



12 May 2009

The Manager
ASX Limited
20 Bridge Street
Sydney NSW 2000

Rubicon Japan Trust (ASX: RJT)

In respect of Rubicon Japan Trust (RJT), find attached the RJT Constitution (conformed to include the First, Second, Third & Fourth Variations).

Yours sincerely,

A handwritten signature in black ink that reads "Matthew Cooper".

Company Secretary
Rubicon Asset Management Limited
as responsible entity for Rubicon Japan Trust

Rubicon Japan Trust Constitution

(Conformed to include the First, Second, Third and Fourth Variations)

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Parties

This deed poll was declared by Rubicon Asset Management Limited of (ACN 095 433 720) to be the Constitution of the Rubicon Japan Trust.

The parties agree

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

2 The Trust

2.1 Appointment of responsible entity

The RE agrees to act as responsible entity of the Trust.

2.2 Holding on trust

- (a) As provided by the Corporations Act, the RE holds the Trust Property on trust for the Unit Holders in accordance with this Constitution.
- (b) The Trust commences on the date Units are first issued.

2.3 Name of Trust

The name of the Trust is the Rubicon Japan Trust or any other name that the RE determines.

3 Units and Unit Holders

3.1 Units

The beneficial interest in the Trust Property will be divided into Units. Unless the terms of issue of a Unit or a Class otherwise provide, all Units will carry all rights, and be subject to all the obligations, of Unit Holders under this Constitution.

3.2 Classes

Different Classes may be issued. If the RE so determines in relation to particular Units, the terms of issue of those Units may:

- (a) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units;
- (b) provide for conversion of Units from one Class to another Class and, if the RE so determines, change the number of Units on such a conversion.

3.3 Fractions

Subject to clause 3.6, fractions of a Unit may not be issued. When any calculations under this Constitution would result in the issue of a fraction of a Unit, the number of Units to be issued must be rounded down to the nearest whole Unit. Any excess application or other money becomes an Asset.

3.4 Equal value

At any time, all the Units in a Class are of equal value.

3.5 Interest

A Unit confers an interest in the Trust Property as a whole. No Unit confers any interest in any particular Asset.

3.6 Consolidation and re-division

- (a) Subject to clause 3.6(b), the RE may at any time divide the Trust Property into any number of Units other than the number into which the Trust Property is for the time being divided.
- (b) A division of a kind referred to in clause 3.6(a) must not change the ratio of Units in a Class registered in the name of any Unit Holder to the Units on Issue in that Class.

3.7 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
 - (i) interfere with any rights or powers of the RE under this Constitution;
 - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to the Unit Holder (or any other person).

3.8 Directions

Unit Holders may not give any directions to the RE if it would require the RE to do or omit doing anything which:

- (a) may result in the RE acting contrary to Law; or

- (b) would otherwise be within the scope of any discretion or power expressly conferred on the RE by this Constitution.

4 Options and Financial Instruments

4.1 Issue of Options

- (a) The RE may issue Options:
 - (i) subject to clause 4.1 (b), on the basis that the price for a Unit to be issued on exercise of the Option (the Exercise Price) is a price determined by the RE other than in accordance with clause 7;
 - (ii) for consideration or no consideration; and
 - (iii) on such other terms as the RE determines, subject to any requirements of the Listing Rules.
- (b) The RE may issue an Option and a Unit may be issued on exercise of the Option at a price determined by the RE, to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms of that ASIC Exemption). The following conditions apply to the extent they reflect the requirements of a relevant ASIC Exemption:
 - (i) if the Units to which the Option relates are Officially Quoted, the Exercise Price of an Option must not be less than 50% of the Market Price for the Units on the day immediately prior to the day on which Option is issued; or
 - (ii) if the Units to which the Option relates are not Officially Quoted, the Exercise Price of an Option must not be less than 50% of the Issue Price for the Units, calculated in accordance with clause 7.1, on the day immediately prior to the day on which the Option is issued.

4.2 Reorganisation of Options

Subject to the Listing Rules, the RE may at any time reorganise Options in accordance with their terms.

4.3 Option exercise

- (a) Options may only be exercised in accordance with their terms.
- (b) The RE must deal with payment for and issue of Units on exercise of Options as if such payment and issue were an application for Units but the RE must not refuse to issue any Units except if the terms of issue and, if applicable, the Listing Rules permit such refusal.

4.4 Financial Instruments

Subject to the Corporations Act and the Listing Rules:

- (a) the RE may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including Derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) (Financial Instruments); and
- (b) Financial Instruments may be issued:

- (i) for consideration or no consideration; and
- (ii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the RE determines.

4.5 Rights attaching to Options and Financial Instruments

- (a) An Option will not confer any interest in, or any rights to participate in the income or capital of, the Trust Property.
- (b) Each Option Holder and, subject to the terms of the Financial Instrument, each Financial Instrument Holder agrees not to:
 - (i) interfere with any rights or powers of the RE under this Constitution;
 - (ii) purport to exercise a right in respect of an Asset or claim any interest in an Asset (for example, by lodging a caveat affecting an Asset); or
 - (iii) require an Asset to be transferred to them (or any other person).

4.6 Offer of Options

Subject to the Listing Rules and any relevant ASIC Exemption, if the RE makes an offer of Options to Unit Holders which is otherwise in proportion to their existing holdings of Units, the RE is not required to offer Options to Unit Holders whose address on the relevant Register is outside Australia.

5 Offer of Units, Options and Financial Instruments

5.1 Offer and minimum subscription

The RE may at any time offer Units, Options or Financial Instruments for subscription or sale. The RE may determine a minimum amount which must be lodged with an application for Units, Options or Financial Instruments and a minimum holding of Units, Options or Financial Instruments for the Trust. ~~The RE may invite persons to make offers to subscribe for or buy Units, Options or Financial Instruments.~~

5.2 Form of application

Each application for Units, Options or Financial Instruments will, unless the RE approves otherwise:

- (a) conform with the form and content requirements of any relevant disclosure document; and
- (b) be accompanied by application moneys as required by any relevant disclosure document; or
- (c) if there is no relevant disclosure document, be made in such manner as the RE approves.

5.3 Acceptance or rejection

The RE may, without giving any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of an application.

5.4 Uncleared funds

Units, Options or Financial Instruments issued against application money in the form of a cheque or other payment order (other than in cleared funds) are void if the cheque or payment order is not cleared within 5 Business Days of being presented for payment.

5.5 Issue of Units, Options and Financial Instruments

Units, Options or Financial Instruments are taken to be issued when:

- (a) the RE accepts the application and the Units, Options or Financial Instruments are entered in the Register; or
- (b) the application money is received by (or Property which is acceptable to the RE against which Units, Options or Financial Instruments are to be issued is transferred to) the RE,

whichever is the later or at such other time as the RE determines.

5.6 Number of Units issued

Subject to clause 5.7 and the terms of any Option or Financial Instrument, the number of Units issued at any time in respect of an application for Units will be calculated as follows:

- (a) for Units other than Partly Paid Units, by dividing the balance of the application moneys or the value of the Property paid by the applicable Issue Price at that time and rounding down to the nearest Unit;
- (b) for Partly Paid Units, by dividing the balance of the application moneys or the value of the Property paid, by that amount of the Issue Price which is payable at the time of issue and rounding down to the nearest Unit,

and any balancing amount will become an Asset.

5.7 Units as consideration

Where an Investment is acquired for consideration which includes the issue of Units by the RE, the number of Units created and issued by the RE is determined in accordance with the following formula.

$$\frac{MVA - C}{IP}$$

Where:

MVA = the value of the Investment being acquired as determined in accordance with this Constitution

C = the amount of the cash consideration paid in respect of the Investment (if any)

IP = the Issue Price of the Units being issued (as determined in accordance with clause 7.3)

5.8 Certificates

No certificates will be issued for Units, Options or Financial Instruments (unless the RE determines otherwise in relation to some Units, Options or Financial Instruments, a Class or all Units).

5.9 Defective applications

Where, within ten Business Days of the issue of Units, Options or Financial Instruments (or such longer period as the RE determines), the RE determines that:

- (a) the applicant was not entitled to hold the Units, Options or Financial Instruments;
- (b) the application form was incorrectly executed or executed without power or authority;
- (c) the application form was defective and was accepted in error; or
- (d) the application moneys due were not credited to the RE's account, or, if credited, were later reversed by the paying party,

the RE may, in its sole discretion, cancel those Units, Options or Financial Instruments and make an appropriate entry in the Register and, if necessary, repay the application moneys to the applicant out of the Trust Property. If Units, Options or Financial Instruments are cancelled under this sub-clause, the RE is not required to adjust the Trust Value, Issue Price or Withdrawal Price determined before the cancellation of the Units in the Fund.

6 Partly Paid Units and Forfeiture

6.1 Terms of Issue

The RE may issue Partly Paid Units on such terms and conditions as it determines. In particular, ~~without limitation, the RE may determine the number of instalments and the terms on which they are payable.~~ This is subject to the Listing Rules if applicable.

6.2 Calls

Each Holder of a Partly Paid Unit must pay a Call made in accordance with the terms of issue of the Unit. The RE may only make a Call if the Call is made on all Unit Holders of that Class.

6.3 Interest on late payment of Call

If any Call is not paid on or before the day appointed for payment, the Holder of such Partly Paid Unit must pay interest on the amount of the Call from the day appointed for the payment to the time of actual payment. Interest which accrues on an unpaid Call will become an Asset. Unless the terms of the Partly Paid Unit specify otherwise, interest will be payable at the Interest Rate.

6.4 Non-receipt of notice of Call

A Call is not invalidated because any Unit Holder does not receive a notice of the Call, or because accidentally notice is not sent to any Unit Holder.

6.5 Deductions for unpaid Calls

If all or part of a Call is not paid by the date appointed for payment, the RE may apply any amount payable to the relevant Unit Holder under this Constitution to pay amounts unpaid under the Call (as well as accrued interest and all costs and expenses incurred by the RE in relation to the unpaid Call).

6.6 Notice requiring payment of sums payable

- (a) If a Call is not paid by the day appointed for the payment, the RE may, while any part of the Call remains unpaid, give a notice to the Unit Holder requiring payment of the unpaid amounts, accrued interest and all costs and expenses incurred by the RE in relation to the unpaid Call (**Forfeiture Notice**).
- (b) The notice must appoint a day (at least 7 days after the date of the notice) by which the payment required by the notice is to be made.
- (c) The notice must also state that, if the payment is not made by the day appointed, the Units to which the Call related will be liable to be forfeited.
- (d) While the Trust is admitted to the Official List the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

6.7 Forfeiture on non-compliance with notice

- (a) If a Unit Holder does not comply with a Forfeiture Notice, any Units the subject of the Forfeiture Notice may be forfeited.
- (b) Forfeiture may be effected by a notice from the RE, with effect from the date of the notice.
- (c) Forfeiture includes forfeiture of all distributions and other money payable to the Unit Holder relating to the forfeited Units not actually paid to the Unit Holder before the Forfeiture (except where such amounts have already been applied to reduce the Call amount under clause 6.5).
- (d) Unless the RE determines otherwise, the rights attaching to forfeited Units which ~~have not yet been sold (or otherwise disposed of) are suspended for the period~~ from the date of the forfeiture to the date of sale (or disposal).

6.8 Entry on Register of Unit Holders

Where any Unit has been forfeited in accordance with this clause, the RE will enter the forfeiture and the date of the forfeiture in the Register of Unit Holders.

