

**AUSTOCK PROPERTY MANAGEMENT LIMITED
(ACN 111 338 937)
("the Responsible Entity")**

and

**EACH OF THE PERSONS WHO FROM TIME TO TIME IS REGISTERED AS A UNITHOLDER OF THE
TRUST**

**CONSTITUTION
OF
AUSTRALIAN EDUCATION TRUST**

**Consolidated Conformed Copy as at 22 March 2011
Important Note**

This consolidated conformed version of the Constitution of the Trust incorporates amendments to the Unit Trust Deed made up to 22 March 2011.

This consolidated Constitution is based on the Unit Trust Deed dated 8 July 2002 and subsequent amendments to that Deed. For completeness, the subsequent amendments are constituted by the following documents:

Supplemental Deed dated 3 December 2002;
Supplemental Deed dated 8 April 2003;
Supplemental Deed dated 13 May 2003;
Supplemental Deed dated 14 November 2003;
Supplemental Deed dated 1 December 2004;
Supplemental Deed dated 22 December 2004;
Supplemental Deed dated 15 August 2006;
Supplemental Deed dated 22 March 2011.

All care has been taken in producing this consolidated conformed version of the Constitution. However, the rights and obligations of the Trustee and a Unitholder must be determined by reference to the original Unit Trust Deed and subsequent amending Deeds referred to above.

**CONSOLIDATED CONSTITUTION
AUSTRALIAN EDUCATION TRUST**

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1. INTERPRETATION

1.1. Definitions

In the interpretation of this Deed, the words and phrases set out below shall, unless the context otherwise requires, have the following meanings:

"Accounting Standards" means:

- (a) the applicable accounting standards under the Corporations Act;
- (b) the applicable requirements of the Corporations Act in relation to the preparation and content of the Accounts; and
- (c) generally accepted accounting practices and principles which are not inconsistent with the applicable requirements referred to in paragraphs (a) and (b) of this definition.

"Accounts" means profit and loss accounts and balance sheets and includes statements, reports and notes (other than the Auditor's report or directors' report) attached to or intended to be read with any of those profit and loss accounts or balance sheets prepared in accordance with:

- (a) Part 16 and the provisions of the Corporations Act;
- (b) Schedule 5 of the Corporations Regulations as if the Trust was a company;
- (c) if the Trust is Listed, the Listing Rules; and
- (d) Accounting Standards.

"Affiliate" means in relation to a person who is an Associate of the Responsible Entity and any other person whose relationship with the Responsible Entity is of such a nature that a reasonable person might consider that dealings between them would not be at arm's length.

"Applicant" means a Person who has made an Application for Units or an Application for Options (as the case may be) in the Trust.

"Application for Options" means an application for Options made under clause 3.9.

"Application for Units" means an application for Units made under clause 3.9.

"Application Moneys" means payment for Units or Options accompanying an Application for Units or an Application for Options (as the case may be).

"Approved Valuer" means a valuer appointed pursuant to clause 14.1.2.

"ASIC" means the Australian Securities & Investments Commission.

"Associate" has the same meaning as in Division 2 of Part 1.2 of the Corporations Act.

"ASX" means Australian Stock Exchange Limited or, in the discretion of the Responsible Entity, any other body approved as a stock exchange in terms of the Corporations Act upon which the Units or Options are listed.

"ASX Operating Rules" means the operating rules of ASX from time to time.

"Auditor" means the auditor of the Trust for the time being appointed pursuant to Part 17.

"**Authorised Investments**" means the investments more particularly described in clause 13.2 and any one or more of them.

"**Bank**" means a bank as defined in section 5 of the *Banking Act* 1959 of the Commonwealth of Australia or a bank formed or incorporated under an Act of Parliament of a State of the Commonwealth of Australia.

"**Bonus Unit**" means a Unit issued pursuant to clause 17.2.7.

"**Borrowings**" means borrowing any sum of money or obtaining credit or financial accommodation for the purpose of the Trust.

"**Business Day**" means a day other than a Saturday or Sunday on which banks are open for general banking business in Melbourne but if Units are listed for quotation on ASX has the meaning given to that term in the Listing Rules.

"**Cash**" includes cheques and bank cheques.

"**Certificate**" means the certificate for Units or Options issued or to be issued pursuant to this Deed.

"**Certificated Holding**" means a holding of Units or Options (as the case may be) in respect of which Certificates have been issued and have not been cancelled.

"**Compliance Committee**" means a compliance committee established by the Responsible Entity for the Trust as required or permitted under the Corporations Act.

"**Contingency Reserve Account**" means the account of that name established pursuant to clause **Error! Reference source not found.**

"**Current Unit Value**" means:

- (a) in relation to a Unit for the purpose of determining the Issue Price, the value of a Unit at the relevant time computed by dividing the Current Value of the Trust Fund by the total number of Issued Units at that time;
- (b) in relation to a Fully Paid Unit, the value of a Fully Paid Unit at any time computed by dividing the Current Value of the Trust Fund by the total number of Issued Units for the time being; and
- (c) in relation to a Partly Paid Unit, the value of a Partly Paid Unit at any time computed by subtracting from the Current Unit Value of a Fully Paid Unit at that time, either the amount of the Issue Price of the Partly Paid Unit which has not been paid at that time, or the Current Unit Value of a Fully Paid Unit at that time, whichever is the lesser.

"**Current Value of the Trust Fund**" means the amount derived by deducting from the Total Tangible Assets:

- (a) all amounts borrowed for the purpose of the Trust Fund and remaining owing;
- (b) interest accrued on the amounts referred to in paragraph (a) of this definition;
- (c) the amount of all actual Liabilities of the Trust Fund (other than those referred to in paragraphs (a) and (b) of this definition) owing but unpaid;
- (d) such amounts as the Responsible Entity thinks necessary to provide for all accrued and contingent outgoings and Liabilities of the Trust Fund (other than those referred to in paragraphs (a)-(c) of this definition);

- (e) all amounts which have not been taken into account in determining Total Tangible Assets and which the Responsible Entity thinks necessary or desirable to provide or allow for depreciation or the writing down or replacement of any Authorised Investments (including provision for amortising leasehold property) or for any other provisions or allowances; and
- (f) all other amounts which the Responsible Entity considers should be deducted for the purposes of making a fair and reasonable determination, in accordance with Accounting Standards, of the Current Value of the Trust Fund.

"**Deed**" means this document as amended from time to time and includes any supplemental deed.

"**Dispose**" has the meaning given to that term in the Listing Rules.

"**Distributable Amount**" has the meaning set out in clause 17.2.3.

"**Distribution Account**" means the ledger account maintained by the Responsible Entity to enable distribution of income pursuant to clause 17.3.

"**Escrow Period**" means the escrow period in the relevant Restriction Agreement.

"**Extraordinary Resolution**" has the meaning given to that term in the Corporations Act.

"**Financial Year**" means each successive period of twelve (12) months commencing on 1 July and ending on 30 June, with the first Financial Year being the period commencing on the date of this Deed and ending on 30 June next ensuing and the last Financial Year being the period ending on the date of termination of the Trust and commencing on 1 July immediately preceding the date of termination of the Trust.

"**Fully Paid Unit**" means a Unit on which the Issue Price of the Unit has been paid in full.

"**Governmental Agency**" means any government or any governmental, regulatory or semi-governmental entity or authority.

"**Investments**" means all investments from time to time comprising the Trust Fund.

"**Issue Price**" means in relation to the issue of a Unit:

- (a) in the case of the initial issue of Units mentioned in clause 3.1, the issue of units pursuant to a redemption of a CDS in connection with an issue of units or the conversion of a CDS (whether or not on the Trust being admitted to be Listed) ;
 - (aa) In the case of a Product Disclosure Statement, \$1.00 per Unit or such other sum as the Responsible Entity may determine as fair and reasonable, taking into account the interests of existing Unitholders and the holders of CDSs.
 - (ab) As the whole or part of the consideration for the acquisition of an Authorised Investment, \$1.00 per Unit or such other sum as the Responsible Entity may determine as fair and reasonable, taking into account the interests of existing Unitholders and the holders of CDSs. In that event, the Units so issued will rank equally with the other Units of the Trust, unless the terms of issue provide otherwise.
- (b) except where paragraph (a), (aa), (ab), (c) or (d) of this definition applies, the sum of:
 - (i) the Current Unit Value as most recently determined prior to the date of issue;

- (ii) any tax, brokerage and all other charges and disbursements incurred or to be incurred by the Responsible Entity in respect of the Application for Units or the issue of the Units, to the extent that it is not included in the amount referred to in paragraph (iii); and
 - (iii) a sum equal to 5% of the Current Unit Value or such other amount as may from time to time be determined by the Responsible Entity in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, Goods and Services tax and other taxes and other costs that may be incurred or expected to be incurred in connection with the conversion of Application Moneys into Authorised Investments;
- (c) unless paragraph (d) applies, while the Trust is Listed and the Units to be issued are in a class of Units which is quoted on ASX, the weighted average of the last sale prices quoted on ASX for the 5 Business Days before the date when the Issue Price is to be ascertained on which such a sale price was recorded or, should there be no sales during that period, the last bid price during the period, provided that if the class of Units includes Partly Paid Units, then the price calculated will be adjusted for any unpaid payment or installment in respect of the Partly Paid Unit so that the price reflects the price of a fully paid Unit; and
- (d) while the Trust is Listed, if the Responsible Entity does not determine that paragraph (c) is to apply to the issue of Units and the Units to be issued are in a class of Units which is quoted on ASX, the VWAP of Units quoted on ASX for the 5 Business Days on which trading in Units occurred prior to (and excluding) the date on which the Issue Price is to be ascertained, provided that if the class of Units includes Partly Paid Units, then the Price calculated will be adjusted for any unpaid amount or instalment in respect of the Partly Paid Unit so that the price reflects the price of a fully paid Unit.

"Issued Options" means all Options for the time being created, issued and current and not exercised, cancelled or expired, together with all Options exercised but in respect of which Units have not yet been issued.

"Issued Units" means all Units for the time being created and issued and not cancelled.

"Land" includes:

- (a) land of any tenure and any estate or interest, whether vested or contingent in land;
- (b) buildings and other improvements or parts of buildings and other improvements (whether the division is horizontal, vertical or made in any other way) erected on the land;
- (c) a lot comprised in a building units plan or group titles plan or plan of a like nature;
- (d) an easement, right, privilege, share, interest or benefit in, over or derived from or attached to land.

"Liabilities" with respect to the Trust includes:

- (a) unpaid administrative costs and expenses, including fees of the Responsible Entity;
- (b) accrued charges in respect of or owing in relation to any Authorised Investment;
- (c) amounts required to meet present liabilities;

- (d) amounts of all Borrowings:
- (e) any provisions for tax which, in the opinion of the Responsible Entity, should be taken into account; and
- (f) any other amounts required to meet liabilities or other expenditure which, in the opinion of the Responsible Entity, should be taken into account and which have not otherwise been taken into account in determining the amount of the liabilities in any of the preceding paragraphs of this definition.

"**Licence**" means any licence, permit or authority from time to time issued in respect of all or part of an asset of the Trust under any Licensing Law.

"**Licensee**" means the Person to whom a Licence is issued under a Licensing Law.

"**Licensing Law**" means any law (including any ordinance or regulation):

- (a) relating to the authorisation of the provision of childcare services at or in conjunction with any asset of the Trust;
- (b) affecting any licensee or lessee of any asset of the Trust; or
- (c) relating to any similar matters to any of the above.

"**Listed**" means being and remaining admitted to the official list of ASX.

"**Listing Rules**" means the listing rules of ASX and any rules of ASX which are applicable while the Trust is listed, each as amended from time to time, except to the extent of any express written waiver by ASX.

"**Market Transfer**" means any transfer made in accordance with the operating rules of a licensed CS facility within the meaning of the Corporations Act.

"**Month**" means calendar month.

"**Net Accounting Income**" has the meaning set out in clause 17.2.1.

"**Net Taxable Income**" has the meaning set out in clause 17.2.2.

"**Option**" means an Option granted to a Person to acquire a Unit on the terms and conditions set out in Part 4.

"**Optionholder**" means the Person for the time being registered under the provisions of this Deed as the holder of an Option and includes Persons jointly so registered.

"**Ordinary Resolution**" means a resolution passed at a meeting of Unitholders duly convened and held in accordance with this Deed by a majority of the Persons voting at that meeting upon a show of hands and if a poll is demanded, then by a majority of votes given on such poll.

"**Part**" means a part of this Deed.

"**Partly Paid Unit**" means a Unit on which the Issue Price of the Unit has not been paid in full.

"**Person**" includes a corporation, firm, body of persons and any government or department, agency, authority or instrumentality of any government.

"**Primary Investment Policy**" means the Responsible Entity's primary investment policy for the Trust as determined from time to time in accordance with clause 13.1.

"**Property Valuer**" means a person who is authorised under any law of the State or Territory where the valuation takes place, to practice as a valuer of Land.

"**Product Disclosure Statement**" has the meaning given to that term in section 9 of the Corporations Act, and includes a prospectus in terms of the Corporations Act.

"**Quarterly Period**" means each successive period of three (3) months commencing on 1 January, 1 April, 1 July and 1 October and ending on 31 March, 30 June, 30 September and 31 December respectively, with the first Quarterly Period being the period commencing on the date of this Deed and ending on 31 March, 30 June, 30 September or 31 December next ensuing and the last quarterly period being the period ending on the date of termination of the Trust and commencing on 1 January, 1 April, 1 July or 1 October immediately preceding the date of termination of the Trust.

"**Redemption Provision**" means such amount per Issued Unit (if any) as may from time to time be determined by the Responsible Entity, in respect of or as an allowance for costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, goods and services tax, taxes and other costs that may be incurred or expected to be incurred in connection with the realisation and conversion into cash of the Investments.

"**Redemption Value**" means in relation to the forfeiture of a Partly Paid Unit, an amount equal to the Current Unit Value of a Partly Paid Unit respectively at the time of redemption less:

- (a) the Statutory Revenue Charges (if any) payable by the Responsible Entity in connection with the redemption;
- (b) all other charges and disbursements (if any) payable by the Responsible Entity in connection with the redemption; and
- (c) the Redemption Provision

or if the result of that calculation is a negative amount, nil.

"**Register**" means the Register of Unitholders and Optionholders referred to in Part 6.

"**Related Body Corporate**" has the meaning given to that expression in Division 6 of Part 1.2 of the Corporations Act.

"**Responsible Entity**" means the responsible entity of the Trust from time to time appointed under the provisions of this Deed in accordance with the Corporations Act.

"**Restricted Interest**" means a Unit or an Option that is a restricted security for the purposes of the Listing Rules.

"**Restriction Agreement**" means a restriction agreement in accordance with Appendix 9A of the Listing Rules, or as ASX requires in a particular case.

"**Special Resolution**" has the meaning given to that term in the Corporations Act.

"**Statutory Revenue Charge**" means a fee, tax, fine, duty, penalty, impost or other charge imposed by statute, rule or regulation and includes any goods and services, bank account debit or financial institutions duty or tax.

"**Tax Act**" means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* of the Commonwealth of Australia as amended or substituted from time to time.

"**Total Tangible Assets**" means the amount derived by adding:

- (a) the total of all cash on hand or at bank;
- (b) the total of the values shown in the Valuation Roll of all Investments;
- (c) the total of the amounts owing to the Trust by way of debtors (not including amounts referred to in paragraph (d) of this definition) but after deducting any bad or doubtful debts;
- (d) the total of the amounts of the Issue Price of Partly Paid Units which has not then been paid, whether or not then due and payable;
- (e) the total of all prepaid expenses; and
- (f) the total of the values of all other assets of the Trust not included in the preceding paragraphs of this definition, as determined by the Auditor;
- (g) and subtracting any amount (whether of income or capital) for the time being transferred or to be transferred as at a date prior to the date on which a calculation of Total Tangible Assets is to be made, to and held in the Distribution Account pending distribution.

"**Trust**" means the trusts constituted by this Deed.

"**Trust Fund**" means all the cash, Investments and other property for the time being held by the Responsible Entity upon the trusts of this Deed, excepting any income transferred to the Distribution Account.

"**Trustee Investment**" means any investment made within Australia which would be an investment in which a trustee would, at the time the investment is made, be authorised to invest trust moneys under any of the laws of any State or Territory of the Commonwealth of Australia.

"**Uncertificated Holdings**" means a holding of Units or Options (as the case may be) in respect of which Certificates have not been issued or have been issued and cancelled.

"**Unit**" means an undivided share in the Trust Fund, and except where the context otherwise requires, includes a Fully Paid Unit and a Partly Paid Unit.

"**Unitholder**" means the Person for the time being registered under the provisions of this Deed as the holder of a Unit and includes Persons jointly so registered.

"**Valuation Roll**" means the roll referred to in clause 14.1.1.

"**Value**" of an Investment means:

- (a) in the case of Land, the value ascertained by an Approved Valuer under Part 14;
- (b) in the case of Trustee Investments (other than debentures or deposits), units in unlisted unit trusts and personal property investments (the value of which is not otherwise defined in the succeeding paragraphs of this definition), all costs and expenses of acquisition or creation of the investment, including all costs and expenses relating to such acquisition or creation until the investment is revalued under Part 14 and thereafter, the value indicated by the most recent revaluation;

- (c) in the case of shares, units or debentures (including Trustee Investments being debentures) quoted on ASX, the last sale price thereof according to the ASX quotation on the date when value is to be ascertained or the nearest day as is practicable to that on which the value is to be ascertained, unless the Responsible Entity determines that such price does not accurately reflect the value of the shares, units or debentures, in which case the value is the price determined as a fair and reasonable price by the Responsible Entity after taking into consideration previously quoted seller prices, buyer prices and sale prices for the same shares, units or debentures and any other relevant factors, provided that the Responsible Entity may refer any question in that regard to a firm of stockbrokers (being members of ASX) and their certified determination of the fair value of the shares, units or debentures will be final;
- (d) in the case of shares which are not quoted on ASX, the value as calculated on the basis of net tangible asset backing as shown in the last audited consolidated balance sheet of the company in which the shares are held (and its subsidiaries, where applicable), subject only to such adjustments as the Responsible Entity in its discretion considers necessary, provided that the Responsible Entity may refer any question in that regard to the Auditor whose determination will be final;
- (e) in the case of a deposit or unsecured loan, the amount of such deposit or unsecured loan at the date when the value is required to be ascertained or taken into account;
- (f) in the case of commercial bills of exchange or negotiable certificates of deposit, their market value as determined by the Auditor,
- (g) and in the case of any other Investment, the amount determined by the Auditor in accordance with prevailing market practice or, where applicable, the Property Valuer.

