf of the Responsible Entity) by the Record Date.
- (2) The Responsible Entity will register registrable transfers or transmission applications of the kind referred to in clause 55.2(1)(b) by, or as soon as practicable after, the Record Date. The persons shown in the Register, and the number of Units shown as being held by them, after registration of those transfers and transmission applications will be taken to be the Scheme Unitholders and the Scheme Units held by them, respectively.
- (3) Subject to the other provisions of this clause 55, the Responsible Entity will not accept for registration, nor recognise for any purpose, any transfer or transmission application in respect of Units received after the Record Date (or received prior to the Record Date not in registrable form) and prior to registration of FIML as holder in respect of all Scheme Units under clause 55.4(3).
- (4) The Responsible Entity will, until the Scheme Consideration has been provided and the name and address of FIML has been entered in the Register as the holder of all of the Scheme Units, maintain, or procure the maintenance of the Register, in accordance with this clause 55.2. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 55.2(1)(b) will solely determine the persons who are Scheme Unitholders and their entitlements to the Scheme Consideration and the Units which are Scheme Units.

- (5) From the Record Date until registration of FIML as holder in respect of all Scheme Units under clause 55.4(3), no Investor may deal with Units in any way except as set out in this clause 55.2 and any attempt to do so will have no effect.
- (6) From the Record Date until registration of FIML as holder in respect of all Scheme Units under clause 55.4(3), all certificates and holding statements (as applicable) for Scheme Units as at the Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Unitholders to the Scheme Consideration.
- (7) On or before 9.00am on the Implementation Date, the Responsible Entity must give to FIML, or procure that FIML be given, details of the names, Registered Addresses and holdings of Scheme Units of every Scheme Unitholder as shown in the Register as at the Record Date in such form as FIML may reasonably require.
- (8) Each Scheme Unitholder, and any person claiming through that Scheme Unitholder, must not dispose of or purport or agree to dispose of any Scheme Units or any interest in them, after the Record Date.

55.3 Scheme Consideration and Implementation Distribution

- (1) Subject to clause 55.5, each Scheme Unitholder will be entitled to receive the Scheme Consideration for each Scheme Unit held which is to be issued in the manner referred to in clause 55.3(2).
- (2) To facilitate the provision of the Scheme Consideration, the Responsible Entity must deliver to FIML before 12.00pm on the Implementation Date a master application for the New FET Units comprising the Scheme Consideration duly completed and executed by the Responsible Entity (or its directors or officers) as the attorney and/or agent of each Scheme Unitholder as applicant in the form reasonably acceptable to FIML
- (3) To facilitate the provision of the Scheme Consideration, the Responsible Entity will procure FIML to (subject to the provisions of clauses 55.3(2) and 55.5):
 - (a) before 12.00pm on the Implementation Date, issue the applicable New FET Units to each applicable Scheme Unitholder in accordance with the terms of the Scheme;
 - (b) before 12.00pm on the Implementation Date, enter, or procure the entry, in the FIML Register the name and Registered Address of each such Scheme Unitholder and the number of New FET Units which that Scheme Unitholder is entitled to receive under the Scheme; and
 - (c) within 5 Business Days after the Implementation Date, despatch to each Scheme Unitholder by pre-paid or ordinary post (or if the Registered Address of the Scheme Unitholder in the Register is outside Australia, by pre-paid airmail post) to their Registered Address, an uncertificated holding statement for the New FET Units issued to that Scheme Investor in accordance with the Scheme. In the case of Scheme Units held in joint names, holding statements for New FET Units must be issued in the names of joint holders and sent to the holder whose name appears first in the Register on the Record Date.

- (3) If the Scheme becomes Effective the Responsible Entity will pay the Implementation Distribution to each Scheme Unitholder, the record date for which will be the Record Date. The Implementation Distribution will be paid to Scheme Unitholders at or about the same time as the Scheme Consideration is provided to Scheme Unitholders.
- (4) If a fractional entitlement to a New FET Unit arises from the calculation of the Scheme Consideration in respect of a Scheme Unitholder, then any such fractional entitlement to a New FET Unit shall be rounded down to the nearest whole number of New FET Units.
- (5) If the Responsible Entity is of the opinion that an Investor (**Relevant Investor**) has been party to splitting or division of their Units in an attempt to obtain advantage by reference to the Scheme Consideration, the Responsible Entity may give notice to the Relevant Investor:
 - (a) stating that opinion; and
 - (b) treating all of that Relevant Investor's holdings of Scheme Units as one holding for the purposes of calculating the Scheme Consideration.