6.9 Disposal of forfeited Units

Subject to the Listing Rules, the Corporations Act and any relevant ASIC Exemption, the RE may sell (or otherwise dispose of) a forfeited Unit in the manner and at such price as the RE determines (including on the basis that the purchaser of such forfeited Units is not obliged to pay the unpaid Calls).

6.10 Cancellation of forfeiture

At any time before a forfeited Unit is sold:

- (a) the RE may cancel the forfeiture upon such conditions as it determines; and

- (b) if the Unit Holder pays to the RE the full amount owing in relation to the forfeited Units (including accrued interest and all costs and expenses incurred by the RE in relation to the unpaid Call), the forfeiture must be cancelled.

6.11 Transfer of forfeited Units

- (a) The RE may, on any sale of forfeited Units, receive the selling price for those Units and effect a transfer of those Units in the name of the Unit Holder whose Units have been forfeited, in favour of the person to whom the Units have been sold. The Unit Holder authorises the RE to take these steps and appoints the RE its agent or attorney to do so. The Unit Holder indemnifies the RE against any claim or liability the RE may incur in doing so.
- (b) Upon effecting the transfer, the transferee must be registered as the holder of the Units. The transferee's title to the Units will not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Units.

6.12 Liability notwithstanding forfeiture

A Unit Holder whose Units have been forfeited ceases to be a Unit Holder (in respect of the Units forfeited) from the date the RE gives a notice under clause 6.7(b) (subject only to cancellation of the forfeiture under clause 6.10). Despite this, the Unit Holder remains liable to pay to the RE all amounts unpaid specified in clause 6.15(a), (b) and (c) which are referable to the forfeited Units. That liability ceases when the RE is paid all such amounts under clause 6.15 or otherwise, and (if relevant) amounts under clause 6.16, in relation to the Units.

6.13 Lien

Subject to the Listing Rules, the RE has a first and paramount lien upon every Unit for unpaid Calls and other moneys payable to the RE by the Unit Holder in relation to a Unit. That lien extends to all distributions and other money from time to time payable in relation to that Unit.

6.14 Sale of Units to enforce lien

For the purpose of enforcing a lien, the RE may sell the Units subject to the lien, in the same manner, so far as is applicable, as if the Units had been forfeited for non-payment of a Call.

6.15 Proceeds of sale

The net proceeds of any sale of forfeited Units or the sale of Units to enforce a lien (including all distributions and other money from time to time payable to the Unit Holder in relation to those Units) must be applied:

- (a) first, in paying all costs which have been or will be incurred in relation to enforcing the lien or the forfeiture (as the case may be) and the sale;
- (b) second, in satisfying the amount of the unpaid Call; and
- (c) third, in satisfying the amount of any accrued interest on the Call and any other moneys payable to the RE.

The balance (if any) must be paid to the Unit Holder whose Units have been sold. If the net proceeds of any sale are insufficient to pay the amounts in paragraphs (a), (b) and (c) then the Unit Holder remains liable for the difference between the net proceeds of sale and the sum of those amounts.

6.16 Underwriting of Calls

- (a) If:
- (i) the RE has appointed an underwriter to underwrite the payment of a Call;
 - (ii) in discharging its obligations, the underwriter has purchased Units; and
 - (iii) the RE is liable to pay the underwriter a fee,
- then the former Unit Holder whose Units have been forfeited and sold is liable to pay to the RE, in respect of those forfeited Units, and may be sued for:
- (iv) all money payable by the RE to the underwriter as contemplated by paragraph (iii), pro rated (if necessary) according to the number of forfeited Units of the former Unit Holder;
 - (v) interest (at the rate specified in clause 6.3); and
 - (vi) all costs and expenses incurred by the RE in procuring payment from the former Unit Holder.
- (b) The RE may assign its rights of action under this clause 6 against the former Unit Holder to an underwriter. The Unit Holders acknowledge that rights against each of them under this clause 6 may be assigned in the manner contemplated by this paragraph and such assignment will not affect the ability of the RE to recover the amounts referred to in clauses 6.15(a) and (c) and 6.16(a)(v) and (vi).

6.17 Joint Holders

Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due on the Partly Paid Units held by them.

6.18 Termination

Subject to their terms, the whole of the unpaid Issue Price of each Partly Paid Unit is payable upon termination of the Trust.

7 Issue Price

7.1 Issue Price while Units are not Officially Quoted

- (a) The Issue Price for the Units issued to establish the Trust under clause 2.2(b) is \$1.
- (b) The Issue Price for the first issue of Units under the first product disclosure statement for the Trust will be \$1.
- (c) Subject to clause 7.1(d), after the first issue of Units under the first product disclosure statement for the Trust and for Units that are not Officially Quoted, the Issue Price for any Unit will be equal to:

Net Trust Value + Transaction Costs

number of Fully Paid Units on Issue + Partly Paid Proportion

all calculated as at the first Valuation Time after the RE receives:

- (i) the application for Units; or
- (ii) the application money (if applicable) or the Property to be transferred to the RE,

whichever happens later.

- (d) However, for Units that are not Officially Quoted, the RE may determine a different Issue Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by an ASIC Exemption (and subject to the terms of that ASIC Exemption). The following apply to the extent they reflect the requirements of a relevant ASIC Exemption. In the case of:
 - (i) offers made at substantially the same time to only and all the then Unit Holders on a pro rata basis, the Issue Price must not be less than 50% of the Issue Price for the Units in that Class (calculated in accordance with clause 7.1(c)) on the Business Day preceding the date on which the intention to make the offer or issue is announced; and
 - (ii) a distribution reinvestment arrangement referred to in clause 16.7, the Issue Price must not be less than 50% of the Issue Price of a Unit (calculated in accordance with clause 7.1(c)) as at the date determined by the RE under clause 16.7 for the reinvestment of entitlements to income.

Subject to any relevant ASIC Exemption:

- (iii) the RE is not required to offer Units under paragraphs (i) and (ii) to Unit Holders whose address on the relevant Register is outside Australia; and
- (iv) entitlements of Holders of Partly Paid Units will be determined by reference to the amount of the Issue Price actually paid up on those Partly Paid Units at the relevant time.

7.2 Issue Price while Units are Officially Quoted

- ~~(a) Subject to clauses 7.2(b) and (c) and 7.3, for Units that are Officially Quoted, the Issue Price for any Unit will be the Market Price on the Calculation Date.~~
- (b) However, the RE may determine a different Issue Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by an ASIC Exemption (subject to the terms of that ASIC Exemption) and the Listing Rules. The following apply to the extent they reflect the requirements of a relevant ASIC Exemption. In the case of:
 - (i) offers made at substantially the same time to only and all the then Unit Holders on a pro rata basis, the Issue Price must not be less than 50% of the Market Price for the Units in that Class on the Business Day preceding the date on which the intention to make the offer or issue is announced to the ASX.
 - (ii) a distribution reinvestment arrangement referred to in clause 16.7, the Issue Price must not be less than 50% of the Market Price of a Unit as at the date determined by the RE under clause 16.7 for the reinvestment of entitlements to income.

Subject to any relevant ASIC Exemption:

- (iii) the RE is not required to offer Units under paragraphs (i) and (ii) above to Unit Holders whose address on the relevant Register is outside Australia; and
- (iv) entitlements of Holders of Partly Paid Units will be determined by reference to the amount of the Issue Price actually paid up on those Partly Paid Units at the relevant time.

7.3 Issue of Units to acquire an Asset

- (a) Where Units that are not Officially Quoted are consideration (in whole or in part) for the acquisition of an Investment the Issue Price for those Units must be calculated in accordance with clause 7.1(c) calculated on the date of the agreement under which there will be an issue of the Units.
- (b) Where Units that are Officially Quoted are consideration (in whole or in part) for the acquisition of an Investment, the Issue Price for those Units must be the Market Price calculated on the day which is 5 Business Days prior to the day on which the RE publicly announces the proposed transaction under which there will be an issue of the Units (or if there is no such announcement, 5 Business Days prior to the date of the agreement under which there will be an issue of the Units or 5 Business Days prior to the date on which a right to call for the issue of Units is exercised in accordance with the terms of the agreement or arrangement pursuant to which the right was granted).
- (c) However, the RE may determine a different Issue Price in relation to some Units, a Class or all Units to the extent permitted by and in accordance with an ASIC Exemption and the Listing Rules.

7.4 Satisfaction of Issue Price

The Issue Price may be satisfied by payment of Cash or by transfer to the RE of an Investment acceptable to the RE (or by a combination of both). If the RE accepts an Investment other than Cash, it may determine that some or all of the costs associated with the valuation or transfer of the Investment are payable or reimbursable out of the Trust Property or by the applicant.

7.5 Issue of Units as Bid Consideration

- (a) The RE may issue a Unit as consideration, or part of the consideration, to acquire securities or financial products of a target entity under a takeover bid (**Bid**) made in accordance with Chapter 6 of the Corporations Act (**Bid Consideration**).
- (b) If the RE determines it is in the best interests of Unit Holders to issue a Unit as, or as part of, the Bid Consideration at a particular Issue Price, subject to the Corporations Act and the Listing Rules, the RE may amend this Constitution to specify the Issue Price for that Bid and may issue Units at the specified Issue Price.

7.6 Limitation on Issue and Redemption

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

8 Withdrawal of Units

8.1 Withdrawal request while Trust is Liquid

Subject to clause 8.3, while the Trust is Liquid or is not a registered Trust, any Unit Holder may request that some or all of their Units be withdrawn. Each request must:

- (a) satisfy the form and content requirements prescribed by the RE; and
- (b) be delivered to the RE at its registered office (or other place nominated by the RE).

Upon making such a request, the Unit Holder will have no right to deal with the Units (unless and until the request is denied by the RE). A Unit Holder may not withdraw a withdrawal request unless the RE agrees.

8.2 Action following request

Within a reasonable time of receiving a withdrawal request under clause 8.1 the RE must consider that request and, in the RE's absolute discretion:

- (a) deny the request (but it must then notify the Unit Holder accordingly); or
- (b) effect the withdrawal by causing the number (or value) of Units held by the Unit Holder referred to in the withdrawal request to be redeemed at the applicable Withdrawal Price put of the Trust Property; or
- (c) subject to the Listing Rules and the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder referred to in the withdrawal request; or
- (d) partially effect the withdrawal in the manner described in clause 8.2(b) and partially purchase Units (or arrange for Units to be purchased) in the manner described in clause 8.2(c).

8.3 Suspension of withdrawal request right

Unless the RE determines otherwise, the right to make a withdrawal request under clause 8.1 is suspended while the Trust is admitted to the Official List.

8.4 Withdrawal while Trust is not Liquid

- (a) While the Trust is a registered Trust but is not Liquid the RE may make a Withdrawal Offer to all Unit Holders or to Unit Holders in a Class. A Unit Holder may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer. Otherwise, a Unit Holder has no right to request that some or all of the Unit Holder's Units be withdrawn.
- (b) A Withdrawal Offer must contain the information required by the Corporations Act and, if applicable, the Listing Rules. The Withdrawal Offer may be made by:
 - (i) publishing it (for example, in a national newspaper or on the internet); or
 - (ii) giving a copy to all Unit Holders (or Holders in a Class).
- (c) Subject to the Corporations Act and the Listing Rules, the RE may determine the terms of a Withdrawal Offer in its absolute discretion but the means of effecting the

withdrawal must be one of those permitted under clause 8.2 (subject to the Corporations Act and the Listing Rules).

- (d) The RE may cancel a Withdrawal Offer in accordance with the Corporations Act.