"**Vendor Unit**" means a Unit issued as authorised by the Corporations Act in satisfaction of the whole or part of the purchase price of an Authorised Investment.

"**VWAP**" for a Unit in respect of a period means the volume weighted average price of the Units sold on ASX in that period, excluding any special crossings, crossings prior to the commencement of normal trading, portfolio special crossings, crossings during the closing phase and the after hours adjust phase, any overseas trades or trades pursuant to the exercise of options over Units and any overnight crossings (and where the relevant term is defined in the ASX Operating Rules, that definition applies) or other trades that the directors determine to exclude on the basis that the trades are not fairly reflective of supply and demand.

1.2. Plurals, Genders and Parts of Speech

- 1.2.1. Words importing the singular number include the plural and vice versa and words importing any gender include all genders.
- 1.2.2. Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

1.3. Headings and Sub-headings

Headings and sub-headings have been included for ease of reference and do not affect interpretation.

1.4. Statutes

References to statutes, regulations, ordinances or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing them.

1.5. Bodies and Associations

References to authorities, institutes, associations and bodies whether statutory or otherwise shall, in the event of any such authority, institute, association or body ceasing to exist or being reconstituted, renamed or replaced or the powers or functions thereof being transferred to any other authority, institute, association or body, be deemed to refer respectively to the authority, institute, association or body established or constituted in lieu thereof and/or as most nearly as may be fulfilling the powers or functions thereof.

1.6. Monetary Amounts

References to "\$" and "dollars" are to Australian currency.

1.7. Invalidity

If any term, clause or provision of this Deed shall be or be deemed or judged to be invalid for any reason, such invalidity shall not affect the validity or operation of any other term, clause or provision of this Deed, except to the extent necessary to give effect to such invalidity.

1.8. Statutory Requirements

The provisions of this Deed apply except to the extent of any inconsistency with the Corporations Act. If any relief from any provisions of the Corporations Act granted by the ASIC requires that this Deed contain certain provisions, then those provisions are deemed to be incorporated into this Deed only insofar as they apply to the Trust and only for so long as they are required to be incorporated.

1.9. Requirements of Listing Rules

While the Trust is Listed:

- 1.9.1. notwithstanding anything to the contrary contained in this Deed, if the Listing Rules prohibit an act being done, the act shall not be done;
- 1.9.2. nothing contained in this Deed prevents an act being done that the Listing Rules require to be done;
- 1.9.3. if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- 1.9.4. if the Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
- 1.9.5. if the Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision; and
- 1.9.6. if any provision of this Deed is or becomes inconsistent with the Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.

1.10. In the interpretation of this Deed, any consequential amendment that ought to have been made to the Deed that was not made at the time amendments under clause 19 were made by special resolution of the Unitholders or the Responsible Entity, as appropriate, are taken to have been made to the intent that the Deed corresponds to and is consistent with the amendments so made.

1.11. General Compliance provision

- (a) A provision of this deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.

- (b) Clause 1.11(a) is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this deed.
- (c) This clause 1.11 prevails over all other provisions of this deed including any that are expressed to prevail over it.

1.12. Additional Listing Rule requirements

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

- (a) the Responsible Entity must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit or Option except in any of the following cases:
 - (1) an Instalment which is due and payable on that Unit under clause 3.6.1 has not been paid;
 - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with this deed;
 - (3) in the case of the voting right, the Holder became the holder of that Unit or Option after the time determined under Regulation 7.11.38 of the Corporations Regulations as the "specified time" for deciding who held the Unit or Option for the purpose of the meeting;
 - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
 - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
 - (6) the right is removed or changed under a court order;
- (b) a holder of a Unit must not be divested of that Unit except in any of the following cases:
 - (1) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or is approved by ASX as appropriate and equitable;
 - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
 - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
 - (4) the divestment is under a court order; or
 - (5) the divestment is under clause 3.6.3;
- (c) the Responsible Entity must not divest a Unit Holder of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the SCH Business Rules. At all times that the Trust is admitted to the Official List the Responsible Entity must comply with SCH Business Rule 8.13.

2. CONSTITUTION OF TRUST

2.1. Establishment of Trust Fund

The first Unitholder has upon the execution of this Deed, lodged with the Responsible Entity the sum of \$25 for investment by the Responsible Entity in or in the purchase of Authorised Investments which are vested in and held by the Responsible Entity upon the trusts of this Deed.

2.2. Additions to Trust Fund

2.2.1. The Responsible Entity may from time to time hold further cash and/or Authorised Investments upon the trusts of this Deed.

2.2.2. Where the Responsible Entity has received Application Moneys for Units or Options and the Responsible Entity proposes to proceed with an allotment of Units or Options, the Application Moneys in respect of which applications for subscription have been accepted must be added to the Trust Fund by the Responsible Entity and held on the terms and conditions of this Deed.

2.3. Appointment of Responsible Entity

The Responsible Entity is the trustee of the Trust Fund and shall hold the Trust Fund and every part of the Trust Fund upon trust for the benefit of the Unitholders in accordance with the terms and conditions of this Deed.

2.4. Name of Trust

The name of the Trust shall be "**Australian Education Trust**" or such other name as may be adopted in substitution for that name by the Responsible Entity. If a Responsible Entity retires or is removed, its successor as Responsible Entity must, unless otherwise approved by the former Responsible Entity, take all steps and use its best endeavours to ensure the name of the Trust does not imply an association with the former Responsible Entity or its business.

2.5. Term of Trust

The Trust commenced on the date of the Deed Poll to which this Constitution is annexed, and, unless sooner determined as provided for in this Deed, shall terminate and be wound up on the date which is eighty (80) years from that date.

2.6. Beneficial Interest in Trust Fund

2.6.1. The beneficial interest in the Trust Fund shall be divided into Units.

2.6.2. Subject to the provisions of this Deed and subject furthermore in the case of Partly Paid Units, to the due payment of the Issue Price thereon, every Unit shall confer an equal interest in the Trust Fund, but shall not confer any interest in any particular part of the Trust Fund or any Investment, but shall confer only such interest in the Trust Fund as a whole which is conferred on a Unit under the provisions of this Deed.

2.6.3. Subject to the provisions of this Deed and subject furthermore in the case of Partly Paid Units, to the due payment of the Issue Price thereon, all the Units into which the beneficial interest in the Trust Fund is for the time being divided shall, at any given date, be of equal value.

2.7. Unitholder may not Manage Investments

2.7.1. Except as is expressly provided in this Deed, the beneficial interest of a Unitholder in the Trust Fund does not entitle him to interfere with the rights or powers of the Responsible Entity in its management of the Trust Fund nor to

exercise any rights, powers or privileges in respect of any Investment of the Trust Fund or to represent the Responsible Entity at any meeting of shareholders, debenture holders or investors or otherwise.

- 2.7.2. Except as is expressly provided in this Deed, the beneficial interest of a Unitholder in the Trust Fund does not entitle the Unitholder to require the transfer to him of any part of the Trust Fund or any Investment.

2.8. Unitholders and Optionholders bound by Deed

The terms and conditions of this Deed shall be binding on the Responsible Entity and each Unitholder and each Optionholder and all Persons claiming through them respectively as if each such Unitholder and each such Optionholder had severally been a party to this Deed.

2.9. Limitation of Liability

- 2.9.1. Notwithstanding any other provision of this Deed or any provision included or deemed to be included in this Deed, a Unitholder of Fully Paid Units will not by virtue of the holding of such Units have any liability to make any contribution to the Trust Fund or payments to the Responsible Entity in respect of the Trust Fund.
- 2.9.2. Notwithstanding any other provision of this Deed or any provision included or deemed to be included in this Deed, the liability of a Unitholder of Partly Paid Units by virtue of the holding of such Units will be limited to the payment of the unpaid portion of the Issue Price on the Partly Paid Units and upon payment in full of such Issue Price, such Unitholder will not by virtue of the holding of such Units have any liability to make any further contribution to the Trust Fund or payments to the Responsible Entity in respect of the Trust Fund.
- 2.9.3. Notwithstanding any other provision of this Deed or any provision included or deemed to be included in this Deed, an Optionholder will not by virtue of the holding of Options and whilst such Options remain unexercised have any liability to make any contribution to the Trust Fund or payments to the Responsible Entity in respect of the Trust Fund.
- 2.9.4. 2.9.4.1. No holder of a Unit or an Option shall be under any obligation personally to indemnify the Responsible Entity or any creditor of it in respect of any of the liabilities (actual, contingent or otherwise and whether due to any deficiency or not) of the Responsible Entity in relation to, arising from or in connection with the Trust Fund and arising from or by reason of the holding of such Unit or Option or any relationship with the Responsible Entity arising from any such holding. Any such liability is hereby expressly excluded.
- 2.9.4.2. The only rights, if any, of indemnity of the Responsible Entity and its creditors, shall be limited to having recourse to the Trust Fund.
- 2.9.4.3. Nothing in this Deed shall constitute the Responsible Entity as the agent or partner of any Unitholder or Optionholder nor create any relationship between the Unitholder or Optionholder on the one hand or the Responsible Entity (other than as Responsible Entity) on the other.
- 2.9.4.4. Without limiting the generality of the provisions of this clause 2.9, it is recorded that each of the Unitholders and each of the Optionholders shall be entitled to rely on the provisions of this clause 2.9 also in cases where any liability is incurred as a result of any directions or request of Unitholders or of Optionholders.

3. UNITS

3.1. Initial Units

The beneficial interest in the Trust Fund, as originally constituted by the lodging with the Responsible Entity of the sum of \$25, was divided into 25 Units of \$1.00 each.

3.2. Additional Units

3.2.1. Additional Units may be issued:

3.2.1.1. when the Responsible Entity receives and accepts an Application for Units and Application Moneys in accordance with clause 3.9;

3.2.1.2. where the terms of the acquisition of an Authorised Investment provide for the satisfaction of the whole or part of the purchase price of the Authorised Investment by the issue of Units on receipt of an Application for Units and completion of the acquisition of the Authorised Investment. The issue of units in these circumstances may be on the basis of such sum or sums per Unit (or without specification of a sum or sums per Unit) as the Responsible Entity may determine as fair and reasonable, taking into account the interests of existing Unitholders.;

3.2.1.3. upon exercise of any Options issued in accordance with Part 4;

3.2.1.4. in the circumstances described in clause 17.2.7 pertaining to Bonus Units; and

3.2.1.5. in the circumstances referred to in clause 17.7 pertaining to a Unit reinvestment plan.

3.2.2. Except where clause 3.2.3 applies:

3.2.2.1. where clause 3.2.1.1 applies, the number of Units to be issued will be that number (rounded down to the nearest whole number) arrived at by dividing the amount of the Application Moneys received by the Issue Price at the date of issue of the Units;

3.2.2.2. where clause 3.2.1.2 applies, the number of Units to be issued will be that number (rounded down to the nearest whole number) arrived at by dividing that portion of the purchase price of the Authorised Investment which is to be satisfied by the issue of Units by the Issue Price on the date of completion of the acquisition of that Authorised Investment (being the date of issue of the Units);

3.2.2.3. in the case where clause 3.2.1.3 applies, the number of Units to be issued will be equal to the number of Options exercised;

3.2.2.4. where clause 3.2.1.4 applies, the number of Units to be issued will be as determined in accordance with clause 17.2.7; and

3.2.2.5. where clause 3.2.1.5 applies, the number of Units to be created will be as determined in accordance with clause 17.7.

- 3.2.3. Units shall be issued at the Issue Price provided that Units may be issued at a price other than the Issue Price in the circumstances referred to or described below and upon the issue of Units at a price determined in accordance with the circumstances referred to or described below, that price will, for the purposes of this Deed, be the price at which those Units were issued:
- 3.2.3.1. under a Unit reinvestment plan arrangement as provided for in clause 17.7;
 - 3.2.3.2. pursuant to pari passu offers made substantially at the same time to only and all the then Unitholders if the requirements of clause 3.7 are satisfied, but subject to the Corporations Act, as modified by any applicable ASIC relief, and the Listing Rules, the Responsible Entity is not required to (but in its discretion may elect to) offer Units under this clause to persons whose address on the Register is in a place other than Australia or New Zealand;
 - 3.2.3.3. while the Fund is listed, the Responsible Entity may at any time issue Units to any person by way of a placement at a price and on terms determined by it, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC relief.
 - 3.2.3.4. where the issue is an issue of Bonus Units as provided for in clause 17.2.7; or
 - 3.2.3.5. where the issue of Units arises consequent upon the exercise of any Options issued in accordance with Part 4.
- 3.2.4. Subject to clause 3.9, the Responsible Entity must cause Units issued pursuant to clause 3.2.1.1 to be issued upon receipt and acceptance of an Application for Units and the Application Moneys and must cause Units issued pursuant to clause 3.2.1.2 to be issued upon receipt of an Application for Units and:
- 3.2.4.1. in the case of a purchase of an Authorised Investment which is Land, when the Responsible Entity is satisfied that it is presently entitled to become the registered owner or otherwise to complete its acquisition of that Authorised Investment; or
 - 3.2.4.2. in the case of any other Authorised Investment, when all matters, things and actions necessary in order to permit the vesting of the title of the Responsible Entity to or otherwise to complete the acquisition by the Responsible Entity of the Authorised Investment have taken place and have been carried out to the reasonable satisfaction of the Responsible Entity.

3.3. Underwriting

Any offer of Units or Options for sale or subscription may, in the Responsible Entity's discretion, be underwritten by an underwriter, on terms determined by the Responsible Entity.

3.4. Allotment of Units

- 3.4.1. Except as otherwise provided in this Deed, Units shall be allotted only to Persons nominated by the Responsible Entity. Once any Person, other than the Responsible Entity, has been nominated as the holder of a Unit, the right of the Responsible Entity to nominate shall cease as regards such Unit.

- 3.4.2. Each Unit shall be deemed to have been allotted to a Person when the name of such Person is entered in the Register.

3.5. Division or Consolidation

The Responsible Entity may at any time in its discretion, divide or consolidate the Trust Fund into any number of Units other than the number into which the Trust Fund is for the time being divided, provided that the division or consolidation does not change the ratio of the number of Units held by each Unitholder to the number of Issued Units.

3.6. Partly Paid Units

- 3.6.1. 3.6.1.1. The Responsible Entity may, in its absolute discretion, determine at any time that Units shall be offered on terms that the Issue Price of such Units shall be payable by instalments of such amounts and at such times as the Responsible Entity shall determine from time to time or, if the Responsible Entity shall so determine, by a single instalment payable at such time as the Responsible Entity shall determine.
- 3.6.1.2. All the terms and conditions of any offer of Partly Paid Units shall be set out in the document offering such Units for subscription.
- 3.6.2. Where Units are offered on terms and conditions determined pursuant to clause 3.6.1, such terms and conditions attaching to any Unit may be varied or compliance with those terms and conditions waived by the Responsible Entity in accordance with the Corporations Act and if the Trust is Listed, the Listing Rules.
- 3.6.3. 3.6.3.1. If a Unitholder fails to pay in full any instalment due on any Partly Paid Unit on or by the day specified for payment of the instalment, the Responsible Entity shall thereafter during such time as the instalment or any part thereof remains unpaid, serve a notice on such Unitholder requiring payment of so much of the instalment as is unpaid.
- 3.6.3.2. The notice shall specify a further time and day (not earlier than the expiration of 7 Business Days from the date of service of the notice) on or by which the payment as required by the notice is to be made and shall state that, in the event of non-payment on or by that time and day, the Partly Paid Units in respect of which the installment or part thereof remains unpaid will be liable to be forfeited, provided that nothing in this clause 3.6 shall prevent the Responsible Entity from undertaking legal proceedings to require the Unitholder concerned to specifically perform its obligation to pay in full any instalment due on Partly Paid Units.
- 3.6.4. 3.6.4.1. If the requirements of any such notice provided for in clause 3.6.3 are not complied with, any Partly Paid Unit in respect of which the notice has been given may, at any time after the date specified in such notice for payment of the amount required by the notice, be forfeited by a resolution of the Responsible Entity.
- 3.6.4.2. Notice of such forfeiture shall be given to the Person who was registered as Unitholder of such forfeited Units.
- 3.6.5. Upon forfeiture:

- 3.6.5.1. Subject to clause 3.6.5.2, the Responsible Entity shall repurchase the forfeited Units from the Unitholder whose Units were forfeited as soon as practicable at the Redemption Value on the date of repurchase;
- 3.6.5.2. If the Trust is Listed and the forfeited Units are in a class quoted on ASX and not suspended, the Responsible Entity or its agent may resell the forfeited Units at a price determined by the Responsible Entity provided that the following conditions apply:
- 3.6.5.2.1. the forfeited Units are sold in accordance with section 254Q of the Corporations Act other than subsections 254Q(1), (10) and (13) as if the Units were shares, the Trust was the company and the Responsible Entity was the directors of the company;
- 3.6.5.2.2. the Unitholder whose Units have been forfeited shall, as far as practicable, have the same rights as a shareholder whose shares in a company have been forfeited;
- 3.6.5.2.3. the sale of the forfeited Units is in accordance with the Listing Rules.
- 3.6.6. The holder of Partly Paid Units which have been forfeited shall cease to be a Unitholder in respect of the forfeited Units, but shall notwithstanding forfeiture remain liable to pay to the Responsible Entity all moneys which, at the date of forfeiture, were payable by him to the Responsible Entity in respect of the forfeited Units (together with interest at the rate of 10% per annum on the money for the time being unpaid from the date of forfeiture until payment in full, if the Responsible Entity thinks fit to enforce payment of interest), but his liability shall cease if and when the Responsible Entity receives payment in full of all such money (including any interest) in respect of the forfeited Units.
- 3.6.7. A statement in writing by the secretary of the Responsible Entity that a Partly Paid Unit has been duly forfeited on a date stated in the statement shall be prima facie evidence of the facts so stated as against all Persons claiming to be entitled to the forfeited Units.
- 3.6.8. 3.6.8.1. Where a Partly Paid Unit is forfeited pursuant to clause 3.6.4.1, the Responsible Entity shall receive the purchase price calculated in accordance with clause 3.6.5 of the forfeited Unit and the Responsible Entity may appoint a Person to execute on behalf of the holder of the forfeited Unit, any necessary transfer of such Unit to the Responsible Entity who shall thereupon be registered as the holder of that Unit.
- 3.6.8.2. Notwithstanding that the Certificate for such forfeited Units may not have been delivered to the Responsible Entity, a new Certificate shall be issued to the Responsible Entity in accordance with Part 5 (if the forfeited Unit is a Certificated Holding) and the previous Certificate shall be deemed to have been cancelled.
- 3.6.9. Where forfeited Units are repurchased, the Responsible Entity shall deduct from the amount of the purchase price calculated in accordance with clause 3.6.5, the amount of the instalment owing at the date of forfeiture, together with interest (if any) payable thereon pursuant to clause 3.6.6 and a sum representing an amount which has been or will be incurred for commissions,

stamp duties, transfer fees and other usual charges (if any) on the sale or disposal of the forfeited Unit and any costs associated with the forfeiture or any proceedings brought against the Unitholder to recover the instalment or part thereof owing, and the balance (if any) remaining shall be paid to the former Unitholder whose Units were forfeited.