55.4 Transfers to FIML

- (1) On the Implementation Date, subject to FIML satisfying its obligations to provide the Scheme Consideration in the manner contemplated by clause 55.3 and providing the Responsible Entity with written confirmation of that provision:
 - (a) all of the Scheme Units, together with all rights and entitlements attaching to the Scheme Units as at the Implementation Date, will be transferred to FIML (or its custodian) without the need for any further act by any Scheme Unitholders (other than acts performed by the Responsible Entity (or its directors or officers) as attorney or agent of the Scheme Unitholders pursuant to clause 55.8 or otherwise); and
 - (b) the Responsible Entity will procure the delivery to FIML for execution transfers of all the Scheme Units to FIML (or its custodian) duly completed and executed by the Responsible Entity (or its directors or officers) as the attorney and/or agent of each Scheme Unitholder as transferor in the form of Scheme Transfers.
- (2) FIML must immediately execute (or must, if applicable, procure that its custodian executes) the transfers referred to in clause 55.4(1)(b) and deliver such transfers to the Responsible Entity for registration.
- (3) The Responsible Entity must, immediately following receipt of the transfers under clause 55.4(2), enter the name and address of FIML (or its custodian) in the Register in respect of all the Scheme Units.

55.5 Ineligible Overseas Investors

- (1) Each Ineligible Overseas Investor acknowledges and agrees that the Responsible Entity will be under no obligation under the Scheme to procure that FIML provides, and FIML will not provide, any New FET Units to an Ineligible Overseas Investor.
- (2) Any entitlement that an Ineligible Overseas Investor would otherwise have to be issued New FET Units under the Scheme will be satisfied by

the Responsible Entity procuring FIML, on the Implementation Date, to issue such New FET Units to the Nominee.

- (3) On the Implementation Date, the Responsible Entity will procure that FIML procures the entry in the FIML Register of the name and address of the Nominee in respect of the New FET Units issued or transferred to it.
- (2) The Responsible Entity will procure that, as soon as reasonably practicable and in any event:
- (a) not more than [15] Business Days after the Implementation Date, the Nominee sells all of the New FET Units issued to the Nominee pursuant to clause 55.5(1) in such manner, and at such price and on such other terms as the Nominee determines in good faith and at the risk of the Ineligible Overseas Investor, having regard to the desire to achieve the best price reasonably available at the time of sale; and
- (b) not more than [25] Business Days after the Implementation Date, the Nominee remits to each Ineligible Overseas Investor a cash amount for each New FET Unit which the Ineligible Overseas Investor would otherwise have been entitled to under the Scheme being sold by the Nominee, which is equivalent to the amount calculated by dividing the gross proceeds of sale of all New FET Units sold by the Nominee (rounded to the nearest cent, after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) by the total number of New FET Units that are sold by the Nominee.

55.6 Responsible Entity's limitation of liability

The Responsible Entity will not have any liability of any nature whatsoever to Investors, beyond the extent to which the Responsible Entity is actually indemnified out of the Assets, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act, matter or thing (including the execution of a document) pursuant to or in connection with the implementation of the Scheme.

55.7 Covenants by Scheme Investors

Each Scheme Unitholder:

- (a) acknowledges that this clause 55 binds the Responsible Entity and all of the Investors from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme Resolutions);
- (a) irrevocably agrees to the transfer of all of their Scheme Units, together with all rights and entitlements attaching to those Scheme Units, to FIML (or its custodian) in accordance with this clause 55;
- (b) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 55;
- (c) irrevocably agrees, without the need for any further act, to become a member of FET and to have their name and address entered in the FIML Register;

- (c) irrevocably accepts, without the need for any further act, the New FET Units issued pursuant to the Scheme on the terms and conditions of the constitution of FET and agrees to be bound by the constitution of FET as in force from time to time in respect of the New FET Units;
- (e) irrevocably consents to the Responsible Entity doing all things and executing all deeds, instruments, transfers, applications or other documents (including the Scheme Transfers) as may be necessary or desirable to give full effect to the Scheme, this clause 55 and the transactions contemplated by them; and
- (g) agrees to provide the Responsible Entity with such information as the Responsible Entity may reasonably require to comply with any law in respect of the Scheme and the transactions contemplated in this clause 55.