8.5 Minimum holding

If the RE has established a minimum number of Units for which an application can be made or a minimum number of Units which must be held at any time, then the RE may treat a withdrawal request (including acceptance of a Withdrawal Offer), which if accepted, would lead a Unit Holder to hold fewer Units than that minimum number, as a request for the withdrawal of all that Unit Holder's Units. If there is more than 1 Class, this clause only applies to Units in the same Class.

8.6 Sums owed

The RE may deduct from the proceeds of withdrawal of Units any money due to the RE in relation to the Unit Holder.

8.7 Transfer of Assets to effect a withdrawal

Rather than pay Cash to effect a withdrawal in whole or in part, the RE may transfer Assets to a Unit Holder (or the Unit Holder's nominee). The RE must satisfy itself that the Asset Value (with any Cash paid) will equal the total amount of Cash otherwise payable. The RE may do this on the basis of a valuation of the Assets obtained within 1 month of the withdrawal date.

8.8 Liquid or not Liquid

The RE will determine whether or not the Trust is Liquid. Such a determination is binding on Holders and no Holder will challenge it.

8.9 Cooling off

Nothing in this clause 8 prevents the RE from complying with any requirement to return application money to Unit Holders in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the RE or the Trust.

8.10 Increase of minimum holding

If the RE increases the minimum holding for the Trust, the RE may, after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Withdrawal Price less than the current minimum holding, redeem that Unit Holder's holding without the need for a withdrawal request.

8.11 On market buy back of Units

Subject to the Listing Rules, the Corporations Act and any relevant ASIC Exemption, the RE may effect a buy back of Units by purchasing Units on market as if the Trust was a company, with any adaptations that the ASX or ASIC consider appropriate.

8.12 The purchase price payable under clause 8.11 for the Unit shall be determined by the RE as follows:

- (a) during any period in which a purchase may be made, the RE (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on the ASX and may adjust that pricing

range from time to time if appropriate, but the price paid must satisfy the following requirements:

- (i) the maximum purchase price on any day can not exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess to be determined by RE (or its nominee); and
- (ii) the minimum purchase price on any day can not be less than the Buy-Back Market Price for that day by more than 15%, the amount of that reduction to be determined by the RE (or its nominee); and
- (iii) the purchase price must otherwise satisfy the conditions of any ASIC Exemption.

For the purposes of this clause 8.12;

Buy-Back Market Price: in respect of the relevant Unit means the average of the market price (as that term is defined in the Listing Rules) calculated over the last 5 days on which sales in the Unit were recorded before the day on which the purchase under the buy-back was made.

9 Withdrawal Price

The Withdrawal Price for any Unit will be equal to:

$$\frac{\text{Net Trust Value} - \text{Transaction Costs}}{\text{number of Fully Paid Units on Issue} + \text{Partly Paid Proportion}} \times \frac{\text{amount paid up on that Unit}}{\text{Issue Price of that Unit}}$$

While the Trust is not a registered Trust or is Liquid, each of these variables will be calculated as at the next Valuation Time after the RE received (or is taken to have received) the withdrawal request. If the Trust is a registered Trust but is not Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes. The RE may adjust any variable where the calculation is in respect of a particular Class.

10 Transfers

10.1 Transferability

- (a) Subject to this Constitution and their terms of issue, a Unit, Option or Financial Instrument may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the RE approves.
- (b) A transferor of Units, Options or Financial Instruments remains the Holder of the Units, Options or Financial Instruments (as the case may be) transferred until the transfer is registered.

10.2 Uncertificated system

Units, Options or Financial Instruments may be transferred in any manner permitted by an applicable uncertificated trading system. The RE may require before registration of any such transfer that there be provided to the RE any documents which the rules of the uncertificated system require or permit the RE to require be provided to it to authorise registration.

10.3 Registration of transfers

- (a) Where Units, Options or Financial Instruments are transferred other than in accordance with an applicable uncertificated trading system, the following documents must be lodged for registration at the registered office of the RE or the location of the Register:
 - (i) the instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units, Options or Financial Instruments; and
 - (iii) any other information that the RE may require to establish the transferor's right to transfer the Units, Options or Financial Instruments.
- (b) On compliance with clause 10.3(a), the RE will, subject to the powers or obligations of the RE to refuse registration, register the transferee as a Holder.
- (c) The RE may waive compliance with clause 10.3(a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.

10.4 Where registration may be refused

Subject to the Corporations Act, the Listing Rules or the rules of any applicable uncertificated trading system, the RE may refuse to register any transfer of Units, Options or Financial Instruments. When the Listing Rules apply, the RE may also apply a holding lock (or ask that a holding lock be applied) to the extent permitted by the Listing Rules.

10.5 Restricted Securities

When Units are Officially Quoted and the Listing Rules or a restriction agreement requires, the RE must refuse to acknowledge, deal with, accept or register any disposal (including any sale, assignment or transfer) of any restricted securities on issue which is or might be in breach of the Listing Rules or any restriction agreement entered into by the RE under the Listing Rules in relation to the restricted securities.

During a breach of the Listing Rules relating to restricted securities, or a breach of a restriction agreement, the holder of the restricted securities is not entitled to any distribution or (subject to the Corporations Act) voting rights in respect of the restricted securities.

11 Transmission of Units, Options and Financial Instruments

11.1 Entitlement to Units on death

- (a) If a Holder dies:
 - (i) the survivor (or survivors, where the Holder was a joint Holder); and
 - (ii) the legal personal representatives of the deceased, where the Holder was a sole holder,will be the only persons recognised by the RE as having any title to the Holder's interest in the Units, Options or Financial Instrument (as the case may be).
- (b) The RE may require evidence of a Holder's death as it thinks fit.

- (c) This clause does not release the estate of a deceased joint Holder from any liability in respect of a Unit, Option or Financial Instrument that had been jointly held by the Holder with other persons.

11.2 Registration of persons entitled

- (a) Subject to the Bankruptcy Act 1966 (Cth), the Corporations Act and to the production of any information that is properly required by the RE, a person becoming entitled to a Unit, Option or Financial Instrument in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Holder may elect to:
 - (i) be registered personally as a Holder; or
 - (ii) have another person registered as the Holder.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
 - (i) the right to transfer;
 - (ii) the registration of the transfer of; and
 - (iii) the issue of certificates for,

Units, Options or Financial Instruments apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Holder had not occurred and the notice or transfer were a transfer signed by that Holder.

11.3 Distributions and other rights

- (a) If a Holder dies or suffers a legal disability, the Holder's legal personal representative or the manager of the Holder's estate (as the case may be) is, on the production of all information as is properly required by the RE, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Trust or to voting or otherwise) as the Holder would have been entitled to if the Holder had not died or suffered a legal disability.
- (b) Where 2 or more persons are jointly entitled to any Unit, Option or Financial Instrument as a result of the death or legal disability of a Holder, they will, for the purposes of this Constitution, be taken to be joint Holders of the Unit, Option or Financial Instrument (as the case may be).

12 Successor Trust

12.1 Transfer of Assets to Successor Trust

The RE may, in relation to specific Unit Holders or all Unit Holders, in full discharge of those Unit Holders' rights in respect of Units and rights arising under this Constitution:

- (a) transfer Assets of the Trust Property having a value equal (as nearly as practicably possible) to the value of the Units of the relevant Unit Holders to another managed investment Trust (**Successor Trust**) in exchange for the issue to those Unit Holders of units in the Successor Trust with an equivalent total issue price (as nearly as practicably); or
- (b) cause the Units of those Unit Holders to be transferred to the responsible entity or custodian of the Successor Trust in exchange for the issue to the relevant Unit

Holders of units in the Successor Trust with an equivalent total issue price (as nearly as practicable),

if having regard to any reasonably foreseeable material benefits and detriments to Unit Holders the RE believes that to do so is in the interests of the Unit Holders as a whole, or is not materially adverse to those Unit Holders and to the Unit Holders as a whole.

12.2 Applications

The RE is authorised to complete any application for units or other documents reasonably required in relation to the issue of units in the Successor Trust, and any form of transfer or other documents reasonably required in relation to the transfer of Units to the responsible entity or custodian of the Successor Trust, in each case on behalf of and in the name of the relevant Unit Holder, as agent or attorney.

12.3 Notice

The RE must give notice to the affected Unit Holders not less than 21 days before the date of the proposed transfer which must contain information about the Successor Trust considered appropriate by the RE.

13 Exchange of Units for Units in Another Trust

13.1 Exchange of Units

If, with the approval of the RE, an offer is made to Unit Holders, or to 1 or more specific Unit Holders to transfer some or all of their Units in consideration of any or all of:

- (a) the issue or transfer of units in another Trust, or interests of whatever nature in another entity;
- (b) a cash payment; and
- (c) a transfer of Assets,

and at least 21 days notice is given to Unit Holders to accept the offer, then at the end of the period of notice if no election has been made by any Unit Holder, the Unit Holder will be taken to have accepted the offer. Where the offer is of cash and 1 or more other alternatives, the Unit Holder is taken to have elected to accept the cash alternative and where there are 1 or more non-cash alternatives, the Unit Holder is taken to have elected to accept the alternative determined by the RE.

13.2 Applications

The RE is authorised to complete any application for units, forms of transfer or other documents reasonably required for the purposes of this clause 13, in each case on behalf of and in the name of the relevant Unit Holder, as agent or attorney.

14 Small Holdings

14.1 Sale or Redemption

- (a) Subject to the provisions of this clause 14, the RE may in its discretion from time to time sell or redeem any Units held by a Unit Holder which comprise less than a marketable parcel as notified by the RE to Unit Holders from time to time without request by the Unit Holder.

- (b) The RE may only sell or redeem Units pursuant to this clause 14 on 1 occasion in any 12 Month period. The RE must notify the Unit Holder of its intention to sell or redeem Units under this clause 14.
- (c) The RE will not sell or redeem the relevant Units:
 - (i) before the expiry of 6 weeks from the date of the notice given under this clause 14; or
 - (ii) if, within the 6 weeks allowed under paragraph (i), the Unit Holder advises the RE that the Unit Holder wishes to retain the Units.
- (d) The RE or the purchaser of the Units must pay the costs of the sale, as the RE decides. The proceeds of the sale or redemption will not be sent until the RE has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed.

14.2 Impact of Takeover

The RE's power to sell or redeem the Units under clause 14.1 lapses following the announcement of a Bid but the procedure may be started again after the close of the offers made under the Bid.

15 Net Accounting Income and Net Income

15.1 Net Accounting Income

- (a) The RE will determine (or cause to be determined) the Net Accounting Income for each Half Year having regard to applicable Australian Accounting Standards adjusted by:
 - (i) adding any amount which the RE transfers from a reserve or releases from undistributed income; and
 - (ii) deducting any amount which the RE:
 - ~~(A) credits to a reserve, or otherwise retains as undistributed income; or~~
 - (B) applied against accumulated losses.
- (b) The RE will determine (in consultation with the Trust Auditor) the classification of any item as being on Income or capital account and the extent to which reserves or provisions need to be made.

15.2 Net Income

The RE will determine (or cause to be determined) the Net Income for each Tax Year in accordance with section 95(1) of the Income Tax Assessment Act 1936 (Cth).

16 Distributions

16.1 Distributable Income

- (a) The RE must determine the Distributable Income for each Half Year.

- (b) If no determination is made under clause 16.1 (a) prior to the end of a Half Year, then the Distributable Income for that Half Year is equal to the Net Accounting Income for that Half Year.
- (c) Notwithstanding the manner in which the Distributable Income may, in accordance with clauses 16.1(a) and (b) be calculated, the accounts of the Trust are to be prepared in accordance with applicable Australian Accounting Standards. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clauses 16.1 (a) and (b).