- 3.6.10. Joint holders of Partly Paid Units shall be jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

3.7. Rights Issues

- 3.7.1. 3.7.1.1. Subject to clause 3.7.1.2 and 3.7.1.3 the Responsible Entity may from time to time offer further Units for subscription at a price and to those Persons who were Unitholders and Optionholders at a date (not being more than 20 Business Days immediately prior to the date of the offer) determined by the Responsible Entity, having due regard to the Corporations Act and, if the Trust is Listed, the Listing Rules.
- 3.7.1.2. An offer of further Units shall only be made under clause 3.7.1.1 if -
- 3.7.1.2.1. the offer of Units is to all the then Unitholders and Optionholders and at substantially the same time;
- 3.7.1.2.2. the Units are offered at the same price provided that the amount by which the price is less than the Issue Price does not exceed 20% of the Issue Price;
- 3.7.1.2.3. the offer of Units is in relation to the same class of Units; and
- 3.7.1.2.4. the amount of Units offered to each Unitholder and Optionholder is proportionate to the value of that Person's interest in the Trust;
- except that Units offered to, but not acquired by, Unitholders or Optionholders may be offered to other persons including, but not limited to, other Unitholders or Optionholders.
- 3.7.1.3. The Responsible Entity may do either or both of the following:
- 3.7.1.3.1. elect not to make an offer under clause 3.7.1.1 to some members;
- 3.7.1.3.2. make offers of Units to some Unitholders and Optionholders earlier than other Unitholders and Optionholders,
- in accordance with the Corporations Act, any applicable ASIC relief and the Listing rules.
- 3.7.2. Any Unitholder may renounce its entitlement in respect of any Units offered to it on the terms described in clause 3.7.1 in favour of some other person, unless the issue is expressed to be non-renounceable.

3.8. Responsible Entity may hold Units and Options

Subject to the Corporations Act, the Responsible Entity is entitled, either by itself or by a nominee, to subscribe for, purchase or hold or dispose of any Units or Options and will thereafter, for so long as it is a Unitholder or Optionholder, unless otherwise expressly provided in this Deed, have all the rights of a Unitholder or Optionholder under this Deed.

3.9. Applications For Units and Options

- 3.9.1. An applicant for Units or Options must complete a form approved by the Responsible Entity if the Responsible Entity so requires. The form may be transmitted electronically if approved by the Responsible Entity.
- 3.9.2. Application Moneys must be paid by cheque, bank draft or other form acceptable to the Responsible Entity or, if the Responsible Entity decides, by the capitalisation or in satisfaction of any amount of Borrowings for which the Trust is liable to pay or repay, or the effective transfer of title to any property in favour of the Responsible Entity.
- 3.9.3. 3.9.3.1. The Responsible Entity may, in its absolute discretion, accept or refuse in whole or in part any Application for Units or Application for Options.
- 3.9.3.2. The Responsible Entity covenants to exercise its discretion to accept or refuse any Application for Units or Application for Options within 5 Business Days of the closing of the offer period in relation to an offer of Units or Options whether pursuant to a Product Disclosure Statement or otherwise.
- 3.9.4. Following acceptance of the Application for Units or Application for Options by the Responsible Entity, and when the cheque or bank draft by which those Application Moneys is paid by the bank on which it is drawn, is taken by the Responsible Entity pursuant to clause 3.9.2 as being paid, or the Application Moneys have otherwise been received by the Responsible Entity:
- 3.9.4.1. those Application Moneys form part of the Trust Fund; and
- 3.9.4.2. the Responsible Entity must register the Applicant as a Unitholder or Optionholder, with the number of Units issued to the Applicant being determined in accordance with clauses 3.2.2 and 3.2.3 and the number of Options issued to the Applicant determined in accordance with Part 4.
- 3.9.5. Whenever the Responsible Entity is required by this Deed or otherwise to register a Person as a Unitholder or Optionholder, the Responsible Entity must cause that Person's name to be entered on the Register.
- 3.9.6. No Units or Options may be issued pursuant to clause 3.2.1.2 unless the person to whom Units or Options are issued as the whole or part of the purchase price of an Authorised Investment duly executes an Application for Units or an Application for Options, which Application may be conditional on due completion by the Responsible Entity of an agreement pursuant to which the Authorised Investment concerned is to be acquired by the Responsible Entity.
- 3.9.7. Notwithstanding any other provision of this Deed, every Application for Units and Application for Options is deemed to contain an acknowledgement that the Application is subject to the terms and conditions of this Deed and the Responsible Entity makes no warranty or representation in connection with the Trust Fund or as to the future price of Units or the income payable in respect thereof other than as specifically made in any Product Disclosure Statement or

other representation issued by the Responsible Entity in relation to the Units or Options issued.

3.10. Redemption and Cancellation of Units

A Unitholder may not require any Unit to be redeemed.

3.11. Additional Classes of Units

This Deed may be amended from time to time pursuant to Part 19 to provide for different classes of Units.

3A. CONVERTIBLE DEBT INSTRUMENTS

3A.1 Definitions

Convertible Debt Instruments, Convertible Debt Securities or CDS means an instrument issued by the Responsible Entity as Responsible Entity of the Trust recording the terms of an unsecured loan to the Trust by a CDS Holder, that may be converted into Units in the Trust, subject to its terms.

CDS Holder means the person for the time being registered under the provisions of this Deed as the holder of a CDS and includes persons jointly so registered.

3A.2 Responsible Entity may accept applications and issue CDS

3A.2.1 The Responsible Entity may receive applications for CDS's in such form as the Responsible Entity may from time to time determine from a person invited to, or wishing to subscribe for them, any such application to be lodged duly signed by or on behalf of the CDS applicant and lodged together with CDS application moneys at such place as the Responsible Entity may from time to time determine.

3A.2.2 CDS's may be issued by the Responsible Entity on such terms and conditions as may be determined by the Responsible Entity, including recording the terms of an unsecured loan by the CDS Holder to the Trust and any entitlements of the holders thereof to the issue of Units pursuant to this Deed and the terms of the CDS.

3A.2.3 CDS application moneys must be paid by cheque or bank draft.

3A.2.4 The Responsible Entity may, in its absolute discretion, accept or refuse in whole or in part any application for CDS's.

3A.3 Date of Issue

3A.3.1 Following acceptance of an application for CDS's by the Responsible Entity and when the cheque or bank draft by which the CDS application moneys is paid by the bank on which it is drawn:

3A.3.1.1 the Responsible Entity must register the CDS applicant as a CDS Holder with the number of CDS's issued to the CDS applicant being those to which the Responsible Entity's acceptance relates; and

3A.3.1.2 those CDS application moneys form part of the Trust Fund.

3A.3.2 CDS's will be taken to be issued to the relevant CDS applicant when the name of such person has been entered on the CDS Register.

3A.4 CDS Certificates

Subject to clause 5, each Certificate for CDSs shall be in such form as the Responsible Entity may from time to time determine and shall have a distinctive number and shall specify the number of CDSs to which it relates. A statement of the rights of the CDS Holder shall be provided on the Certificate. The provisions of Part 5 shall otherwise apply (with such modifications as are necessary) to the issue of Certificates for CDSs.

3A.5 Responsible Entity to Maintain CDS Register

The Responsible Entity shall keep or cause to be kept a Register of CDS Holders as provided for in Part 6 as though that Part referred to and dealt with CDSs.

3A.6 Transfer of CDS

The provisions relating to the Transfer of Units shall apply (with such modifications as are necessary) to the transfer of CDSs.

3A.7 Transmissions of CDS

The provisions relating to the transmission of Units shall apply (with such modifications as are necessary) to the transmissions of CDSs.

3A.8 Amendment, Redemption or Conversion of CDS

3A.8.1 The Responsible Entity may agree to vary the terms of issue of a CDS with a CDS Holder.

3A.8.2 A CDS may be either redeemed or converted (in whole or in part), as applicable, according to the terms of issue of the CDS.

3A.8.3 If a CDS is converted according to its terms of issue, then the amount acknowledged by the CDS as due to the CDS Holder must be dealt with by the Responsible Entity in the same manner as if it was Application Moneys for Units.

3A.9 Meetings

CDS Holders who are not Unitholders or Option holders, as applicable, shall be entitled to receive notice of and attend, but not to speak or vote at any meeting of Unitholders.

3A.10 Accounts

The Responsible Entity will send or cause to be sent by post a copy of the Accounts to all CDS Holders.

3A.11 Quoted CDS

3A11.1 The Responsible Entity does not intend to list the CDS's for quotation on the ASX or on any other stock exchange and it is not obligated to do so.

4. OPTIONS

4.1. Responsible Entity may Grant Options

4.1.1. The Responsible Entity may issue, upon such terms and conditions as may be determined by the Responsible Entity, Options entitling the holders thereof to purchase Units pursuant to this Deed, provided that:

4.1.1.1. the Issue Price of an Option shall be 10% of the Issue Price on the date of issue of the Option, and shall be and become part of the Trust Fund and not form part of the exercise price should the Optionholder exercise the Option;

- 4.1.1.2. each Option shall entitle the holder thereof to purchase one Unit upon payment to the Responsible Entity of the exercise price of each Option;
 - 4.1.1.3. the exercise price per Unit to be paid on the exercise of each Issued Option must be 90% of the Issue Price on the date of issue of the Option;
 - 4.1.1.4. the terms and conditions upon which an Option may be issued by the Responsible Entity must make provision for the rights (if any) of the Optionholder in the event that an offer of Units and/or Options is made whilst the Option remains an Issued Option;
 - 4.1.1.5. each Optionholder shall have no other entitlements consequent upon holding an Option, other than set out in this Part 4; and
 - 4.1.1.6. the Responsible Entity may not issue Options to itself, except insofar as the Options are issued to it as a Unitholder on a pro rata basis pursuant to this Part 4.
- 4.1.2. Notwithstanding clause 4.1.1, the Responsible Entity may issue, upon such terms and conditions as may be determined by the Responsible Entity, Options entitling Unitholders and Optionholders to purchase Units pursuant to this Deed, on condition that:
- 4.1.2.1. the offer of Options is made to all the then Unitholders and Optionholders at substantially the same time;
 - 4.1.2.2. the Options offered are all in the same class and are all offered at the same Issue Price and exercise price;
 - 4.1.2.3. the amount by which the exercise price per Unit to be paid on the exercise of each Issued Option is less than the Issue Price does not exceed 20% of the Issue Price on the date of exercise of the Option, however, if the Trust is Listed and the exercise price would be below any minimum exercise price set by the Listing Rules, then that minimum exercise price will apply;
 - 4.1.2.4. the terms and conditions upon which an Option may be issued by the Responsible Entity must make provision for the rights (if any) of the Optionholder in the event that an offer of Units and/or Options is made whilst the Option remains an Issued Option;
 - 4.1.2.5. each Option shall have no other entitlements consequent upon holding an Option, other than set out in this Part 4;
 - 4.1.2.6. the means of calculating the exercise price is set out in the terms of issue of the Options; and
 - 4.1.2.7. the Options are offered to Unitholders and Optionholders in proportion to the value of their interests in the Trust,

provided that if the Responsible Entity reasonably considers that it would be in the best interests of Unitholders and Optionholders to exclude Foreign Members and not unfair to those Foreign Members, the Responsible Entity may sell the Options that the Foreign Members would have been entitled to but for the fact that they are Foreign Members, instead of issuing the Options to the Foreign Members, taking reasonable steps to maximise the sale price net of

expenses of the sale and promptly pay to the Foreign Members the net sale price.

4.2. Date of Grant

An Option shall be deemed to have been granted to the Person entitled to exercise the Option when the name of such Person has been entered in the Register.

4.3. Option Certificates

Subject to clause 5.5, each Certificate for Options shall be in such form as the Responsible Entity may from time to time determine and shall have a distinctive number and shall specify the number of Options to which it relates. A statement of the rights of the Optionholder shall be provided on the back of such Certificate. The provisions of Part 5 shall otherwise apply (with such modifications as are necessary) to the issue of Certificates for Options.

4.4. Responsible Entity to Maintain Option Register

The Responsible Entity shall keep or cause to be kept a Register of Optionholders as provided for in Part 6.

4.5. Transfer of Options

The provisions relating to the transfer of Units shall apply (with such modifications as are necessary) to the transfer of Options.

4.6. Transmission of Options

The provisions relating to the transmission of Units shall apply (with such modifications as are necessary) to the transmission of Options.

4.7. Notice prior to Exercise of Options

The Responsible Entity shall send or cause to be sent to each Optionholder at least 20 Business Days prior to the expiry date of the Options, a notice stating:

- 4.7.1. the name of the Optionholder;
- 4.7.2. the number of Options held and the number of Units to be issued on their exercise;
- 4.7.3. the exercise price;
- 4.7.4. the due date for payment;
- 4.7.5. the consequences of non-payment and, if the Options are quoted on the official list on ASX, the date quotation of the Options on ASX will cease;
- 4.7.6. the Current Unit Value of Fully Paid Units determined by the Responsible Entity as at the day selected by the Responsible Entity, not being more than 30 days prior to the date of such notice;
- 4.7.7. if the Options are quoted on ASX, such other information required to be sent to each Optionholder under the Listing Rules from time to time.

4.8. Exercise of Options

- 4.8.1. Options shall be exercised by the Optionholder completing and lodging with the Responsible Entity, a notice of exercise of Option in such form as may from time to time be prescribed by the Responsible Entity or as is otherwise acceptable to the Responsible Entity, together with the Option Certificate (if any) and payment for the number of Units in respect of which Options are being exercised.

- 4.8.2. Such payment shall be dealt with by the Responsible Entity in the same manner as if it was Application Moneys for Units.
- 4.8.3. Notice of exercise, together with the Option Certificate (if any) and payment as aforesaid which is received by the Responsible Entity within 2 Business Days after the expiry date of the relevant Option, shall be accepted by the Responsible Entity as a proper exercise of that Option.

4.9. Meetings

Optionholders who are not Unitholders shall be entitled to receive notice of and attend and vote at any meeting of Unitholders.

4.10. No Participation

Options shall not give Optionholders any right to participate in any distribution of the income or capital of the Trust or any interest in the Trust Fund.

4.11. Accounts

The Responsible Entity will send or cause to be sent by post a copy of the Accounts to all Optionholders.

4.12. Quoted Options

- 4.12.1. The Responsible Entity shall use its best endeavours to cause Options issued on the basis of a representation by the Responsible Entity that they would be quoted on ASX, to be so quoted on ASX.
- 4.12.2. During the period in which the Options are quoted on ASX, the Responsible Entity shall comply with the Listing Rules in relation to Options.

5. CERTIFICATES

5.1. Form of Certificates

- 5.1.1. 5.1.1.1. Each Certificate shall be in such form as the Responsible Entity may from time to time determine.
- 5.1.1.2. Such Certificates may be engraved or lithographed or printed as the Responsible Entity may from time to time determine and shall be signed on behalf of the Responsible Entity by a duly authorised officer of the Responsible Entity by autographical, mechanical or other means and when so signed, shall have full force and validity.
- 5.1.2. In case any officer of the Responsible Entity whose signature appears on any Certificate shall die or otherwise cease to be such officer before the Certificate has been issued, such Certificate shall nevertheless be as valid and binding as though the officer whose signature so appeared had continued in office up to and including the date of the issue of such Certificate.

5.2. Issue of Certificate

- 5.2.1. Subject to clause 5.5 and unless the conditions of issue of Units or Options expressly provide that Certificates will not be issued, the Responsible Entity shall, within 2 Months after the allotment of any Units or Options, issue Certificates to the subscribers or purchasers of Units or Options so allotted and, unless otherwise instructed by the allottee, the Certificate shall be sent or delivered to the allottee at the address of the allottee shown on the Register.
- 5.2.2. Except as otherwise provided in this Part 5, Certificates shall be issued without charge to Unitholders and Optionholders.

- 5.2.3. A Unitholder or Optionholder is entitled, on written request to the Responsible Entity, to have Certificates issued to him in reasonable denominations in respect of a Certificated Holding of Units or Options only.

