

ASX Announcement

31 October 2014

Brookfield Prime Property Fund (ASX: BPA) Proposal from Brookfield to acquire units in the Fund

Brookfield Capital Management Limited (BCML) as Responsible Entity for Brookfield Prime Property Fund (BPA or the Fund) announces a proposal regarding the acquisition of units in the Fund.

Key messages in this announcement are:

- BCML has entered into an Implementation Deed with Brookfield BPPF Investments Pty Limited as trustee for Brookfield BPPF Investments Trust (Brookfield) in relation to a proposal to implement a trust scheme to acquire the remaining 19.5% of units in the Fund not currently owned by Brookfield and its associates (Proposal);
- The Implementation Deed contains a number of conditions that need to be satisfied in order for the Proposal to be implemented (including approval of unitholders at a meeting to be advised);
- The proposed acquisition price is \$5.50 per unit;
- An acquisition price of \$5.50 per unit represents a premium of 20.6% to the closing price on ASX on 31 October 2014 of \$4.56 and a 16.5% premium to the 28 day volume weighted average price of \$4.72 per unit;
- The Independent Directors of BCML intend to recommend the Proposal subject to receipt of a report from an independent expert, and in the absence of any proposal which is superior and in the best interests of unitholders; and
- A meeting of unitholders will be held to consider and approve the Proposal and a booklet will be mailed to unitholders containing a Notice of Meeting and Explanatory Memorandum in relation to the Proposal. Mailing of these materials is anticipated within the next two weeks, with the meeting expected to be held on 8 December 2014.

Implementation Deed

A copy of the Implementation Deed is attached to this release.

Other than requiring approval of the resolutions to effect the Proposal at a meeting of unitholders, a number of conditions remain outstanding under the Implementation Deed.

The conditions relating to unitholder approval of the resolutions and to regulatory approvals cannot be waived. If those conditions are not satisfied, the Proposal cannot proceed. Other conditions may be waived in certain circumstances as set out in the Implementation Deed.

The Implementation Deed may be terminated if, between 31 October 2014 and 6.00 pm the day before the unitholder meeting, BCML receives an alternative proposal which the Independent Directors determine is superior to the Proposal and in the best interests of unitholders.

Resolutions to be put to unitholders

In order to implement the Proposal, BCML is proposing two resolutions for unitholders' consideration. In order to proceed with implementation of the Proposal, **both** resolutions must be passed by unitholders at the meeting to be held on a date to be advised (expected to be 8 December 2014).

Resolution 1

Unitholders must approve amendments to the Constitution, as required by section 601GC of the Corporations Act, to authorise transfer of relevant units to Brookfield. These amendments must be approved by a special resolution which requires approval by at least 75% of the votes cast by unitholders entitled to vote on the resolution. Members of the Brookfield Group will not be entitled to vote on the resolution.

Resolution 2

Unitholders must approve acquisition of the units by Brookfield for the purposes of item 7 section 611 of the Corporations Act by an ordinary resolution. To be passed, the ordinary resolution requires approval by more than 50% of votes cast on the resolution at the Meeting by unitholders entitled to vote on the resolution. Members of the Brookfield Group will not be entitled to vote on the resolution.

Appointment of Independent Expert and Recommendation of the Independent Directors

BCML has engaged KPMG Financial Advisory Services (Australia) Pty Ltd (Independent Expert) to provide an independent expert's report in relation to the Proposal.

The Notice of Meeting and Explanatory Memorandum will also contain details in relation to the recommendation by the Independent Directors of BCML having regard to the advantages and potential disadvantages of the resolutions and the opinion of the Independent Expert.

Next steps

A booklet containing the Notice of Meeting and Explanatory Memorandum, setting out the advantages and disadvantages of the proposal, key dates and including the Independent Expert's report is being prepared and will be released through the ASX and mailed to unitholders. It is expected this will occur within the next two weeks.

BCML recommends that unitholders consider carefully the contents of this announcement and the information to be contained in the Notice of Meeting and Explanatory Memorandum, and to consult with your investment, tax, legal or other professional adviser.

Additional information about the Fund and its assets can be found at www.au.brookfield.com.

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Deed

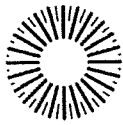
EXECUTION VERSION

Implementation Deed

Brookfield Capital Management Limited (as
responsible entity for Brookfield Prime Property
Fund)

Brookfield BPPF Investments Pty Limited (as
trustee for Brookfield BPPF Investments Trust)

Brookfield Australia Investments Limited



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This deed provides



1 Definitions and interpretation

1.1 Definitions

- (a) The meanings of the terms used in this deed, unless the context otherwise requires, are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
ASX	ASX Limited ABN 98 008 624 691, or the market operated by it, as the context requires.
BCML Warranties	each representation and warranty in clause 1 of Annexure 4.
Brookfield Warranties	each representation and warranty in clause 2 of Annexure 4.
Business Day	has the meaning given in the Listing Rules.
Claim	<p>any claim, demand, legal proceedings or cause of action, including any claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none">1 based in contract (including breach of warranty);2 based in tort (including misrepresentation or negligence);3 under common law or equity; or4 under statute (including the Australian Consumer Law (being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (CCA)) or Part VI of the CCA, or like provision in any state or territory legislation), <p>in any way relating to this deed or the Scheme, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.</p>
Consideration	\$5.50 per Unit.
Constitutional Changes	the amendments to the Fund Constitution required to enable implementation of the Scheme as set out in Annexure 5.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).