16.2 Present entitlement

On and from the last day of each Half Year, the Unit Holders on the Register at 12:00 pm on the last day of the Half Year have a vested and indefeasible interest in, and will be presently entitled to receive distribution of the Distributable Income of the Trust for that Half Year (other than any part of the Distributable Income which has previously been distributed in that Half Year as permitted by this clause 16) in the proportion specified in clause 16.3(d).

16.3 Distribution of Distributable Income

- (a) The RE may determine to make an interim distribution out of the Net Accounting Income accruing during any Interim Distribution Period (an Interim Distribution). An Interim Distribution cannot exceed, but can be less than, the amount of the Net Accounting Income which has accrued during the relevant Interim Distribution Period. The RE must within 90 days of the last day of the Interim Distribution Period pay the interim Distribution to the Unit Holders on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in clause 16.3(c).
- (b) Within 90 days of the end of the Half Year and subject to clause 16.3(d) and clause 16.3(e), the RE must pay to the Unit Holders on the Register at the end of the last day of that Half Year an amount equal to the Distributable Income of the Trust for the Half Year less any amounts previously distributed during that Half Year under clause 16.3(a).
- ~~(c) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class and to clause 16.3(d), a Unit Holder on the Register at the end of the last day of the Half Year or Interim Distribution Period:~~
 - (i) for the purposes of clause 16.2, has a vested and indefeasible interest in, and is presently entitled to;
 - (ii) for the purposes of clause 16.3(b), is entitled to a distribution of; and
 - (iii) for the purposes of clause 16.3(a), is entitled to an Interim Distribution out of Net Accounting Income of,

the proportion of the Distributable Income, or such Interim Distribution of Net Accounting Income which the RE determines to make, as is equal to the number of Units held by that Unit Holder on that date divided by the number of Units on Issue on that date.
- (d) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Unit Holder is entitled to receive a distribution under clause 16.3(a) or 16.3(b) in accordance with the following formula:

$$\frac{[(A + B) \times C] - E}{D}$$

Where:

- A = the amount of the Distributable Income or Interim Distribution in respect of the relevant Half Year or Interim Distribution Period (as the case may be);
- B = the amount (if any) of withholding tax (or any similar or equivalent tax) which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Half Year or Interim Distribution Period as a consequence of the characteristics of any particular Unit Holder or Unit Holders including the number or percentage of Units on Issue held by any such Unit Holder,
- C = the aggregate of the number of Units held by the Unit Holder as at the close of business on the last Business Day of that Half Year or Interim Distribution Period which are entitled to a full income distribution for that period plus, if the Unit Holder holds at the close of business on the last Business Day of that period Units issued during that period which have a proportionate income entitlement in accordance with clause 16.8, the aggregate number of such Units held by that Unit Holder multiplied by the relevant proportion;
- D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Half Year or Interim Distribution Period plus, if Units have been issued during that period which have a proportionate income entitlement in accordance with clause 16.8, the aggregate of the total number of such Units multiplied by the relevant proportion, in each case calculated as at the close of business on the last Business Day of that period; and
- E = the amount (if any) of withholding tax (or any similar or equivalent tax) which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Half Year or Interim Distribution Period as a consequence of the characteristics of the Unit Holder including the number or percentage of Units on Issue held by the Unit Holder.

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- (e) ~~The RE may in its absolute discretion extend the 90 day period contemplated for the payment of the Distributable Income to Unit Holders under clause 16.3(b), provided that RE, acting reasonably, forms a view that the proposed extension is in the best interests of the Unit Holders.~~

16.4 Capital distributions

The RE may distribute capital of the Trust to the Unit Holders. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the RE divided by the number of Units on the Register on that date. A distribution may be in Cash or of Assets or by way of bonus Units.

16.5 Grossed up Tax amounts

- (a) Subject to clause 16.5(b) and the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders in proportion to the Distributable Income for a Half Year or an Interim Distribution, as

the case may be, which is referable to a dividend or other income to which they are presently entitled.

- (b) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to withholding tax on dividends or distributions received by the Trust is taken to be distributed to a Unit Holder based on the amount of withholding tax which has been withheld from any dividends or distributions paid to the Trust during or in respect of the relevant Half Year or Interim Distribution Period as a consequence of the characteristics of that Unit Holder, including the number or percentage of Units on issue held by that Unit Holder.

16.6 Excess distribution

If at the end of a Financial Year, the Responsible Entity determines that the amount distributed as Distributable Income under this clause 16 exceeds the aggregate of the Net Accounting Income for such Half Year, the excess will be taken to be a distribution of capital.

16.7 Reinvestment

A Unit Holder may, if the RE approves, elect to reinvest some or all of any distribution by acquiring Units in the Trust and the amount of the distribution must be applied on behalf of the Unit Holder to acquire the additional Units in the Trust. In those cases, the RE is treated as having received an application to reinvest distributions on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 7. The procedure for reinvestment of distributions is to be determined by the RE and notified to Unit Holders from time to time.

16.8 Other Rights or Restrictions

For the removal of doubt and despite anything in this clause 16, the rights of a Unit Holder under this clause 16 are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the RE is entitled to do so by the Corporations Act and the Listing Rules, the RE may decide to issue:

- (a) Partly Paid Units which for the purposes of distribution entitlements are to be treated according to:
 - (i) that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit, rounded to the nearest 2 decimal places; and
 - (ii) the length of time during the Financial Year or Interim Distribution Period for which the proportion or different proportions of the Issue Price were paid up; or
- (b) Units on terms which entitle the Unit Holder to receive a distribution of Distributable Income in respect of a Financial Year or Interim Distribution Period in which such Units are issued in an amount which is not greater than the proportion of the Distributable Income or Interim Distribution, as applicable, to which a Unit Holder holding a Unit during the whole of that period is entitled, multiplied by the number of days from the date of issue of those Units to the end of that period divided by the total number of days in that period; or
- (c) Units on terms which do not entitle the Unit Holder to receive a distribution of Distributable Income in respect of a Financial Year or Interim Distribution Period in which such Units are issued; or

- (d) Partly Paid Units or Units on such other terms as to the above matters or otherwise that the RE determines.

16.9 Withholding Tax

The RE may deduct from any amount dealt with under this clause any Tax that it is required by Law to deduct from such amount, or any Tax that it is required by Law to pay in respect of such amount, or any Tax that is required by Law to pay for or in respect of or on account of any Holder.

16.10 Distributions Where Tax Event Occurs

Clauses 16.10, 16.11, 16.12, 16.13 and 16.14 (**Tax Event Clauses**) operate in respect of a Tax Year, and in relation to any distributions to Unit Holders (whenever made) which relate to a Tax Year, if a Tax Event applies in relation to that Tax Year.

16.11 No Present Entitlement

If the Tax Event Clauses operate in respect of a Tax Year, Unit Holders will not have any present entitlement to any Distributable Income of that Tax Year and the preceding clauses of this clause 16 will not operate to give rise to any such present entitlement.

16.12 Obligation of RE to make Distributions

If the Tax Event Clauses operate in respect of a Tax Year, the RE must cause distributions to be made to Unit Holders at such times and in such amounts as it considers reasonable and equitable, so as to achieve insofar as is possible:

- (a) total distributions to Unit Holders in respect of that Tax Year of the after-tax equivalent of the amounts to which Unit Holders would have been presently entitled in respect of that Tax Year had the Tax Event not occurred; and
- (b) maximum use of franking credits (if any) which arise from the RE being liable to Tax on income, profits or gains of the Trust in a manner similar to that in which a company beneficially deriving such income, profits or gains would be liable to Tax.

16.13 Equity

If the Tax Event Clauses operate in respect of any Tax Year, distributions to Unit Holders and any franking thereof must be carried out in a manner which does not discriminate among Unit Holders.

16.14 Tax Acknowledgement

The RE and Unit Holders acknowledge that the terms of this Constitution have been prepared on the basis that in calculating the Management Fee and any other fees payable to the RE pursuant to clause 31, all relevant amounts must be grossed up to reflect any Tax paid, payable or withheld by the RE on behalf of the Trust.

17 Powers of RE

17.1 Powers

The RE has all the powers:

- (a) in respect of the Trust that it is possible under the Law to confer on a responsible entity;

- (b) as though it were the absolute owner of the Assets and acting in its personal capacity; and
- (c) necessary for fulfilling its obligations under this Constitution and at Law.

For example, the RE's powers include the following:

- (i) to acquire Property or Investments or dispose of Assets for cash or other consideration;
- (ii) to develop and otherwise deal with any Assets, including to alter, repair, subdivide and develop any Land;
- (iii) to borrow, raise money or otherwise obtain financial accommodation (for example, for the purposes of paragraphs (i) and (ii)) and to incur any types of obligations and liabilities;
- (iv) to create Security Interests over the Trust Property or any Asset (for example, for the purposes of paragraphs (iii) and (v));
- (v) to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (vi) to apply for listing of the Trust, and quotation of the Units, Options or Financial Instruments (or any other financial product), on any stock exchange, including the ASX, and for this purpose the RE is authorised on its own behalf and on behalf of each Holder as the Holder's agent or attorney to do all things necessary to effect a listing and quotation;
- (vii) to make any kind of Investment (including entering into Derivatives);
- (viii) to delegate its investment powers and discretions, in whole or in part, to any committee, including, without limitation, the Advisory Board;
- (ix) to buy-back Units;
- (x) to fetter future discretions, such as by the granting of options;
- (xi) to enter into any arrangement or agreement with underwriters in relation to the Trust;
- (xii) to institute, defend and compromise legal proceedings including arbitration;
- (xiii) to exercise all voting rights conferred by the Assets as it thinks fit;
- (xiv) to insure any Assets against all risks and for amounts the RE considers appropriate; and
- (xv) to attend and vote at meetings of any company or other entity interests in which are Assets.

17.2 Delegation

- (a) The RE may appoint delegates or agents (including Custodians) to perform any act or exercise any power of the RE (including a power in turn to appoint its own agent or delegate).
- (b) An agent or delegate may be an Affiliate or employee of the RE.

- (c) An appointment may be joint.
- (d) Subject to section 601FB of the Corporations Act, the RE will not be liable for the acts or omissions of any delegate so long as reasonable care is taken in selecting the delegate. The RE may include provisions in the delegate's appointment to protect and assist those dealing with the delegate as the RE thinks fit.

17.3 Advisers

Subject to the Corporations Act but without limiting clause 17.1, the RE may engage Advisers to assist it with its duties and functions under this Constitution. An Adviser may be an Affiliate of the RE or employee of the RE.

18 Valuations

18.1 Valuation of an Asset

Subject to clause 18.2, the RE may cause an Asset to be valued at any time.

18.2 Valuation if required

The RE must cause an Asset to be valued if required by ASIC or under the Corporations Act and the valuation must be undertaken in accordance with those requirements.

18.3 Periodic valuation

The RE may determine and vary valuation methods and policies for each category of Asset. Unless the RE determines otherwise, the value of an Asset will be its market value. Where the RE values an Asset at otherwise than its market value, the valuation methods and policies applied by the RE must be capable of resulting in the calculation of an Issue Price that is independently verifiable.

18.4 Determination of Net Trust Value

The RE may determine the Net Trust Value at any time in its discretion, including more than once a day.

19 Holding Assets

19.1 How held

Subject to clauses 19.2 and 19.3, all Assets will be held in the name of the RE.

19.2 Custodian

If the RE considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the RE and acting as agent for the RE.