5.3. Certificates for Fully Paid Units and Partly Paid Units

- 5.3.1. Subject to clause 5.5, separate Certificates shall be issued for Fully Paid Units and for Partly Paid Units and in the case of Partly Paid Units, the Certificates shall show by endorsement or otherwise, the amount of the Issue Price paid on such Units, but where the amount of the Issue Price paid on some Partly Paid Units held by a Unitholder differs from the amount of the Issue Price paid on other Partly Paid Units, separate Certificates shall be issued for those Partly Paid Units.
- 5.3.2. Each Certificate must be given a distinctive number and must specify the number and class of Units or Options to which it relates, the name of the Trust, the date of this Deed, the name of the Responsible Entity and if the Trust is Listed, all other information required by the Listing Rules.

5.4. Replacement Certificates

- 5.4.1. 5.4.1.1. If any Certificate be worn out or defaced, then upon production of that Certificate to the Responsible Entity, it may cancel the Certificate and cause to be issued a new Certificate in lieu thereof.
- 5.4.1.2. If any Certificate is lost or destroyed, then upon proof of the loss or destruction of the Certificate to the satisfaction of the Responsible Entity and upon such indemnity as the Responsible Entity may deem adequate being given, a new Certificate in lieu thereof shall be given to the person entitled to such lost or destroyed Certificate. An application by a Unitholder or Optionholder for a new Certificate where the Certificate is lost or destroyed must be accompanied by a statutory declaration that the Certificate has been lost or destroyed and has not been pledged, sold or otherwise disposed of and, if lost, that proper searches have been made, together with an undertaking in writing that if the Certificate is found or received by the Unitholder or Optionholder, it will immediately be surrendered to the Responsible Entity.
- 5.4.1.3. The Responsible Entity may, before an application for the issue of a new Certificate in the circumstances referred to in clause 5.4.1.2 is accepted, require the applicant to indemnify the Responsible Entity in a form approved by the Responsible Entity against any loss, damage or expense arising out of the loss or destruction of the Certificate or application for the issue of a new Certificate.
- 5.4.2. A fee as determined by the Responsible Entity (but not exceeding the fee, if any, prescribed under the Corporations Act in that regard) for the replacement of worn out, defaced, lost or destroyed Certificates shall be paid to the Responsible Entity by the person entitled to a new Certificate pursuant to this clause 5.4.

5.5. Uncertificated System

Notwithstanding the provisions of Part 5:

- 5.5.1. the Responsible Entity is not required to issue Certificates in respect of any Units or Options while the Trust is admitted to any system or scheme approved by either ASX or the ASIC or both which allows trading of uncertificated securities;
- 5.5.2. upon the Trust being admitted to such a system or scheme, the Responsible Entity may, if it believes that it is appropriate, cancel some or all of the existing Certificates; and
- 5.5.3. the Responsible Entity shall take any steps as are necessary to ensure that, upon the Trust being admitted to any system or scheme of the type referred to in clause 5.5.1, each Unitholder or Optionholder may, if appropriate, by giving to the Responsible Entity notice in writing of its intention to do so and by complying with the Listing Rules or any other rules regulating the operation of the system or scheme, choose to have all or any of his Units or Options converted from a Certificated Holding to an Uncertificated Holding.

6. REGISTER OF UNITHOLDERS AND OPTIONHOLDERS

6.1. Responsible Entity to Maintain Register

- 6.1.1. The Responsible Entity shall keep and maintain at the registered office or principal place of business in Australia of the Responsible Entity, an office where the work involved in maintaining the register is done or at such other place in Australia as the ASIC approves, a Register of Unitholders and Optionholders in which shall be entered:
 - 6.1.1.1. the names and addresses of the Unitholders and Optionholders;
 - 6.1.1.2. the number of Units or Options and the numbers of Certificates held by them respectively;
 - 6.1.1.3. the date at which the name of every such person was entered in the Register in respect of such Units or Options;
 - 6.1.1.4. the date at which any person ceased to be a Unitholder or Optionholder;
 - 6.1.1.5. in the case of Partly Paid Units, the Issue Price for such Units and the instalments of the Issue Price paid thereon;
 - 6.1.1.6. any other details considered necessary by the Responsible Entity; and
 - 6.1.1.7. such other details as required by the Corporations Act to be entered in the Register.
- 6.1.2. For the purposes of this clause 6.1, the Responsible Entity shall have power to correct any manifest error in the Register.

6.2. Inspection of Register

The Responsible Entity will make the Register available for inspection in accordance with the Corporations Act.

6.3. No Trusts on Register

Except as required by the Corporations Act, the Responsible Entity shall not be obliged to enter on the Register notice of any trust (express, implied or constructive) in respect of any Unit or Option.

6.4. Trusts not Recognised

- 6.4.1. The Responsible Entity shall recognise the Unitholder and Optionholder (as the case may be), his executors or administrators as the absolute owner of the Units or the Options in respect of which he is registered and all Persons may act accordingly.
- 6.4.2. The Responsible Entity shall not, except as otherwise provided in this Deed or except as ordered by a Court of competent jurisdiction or except as required by statute, be bound to take notice of any trust or equity (whether express, implied or constructive) affecting the ownership of any Unit or Option or the rights incidental thereto and the receipt of such Unitholder and Optionholder (as the case may be) and his executors or administrators for any money payable in respect of the Units or Options shall be a good discharge to the Responsible Entity.

7. TRANSFER OF UNITS

7.1. Right of Transfer

Subject to the provisions of this Deed, Units or Options may be transferred or transmitted. A Unitholder or an Optionholder (as the case may be) cannot Dispose of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or ASX.

7.2. Instrument of Transfer

- 7.2.1. A transfer of Units or Options (being a Certificated Holding) shall not be registered unless there has been lodged with the Responsible Entity, a proper instrument of transfer duly stamped (if necessary) and executed by the transferor and executed by the transferee (except where execution by the transferor and/or transferee is rendered unnecessary by statute or as otherwise provided in this Deed), together with Certificates for the Units or Options to which it relates and such other evidence as the Responsible Entity may require to establish the title of the transferor to such Units or Options or his right to transfer those Units or Options.
- 7.2.2. Any transfer of an Uncertificated Holding must be effected in accordance with the Listing Rules and the operating rules (as defined by the Corporations Act).

7.3. Date of Transfer

The transferor remains the holder of the Units or Options until the name of the transferee is entered in the Register.

7.4. Form of Transfer

- 7.4.1. Each transfer of Units and/or Options must (unless it is a transfer of an Uncertificated Holding) be in writing and comply with the Corporations Act and, if the Unit or Option is quoted on ASX, in any form which complies with the Listing Rules, and if the Unit or Option is not quoted on ASX, in such form as the Responsible Entity may from time to time approve.
- 7.4.2. 7.4.2.1. Where a Unitholder or Optionholder seeks to transfer all or any of its Options or Units by a Market Transfer, the Responsible Entity must comply with any obligations which are imposed on it by the Listing Rules or by the operating rules (as defined by the Corporations Act).
- 7.4.2.2. Any transfer of Uncertificated Holdings must be carried out in the form required by the Listing Rules or the operating rules (as defined by the Corporations Act).

7.4.2.3. Notwithstanding any other provision of this Deed, the Responsible Entity may not prevent, delay or interfere with the registration of a Market Transfer where to do so would be contrary to any provision of the Listing Rules or the operating rules (as defined by the Corporations Act).

7.4.2.4. The Responsible Entity may do anything permitted by the Corporations Act and the Listing Rules which it considers necessary or desirable in connection with the participation of the Trust in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purpose of facilitating dealings in Units and Options.

7.5. Payment of Duties and Charges

Subject to clauses 7.4.2 and 7.9.2, the Responsible Entity shall not be required to effect any transaction or deal in any Certificate or any transfer or other instrument in respect thereto on behalf of or for the benefit of any Unitholder or Optionholder, unless such Unitholder or Optionholder shall have first paid for or otherwise provided to the satisfaction of the Responsible Entity, all duties, taxes, government charges, transfer fees, registration fees, brokerage fees and other charges, whether in respect of the Certificate or the transfer or other instrument or otherwise (collectively "**duties and charges**"), which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing, provided that the Responsible Entity shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the Unitholder or Optionholder concerned and to retain the amount so paid out of any moneys to which the Unitholder may be and may become entitled under this Deed.

7.6. Production of Certificate

The Responsible Entity may waive production of any Certificate (if any) upon evidence satisfactory to the Responsible Entity of its loss or destruction.

7.7. Retention of Transfer

Every instrument of transfer of a Unit or Option which is registered shall, for such period (being not less than 6 years) as the Responsible Entity may determine, be retained by the Responsible Entity after which (subject to the provisions of any law to the contrary) the Responsible Entity may destroy them.

7.8. Return of Transfer

Where the Responsible Entity refuses to register an instrument of transfer in accordance with the provisions of this Deed, the Responsible Entity shall, within 2 Months after the date on which the transfer was lodged with it:

7.8.1. send to the transferee notice of such refusal; and

7.8.2. except in the case of suspected fraud, return the instrument of transfer to the Person depositing it.

7.9. Refusal to Register

7.9.1. During the period in which the Trust is not Listed, the Responsible Entity may, in its absolute discretion, refuse to register or fail to register or give effect to any transfer of Units or Options without assigning any reason.

7.9.2. Where the Trust is Listed the Responsible Entity may decline to register a transfer of Units or Options where to do so would not contravene the Listing Rules and must do so when required by law, by the Listing Rules or by the operating rules (as defined by the Corporations Act). Where the Trust is Listed and the Listing Rules so require, if the Responsible Entity declines to register a

transfer of Units or Options, it must notify the lodging party of the refusal and the reasons for the refusal within the time prescribed by the Listing Rules for that purpose.

- 7.9.3. If it is a term of issue of a Vendor Unit that the holder of the Vendor Unit would not offer to sell or invite the purchase of the Vendor Unit other than by way of personal offer within the meaning of the Corporations Act, any transfer resulting from any other offer or invitation shall not be registered.
- 7.9.4. The Responsible Entity shall refuse to acknowledge a Disposal (including registering a transfer) of Restricted Interests during the Escrow Period except as permitted by the Listing Rules or ASX.

7.10. Procedure on Registration

- 7.10.1. Upon particulars of a transfer of Units or Options being entered in the Register, the Certificate (if any) which accompanied the instrument of transfer shall be cancelled by the Responsible Entity and a new Certificate for the Units or Options shall be issued by or on behalf of the Trustee within 1 Month after the date of lodgement of the instrument of transfer with the Responsible Entity.
- 7.10.2. If the whole of the Units or Options comprised in the first mentioned Certificate has not been transferred, a new Certificate for the balance of the Units or Options comprised therein shall be issued to the transferor within the 1 Month period referred to in clause 7.10.1.

8. TRANSMISSION OF UNITS

8.1. Death of Unitholder

In case of the death of a Unitholder or Optionholder, the survivor or survivors (where the deceased was a joint Unitholder) and the executor or administrator of the deceased (where he was a sole Unitholder), shall be the only Persons recognised by the Responsible Entity as having any title to the Units or Options represented by the Certificates (if any) registered in his name.

8.2. Election of Person Entitled

Any Person becoming entitled to any Units or Options in consequence of the death or bankruptcy of a Unitholder or Optionholder may, upon such evidence being produced as may from time to time be required by the Responsible Entity, elect either to be registered himself as registered holder of such Units or Options or to have some Person nominated by him registered as the transferee thereof.

8.3. Method of Transmission

- 8.3.1. If the person so becoming entitled shall elect to be registered himself, he shall give notice in writing to the Responsible Entity of his election. If he shall elect to have his nominee registered, he and the nominee shall testify the election by delivering or sending to the Responsible Entity an instrument of transfer to that nominee.
- 8.3.2. All the provisions of this Deed relating to the registration of transfers of Units and Options shall be applicable to any such notice or transfer referred to in clause 8.3.1, as if the death or bankruptcy of the Unitholder or Optionholder had not occurred and the notice or transfer was a transfer executed by such Unitholder or Optionholder.

8.4. Voting Rights Suspended

A Person becoming entitled to Units or Options in consequence of the death or bankruptcy of a Unitholder or Optionholder shall be entitled to receive and may give a discharge for all

moneys payable in respect of the Units or Options, but shall not be entitled to receive notices of or to attend or vote at any meetings of Unitholders or Optionholders until he shall have become a Unitholder or Optionholder in respect of such Units or Options (as the case may be).

9. RESPONSIBLE ENTITY

9.1. Covenants by Responsible Entity

The Responsible Entity covenants with the intent that the benefit of this covenant shall enure to each Unitholder and Optionholder severally that:

- 9.1.1. the Responsible Entity will act continuously as Responsible Entity under the trusts of this Deed until such trusts are determined as provided in this Deed or it has retired or been removed from office as provided in this Deed;
- 9.1.2. the Responsible Entity shall retain the Trust Fund in safe care and shall hold it as trustee for the Unitholders upon the terms of this Deed;
- 9.1.3. except as provided for in this Deed, the Responsible Entity shall not sell, mortgage, charge or part with possession of any of the Investments of the Trust Fund;
- 9.1.4. the Responsible Entity will ensure that any officers of the Responsible Entity authorised by the Responsible Entity to perform its powers or functions under this Deed, will be required by the Responsible Entity to duly observe and perform the covenants and obligations of this Deed in the same manner as is required of the Responsible Entity.

9.2. Delegation by Responsible Entity

Without in any way affecting the generality of its powers, the Responsible Entity in managing the Trust Fund and in carrying out and performing its duties and obligations under this Deed may:

- 9.2.1. appoint by writing or otherwise, any Person to be the agent of the Responsible Entity as the Responsible Entity may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Responsible Entity) as it thinks fit and by power of attorney, appoint any person to be attorney or agent of the Responsible Entity for such purposes and with such powers, authorities and discretions as it thinks fit (not exceeding those vested in the Responsible Entity), with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the Responsible Entity of documents bearing facsimile signatures of the Responsible Entity or of the attorney or agent either with or without proper manuscript signatures of its officers thereon, provided that the Responsible Entity shall be liable for all acts or omissions of any such attorney, agent, sub-delegate or sub-agent as if such acts or omissions were the Responsible Entity's own acts or omissions and shall, subject to Part 11, be responsible for their remuneration, fees and charges;
- 9.2.2. appoint and engage any Approved Valuers, solicitors, barristers, accountants, surveyors, contractors and other qualified advisers necessary, usual or desirable for the purpose of exercising its powers and performing its obligations, being in each and every case, independent of the Responsible Entity. The Responsible Entity shall be responsible for the remuneration, fees and charges payable to such qualified advisers, but shall be entitled to be indemnified out of the Trust Fund in respect thereof in the manner and to the extent set out in Part 11;

- 9.2.3. appoint and engage managing agents of Land and collection agents for mortgages forming part of the Trust Fund, notwithstanding that any such managing agent or collection agent may be a company related to the Responsible Entity, provided that the Responsible Entity shall be liable for all acts and omissions of any such agents as if such acts or omissions were the Responsible Entity's own acts or omissions and shall be responsible for the remuneration, fees and charges payable to such agents, but shall be entitled to be indemnified out of the Trust Fund in respect thereof in the manner and to the extent set out in Part 11.

9.3. Remuneration of Responsible Entity

- 9.3.1. The Responsible Entity shall be entitled to receive out of the income of the Trust Fund and retain for its own use and benefit, remuneration calculated at the following times and in the following manner:
- 9.3.1.1. a quarterly sum determined in accordance with clause 9.3.1.2 for the preceding period of 3 Months or any part thereof ending on 31 March, 30 June, 30 September and 31 December respectively such sum being payable in the first instance out of the income of the Trust Fund for the relevant period but after all other costs, charges and expenses (as set out in clause 17.2.1) due, accrued or provided for in respect of such period with the residue (if any) being payable out of the Trust Fund; and
- 9.3.1.2. the Responsible Entity's quarterly remuneration will be an amount calculated at 31 March, 30 June, 30 September and 31 December at 0.125% of the Total Tangible Assets.
- 9.3.2. The remuneration shall be deemed to accrue from day to day and in the case of any period which is less than 3 Months, a proportionate part of the appropriate fee shall be payable.

9.4. Priority of Remuneration and Reimbursement

In the event of the income of the Trust Fund being insufficient to pay the remuneration of the Responsible Entity or to reimburse the Responsible Entity for the expenses referred to in Part 11, the Responsible Entity may retain or pay out of any Trust moneys for the time being in its hands, the amounts required for its remuneration and reimbursement in priority to any claim by Unitholders.

9.5. Voluntary Retirement of Responsible Entity

The Responsible Entity may retire from office as permitted by the Corporations Act.

9.6. Removal of Responsible Entity

The Responsible Entity covenants that it will retire forthwith from office when required by the Corporations Act.

9.7. Settlement and Discharge

Subject to the Corporations Act, the new Responsible Entity appointed in accordance with the Corporations Act is entitled to settle with the former Responsible Entity, the amount of any sums payable by the new Responsible Entity to the former Responsible Entity under the provisions of this Deed and to give to or accept from the former Responsible Entity, a discharge which shall be conclusive and binding upon the new Responsible Entity, except in the case of fraud or breach of duty imposed by statute or rule of law, breach of trust, neglect or default.

10. MANAGEMENT OF TRUST

10.1. Responsible Entity to Manage Trust Fund

Subject to the provisions of this Deed, the Responsible Entity shall manage the Trust Fund for the benefit of the Trust with full and complete powers of management.

10.2. Management of Investments

10.2.1. The Responsible Entity (itself or by its agents) shall manage and supervise all Investments.

10.2.2. The Responsible Entity shall use its best endeavours to ensure that all Investments are kept in good repair, that all valid notices from and requirements of proper authorities in relation thereto are observed and complied with and that the same are let and otherwise dealt with to the best advantage.

10.2.3. The Responsible Entity shall use its best endeavours to ensure that the rights and remedies of the Responsible Entity with respect to mortgage investments are enforced and that the obligations of the mortgagors under the securities are fulfilled.

10.2.4. Where the Responsible Entity appoints an attorney or agent, the Responsible Entity will remain liable for the acts or omissions of any such attorney or agent and will be solely responsible for its fees, subject to any right of reimbursement out of the Trust Fund in the manner and to the extent set out in Part 11. The Responsible Entity may appoint a real estate agent (which may be the Responsible Entity or an Associate of the Responsible Entity) to be the managing agent for Land investments forming part of the Trust Fund and must remunerate such agent out of the income of the Trust Fund as provided for in Part 11, provided that such remuneration shall not exceed an amount which would be paid by the Responsible Entity if the parties were dealing at arm's length.