Term	Meaning
Duty	any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of the duty or charge.
Encumbrance	<p>an interest or power:</p> <ol style="list-style-type: none">1 reserved in or over an interest in any asset; or2 created or otherwise arising in or over any interest in any asset under a security agreement, a bill of sale, mortgage, charge, lien, pledge, trust or power, <p>by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to:</p> <ol style="list-style-type: none">3 any agreement to grant or create any of the above; and4 a security interest within the meaning of section 12(1) of the PPSA.
End Date	28 February 2015, or such other date as agreed by the Parties.
Explanatory Memorandum	the Explanatory Memorandum to be attached to the Notice of Meeting.
Explanatory Memorandum Despatch Date	the date set out in the Timetable for the Notice of Meeting and Explanatory Memorandum to be sent to Unitholders by BCML or such other date as the Parties agree in writing.
Financier	Australia and New Zealand Banking Group Limited (ANZ) in its capacity as Term Facility Agent under the A\$ Syndicated Facility Agreement as amended and restated on 20 June 2014 between, among others, BCML, ANZ and ANZ Fiduciary Services Pty Ltd.
Fund Constitution	the constitution of the Fund, as amended from time to time.
Fund Register	the register of Unitholders maintained by BCML.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
GST	goods and services tax or similar value added tax levied or imposed in



Term	Meaning
	Australia under the GST Law or otherwise on a supply.
GST Act	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Law	has the same meaning as in the GST Act.
Guidance Note 15	<i>Guidance Note 15: Trust Scheme Mergers</i> issued by the Takeovers Panel of Australia.
IBC	the independent committee of the BCML board which, as at the date of this deed, consists of Barbara Ward and Allan McDonald.
Independent Expert	KPMG Corporate Finance, a division of KPMG Financial Advisory Services (Australia) Pty Ltd.
Independent Expert's Report	the report for inclusion in the Explanatory Memorandum for the purpose of the Resolution seeking approval under item 7 of section 611 of the Corporations Act.
Insolvency Event	in relation to an entity: <ol style="list-style-type: none">1 a liquidator, provisional liquidator, receiver or receiver and manager is appointed in relation to the whole or a substantial part of the undertaking or property of the entity;2 a court order is made or an effective resolution is passed for the winding up or dissolution without winding up (otherwise than for the purposes of reconstruction or amalgamation) of the entity; or3 an administrator is appointed under section 436A, 436B or 436C of the Corporations Act.
Listing Rules	the listing rules published by ASX.
Material Acquisition	BCML or any subsidiary of the Fund acquires or enters into an agreement to acquire any entity or asset (or interest in any entity, business or asset) for consideration in excess of \$5 million for any individual item.
Material Adverse Change	an event, change or condition which has, or could reasonably be expected to have, either individually or in aggregate with other events, changes and conditions: <ol style="list-style-type: none">1 an adverse financial effect of \$5 million or more on the net profit or loss of



Term	Meaning
	<p>the Fund in any financial year (calculated on a basis consistent with that applied in the audited financial report of the consolidated Fund for the financial year ended 30 June 2014); or</p> <p>2 an adverse financial effect of \$10 million or more on the value of the net assets of the Fund,</p> <p>other than:</p> <p>3 mark to market movements relating to investment properties and financial derivatives (including those reflected in the Fund's share of net profit or loss on investments accounted for using the equity method); or</p> <p>4 events, changes and conditions publicly announced by the Fund to ASX prior to any announcement under clause 7.1 or otherwise disclosed in public filings by BCML in relation to the Fund or any of its subsidiaries prior to any announcement under clause 7.1, in each case where the relevant disclosure is not, and is not likely to be, incomplete, incorrect, untrue or misleading.</p>
Material Commitment	BCML on behalf of the Fund commits to a new development project requiring funding in excess of \$5 million.
Material Disposal	BCML or any subsidiary of the Fund disposes or offers or agrees to dispose of any entity or asset (or interest in any entity, business or asset): <p>1 for consideration in excess of \$5 million for any individual item; or</p> <p>2 in respect of which the book value (as recorded in the Fund's statement of financial position as at 30 June 2014) is in excess of \$5 million for any individual item.</p>
Meeting	the meeting of Unitholders to be convened to consider the Resolutions.
Meeting Date	the date on which the Meeting is held.
Notice of Meeting	the notice of meeting convening a meeting of Unitholders to consider the Resolutions to be sent to Unitholders by BCML.
Parties	all parties to this deed.
Payment Date	the date which is 2 Business Days after the Record Date.
Permitted Distribution	a quarterly distribution payable to Unitholders in accordance with the Fund Constitution up to a maximum of \$0.02 per Unit.



Term	Meaning
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth).
Prescribed Occurrence	<ol style="list-style-type: none">1 conversion of any Units into a larger or smaller number of Units;2 the Fund resolves to reduce its capital in any way;3 the Fund enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act or otherwise;4 the Fund issues or agrees to issue units or shares, or grants or agrees to grant an option over its units or shares, other than an issue of Units as a result of the exercise of options which are on issue at the date an announcement is made under clause 7.1;5 the Fund or a subsidiary of the Fund issues or agrees to issue convertible notes (or any other securities convertible into units or shares);6 the Fund or a subsidiary of the Fund Disposes or agrees to Dispose of the whole or a substantial part of its business or undertaking;7 the Fund or a subsidiary of the Fund grants or agrees to grant an Encumbrance over the whole or a substantial part of its business or property; or8 an Insolvency Event occurs in respect of the Fund or a subsidiary of the Fund.
Record Date	the date which is 5 Business Days after the Meeting Date or such other date as agreed by the Parties in writing. The time for determining entitlements under the Scheme is 7:00 pm on the Record Date.
Regulatory Approvals	any ASIC relief or ASX confirmation or waiver required by a Party to complete the Scheme.
related body corporate	has the meaning given in the Corporations Act.
Resolutions	the resolutions set out in Annexure 2.
Scheme	the trust scheme under which Brookfield will acquire all of the Units that it and its related bodies corporate do not presently hold.
Scheme Implementation Date	the date which is 7 Business Days following the Record Date or, if later, 3 Business Days after the last of the conditions in clause 3.1 is satisfied.



Term	Meaning
subsidiary	has the meaning given in the Corporations Act, but so that: <ol style="list-style-type: none">1 a trust may also be a subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and2 an entity may be a subsidiary of a trust if it would have been a subsidiary if that trust would have been a corporation.
Units	ordinary fully paid units in the Fund.
Unitholder	a holder of Units from time to time.
Timetable	the proposed timetable attached as Annexure 3 to this deed.
Transaction Steps	the steps to be performed by the Parties under this deed as set out in Annexure 1 to this deed.

1.2 Interpretations

In this deed, unless the context otherwise requires:

- (a) headings and bold types 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) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this deed and a reference to this deed includes any annexure, exhibit and schedule;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) no provision of this deed will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this deed or that provision;



- (k) a reference to a body, other than a Party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or function; and
- (l) a reference to a statute, ordinance, code or other law or rule includes regulations and other instruments under it and consolidation, amendments, re-enactments or replacement.