19.3 Holding of Assets

The Custodian of a particular Asset must hold that Asset either:

- (a) directly in its name; or

- (b) indirectly by means of any asset title transfer or holding system approved by the RE (while the Trust is a registered Trust, to the extent permitted by the Corporations Act or an ASIC Exemption).

20 The Register

20.1 Keeping Registers

The RE must establish and keep a Register of Unit Holders, a Register of Option Holders and a Register of Financial Instrument Holders.

20.2 Information in Registers

To the extent applicable, the Registers must be kept in accordance with, and contain the information required by, the Corporations Act. Otherwise, the RE may decide what information is included in the Registers. If the Corporations Act applies, the RE has the powers conferred under the Corporations Act in relation to the Registers.

20.3 Changes

Every Holder must promptly notify the RE of any change of name or address and the RE must alter the relevant Register accordingly.

21 The RE's Limitation of Liability

21.1 General

Subject to the Corporations Act, the RE is not liable for any loss or damage to any person (including any Unit Holder, Option Holder or Financial Instrument Holder) arising out of any matter unless, in respect of that matter, it acted both:

- (a) otherwise than in accordance with this Constitution; and
- (b) without a belief held in good faith that it was acting in accordance with this Constitution.

In any case, subject to the Corporations Act, the liability of the RE in relation to the Trust is limited to the Assets, from which the RE is entitled to be, and is in fact, indemnified.

21.2 Specific

In particular, subject to the Corporations Act, the RE is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (a) to the extent permitted by Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the RE; or
- (b) it acted as required by Law; or
- (c) it relied in good faith upon any signature, marking or documents.

21.3 Advisory Board

The limitation of liability expressed in favour of the RE under this clause 21, shall also specifically apply to each member of the Advisory Board, as if each reference to the RE in this clause 21, was a reference to the relevant member.

22 Indemnities

22.1 RE's indemnity

In addition to any indemnity under any Law but subject to the Corporations Act, the RE has a right of indemnity out of the Trust Property on a full indemnity basis, in respect of a matter unless, in respect of that matter, the RE has acted negligently, fraudulently or in breach of trust.

22.2 RE's indemnity continuing

Such right of indemnity in respect of a matter (an **Indemnified Matter**) will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in respect of which the indemnity does not apply. Also, the right of indemnity continues to be available after the RE retires or is removed as responsible entity of the Trust.

22.3 Payment

The RE may pay out of the Trust Property any amount for which it would be entitled to be indemnified under clause 22.1 or clause 23.

22.4 The RE not to incur liability

The RE is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

22.5 Compliance committee and Advisory Board

If any member of a compliance committee established by the RE in connection with the Trust or the Advisory Board incurs a liability in that capacity in good faith, the RE may indemnify the compliance committee member out of the Trust Property, to the extent permitted by the Corporations Act.

23 The RE's Indemnity by Holders for Tax Liability

23.1 Liability limited

The RE is entitled to be indemnified by a Holder or a former Holder to the extent that it incurs any liability for Tax as a result of the Holder's action or inaction or as a result of an act or omission requested by the Unit Holder or former Unit Holder.

23.2 Joint Holders

Joint Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 23.1 applies.

24 Change of RE

24.1 Voluntary retirement while a registered Trust

While the Trust is a registered Trust, the RE may retire as the responsible entity of the Trust as permitted by the Corporations Act.

24.2 Voluntary retirement while not a registered Trust

While the Trust is not a registered Trust, the RE may retire on not less than 2 months' notice to Unit Holders (or such shorter period as they agree). On retirement, the RE may appoint in writing another person to be the responsible entity,

24.3 Compulsory retirement

The RE must retire as the responsible entity of the Trust when required by Law.

24.4 New RE

Any replacement responsible entity must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it. While the Trust is not a registered Trust the RE must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of responsible entity.

24.5 Release

When the RE retires or is removed, subject to the Corporations Act, the RE is released from all obligations in relation to the Trust arising after the time it retires or is removed.

24.6 Retirement benefit

Subject to the Listing Rules and the Corporations Act, the RE is entitled to agree with the incoming responsible entity that it will be paid by, or receive a benefit from, the incoming responsible entity for:

- (a) agreeing to submit a proposal for its retirement to a meeting of Unit Holders, and nominating to the Unit Holders the incoming responsible entity as its replacement, or
- (b) retiring as responsible entity,

and is not required to account to Unit Holders for such payment or benefit. The RE is also entitled to sell part or all of its business relating to management of the Trust to the incoming responsible entity (or any related body corporate or Affiliate of the incoming responsible entity) for any consideration the parties may agree.

25 Amendments to Constitution

Subject to the Corporations Act, the RE may amend this Constitution (including this clause) by deed or as otherwise permitted by the Corporations Act.

26 Statements, Accounts and Audit

26.1 Appointment of auditors

- (a) The RE must appoint a registered company auditor to audit the Trust's financial report for a Financial Year and perform the other duties required of the auditor under the Corporations Act,
- (b) While the Trust is a registered Trust the RE must appoint a Compliance Plan Auditor.

26.2 Retirement of auditors

While the Trust is a registered Trust, the Trust Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Corporations Act. Otherwise, the Trust Auditor may retire or be removed in accordance with its terms of engagement or as agreed with the RE.

26.3 Remuneration of auditors

The remuneration of the Trust Auditor and Compliance Plan Auditor will each be fixed by the RE.

26.4 Accounts and reports

- (a) The financial statements of the Trust must be kept and prepared by the RE in accordance with applicable Australian Accounting Standards.
- (b) The RE must report to Unit Holders concerning the affairs of the Trust and their holdings as required by the Corporations Act. Subject to the Corporations Act, the person preparing a report may determine the form, content and timing of it.

26.5 Audit

The RE will cause:

- (a) the Trust Auditor to audit and report on the financial statements, and
- (b) while the Trust is a registered Trust the Compliance Plan Auditor to audit and report on the compliance plan,

each in the manner required by the Corporations Act to the extent it applies.

27 Meetings of Holders

27.1 Convening meetings

The RE may at any time convene a meeting of Unit Holders and must convene a meeting of Unit Holders when required to do so by the Corporations Act.

27.2 Calling and holding meetings while a registered Trust

While the Trust is a registered Trust, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the Corporations Act. However:

- (a) Despite section 252G(4) of the Corporations Act, a notice of meeting sent by post is taken to be given the day after it is posted.
- (b) Despite section 252R(2) of the Corporations Act, if at any time, there is only 1 Unit Holder, the quorum for a meeting is 1.
- (c) Despite section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the RE may, in determining whether a quorum is present, count the individual in respect of each such capacity more than once.
- (d) **(Section 252W(2))** A proxy is entitled to vote on a show of hands.
- (e) **(Section 252W(3))** A proxy is entitled to speak and vote for a Unit Holder (to the extent allowed by the appointment) even if the Unit Holder is present, but only so long as the Unit Holder does not speak or vote, as the case may be.
- (f) Despite section 252Y(2) of the Corporations Act, an appointment of proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.
- (g) **(Section 252Z(5))** The RE may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any period less than 48 hours before the meeting.

27.3 Calling and holding meetings while not a registered trust

While the Trust is not a registered trust, meetings of Unit Holders will be called and conducted as if Part 2G.4 applied (as modified by clause 27.2) with any necessary modifications.

27.4 Cancellation or Adjournment

The chairman of a meeting of Unit Holders has power to cancel a meeting or to adjourn the meeting for any reason to such place and time as the chairman thinks fit.

27.5 Non-receipt

If a Unit Holder does not receive a notice (including if the notice was accidentally omitted to be given to them) the meeting is not Invalidated.

27.6 Resolution binding on Unit Holders

A resolution passed at a meeting of Unit Holders is binding on all Unit Holders.

27.7 Written resolution

Except in circumstances where the Corporations Act requires a resolution to be passed at a meeting of Unit Holders, a resolution in writing signed by Unit Holders together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders and is effective when signed by the last of the Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by 1 or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by the Unit Holder.

27.8 Option Holders and Financial Instrument Holders

This clause 27 applies to meetings of Option Holders and Financial instrument Holders with any necessary modifications.

28 Notices

28.1 Notice to Holders

- (a) Subject to the Corporations Act, a notice or other communication from the RE to a Holder must be given in writing and may be sent to the Unit Holder's physical or electronic address (which includes fax numbers and e-mail addresses) as recorded on the Register.
- (b) Subject to the Corporations Act, a notice or other communication from the RE to a Holder sent by:
 - (i) post, is taken to be received on the Business Day after it is posted;
 - (ii) fax, is taken to be received 1 hour after the transmitter receives confirmation of transmission from the receiving fax machine; and
 - (iii) other means, is taken to be received at the time the RE determines.

28.2 Notice to joint Holders

The RE may give a notice or other communication to joint Holders by giving it to the Holder first named in the Register for that holding.

28.3 Notice to successor

The RE may give a notice or other communication to the persons entitled to a Unit, Option or Financial Instrument in consequence of the death or legal disability of a Holder by sending it to the representatives or responsible entity of the Unit Holder at the address supplied for the purpose by the representative or responsible entity. Until such an address has been supplied notice may be given by sending the notice or other communication to the Holder's address as recorded on the Register.

28.4 Signature on notice

The signature to any notice or other communication by the RE may be written, printed, stamped or produced electronically and the signature may be that of the RE or of any director or secretary of the RE.

28.5 Notices to the RE

Notices to the RE by Holders must be given in writing or in any other manner the RE determines. A notice is effective when it is received by the RE. A notice must be signed by the Holder or a duly authorised representative (unless the RE waives this requirement).

29 Termination of the Trust

29.1 Trust termination date

The Trust will terminate on the earliest of:

- (a) the Date of Delisting;
- (b) a date specified by the RE as the date the Trust will terminate in a notice given to Unit Holders; and
- (c) the date on which the Trust is terminated in accordance with another provision of this Constitution or by operation of Law.

29.2 Corporations Act

The RE may terminate the Trust when permitted to do so, and must terminate it when required to do so, by the Corporations Act.

30 Procedure on Termination

30.1 Notice of termination

Within a reasonable time before, or as soon as practicable after, termination of the Trust the RE must give to each Unit Holder notice of the termination and of its intention to distribute the Trust Property.

30.2 Realisation of Trust Property

Subject to clauses 30.4 and 30.5, as soon as practicable after giving of the notice under clause 30.1 the RE must sell or realise the Assets in such manner as the RE considers appropriate.

30.3 Final distribution

- (a) Subject to the terms of issue of any Unit or Class, the Net Proceeds From Realisation must be distributed among the Unit Holders in proportion to the number of Units they hold.
- (b) For the purposes of distribution entitlements, Partly Paid Units will be treated as that proportion of a whole Unit as the amount paid up bears to the total Issue Price for that Unit, rounded to the nearest 2 decimal places, or will be treated in such other manner as the RE determines.
- (c) For the purposes of clause 31.3(a), Net Proceeds From Realisation means the proceeds from sale or other realisation of the Assets after paying or providing for:
 - (i) all Liabilities of the Trust;
 - (ii) any unpaid fees payable (or to be payable) to the RE;
 - (iii) the Expenses of termination.
- (d) This clause does not limit clause 30.6.

30.4 Transfer of Assets

Despite clause 30.3, the RE may transfer Assets to any Unit Holder holding Units having a value in excess of an amount as determined by the RE, in satisfaction of that Unit Holder's entitlement in the Trust Property. The value of the Assets transferred will be calculated at market value, as determined by the RE, and the Expenses incurred in transferring the Assets will be borne by the Unit Holder or Unit Holders.

