

# **Constitution**

## **Astro Japan Property Trust**

**Babcock & Brown Japan Property Management Limited**

ABN 94 111 874 563

**Incorporating amendments made by amending deeds dated  
24 March 2005, 27 September 2006, 21 November 2007, 14  
April 2009, 23 July 2009, 12 November 2009, 16 December  
2009, 29 March 2010 and 10 November 2010**

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Reference JHG:DB:25F

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## This trust deed

is made on 2005 by:

**Babcock & Brown Japan Property Management Limited**

ABN 94 111 874 563

of Level 39, Chifley Tower, 2 Chifley Square, Sydney, New South Wales  
(Trustee)

### Recitals

- A. The Trustee intends that this trust deed will be the constitution for a unit trust known as Astro Japan Property Trust.
- B. The Trustee intends that this trust will be registered as a managed investment scheme under section 601EB(1) of the Corporations Act and listed on the Official List.

**This deed witnesses** that:

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## 1 Definitions and Interpretation

### 1.1 Definitions

- (a) In this deed, unless the context otherwise requires:

**Application** means any of the following, as the case requires:

- (1) an application for Units;
- (2) a notification of the exercise of or application to exercise Options;  
or
- (3) an application for Options;

**Application Moneys** means the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application for Units or Options;

**Approved Valuer** means a valuer appointed by the Trustee;

**ASIC** means the Australian Securities and Investments Commission or any body that replaces it;

**ASTC** means ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

**ASTC Settlement Rules** means the ASTC Settlement Rules and any other rules of ASTC which apply while the Units are CHESS Approved Securities, each as amended from time to time;

**ASX** means ASX Limited;

**Attached Security** means a Security which is from time to time Stapled or to be Stapled to a Unit;

**Auditor** means the auditor from time to time appointed by the Trustee to audit the Trust;

**Business Day** has the meaning given to that term in the Listing Rules;

**CHES Approved Securities** means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, ASTC) in accordance with the ASTC Settlement Rules;

**Commonwealth** means the Commonwealth of Australia and its external territories;

**Compliance Committee** means the compliance committee for the Trust as required by section 601JA of the Corporations Act or otherwise as appointed by the Trustee;

**Compliance Plan** means the compliance plan for the Trust as required by section 601HA of the Corporations Act;

**Corporations Act** means Corporations Act 2001;

**Corresponding Number** in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to an issued Unit at that time;

**Costs** includes costs, charges, fees, expenses, commissions, Liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

**Current Unit Value** means the amount calculated as follows;

$$CUV = \frac{NAV}{NU}$$

where:

CUV is Current Unit Value

NAV is Net Asset Value

NU is the number of Units on Issue;

**Distributable Amount** means the amount (if any) determined in accordance with clause 9.3(a);

**Distribution Calculation Date** means 30 June in each year and any other date that the Trustee determines to be a Distribution Calculation Date;

**Distribution Date** means either:

- (1) a day not more than three calendar months after the Distribution Calculation Date for the relevant Distribution Period; or
- (2) if the Trustee determines that it is in the interests of Unitholders to delay the Distribution Date for a particular Distribution Period, the date determined by the Trustee as being the appropriate Distribution Date for the Distribution Period;

**Distribution Entitlement** means the entitlement to any Distributable Amount determined in accordance with clause 9.3(b);

**Distributable Income for a Distribution Period** means the amount (if any) determined in accordance with clause 9.2;

**Distribution Period** means:

- (1) for the first Distribution Period, the period from the date of establishment of the Trust to the next Distribution Calculation Date;
- (2) for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- (3) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

**Exercise Price** in relation to a Unit issued on exercise of an Option, means the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with clause 5;

**Financial Year** means:

- (1) for the first Financial Year, the period from the date of establishment of the Trust to the next 30 June;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

**Foreign Interests** means the Units or Options a Foreign Unit Holder would have been entitled to but for clause 4.7(a) and where the Units are Stapled, includes the Stapled Securities of which those Units would have formed part;

**Foreign Unit Holder** means a Unitholder whose address appearing in the Register is in a country outside Australia;

**Forfeited Unit** means a Partly Paid Unit which is forfeited under clause 3.9(b) by non-payment of an Instalment;

**Fully Paid Unit** means a Unit on which the whole of the Issue Price has been paid;

**Fund** means all the cash, investments, rights and other property of the Trust (including, but not limited to, each Instalment in respect of each Partly Paid Unit);

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

**Gross Asset Value** means the value of the Fund;

**Holder** means a Unitholder or Optionholder (as the context may require);

**Instalment** means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue;

**Issue Price** in relation to a Unit or an Option means the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with the clause in clause 5 pursuant to which the Unit or Option was issued and in respect of a Unit issued on the exercise of an Option, means the Exercise Price;

**Liabilities** means the liabilities in respect of the Trust and includes:

- (1) unpaid administrative costs and expenses including fees of the Trustee;
- (2) accrued charges in respect of or owing in relation to any asset of the Fund;
- (3) amounts of all borrowings; and
- (4) any provision for Tax which in the opinion of the Trustee should be taken into account;

**Listed** means admitted to the Official List;

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

**Market Price** has the meaning given in clause 1.3;

**Meeting** means a meeting of Holders convened in accordance with this deed;

**month** means calendar month;

**Net Asset Value** means the Gross Asset Value less the following:

- (1) all amounts required to meet all Costs (including the amount of any provisions the Trustee determines, in consultation with the Auditor, should be made);
- (2) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unitholders on the day on which the Net Asset Value is determined; and
- (3) any amount paid in advance of a call on a Partly Paid Unit;

**Official List** means the official list of ASX;

**Official Quotation** or **Officially Quoted** means official quotation by ASX of the Units, Options or Stapled Securities, as the case requires;

**Operating Income** means the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to:

- (a) property outgoings;
- (b) repairs and maintenance;
- (c) interest and other borrowing costs;

- (d) fees paid to the Trustee; and
- (e) any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust;

**Option** means an option granted by the Trustee in respect of unissued Units;

**Optionholder** means the person for the time being registered as a holder of an Option, including any persons jointly registered;

**Paid-up Proportion** in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

**Partly Paid Unit** means a Unit in respect of which any portion of its Issue Price remains unpaid;

**PDS** means a Product Disclosure Statement lodged under Part 7.9 of the Corporations Act in respect of an issue of Units or Options;

**Quarter** means each 3 month period ending on the last day of March, June, September and December in each year;

**Register** means the register of Unitholders or Optionholders maintained by the Trustee pursuant to clause 1.6(c) or Chapter 2C of the Corporations Act, as the context requires;

**Security** has the meaning given to that term in section 92(1) of the Corporations Act;

**Stapled** means in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others;

**Stapled Entity** means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units;

**Stapled Security** means a Unit and each Attached Security which are Stapled together;

**Stapled Security Register** means the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 20.6;

**Stapling** means the process that results in the Units and Attached Securities being and remaining Stapled to each other;

**Stapling Date** means the date and time determined by the Trustee to be the first day and time on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities;

**Tax** means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

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

**Terms of Issue** in relation to a Stapled Security, Unit or Option means the terms and conditions upon which that Stapled Security, Unit or Option is issued (other than those in this deed);

**Terms of Offer** in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

**Transmission Event** means:

- (1) in respect of a Holder who is an individual:
  - (A) the death of the Holder;
  - (B) the bankruptcy of the Holder; or
  - (C) the Holder becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (2) in respect of a Holder who is body corporate, the dissolution of the Holder or the succession by another body corporate to the assets and liabilities of the Holder;

**Trust** means the trusts constituted under this deed;

**Trustee** includes the trustee of the Trust for the time being or any other company named in ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust;

**Unit** means an undivided interest in the Trust as provided for in this deed;

**Unitholder** means a person registered as the holder of a Unit, including any persons jointly registered;

**Unit Holding** means the total number of Units held by a Unitholder;

**Units on Issue** means the number of Units created under this deed and not cancelled;

**Unstapled** means in relation to a Unit and an Attached Security or Attached Securities, no longer being linked together so that one may be dealt with without the other or others; and

**Unstapling Date** means the date when Stapling ceases to apply, determined pursuant to clause 20.4.

- (b) Unless otherwise specified in this deed, terms defined for the purposes of the Corporations Act are used in this deed with the same meaning.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;

- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (e) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (i) a reference to cash includes cheques and bank cheques;
- (j) references to sums of money are to amounts in Australian dollars; and
- (k) a reference to the proper performance of a duty is a reference to the proper performance of the duty after all available appeals from each judgment in respect of the matter have been exhausted.

### 1.3 Market Price

- (a) In this clause 1.3, **Interest** means:
  - (1) where a Unit does not form part of a Stapled Security, a Unit; and
  - (2) where a Unit forms part of a Stapled Security, a Stapled Security.
- (b) Subject to clause 1.3(d), the **Market Price** for an Interest on any Business Day is:
  - (1) for all purposes other than the purposes of clauses 5.10 and 5.11, either:
    - (A) the average of the daily volume weighted average sale price for an Interest for all sales on ASX for the period of 10 Business Days immediately preceding (but not including) the relevant Business Day (whether or not a sale was recorded on any particular day); or
    - (B) the price obtained pursuant to a bookbuild arranged by a reputable merchant bank with experience in arranging bookbuilds in the Australian equity market, provided that that merchant bank has provided written certification that the bookbuild was conducted in accordance with normal market practice for bookbuilds;
  - (2) for the purposes of clause 5.10, an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and which in the opinion of an Approved Valuer will

approximate the market price of an Interest at or around the relevant date; and

- (3) for the purposes of clause 5.11, the average of the daily volume weighted average sale price in cents per Interest (rounded to the nearest full cent) of all Interests sold on the ASX over the 10 trading days ending on the trading day which is 3 trading days before the date that Interests are to be allotted pursuant to clause 9.5 (excluding transactions referred to in clause 1.3(c)).

If in respect of clause 1.3(b)(1)(A) or 1.3(b)(3), the Trustee considers the period of 10 Business Days or 10 trading days (as applicable) to be inappropriate in the circumstances, it can extend or reduce the period or change the timing of the period.

- (c) For the purposes of clauses 1.3(b)(1)(A), 1.3(b)(3) and the definitions of Market Capitalisation and Performance Unit Issue Price in paragraph 1 of Schedule 2:

- (1) the following transactions are excluded when calculating Market Price:

- (A) any transaction defined in the ASX Market Rules as a “Special Crossing”;
- (B) any transaction defined in the ASX Market Rules as a “Crossing” that occurs prior to the commencement of normal trading or during the closing phase or after-hours adjust phase;
- (C) any transaction pursuant to the exercise of Options over Units; or
- (D) any transaction which the Trustee considers is not reflective of natural supply and demand.

- (d) If the Trustee believes that the calculations in clause 1.3(b) do not provide an appropriate reflection of the market price of an Interest, the Market Price on any Business Day is an amount determined by an Approved Valuer or a reputable merchant bank appointed by the Trustee who, in either case:

- (1) is independent of the Trustee; and
- (2) has relevant market experience in determining market price in circumstances similar to those in which the determination of the market price of an Interest is being made,

to be the fair market price of the Interest, having regard to:

- (3) the nature of the proposed offer of Interests for which purpose the market price of an Interest is being calculated; and
- (4) the circumstances in which the proposed offer of Interests will be made.

- (e) The Market Price of an Option on any Business Day must be determined in the same manner as the Market Price for an Interest is determined.