10.3. Insurances

10.3.1. 10.3.1.1. The Responsible Entity will insure and keep insured or cause to be insured and kept insured on a replacement or reinstatement basis or for such amounts as may from time to time be determined by the Responsible Entity with such insurance company as may be determined by the Responsible Entity, the Authorised Investments which are of a nature or kind capable of being insured against fire and such other risk (including loss of rents) as the Responsible Entity may deem prudent.

10.3.1.2. The Responsible Entity will also ensure that property comprised in every security comprised in a mortgage investment of the Trust Fund is insured and kept insured in the names of the Responsible Entity and the mortgagors and other Persons (if any) for their respective interests against all usual risks.

10.3.2. 10.3.2.1. The Responsible Entity may effect such further or other insurances as it may deem necessary or prudent.

10.3.2.2. Premiums payable on any such insurances effected by the Responsible Entity are to be met by the Trust Fund.

10.3.3. The Responsible Entity shall effect, and shall be entitled to be reimbursed out of the income of the Trust Fund for the reasonable cost of, professional

indemnity insurance covering all risks ordinarily incurred by a responsible entity of property trusts in Australia.

- 10.3.4. If the Responsible Entity is of the opinion that the cost of effecting any insurance required to be effected under clause 10.3 is so excessive that it is not in the interests of Unitholders to effect or maintain the same, the Responsible Entity may, subject to the Corporations Act, refrain from effecting such insurance for such a period and on such other conditions as the Responsible Entity may determine.

10.4. Powers of Responsible Entity

- 10.4.1. Subject to the provisions of this Deed, the Responsible Entity shall have all the powers over and in respect of the property and assets constituting the Trust Fund which it could exercise if it were the absolute and beneficial owner thereof.
- 10.4.2. Without in any way affecting the generality of clause 10.4.1, the Responsible Entity shall be deemed to have full and absolute powers of:
- 10.4.2.1. purchase and sale for cash or upon terms;
 - 10.4.2.2. entering into, undertaking, performing and enforcing agreements, contracts, bonds, deeds and other legal obligations, whether pursuant to or in respect of the acquisition or development of Land or otherwise for the purposes of this Deed;
 - 10.4.2.3. leasing and accepting surrenders of leases (or agreeing so to do) with power to compromise with lessees and others;
 - 10.4.2.4. executing and paying for repairs and improvements;
 - 10.4.2.5. instituting, prosecuting, compromising and defending legal proceedings and without limitation, instituting, prosecuting, defending and compromising legal proceedings to secure compliance with this Deed and any Product Disclosure Statement issued to enable an offer of Units under this Deed to be made and to recover any loss suffered by Unitholders in respect of their investment under this Deed;
 - 10.4.2.6. attending and voting at meetings;
 - 10.4.2.7. paying all outgoings reasonably and properly incurred in connection with the Trust Fund or this Deed which are not otherwise payable by the Responsible Entity out of its own funds;
 - 10.4.2.8. subject to Part 13, lending money or providing financial or other assistance;
 - 10.4.2.9. giving guarantees and/or indemnities for the payment of money or the performance of contracts or obligations for such purposes as the Responsible Entity may consider conducive to the interests of the Trust and the Unitholders;
 - 10.4.2.10. subject to this Deed, borrowing or raising money or procuring other financial accommodation whatsoever, with or without security;
 - 10.4.2.11. developing, improving, subdividing, building, rebuilding, altering, extending, replacing, repairing, managing, operating, granting easements, leasing and otherwise dealing with any

- Authorised Investment and purchasing such plant, equipment and fittings as are necessary having regard to the purposes for which an Authorised Investment is from time to time being used or intended to be used;
- 10.4.2.12. drawing, endorsing, discounting, selling, purchasing and otherwise dealing with bills of exchange either alone or jointly and in particular, commercial bills, but so that the totality of the moneys for the time being the subject of liability on the part of the Responsible Entity (whether as drawer, acceptor or endorser) of any and all of such bills of exchange and whether alone or jointly or severally with other Persons shall be deemed to be Liabilities of the Trust;
- 10.4.2.13. entering into agreements with joint or co-owners of assets, an interest in which constitutes an Authorised Investment for the time being held by the Trust, for such purposes as the Responsible Entity may consider conducive to the interests of the Trust and the Unitholders;
- 10.4.2.14. entering into agreements (whether in the nature of partnerships, joint ventures or otherwise) for the development of Authorised Investments with other reputable financial solvent and stable Persons and corporations including agreements which, subject to Part 13 being complied with, may involve a Development Proposal or the disposal of an interest in an asset which asset comprises an Investment held by the Trust;
- 10.4.2.15. setting aside out of the capital and income of the Trust Fund, such moneys as shall be required to meet the obligations of the Responsible Entity under this Deed;
- 10.4.2.16. taking or granting options to acquire or dispose of any Investment or proposed investment of the Trust and paying any option fee which the Responsible Entity thinks appropriate;
- 10.4.2.17. granting mortgages and other securities for the payment of money or the performance of contracts or obligations by any Person for such purposes as the Responsible Entity may consider conducive to the interests of the Trust and the Unitholders; and
- 10.4.2.18. doing such other things as may appear to the Responsible Entity to be incidental to any or all of the above powers.
- 10.4.3. None of the foregoing paragraphs of clause 10.4.2 shall limit or restrain the scope or ambit of any of the other paragraphs of clause 10.4.2 or limit in any way the Responsible Entity's full and absolute power to institute, prosecute, compromise and defend any legal proceedings against or brought by the Responsible Entity.

10.5. Depreciable Instruments

The Responsible Entity may cause such provision as it deems sufficient to make out of the income of the Trust Fund or from such other source as it may from time to time determine, from which the replacement costs of any of the Investments as comprise property that tends to depreciate in value through use or effluxion of time, is to be met.

10.6. Licences

- 10.6.1. This clause will apply where the nature of an asset of the Trust or the business to be carried on in conjunction with that asset requires that a Licence be held in relation to that asset under any Licensing Law.
- 10.6.2. The Responsible Entity shall ensure that:
- 10.6.2.1. the Licensee complies with all conditions attached to the Licence;
 - 10.6.2.2. the Licensee renews and keeps the Licence current and in good standing;
 - 10.6.2.3. the Licensee duly and punctually complies with and ensures compliance with any Licensing Law and all directions and other requirements of any Governmental Agency;
 - 10.6.2.4. it and the Licensee will not do, or omit to do, anything which may offend against any Licensing Law relating to the relevant asset of the Trust or anything as a result of which the Licence may be forfeited, cancelled, not renewed or otherwise prejudicially affected.

11. COSTS

11.1. On Going Costs

- 11.1.1. In addition to the remuneration of the Responsible Entity as provided for in clause 9.3, the Responsible Entity is entitled to be indemnified out of the income of the Trust Fund (or if the income is insufficient, out of any Trust moneys) for the following costs, charges and expenses which have been reasonably and properly incurred in or about the administration of the Trust:
- 11.1.1.1. the costs of keeping proper books of account and auditing Accounts as required by this Deed;
 - 11.1.1.2. the costs of establishing, maintaining and auditing the Register;
 - 11.1.1.3. disbursements in connection with the acquisition or sale of or other dealing with any Investment of the Trust, including legal fees, stamp duties, brokerage and commission;
 - 11.1.1.4. the fees and disbursements payable to any real estate agents, managing agents or collection agents chargeable by real estate agents, managing agents or collection agents for services performed by them;
 - 11.1.1.5. disbursements in connection with the borrowing or raising of money and the giving and discharging of securities;
 - 11.1.1.6. fees paid to Approved Valuers, solicitors, barristers, accountants, surveyors, contractors, qualified advisers and other Persons as provided for in this Deed, including legal and valuation fees paid in respect of Investments proposed to be purchased (whether purchased or not);
 - 11.1.1.7. advertising expenses relating to the sale or leasing of property;
 - 11.1.1.8. costs incurred in connection with any further offer of Units and/or Options for subscription (whether requiring the issue of a Product Disclosure Statement or not), including but without limitation, all costs of the preparation, approval, registration,

- printing, distribution and promotion of any Product Disclosure Statement or offer document, and any management, underwriting fees or brokerage payable in respect of the issue (including the sum of \$350,000.00 for its services in relation to the establishment of the Trust, preparation of the initial Product Disclosure Statement and management of distribution);
- 11.1.1.9. the cost of acquiring, establishing and developing computer hardware and software systems required for the administration of the Trust;
- 11.1.1.10. bank charges on banking accounts operated solely for the use of the Trust;
- 11.1.1.11. stamp duties on cheques, bank account debits taxes and other similar imposts;
- 11.1.1.12. financial institutions duties and similar imposts;
- 11.1.1.13. costs of printing of certificates, accounts, statements and cheques;
- 11.1.1.14. costs of postage of all cheques, accounts, statements, notices and other documents posted to all or any Unitholders or Optionholders in accordance with the provisions of this Deed;
- 11.1.1.15. disbursements incurred in convening or holding any meetings of Unitholders and implementing any resolution passed at such meetings;
- 11.1.1.16. disbursements incurred by or on behalf of the Responsible Entity in connection with the retirement of it under this Deed and the appointment of another in substitution therefor and anything ancillary or incidental to such retirement or appointment;
- 11.1.1.17. all rates, taxes, charges, assessments and impositions whatsoever (including goods and services tax) (whether parliamentary, municipal or otherwise and whether assessed, charged or imposed by or under Federal or State law or by Federal, State or local authorities and whether on a capital or revenue value or any other basis and even though of a novel character) which may be or are assessed, charged or imposed in respect of the Trust Fund or any part thereof;
- 11.1.1.18. costs of the preparation and lodgment of returns pursuant to the Corporations Act or the Tax Act or any other applicable statute or regulation;
- 11.1.1.19. costs, charges and expenses in relation to the provision of standby financial facilities as the Responsible Entity considers are for the benefit of the Trust;
- 11.1.1.20. the costs and expenses in connection with any rearrangement of the capital structure of the Trust;
- 11.1.1.21. the costs and expenses incurred in or in connection with any amendments, modifications or additions to the provisions of the Trust Deed;
- 11.1.1.22. the costs and expenses incurred by the Responsible Entity in examining, considering or investigating proposals for the purchase or sale of any assets pursuant to this Deed or any

- proposals for the investment or reinvestment of any moneys or other assets for the time being comprised in the Trust Fund;
- 11.1.1.23. the expenses and outgoings which the Responsible Entity may incur in or about the acquisition, maintenance, insurance, investment, realisation, valuation, disposal, collection and distribution of any money, property or Investments received or held by it in respect of the Trust;
- 11.1.1.24. reasonable remuneration of and all costs, charges and expenses incurred by any receiver appointed in relation to the Trust Fund or any part of it;
- 11.1.1.25. all costs and expenses payable in or in connection with the listing of the Trust on any securities exchange or the official quotation of any Units while the Trust is on the official list of a securities exchange, or maintaining any listing or any ability to trade Units or in connection with or arising out of any removal of the Trust from the official list of a securities exchange or suspension of any Units from trading by any securities exchange;
- 11.1.1.26. reasonable costs incurred by the Responsible Entity in respect of time spent by the Responsible Entity in relation to the winding-up of the Trust which is in excess of the time normally spent in carrying out the Responsible Entity's duties under this Deed, to be charged at the Responsible Entity's usual time costed rates;
- 11.1.1.27. all other costs and expenses incurred in connection with the administration of the Trust.

11.2. Other Fees

- 11.2.1. In addition to the Responsible Entity's remuneration under clause 9.3, the Responsible Entity is entitled to reasonable fees (not exceeding an amount which would be payable in a commercial, arm's length transaction) in respect of its services, if it acts as property manager or managing agent in respect of any Land which is an Investment.
- 11.2.1A In addition to the Responsible Entity's remuneration under clause 9.3, the Responsible Entity is entitled to be paid and will be paid the amount of \$5,000 (indexed by CPI) (plus GST) on account of due diligence enquiries including, but without limitation, as to financial and commercial matters undertaken by the Responsible Entity in respect of the acquisition by the Trust of a Trustee Investment. Adjustment of this fee for CPI indexation (all groups Brisbane) will be made at the commencement of each Financial Year.
- 11.2.2. In addition to the Responsible Entity's remuneration under clause 9.3
- 11.2.2.1. The Responsible Entity must be paid a fee equal to 0.5% of all debt funding arranged by the Responsible Entity for the Trust. The fee must be paid to the Responsible Entity within 14 days of the drawdown of the funding.
- 11.2.2.2. Notwithstanding anything else in this Deed, the Responsible Entity has the power to sell or otherwise realise any Investments for the purposes of realising funds sufficient to pay the Responsible Entity, any sum which it is entitled to be paid or reimbursed out of the Trust Fund to the extent that

such sum exceeds the income for the time being of the Trust Fund which is available for payment or reimbursement or is not payable out of that income.

- 11.2.2.3. The Responsible Entity may deduct and retain from the proceeds of sale or realisation such sum referred to in clause 11.2.2.2, provided that prior to selling or realising an Investment pursuant to clause 11.2.2.2, the Responsible Entity must obtain a valuation of that Investment by an Approved Valuer no more than 12 Months prior to the date of sale or realisation and may sell or realise the Investment only if the valuation supports the price proposed to be obtained or if the Responsible Entity otherwise reasonably believes that it is in the interests of the Unitholders to do so.

11.3. Limitation of fees

- 11.3.1. Except as provided for in this Deed or where required or permitted by law, no charge may be made to Unitholders or Optionholders and no deduction for such may be made from the income of the Trust Fund of any kind whatsoever.
- 11.3.2. Despite any other provision of this Deed, the Responsible Entity is not entitled to any remuneration or fees except in relation to the proper exercise by the Responsible Entity of its powers and discretions and the proper performance of its duties under this Deed.

12. RESPONSIBILITIES AND INDEMNITIES

12.1. Responsibilities and Indemnities

- 12.1.1. Without prejudice to any indemnity allowed by law or elsewhere in this Deed given to the Responsible Entity, but subject to and without limiting in any way the provisions of clause 9.1:
- 12.1.1.1. the Responsible Entity has the power to institute or bring legal proceedings and shall be indemnified out of the Trust Fund from and against any expense and liability that may be incurred in prosecuting or defending any action or suit in respect of the provisions of this Deed, save and except in the event that any such action or suit is a result of the Responsible Entity's own act of deceit, neglect, breach of trust or default;
- 12.1.1.2. the Responsible Entity shall not incur any liability to anyone in respect of doing or performing or failing to perform or do any act or thing which, by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any ordinance, rule, regulation or by-law made pursuant thereto or of any decree, order or judgment of any competent court, the Responsible Entity is required to do or perform or is hindered, prevented or forbidden from doing or performing;
- 12.1.1.3. the Responsible Entity shall not be liable to account to any Unitholder or otherwise for any payments made by the Responsible Entity in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory thereof for taxes or other charges upon the Trust Fund or upon the Certificates or with respect to any transaction under this Deed, notwithstanding that any such payment ought or need not have been made, except to the extent that such

- payments may be attributable to the Responsible Entity's own act of deceit, neglect, breach of trust or default;
- 12.1.1.4. the Responsible Entity may act upon the advice or opinion of solicitors or barristers instructed by the Responsible Entity and may act upon the opinion or advice of or any statement or information obtained from any accountants, bankers, Approved Valuers and any other qualified advisers appointed by the Responsible Entity, and being in each and every case independent of the Responsible Entity and believed by the Responsible Entity in good faith to be an expert in relation to the matters upon which they are consulted. The Responsible Entity will not be liable for anything done or suffered by it in good faith in reliance on such opinion, statement or information;
- 12.1.1.5. the Responsible Entity shall not be responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of any attorney, banker, receiver, barrister, solicitor, Approved Valuer or other Person acting hereunder as adviser of the Responsible Entity (independent of the Responsible Entity), except that the Responsible Entity will not be excused to the extent that any loss caused by such misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence is attributable to the Responsible Entity's own willful neglect, default, breach of trust or deceit;
- 12.1.1.6. except as otherwise provided in this Deed or required by law, the Responsible Entity, as regards all the trusts, powers, authorities and discretions vested in it, has absolute and uncontrolled discretion as to their exercise, whether or not to exercise them and in relation to the manner or as to the method of or time of exercise. Nothing in this Deed indemnifies or may be treated as indemnifying the Responsible Entity or exempting it from any liability for breach of trust, where the Responsible Entity fails to show the degree of care and diligence required of a trustee;
- 12.1.1.7. except to the extent that any loss is attributable to the Responsible Entity's own act of deceit, neglect or default amounting in any such case to a breach of trust on the part of the Responsible Entity, whenever the Responsible Entity has failed to show the degree of care and diligence required of a trustee having regard to the provisions of this Deed conferring powers, authorities or discretions on the Responsible Entity, the Responsible Entity will not be liable to the Unitholders or Optionholders, to any greater extent than the value of the Investments, cash and other property actually vested in the Responsible Entity or received by it in accordance with the provisions of this Deed;
- 12.1.1.8. subject to the Corporations Act, nothing in this Deed prohibits the Responsible Entity or the holding company or any subsidiary of that holding company or any shareholder or stockholder of or in the Responsible Entity or a Related Body Corporate of the Responsible Entity or any directors or officers of the Responsible Entity, holding company, subsidiary, Related Body Corporate or shareholder or stockholder (all of them in this clause 12.1.1.8 where the context permits being

included in the expression the "**Responsible Entity**") from being a Unitholder or Optionholder or from acting in any representative capacity for a Unitholder or Optionholder and, in particular and without limitation, it is expressly declared:

12.1.1.8.1. that the Responsible Entity may so act on its own account or as executor, administrator, trustee, receiver, attorney or agent or in any other fiduciary, vicarious or professional capacity and the acting in any such capacity will not be a breach of the obligations arising out of the fiduciary or other relationship between the Responsible Entity and the Unitholders or between the Responsible Entity and the Optionholders established by this Deed or otherwise imposed or implied by law; and