2 Agreement to implement Scheme

2.1 Obligations of the Parties

Subject to the terms of this deed:

- (a) BCML agrees to propose the Resolutions to the Unitholders and to carry out the Transaction Steps for which it is responsible in accordance with this deed; and
- (b) Brookfield agrees to carry out the Transaction Steps for which it is responsible in accordance with this deed, including paying the Consideration in accordance with clause 5.3 of Annexure 1,

in each case to the extent that such actions have not occurred prior to the date of this deed.

2.2 Benefit

Conditional on the Scheme becoming effective, each of BCML and Brookfield undertakes in favour of the Unitholders to carry out the steps contemplated in clause 5 of Annexure 1, with the intent that each such undertaking will operate as a deed poll in favour of each Unitholder and each Unitholder can rely upon and enforce those undertakings (subject to the terms of this deed) even though those Unitholders are not named as parties to this deed.

3 Conditions precedent

3.1 Conditions

The Parties' obligations to give effect to the Scheme, and Brookfield's obligation to pay the Consideration, in accordance with clause 5.3 of Annexure 1 do not become binding until each of the following conditions precedent has been satisfied or waived:

- (a) **(Unitholder approval)**: the Unitholders approve the Resolutions put to them at the Meeting by the requisite majorities;
- (b) **(ASIC and ASX)**: ASIC and ASX issue or provide such consents, waivers and approvals or do such other acts that are necessary to implement the Scheme, as determined by BCML;



- (c) **(Financier consent)**: the Fund's Financier has given all necessary consents to the implementation of the Scheme and such consents remain in full force and effect;
- (d) **(third party consents)**: all other third party consents, approvals and waivers which are necessary to implement the Scheme have been obtained;
- (e) **(no regulatory action)**: between the date that a public announcement is made under clause 7.1 and the Scheme Implementation Date:
 - (1) there is not in effect any preliminary or final decision, order or decree issued by a Government Agency;
 - (2) no action or investigation is announced, threatened or commenced by a Government Agency; and
 - (3) no application is made to any public authority (other than by Brookfield or any of its related bodies corporate),

(other than an application to, or a decision or order of, ASIC or the Takeovers Panel under, or relating to a breach of Chapter 6A, 6B or 6C of the Corporations Act or relating to unacceptable circumstances within the meaning of section 657A of the Corporations Act in consequence of, or in connection with, the Scheme) that restrains, impedes or prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon any of the Scheme proposal, the acquisition of Units under the Scheme or any transaction contemplated by the Explanatory Memorandum or the Scheme or the rights of Brookfield or any of its related bodies corporate in respect of the Units, or requires the divestiture by Brookfield of any Units or by the Fund of any assets;
- (f) **(no Material Adverse Change)**: no Material Adverse Change occurs between the date an announcement is made under clause 7.1 and 10:00am on the Meeting Date;
- (g) **(no Material Acquisition, Material Disposal or Material Commitment)**: no Material Acquisition, Material Disposal or Material Commitment is made between the date an announcement is made under clause 7.1 and the Scheme Implementation Date;
- (h) **(Permitted Distribution only)**: no distribution other than the Permitted Distribution has been made, declared or determined to be payable by BCML between the date an announcement is made under clause 7.1 and the Meeting Date, and if the Resolutions are approved by Unitholders, no distribution has been made, declared or determined to be payable by BCML between the Meeting Date and the Scheme Implementation Date, whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (i) **(no Prescribed Occurrence)**: no Prescribed Occurrence occurs between the date an announcement is made under clause 7.1 and the Scheme Implementation Date; and
- (j) **(restraints)** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the Scheme is in effect at 8:00 am on the Meeting Date.

3.2 Reasonable endeavours

- (a) BCML must, to the extent it is within its power to do so, use its reasonable endeavours to procure that:



- (1) the conditions in clauses 3.1(c), 3.1(d), 3.1(f), 3.1(g), 3.1(h) and 3.1(i) are satisfied; and
 - (2) in the case of the conditions in 3.1(c) and 3.1(d), those are satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times until the End Date.
- (b) Each Party must, to the extent it is its power to do so, use its reasonable endeavours to procure that:
- (1) there is no occurrence within its control or the control of any of its subsidiaries; and
 - (2) no action is taken by it or any of its subsidiaries, that would prevent any of the conditions in clause 3.1 being or remaining satisfied, other than to extent such occurrence or action is required by law.

3.3 Notification

Each Party must promptly notify each other Party in writing if it discovers that any condition is satisfied or becomes incapable of being satisfied.

3.4 Waiver

- (a) The conditions referred to in clause 3.1 (other than the conditions referred to in clauses 3.4(b) and 3.4(c)) are for the benefit of BCML and Brookfield and cannot be waived except by agreement of BCML and Brookfield in their absolute and unfettered discretion.
- (b) The conditions referred to in clauses 3.1(f), 3.1(g), 3.1(h) and 3.1(i) are for the benefit of Brookfield and may only be waived in writing by Brookfield in its absolute and unfettered discretion.
- (c) The conditions referred to in clauses 3.1(a) and 3.1(b) may not be waived.
- (d) Waiver of the breach or non-fulfilment of a condition does not affect a Party's right to bring a Claim against any other Party for breach of this deed.

3.5 End Date and termination

- (a) If a condition is not satisfied or waived or becomes incapable of being satisfied and is not waived on or by the End Date, the Parties must consult in good faith to determine whether the Scheme may proceed by alternative means and whether or not to extend the End Date.
- (b) Any Party may terminate this deed at any time with immediate effect by written notice to the other Party if:
 - (1) a condition is not satisfied or waived or becomes incapable of being satisfied by the End Date and is not waived; and
 - (2) the Parties do not agree to extend the End Date under clause 3.5(a).



4 Implementation

4.1 Implementation

Subject to any applicable laws and the Listing Rules, each Party must execute all documents and take all necessary action within its power to implement the Transaction Steps as soon as reasonably practicable and in the order set out in the Transaction Steps. In particular, each Party must provide each other Party with reasonable assistance to implement the Transaction Steps. No other provision of this clause 4 limits the generality of this clause 4.1.

4.2 Timetable

Each Party must use all reasonable endeavours to complete all Transaction Steps for which it is responsible and perform all its other obligations substantially in accordance with the Timetable (to the extent that those Transaction Steps have not been completed before the date of this deed), and in particular, to hold the Meeting by the End Date.