- (f) The Buy-Back Market Price for an Interest on any Business Day is the average of the market price (as that term is defined in the Listing Rules) per Interest of all Interests sold on the ASX during the last 5 days on which sales in Interests were recorded before the relevant Business Day.

#### **1.4 General compliance provision**

On and from the date the Trust becomes a registered scheme:

- (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 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this deed.
- (c) this clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.

#### **1.5 Inconsistency with the Listing Rules**

- (a) Despite anything to the contrary in this clause 1.5, this clause 1.5 has effect subject to clause 1.4.
- (b) If the Trust is admitted to the Official List, the following clauses apply:
- (1) despite anything in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
  - (2) nothing in this deed prevents an act being done that the Listing Rules require to be done;
  - (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);
  - (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
  - (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
  - (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is taken not to contain that provision to the extent of the inconsistency.

#### **1.6 Additional Listing Rule requirements**

If the Trust is admitted to the Official List:

- (a) the Trustee 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 3.8 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 schedule 1;
  - (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 or Option must not be divested of that Unit or Option except in any of the following cases:
- (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit or Option 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 3.10;
- (c) the Trustee must not divest a Unitholder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the ASTC Settlement Rules. Without limitation to clause 1.5, at all times that the Trust is admitted to the Official List the Trustee must comply with ASTC Settlement Rule 5.12.

## 1.7 Corporations Act prior to registration

Whilst and so long as the Trust is not a registered scheme, the Trustee must comply with the following provisions of the Corporations Act as far as the circumstances admit as if the Trust was a registered scheme and the Trustee was the responsible entity of that scheme, namely:

- (a) Chapter 2C (Registers);
- (b) Part 2G.4 (Meetings of Members of Registered Managed Investment Schemes); and
- (c) Chapter 2M (Financial Reports and Audit).

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## **2 The Trust**

### **2.1 Trustee**

Babcock & Brown Japan Property Management Limited ABN 94 111 874 563 is appointed and agrees to act as trustee of the Trust.

### **2.2 Name of Trust**

The name of the Trust is Astro Japan Property Trust. The Trustee may change the name of the Trust.

### **2.3 Vesting of assets in Trustee**

Each asset of the Fund is vested in, and is held by, the Trustee on behalf of the Unitholders.

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## **3 Interest of Unitholder**

### **3.1 Division into Units**

- (a) The beneficial interest in the Fund is divided into Units. No Unit confers an interest in a particular part of the Trust or the Fund.
- (b) A Holder may not:
  - (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
  - (2) claim or exercise any right in respect of any asset of the Fund or lodge any caveat or other notice affecting any asset of the Fund; or
  - (3) require that any asset of the Fund be transferred to a Holder.
- (c) Holders may not give any directions to the Trustee (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Trustee to do or omit doing anything which may result in:
  - (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 4.7; or
  - (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

### **3.2 Fractions and splitting**

- (a) Units may be issued in fractions at the discretion of the Trustee, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate such fractions.

- (c) The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:
  - (1) immediately amend the Register to record the consolidation or split;
  - (2) notify the Unitholder within 30 days of the consolidation or split; and
  - (3) ensure that each Unit is consolidated or split on the same basis as each Attached Security.
- (d) The Trustee has the power, in giving effect to any consolidation or split of Units, to:
  - (1) make provision for the issue of fractional certificates;
  - (2) make cash payments;
  - (3) determine that all or any fractions may be disregarded;
  - (4) appoint a trustee to deal with any fractions on behalf of Unitholders; and
  - (5) round up each fractional entitlement to the nearest whole Unit.

### 3.3 Issue of Partly Paid Units

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units, the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The Terms of Issue of any Partly Paid Unit may provide that the whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue of the Partly Paid Unit and in accordance with this deed.

### 3.4 Joint Holders

Where two or more persons are registered as the Holders of a Unit or an Option (**joint holders**) they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit or Option as joint tenants, on the following conditions:

- (a) except where otherwise required under the ASTC Settlement Rules, the Trustee is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;

- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

### **3.5 Classes of Units**

- (a) The Trustee may at any time issue Units in two or more classes with rights, obligations and restrictions as it determines.
- (b) The Trustee may convert any Units from one class to another class or reclassify Units from one class to another.
- (c) The Trustee must enter on the Register the class or Terms of Issue of Units held by a Unitholder.

### **3.6 Benefits and obligations of Unitholders and Optionholders**

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations in this deed apply for the benefit of and bind each Unitholder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations in this deed bind each Optionholder to the extent provided in this deed. The benefits in this deed only apply for the benefit of Optionholders where expressly provided in this deed.
- (c) Subject to the Corporations Act, where the interests of Optionholders and Unitholders conflict, the Trustee must prefer the interests of Unitholders.

### **3.7 No further liability**

- (a) This clause 3.7 is subject to any separate agreement between a Unitholder and the Trustee and to any Instalments on Partly Paid Units payable under clauses 3.3 and 3.8 to 3.16.
- (b) The liability of each Holder in its capacity as such is limited to its investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the assets of the Fund.
- (e) Except as provided in clauses 3.10(a) and 3.14(h), nothing in or under this deed makes either the Trustee the agent of a Unitholder nor does it create any relationship other than that of beneficiary and Trustee.

### 3.8 Failure to pay instalment on Partly Paid Unit

- (a) For the purposes of this clause 3.8, while the Units are Stapled, an Instalment will not be regarded as having been properly paid unless any amount payable at the same time in relation to partly paid Attached Securities is also paid.
- (b) The Trustee must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Trustee or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.
- (c) If a Unitholder does not pay an Instalment on the due date, the Unitholder must pay:
  - (1) so much of the Instalment as is unpaid;
  - (2) interest, which accrues daily and may be capitalised monthly or at such other intervals as the Trustee determines on so much of the Instalment as is unpaid from time to time, from the date when the Instalment falls due to the date of actual payment:
    - (A) if the Trustee has fixed a rate, at the rate so fixed; or
    - (B) in any other case, at the rate prescribed in respect of unpaid judgments in the Supreme Court of New South Wales; and
  - (3) any costs, expenses or damages incurred by the Trust in relation to the non-payment or late payment of the Instalment.

### 3.9 Forfeiture of Units

- (a) If a Unitholder fails to pay the whole of an Instalment when it falls due, the Trustee may serve a notice on that Unitholder:
  - (1) requiring payment of the amount payable under clause 3.8(c);
  - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under clause 3.8(c) is to be paid; and
  - (3) stating that in the event of non-payment of the whole of the amount payable under clause 3.8(c) by the time and at the place named, the Unit in respect of which the Instalment was due will be liable to be forfeited.
- (b) A Partly Paid Unit is forfeited and the Trustee may offer that Forfeited Unit for sale if payment in full is not received by the due date specified in the notice issued under clause 3.9(a).
- (c) A forfeiture under clause 3.9(b) will include all distributions, interest and other money payable in respect of a Forfeited Unit and not actually paid before the forfeiture.
- (d) Where a Unit has been forfeited:
  - (1) notice of the forfeiture must be given to the Unitholder who owned the Forfeited Unit immediately before the forfeiture; and

- (2) an entry of the forfeiture, with the date, must be made in the Register.
- (e) Failure to give the notice or make the entry required under clause 3.9(d) does not invalidate the forfeiture.
- (f) If an Attached Security is forfeited, the Trustee must forfeit the Unit to which it is Staped.

### **3.10 Sale of Forfeited Unit**

- (a) The Trustee may offer a Forfeited Unit for sale as agent for the Holder of the Forfeited Unit.
- (b) Subject to clause 3.10(c), if the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Trustee.
- (c) The Trustee must ensure that the sale of the Forfeited Unit is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (e) A person whose Units have been forfeited ceases to be the Holder of those Units, but remains liable to pay, and must immediately pay, to the Trustee all Instalments, interests, costs, expenses and damages owing in respect of the Units at the time of the forfeiture.
- (f) Where permitted by the Listing Rules (while the Trust is Listed), the Trustee may:
  - (1) exempt a Unit from all or any part of this clause 3.10;
  - (2) waive or compromise all or any part of any payment due to the Trustee (as trustee of the Trust); and
  - (3) before a Forfeited Unit has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as it thinks fit.

### **3.11 Income and Capital of a Forfeited Unit**

Distribution of income and capital under clause 9:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder before forfeiture,

must be applied in accordance with clause 3.15 as if they formed part of the proceeds of sale of a Forfeited Unit.

### **3.12 Notice of sale of Forfeited Unit**

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.10, the Trustee must give notice of the sale of a Forfeited Unit by placing an advertisement in a daily newspaper circulating generally throughout Australia.

### 3.13 Cancellation of Forfeiture

The Trustee must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Trustee the full amount of the Instalment due together with interest on that Instalment calculated under clause 3.8(c) and any other amount payable in respect of the forfeiture.

### 3.14 Consequences of sale and continuing liability

- (a) On completion of the sale of the Forfeited Unit, the Unitholder ceases to be the Unitholder of that Unit but remains liable to the Trustee for the total amount payable under clause 3.8(c).
- (b) The Unitholder's liability under this clause ceases as soon as the Trustee receives:
  - (1) payment in full of the amount payable pursuant to clause 3.8(c) (excluding any amount paid by an underwriter under an underwriting agreement entered into under clause 5.2);
  - (2) the Costs associated with the forfeiture; and
  - (3) the Costs of all proceedings instituted against the Unitholder to recover the amount due.
- (c) A statement signed by a director or secretary of the Trustee setting out:
  - (1) that a Partly Paid Unit has been forfeited; and
  - (2) the date of forfeiture,
 is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 3.15.
- (e) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must register the transferee as the Holder of the Forfeited Unit.
- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

### 3.15 Proceeds of sale of Forfeited Unit

- (a) If a Forfeited Unit is sold under clause 3.10, the Trustee must apply the proceeds of the sale in the following order and manner:
  - (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;

- (2) by paying any Costs incurred by the Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit;
  - (3) by holding as an asset of the Fund, the interest accrued in respect of the outstanding Instalments calculated under clause 3.8(c);
  - (4) by holding as an asset of the Fund, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (5) by paying any balance (subject to any lien that exists under clause 3.16 in respect of money not presently payable) to the former Unitholder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the Costs listed in clause 3.15(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
  - (c) Joint holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

### **3.16 Lien for Amounts Owing**

The Trustee has a first and paramount lien over Units for any amounts owing to the Trustee in respect of Units registered in the name of a Unitholder, including any fees or unpaid calls which are payable to the Trustee in respect of those Units and also for such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unitholders. The lien extends to distributions from time to time payable in respect of such Units but if the Trustee registers any transfer of any Unit upon which it has a lien, those Units are freed and discharged from the lien.

## **4 Issue of Options and Units**

### **4.1 Number of Units issued**

- (a) If the Trustee accepts an Application for Units in whole or in part, the number of Units issued is the number (rounded down to the nearest whole number) determined by the Trustee by dividing the relevant Application Moneys by the Issue Price.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Moneys by the amount of the Issue Price for a Unit which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

### **4.2 Application for Units or Options**

A person who wishes to subscribe for Units or Options must:

- (a) complete or make an Application in the form or manner determined by the Trustee;

- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee;
- (c) include with the Application the Application Moneys in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee; and
- (d) if the Units subscribed for will be Stapled, lodge or make an application for the Corresponding Number of Attached Securities to be Stapled to those Units in the manner required under the constitutions of the relevant Stapled Entities, including by paying any application moneys which must be paid in respect of those Attached Securities.