12.1.1.8.2. that the Responsible Entity will not by reason of its fiduciary capacity arising under this Deed or imposed or implied by law in any way be precluded from making any contracts or entering into any transactions with itself as Responsible Entity or from undertaking any insurance, assurance, banking, financial or agency services for itself as Responsible Entity and without limiting the generality of these provisions, it is expressly declared that such contracts and transactions may include any contract or transaction in relation to insurance or assurance, the subscription or placing of or any other dealing with any stocks, shares, debenture stock, debentures, loan stock or other securities or notes or bills of exchange of the Responsible Entity or of any other corporation in which the Responsible Entity is interested and the acceptance of any office of profit from or under the Responsible Entity or any contract of loan or deposit or other contract or transaction which any person or company not being the Responsible Entity could or might have entered into with itself as Responsible Entity, including provision for the customary share of brokerage and usual trustee company's or banker's profit. The Responsible Entity, in connection with any of the foregoing, will not be accountable to any such other corporation or the Unitholders or the Optionholders or any of them for any profits or benefits arising from any such contracts, transactions or offices if the Responsible Entity, in connection with any such transaction, acts in the recognition of its fiduciary relationship to all Unitholders and Optionholders;

12.1.1.9. in no event shall the Responsible Entity be bound to make any payment to Unitholders, except out of the Trust Fund;

- 12.1.1.10. 12.1.1.10.1. whenever the Responsible Entity shall be entitled to buy any Authorised Investment or sell any Investment or property, the Responsible Entity shall have the fullest discretion to prescribe the time and manner of such purchase or sale, including the right to direct postponement of such sale for so long as the Responsible Entity in its discretion shall think fit;
- 12.1.1.10.2. the Responsible Entity is empowered to effect any sale or realisation over a period of time and in such lots or parcels as it considers advisable and to fix and vary reserve prices below which Investments may not be sold;
- 12.1.1.10.3. the Responsible Entity shall not on any account be under any liability to any Person by reason of their not having realised any specific price or reserve in respect of any Investment or property sold;
- 12.1.1.10.4. whenever the Responsible Entity sells or transfers any Investment, it shall be (subject to this Deed) indemnified out of the Trust Fund against all costs, charges and expenses (including stamp duty) in connection therewith;
- 12.1.1.11. in the event of the liquidation or dissolution of any company or if for any other reason, it becomes impossible or impracticable to carry out the provisions of this Deed in respect of such company or otherwise, the Responsible Entity shall not be under any liability by reason thereof nor incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done by it in good faith;
- 12.1.1.12. the Responsible Entity shall not be under any liability, except such liability as may be expressly assumed by it under this Deed nor shall the Responsible Entity (except as otherwise provided) be liable for the failure of any Person or corporation to carry out any agreement on his or its part;
- 12.1.1.13. nothing in this Deed shall limit the liability of the Responsible Entity for neglect, default, breach of duty or breach of trust;
- 12.1.1.14. the Responsible Entity may rely on the authenticity of documents, Certificates or other instruments and will not in any way be liable to make good out of its own funds, any loss incurred by any Person if such documents, Certificates or other instruments are not authentic, unless the Responsible Entity has reasonable grounds to believe that the documents, Certificates or other instruments are not genuine;
- 12.1.1.15. except as otherwise provided for in this Deed, the Responsible Entity shall not be bound to make any apportionment or keep separate accounts of the investments of the Trust Fund and the Responsible Entity shall hold the whole of the Trust Fund for the time being as one fund;
- 12.1.1.16. should the Responsible Entity purchase any Authorised Investment in regard to which there is a liability, the

Responsible Entity shall have a right of indemnity out of the Trust Fund in respect of any such liability;

- 12.1.1.17. except as otherwise provided in this Deed, the Responsible Entity shall be indemnified and shall be entitled to be reimbursed out of the Trust Fund in respect of all stamp duty, goods and services tax and other imposts (State or Federal) which it may incur or which is or may be imposed in or about the receipt, collection, investment, disposal and distribution of moneys or property in the performance or exercise of its duties and powers under this Deed otherwise by virtue of or in respect of the Trust, and for the purpose of such indemnity and reimbursement, may from time to time realise such Investments of the Trust in such manner and at such times as it thinks fit;
- 12.1.1.18. in no circumstances will the Responsible Entity be under an obligation to commence, institute or prosecute or defend any action or proceedings in respect of the Trust, unless it is first satisfied that the Trust Fund is sufficiently adequate to indemnify it against costs, charges, expenses and any liability it may incur in connection with such action or proceedings;
- 12.1.1.19. the Responsible Entity is not liable, subject to the covenants by the Responsible Entity contained in this Deed, for any loss, costs, damages or expenses arising out of any act or omission on its part under this Deed, except where the act or omission is fraudulent, negligent or in breach of trust or any duty imposed on the Responsible Entity by deed or implied by law.
- 12.1.1.20. the Responsible Entity may, at its discretion, deduct from the income payable to each Unitholder or from the proceeds of any repurchase or Redemption of Units payable to a Unitholder, and retain as part of the Trust Fund, any income tax, withholding tax, stamp duty, financial institutions duty and any other tax or duty which is paid or payable by the Responsible Entity on account of or in respect of any Unitholder. Such sums so retained shall be applied in payment of the tax or duty to the Person entitled to it.
- 12.1.2. Nothing in this Deed shall operate to have the effect of exempting the Responsible Entity from or indemnifying the Responsible Entity against liability for breach of trust, where the Responsible Entity fails to show the degree of care and diligence required of the Responsible Entity, having regard to the powers, authorities or discretions conferred on the Responsible Entity by this Deed.

12.2. Liability of the Responsible Entity

- 12.2.1. Without prejudice to any liability of the Responsible Entity to the Unitholders or the Optionholders arising from fraud, negligence, breach of trust or breach of duty on the part of the Responsible Entity, the Responsible Entity has a right to be indemnified and reimbursed out of the Trust Fund for all liabilities, costs and expenses reasonably incurred while:
- 12.2.1.1. acting in accordance with its duties under this Deed; or
- 12.2.1.2. purporting bona fide to act in accordance with its duties under this Deed.
- 12.2.2. Without prejudice to clause 2.9.4.1 or to any liability of the Responsible Entity to the Unitholders or the Optionholders arising from fraud, negligence, breach of

trust or breach of duty on the part of the Responsible Entity, the Responsible Entity shall not be required to enter into any Obligations under which it is or may be exposed to any liability (actual, contingent, prospective or of some other kind) unless:

12.2.2.1. the Responsible Entity is indemnified to its absolute satisfaction against all liability which it may incur on that account; and

12.2.2.2. without affecting the generality of clause 12.2.2.1, the documentation in respect of the Obligations contains a provision in terms satisfactory to the Responsible Entity in its absolute discretion that is effective to:

12.2.2.2.1. limit the liability of the Responsible Entity in respect of those Obligations or in respect of a breach of those Obligations, to the Assets in the possession and control of the Responsible Entity in relation to the Trust (notwithstanding that, but for such limitation, the actual, contingent, prospective or other kind of liability of the Responsible Entity under or by virtue of those Obligations might at any time exceed the aggregate amount of the Assets in the possession and control of the Responsible Entity in relation to the Trust); and

12.2.2.2.2. put the Responsible Entity in a position so that it will not be required to satisfy any liability of the Responsible Entity in respect of those Obligations or in respect of a breach of those Obligations, out of any Assets other than the Assets in the possession and control of the Responsible Entity in relation to the Trust.

12.2.3. For this purpose:

12.2.3.1. the term "**Obligation**" includes all obligations and liabilities imposed upon or incurred by the Responsible Entity under any transaction, arrangement or document collateral to or entered into pursuant to this Deed and/or under any other transaction, arrangement or document whatsoever related in any way to the Trust; and

12.2.3.2. the term "**Assets**" includes all assets, property and rights real and personal of any nature whatsoever.

12.3. No Release of Responsible Entity's Duty

Nothing in this Deed shall limit the Responsible Entity's duty of diligence and vigilance in respect of the Trust or prevent or restrict any determination as to whether there has been a breach of trust nor affect the exclusive operation of the provisions of any statute prescribing the circumstances under which the Responsible Entity may obtain relief from breach of trust.

12.4. Responsible Entity's Duties

For the purposes of clause 12.5, the expression "**Responsible Entity's Duties**" means the duty of the Responsible Entity to exercise all due diligence and vigilance in watching and protecting the rights and interests of the Unitholders and the Optionholders.

12.5. Exercise of Responsible Entity's Powers

Notwithstanding anything contained in this Deed, the Responsible Entity:

- 12.5.1. shall not exercise any of its powers under this Deed if such exercise will, in the opinion of the Responsible Entity (in its absolute discretion), constitute or result in a breach of the Responsible Entity's Duties;
- 12.5.2. shall not be bound to enter into any Obligations (as defined in clause 12.2.3) unless the requirements of clause 12.2.2 have been satisfied.

12.6. Qualified Indemnity and Liability

- 12.6.1. Despite any other provision of this Deed, the Responsible Entity is not entitled to be indemnified against any expenses and liabilities incurred in the improper exercise of its powers and discretions or the improper performance of its duties under this Deed.
- 12.6.2. Despite any other provision of this Deed, all or part of any provision of this Deed which purports to limit or exclude the liability of any Person is modified in the following manner:
 - 12.6.2.1. the limitation of liability only operates to the extent permitted by the Corporations Act; and
 - 12.6.2.2. the limitation does not exclude nor reduce liability under the Corporations Act.

12.7. Subject to the provisions of the Corporations Act, each member of the Compliance Committee shall be entitled to be indemnified out of the assets of the Trust with respect to any liability incurred by that member arising from the acts or omissions of that person in the capacity as member of the Compliance Committee, provided that such indemnity shall:

- 12.7.1. not extend to a liability arising out of conduct involving a lack of good faith; but shall
- 12.7.2. extend to costs and expenses incurred:
 - 12.7.2.1. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Compliance Committee member or in which that person is acquitted; or
 - 12.7.2.2. in connection with an application, in relation to such proceedings, in which the Court grants relief to that person under the Corporations Law.

13. INVESTMENTS**13.1. Primary Investment Policy**

The primary investment policy of the Trust Fund shall be investment in Land so as to achieve income with security and capital appreciation over a term of years or such investment policy which is determined by the Responsible Entity from time to time.

13.2. Authorised Investments

- 13.2.1. The Trust Fund shall be invested, in accordance with the Primary Investment Policy, only in Authorised Investments, which shall consist of:

- 13.2.1.1. Land (or any share, interest or estate therein) for the purpose, or principally for the purpose, of deriving rent and any improvements, fixtures and fittings erected or installed or to be erected or installed thereon or rights conferring options, rights of first refusal or otherwise relating to the acquisition of Land;
- 13.2.1.2. plant, equipment, furnishings and fittings and any other personal property used in association with buildings and Land forming part of the Trust Fund;
- 13.2.1.3. Trustee Investments and cash;
- 13.2.1.4. moneys deposited with an authorised short term money market dealer as such expression is defined in section 65 of the Corporations Act;
- 13.2.1.5. moneys deposited with any member of the Australian Merchant Bankers' Association (or if this association has ceased to exist, of some other association substantially fulfilling the same objects of that association) or any Bank or any company related to a Bank or any other company determined by the Responsible Entity;
- 13.2.1.6. bills of exchange and promissory notes, whether purchased or discounted and which have been either drawn, issued, endorsed or accepted by a company falling within the category of companies referred to in clause 13.2.1.4 or 13.2.1.5 or any public statutory body constituted under a law of the Commonwealth of Australia or any State or Territory thereof;
- 13.2.1.7. the investment of money on security (whether by way of mortgage taken severally or otherwise) of any Land;
- 13.2.1.8. interests in a managed investment scheme (within the meaning of the Corporations Act) that is registered under Chapter 5C of the Corporations Act or in respect of which relief permitting such investment has been granted pursuant to the Corporations Act;
- 13.2.1.9. the preference or ordinary shares or debentures or any rights or options in respect of such shares or debentures of any corporation, the purchase price of which is supported by a valuation by an Approved Valuer made within 3 Months preceding acquisition of any such investment, whether such investment is by way of purchase, subscription or otherwise;
- 13.2.1.10. the lending of money pursuant to the powers contained in clause 10.4;
- 13.2.1.11. personal property not referred to in any of the preceding paragraphs of clause 13.2.1 and any share, interest or estate therein, provided the purchase price in each case is supported by a valuation of an Approved Valuer made within 3 Months preceding acquisition of any such investment;
- 13.2.1.12. any security issued by the Government of the Commonwealth of Australia or by any government of a State or Territory of the Commonwealth of Australia or any instrumentality of any such government;
- 13.2.1.13. life insurance policies, insurance bonds and other securities issued under the *Insurance Act 1945*;

- 13.2.1.14. any "eligible investment business" as defined in section 102M of the Tax Act.
- 13.2.2. Any Investment referred to in clause 13.2.1 may be acquired from any Person (including the Responsible Entity or any Affiliate of the Responsible Entity), provided that such acquisitions are in good faith and are otherwise not in breach of this Deed.

13.3. Investment Procedures

- 13.3.1. Before investing in any Authorised Investment, the Responsible Entity shall:
- 13.3.1.1. where the proposed investment is for the purchase or acquisition of Land, consider:
- 13.3.1.1.1. a valuation addressed to the Responsible Entity by an Approved Valuer instructed in writing by the Responsible Entity for the purpose, made as at a date no more than 6 Months (or such greater period as the Responsible Entity may determine) previously; and
- 13.3.1.1.2. a certificate by a solicitor determined by the Responsible Entity stating that, on completion of the acquisition of the Land, the Responsible Entity will obtain a clear and unencumbered title thereto or, if the Land is encumbered in any way, that the encumbrances (including any leases registered or unregistered) are not adverse to or inconsistent with the abovementioned valuation and that the solicitor has made usual searches and enquiries in respect of the Land and that such searches and enquiries do not disclose any material matter adverse to or inconsistent with the abovementioned valuation or, if he has not yet made those searches or enquiries, that if when made, those searches and enquiries disclose any material matter adverse to or inconsistent with the abovementioned valuation, the Responsible Entity will be able to either rescind any contract or agreement relating to the acquisition or will be entitled to receive satisfactory compensation;
- 13.3.2. Notwithstanding anything contained in this Deed, the Unitholders may by Ordinary Resolution, approve the purchase or sale of, or other dealing with, any property by the Trust, whether or not the same is at a price which is supported by an Approved Valuer's valuation or a commercial appraisal thereof

13.4. Variation of Investments

Except on termination of the Trust, any sale or disposal by the Responsible Entity of the main undertaking of the Trust shall while the Trust is Listed, be subject to the prior approval of Unitholders in general meeting. At the meeting held to approve any sale or disposal, any person who may benefit (in a capacity other than only as a Unitholder) from the sale or disposal and any person who, for the purposes of Part 1.2 Division 2 of the Corporations

Act, would be regarded as a person associated with that person, shall not vote on the resolution.

14. VALUATION OF TRUST FUND

14.1. Valuations

- 14.1.1. The Responsible Entity must establish and maintain a register recording the Value of each Investment.
- 14.1.2. The Responsible Entity must from time to time appoint in writing and with such reasonable remuneration as the Responsible Entity may determine, a Person determined by the Responsible Entity (but independent of the Responsible Entity) to be an Approved Valuer to prepare valuation reports in accordance with this Deed as instructed by the Responsible Entity.

14.2. Procedure for Valuations

- 14.2.1. The Responsible Entity shall cause a valuation to be carried out in accordance with this Deed of all or any of the Investments of the Trust when required to do so by the Corporations Act, and may cause a valuation to be carried out in accordance with this Deed of all or any of the Investments of the Trust at any time.
- 14.2.2. The Responsible Entity covenants that it will instruct a Property Valuer preparing a valuation report that it must prepare a valuation of the property that, amongst other matters required by the Responsible Entity:
 - 14.2.2.1. reports on the following:
 - 14.2.2.1.1. zoning particulars, including details of all original development approvals (if readily available);
 - 14.2.2.1.2. a complete assessment of all sources of property income;
 - 14.2.2.1.3. full details relating to all existing tenancies and licences;
 - 14.2.2.1.4. an assessment of any vacancy factor applicable to the property;
 - 14.2.2.1.5. a fully detailed analysis of all property outgoings, clearly showing those which are recoverable and those which must be borne by the property owner;
 - 14.2.2.1.6. an assessment of the property's net income potential, together with comments on stability and expectations of growth;
 - 14.2.2.1.7. an assessment of existing and potential supply and demand of comparable land and improvements which may influence the performance of the subject property; and
 - 14.2.2.1.8. the physical condition of the property, with the full details being supplied in relation to any upgrading works required in accordance with any existing statutory orders, together with any works considered necessary to upgrade capacity and/or marketability; and

14.2.2.2. takes into account the likely costs incidental to a sale of the property.

14.2.3. The cost of valuations carried out under this Deed are expenses of the Trust for the purposes of Part 11.

15. AUDITOR

15.1. Appointment of Auditor

15.1.1. The Responsible Entity shall from time to time appoint an Auditor upon such terms as to remuneration as determined by the Responsible Entity to perform the functions of the Auditor required by this Deed. Every such Auditor shall be a registered company auditor or firm of chartered accountants, at least one member of which is so registered.

15.1.2. The Auditor may be the auditor of the Responsible Entity or of any other trust whether of a similar nature to the trusts of this Deed or otherwise, provided that no Person shall be appointed as the Auditor of the Trust if that Person is or becomes:

15.1.2.1. an officer or employee of the Responsible Entity or any Related Body Corporate of it;

15.1.2.2. a partner, employer or employee of any such officer or employee; or

15.1.2.3. indebted to the Responsible Entity or the Trust or to any Related Body Corporate of the Responsible Entity in an amount exceeding \$5,000.00.