55.8 Appointment of the Responsible Entity as attorney and as agent for implementation of the Scheme

Each Scheme Unitholder, without the need for any further act by that Scheme Unitholder, irrevocably appoints the Responsible Entity as that Scheme Unitholder's attorney and as that Scheme Unitholder's agent for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including:
 - (i) executing any form of application (including any necessary consent) required for the New FET Units to be issued to that Scheme Unitholder in accordance with the Scheme;
 - (ii) effecting a valid transfer or transfers of the Scheme Units to FIML under clause 55.4, including executing and delivering any Scheme Transfers;
 - (iii) effecting a valid transfer of New FET Units to the Nominee under clause 55.5(1); and
 - (iv) communicating the Scheme Unitholder's instructions and notifications under clause 55.11; and
- (b) enforcing the Deed Poll against FIML,

and the Responsible Entity accepts such appointment. The Responsible Entity, as attorney and as agent of each Scheme Unitholder, may sub-delegate its functions, authorities or powers under this clause 55.8 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Scheme Unitholder indemnifies the Responsible Entity and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 55.8.

55.9 Appointment of FREML as attorney and as agent for Scheme Units

- (1) From the Effective Date until the Responsible Entity registers FIML (or its custodian) as the holder of all Scheme Units in the Register, each Scheme Unitholder:
 - (a) without the need for any further act by that Scheme Shareholder, irrevocably appoints the Responsible Entity as its attorney and agent (and directs the Responsible Entity in such capacity) to irrevocably appoint the Chairman of FIML (or other nominee of FIML) as its sole proxy and, where applicable, corporate representative to attend meetings of Investors, exercise the votes attaching to the Scheme Units of which they are the registered holder and sign any Investors' resolution; and
 - (b) must take all other action in the capacity of a Scheme Unitholder for the purposes of facilitating the Scheme as FIML reasonably directors.
- (2) From the Effective Date until the Responsible Entity registers FIML (or its custodian) as the holder of all Scheme Units in the Register, no Scheme Unitholder may attend or vote at any meetings of Investors or sign or vote on any Investors' resolutions (whether in person, by proxy or by corporate representative) other than pursuant to this clause 55.6(2).
- (3) The Responsible Entity undertakes in favour of each Scheme Unitholder that it will appoint the Chairman of FIML (or other nominee of FIML) as the Scheme Unitholder's proxy or, where applicable, corporate representative in accordance with this clause 55.9.

55.10 Status of Scheme Units

- (1) To the extent permitted by law, the Scheme Units transferred to FIML under this clause 55 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (2) Each Scheme Unitholder is deemed to have warranted to the Responsible Entity in its own right and on behalf of FIML that all their Scheme Units (including any rights and entitlements attaching to those Scheme Units) which are transferred to FIML (or its custodian) under this clause 55 will, at the date they are transferred to FIML (or its custodian), be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind not referred to in this document, and that they have full power and capacity to sell and to transfer their Scheme Units (including any rights and entitlements attaching to those securities) to FIML pursuant to the Scheme.
- (3) FIML will be beneficially entitled to the Scheme Units transferred to it under this clause 55 pending registration by the Responsible Entity of the name and address of FIML (or its custodian) in the Register as the holder of the Scheme Units.

55.11 Binding instructions or notifications

Except for a Scheme Unitholder's tax file number, any binding instruction or notification between a Scheme Unitholder and the Responsible Entity relating to Scheme Units as at the Record Date (including, without limitation, any instructions relating to payment of distributions or to communications from the Responsible Entity) will, from the Record Date, be deemed (except to the extent determined otherwise by FIML in its

sole discretion) to be a similarly binding instruction or notification to, and accepted by, FIML in respect of any New FET Units issued to the Scheme Unitholder pursuant to the Scheme, until that instruction or notification is revoked or amended in writing addressed to FIML, provided that any such instructions or notifications accepted by FIML unless any such instruction or notification is inconsistent with the other provisions of the Scheme.

55.12 Suspension and termination of quotation of Units

- (1) The Responsible Entity must apply to ASX for suspension of trading of the Units on the financial market known as the Australian Securities Exchange conducted by ASX with effect from the close of business on the trading day after the Effective Date.
- (2) The Responsible Entity must apply to ASX for termination of official quotation of the Units on the financial market known as the Australian Securities Exchange conducted by ASX and the removal of the Fund from the official list of the ASX with effect from the trading day immediately following the Implementation Date, or from such later date as may be agreed by the Responsible Entity and FIML.

55.13 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Responsible Entity, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Fund's registered office.;

- (b) by including the following sentence at the end of the existing clause 4 of schedule 1:

"The Responsible Entity will be paid the fee referred to in this clause upon it ceasing to be the responsible entity of the Fund following implementation of the Scheme as contemplated in clause 55 of this Constitution.";

- (c) by inserting the following definitions in clause 1.1 in alphabetical order:

(7A) "**ASIC Instrument**" means

- (a) an exemption or modification granted by ASIC under Part 5C.11 of the Corporations Act; or
- (b) any other instrument issued by ASIC under a power conferred on ASIC which applies or relates to the Responsible Entity of Fund.