### **4.3 Payments to the Trustee**

- (a) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
  - (1) an effective transfer of the title to the property in favour of the Trustee; and
  - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (b) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Trustee before the Trustee accepting the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 4.1.
- (c) If Units or Options are issued and:
  - (1) the Trustee has not received the Application Moneys in accordance with the Terms of Issue;
  - (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee; or
  - (3) if the Units will be Stapled, the applicant has not paid any amounts which are payable by the applicant under the constitutions of the relevant Stapled Entities in respect of the issue of the Corresponding Number of Attached Securities to be Stapled to those Units,

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Moneys for the Units or Options.
- (d) All income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Trustee) before the issue of those Units or Options forms part of the Fund.

### **4.4 Allotment**

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or an Option until it is granted.

#### 4.5 Trustee's discretion on Application

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

#### 4.6 Certificates

If it is not contrary to the Listing Rules, the Trustee may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

#### 4.7 Foreign Unitholders

- (a) The Trustee may determine that Foreign Unitholders are not to be offered Units or Options under clauses 5.9, 5.10, 5.11 and 5.12 where it reasonably considers that it would:
  - (1) be in the best interests of the Holders; and
  - (2) not be unfair to the Foreign Unitholders.
- (b) If the Trustee makes a determination under clause 4.7(a) and it is practicable to do so, the Trustee must sell the Foreign Interests and pay to each Foreign Unitholder the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$

where:

AF is the amount to be paid to that Foreign Unitholder;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Trustee by any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and
- (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Unitholder would otherwise have been entitled.

- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unitholder the amount calculated in accordance with the formula in, clause 4.7(b).
- (d) The Trustee must take reasonable steps to maximise the amount payable to each Foreign Unitholder under clause 4.7(b).

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## **5 Power to issue Units and Options**

### **5.1 Powers Cumulative**

- (a) The Trustee may issue Units only in accordance with this clause 5 and subject to this deed.
- (b) No clause of this clause 5 (other than this clause 5.1) limits any other such clause.

### **5.2 Underwriting of Issue**

- (a) The Trustee may arrange for:
  - (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of Instalments in respect of Partly Paid Units; or
  - (3) the exercise of Options,to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may:
  - (1) be the Trustee or a related body corporate of the Trustee;
  - (2) take up any Units or Options not subscribed for; and
  - (3) purchase forfeited Units sold under clause 3.10.
- (c) The Trustee may issue Units and Options under this clause 5.2 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

### **5.3 Issues of Options**

The Trustee may offer Options for subscription in accordance with the Terms of Offer and Terms of Issue.

### **5.4 Issue of Units pursuant to Options**

The Trustee may issue a Unit or Units in accordance with the Terms of Offer and Terms of Issue of an Option.

### **5.5 Issue at fixed price**

In addition to any other power the Trustee has to issue Units under this deed, the Trustee may issue Units or Options at any time to any person at an Issue Price as follows:

- (a) for the initial issue of Units, Units at an Issue Price of \$1.00 per Unit;
- (b) after the initial issue of Units pursuant to 5.5(a) but prior to the Trust being Listed, Units or Options at an Issue Price per Unit or Option as set out in or calculated in accordance with a PDS or other offer document issued by the Trustee;

- (c) where the Trust is Listed and Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily):
  - (1) where Units will not form part of Stapled Securities:
    - (A) Units or Options at the Market Price on the Business Day prior to the day on which the offer or issue is made;
    - (B) Options at the consideration for the issue of the Option specified in the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to the exercise of those Options are to be issued at the Market Price of a Unit immediately before the date upon which the Option is issued; or
  - (2) where Units will form part of Stapled Securities:
    - (A) Units at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the issue price of the Attached Security or Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the day on which the offer or issue is made; and
    - (B) Options at a price determined by the Trustee provided that:
      - (i) the consideration for the issue of the Option will be as specified in the Terms of Offer and Terms of Issue; and
      - (ii) on exercise of the Option, the Stapled Securities are to be issued such that the aggregate of the Issue Price of the Unit and the issue price of the Attached Security or Attached Securities to which that Unit will be Stapled will be equal to the Market Price for the Stapled Securities immediately prior to the date upon which the Option is issued.
- (d) where Stapled Securities or Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed and subject to clauses 4.1 and 5.2(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made.

## 5.6 Placements of Units at Market Price

While the Trust is Listed and Units, or (if the Units are Stapled) Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), the Trustee may issue Units at an issue price:

- (a) where the Units will not be part of Stapled Securities, equal to the Market Price of a Unit determined in accordance with clause 1.3(b)(1)(B); or
- (b) where the Units will form part of a Stapled Security, determined by the Trustee, provided that the aggregate of the Issue Price of that Unit and the issue price of the Attached Security or Attached Securities to which that

Unit will be Stapled is equal to the Market Price for Stapled Securities determined in accordance with clause 1.3(b)(1)(B),

if the issue is:

- (c) a placement to professional investors (as that term is defined in section 9 of the Corporations Act):
  - (1) for the purposes of which the Market Price was initially calculated; or
  - (2) announced at the same time as, or within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 1.3(b)(1)(B); or
- (d) made pursuant to a PDS lodged with ASIC pursuant to section 1015B of the Corporations Act within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 1.3(b)(1)(B).

## **5.7 Placements of Units and Options without Unitholder approval**

The Trustee may issue Units or Options at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2, 5.5 and 5.6, if:

- (a) the Trust is Listed and Units, or (if the Units are Stapled) Stapled Securities or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
- (b) the issue is not to the Trustee or any person associated with the Trustee;
- (c) the amount by which the Issue Price of the Units, or (if the Units are Stapled) Stapled Securities or Options is less than the Market Price (on the Business Day prior to the day on which the relevant offer or issue is made) for Units, Stapled Securities or Options (as the case may be) does not exceed 10%;
- (d) the issue is of Units or Options that would not, immediately after the issue (when aggregated with any other issue of Units or Options (as the case may be) pursuant to this clause 5.7 up to one year previously other than an issue that was subsequently ratified by the Holders), comprise more than 10% (or such greater percentage as may be permitted from time to time by both the Corporations Act and the Listing Rules) of either all Units or Options (as the case may be) or the Units or Options in the same class as the Units or Options comprised in the issue.

## **5.8 Placement of Units and Options with Unitholder approval**

The Trustee may issue Units or Options at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2, 5.5 and 5.6, if:

- (a) the Trust is Listed and Units, or (if the Units are Stapled) Stapled Securities or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
- (b) the issue is not to the Trustee or any person associated with the Trustee;
- (c) the Holders approve the issue;

- (d) if the Units or Options are to be issued in a particular class, Holders in that class approve the issue;
- (e) unless the Trustee reasonably considers that the issue will not adversely affect the interests of Holders in another class, Holders in that other class approve the issue;
- (f) any notice convening a Meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;
- (g) an approval for the purposes of this clause is given by special resolution of the relevant Holders where Holders with at least 25% of the total value of all the Units or Options (as the case may be) of Holders entitled to vote on the question vote on the question at the Meeting; and
- (h) if in making the calculations referred to in clause 5.8(g), any vote of a person to whom the Units or Options are to be issued or any vote of any associate of that person were not counted, the special resolutions would be passed.

### **5.9 Rights issues of Units**

The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2, 5.5 and 5.6, pursuant to offer made at substantially the same time to only and all the then Unitholders if:

- (a) all the Units offered are in the same class;
- (b) the Issue Price of all the Units offered is the same or (if the Units are Stapled) the issue price of all the Stapled Securities is the same;
- (c) the Issue Price, or if the Units form part of Stapled Securities, the issue price of the Stapled Securities, is not less than 50% of the Market Price of Units in that class or the Stapled Securities (as the case may be) on the Business Day preceding the day on which the intention to make the offer or issue is announced on ASX; and
- (d) the amount of Units offered to each Unitholder is proportionate to the value of that Unitholder's Unit Holding.

### **5.10 Rights issues of Options**

The Trustee may issue Options and Units on the exercise of an Option at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2, 5.5 and 5.6, if:

- (a) the Options are issued pursuant to offers made at substantially the same time to only and all the then Unitholders in proportion to the value of their Unit Holding;
- (b) all the Options offered are in the same class;
- (c) the Issue Price of all the Options offered is the same;
- (d) the Exercise Price of all the Units to be issued on exercise of the Options is the same;

- (e) the means of calculating the Exercise Price is set out in the Terms of Issue; and
- (f) the Exercise Price on the date of exercise of the Options is not less than 50% of the Market Price of a Unit on the Business Day preceding the day on which the Option is issued or, where Units are Stapled, the issue price of a Stapled Security on that Business Day.

### **5.11 Issues of Units – distribution reinvestment**

The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2, 5.5 and 5.6, pursuant to a distribution reinvestment arrangement referred to in clause 9.5 where:

- (a) the whole or part of a Unitholder's Distribution Entitlement is applied in payment for the subscription for Units;
- (b) each Unitholder may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the Distribution Entitlement which is or would otherwise be, payable to that Unitholder;
- (c) all the Units issued under the arrangement are of the same class;
- (d) the Issue Price of each Unit issued pursuant to that arrangement at substantially the same time is the same; and
- (e) either:
  - (1) if the Units do not form part of Stapled Securities, the Issue Price is not less than 90% of the Market Price of a Unit; or
  - (2) if the Units form part of Stapled Securities, the issue price of the Stapled Securities is not less than 90% of the Market Price of a Stapled Security.

### **5.12 Issue of Units – Unitholder purchase plans**

The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2, 5.5 and 5.6, where the Trust is Listed and Units or Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), under an arrangement where:

- (a) an offer for the issue of Units is made to each Unitholder or, where the offer is being made to Unitholders of a class of Units, to each Unitholder of Units in that class;
- (b) each offer is made on the same terms and conditions and on a non-renounceable basis;
- (c) the Issue Price or, where the Units form part of Stapled Securities, the issue price of the Stapled Securities is less than the Market Price during a specified period in the 30 days prior to either the date of the offer or the date of the issue; and
- (d) no Unitholder may be issued with Units, or where the Units form part of Stapled Securities, the Stapled Securities, with an application price totalling more than \$15,000 (or such other amount as may be permissible

under the Corporations Act, as modified by any applicable class order issued by ASIC) in any consecutive 12 month period.

### 5.13 Other issues of Units, Options or Stapled Securities

The Trustee may issue Units, Options or Stapled Securities at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2, 5.5 or 5.6 in any circumstance where the Corporations Act (as modified by any applicable class order issued by ASIC) permits the Trustee to set such Issue Price in such a manner.

### 5.14 Interpretation

For the purposes of clause 5.12:

- (a) if a trustee or nominee is expressly noted on the Register as holding Units on account of another person (**beneficiary**):
  - (1) the beneficiary is taken to be the Unitholder in relation to those Units; and
  - (2) any issue of Units to the trustee or nominee is taken to be an issue to the beneficiary;
- (b) a reference to an offer for the issue of Units includes a reference to inviting an application for the issue of the Unit.