4.3 Regulatory Approvals

- (a) Each Party must promptly apply for all relevant Regulatory Approvals it requires to be able to implement the Scheme and take all Transaction Steps for which it is responsible, including responding to requests for information at the earliest practicable date.
- (b) Each Party must consult with each other Party in advance in relation to all communications (whether written or oral and whether direct through agents or advisors) with any Government Agency relating to any Regulatory Approval. In particular, each Party must:
 - (1) give each other Party drafts of any material written communication to be sent to a Government Agency and attempt to resolve in good faith any dispute about the form and content of communications; and
 - (2) give each other Party copies of any written communications sent to or received from any Government Agency promptly on sending or receiving them.
- (c) Each Party is entitled to be represented and to make submissions at any meeting with any Government Agency relating to any Regulatory Approval.

4.4 Explanatory Memorandum

- (a) BCML must prepare the Notice of Meeting and the Explanatory Memorandum (other than those parts of the Explanatory Memorandum required to be prepared by Brookfield and provided to BCML under clause 4.4(b)) so that those documents comply with Guidance Note 15, ASIC Regulatory Guides, the Listing Rules and all other applicable laws,
- (b) Brookfield must prepare and provide BCML with information referable to Brookfield in a form for inclusion in the Explanatory Memorandum, which information is to include all information regarding Brookfield required to enable the Explanatory Memorandum to comply with Guidance Note 15, ASIC Regulatory Guides the Listing Rules and all other applicable law.
- (c) Each Party must assist each other Party in the earliest possible preparation of the Explanatory Memorandum.



- (d) Each Party must consult with each other Party about the form and content of the Explanatory Memorandum and any other communication provided to Unitholders and attempt to resolve in good faith any dispute about the form and content of communications with a view to reaching agreement in a reasonable time frame.
- (e) Each Party must ensure that those parts of the Explanatory Memorandum for which the Party is responsible are updated with any information of which the Party becomes aware between the Explanatory Memorandum Despatch Date and the Meeting Date, that is necessary to ensure that the Explanatory Memorandum is not misleading or deceptive, or likely to mislead or deceive, in any material respect and complies with all applicable laws and the Listing Rules.

4.5 Access to information

Subject to each Party's respective fiduciary duties, each Party must:

- (a) give each other Party reasonable access to its records (subject to any existing confidentiality obligations owed to third parties), premises and personnel and reasonable co-operation for the purpose of understanding the Party's financial position, performance and prospects, and preparing and verifying the Explanatory Memorandum; and
- (b) give each other Party all information that it reasonably requires to implement the Transaction Steps and give effect to the Scheme or otherwise perform their obligations under this deed.

4.6 IBC recommendation

- (a) Subject to clause 4.6(b), BCML (as represented by the IBC) must use its best endeavours to procure that the IBC agrees to recommend that Unitholders vote in favour of the Resolutions, in the absence of a proposal that BCML determines is superior to the Scheme and in the best interests of Unitholders and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Unitholders, provided that BCML shall not be required to do anything in the foregoing part of this clause 4.6(a) if the Independent Expert concludes in the Independent Expert's Report (either initially or in any updated report) that the Scheme is not in the best interests of Unitholders.
- (b) BCML (as represented by the IBC) must not change, withdraw or modify, its recommendation in favour of the Resolutions unless either:
 - (1) the Independent Expert concludes in the Independent Expert's Report (either initially or in any updated report) that the Scheme is not in the best interests of Unitholders;
 - (2) BCML has received an alternative proposal that it has determined is superior to the Scheme and in the best interests of Unitholders; or
 - (3) the IBC has determined, after receiving written financial advice from its financial advisers and written legal advice from its legal advisers, that continuing to recommend the Resolutions would be, or would be likely to be, a breach of their statutory or fiduciary duties or would be, or would be likely to be, unlawful.



5 Representation and warranties

5.1 BCML Warranties

BCML makes each of the BCML Warranties to Brookfield. The BCML Warranties are made on the date of this deed, on the Meeting Date and on each subsequent date up to completion of the Transaction Steps, or on any other date on which a BCML Warranty is expressed to be made.

5.2 Brookfield Warranties

Brookfield makes each of the Brookfield Warranties to BCML. The Brookfield Warranties are made on the date of this deed, on the Meeting Date and on each subsequent date up to completion of the Transaction Steps, or any other date on which a Brookfield Warranty is expressed to be made.

5.3 No representation of reliance

Each Party acknowledges that it has not entered into this deed in reliance on any warranty or representation made by or on behalf of any other Party, except the warranties and representations set out in this deed.

6 Termination

6.1 Termination

A Party may terminate this deed by written notice at any time before the Scheme Implementation Date if:

- (a) **(Resolutions)** the Meeting is held and the Unitholders fail to pass any Resolution put to them; or
- (b) **(regulatory intervention)** ASIC, the ASX, a court or other Government Agency has issued an order, decree or ruling or taken other action which materially restrains or prohibits the Scheme.

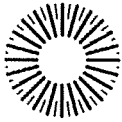
6.2 Termination by BCML

BCML may terminate this deed by written notice at any time before the Meeting Date if:

- (a) Brookfield is in material breach of this deed or a Brookfield Warranty is or becomes materially inaccurate or misleading before the Meeting Date and the matter remains unremedied for 7 days after BCML provides Brookfield with written notice of such matter; or
- (b) between the date of this deed and 6:00 pm on the day before the Meeting Date, BCML receives an alternative proposal to the Scheme which it has determined is superior to the Scheme and in the best interests of Unitholders.

6.3 Termination by Brookfield

Brookfield may terminate this deed by written notice at any time before the Meeting Date if BCML is in material breach of this deed or a BCML Warranty is or becomes materially



inaccurate or misleading before the Meeting Date and the matter remains unremedied for 7 days after Brookfield provides BCML with written notice of such matter.

6.4 Effect of termination

If this deed is terminated, the Parties are discharged from any further performance of their obligations under this deed. This discharge does not apply to:

- (a) any obligations which are expressed in this deed to survive termination; or
- (b) any liability for breach of this deed.

6.5 Notification of breach

Each Party must promptly give each other Party notice if it becomes aware that:

- (a) a warranty or representation made by the Party in this deed has become inaccurate or misleading; or
- (b) the Party has breached this deed.

7 Announcements and disclosure

7.1 Announcement of Scheme

Immediately after the execution of this deed, the Parties must issue a public announcement in a form previously agreed to in writing between them.