(9B) "**ASX**" means ASX Limited ABN 98 008 624 691 or the market operated by it as the context requires

(10A) "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Victoria.

(26A) "**Corporations Act**" means the *Corporations Act 2001* (Cth).

(27A) "**Deed Poll**" means the deed poll to be executed by FIML prior to the Scheme Meeting in favour of the Scheme Unitholders.

(32A) "**Effective**" means, in relation to the Scheme, the point in time when

the Responsible Entity lodges the Supplemental Deed making amendments to this Constitution to facilitate the Scheme, including the insertion of clause 55, with ASIC and the amendments become binding on the Responsible Entity and Investors.

(32B) **"Effective Date"** means the date on which the Scheme becomes Effective.

(33A) **"FET"** means Folkestone Education Trust ARSN 128 141 177.

(33B) **"FIML"** means Folkestone Investment Management Limited ABN 46 111 338 937 as responsible entity of FET.

(33C) **"FIML Register"** means the register of holders of fully paid ordinary units in FET from time to time, as administered by FIML (or such suitably qualified person or persons that is from time to time appointed by FIML).

(37A) **"Implementation Date"** means the 4th Business Day after the Record Date or such other date as the parties agree in writing.

(37B) **"Implementation Distribution"** means a \$0.675 capital distribution per Scheme Unit.

(40A) **"Ineligible Overseas Investor"** means a Scheme Unitholder whose address as shown in the Register as at the Record Date is a place outside Australia and its external territories, New Zealand and such other jurisdiction as FIML and the Responsible Entity agree is writing or as may be required by any applicable ASIC Instrument.

(54A) **"New FET Unit"** means a fully paid ordinary unit in FET to be issued under the Scheme.

(54B) **"Nominee"** means an entity appointed by FIML to sell the New FET Units in accordance with the Sale Facility.

(63A) **"Record Date"** means 7.00 pm (Melbourne time) on 31 December 2014 or such other date (after the Effective Date) as the Responsible Entity and FIML agree in writing.

(64A) **"Registered Address"** means, in relation to an Investor, the address of the Investor as recorded in the Register.

(68A) **"Sale Facility"** means the facility described in clause 55.5 whereby the New FET Units to which Ineligible Overseas Investors would otherwise have been entitled are placed for sale by the Nominee.

(69A) **"Scheme"** means, unless the context otherwise requires, for the purposes of clause 55, the arrangements pursuant to which FIML acquires all of the Scheme Units from the Scheme Unitholders in return for FIML providing the Scheme Consideration.

(69B) **"Scheme Consideration"** means 1.32 New FET Units for every 1 Scheme Unit held on the Record Date.

(69C) **"Scheme Meeting"** means a meeting of Investors convened on [19] December 2014 to consider a number of resolutions required to facilitate the Scheme.

(69D) **"Scheme Resolutions"** means those resolutions put to Investors at the Scheme Meeting to approve the Scheme.

(69E) **"Scheme Transfers"** means, for each Scheme Unitholder, a proper instrument of transfer of their Scheme Units for the purposes of section 1071B of the Corporations Act, which may be a master transfer for all Scheme Units.

(69F) "**Scheme Unit**" means a Unit on issue as at the Record Date.

(69G) "**Scheme Unitholder**" means a holder of Scheme Units as at the Record Date.

- (d) by amending the definition of "Incoming Responsible Entity" in clause 1.1(40) by deleting the words:

"when that Responsible Entity is registered in the record of registration maintained by ASIC in accordance with section 601FJ of the *Corporations Act* as the new responsible entity or Temporary Responsible Entity of the Fund"; and

- (e) by amending the definition of "Responsible Entity" in clause 1.1(68) by inserting the following words at the end of that definition:

"or any replacement trustee of the Fund if the Fund ceases to be a registered managed investment scheme".

3.2 Provisions not affected

The provisions of the Constitution are not otherwise effected.

4. Governing law

This Supplemental Deed is governed by and will be construed according to the laws of the State of Victoria.

5. No resettlement

Nothing in this Supplemental Deed constitutes a resettlement or redeclaration of the Trust.

6. Effective time

The modifications to the Constitution pursuant to clause 3 of this Supplemental Deed take effect when this Supplemental Deed is lodged with ASIC pursuant to section 601GC(2) of the Corporations Act.

Executed as a deed.

Executed by Folkestone Real Estate Management Limited ABN 29 094 185 092 as responsible entity of the Folkestone Social Infrastructure Trust ARSN 094 614 874 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director