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## 5A Buy-Back of Units

- (a) While the Trust is Listed, the Trustee may buy-back Units, subject to and in accordance with the Corporations Act (including any modification of the Corporations Act) and any requirements under the Listing Rules and, if Units are Stapled, provided that the Attached Securities Stapled to those Units are bought back at the same time.
- (b) Immediately after the registration of a transfer of a Unit or (if the Units are Stapled) Stapled Securities following a buy-back under this clause 5A, the Units purchased are cancelled.
- (c) The purchase price payable under this clause 5A for a Unit will be determined by the Trustee (or its nominee) as follows:
  - (1) during any period in which a purchase may be made, the Trustee (or its nominee) may set a range of prices at which purchases of Units, or where the Units are Stapled, Stapled Securities can be made during all or part of that period in the ordinary course of trading on ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day cannot exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess, if any, to be determined by the Trustee (or its nominee); and
  - (2) the purchase price must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.

- (d) For the purposes of clause 5A(c)(1), the Trustee may, in its discretion determine the purchase price of a Unit forming part of a Stapled Security provided that the aggregate of the purchase price of that Unit and the purchase price of the Attached Security or Attached Securities to which that Unit is Stapled does not exceed the buy-back price of Stapled Securities as determined under clause 5A(c).

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## 6 Trustee's Powers

### 6.1 General powers of Trustee

- (a) Subject to this deed, the Trustee has all the powers that it is possible to confer on a trustee, and has all the powers that are incidental to ownership of the Fund as though it were the absolute and beneficial owner of the Fund.
- (b) In the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property, borrow or raise money, encumber any asset of the Fund, incur any liability, guarantee any obligations of any person, enter into joint venture arrangements or fetter any power.
- (c) Without limitation, the investment policy of the Fund is to invest in Japanese real estate through various Japanese legal structures including:
- (1) contractual relationships, such as those known as “**Tokumei Kumiai**” where the operator of the Tokumei Kumiai holds the interests in property in its own name and the Fund has a contractual claim against that operator for profits, losses and capital of the Tokumei Kumiai; and
  - (2) shares in limited liability companies established pursuant to Japanese laws, such as those known as “**Tokutei Mokuteki Kaisha**”.

### 6.2 Delegation by Trustee

- (a) The Trustee may appoint a person, including an Associate of the Trustee, as its delegate, attorney or agent to exercise its powers and perform its obligations.
- (b) The Trustee may appoint an agent, custodian or other person, including an Associate of the Trustee (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with any asset of the Fund on behalf of the Trustee and perform any action incidental or ancillary thereto or otherwise approved by the Trustee.

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## **7 Trustee's responsibilities and indemnities**

### **7.1 No limitation of other undertakings**

This clause 7 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

### **7.2 Limitation of liability**

Except where the Corporations Act expressly provides otherwise:

- (a) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee;
- (b) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Fund actually vested in the Trustee in respect of the Trust.

### **7.3 Indemnities**

- (a) The Trustee is not responsible for:
  - (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
  - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
  - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,except where the Corporations Act provides otherwise.
- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
  - (1) any provision of any present or future law or statute of Australia or any State or Territory;
  - (2) of any decree, order or judgement of any competent court; or
  - (3) any document or agreement binding on the Trustee,the Trustee is prevented, forbidden or hindered from doing or performing.

### **7.4 Trustee may rely on advice**

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and

- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statements or information.

## **7.5 Interested dealings by Trustee**

The Trustee or an officer or employee or Associate of the Trustee may:

- (a) be a Holder;
- (b) act in any fiduciary, vicarious or professional capacity, including without limitation as a banker, accountant, auditor, valuer, solicitor, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Trustee or any Holder or as an executor, administrator, receiver or trustee;
- (c) have an interest in or enter into a contract or transaction with:
  - (1) the Trustee or an Associate of the Trustee;
  - (2) any Holder; or
  - (3) any other person, including one whose shares or other securities form an asset of the Fund; or
- (d) hold or deal in or have any other interest in an asset of the Fund, and may retain and is not required to account for any benefit derived by doing so.

## **8 Valuation of the Fund**

### **8.1 Valuation of assets of the Fund**

- (a) The Trustee may at any time cause the valuation of any asset of the Fund.
- (b) In determining whether a valuation accurately reflects the current value of an asset of the Fund, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of the assets of the Fund.
- (c) Each asset of the Fund must be valued at its market value unless the Trustee determines:
  - (1) there is no market in respect of the asset of the Fund; or
  - (2) the market value does not represent the fair value of the asset of the Fund.
- (d) Where the Trustee makes a determination under clause 8.1(c), the Trustee must at the same time determine the method of valuation of the asset of the Fund.

- (e) Where any asset of the Fund is to be valued or the Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Trustee.
- (f) Where the calculation of the Issue Price is to be made as at a particular date, the Trustee need not cause a valuation of the Fund to be performed at that date but may rely on the most recent valuations for the purposes of that calculation.

## 8.2 Currency Conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Trustee.

## 8.3 Trustee to determine Current Unit Value

The Trustee may determine the Current Unit Value at any time.

# 9 Income and Distributions

## 9.1 Determination of income and reserves

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

## 9.2 Distribution of income

- (a) The Trustee may at any time distribute pro rata to Unitholders income or capital out of the Fund.
- (b) For each Distribution Period the Trustee must:
  - (1) determine the income for the Distribution Period; and
  - (2) calculate and distribute each Unitholder's Distribution Entitlement.
- (c) If no determination is made or to the extent to which no determination is made under clause 9.2(b)(1), then the Distributable Income for that Distribution Period is equal to whichever is the greater of the Operating Income for that Distribution Period, or the net income of the Fund for that Distribution Period, as determined in accordance with section 95 of the Tax Act.

## 9.3 Distribution Entitlement

- (a) **Distributable Amount for a Distribution Period** is to be determined in accordance with the following formula:

$$DA = I + C$$

Where:

DA is the amount of Distributable Amount.

I is the Distributable Income of the Fund.

- C is any additional amount (including capital) that the Trustee has determined is to be distributable to Unitholders.
- (b) Subject to the Terms of Issue for any Unit, each Unitholder's **Distribution Entitlement** is to be determined in accordance with the following formula:

$$DE = DA \times \frac{UH}{UI}$$

where:

DE is the Distribution Entitlement.

DA is the Distributable Amount.

UH is the aggregate of the Paid-up Proportion of each relevant Unit Holding of the Unitholder at the close of business on the Distribution Calculation Date.

UI is the aggregate Paid-up Proportion of all Units on issue in the Trust at the close of business on the Distribution Calculation Date.

#### 9.4 Distribution of Entitlement

- (a) The Trustee must pay to each Unitholder its Distribution Entitlement on or before the Distribution Date.
- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution, the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period have an absolute, vested and indefeasible interest in the Distributable Amount for the Distribution Period.
- (c) The Trustee may retain from each Unitholder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unitholder an amount in or towards satisfaction of any amount payable by the Unitholder to the Trustee under this deed or required to be deducted by law.
- (e) The Trustee may at any time determine to satisfy its obligation to pay a Unitholder's Distribution Entitlement by way of an issue of Units to that Unitholder (and if the Units are Stapled, arranging for the issue to that Unitholder of a Corresponding Number of each Attached Security).

#### 9.5 Distribution Reinvestment Arrangements

The Trustee may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in an arrangement under which Unitholders may request that all or a proportion of specified distributions due to them be satisfied by the issue of further Units (and if the Units are Stapled, arranging for the issue to that Unitholder of a Corresponding Number of each Attached Security).

## **9.6 Discharge of Trustee's obligation**

The Distributable Amount shall be distributed to persons who are Unitholders on the Distribution Calculation Date for that Distribution Period. It is acknowledged by Unitholders that such payments of Distributable Amounts shall be good and complete discharge to the Trustee in respect of any liability to any person in respect of an entitlement to such Distributable Amount.

## **9.7 Trust taxed as a company**

Notwithstanding clauses 9.3 and 9.4, if in any Financial Year the Trustee in its capacity as trustee becomes taxable as if it were a company under the Tax Act:

- (a) the Trustee has complete discretion as to how much, if any, of:
  - (1) the Distributable Amount for that Financial Year; or
  - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,
 is to be distributed to Unitholders on the Distribution Date.
- (b) Each Unitholder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 9.7(a)) is to be determined in accordance with clause 9.3(b).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 9.7(b)) to the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period.

# **10 Remuneration of Trustee**

## **10.1 Trustee's remuneration**

The Trustee is entitled to receive out of the Fund the fees set out in schedule 2.

## **10.2 Waiver of remuneration**

The Trustee may waive the whole or any part of the remuneration to which it would otherwise be entitled.

## **10.3 Priority of Trustee's remuneration**

The remuneration of the Trustee has priority over the payment of all other amounts payable from the Fund.

## **10.4 Indemnity**

In addition to the Trustee's right of remuneration under Clause 10.1 and any other right of indemnity which it may have under this deed, the Trustee is indemnified and entitled to be reimbursed out of or have paid from the Fund for all Costs incurred at law or under this deed in the performance of its duties, the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

## 10.5 Proper performance of duties

The rights of the Trustee to be paid fees out of the Fund, or to be indemnified out of the Fund for liabilities or expenses incurred in relation to the performance of its duties, are available only in relation to the proper performance of those duties.

## 10.6 Reimbursement of GST

- (a) Any reference in this clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken as a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this deed which is relevant in determining the amount of any payment to be made to or by the Trustee is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this deed, the consideration payable for that supply is increased by the rate at which the GST is imposed. The additional consideration is, subject to the recipient having received a tax invoice, payable at the same time and in the same manner as the consideration to which it relates.
- (d) The supplier must issue a tax invoice in respect of a supply to the recipient before the end of the tax period in which the supply is made.
- (e) If the Trustee is entitled to be reimbursed for an expense or outgoing incurred in connection with this deed, the amount of the reimbursement will be net of any input tax credits which may be claimed by the party being reimbursed in relation to that expense or outgoing.

# 11 Indemnity and insurance

## 11.1 Persons to whom clauses 11.2 and 11.4 apply

Clauses 11.2 and 11.4 apply to each person who is or has been a member of the Trust's Compliance Committee (if any).

## 11.2 Indemnity

The Trustee must, from the Fund indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 11.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

### 11.3 Extent of indemnity

The indemnity in clause 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 11.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### 11.4 Insurance

The Trustee may, from the Fund and to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 11.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### 11.5 Savings

Nothing in clauses 11.2 or 11.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.

## 12 Transfers and other transactions

### 12.1 Transfer

- (a) All transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 12.1(a) unless the instrument of transfer:
  - (1) is duly stamped (if applicable);
  - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor; and
  - (3) complies with any requirements prescribed by the Trustee from time to time.
- (b) While the Trust is Listed all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in

respect of the Units or Options or the transfer is effected in accordance with the ASTC Settlement Rules.

## **12.2 Transaction advice after transfer**

If the Trustee accepts a transfer under this part, the Trustee may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and
- (b) the balance of any Units which were not transferred.

## **12.3 No General Restriction on Transfer**

- (a) Whilst the Trust is Listed, there is no restriction on the transfer of Units and, subject to clauses 12.3(c)(3), 12.5, 20.3(e)(7) and 20.5, the Trustee may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 12.1(b).
- (b) Except as otherwise set out or referred to in this clause 12, there is no restriction on any other transfer of Units or Options.
- (c) In relation to Units which are CHESSE Approved Securities:
  - (1) subject to clauses 12.3(c)(1) and 12.3(c)(3), the Trustee must not prevent, delay or in any way interfere with the registration of a proper ASTC transfer;
  - (2) the Trustee may apply a holding lock to specified CHESSE Approved Securities where permitted to do so by the Listing Rules; and
  - (3) the Trustee may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

## **12.4 Power to suspend the registration of transfers**

Subject to the Listing Rules and the ASTC Settlement Rules, whilst the Trust is Listed, the Trustee may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as it thinks fit.