30.5 Postponement of realisation

The RE may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interests of Unit Holders. The RE will not be responsible for any loss attributable to the postponement.

30.6 Retention of property

The RE may retain for as long as it thinks fit sufficient Assets as, in its opinion, may be required to meet any outgoings or Liabilities (actual or contingent) in respect of the Trust. If any Asset retained is ultimately found not to be required, then it must be distributed to the Unit Holders in accordance with this clause 30.

30.7 Continuation of powers

The powers, duties and rights of the RE (including the rights to remuneration and to any indemnities under this Constitution or the Law) continue following termination to the extent to which they are not inconsistent with this clause 30.

30.8 Cancellation of Units

Unless the RE determines otherwise, all Units in the Trust will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from realisation is made.

30.9 Audit

If, at the time it is wound up, the Trust is a registered Trust and ASIC policy requires it, the RE will provide for an independent review or audit by a registered company auditor of the final accounts of the Trust after termination.

31 Fees

31.1 Management fee

- (a) From the Commencement Date until the Trust Property is distributed under clause 30, ~~the RE is entitled to receive the Management Fees set out in part 1 of schedule 3 for managing the Trust.~~
- (b) For the purposes of calculating the Management Fee, (and despite the definitions of Trust Value and Asset Value in Attachment A) an Asset may be valued by the RE based on the gross value of an asset underlying (whether directly or indirectly) that Asset but only in proportion to the Trust's direct or indirect interest in the Asset. For example, where the Asset is a direct or indirect interest in another entity which holds an underlying asset, the Asset may be valued based on the value of that underlying asset, in proportion to the Trust's indirect interest in the asset, disregarding any borrowings, liabilities or provisions of the other entity. In valuing an underlying asset for the purposes of this clause, the RE may adopt the value of the asset in the books of the other entity which holds the asset, or any other valuation method determined by the RE.

31.2 Performance Fee

- (a) From the Commencement Date until the Trust Property is distributed under clause 30, the RE is entitled to receive the Performance Fee for a Half Year, calculated in accordance with part 2 of schedule 3.

- (b) The Performance Fee is payable within 30 Business Days after the end of a Half Year.
- (c) While Units are Officially Quoted, subject to the Corporations Act and the Listing Rules, the RE's entitlement to the Performance Fee for a Half Year may be satisfied by the RE issuing Units to itself, or a person nominated by it, (or, in the case of an entitlement to a retired trustee under clause 31.2(d), to the retired trustee) calculated in accordance with part 2 of schedule 3.
- (d) If, during a Financial Year the RE ceases to be trustee of the Trust (**Retired Trustee**), the amount of the Management Fee and the Performance Fee for the Half Year in which the Retired Trustee ceases to be trustee of the Trust to which the Retired Trustee and the RE are entitled, is to be apportioned on a pro rata basis calculated by reference to the number days during the relevant Half Year that each person was trustee of the Trust.

31.3 Waiver of fees

The RE may waive or postpone the receipt of any fee (or any part of a fee) or charge a lesser fee than it would otherwise have been entitled to receive under this Constitution.

31.4 Establishment Costs

- (a) The RE, or an Affiliate of the RE, may pay, on behalf of the Trust, any or all Expenses incurred in connection with the establishment and initial promotion of the Trust, including the production and distribution of the first product disclosure statement for the Trust (the Establishment Costs).
- (b) In such a case, the RE or the Affiliate (as the case may be) will be entitled to be reimbursed out of the Trust Property for all Establishment Costs that were reasonably and properly incurred.
- (c) The RE or the Affiliate (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Trust Property in a year or years later than the year in which the Establishment Cost was incurred.

31.5 Differential fee arrangements

Subject to the Corporations Act and any ASIC Exemption, the RE may agree with any Unit Holder fee arrangements in respect of that Unit Holder which are different to those provided for under this Constitution.

31.6 Expenses

All Expenses reasonably and properly incurred by the RE in connection with the establishment and operation of the Trust or in performing its obligations under this Constitution are payable or can be reimbursed out of the Trust Property. Amounts payable under this clause 31.6 are in addition to other fees payable under this clause 31 and rights to indemnification or reimbursement conferred under this Constitution or by Law.

31.7 Waiver of Expenses

The RE may waive or postpone reimbursement of any or all Expenses under clause 31.6.

31.8 Units as payment for fees

Subject to the Corporations Act and the Listing Rules, the RE may elect that it is to be issued Units instead of Cash in payment of its fees or reimbursement of its expenses under this Constitution.

31.9 GST

The payments to the RE under this Constitution do not include any amount referable to GST. If the RE is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution, then, in addition to any fee or other consideration payable to the RE in respect of the supply, the RE is entitled to be paid an additional amount on account of GST. The additional amount is to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the RE will be entitled to be reimbursed or indemnified for such amount of GST out of the Trust Property.

31.10 Fees paid to RE in a different capacity

Subject to the Corporations Act and the Listing Rules, the RE or an Affiliate of the RE may be paid a fee for work performed in connection with the Trust in its personal capacity and not in its capacity as the responsible entity of the Trust. The RE or its Affiliate may retain any such fee for its own purposes and is not required to account for the fee to the Trust or Unit Holders.

31.11 Liability Net of GST

Where a party is entitled to be indemnified or reimbursed for any cost, expense or other liability that it has Incurred, the amount of the indemnity or reimbursement shall not include the amount of any Input Tax Credit to which that party is entitled in relation to the relevant cost, expense or other liability. Any reference to a party's liability to pay GST or an entitlement to an Input Tax Credit includes a liability or entitlement of the Representative Member of that party's GST Group.

32 Unit Holders

32.1 Unit Holder bound

Each person who becomes registered as a Unit Holder is taken to have agreed to be bound by this Constitution.

32.2 Liability

Subject to this Constitution and to the extent permitted by Law, no Unit Holder will, in its capacity as Unit Holder, be personally liable for any obligation of, or liability incurred by, the RE.

32.3 Limitation of liability

Subject to this Constitution and to the extent permitted by Law, each Unit Holder's liability to the RE or the Trust is limited to the aggregate of amounts paid and agreed to be paid by the Unit Holder for the issue of Units.

33 Other Activities and Obligations of the RE

33.1 Other activities

Subject to the Corporations Act, nothing in this Constitution restricts the RE (in its personal capacity or in any capacity other than as responsible entity of the Trust) or its Affiliates from:

- (a) dealing with the RE (as responsible entity of the Trust) or any Holder,
- (b) being interested in any contract, transaction, or matter with the RE (as responsible entity of the Trust) or with any Holder;
- (c) acting as responsible entity in relation to any other trust or managed investment Trust; or
- (d) any dealings with any entity in which the RE holds an Investment on behalf of the Trust,

and in each such case the RE (or any Affiliate) may retain for its own benefit all profits or benefits derived from that activity.

33.2 Other obligations

Subject to the Corporations Act, all obligations of the RE or restrictions on its power which might otherwise be implied by Law are expressly excluded to the extent permitted by Law.

33.3 Hold Units

The RE and its Affiliates may hold Units, Options or Financial Instruments in any capacity.

34 Payments

34.1 Money payable

Money payable by the RE to a Holder may be paid in any manner the RE decides.

34.2 Cancel cheques

The RE may cancel cheques drawn by the RE that are not presented within 6 months. Subject to the Corporations Act, when such a cheque was drawn in favour of a Holder, the money may be:

- (a) in the case of a Unit Holder, reinvested in Units at the Issue Price prevailing at the next Valuation Time after the day the cheque is cancelled; or
- (b) held by the RE; or
- (c) paid by the RE in accordance with applicable unclaimed money legislation.

The same applies where the RE attempts to make a payment to a Holder by electronic transfer of funds and the transfer is unsuccessful 3 times. However, the RE may also then draw a cheque in favour of the Holder.

34.3 Joint Holders

A payment to any 1 of joint Holders will discharge the RE for the payment.

34.4 Deductions for Tax

The RE may deduct from any amount payable to a Holder or former Holder (or received from a Holder or former Holder) any Tax that is required by Law to deduct from such amount or any Tax that is required by law to pay in respect of such amount, or any Tax that it is required by law to pay for or in respect of or on account of any holder (or an estimate of it) which the RE reasonably believes it must or should deduct, in respect of that Holder.

35 Complaints

35.1 Procedure

While the Trust is a registered Trust, if a Unit Holder submits to the RE a complaint in relation to the Trust or its operation, the RE must:

- (a) acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) consider the complaint in accordance with clause 35.2;
- (c) communicate in writing to the complainant the determination and the reasons for that determination of either the compliance committee or the RE (as the case may be) in relation to the complaint as soon as practicable and in any event not more than 90 days after the RE received the complaint;
- (d) if the complainant is dissatisfied with the outcome of the determination;
 - (i) refer the complainant to (and provide reasonable details of) an independent external dispute resolution body of which the RE is a member; and
 - (ii) provide general guidance (without any obligation to provide legal advice) on further avenues available to the complainant; and
- (e) if the complainant so requests, provide the complainant with an opportunity to inspect the material referred to in clause 35.2(d).

35.2 Consideration of complaint

In considering a complaint the RE will take into account such of the following factors as are relevant to that complaint:

- (a) the alleged breach of the Corporations Act, this Constitution or breach of trust;
- (b) legal advice (if any) it has received in relation to that alleged breach;
- (c) the supporting material provided by the Unit Holder in relation to the alleged breach;
- (d) any material held by the RE in relation to the alleged breach; and
- (e) any other relevant information.

35.3 Referral of complaint

The RE must consider a complaint by referring it to either:

- (a) the RE's Compliance Officer; or
- (b) if the Compliance Officer considers the complaint to be of a material nature, the board of directors of the RE.

36 Listing Rules and Corporations Act

36.1 Listing Rules

If and for so long as the Trust is admitted to the Official List the following applies:

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

This is despite clause 25.

36.2 Corporations Act and Listing Rules

Despite any other clause of this Constitution, a clause of this Constitution which is expressed to apply subject to:

- (a) the Listing Rules, is only so subject while the Trust is admitted to the Official List (and the clause is to be read accordingly); and
- (b) the Corporations Act, is only so subject while the Trust is a registered Trust (and the clause is to be read accordingly).

36.3 Agreed amendments

If any part of this Constitution (a Required Part) is included to comply with the requirements of the Corporations Act, the Listing Rules, ASIC or ASX (Regulatory Requirement) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that, unless the RE determines otherwise, this Constitution will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement), and authorise the RE to make that amendment in a deed made for that purpose (a Regulatory Requirement Amendment); and

- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.
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37 ASIC Exemptions

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Constitution contain certain provisions, then, despite clause 25, those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any Inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the RE declares in writing that this is the case. This declaration may be made at any time.

38 Governing Law

This Constitution is governed by the laws of New South Wales. The RE and the Holders submit to the non-exclusive jurisdiction of courts exercising Jurisdiction there.

39 Severability

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

Schedule 1 — Dictionary

1 Dictionary

In this deed:

The following definitions apply in this deed.

Adviser includes any adviser, consultant or expert including any architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent investment manager, broker, administrator or property manager, environmental auditor and/or assessor, and any other person appointed by the RE to provide advice in relation to the Trust.

Advisory Board means the committee established by the RE to advise in relation to the Investments of the Trust and such other matters determined by the RE from time to time, having the number of members notified to Unit Holders.

Affiliate of the RE includes:

- (a) any Associate of the RE; and
- (b) any person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the RE or a related body corporate of the RE.

Approved Valuer means any person, independent of the RE, who is duly qualified to value any Property of the Trust.