7.2 Public announcements

Subject to clause 7.3, no public announcement or disclosure regarding the Scheme may be made other than in a form approved by the Parties (acting reasonably), but each of them must use all reasonable endeavours to provide such approval as soon as practicable.

7.3 Required disclosure

A Party may make any announcement or disclosure in connection with the Scheme or any Transaction Step that it is required by applicable law or the Listing Rules to make, provided that the Party has, to the extent practicable and lawful having regard to the timing of the disclosure, consulted with the other Parties prior to making the relevant disclosure.

8 Costs and Duty

8.1 Costs

Subject to clauses 8.2 and 8.3, each Party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery, stamping and registration of this deed and any other document signed or executed under this deed.



8.2 Duty

Brookfield must pay any stamp duty (including fines, penalties and interest) payable on or in connection with the transfer of Units or the implementation of the Transaction Steps and the Scheme in accordance with this deed.

8.3 Scheme costs of the Fund

Brookfield indemnifies BCML against and must pay to BCML the amount of BCML's reasonable costs in relation to:

- (a) BCML's consideration of the proposal for the Scheme given by Brookfield to BCML (including any updated or revised proposal); and
- (b) convening the Meeting to seek approval for the Scheme.

9 GST

9.1 GST exclusive

All fees or other sums payable or any other consideration provided, or to be provided, under or in connection with this deed, are GST exclusive.

9.2 GST gross up

- (a) A party (**Supplier**) making a taxable supply under or in connection with this deed, may recover from the party (**Recipient**) to whom the taxable supply is made, an additional amount of GST calculated by multiplying the value of the consideration payable or to be provided for the supply (without any deduction or set-off) by the prevailing GST rate (**Additional Amount**).
- (b) The Additional Amount must be paid at the time when payment of the consideration for the taxable supply is due if the consideration is monetary, and within 14 days after the supplier provides a tax invoice to the Recipient if the consideration is non-monetary.
- (c) The Supplier will provide a tax invoice to the Recipient for any taxable supply made under or in connection with this deed.

9.3 Adjustments

If the amount of GST recovered by the Supplier from the Recipient differs from the amount of GST payable at law by the Supplier in respect of the supply, the amount payable by the Recipient to the Supplier will be adjusted accordingly.

9.4 Indemnity or reimbursement payments

If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party (or an entity grouped with that party for GST purposes) is entitled for that loss, cost or expense.



9.5 Interpretation

Terms and expressions used in this clause 9 which are defined in the GST Act, have the same meaning given to those terms and expressions in that Act.

10 Limitation of liability

10.1 Limitation of BCML's liability

- (a) BCML enters into this deed only in its capacity as responsible entity of the Fund.
- (b) Subject to clause 10.1(d):
 - (1) a liability arising under or in connection with this deed (or the transactions contemplated by it) is limited and can be enforced against BCML only to the extent to which it can be satisfied out of property of the Fund out of which BCML is actually indemnified for the liability; and
 - (2) the limitation in clause 10.1(b)(1) applies despite any other provisions of this deed.
- (c) Subject to clause 10.1(d), no party shall:
 - (1) sue BCML in any capacity other than as responsible entity of the Fund;
 - (2) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to BCML or prove in any liquidation, administration or arrangement of or affecting BCML (except in relation to property of the Fund);
 - (3) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this deed (or the transactions contemplated by it) against any property of BCML other than property held by BCML as responsible entity of the Fund.
- (d) The limitations in clauses 10.1(a), (b) and (c) do not apply to any liability of BCML to the extent that the liability is not satisfied because, under the Fund Constitution or by operation of law there is a reduction in the extent of BCML's indemnification out of the assets of the Fund, as a result of BCML's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

10.2 Limitation of Brookfield's liability

- (a) Brookfield enters into this deed only in its capacity as trustee for the Brookfield BPPF Investments Trust (the **Brookfield Trust**).
- (b) Subject to clause 10.1(d):
 - (1) a liability arising under or in connection with this deed (or the transactions contemplated by it) is limited and can be enforced against Brookfield only to the extent to which it can be satisfied out of property of the Brookfield Trust out of which Brookfield is actually indemnified for the liability; and



- (2) the limitation in clause 10.2(b)(1) applies despite any other provisions of this deed.
- (c) Subject to clause 10.1(d), no party shall:
 - (1) sue Brookfield in any capacity other than as trustee of the Brookfield Trust;
 - (2) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to Brookfield or prove in any liquidation, administration or arrangement of or affecting Brookfield (except in relation to property of the Brookfield Trust);
 - (3) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this deed (or the transactions contemplated by it) against any property of Brookfield other than property held by Brookfield as trustee of the Brookfield Trust.
- (d) The limitations in clauses 10.2(a), (b) and (c) do not apply to any liability of Brookfield to the extent that the liability is not satisfied because, under the trust deed of the Brookfield Trust or by operation of law there is a reduction in the extent of Brookfield's indemnification out of the assets of the Brookfield Trust, as a result of Brookfield's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

11 Guarantee by Brookfield Guarantor

11.1 Guarantee and indemnity

For valuable consideration and in order to induce BCML to enter into this document, the Brookfield Guarantor:

- (a) unconditionally and irrevocably guarantees to BCML on demand, the due and punctual performance by Brookfield of its obligations under this agreement; and
- (b) as a separate and additional liability, indemnifies BCML, on demand, against all losses and Claims which may be incurred by, or brought, made or recovered against, BCML as a result of any default or delay by Brookfield in the due and punctual performance of its obligations under this agreement.

11.2 Principal obligations

The obligations of the Brookfield Guarantor under this clause

- (a) are principal obligations of the Brookfield Guarantor and not ancillary or collateral to any other right or obligation; and
- (b) extend to cover this deed as amended, varied or replaced, whether with or without the consent of the Brookfield Guarantor.

11.3 Continuity

This clause 10.2(a) is a continuing guarantee and indemnity and remains in full force and effect for so long as Brookfield has any liability or obligation to BCML under this agreement and until all those liabilities and obligations are fully discharged.