## **12.5 Restricted Securities**

Notwithstanding any other provisions of this deed and whilst the Trust is Listed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during any applicable escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASTC Settlement Rules in respect of CHESSE Approved Securities, the Trustee must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during any applicable escrow period except as permitted by the Listing Rules or ASX; and
- (c) during a breach of the Listing Rules relating to restricted securities or a breach of any restriction agreement, the holder of restricted securities is

not entitled to any distributions and to any voting rights in respect of the restricted securities.

## 12.6 Transmission of Units and Options

- (a) In the case of a Transmission Event in respect of a Holder, the only persons who will be recognised as having any title to the Units or Options registered in the Holder's name or any benefits accruing in respect of those Units or Options are:
  - (1) where the Holder is a joint holder, the survivor or survivors of the Holder;
  - (2) where the Holder is an individual, the legal personal representative of the Holder or the person entitled to the Units or Options as a result of bankruptcy; or
  - (3) where the Holder is a body corporate, the person entitled to the Units or Options as a result of the dissolution or succession.
- (b) Nothing in clause 12.6(a) releases the Holder or the estate of a deceased Holder from any liability in respect of the Units or Options held whether that Unit or Option was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit as a result of a Transmission Event may, upon producing such evidence as the Trustee may require to prove that person's entitlement to the Unit or Option, elect:
  - (1) to be registered as the Holder of the Unit or Option by signing and serving on the Trustee a notice in writing stating that election; or
  - (2) to have some other person nominated by that person registered as the transferee of the Unit or Option by executing a transfer to that other person in accordance with clause 12.1.
- (d) The Trustee need not register any transfer or transmission pursuant to this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this deed relating to the right to transfer, and the registration of transfers of, Units and Options apply, so far as they can and with such changes as are necessary, to any transfer under clause 12.6(c) as if the relevant Transmission Event had not occurred and the transfer was signed by the Holder of the Unit or Option.
- (f) For the purposes of this deed, where 2 or more persons are jointly entitled to any Unit or Option in consequence of a Transmission Event they will, upon being registered as the Holders or the Unit or Option, be taken to hold the Unit or Option as joint tenants and clause 3.4 will apply to them.
- (g) Despite clause 12.6(a), the Trustee may register a transfer of Units signed by a Holder before a Transmission Event even though the Trustee has notice of the Transmission Event.

## 12.7 Recognition of Holder

- (a) Except as otherwise provided by law or provided in this deed, the Trustee:
  - (1) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
  - (2) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit or Option by any other person, even if the Trustee has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Trustee, Units or Options held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in clause 12.7(c) limits the operation of clause 12.7(a).

## 12.8 Participation in Transfer Systems

The Trustee may determine that Units or Options which are Officially Quoted will participate in the “Clearing House Electronic Sub-register System” or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this clause 12.

# 13 Options

## 13.1 Terms and Subscription

- (a) This clause 13 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

## 13.2 Nominees

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Optionholder unless the Terms of Issue provide otherwise.

## 13.3 Exercise

- (a) An Optionholder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the

Optionholder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.

### **13.4 Optionholder's Rights and Interest**

- (a) An Option does not confer on the Optionholder any interest in the Fund. Optionholders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules (if applicable).
- (b) Optionholders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Optionholders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to, Unitholders.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

### **13.5 Redemption or Repurchase**

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Trustee must make any payment to an Optionholder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 13.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 13.5(a) form part of the Fund and the Trustee is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee retains title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

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## **14 Retirement or Removal of Trustee**

### **14.1 Retirement and removal of Trustee**

- (a) Whilst the Trust is not a registered scheme:
  - (1) the Trustee may retire on not less than one month's notice to the Unitholders. On retirement, the Trustee may appoint another person in writing to be the Trustee; and

- (2) the Trustee must retire if directed to do so by a special resolution of Unitholders.
- (b) Whilst the Trust is a registered scheme:
  - (1) the Trustee may only retire as responsible entity of the Trust in accordance with section 601FL of the Corporations Act; and
  - (2) the Trustee may only be removed as responsible entity of the Trust in accordance with section 601 FM of the Corporations Act.
- (c) On retirement or removal the Trustee must give the new responsible entity all books, documents and records relating to the Trust.
- (d) If the Trust is not a registered scheme at the time the Trustee is to retire, any proposed replacement trustee must execute a deed by which it covenants to be bound by this Trust Deed as if it had originally been a party to it.

#### **14.2 Name of Trust to be changed**

- (a) If Babcock & Brown Japan Property Management Limited retires or is removed as the Trustee, the new Trustee must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with Babcock & Brown Limited or any of its Associates from the title of the Trust and this deed and such letters, words or expressions must not be used in any connection with the Trust and this deed.
- (b) Clause 14.2(a) does not apply if the new Trustee obtains the consent of Babcock & Brown Limited not to take the action set out in that clause.

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## **15 Alterations to Trust**

Subject to any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

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## **16 Term of Trust and termination of Trust**

### **16.1 Term of Trust**

The term of the Trust ends on the earlier of:

- (a) the date determined by the Trustee as the date on which the Trust is to be terminated; and
- (b) the date on which the Trust is terminated under this deed or by law.

### **16.2 Procedure on winding up of Trust**

- (a) In winding up the Trust the Trustee must:
  - (1) realise the Fund;
  - (2) pay any amount due to it under clause 16.2(c);

- (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unitholder who is a creditor of the Trust; and
- (4) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unitholders, distribute the net proceeds of realisation (which may include amounts of income) among the Unitholders pro rata in accordance with the number of Units held by Unitholders (irrespective of the Paid-Up Proportion of the Units), provided that:
  - (A) the amount that would otherwise be distributed to the Holder of a Partly Paid Unit under clause 16.2(a)(4) must be reduced by the amount of the unpaid Instalments on that Unit at the date of distribution; and
  - (B) if the effect of the reduction under clause 16.2(a)(4)(A) would be to reduce the distribution to the Holder of a Partly Paid Unit to a negative amount, the Holder must contribute that amount to the Fund.
- (b) The Trustee may distribute an asset of the Fund to a Unitholder in specie. The Trustee must determine the value of the asset of the Fund to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unitholder before the distribution is made.
- (c) The Trustee is entitled to:
  - (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unitholders all Costs incurred or which it establishes will be incurred:
    - (A) by it before the winding up of the Trust which it has not recouped;
    - (B) by it in connection with the winding up of the Trust and the realisation of the Fund;
    - (C) by or on behalf of any creditor of the Trustee in relation to the Trust; and
    - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
  - (2) an indemnity against the amounts referred to in clause 16.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 16.2(a)(4) is made; and
  - (3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 10.
- (d) The Trustee may postpone the realisation of the Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Trustee may retain for as long as it thinks fit any part of the Fund which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to

the Trustee under this deed, including but not limited to under clause 16.2(c).

- (f) The Trustee must distribute among the Unitholders in accordance with clause 16.2(a)(4) anything retained under clause 16.2(e) which is subsequently not required.

### **16.3 Audit of accounts of Trust**

The Trustee must ensure that the final accounts of the Trust following the winding-up are audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the Trustee.

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## **17 Meetings**

### **17.1 Meetings**

The Trustee may convene a Meeting at any time. The provisions of schedule 1 and the Corporations Act (if applicable) apply to a Meeting.

### **17.2 Resolution by Postal Ballot**

- (a) A resolution of Holders may be passed by the Holders completing, signing and returning copies of a written resolution which has been sent by the Trustee within a period specified by the Trustee.
- (b) In respect of such a resolution each Holder has the number of votes determined in accordance with section 253C(2) of the Corporations Act. The value of a Holder's total holding must be determined at such time as the Trustee specifies.

### **17.3 Passing of resolution**

A resolution passed at a meeting of Holders held in accordance with this deed or by postal ballot under clause 17.2 is binding on all Holders.

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## **18 Complaints**

### **18.1 General**

The provisions of this clause 18 only apply whilst the Trust is a registered scheme.

### **18.2 Complaints handling**

The Trustee must establish and maintain a procedure for dealing with complaints by Holders in relation to a Trust which is consistent with AS4269 Australian Standard on Complaints Handling or such other standard which satisfies the requirements (if any) of the Corporations Act or any Governmental Agency from time to time.

### 18.3 Holder Complaints

- (a) A Holder may by notice in writing to the Trustee (or by such other method as the Trustee may approve) lodge a complaint in relation to the Trust.
- (b) The Trustee must:
  - (1) record the complaint and the date it was received in a register maintained for that purpose; and
  - (2) send the Holder an acknowledgment of receipt of the complaint.

### 18.4 Handling of Complaints

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 18.3 in accordance with this clause 18, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (c) The Trustee must inform the Holder by notice in writing of:
  - (1) its decision in relation to the complaint;
  - (2) the remedies available to the Holder in relation to the complaint; and
  - (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.

### 18.5 Assistance and Information

- (a) The Trustee must provide a Holder with all reasonable assistance and information that the Holder may reasonably require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Trustee.
- (b) A Holder lodging a complaint in relation to a Trust must provide the Trustee with all information the Trustee may require in order to properly deal with and resolve the complaint.

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## 19 Stapling authorisation

### 19.1 Definitions

In this clause 19, the following definitions apply:

**Astro Japan Property Group Limited** means the company of that name, being incorporated in Australia, with ACN 135 381 663.

**EM** means the Notice of Meeting and Explanatory Memorandum dated on or around 9 October 2009 in relation to the Stapling Proposal.

**Excluded Foreign Unitholder** means a foreign unitholder specified in the EM as ineligible to participate in the Stapling Proposal, in particular, to receive Stapled Securities.

**Stapling Proposal** means the proposal to Staple the shares of Astro Japan Property Group Limited to the Units as contemplated in the EM.

**Stapling Resolution** means the resolution to approve amendments to this constitution to, among other things, give effect to Stapling under this clause 19.

## 19.2 Stapling Resolution

If the Stapling Resolution is passed by Holders by the requisite majorities set out in the EM and all conditions to that resolution are satisfied, clauses 19.3 to 19.6 will take effect.

## 19.3 Power to implement Stapling Proposal and limitation of liability

- (a) The Trustee has power to do all things which it considers are necessary, desirable or reasonably incidental to effect the Stapling Proposal and such powers apply notwithstanding, and are not limited by, any provision of this trust deed other than clause 1.4.
- (b) The Trustee will not have any liability of any nature to Unitholders (which exceeds the extent to which it is actually indemnified out of the assets of the Fund) arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the proper implementation of the Stapling Proposal.

## 19.4 Appointment of Trustee as agent and attorney

- (a) The Trustee is irrevocably appointed as the agent and attorney of each Unitholder to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Unitholder to effect the Stapling Proposal, including, without limitation:
  - (1) making the return of capital to Unitholders contemplated by, and at the times set out in the EM;
  - (2) taking all necessary action to compulsorily transfer all Units held by each Excluded Foreign Unitholder in the manner contemplated by, and at the times set out in the EM;
  - (3) applying for shares in Astro Japan Property Group Limited in the name of the Unitholder and to apply, on behalf of the Unitholder, the proceeds of any return of capital which is made to the Unitholder referred to in clause 19.4(a)(1) in payment of the subscription price of those shares;
  - (4) agreeing on behalf of the Unitholder to be bound by the constitution of Astro Japan Property Group Limited; and
  - (5) Stapling each Unit held by the Unitholder on the Stapling Date to a share in Astro Japan Property Group Limited.