15.2. Retirement of Auditor

Subject to the Corporations Act, the Auditor may retire upon the expiration of 1 Month's notice in writing to the Responsible Entity, provided that the Auditor shall not retire within a period of 3 Months before or after the end of a Financial Year without the consent of the Responsible Entity.

15.3. Removal of Auditor

Subject to the Corporations Act, the Auditor may at any time be removed from office by the Responsible Entity.

15.4. Replacement of Auditor

Any vacancy in the office of Auditor shall be filled by the Responsible Entity appointing an Auditor who has the qualifications described in clause 15.1.

16. ACCOUNTS AND AUDIT

16.1. Books of Account

16.1.1. The Responsible Entity shall keep books of account in relation to the Trust and the Units and Options in such manner as will enable true and fair accounts of the Trust from time to time to be prepared and conveniently and properly audited in accordance with this Deed.

16.1.2. All books of accounts relating to the Trust Fund and the Units and Options must be open to the inspection of the Auditor. The Auditor must be provided by the Responsible Entity with such information, accounts and explanations as may be necessary for the performance of its duties under this Deed and, in particular, will be provided with a copy of all valuations of the Trust property.

16.2. Form of Accounts

The Accounts may be kept in written, typed, electronic or similar form of storage.

16.3. Half-Yearly and Yearly Accounts

16.3.1. The Responsible Entity shall prepare half-yearly Accounts in respect of each Half-Yearly Period ending 31 December and annual Accounts in respect of each Financial Year.

16.3.2. All such Accounts shall include a balance sheet and profit and loss statement together with such notes and explanations as may be necessary for the proper understanding of the Accounts.

16.3.3. The Accounts shall comply with the provisions of the Corporations Act affecting registered managed investment schemes.

16.3.4. All such Accounts must be open for inspection by Unitholders and Optionholders at the office of the Responsible Entity at all reasonable hours.

16.4. Accounts for Listed Trust

While the Trust is Listed, the Trustee will send or cause the Accounts to be sent to each Unitholder in accordance with the Listing Rules.

16.5. Auditing of Accounts

The Responsible Entity will, at the expense of the Trust, cause the Auditor to audit the Accounts of the Trust at the end of each Financial Year and review the Accounts of the Trust at the end of each Half-Yearly Period ending 31 December.

17. DISTRIBUTION OF INCOME AND CAPITAL**17.1. Gross Receipts Payable to Responsible Entity**

17.1.1. Unless otherwise expressly provided in this Deed, all moneys and property of every description payable to or receivable in respect of the Trust Fund shall be held by the Responsible Entity.

17.1.2. The Responsible Entity must in each Quarterly Period, cause to be paid, in the first instance out of the income of the Trust according to Accounting Standards and then (if the income is insufficient) out of the balance of the Trust Fund:

17.1.2.1. all costs, disbursements and other outgoings in respect of the Investments and the management and administration of the Trust or any investments which are properly chargeable against the income of the Trust in accordance with the Accounting Standards; and

17.1.2.2. the remuneration, costs, charges and expenses of the Responsible Entity payable in accordance with this Deed.

17.2. Net Income

17.2.1. In determining the "**Net Accounting Income**" of the Trust Fund, there shall be taken into account as at the last day of the Quarterly Period, all income accrued or due or receivable or received (and not previously accounted for) in respect of the Trust during that period and all fees, duties, costs, charges and expenses due or incurred by the Trust during that period, including without limitation:

17.2.1.1. the costs payable from the Trust Fund referred to in Part 11, other than costs not chargeable against income;

- 17.2.1.2. all costs and expenses incurred in repairing and maintaining Authorised Investments;
 - 17.2.1.3. if the Responsible Entity so determines, depreciation of Authorised Investments at rates to be determined by the Responsible Entity;
 - 17.2.1.4. any amount considered necessary to provide for the amortization of the cost of any leasehold property in which the Trust Fund may be invested;
 - 17.2.1.5. due provision for prepayments and allowance for bad debts and doubtful debts;
 - 17.2.1.6. all amounts allocated to a provision or reserve account;
 - 17.2.1.7. all tax payable by the Responsible Entity in respect of the Trust; and
 - 17.2.1.8. such other contingencies as in the opinion of the Responsible Entity are necessary to bring to account in order that the net income for the particular Quarterly Period may fairly represent the results of the Trust for that period.
- 17.2.2. The "**Net Taxable Income**" for each Quarterly Period is the amount which is calculated by the Responsible Entity as constituting the net income of the Trust Fund for that Quarterly Period ascertained in accordance with the Tax Act applied in respect of the relevant Quarterly Period.
- 17.2.3. 17.2.3.1. For the purposes of this Deed, the "**Distributable Amount**" for each Quarterly Period means the Net Taxable Income, together with any amount from time to time described in clause 17.2.3.2, provided that where the Net Accounting Income exceeds the Net Taxable Income, the Distributable Amount will be the Net Accounting Income unless the Responsible Entity, on or before the last day of the Quarterly Period, determines that the Distributable Amount will be the Net Taxable Income or some amount greater than the Net Taxable Income but less than the Net Accounting Income and in any such case, the Distributable Amount will be the amount so determined.
- 17.2.3.2. In addition to the distribution of income referred to in this clause 17.2.3, the Responsible Entity may, in its absolute discretion, distribute from time to time to Unitholders, the amount determined by the Responsible Entity representing capital, arising from the net proceeds of realisation of Investments (to the extent that it is not included in the Net Taxable Income) or representing other capital of the Trust Fund howsoever arising or representing amounts deducted from income of the Trust as allowance for depreciation of Authorised Investments, and any such amount shall be distributed by the Responsible Entity in cash to the Unitholders in proportion to the number of Units held by them as at the date specified in the request.
- 17.2.3.3. A distribution under clause 17.2.3.2 may not be made to the extent that the excess of the Net Taxable Income of the Trust over the Net Accounting Income of the Trust for a year of income is due to the grossing up of any amount of income of the Trust in respect of any tax credit or rebate unless the Responsible Entity is of the opinion that tax is likely to become payable by the Responsible Entity if it does not make the

distribution or unless the benefit of a tax credit or rebate cannot be made available to Unitholders. If a distribution is not made for this reason, credit is deemed to have been distributed to Unitholders pro rata to their entitlement to any Net Taxable Income of the Trust of the category or source of income in respect of which the credit or rebate applied.

- 17.2.4. The Responsible Entity may establish or cause to be established the following reserve accounts:
- 17.2.4.1. a building allowance reserve;
 - 17.2.4.2. an asset revaluation reserve; and
 - 17.2.4.3. a realisation reserve,
- and such other reserves as the Responsible Entity may from time to time determine ("**Reserve Account**").
- 17.2.5. If so determined by the Responsible Entity, any net realised and unrealised capital gains or losses of the Trust may be separated from the other receipts, profits and gains of the Trust and credited to a Reserve Account.
- 17.2.6. The Responsible Entity may distribute to the Unitholders from time to time by way of cash or other Assets of the Trust as at a date determined by the Responsible Entity an amount equal to so much of the net realised capital gains credited to that Reserve Account which is called the asset realisation reserve as the Responsible Entity may determine in the same manner as the Distributable Amount. The Responsible Entity must adjust a Reserve Account for the amount so distributed.
- 17.2.7. Any amount standing to the credit of a Reserve Account may be capitalised by a determination of the Responsible Entity. The capitalisation is to be effected by dividing the number of Units held by Unitholders by a proportion determined by the Responsible Entity which takes into account the number of Units held by the Unitholder, in the case of Partly Paid Units, the amount of the Issue Price paid up on those Partly Paid Units, the amount capitalised and other matters in relation to the particular Unitholder determined by the Responsible Entity. Upon or following the capitalisation (as the case may be):
- 17.2.7.1. new fully paid Units will be created and the number of Issued Units will increase accordingly;
 - 17.2.7.2. the new Units so created shall be distributed to Unitholders in proportion to the number of Units held by each Unitholder as at the date determined by the Responsible Entity and, in the case of Partly Paid Units, according to the proportion of the Issue Price paid up on those Partly Paid Units as at that date;
 - 17.2.7.3. the Responsible Entity must cause the Register to be amended and take other steps which the Responsible Entity considers necessary to amend the records of the Trust to reflect the capitalisation;
 - 17.2.7.4. the Responsible Entity may ignore fractions and round down each Unitholder's entitlement to the nearest whole Unit and any Units created under this clause 17.2.7.4 but not issued as a result of rounding down shall be cancelled.
 - 17.2.7.5. the sum capitalised must be debited to the relevant Reserve Account and thereafter be treated in the same manner as funds subscribed by Unitholders to the Trust; and

- 17.2.7.6. the additional Units created will rank for distribution of income and for all other purposes from the date determined by the Responsible Entity.
- 17.2.8. The number of additional Units created under clause 17.2.7 must (subject to clause 17.2.7.4) not be less than the number calculated in accordance with the following formula:
- $$\frac{A}{B}$$
- Where A equals the amount standing to the credit of the Reserve Account which is to be capitalised and
- B equals the Issue Price applicable on the day upon which the capitalisation is to take place.
- 17.2.9. Each unit created upon the capitalisation as provided for in clause 17.2.7 must be issued at the same price, being the Issue Price on that date or the price determined in accordance with clause 3.7, and the amount of that price shall be deemed to have been subscribed for each such Unit.
- 17.2.10. The Responsible Entity may determine in accordance with the Accounting Standards whether any receipt, profit, gain (whether realised or unrealised), payment, loss, outgoing, provision or reserve or any sum of money or investment in a Quarterly Period is or is not to be treated as being on income or capital account and whether and the extent to which any provisions and reserves need to be made for the Quarterly Period.
- 17.2.11. If any income is received at such a time that it is, in the opinion of the Responsible Entity, not practicable to make it available for distribution in respect of the Quarterly Period in which it is received, that income may be treated by the Responsible Entity as having been received in the next following Quarterly Period.

17.3. Distribution

- 17.3.1. The Distributable Amount for a Quarterly Period shall be transferred to a Distribution Account as at the last day of such period and distributed amongst the Unitholders registered on the Register as at the close of business on the last Business Day of such period and among those Unitholders who are entitled to a distribution of income, subject to any deduction to be made in respect of any tax or duty as provided for in clause 12.1.1.20 and subject to the provisions of clause 17.3.1 and clause 17.4.1.
- 17.3.2. Except for Units issued as provided in clauses 17.3.2A(ii) to (iv) inclusive, all Units on issue as at the last Business Day referred to in clause 17.3.1 rank equally with each other for distribution of income, provided that in the case of the allotment of Units in accordance with a Unit reinvestment plan for the acquisition of Units pursuant to clause 17.7, the Units shall rank for distribution of income as provided in that clause.
- 17.3.2A The Responsible Entity may in its discretion issue Units on terms that such Units:
- (i) participate fully for distribution of income in respect of the Quarterly Period in which they are issued;
 - (ii) do not entitle the holder of such Units to receive distribution of income in respect of the Quarterly Period in which they are issued;

- (iii) entitle the holder of such Units to receive distributions of income in respect of the Quarterly Period in which they are issued which is not greater than the proportion of the income to which a holder of one Unit holding the Unit during the whole of that Quarterly Period is entitled, multiplied by:
- (A) the number of days from the date of allotment of those Units to the end of that Quarterly Period divided by the total number of days in that Quarterly Period; or
 - (B) the number of Months from the first day of the Month following the date of allotment of those Units to the end of that Quarterly Period divided by 3,
- as determined by the Responsible Entity; or
- (iv) entitle the holder to a fixed rate distribution for a period to be determined by the Responsible Entity.
- 17.3.3. 17.3.3.1. In the case of Units which are Fully Paid Units for the whole of the Quarterly Period, such Units shall participate in a distribution of income in respect of that Quarterly Period according to the number of Fully Paid Units held by each Unitholder as at the close of business on the last Business Day of that Quarterly Period.
- 17.3.3.2. In the case of Units which are Partly Paid Units for the whole or part of a Quarterly Period, such Units shall participate in the distribution of income in respect of that Quarterly Period according to the number of Partly Paid Units held by each Unitholder as at the close of business on the last Business Day of that Quarterly Period and according to the proportion or different proportions of the Issue Price paid up on such Partly Paid Units and the proportion of the relevant Quarterly Period (calculated in Months) for which the relevant proportion or different proportions of the Issue Price of those Partly Paid Units have been paid up.
- 17.3.3.3. For the purposes of such calculations, where an instalment of the Issue Price of a Partly Paid Unit is paid into the Trust Fund, the Unit in respect of which such payment is made shall thereby be entitled to rank for an increased participation in income from the first day of the Month immediately following the date of such payment.
- 17.3.4. The Responsible Entity shall distribute the Distributable Amount which has arisen in respect of the Trust Fund on a Quarterly Period basis.
- 17.3.5. The Responsible Entity is empowered (but not bound) to make an apportionment or keep separate accounts of the different categories and sources of income that relate to different types of Investments and the costs, charges and expenses attributable to each of those types of income. The Responsible Entity may allocate to every Unitholder, all or part of the Net Accounting Income to which Unitholders are entitled from a particular category or source of income, in which case the Responsible Entity must advise the Unitholders of the extent to which income allocated to the Unitholders consists of income from a particular category and/or source.
- 17.3.6. During such period as there is a breach of the Listing Rules relating to Restricted Interests, or a breach of a Restriction Agreement relating to

Restricted Interests, the holder of the Restricted Interests is not entitled to receive any distribution of the Distributable Amount in respect of the Restricted Interests.

- 17.3.7. With the consent of all Unitholders, the Responsible Entity may make such distribution to Unitholders of such sum or sums and at such time or times as the Responsible Entity may determine.

17.4. Entitlement of Transferee

- 17.4.1. The transferee of any Unit, the subject of a transfer received or registered by the Responsible Entity prior to or on the last Business Day of a Quarterly Period, shall for the purpose of determining entitlements to the Distributable Amount be deemed to have been the Unitholder of such Unit to the exclusion of the transferor of that Unit.

17.5. Interest of Unitholders in Income

- 17.5.1. The Unitholders entitled to part of the Distributable Amount pursuant to clauses 17.3 and 17.4 have on the last day of each Quarterly Period, an absolute vested interest in and are entitled to call for payment of the Distributable Amount in the proportions determined according to clauses 17.3 and 17.4. As from the last day of each Quarterly Period, the amount of cash required to effect any distribution as at that date must not, for the purposes of any provision of this Deed, be treated as part of the Trust Fund, but as being held by the Responsible Entity for the Unitholders entitled to it in accordance with clauses 17.3 and 17.4.
- 17.5.2. If a question arises as to whether any money or property constitutes Net Accounting Income or Net Taxable Income or not, or as to whether any loss or outgoing or any charge or provision (including an allowance) of any kind whatsoever is chargeable against Net Accounting Income or Net Taxable Income or not, that question must be determined by the Auditor, acting as an expert and not as an arbitrator, and whose decision will be final and binding.
- 17.5.3. Deleted.

17.6. Distribution Statement -

- 17.6.1. The Responsible Entity must pay a distribution of income to be made to Unitholders (calculated in accordance with clause 17.3) within 3 Months of the last day of each Quarterly Period.
- 17.6.2. The Responsible Entity shall send (or cause to be sent) a distribution statement for each Quarterly Period to Unitholders.

17.7. Unit Reinvestment Plan

- 17.7.1. The Responsible Entity may in its discretion from time to time, by notice to all Unitholders confer upon all Unitholders of the Trust the right to reinvest the whole or part of their entitlement to a distribution of income as provided for in this Part 17 (in this clause 17.7, being called "**Entitlement**"), in further Units during such period as the Responsible Entity may determine. This right, if conferred by the Responsible Entity, may be exercised by the Unitholder giving written notice to the Responsible Entity (in the form determined by the Responsible Entity) requesting that the Responsible Entity retain and reinvest the whole or part of its Entitlement in Units.

- 17.7.2. 17.7.2.1. Where a Unitholder has given notice to the Responsible Entity as provided for in clause 17.7.1 and the notice is received not later than the last day of the relevant Quarterly Period, then the whole or part of (as the case may be) the Entitlement in respect of that Unitholder (less any deductions made in accordance with this Deed) is to be reinvested in Units, and unless the Responsible Entity otherwise determines, after a Distributable Amount in respect of a Unitholder is transferred to the Distribution Account and after any permitted deduction is made, the Responsible Entity shall cause that portion of the Unitholder's Entitlement to be reinvested in Units. Thereupon, an issue of Units shall take effect, with the number of Units calculated as if the Entitlement comprised Application Moneys, so that the number of Units to be issued will be the number (rounded down to the next whole number) arrived at by dividing the amount of the Entitlement of that Unitholder by the Issue Price of those Units as determined in accordance with clause 17.7.3.
- 17.7.2.2. The amount so reinvested under this clause 17.7 shall become part of the Trust Fund, and, in so far as they are applicable, the provisions of Part 3 shall apply to the issue of the Units.
- 17.7.3. The Issue Price payable for each additional Unit upon reinvestment is the Issue Price on the first Business Day after the end of the Quarterly Period to which the Entitlement relates or, while the Trust is Listed and the relevant Units are quoted, the volume weighted average sale price of those Units sold on the ASX during the five (5) trading days immediately following the end of the Quarterly period to which the Entitlement relates but not including:
- (A) any transaction defined in the ASX Business Rules as a "Special Crossing";
 - (B) any transaction defined in the ASX Business Rules as a "Crossing" that occurs prior to the commencement of normal trading or during the after-hours adjust phase; or
 - (C) any transaction pursuant to the exercise of Options,
- less such discount (if any) not exceeding 10% as the Responsible Entity may determine. If the amount to be reinvested in Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust on behalf of the relevant Unitholder.
- 17.7.4. The Responsible Entity must, upon issue of the additional Units, provide each Unitholder that has made a request for reinvestment under this clause 17.7 with a notice to the effect that the whole or part (as the case may be) of the Entitlement to which the Unitholder would otherwise be entitled has been reinvested on the Unitholder's behalf and the amount of any Statutory Revenue Charges withheld.
- 17.7.5. An offer of Units under clause 17.7 shall only be made if:
- 17.7.5.1. the Units are offered at the same price in each particular distribution made in respect of a Quarterly Period, which is not less than the price referred to in clause 17.7.3; and

17.7.5.2. the offer is made to all Unitholders of the relevant class of Units;

17.7.5.3. the offer specifies the period during which the offer may be accepted and specifies procedures for issue of the Units; and

17.7.5.4. the offer complies with the Corporations Act and if the Trust is Listed, the Listing Rules,

and provided that if the Responsible Entity proposes to offer the Units at a price which is less than the Issue Price:

17.7.5.5. all of the Units offered are of the same class; and

17.7.5.6. where the Responsible Entity reasonably considers that it would be in the best interests of Unitholders and Optionholders to exclude Foreign Members and not unfair to those Foreign Members, the Responsible Entity may sell the Units that the Foreign Members would have been entitled to but for the fact that they are Foreign Members, instead of issuing the Units to the Foreign Members, taking reasonable steps to maximise the sale price net of expenses of the sale and promptly pay to the Foreign Members the net sale price.