11.4 Liability unaffected by other events

The liability of the Brookfield Guarantor under this clause 11 is not affected by any circumstance, act or omission which, but for this provision, might otherwise affect it at law or in equity including, whether with or without the consent of the Brookfield Guarantor:

- (a) the grant to Brookfield or any other person of any time, waiver or other indulgence or concession;
- (b) the discharge or release of Brookfield or any other person from any liability or obligation;
- (c) any transaction or arrangement that may take place between Brookfield and BCML or any other person;
- (d) the occurrence of an Insolvency Event in relation to Brookfield or any other person;
- (e) BCML exercising or refraining from exercising any rights, powers or remedies against Brookfield or any other person;
- (f) any failure, omission or delay by BCML or Brookfield to give notice to the Brookfield Guarantor of any default by Brookfield or any other person under this document; and
- (g) any legal limitation, disability, incapacity or other circumstances related to Brookfield or any other person.

11.5 No waiver and remedies cumulative

- (a) No failure by BCML or Brookfield to exercise, and no delay in exercising, any right, power or remedy under this document will operate as a waiver. Nor will any single or partial exercise by BCML or Brookfield of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The rights, powers and remedies provided to BCML and Brookfield in this clause 11 are cumulative and not exclusive of any rights, powers or remedies provided at law or in equity or by any agreement.

11.6 No withholdings

The Brookfield Guarantor must make all payments which may be or become due under this clause 11 free and clear, and without deduction, of all present and future withholdings (including taxes of the Commonwealth of Australia or any other jurisdiction). If the Brookfield Guarantor is compelled by law to deduct any withholding, it must pay to BCML or Brookfield (as applicable) an amount equal to the withholding in addition to any payment due under this clause 11.

11.7 No set off

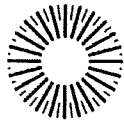
The Brookfield Guarantor has no right to set off, deduct or withhold any moneys which it is liable to pay to BCML under this clause 11 against any moneys which BCML is liable to pay to Brookfield or the Brookfield Guarantor whether under this document or otherwise.



12 General

12.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a Party and given under or in connection with this deed:
- (1) must be in legible writing and in English addressed as shown below:
 - (A) If to Brookfield:
Address: Level 22, 135 King Street, Sydney NSW 2000
Attention: Senior Vice President Legal - Commercial Property
Email: claire.bibby@au.brookfield.com
 - (B) If to BCML:
Address: Level 22, 135 King Street, Sydney NSW 2000
Attention: Company Secretary
Email: neil.olofsson@au.brookfield.com
 - (C) If to the Brookfield Guarantor:
Address: Level 22, 135 King Street, Sydney NSW 2000
Attention: Senior Vice President Legal - Commercial Property
Email: claire.bibby@au.brookfield.comor to such other addresses or numbers as the Parties may notify to each other in writing;
 - (2) where the sender is a company, must be signed by an officer or under the common seal of the sender;
 - (3) is regarded as being given by the sender and received by the addressee:
 - (A) if delivered by hand, when delivered;
 - (B) if sent by post, 9:00am on the second Business Day after posting; and
 - (C) if sent by email, when sent unless the sender receives a notification indicating non-delivery within 4 working hours of sending the email,
but if the delivery or receipt is on a day which is not a Business Day or is after 4:00 pm (addressee's time) it is regarded as received at 9:00 am 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) In this clause 12.1, a reference to an addressee includes a reference to an addressee's officers, agents or employees.



12.2 Governing law

This deed is governed by the laws of New South Wales.

12.3 Prohibition and enforceability

Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

12.4 Waivers

- (a) Waiver of any right arising from a breach of this deed or arising upon default under this deed must be in writing and signed by the person granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this deed does not result in a waiver of that right.
- (c) A person is not entitled to rely on a delay in the exercise or non exercise of a right arising from a breach of this deed or on a default under this deed as constituting a waiver of that right.
- (d) A person may not rely on any conduct of another person as a defence to exercise of a right by that other person.
- (e) This clause may not itself be waived except by writing.

12.5 Variation

A variation of any term of this deed must be in writing and signed by the Parties.

12.6 Assignment

Rights and obligations arising out of or under this deed are not assignable by any Party without the prior written consent of each other Party.

12.7 Further assurances

Each Party must do all things and execute all further documents necessary to give full effect to this deed.

12.8 Entire agreement

This deed supersedes all previous discussions, negotiations, understandings, agreements and deeds in respect of its subject matter and embodies the entire agreement between the Parties.

12.9 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this deed by signing any counterpart.



12.10 To the extent not excluded by law

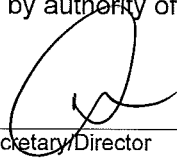
The rights, duties and remedies granted or imposed under the provisions of this deed operate to the extent not excluded by law.



Signing page

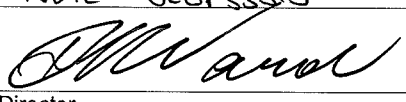
Executed as a deed

Signed sealed and delivered by
Brookfield Capital Management Limited (responsible entity for **Brookfield Prime Property Fund**) in accordance with section 127(a) of the Corporations Act 2001 (Cth) by authority of its directors
By

sign here ► 

 Company Secretary/Director

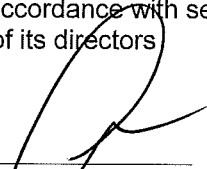
print name NEIL OLOFSSON

sign here ► 

 Director

print name BARBARA WARD

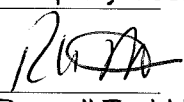
Signed sealed and delivered by
Brookfield BPPF Investments Pty Limited (trustee for **Brookfield BPPF Investments Trust**) in accordance with section 127(a) of the Corporations Act 2001 (Cth) by authority of its directors
By

sign here ► 

 Company Secretary/Director

print name Neil Olofsson

 Company Secretary

sign here ► 

 Director

print name Russell Todd Proutt

 Director



Signed sealed and delivered by
Brookfield Australia Investments Limited in accordance with section 127(a) of
the Corporations Act 2001 (Cth) by authority of its directors
By

sign here ▶ _____
Company Secretary/Director


Neil Olofsson

print name _____
Company Secretary

sign here ▶ _____
Director


Russell Todd Proutt

print name _____
Director



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FREEHILLS

Annexures

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Annexure 1

Transaction Steps

1 Preparation

1.1 Obligations of BCML

BCML must:

- (a) engage the Independent Expert to provide the Independent Expert's Report;
- (b) provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) apply for any Regulatory Approvals or other approvals it requires in relation to the Resolutions or to implement the Scheme;
- (d) seek all consents required from the Fund's Financier and other third parties for implementation of the Scheme and the Transaction Steps;
- (e) prepare the Notice of Meeting and the Explanatory Memorandum in accordance with clause 4.4(a) (other than those parts of the Explanatory Memorandum required to be prepared by Brookfield and provided to BCML under clause 1.2 of this Annexure 1);
- (f) lodge a draft of the Explanatory Memorandum and the Independent Expert's Report with ASIC for review;
- (g) seek relief from ASIC (to be granted to Brookfield) to enable Unitholders to vote on the Resolution seeking approval under item 7 of section 611 of the Corporations Act; and
- (h) submit the draft Constitutional Changes to the ASX pursuant to Listing Rule 15.1.