- (b) The Trustee is authorised to execute these documents and do these things without needing any further authority or approval from the Unitholders.

### **19.5 Interested dealings by the Trustee**

Subject to the Corporations Act, the Trustee or an officer, employee or associate of the Trustee may do the things described in clauses 19.3 and 19.4 even if it has an interest in the outcome.

### **19.6 Paramountcy**

Subject only to clause 1.4, this clause 19 has effect notwithstanding any other provision of this trust deed and any provision of this trust deed which is inconsistent with this clause 19 does not operate to the extent of any inconsistency.

## **20 Stapling**

### **20.1 Power to staple Securities**

- (a) The Trustee may, subject to this clause 20.1, the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, cause the Stapling of any Security to the Units and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity.
- (b) Any Stapling referred to in clause 20.1(a) takes effect from the Stapling Date.

### **20.2 Operation of Stapling provisions**

Clauses 20.3 to 20.10 apply only, and for so long as, a Unit is a component of a Stapled Security.

### **20.3 Units to be Stapled**

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.
- (c) The number of issued Units at any time must equal the number of issued Attached Securities divided by the relevant Corresponding Number.
- (d) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.

- (e) On and from the Stapling Date and prior to the Unstapling Date, the Trustee and the Unitholders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
- (1) the Trustee must not offer a Unit for subscription or sale (including by way of offering or Options) unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
  - (2) any offer of a Unit for subscription or sale (including by way of offering or Options) must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
  - (3) a Unitholder must not sell a Unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
  - (4) the Trustee must not issue or sell a Unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
  - (5) the Trustee must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities;
  - (6) the Trustee must not forfeit a Unitholder's Unit unless the Corresponding Number of each Attached Security is also forfeited; and
  - (7) the Trustee must not register the transmission or transfer of Units pursuant to clause 12 unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.

#### **20.4 Unstapling Date**

- (a) Subject to approval by a special resolution of the Unitholders and the members of each Stapled Entity respectively, the Trustee may determine that the Stapling provisions of this deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) Stapling also ceases to apply on the winding up of a Stapled Entity and the Unstapling Date is the date of winding up.
- (c) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Trustee must do all things reasonably necessary to procure that each Unit is Unstapled.
- (d) If the Trustee determines to Unstaple the Stapled Securities pursuant to this clause 20.4, this does not prevent the Trustee from subsequently determining that the Stapling provisions should recommence.

## 20.5 Transfers and Issues of Stapled Securities

- (a) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 12 the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee.
- (b) A transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee.
- (c) A transfer of any Attached Security to which a Unit is Stapled which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Unit is Stapled to the same transferee.
- (d) Each Unitholder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing any documentation which the Trustee reasonably considers is necessary or desirable) to effect on a date to be determined by the Trustee the transfer to the Trustee (as trustee of the Trust) or to a person nominated by the Trustee of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.
- (e) Each Unitholder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing any documentation which the Trustee reasonably considers is necessary or desirable) to arrange and apply for the issue to the Unitholder of Securities in Astro Japan Property Group Limited or any other Stapled Entity and to agree on behalf of the Unitholder to be bound by the constitution of that entity, so as to give effect to any issue of Securities contemplated by clauses 9.4 or 9.5.

## 20.6 Stapled Security Register

The Trustee must cause to be set up and maintained a Stapled Security Register which:

- (a) may incorporate or form part of the Register;
- (b) records the names of the Unitholders, the number of Units held, the number of Attached Securities held by the Unitholders to which each Unitholder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the Trustee.

## 20.7 Variation of Stapling provisions

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this deed which:

- (a) directly affects the terms on which Units are Stapled; or

- (b) removes any restriction on the transfer of a Stapled Unit if that restriction also exists for all other Attached Securities unless that restriction is simultaneously removed for all Attached Securities.

## **20.8 Maintenance of Listing and Consistency with Constitutions of Stapled Entities**

- (a) The Trustee must use every reasonable endeavour to procure that the Stapled Securities are and continue to be Officially Quoted as one joint security.
- (b) The Trustee must use every reasonable endeavour to procure that the Stapled Securities are dealt with under this deed in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

## **20.9 Trustee's Duties**

The Trustee is entitled to have regard to the fact that the Trust is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Trust and the Stapled Entities are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of its obligations, the Trustee may, except to the extent otherwise required by law, have regard to the interests of Unitholders as holders of other Attached Securities.

## **20.10 Stapling Provisions Paramount**

If there is an inconsistency between any provision of this deed relating to Stapling (including this clause 20) and any other provision, then the provision relating to Stapling prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, ASTC Settlement Rules, the Corporations Act or any other law. The provision relating to Stapling prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this deed.

# **21 General**

## **21.1 Service of notices**

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
  - (1) must be in legible writing and in English addressed:
    - (A) if to the Trustee, to its registered office;
    - (B) if to a Holder, to the Holder's address specified in the register of Unitholders or Optionholders,
 or to the e-mail or other electronic messaging system address of a party from time to time or as specified to the sender by any party by notice and in the case of a Holder, with the Trustee's prior consent;

- (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender or, if the notice or communication is sent by electronic messaging system, be otherwise able to be verified in such manner as the Trustee may prescribe from time to time;
- (3) is regarded as being given by the sender and received by the addressee:
  - (A) if by delivery in person, when delivered to the addressee; or
  - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee; or
  - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 3 hours after transmission is received, the facsimile transmission is regarded as not given or received;
  - (D) if sent by electronic messaging system, when the electronic message is received by the addressee,
 

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and
- (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A notice or other communication to joint Holders is validly given if it is given only to the joint holder whose name appears first on the Register.

## **21.2 Method of payment, repayment or redemption**

- (a) Any money payable by the Trustee to a Holder under this deed may be paid by a crossed "not negotiable" cheque made payable to the Holder and posted to the Holder's registered address.
- (b) A Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque is to be reinvested in Units. The reinvestment is taken to be made on the day the cheque is cancelled.

### **21.3 Binding conditions**

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

### **21.4 Governing law**

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of New South Wales.

### **21.5 Severability**

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

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## Schedule 1 - Meetings

(Clause 17)

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### 1 Notice of meeting

If the Trustee omits to give a Holder notice of a Meeting or if a Holder does not receive notice, the Meeting is still valid.

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### 2 Who may attend and address Meetings

- (a) The Trustee, the directors of the Trustee, the Auditor, the auditor of the Compliance Plan, the members of the Compliance Committee and any person invited by any of them is entitled to attend and address a Meeting or adjourned Meeting.
  - (b) While the Units are Stapled, the directors, auditors and representatives of each Stapled Entity may attend and speak at any meeting, or invite any other person to attend and speak.
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### 3 Quorum

- (a) No business may be transacted at any Meeting unless a quorum of Holders is present at the time when the Meeting proceeds to business.
  - (b) The quorum for any meeting is 5 Holders present at the Meeting.
  - (c) A Holder is counted towards a quorum even though the Holder may not be entitled to vote on the resolution at the Meeting.
  - (d) If a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting must be adjourned as the chairman directs.
  - (e) Other than for a Meeting to consider an extraordinary resolution, at an adjourned Meeting the Holders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolutions.
- 

### 4 Adjournments

The chairman may adjourn a Meeting for any reason to such time and place as the chairman thinks fit.

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### 5 Proxies

- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney

authorised in writing. While the Units are Stapled, the form of proxy used may be the same form as the Holder uses to appoint a proxy to vote on their behalf in respect of the Attached Securities.

- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (1) under its common seal (if any);
  - (2) under the hand of an officer or attorney who has been authorised by the corporation;
  - (3) under the hand of any 2 directors or a director and a secretary; or
  - (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 48 hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the Meeting at which the proxy proposes to vote.
- (e) If paragraph 5(d) is not complied with, the proxy is invalid.
- (f) The Trustee is not obliged to enquire whether a proxy has been validly given.
- (g) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (h) Paragraph 5(g) does not apply if the Trustee has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.
- (i) For the purposes of this part 5 a proxy appointment received at an electronic address specified in the notice of meeting for the receipt of proxy appointments or otherwise received by the Trustee in accordance with the Corporations Act is taken to have been:
  - (1) signed for the purpose of paragraph (b) or executed for the purpose of paragraph (c) if the appointment:
    - (A) includes or is accompanied by a personal identification code assigned by the Trustee to the Unitholder making the appointment;
    - (B) has been authorised by the Unitholder in another manner approved by the Trustee and specified in or with the notice of meeting; or
    - (C) is otherwise authenticated in accordance with the Corporations Act; and
  - (2) deposited with the Trustee for the purpose of paragraph (d).

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## 6 Voting

- (a) A poll is to be conducted as directed by the Chairman at the Meeting or any adjournment of the Meeting.
- (b) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (c) The result of the poll is regarded as the resolution of the Meeting.
- (d) A poll may not be demanded on any resolution concerning:
  - (1) the election of the chairman of a meeting; or
  - (2) the adjournment of a meeting.
- (e) If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting as if the committee, trustee or other person were the Holder.

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## 7 Joint Unitholders

Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a Meeting under section 252B(1) of the Corporations Act;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
- (c) requested that a statement be distributed to members under section 252N of the Corporations Act; or
- (d) demanded a poll under section 253L of the Corporations Act.

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## 8 Class Meetings

The provisions of Part 2G.4 of the Corporations Act, clause 17, and this schedule 1 relating to meetings apply so far as they can and with such changes as are necessary, to each separate Meeting of Holders of Units or Options in a class of Units or Options.

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## 9 Stapled Security Meetings

Whilst the Units are Stapled, meetings of Unitholders may be held in conjunction with meetings of the holders of the Attached Securities and, subject to the Corporations Act, the Trustee is entitled to make such rules for the conduct of such Stapled Security holder meetings as the Trustee determines.