18. MEETINGS

18.1. Responsible Entity may Convene Meeting

The Responsible Entity may at any time convene a meeting of Unitholders and must do so if required by the Corporations Act.

18.2. Unitholders may Requisition Meeting

18.2.1. The Responsible Entity shall at any time on the requisition in writing of not less than 50 or one tenth in number (whichever is the less) of the Unitholders, convene a meeting of the Unitholders to consider and vote on a proposed Ordinary Resolution.

18.2.2. The requisition shall state the objects of the meeting and the terms of any Ordinary Resolution proposed to be submitted to the meeting. The requisition must be signed by the requisitionists and deposited at the registered office of the Responsible Entity in Queensland and may consist of several documents in like form each signed by one or more of the requisitionists.

18.2.3. If the Responsible Entity does not, within 21 days from the date of the requisition being so deposited, duly proceed to convene a meeting of Unitholders to be held within 2 Months of the date of receipt of the requisition, the requisitionists or a majority of them in number of Units held may themselves convene the meeting, but any meeting so convened shall not be held after 2 Months from the date on which the original requisition was received.

18.2.4. Any meeting convened under this clause 18.2 by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Responsible Entity, except that the requisitionists shall give the like notice to the Responsible Entity.

18.2.5. The omission to give such notice to or the non-receipt of such notice by the Responsible Entity shall invalidate the meeting, but the Responsible Entity may waive such omission or non-receipt.

18.3. Notice of Meeting

- 18.3.1. Except as otherwise provided in this Deed or by law, at least 21 days' notice specifying the place, day and hour of meeting, the general nature of the business to be transacted, the terms of any resolution to be proposed and such further information as the Responsible Entity may think fit or the Corporations Act requires, shall be given to Unitholders and any other person required by the Corporations Act.
- 18.3.2. The accidental omission to give such notice to or the non-receipt of such notice by any Unitholder shall not invalidate the meeting.

18.4. Right of Audience

The Auditor and the representatives of the Responsible Entity shall be entitled to attend any meeting of Unitholders with or without their respective solicitors and/or counsel and all such Persons shall have the right of audience thereat.

18.5. Chairman

Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Unitholders.

18.6. Quorum

- 18.6.1. No business shall be transacted at any such meeting unless a quorum is present when the meeting proceeds to business. Subject to clause 18.6.4, the quorum shall be at least 5 Persons (or if there are fewer than 5 Unitholders, the number of Persons holding Units) holding or representing by proxy or attorney, at least 10% of the number of Issued Units.
- 18.6.2. If within 15 minutes from the time appointed for any meeting, a quorum is not present, the meeting shall:
- 18.6.2.1. if called for the purpose of passing an Ordinary Resolution, stand adjourned to the same day in the next week at the same time and the same place;
- 18.6.2.2. if called for the purpose of passing a Special Resolution or an Extraordinary Resolution, stand adjourned for such period as the chairman shall direct.
- 18.6.3. The Responsible Entity must give notice to all Unitholders of an adjourned meeting in accordance with clause 18.3 and, if applicable, that a Special Resolution or an Extraordinary Resolution will be proposed at the adjourned meeting and that the requirements for a quorum are as set out in clause 18.6.4.
- 18.6.4. At an adjourned meeting, the Unitholders present in person or by proxy or attorney (whatever their number and the number of Units) shall form a quorum and shall have power to pass the resolutions to be proposed thereat.

18.7. Restriction on Voting

During such period as there is a breach of the Listing Rules relating to Restricted Interests, or a breach of a Restriction Agreement relating to Restricted Interests, the holder of the Restricted Interests is not entitled to exercise any voting rights in respect of the Restricted Interests.

18.8. Chairman to have Casting Vote

In the case of an equality of votes, the chairman shall, both on a show of hands and on a poll, have a second or casting vote in addition to the vote or votes (if any) to which he may be entitled as a Unitholder.

18.9. Manner of Poll

- 18.9.1. If at any meeting a poll is demanded, it shall be taken in such manner and either at once or after an adjournment as the chairman directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.
- 18.9.2. Any poll demanded at any meeting of Unitholders on the election of the chairman or any question of adjournment shall be taken at the meeting without adjournment.
- 18.9.3. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which the poll has been demanded.

18.10. Effect of Resolution

A resolution (whether an Ordinary Resolution, a Special Resolution or an Extraordinary Resolution) passed at a meeting of the Unitholders duly convened and held in accordance with this Deed shall be binding upon all the Unitholders whether present or not present at such meeting and each of the Unitholders and the Responsible Entity shall be bound to give effect thereto accordingly.

18.11. Joint Holders

In the case of joint holders of a Unit, the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and for this purpose, seniority shall be determined by the order of priority in which their names stand in the Register.

18.12. Corporations

- 18.12.1. Except where precluded by an applicable law, a corporation being a Unitholder may vote:
- 18.12.1.1. by any representative duly authorised in writing in the manner set out in the Corporations Act; or
- 18.12.1.2. by proxy or attorney.
- 18.12.2. The representative, proxy or attorney shall be entitled to speak, demand a poll, vote, act as a proxy and in all other respects exercise the rights of a Unitholder and shall be reckoned as a Unitholder for all purposes.

18.13. Person of Unsound Mind

A Unitholder of unsound mind or in respect of whom an order has been made by a court having jurisdiction in respect of mental health, may vote whether on a show of hands or on a poll, by his committee, curator bonis or other Person in the nature of a committee or curator bonis appointed by such court and such committee, curator bonis or other Person may vote by proxy.

18.14. Objection to Qualification of Voter

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting and his decision shall be final and conclusive.

18.15. Proxies

- 18.15.1. Except as precluded by any applicable law, votes may be given by proxy in accordance with the conditions set out in clause 18.15.
- 18.15.2.
 - 18.15.2.1. Except as precluded by any applicable law, on a show of hands and on a poll, votes may be given either personally or by proxy and a proxy will have the same rights as the appointing Unitholder to attend and speak at a meeting of Unitholders, to vote at the meeting and to be counted in a quorum.
 - 18.15.2.2. Except as precluded by any applicable law, a Unitholder entitled to attend and vote at a meeting of Unitholders is entitled to appoint not more than 2 proxies to attend, speak and vote at such meeting.
- 18.15.3. The instrument appointing a proxy shall comply with the Corporations Act.
- 18.15.4. Any Person may act as a proxy whether or not the Person is a Unitholder.
- 18.15.5. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority (or a legible transmission copy of the instrument of proxy which has been signed under the hand of the appointer) shall be deposited with or received by the Responsible Entity or its duly appointed agent at least 48 hours before the time appointed for holding the meeting or adjourned meeting at which the Person named in the instrument proposes to vote and in default of this requirement, the instrument or proxy shall not be treated as valid.
- 18.15.6. An instrument appointing a proxy may be in the following form or in any form which the Responsible Entity shall approve:

"I, _____ of _____ being a Unitholder of the Australian Education Trust hereby appoint _____ of _____ to vote for me and on my behalf at the meeting of the Unitholders to be held on the _____ day of _____ and at any adjournment thereof.

Signed at _____ by me this _____ day of _____

I direct my proxy to vote for/against the proposed resolution. (In the absence of direction, the proxy may vote as he thinks fit or abstain from voting.)"
- 18.15.7. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal, revocation of the proxy or of the authority under which the proxy was executed or transfer of the Unit in respect of which the proxy was given, provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the Trustee before the commencement of the meeting or adjourned meeting at which the proxy is used.

18.16. Adjournment of Meeting

Subject to clause 18.6, the chairman may, with the consent of any meeting of Unitholders, adjourn the same from time to time and from place to place.

18.17. Minutes

- 18.17.1. Minutes of all resolutions passed and proceedings at every meeting of Unitholders shall be made and duly entered in a book to be provided for that purpose by the Responsible Entity and any such minutes, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting (if any) of Unitholders and if recorded in the manner required by the Corporations Act, shall be conclusive evidence of the matters therein stated.
- 18.17.2. Until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat and proceedings to have been duly passed and had.

18.18. Signed Document Passing Resolution

If all of the Unitholders record in writing the Unitholders' decision to a particular effect, the recording of the decision counts as the passing by the Unitholders of a resolution to that effect, and the record made of the decision has effect as minutes of the passing of the resolution.

19. VARIATION OF TRUST DEED

Subject to the Corporations Act, the Responsible Entity shall be entitled by deed supplemental to this Deed to alter, modify, add to or delete any provisions of this Deed (including this Part 19) provided that any alteration, modification, addition or deletion cannot affect an entitlement under clause 17.3.1., once vested..

20. TERMINATION OF TRUST**20.1. Termination by Extraordinary Resolution**

If at a duly convened meeting of Unitholders, an Extraordinary Resolution is passed that the Trust will determine, the Trust shall terminate forthwith.

20.2. Termination for Decrease in Income or Capital

If at any time legislation is enacted which in the opinion of the Responsible Entity will have the effect of materially diminishing the amount of income or capital growth of the Trust Fund available for distribution to Unitholders, then the Responsible Entity may, subject to law, terminate the Trust.

20.3. Termination required by Corporations Act

Despite any other provision of this Deed, the Responsible Entity must terminate the Trust in accordance with this clause 20 and the Corporations Act if required to do so under Part 5C.9 of the Corporations Act.

20.4. Realisation of Trust Fund

- 20.4.1. On termination of the Trust, the Responsible Entity must sell and realise the Trust Fund. The sale, so far as reasonably practicable, must be completed within 180 days after the termination of the Trust, but the Responsible Entity may postpone the sale until after the expiration of this period, where it considers that the postponement is in the best interests of Unitholders.
- 20.4.2. The Responsible Entity is entitled to retain out of the proceeds of sale and realisation of the Trust Fund, its remuneration pursuant to this Deed and full provision for all actual or contingent costs, charges, duties, expenses, claims and demands incurred, made or anticipated by the Responsible Entity in

connection with or arising out of the termination of the Trust, as well as the fees of any agents, solicitors, accountants, valuers or other Persons whom the Responsible Entity may employ in connection with the termination of the Trust, and out of the moneys so retained are each entitled to be indemnified against any such costs, charges, duties, expenses, claims and demands.

- 20.4.3. In the event of there being any deficiency of the Trust Fund as compared with the Liabilities of the Trust, the holders of the Partly Paid Units at the time of termination of the Trust shall be liable to pay to the Responsible Entity upon demand by the Responsible Entity, the balance of the Issue Price unpaid on those Partly Paid Units or such lesser amount as is so demanded and is necessary to meet such deficiency, and in the latter case, the amount payable for Partly Paid Units shall be calculated on the basis that the amount of deficiency is divided and payable amongst all Partly Paid Units in proportion to the respective proportions of the Issue Price unpaid on those Partly Paid Units.
- 20.4.4. 20.4.4.1. On realisation of the Trust Fund, the Responsible Entity may (subject to clause 20.4.2) distribute to Unitholders all net cash proceeds derived from the realisation of the Trust Fund and available for the purpose of distribution.
- 20.4.4.2. Subject to the terms of the issue of any Unit, all Units will rank equally for that purpose, except that in calculating the amount to be distributed to each Unitholder, there shall be added to the net cash proceeds, the balance of the Issue Price remaining unpaid in respect of the Partly Paid Units and there shall be deducted from the amount to be distributed to holders of Partly Paid Units, the amount of the balance of the Issue Price remaining unpaid in respect of those Partly Paid Units.
- 20.4.5. In respect of Certificated Holdings only, every such distribution may be made only against delivery to the Responsible Entity of the Certificate relating to the Units in respect of which the same is made or proof of loss or destruction of such Certificate which is satisfactory to the Responsible Entity, together with such form of receipt and discharge as may be required by the Responsible Entity.
- 20.4.6. The Responsible Entity covenants that it will ensure that the Trust is wound up as soon as reasonably practicable, having regard to the interests of Unitholders and the decision to wind up the Trust.
- 20.4.7. Following the termination of the Trust in accordance with clause 20, the Responsible Entity must prepare final accounts for the Trust covering the period since the last financial accounts were prepared. The Responsible Entity must have those final accounts audited by an independent registered company auditor.

21. MISCELLANEOUS

21.1. Copy of Deed

- 21.1.1. A copy of this Deed (as amended from time to time) shall at all times during usual business hours be made available by the Responsible Entity at its office in Queensland for inspection by Unitholders or Optionholders or prospective Unitholders or Optionholders.
- 21.1.2. A copy of this Deed (as amended from time to time) will be provided to Unitholders and Optionholders on request on payment of such reasonable sum as is determined by the Responsible Entity.

21.2. Payments to Unitholders

- 21.2.1. Money payable by the Responsible Entity to a Unitholder may be paid in any manner the Responsible Entity decides.
- 21.2.2. Cheques issued by the Responsible Entity that are not presented within 6 Months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Unitholder, the money may be held without interest in an Authorised Investment pending claim by the Unitholder.
- 21.2.3. Where the Responsible Entity attempts to make a payment by electronic transfer of funds to a Unitholder and the transfer is unsuccessful on 3 occasions, the money may be held without interest in an Authorised Investment after failure of the third attempt pending claim by the Unitholder.
- 21.2.4. Only whole cents are to be paid, and any remaining fraction of a cent becomes part of the Trust Fund.
- 21.2.5. A payment to any one of joint Unitholders will discharge the Responsible Entity in respect of the payment.
- 21.2.6. The Responsible Entity may deduct from any amount to be paid to a Unitholder, or received from a Unitholder, any amount of Statutory Revenue Charge (or an estimate of it) which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Responsible Entity considers should be deducted.
- 21.2.7. Payment of a cheque, if duly presented and paid, and payment of moneys by electronic transfer shall be a satisfaction of the moneys payable and shall be a good discharge to the Responsible Entity.

21.3. Proper Law

The rights, liabilities and obligations inter se of the Responsible Entity, the Unitholders and Optionholders shall be governed by the law of the State of Queensland and any proceedings to enforce such rights, liabilities and obligations may be taken in the courts of that State.

21.4. Notices to Unitholders and Optionholders

- 21.4.1. Any notice required to be given to a Unitholder or Optionholder under this Deed shall be deemed to have been duly given if it is in writing and either delivered or sent by post in a properly pre-paid envelope addressed to such Unitholder or Optionholder at the address as appearing in the Register.
- 21.4.2. In the case of joint Unitholders or Optionholders, a notice given to that joint holder whose name stands first in the Register shall be sufficient notice to all such joint Unitholders or Optionholders.
- 21.4.3. Any notice given by post shall be deemed to have been served on the third day following the day when it was posted and in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted by pre-paid post and a statement signed by the Responsible Entity that it was so posted and when, shall be conclusive of those facts.

22. COMPLAINTS AND DISPUTES

22.1. Receipt of Complaint

If the Responsible Entity receives an expression of dissatisfaction concerning the management or administration of the Trust ("**Complaint**") from a Unitholder ("**Complainant**"), the Responsible Entity must acknowledge the receipt of the Complaint

within 14 days of receiving it, which acknowledgment must set out the procedure which will be adopted in relation to the Complaint.

22.2. Register of Complaints

The compliance officer for the Responsible Entity must keep a register of Complaints ("**Complaints Register**") and must enter on the register the following matters:

- 22.2.1. the date of the receipt of the Complaint;
- 22.2.2. the name and address of the Complainant;
- 22.2.3. the date of the acknowledgment sent to the Complainant under clause 22.1;
- 22.2.4. the date, if any, the Complaint was referred to the Compliance Committee under clause 22.3; and
- 22.2.5. the date of the final response having been sent to the Complainant under clause 22.4.

22.3. Consideration of Complaint

Within 14 days after the receipt of the Complaint, the compliance officer must ensure the Complaint is properly dealt with and must make a decision on the following matters:

- 22.3.1. whether the Complaint has merit and warrants further investigation;
- 22.3.2. if further investigation is recommended, who will conduct the investigation;
- 22.3.3. any remedial action, timing of such action and the person or persons responsible for such action;
- 22.3.4. whether the Complaint warrants referral to the Compliance Committee for a decision; and
- 22.3.5. the nature of the response to the Complainant and who will prepare the response.

22.4. Final response

Within 14 days after a decision being made in respect of a Complaint under clause 22.3, the person appointed to prepare the response under clause 22.3.5 must prepare the response and send it to the Complainant. The response must:

- 22.4.1. contain the reasons for any decision made in respect of the Complaint;
- 22.4.2. if any remedial action has been recommended under 22.3.5, set out the details of such action;
- 22.4.3. contain an outline of any remedies available to the Complainant; and
- 22.4.4. advise the Complainant of any further avenue for complaint if the Complainant is not satisfied with the response.

22.5. No charge

The Unitholder will not be charged for any costs or expenses of the Responsible Entity in dealing with a Complaint under this clause 22, subject to any requirement of the Corporations Act to the contrary.

22.6. Reporting

The compliance officer must report to the Compliance Committee quarterly detailing each Complaint received over the previous quarter and current progress with each Complaint including the nature of any decision made in respect of the Complaint.

22.7. Rules

The Responsible Entity may make rules for dealing with complaints and resolving disputes and may vary those rules as it considers appropriate.