1.2 Obligations of Brookfield

Brookfield must:

- (a) apply for any Regulatory Approvals or other approvals it requires in relation to the Resolutions or to implement the Scheme;
- (b) prepare and provide BCML with information referable to Brookfield in a form for inclusion in the Explanatory Memorandum in accordance with clause 4.4(b);
- (c) provide any other assistance or information reasonably requested by BCML in relation to the preparation of the Explanatory Memorandum; and
- (d) provide any assistance or information reasonably requested by BCML or the Independent Expert in connection with the preparation of the Independent Expert's Report.



2 Explanatory Memorandum

2.1 Obligations of BCML

BCML must:

- (a) verify and finalise the Explanatory Memorandum;
- (b) procure that a meeting of the BCML board is convened to approve the Notice of Meeting and the Explanatory Memorandum for despatch to Unitholders;
- (c) lodge the final Explanatory Memorandum with ASX; and
- (d) procure (including by giving appropriate instructions to the Fund's registry) the Explanatory Memorandum is despatched to Unitholders on the Explanatory Memorandum Despatch Date to each Unitholder appearing on the Fund Register on that date in accordance with the Timetable.

2.2 Obligations of Brookfield

Brookfield must verify and finalise those parts of the Explanatory Memorandum comprised of information provided to BCML in accordance with clause 1.2(b) of this Annexure 1.

3 Meeting

BCML must convene and conduct the Meeting in accordance with the Notice of Meeting and the Explanatory Memorandum.

4 Lodgement

4.1 Obligations of BCML

If the Resolutions are passed with the requisite majorities, BCML must:

- (a) lodge a Form 5101 "Notification of change to registered scheme's constitution" with ASIC as soon as practicable after the Meeting in respect of the Constitutional Changes;
- (b) promptly lodge all other notices and forms required by law or the Listing Rules to be lodged with ASIC or ASX in relation to the Resolutions or the Scheme.

5 Scheme Implementation

5.1 Effect

This clause 5 of Annexure 1 has effect only if the Resolutions are passed with the requisite majorities.



5.2 Implementation steps - BCML

BCML must:

- (a) use best endeavours to ensure that ASX suspends trading in Units with effect from the close of trading on the date that the Form 5101 is lodged with ASIC;
- (b) close the Fund Register to determine the identity of Unitholders on the Fund Register on the Record Date and determine their entitlement to the Consideration in accordance with the Scheme;
- (c) promptly execute proper instruments of transfer of, and register all transfers of, all Units to Brookfield (other than Units that it or its related bodies corporate hold) in accordance with the Scheme;
- (d) promptly do all other things contemplated by or necessary to give effect to the Scheme and to effect the transfer of Units to Brookfield; and
- (e) subject to Brookfield complying with its obligations in clause 5.3 of this Annexure 1, BCML will procure that each Unitholder on the Fund Register on the Record Date will be paid the Consideration to which they are entitled on the Scheme Implementation Date.

5.3 Implementation steps - Brookfield

Before 9:00 am on the Payment Date, Brookfield must pay, or procure the payment of, into an account nominated by BCML, an amount in cleared funds equal to the aggregate of the Consideration payable to Unitholders under the Scheme, to be held on trust for Unitholders.



Annexure 2

Resolutions

Unitholders will be asked to consider, and if thought fit, to pass the following resolutions:

- (a) a resolution to approve amendments to the Fund Constitution to enable the implementation of the Scheme (**special resolution**); and
- (b) a resolution to provide approval under item 7 of section 611 of the Corporations Act to allow Brookfield and its associates to acquire a relevant interest in all of the Units (**ordinary resolution**).



Annexure 3

Timetable

It is intended that if the Resolutions are approved by Unitholders, the Scheme will be implemented on 24 December 2014. However, if all conditions precedent have not been satisfied by that date the Scheme Implementation Date may be deferred.

On or before 14 November 2014	BCML to send out Notice of Meeting and Explanatory Memorandum to Unitholders
6 December 2014	3:00 pm: Last date and time to lodge proxy and corporate representative forms for Meeting
8 December 2014	3:00 pm: Meeting of Unitholders held to consider Resolutions required to implement Scheme BCML to advise ASX of the outcome of the Meeting and whether Unitholder approval was obtained Lodge amended Fund Constitution with ASIC and ASX Suspension of trading on ASX at market close
15 December 2014 (5 Business Days after the Meeting Date)	Record Date
17 December 2014 (2 Business Days after the Record Date)	Payment Date: Brookfield to pay Consideration to an account nominated by BCML to be held on trust for Unitholders
24 December 2014 (or 3 Business Days after satisfaction of the last condition precedent) (5 Business Days after the Payment Date)	Scheme Implementation Date: Implementation of Scheme, payment of Consideration to Unitholders, transfer of Units from Unitholders to Brookfield and the Fund Register is updated to reflect the transfer of Units
29 December 2014 (Business Day following the Scheme Implementation Date)	Removal of the Fund from the official list of ASX and announcement of ASX's decision to remove the Fund from the official list



Annexure 4

Warranties

1 BCML Warranties

1.1 Corporate power and authority

BCML represents and warrants that:

- (a) **incorporation:** it is a corporation as that expression is defined in the Corporations Act having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the Corporations Act;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken or will take as required by this deed all necessary action to authorise the execution, delivery, and performance of this deed;
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations, which are, subject to any necessary stamping and registration, enforceable in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity; and
- (f) **transaction permitted:** the execution, delivery and performance by it of this deed will not violate, breach or result in a contravention of:
 - (1) any law, regulation or authorisation;
 - (2) its memorandum and articles of association or constitution; or
 - (3) any material document or obligation which is binding upon it.