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## Schedule 2 – Fees

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### 1 Definitions

In this schedule:

**Additional Asset Excess Performance Amount** means for the relevant Year, the equivalent amount in Yen which if added to the final monthly cashflow in the calculation of the Total Asset Return for the relevant Year would result in the Asset Return being equivalent to the Asset Benchmark Return plus 1%;

**Adjusted Gross Asset Value** means on the last day of any Half Year the aggregate value of all of the assets comprising the Fund on that day and at any other time, means the aggregate value of all of the assets comprising the Fund on the last day of the previous Half Year and for the purposes of this definition:

- (a) where the asset is an interest in a TK Agreement the value of that interest is the relevant percentage of the gross asset value of the assets of the business the subject of that TK Agreement,

where,

relevant percentage is the percentage interest of the Trustee in the capital account of the TK Agreement; and

- (b) where the asset is an interest in a Japanese Tokutei Mokuteki Kaisha (TMK) or any other entity a majority by value of the assets of which comprise interests in real estate in Japan, the value of that interest is that proportion of the gross asset value of the assets of that TMK or other entity which the interest of the Trustee in that TMK or other entity bears to all interests in that TMK or other entity;

**ANPc** means the Asset Return minus the Asset Benchmark Return (expressed as a percentage);

**ANPo** means the ANPc of prior Year except in the Year ended 30 June 2006 when ANPo is 0;

**Asset Benchmark Index** means the Asset Benchmark Index Starting Value, escalated by 10% per annum on a compound basis;

**Asset Benchmark Index Opening Value** means the Asset Benchmark Index Closing Value for the previous period, except for the Year ended June 2006, where the Asset Benchmark Index Opening Value means the Asset Benchmark Index Starting Value;

**Asset Benchmark Index Closing Value** means the value of the Asset Benchmark Index on the last day of the relevant Year;

**Asset Benchmark Index Starting Value** means 100 as at 30 June 2005;

**Asset Benchmark Return** (expressed as a percentage) means the amount calculated in accordance with the following formula:

$$\frac{(ABc - ABo)}{ABo}$$

where

ABc is the Asset Benchmark Index Closing Value; and

ABo is the Asset Benchmark Index Opening Value or if ANPo < 0 the Asset Benchmark Index Opening Value for the last Year in which ANPo  $\geq 0$ , except if that Year is more than 2 years prior to the Relevant Year, ABo is the Asset Benchmark Index Starting Value or if the Relevant Year ends on or after 30 June 2008, the Asset Benchmark Index Opening Value for the Year 2 years prior to the Relevant Year;

**Asset Excess Performance Amount** means for the relevant Year, the equivalent amount in Yen which if added to the final monthly cashflow in the calculation of the Total Asset Return for the relevant Year would result in the Asset Return being equivalent to the Asset Benchmark Return, less the Additional Asset Excess Performance Amount if this amount is less than zero;

**Asset Index** means an index for the Japanese Assets as calculated by the Trustee, compounding the annual Total Asset Return. The index will commence on the 30 June 2005 at a value of 100 (**Asset Index Starting Value**);

**Asset Index Closing Value** means the value of the Asset Index on the last day of the relevant Year;

**Asset Index Opening Value** means the Asset Index Closing Value for the previous Year, except in the Year ended June 2006, where the Asset Index Opening Value means the Asset Index Starting Value;

**Asset Manager** means any asset manager in respect of any property in which the Trust has a direct or indirect economic interest;

**Asset Management Base Fees** means the relevant percentage of any fees paid to any Asset Manager, for asset management services provided in respect of any property in which the Trust has a direct or indirect economic interest being fees calculated by reference to asset values;

where,

relevant percentage is the percentage economic interest of the Trustee in the relevant property; and

fees for asset management services do not include transaction related fees including property management fees, fees for asset acquisitions or disposals and fees for debt placement;

**Asset Management Performance Fees** means the relevant percentage of any fees paid to any Asset Manager, for asset management services provided in respect of any property in which the Trust has a direct or indirect economic interest being fees calculated by reference to financial performance above a benchmark but, for the avoidance of doubt, does not include any fee paid to any Asset Manager where such fee is calculated as a percentage of the Trust Performance Fee;

where relevant percentage is the percentage economic interest of the Trustee in the relevant property;

**Asset Performance Fee** means the fee calculated in accordance with paragraph 3 of this schedule;

**Asset Return** (expressed as a percentage) means the amount calculated in accordance with the following formula:

$$\frac{(ATc - ATo)}{ATo}$$

where:

ATc is the Asset Index Closing Value ; and

ATo is the Asset Index Opening Value or if ANPo<0 then ATo is the Asset Index Opening Value for the last Year where ANPo ≥ 0, except if that Year is more than 2 years prior to the Relevant Year, ATo is the Asset Index Starting Value or if the Relevant Year ends on or after 30 June 2008, the Asset Index Opening Value for the Year 2 years prior to the Relevant Year;

**Base Fee** means the fee calculated in accordance with paragraph 2 of this schedule;

**Benchmark Index** means the average of the S&P ASX 200 Property Accumulation Index as calculated by Standard & Poor's, or other suitable body as determined by the Trustee from time to time and notified to Unitholders, as at the close of normal trading on each of the ten Business Days from and including the date upon which the Units or (if the Units are Stapled) Stapled Securities trade ex the final distribution entitlement for the relevant Year. If the S&P ASX 200 Property Accumulation Index ceases to be published or reasonably able to be calculated there shall be substituted a comparable index reasonably selected by the Trustee;

**Benchmark Index Closing Value** means the value of the Benchmark Index on the last day of the relevant Year;

**Benchmark Index Opening Value** means the Benchmark Index Closing Value for the previous Year, except in the Year ended June 2005, where the Benchmark Index Opening Value means the Benchmark Index Starting Value;

**Benchmark Index Starting Value** means the S&P ASX 200 Property Accumulation Index as calculated by Standard & Poor's, or other suitable body as determined by the Trustee and notified to Unitholders, as at the close of normal trading on the date upon which Units shall first become Officially Quoted;

**Benchmark Return** (expressed as a percentage) means the amount calculated in accordance with the following formula:

$$\frac{(Bc - Bo)}{Bo}$$

where

Bc is the Benchmark Index Closing Value; and

Bo is the Benchmark Index Opening Value or if NPo<0 the Benchmark Index Opening Value for the last Year where NPo ≥ 0, except if that Year is more than 2 years prior to the Relevant Year, Bo is the Benchmark Index Starting Value or if the Relevant Year ends on or after 30 June 2008, the Benchmark Index Opening Value for the Year 2 years prior to the Relevant Year;

**Excess Asset Management Performance Fee** means any fee payable to any Asset Manager under an asset management agreement for asset management services provided in respect of any property in which the Trust has a direct or indirect economic interest being fees calculated by reference to financial performance above a benchmark, which the relevant Asset Manager has agreed to defer on the basis of the limit under paragraph 4.1(a) or 4.1(aa) of this schedule;

**Excess Performance Fees** means the amount determined in accordance with paragraph 4.1(b)(2) of this schedule;

**Half Year** means:

- (a) for the first Half Year, the period from the date Units are first Officially Quoted to the next 30 June; and
- (b) in all other circumstances, the 6 month period ending on 30 June and 31 December;

**Japanese Assets** means the assets in or related to Japan in which the Trustee has a direct or indirect economic interest from time to time;

**Market Capitalisation** means the average of the daily volume weighted average sale price of all Units or (if the Units are Stapled) Stapled Securities traded in normal trading on the ASX during the ten Business Days from and including the date upon which the Units or (if the Units are Stapled) Stapled Securities trade ex the final distribution entitlement for the relevant Year multiplied by the Units or (if the Units are Stapled) Stapled Securities on issue at the close of the last day of the relevant Year;

**NPc** means the Trust Return minus the Benchmark Return (expressed as a percentage);

**NPo** means the NPc of prior Year except in the Year ended 30 June 2005 when NPo is 0;

**Performance Fee** means the fee calculated in accordance with paragraph 3 of this schedule;

**Performance Unit Issue Price** means the greater of the average of the daily volume weighted average sale price of all Units or (if the Units are Stapled) Stapled Securities traded in normal trading on the ASX during the ten Business Days from and including the date upon which the Units or (if the Units are Stapled) Stapled Securities trade ex the final distribution entitlement for the relevant Year and the net tangible asset backing per Unit or (if the Unit is Stapled) Stapled Security at the end of the Year. This will be the issue price of the relevant Performance Units;

**Performance Unit** means the Units or (if the Units are Stapled) Stapled Securities issued to the Trustee pursuant to paragraph 6 of this schedule (if any);

**Relevant Year** means the Year in respect of which a fee is being calculated;

**Tier 1 Asset Performance Fee** means a fee equal to 5% of the Asset Excess Performance Amount multiplied by negative 1, but equals zero:

- (a) for the Year ending 30 June 2005; or
- (b) if ANPc is not greater than zero;

**Tier 2 Asset Performance Fee** means a fee equal to 15% of the Additional Asset Excess Performance Amount multiplied by negative 1 but equals zero:

- (a) for the Year ending 30 June 2005; or
- (b) if ANPc is not greater than 1%;

**Tier 1 Trust Performance Fee** means a fee equal to NPc (up to 2%) multiplied by Market Capitalisation multiplied by 5%, but equals zero if NPc is not greater than zero;

**Tier 2 Trust Performance Fee** = (NPc minus 2%) multiplied by Market Capitalisation multiplied by 15% but equals zero if NPc is not greater than 2%;

**TK Agreement** means a Japanese Tokumei Kumiai Agreement to which the Trustee is a party;

**TK Earnings** means the relevant percentage of all pre-tax profits (but not losses) (excluding profits derived from the disposition of property and excluding profits allocated to an entity other than the TK Operator) from the subject TK business of all TK Operators,

where

relevant percentage is the percentage interest of the Trustee in the capital account of the TK Agreement.

**TK Operator** means an operator under a TK Agreement;

**Total Asset Return** means the internal rate of return at the end of a Year (expressed as a percentage) for the Japanese Assets, calculated on a monthly period over the Year. Monthly period cashflows include the relevant percentage of net income, interest expense, payments with respect to acquisitions, dispositions, capital expenditure, and all fees but before withholding tax and currency hedging, with relevant percentage being the percentage economic interest of the Trustee in the relevant cashflows. The final monthly cashflow will include the end of Year market value of the Japanese Assets less the value of interest bearing debt and other liabilities associated with the Japanese Assets;

**Total Fees** means the aggregate of the Base Fees, Asset Management Base Fees, Performance Fees, Asset Management Performance Fees, and TK Earnings referable to a Year but does not include any Excess Performance Fees;

**Trigger Event** means any of the following:

- (a) a resolution is passed at a meeting of Unitholders removing or replacing the Trustee without the recommendation of the existing Trustee;
- (b) the Trust terminates;
- (c) the Trust is removed from the Official List or Units or (if the Units are Stapled) Stapled Securities have been suspended from Official Quotation for a continuous period of 60 days (**Delisting Event**);
- (d) the Units or (if the Units are Stapled) Stapled Securities are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act;
- (e) the Unitholders approve a formal or informal scheme of arrangement pursuant to which the Trust is to merge with any other managed

investment scheme or entity or pursuant to which there is a material change in the ownership or control of the Trust;

**Trust Index** means the accumulation index for the Trust (together with any of its Stapled Entities) as calculated by Standard & Poor's, or other suitable body as determined by the Trustee from time to time and notified to Unitholders, using closing market price series data. The index will commence on the date upon which Units shall first become Officially Quoted and utilise the initial amount paid for each Unit pursuant to the PDS in relation to the initial public offering of the units (**Trust Index Starting Value**);

**Trust Index Closing Value** means the ten day volume weighted average Trust Index from and including the date upon which the Units or (if the Units are Stapled) Stapled Securities trade ex the final distribution entitlement for the relevant Year;

**Trust Index Opening Value** means the Trust Index Closing Value for the previous Year, except in the first Year where the Trust Index Opening Value means the Trust Index Starting Value;

**Trust Performance Fee** means the fee calculated in accordance with paragraph 3 of this schedule;

**Trust Return** (expressed as a percentage) means the amount calculated in accordance with the following formula:

$$\frac{(T_c - T_o)}{T_o}$$

where:

T<sub>c</sub> is the Trust Index Closing Value; and

T<sub>o</sub> is the Trust Index Opening Value or if NPo < 0 then T<sub>o</sub> is the Trust Index Opening Value for the last Year where NPo ≥ 0, except if that Year is more than 2 years prior to the Relevant Year, in which case T<sub>o</sub> is the Trust Index Starting Value or if the Relevant Year ends on or after 30 June 2008, the Trust Index Opening Value for the Year 2 years prior to the Relevant Year;

**Year** means:

- (a) for the first Year, the period from the date Units are first Officially Quoted to the next 30 June; and
- (b) in all other circumstances, the 12 month period ending on 30 June in each year.