ASIC means the Australian Securities and Investments Commission and its successors.

ASIC Exemption means:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the RE or the Trust.

Assets means all the Property, Investments, rights and income of the Trust from time to time.

Asset Value at any time means the value of all Assets in the Trust Property at that time, as most recently calculated in accordance with clause 18.

Associate has the meaning given by the Corporations Act.

ASX means the Australian Stock Exchange Limited or the financial market operated by that company (whichever the context requires).

ASX Trading Day means any Business Day on which buying and selling occurs through the Stock Exchange Automated Trading System.

Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraph (a) or (b).

Benchmark Index means the S&P/ASX 200 Property Accumulation Index

Benchmark Return has the meaning given in Schedule 3.

Bid has the meaning given in clause 7.5(a).

Bid Consideration has the meaning given in clause 7.5(a).

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

Calculation Date, in relation to a Unit or an Option (as applicable), means:

- (a) where the Unit or Option (as applicable) is offered by way of a prospectus, product disclosure statement, information memorandum or other offer document, the date specified in that document;
- (b) where the Unit is offered as Bid Consideration, or as part of the Bid Consideration, the day the offer is announced; or
- (c) in any other case, the date of issue of the Unit or Option (as applicable).

Call means a call on a Unit Holder to pay all or any part of the unpaid Issue Price for a Partly Paid Unit.

Cash includes cheques.

Class means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only 1 Class.

Commencement Date means the date on which the Trust commences in accordance with clause 2.2(b).

Commodity means any tangible personal property, currency, interest or other rate, financial or other index or indices (including any share index) and such other tangible or intangible thing determined by the RE to be a Commodity for the purposes of this definition.

Compliance Officer means the person from time to time appointed to that role by the RE.

Compliance Plan Auditor means the last person appointed under clause 26.1 (b) to audit the Trust compliance plan as required by section 601HG of the Corporations Act.

Constitution means this deed as amended from time to time.

Corporations Act means the Corporations Act 2001 (Cth) as modified by any ASIC Exemption.

Custodian means a custodian or nominee appointed under clause 19.2.

Date of Delisting means the earlier of:

- (a) the date upon which the RE receives notification from the ASX of the removal of the Trust from the Official List of the ASX; or
- (b) provided the RE has not requested the suspension, where the Units are suspended from quotation on the Official List of the ASX by the ASX for a continuous period of 60 days, the day following the expiration of that 60 day period.

Derivatives means:

- (a) any contract (including a master agreement) commonly known as a derivative, futures contract or synthetic under which there are rights in respect of the acquisition, disposal or trading of any Commodity, Property or Investment and under which delivery, settlement, payment or adjustment is to be made at a future date at a price, or based on a formula, agreed on when the contract is made; or
- (b) any financial instrument or arrangement, contract or transaction that relates to any Commodity, Property or Investment and is, in the opinion of the RE, for the purpose or anticipated or intended purpose of:
 - (i) managing, limiting or reducing perceived risks or anticipated costs relative to returns;
 - (ii) augmenting or improving returns having regard to perceived risks or anticipated costs; or
 - (iii) securing a profit or avoiding a loss,

associated with any Commodity, Property or Investment.

Distributable Income means the distributable income of the Trust as determined in accordance with clause 16.1.

Expenses includes any costs, commissions, brokerage, fees, Taxes and duties. Examples of expenses are given in schedule 2.

Financial Instrument has the meaning given in clause 4.4(a).

Financial Instrument Holder means a person registered as the holder of a Financial Instrument (including persons registered jointly).

Financial Year means a year ending on 31 December in each year but:

- (a) the period commencing on the Commencement Date and ending on the following 31 December will be a Financial Year; and
- (b) the period commencing on 1 January immediately before the termination of the Trust and ending on the day on which the Trust terminates will be a Financial Year.

Forfeiture Notice means a notice given under clause 6.6(a).

Fully Paid Unit means a Unit for which the Issue Price is fully paid.

GST has the meaning given in section 195-1 of the A New Tax System (Goods and Services) Tax Act 1999 (Cth).

GST Group has the meaning given to that term by the A New Tax System (Good and Services Tax) Act 1999 (Cth).

Half Year means a period of 6 months ending 30 June or 31 December. The first Half Year is the period from the Commencement Date to 30 June 2006.

Holder means a Unit Holder, an Option Holder or a Financial Instrument Holder.

Input Tax Credit has the meaning given to that term by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Interest Rate means the bank bill swap rate (**BBSW**) plus 4%, where BBSW is the rate determined by the RE to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01 %) of the bid rates displayed at or about 10.30am Sydney time on the first day of the relevant Month on the Reuters screen BBSW page for that Month after eliminating 1 of the highest and 1 of the lowest of those rates, or if for any reason there are no rates displayed for the relevant Month then the BBSW will be the rate determined by the RE to be the average of the buying rates quoted to the RE by 3 Australian banks selected by the RE at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to 1 Month. Rates will be expressed as a yield per cent per annum to maturity.

Interim Distribution Period means any period determined by the RE so long as the period commences and ends during the same Half Year (but does not end on the last day of that Half Year).

Investment means any type of Investment (including an investment which may be later redeemed or cancelled in accordance with its terms provided that, in the RE's opinion, any such investment is appropriate in all of the circumstances), whether in Australia or elsewhere, which a natural person or corporation may make on its own behalf and not as a responsible entity and includes:

- (a) (without limiting paragraph (b)), financial products; and
- (b) ~~the pursuit of gain or the protection against loss by way of any of the following:~~
 - (i) acquiring or holding of any Property;
 - (ii) making available financial accommodation; or
 - (iii) entering into any contract or a Derivative, and may involve incurring a liability or obligation of any kind.

Issue Price in relation to a Unit means the price at which that Unit is issued calculated in accordance with clause 7.

Land includes any interest in land whether vested or contingent, freehold or leasehold, whether at law or in equity.

Law includes:

- (a) the Corporations Act and any statute; and
- (b) any rule of common law, rule of equity or judgment which applies to the Trust or the RE (as the case may be).

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

Liabilities means all present liabilities of the Trust including any provision which the RE decides should be taken into account in determining the liabilities of the Trust, but excluding any amount representing Unitholder's capital, undistributed profits, interest attributable to Unitholders accruing on Unitholders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Liquid in relation to the Trust, has the meaning given by section 601 KA(4) of the Corporations Act.

Management Fee means the fee calculated in accordance with Part 1 of Schedule 3.

Market Price of a Unit (or where applicable, of a Class) on a particular day means:

- (a) the average of the weighted average price per Unit in that Class for sales of that Class on the ASX (excluding any special crossings) on an ASX Trading Day for the period of 10 ASX Trading Days immediately prior to the relevant day whether or not a sale was recorded on any particular day) adjusted to take into account any entitlement dates that occurred during this period; or
- (b) if Units in that Class :
 - (i) have not been traded for at least 10 consecutive ASX Trading Days before the relevant day; or
 - (ii) in the RE's opinion a determination under paragraph (a) would not provide a fair reflection of the current market value of the Unit ,

the price per Unit that an independent valuer determines to be the market price of the Unit on the relevant day.

Month means a calendar month.

~~**Net Accounting Income** has the meaning given in clause 15.1.~~

Net Trust Value at any time, means the Trust Value less the Liabilities at that time.

Net Income has the meaning given in clause 15.2.

Official List has the same meaning as in the Listing Rules.

Officially Quoted means quotation on the Official List, including when quotation is suspended for a continuous period of not more than 60 days.

Option means an option to be issued a Unit.

Option Holder means a person registered as the holder of an Option (including persons registered jointly).

Partly Paid Proportion means the number derived from multiplying the number of Partly Paid Units on Issue by the following fraction:

the total of all amounts paid or due but unpaid for Partly Paid Units on Issue

the total of all Issue Prices for Partly Paid Units on Issue

Partly Paid Units means Units which have an Issue Price which is payable by instalments and in respect of which all instalments have not been paid.

Performance Fee means the fee calculated in accordance with Part 2 of Schedule 3.

Performance Units means the units (if any) calculated and issued to the RE in accordance with Part 2 of Schedule 3.

Property means property of any description in Australia or elsewhere and includes:

- (a) Land and any personal property;
- (b) any estate or interest in property;
- (c) any debt or chose in action or any other right or interest, including (without limitation) any mortgage or other secured interest;
- (d) any permit, licence or authority or any patent, copyright, design, trade mark or other form of intellectual property; and
- (e) anything regarded as an asset for the purposes of Australian Accounting Standards.

Quarter means a period of 3 Months ending on 31 March, 30 June, 30 September and 31 December in each year (or that part of such a period occurring at the commencement or termination of the Trust) and **Quarterly** has a corresponding meaning.

RE means Rubicon Asset Management Limited or any other person appointed as responsible entity of the Trust.

Register means each of the registers kept under clause 20.

Representative Member has the meaning given to that term by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

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

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Tax means all income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, withholding tax, municipal rates, stamp duties and other tax, impost, rates, duties, charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority in Australia or elsewhere, including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, impost, rates, duties, charges or levies.

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

Tax Event means, in relation to any Tax Year, any one or more of the following:

- (a) the RE being advised by any governmental authority that the income, profits and/or gains of the Trust of the Tax Year are or will be subject to Tax payable by the RE in a manner similar to that in which a company beneficially deriving the income, profits and/or gains would be subject to Tax;
- (b) the RE, acting on appropriate advice, believing on reasonable grounds that the income, profits and/or gains of the Fund will be subject to tax in the manner described in (a).

Tax Year means a Financial Year or, if the Trust has a year of income for tax purposes which is not coincident with the Financial Year, the Tax Year is the period representing the year of income.

Transaction Costs means:

- (a) when calculating the Issue Price of a Unit, the RE's estimate of the total Expenses which would be incurred if all the Assets were to be acquired at the relevant time; and
- (b) when calculating the Withdrawal Price of a Unit, the RE's estimate of the total Expenses which would be incurred if all the Assets were to be disposed of at the relevant time,

(in each case of (a) and (b) excluding the actual cost of the Assets); or

- (c) in either case of (a) and (b), to the extent permitted by the Corporations Act if applicable, a lesser amount (including zero) determined by the RE.
- (d) In estimating the total Expenses the RE may take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

Trigger Event means any of the following:

- (a) a resolution is passed at a meeting of Unit Holders removing or replacing the RE without the recommendation of the existing RE in favour of the removal or replacement;
- (b) the Trust terminates;
- (c) a Date of Delisting occurs;
- (d) the Units are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act;
- (e) the Unit Holders approve a formal or informal Trust of arrangement pursuant to which the Trust is to merge with any other managed investment Trust or entity or pursuant to which there is a material change in the ownership or control of the Trust.

Trust means the Trust constituted by this Constitution.

Trust Auditor means the last person appointed under clause 26.1 (a).

Trust Index means the accumulation index for the Trust as calculated by Standard & Poor's, or other suitable body as determined by the RE from time to time and notified to Unit Holders, using closing market price series data (adjusted for distributions to ensure the index remains an accumulated index) except for the closing price at the end of the Half Year which shall be replaced by the 10 day volume weighted average trading price

from and including the date upon which the Units trade ex distribution entitlement for the relevant Half Year. The index will commence at 1:00pm on the date immediately prior to the date upon which Units shall first become Officially Quoted.

Trust Property means all Assets of the Trust (including money paid to the RE for the issue of any Units).

Trust Value at any time, means the aggregate of the following at that time as calculated by the RE:

- (a) the gross Asset Value;
- (b) the amount of money held in the Trust Property (to the extent not included in paragraph (a)); and
- (c) the gross value of any other Assets (to the extent not included in paragraphs (a) or (b)).