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## 2 Base fee

- (a) Subject to paragraph 2(d) of this schedule, the Trustee is entitled to receive out of the Fund a base fee in an amount up to 0.5% per annum of the Adjusted Gross Asset Value less, for so long as the Trustee is a related body corporate of Babcock & Brown Limited, the sum of:
  - (1) total Asset Management Base Fees for the relevant Year; and
  - (2) total TK Earnings for the relevant Year.

- (b) The Base Fee accrues quarterly, is calculated at the end of each Half Year and is payable in arrears on a quarterly basis.
- (c) The Trustee will not receive any payments under paragraph 2(b) of this schedule if the Base Fee for the relevant period is negative (**Base Fee Deficit**).
- (d) The amount of any Base Fee Deficit (if any) must, as soon as practicable after it is calculated, be paid by the Trustee out of its own funds into the Trust's bank account.
- (e) If the Trustee retires or is removed, it is entitled to be paid any instalment of Base Fees which have already accrued but have not been paid and is also entitled to receive payment of Base Fees calculated on a daily basis from the start of the quarter in which the Trustee ceases to be Trustee up to and including the date it ceases to be Trustee, payable within seven days of such date.
- (f) The Trustee may not pay or economically bear the expense of any Asset Management Base Fee in respect of any Year in excess of 0.4% per annum of the aggregate value of the assets the subject of each TK asset management agreement (including the properties in which the Trustee has a direct or indirect economic interest at cost).

### 3 Performance fee

- (a) Subject to paragraph 4 of this schedule, while the Units or (if the Units are Stapled) Stapled Securities are Officially Quoted the Trustee is entitled to receive out of the Fund a Performance Fee for each Year in an amount up to the sum of:
  - (1) Trust Performance Fee, comprising the sum of:
    - (A) the Tier 1 Trust Performance Fee; plus
    - (B) the Tier 2 Trust Performance Fee; and
  - (2) Asset Performance Fee, comprising the sum of:
    - (A) the Tier 1 Asset Performance Fee; plus
    - (B) the Tier 2 Asset Performance Fee; minus.
    - (C) the Asset Management Performance Fee,
 except that:
    - (i) if, as a result of the deduction of the amount in subparagraph (C), the Asset Performance Fee is less than or equal to zero the Asset Performance Fee for that year will be taken to be zero;
    - (ii) the sum of the Tier 1 Asset Performance Fee plus the Tier 2 Asset Performance Fee is deducted from any amounts payable with respect to the Trust Performance Fee and if, as a result of this deduction, the Trust Performance Fee is less than or equal to

zero, the Trust Performance Fee will be taken to be zero.

- (b) The Performance Fee (if any) accrues at the end of each Year, is payable promptly after calculation under paragraph 3(a) of this schedule and that part of the Performance Fee referable to the Asset Performance Fee (if any) is to be denominated in Yen.
- (c) The Trustee may not pay or economically bear the expense of any Asset Management Performance Fee in respect of any Year in excess of the amount equal to the sum of the Tier 1 Asset Performance Fee and the Tier 2 Asset Performance Fee for that Year.

## 4 Limitation of fees

### 4.1 Limitation

- (a) For so long as the Trustee is a related body corporate of Babcock & Brown Limited, except as provided in this paragraph 4, the maximum Total Fees to be paid to the Trustee and any Asset Manager in respect of any Year, is to be an amount equal to 1% of the Adjusted Gross Asset Value at the end of the Year.
- (aa) For so long as the Trustee is not a related body corporate of Babcock & Brown Limited, except as provided in this paragraph 4, the maximum Total Fees to be paid to the Trustee and any Asset Manager in respect of any Year, is to be an amount equal to the sum of:
  - (1) the amount the Trustee requires to recover its operating costs under paragraph 2(a) of this schedule; and
  - (2) 0.8% of the Adjusted Gross Asset Value at the end of the Year, being the maximum amount of fees payable to the Asset Manager.
- (b) If the amount of the Total Fees as calculated in accordance with this schedule exceeds the limit for the Year specified in paragraph 4.1(a) or 4.1(aa) of this schedule (as applicable);
  - (1) the Base Fee for that Financial Year shall be payable, as well as payment of any Asset Management Base Fees and any TK Earnings and only that amount of the Performance Fee referable to that Year equal to the balance of the fees up to that limit (after deduction of any Asset Management Performance Fees up to that limit) shall be payable to the Trustee at that time, with amounts referable to an Asset Performance Fee payable first;
  - (2) the difference between Total Fees and the amount payable as contemplated by paragraph 4.1(b)(1) of this schedule (**Excess Performance Fee**) will accrue and will become payable in accordance with paragraph 4.2 of this Schedule.

### 4.2 Excess Performance Fees

- (a) The Excess Performance Fee must be recorded as a liability of the Fund payable to the Trustee and the Excess Performance Fee shall be paid to the

Trustee at the end of subsequent Years to the extent that Total Fees payable to the Trustee and any Asset Manager in relation to the relevant subsequent Year are less than the limit referred to in paragraph 4.1(a) or 4.1(aa) of this schedule, after payment of any Excess Asset Management Performance Fees up to that limit.

- (b) If at the end of any Year there shall be any Excess Performance Fee which accrued as a liability at least three years prior to the end of that Year and which has not been paid to the Trustee that Excess Performance Fee will be paid to the Trustee, and disregarded for the purpose of calculating the limits under paragraph 4.1(a) or 4.1(aa) of this schedule in relation to the Year in which it is paid.
- (c) If the Trustee retires or is removed at a time when there are any Excess Performance Fees which have not been paid, it is entitled to receive those fees within seven days of it ceasing to be Trustee. Any payment under this paragraph 4.2(c) will be disregarded for the purposes of calculating the limit under paragraph 4.1(a) or 4.1(aa) of this schedule.
- (d) If a Trigger Event occurs at a time when there are any Excess Performance Fees which have not been paid, including any Excess Performance Fees referable to the Year in which the Trigger Event occurs, then the Trustee is entitled to receive those fees within seven days of the occurrence of the Trigger Event. Any payment under this paragraph 4.2(e) will be disregarded for the purposes of calculating the limit under paragraph 4.1(a) or 4.1(aa) of this schedule.
- (e) For the avoidance of doubt:
  - (1) in paragraphs 4.2(a)-(d) and 6(c) of this schedule, a reference to any Excess Performance Fee means the amount determined in accordance with paragraph 4.1(b)(2) of this schedule less the total amount of any Excess Asset Management Performance Fees;
  - (2) any Excess Asset Management Performance Fee shall be paid under the relevant asset management agreement to the relevant Asset Manager at the end of subsequent Years to the extent that Total Fees payable to the Trustee and any Asset Manager in relation to the relevant subsequent Year are less than the limit referred to in paragraph 4.1(a) or 4.1(aa) of this schedule; and
  - (3) if at the end of any Year there shall be any Excess Asset Management Performance Fee which accrued to any Asset Manager at least three years prior to the end of that Year and which has not been paid to the relevant Asset Manager that Excess Asset Management Performance Fee will be paid under the relevant asset management agreement to the relevant Asset Manager, and disregarded for the purpose of calculating the limit under paragraph 4.1(a) or 4.1(aa) of this schedule in relation to the Year in which it is paid.
- (f) Notwithstanding anything else contained in this schedule, any Excess Performance Fee outstanding as at 30 September 2009 shall be satisfied by payment no later than 20 April 2009 of an amount of \$17,022,511 to be applied to satisfy the respective accrued entitlements of the Trustee under

this deed and the relevant Asset Managers under their asset management agreements, in full and final satisfaction of the amounts outstanding. Any payment under this paragraph 4.2(f) will be disregarded for the purposes of calculating the limit under paragraph 4.1(a) or 4.1(aa) of this schedule.

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## 5 Payment in lieu of Performance Fees

- (a) If a Trigger Event occurs, the Trustee is entitled to, in addition to the Base Fee, a payment in lieu of the Performance Fee calculated in accordance with paragraph 5(b) of this schedule, which might otherwise have been paid to the Trustee in respect of the Year in which the Trigger Event occurs.
- (b) The payment is to be equal to the Performance Fees calculated in accordance with paragraph 3 of this schedule as if the end of the Year was the date of the occurrence of the Trigger Event but in determining:
  - (1) the Trust Index Closing Value, there is to be substituted for the market price of the Units or (if the Units are Stapled) Stapled Securities:
    - (A) in the case of a takeover bid, the price per Unit or (if the Unit is Stapled) Stapled Security which would be payable for compulsory acquisition (including in the case of non-cash consideration the market value of that non-cash component on the date of the Trigger Event);
    - (B) in the case of a scheme of arrangement, the mid-point of the value range for the Units or (if the Units are Stapled) Stapled Securities contained in the independent expert's report (if any) prepared for the Unitholders in relation to the scheme of arrangement or if there is no independent expert's report, the fair value of the consideration per Unit or (if the Unit is Stapled) Stapled Security as determined by an independent accountant appointed by the Trustee;
    - (C) in the case of a Delisting Event, the average of the daily volume weighted average sale price of all Units or (if the Units are Stapled) Stapled Securities traded in normal trading on the ASX during the ten Business Days prior to the date of the Delisting Event; or
    - (D) in the case of termination of the Trust, the amount per Unit or (if the Unit is Stapled) Stapled Security to be received by the Unitholders after accruing the amount payable to the Trustee for Performance Fees; and
  - (2) the Asset Index Closing Value, the Asset Index is to be calculated using the Total Asset Return on a daily basis from the Asset Index Opening Value for the relevant Year up to and including the date of the Trigger Event.
- (c) Such payment is to be made immediately following the calculation to the entity which was the Trustee on the day upon which the Trigger Event

occurred notwithstanding that the entity may have ceased to be the Trustee or that the Trust has terminated.

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## 6 Payment in Units

- (a) Subject to the Corporations Act and Listing Rules and paragraph 6(b) of this schedule, if a payment is made to the Trustee under paragraphs 3 or 4 of this schedule and the payment is referable to a Trust Performance Fee, the Trustee may in substitution for payment in cash, elect to:
  - (1) subscribe for the number of Units or (if the Units are Stapled) Stapled Securities equal to the whole of or any part of the amount of the payment divided by the Performance Unit Issue Price;
  - (2) apply that amount as payment for the Application Monies for those Units or (if the Units are Stapled) Stapled Securities; and
  - (3) be paid in cash to the extent that the payment is not applied in the purchase of Units or (if the Units are Stapled) Stapled Securities under paragraph 6(a)(2) of this schedule.
- (b) Any Units or (if the Units are Stapled) Stapled Securities subscribed for under paragraph 6(a)(1) of this schedule must be issued as soon as reasonably practicable after the payment is calculated.
- (c) If the Trustee's subscription for Units or (if the Units are Stapled) Stapled Securities in paragraph 6(a) of this schedule relates to Excess Performance Fees, the number of Units or (if the Units are Stapled) Stapled Securities which may be issued will be calculated using the relevant Performance Unit Issue Price at the time of payment.

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**Executed as a deed:**

**Signed by**  
**Babcock & Brown Japan Property Management Limited**  
in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)