Unit means a unit created under this Constitution and for the time being held by Unit Holders.

Unit Holder means the person registered as the holder of that Unit (including persons registered jointly).

Units on Issue in relation to a Unit or Class means the total number of Units of that kind issued which have not been withdrawn.

US currency means the lawful currency of the United States of America.

Valuation Time means any time the Net Trust Value is determined.

Withdrawal Offer means an offer made by the RE in accordance with section 601 KB of the Corporations Act.

Withdrawal Price in relation to a Unit means the price at which that Unit is to be withdrawn in accordance with clause 9.

2 Interpretation

In this deed headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) the expression "**person**" includes an individual, a corporation and any other legal entity;
- (b) unless the context otherwise requires, words and phrases in the *Corporations Act 2001* (Cth) are used with the same meaning in the same context;
- (c) a reference to any party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (d) a reference to any document (including this deed) is to that document as varied, notated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all

ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

- (f) a reference to a regulatory body includes any regulatory body which replaces or performs its functions;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to clauses or schedules are references to clauses and schedules to or of this deed, and a reference to this deed includes any schedule to this deed;
- (i) where 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;
- (j) the word "**includes**" in any form is not a word of limitation;
- (k) a reference to "\$" or "**dollar**" is to the legal currency of the Australia;
- (l) a reference to "**US\$**" or "**US dollar**" is to the legal currency of the US;
- (m) if the payment of any money or doing of any act falls on a day which is not a Business Day, that payment must be made or that act must be done on the next Business Day;
- (n) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to 2 or more of them collectively and to each of them individually;
- (o) if a period of time is specified and starts on a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (p) "**notice**" means written communication.

Schedule 2 — Expenses

The following are examples of Expenses and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation and establishment of the Trust and the RE and any supplemental deed amending this Constitution or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) preparation, printing, review, distribution and promotion of any disclosure document, offering memorandum for Units, Options or Financial Instruments or marketing material (in particular, all amounts disclosed in the first and subsequent product disclosure statements for the Trust);
- (c) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets;
- (d) the investigation, negotiation or acquisition of any possible or proposed investment;
- (e) the establishment, administration, management, promotion or valuation of the Trust or its Assets and Liabilities, including:
 - (i) the establishment and maintenance of accounts and Registers;
 - (ii) issuing of Units, Options or Financial Instruments by the RE or any sales of Units, Options or Financial Instruments by one or more Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units, Options or Financial Instruments;
 - (iii) asset and property management fees;
 - (iv) computer operation and development and data processing;
 - (v) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Holder under this Constitution;
 - (vi) dealing with Holder enquiries and complaints;
 - (vii) communications with Holders (written or otherwise);
 - (viii) investor or potential investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Trust or on an ongoing basis;
 - (ix) fees payable to members of the Advisory Board established by the RE pursuant to this Constitution;
 - (x) purchasing or leasing premises in or outside of Australia for the RE in connection with the Trust; and

- (xi) any travel expenses incurred in connection with the Trust;
 - (f) admission of the Trust to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Trust from the official list of the ASX or any other exchange or the suspension of any Units, Options or Financial Instruments from trading by the ASX or any other exchange;
 - (g) fees payable to ASIC, the ASX and any other regulatory body in relation to the Trust, the RE, Units, Options or Financial Instruments;
 - (h) the assigning or maintenance of a credit rating to the Trust;
 - (i) convening and holding meetings of Holders, or of directors of the RE, and the implementation of any resolutions;
 - (j) Tax and bank fees;
 - (k) the engagement of Custodians, Advisers and others;
 - (l) preparation, lodgement and audit of the taxation returns and accounts, and other reports including compliance reports, of the Trust;
 - (m) termination of the Trust and the retirement or removal of the RE and the appointment of a new RE;
 - (n) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the RE;
 - (o) raising money or otherwise obtaining any form of financial accommodation for the Trust (for example, by capital raising), where fees may include but are not limited to:
 - (i) fees payable to any underwriter, broker or other financial service provider; and
 - (ii) any origination and arrangement fees;
-
- (p) the establishment and operation of the board of directors of the RE, including the payment of fees and associated insurance premiums and travel and accommodation costs, regardless of where the directors live;
 - (q) operation of the compliance committee, including fees payable to or insurance premiums payable in respect of any compliance committee member and travel and accommodation costs, regardless of where the compliance committee members live; and
 - (r) a Bid in which the Trust is the target, provided the Expenses are incurred in the interests of the Unit Holders.

Schedule 3 — Fees

Subject to clauses 4.1 and 4.2 of this schedule respectively, the RE is entitled to receive the Management Fee and the Performance Fee as referred to below.

1 Management Fee

- (a) The RE is entitled to recover from the Trust Property, calculated on a half yearly basis as at 30 June and 31 December in each year, a Management Fee for managing the Trust, being an amount equal to up to 1% per annum of the Trust Value at the end of the relevant Half Year.
 - (b) The fee under Part 1 (a) of this Schedule 3, is payable in arrears to the RE within 5 Business Days of the end of each month. The calculation is to be made in US currency and paid to the RE in US currency unless the RE agrees to accept that sum converted into Australian currency, based on the value of the Australian currency as at the relevant Management Fee calculation date.
-

2 Performance fee

2.1 RE's Performance Units

While the Units are Officially Quoted, the RE, in addition to the Management Fee, will (subject to clause 2.2 of this Schedule) be entitled to have up to a certain number of Units issued to it in respect of each Half Year if the performance of the Trust for the Half Year exceeds a stated benchmark.

The formula for determining the maximum number of Units (if any) to be issued to the RE in respect of a Half Year is set out below but is to be adjusted and applied by the RE, in the case of any new capital raising conducted by Trust during the relevant Half Year, such that the new capital raising shall not dilute the PF and EPF numbers (as defined below), and the new capital raising shall also derive an entitlement to Performance Units, applying the principles set out below.

If the TR (as defined below) for the Trust for a Half Year is negative, the Performance Units (if any) to which the RE would have been entitled will not be issued to the RE until the end of the first succeeding Half Year in which the TR is positive:

Number of Performance Units to be issued to the RE = $\frac{(PF+EPF)}{Pc}$

Where:

PF (Tier 1 Performance Fee) = $NPc \times MCo \times 5\%$, but equals zero if NPc is not greater than zero;

EPF (Tier 2 Performance Fee) = $(NPc-EPb) \times MCo \times 15\%$ but equals zero if NPc is not greater than EPb ;

NPc = $TR-BM$ (expressed as a percentage);

NPo (Opening Net Performance) = NPc of prior Half Year except in the first Half Year when $NPo = 0$;

$$\text{TR (Trust Return expressed as a percentage)} = \frac{(\text{Tc} - \text{To})}{\text{To}}$$

Where

Tc = Trust Index at the close of the Half Year; and

To = Opening Trust Index being the Trust Index at close of the prior Half Year or if $\text{NPo} < 0$ then To = the Trust Index used as the opening Trust Index (To) for the last period where $\text{NPo} > 0$;

$$\text{BM (Benchmark Return expressed as a percentage)} = \frac{(\text{Bc} - \text{Bo})}{\text{Bo}}$$

Where

Bc = Benchmark Index at the end of the Half Year; and

Bo = Opening Benchmark Index being the Benchmark Index at close of the prior Half Year or if $\text{NPo} < 0$ then Bo = the Benchmark Index used as the opening Benchmark Index (Bo) for the last period where $\text{NPo} > 0$;

$$\text{MCo (Market Capitalisation)} = \text{Po} \times \text{Uo}$$

Where

Po = the weighted average trading price of all Units traded on the ASX during the ten Business Days from and including the date upon which the Units trade ex the distribution entitlement for the period ending on the last day of the prior Half Year; and

Uo = Units on issue at the close of the last day of the prior Half Year;

EPb (Tier 2 Performance Benchmark) = 2% nominal per annum outperformance for the Half Year; and

Pc = the greater of the weighted average trading price of all Units traded on the ASX during the ten Business Days from and including the date upon which the Units trade ex the distribution entitlement for the relevant Half Year and the net tangible asset backing per Unit at the end of the Half Year.

2.2 Payment in lieu of Performance Units

If a Trigger Event occurs or the RE elects not to receive Performance Units under clause 2.1 of this Schedule, the RE is entitled to be paid (in addition to the Management Fee) a cash payment calculated as follows in lieu of Performance Units which might otherwise have been issued to the RE in respect of the relevant Half Year, such payment to be made to the entity which was the RE on the day upon which the Trigger Event occurred or the last day of the relevant Half Year (as applicable) notwithstanding that the entity may have ceased to be the RE or that the Trust may have been terminated:

- (a) the cash payment is to be equal to:
- (i) PF + EPF where PF and EPF are calculated in accordance with clause 2.1 of this schedule; or
 - (ii) (if a Trigger Event occurs before the end of the Half Year) the Performance Fees calculated in accordance with clause 2.2(a)(i) of the Schedule as if the

end of the Half Year was the date of the occurrence of the Trigger Event but in determining the Trust Index at the close of the period there is to be substituted for the market price of the Units:

- (A) in the case of a takeover bid, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the Unit Holders or for the target's statement or, if there is no independent expert's report, the price per Unit which would be payable for compulsory acquisition (including in the case of non-cash consideration the market value of that non-cash component on the date of the Trigger Event);
 - (B) in the case of a scheme of arrangement, the mid-point of the value range for the Units contained in the independent expert's report (if any) prepared for the Unit Holders in relation to the scheme of arrangement or if there is no independent expert's report, the fair value of the consideration per Unit as determined by an independent accountant appointed by the RE;
 - (C) in the case of delisting, the weighted average market price of the Units traded on the Australian Stock Exchange during the 10 Business Days prior to the Date of Delisting; or
 - (D) in the case of termination of the Trust, the amount per Unit to be received by the Unit Holders after accruing the amount payable to the RE for Performance Fees;
- (b) the cash payment is payable in accordance with clause 31.2(b). If there has been any accrual of the Performance Fee from any prior Half Year whether due to the Trust Return (TR) being negative although exceeding the Benchmark Return (BM) or otherwise, the amount accrued shall be paid in cash rather than Units on the date of occurrence of a Trigger Event.

3 Fee cap and outperformance

- (a) There is a cap on the total of the Management Fee and Performance Fee of 1.00% ~~per annum of the gross asset value of the Trust's direct and indirect proportionate~~ interest in properties and other assets at the end of each Financial Year or greater period from the time the excess accrued.
- (b) If the combined amount of the Management Fee and the Performance Fee for any Financial Year is above 1.00% per annum, the excess will be carried forward into the following Financial Year. Fees carried forward will be paid before any Performance Fee earned in the then current period is paid.
- (c) Where there has been annual outperformance by the Trust for a consecutive period of three years or more from the accrual of the Performance Fee, the accrued balance will be paid at the end of that period. This payment of outstanding fees will not be capped. Accordingly, it is feasible that the aggregate of the Management Fee and Performance Fee could exceed 1.00% per annum of the Trust's assets after three years of consecutive outperformance.

Execution page

Executed as a deed poll.

Signed and delivered by **Rubicon Asset Management Limited ACN 095 433 720**

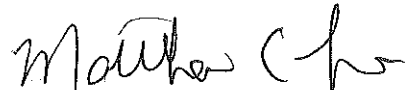
by:



Signature of director

Gordon Edward Christopher Fell

Name of director (print)



Signature of director/secretary

Matthew Raymond Cooper

Name of director/secretary (print)