1.2 Units

- (a) The total number of Units on issue as of the date of this deed is 49,029,150.
- (b) BCML has not issued or agreed to issue any other securities or other financial products which are still outstanding and may convert into Units.

2 Brookfield Warranties

2.1 Corporate power and authority

Brookfield represents and warrants that:



- (a) **incorporation:** it is a corporation as that expression is defined in the Corporations Act having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the Corporations Act;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken or will take as required by this deed all necessary action to authorise the execution, delivery, and performance of this deed;
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations, which are, subject to any necessary stamping and registration, enforceable in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity; and
- (f) **transaction permitted:** the execution, delivery and performance by it of this deed will not violate, breach or result in a contravention of:
 - (1) any law, regulation or authorisation;
 - (2) its memorandum and articles of association or constitution; or
 - (3) any material document or obligation which is binding upon it.

2.2 Information

- (a) **(information)** All information given to BCML by Brookfield for inclusion in the Explanatory Memorandum:
 - (1) has been given in good faith and on the understanding that BCML is relying on that information to prepare and adopt the Explanatory Memorandum;
 - (2) to the best of Brookfield's knowledge and belief, will be true and correct in all material respects as at the date the Explanatory Memorandum is despatched to Unitholders; and
 - (3) to the best of Brookfield's knowledge and belief, is not misleading or deceptive, or likely to mislead or deceive (whether by omission or otherwise) as at the date the Explanatory Memorandum is despatched to Unitholders.
- (b) **(opinions and belief)** Any statement of opinion or belief contained in the information given to BCML by Brookfield for inclusion in the Explanatory Memorandum is honestly held and there are reasonable grounds for holding the opinion or belief.

3 Trustee Warranties

Where a Party enters into this deed as the trustee of a trust (the **Relevant Trust**), the trustee also warrants that:

- (a) it has the right to be indemnified out of the assets of the Relevant Trust in respect of all and any of its obligations and liabilities under this deed;



- (b) in its capacity as trustee of the Relevant Trust, it has the power under the trust deed which established the Relevant Trust (the **Relevant Trust Deed**) to enter into this agreement and is duly authorised to do so;
- (c) it was duly appointed trustee of the Relevant Trust pursuant to the Relevant Trust Deed and the Relevant Trust was duly established on the date the Relevant Trust Deed bears;
- (d) the Relevant Trust Deed was duly executed and duly stamped and any amendment since its execution in no way affects the other representations and warranties made or given in this deed nor the ability of that trustee to perform its obligations under this agreement;
- (e) no circumstances have arisen which may lead to its removal as trustee of the Relevant Trust; and
- (f) it has not been replaced as or removed from the office of trustee of the Relevant Trust or ceased to act and no additional trustee has been appointed.



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Annexure 5

Constitutional Changes



Constitution of Brookfield Prime Property Fund

Details

Interpretation – definitions are at the end of the General terms

RE	Name	Brookfield Capital Management Limited
	ACN	094 936 866
Trust Name	Brookfield Prime Property Fund	
Governing law	New South Wales	



Constitution of Brookfield Prime Property Fund

General terms

1 Declaration of Trust

1.1 Declaration of Trust

[no clause]¹

1.2 Name

- (a) The Trust is called the Brookfield Prime Property Fund or by such other name as the RE determines from time to time².
- (b) If the RE retires or is removed, its successor as RE must, unless otherwise approved by the former RE, change the name of the Trust to a name that does not imply an association with the former RE or its business.

1.3 Stapling

- (a) The Stapling Provisions take effect if determined by the RE and, if so determined, apply on and from the Stapling Commencement Date unless and until they cease to apply in accordance with this constitution.
- (b) On and from the Stapling Commencement Date:
 - (i) the Stapling Provisions apply and this constitution is to be read subject to the Stapling Provisions;
 - (ii) subject to article 26, the Stapling Provisions prevail over all other provisions of this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law; and
 - (iii) without limiting article 1.3(b)(ii), those articles of the constitution, which by their meaning and context apply only while Units are not Stapled do not apply while Units are Officially Quoted as part of a Stapled Security.

2 Assets held on trust

2.1 Assets held on trust

[no clause]³.

¹ Clause 2.2 of the trust deed dated 16 July 2004 is not replaced, amended or redeclared but is preserved. It states: "The Responsible Entity acknowledges and declares that it holds the Fund on trust for the benefit of the Unitholders on the terms and conditions set out in this deed."

² See Corporations Regulation 5C.1.02

³ See footnote 1 and section 601FC(2) of the Corporations Act



2.2 Assets vested in RE

The Assets which are from time to time vested in the RE must be clearly identified as property of the Trust and held separately from the assets of the RE and any other managed investment scheme if and to the extent that the Corporations Act so requires⁴. Subject to law, the RE may have assets held by a Custodian.

3 Relevant Securities

3.1 Beneficial interest divided into Units

The beneficial interest in the Trust is divided into Units.

3.2 Units confer equal undivided interest

Subject to any special rights conferred upon the Units in a Class, each Fully Paid Unit confers an equal undivided interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in any particular Asset. Unless this constitution states otherwise, a Partly Paid Unit confers an interest of the same nature, less the amount remaining to be paid up on the Unit.

3.3 Interest in Assets

- (a) A Unit confers an interest in the Assets as a whole, subject to the Liabilities.
- (b) A Unit does not confer an interest in a particular Asset.
- (c) A Unit confers a vested and indefeasible interest to Distributable Income and the capital of the Trust and for avoidance of doubt the process of disposal of a Defaulted Unit set out in article 4 does not defeat this interest.

3.4 Power to issue Units

The RE may issue Units on such terms and conditions as the RE determines consistently with this constitution, the Corporations Act and the Listing Rules.

3.5 Income entitlement of Units

- (a) The RE may in its discretion issue Units on terms that such Units:
 - (i) participate fully for Distributable Income in respect of the Distribution Period in which they are issued; or
 - (ii) do not entitle the holder of such Units to receive a distribution of Distributable Income in respect of the Distribution Period in which such Units are issued; or
 - (iii) entitle the holder of such Units to receive a distribution of Distributable Income in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Distributable Income to which a Member holding a Unit during the whole of that Distribution Period is

⁴ See section 601FC(1)(f)



entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period; or

- (iv) entitle the holder (including the holder of a Partly Paid Unit) to a fixed rate distribution for a period to be determined by the RE.

3.6 Creation of Options

The RE may create and issue Options on such terms and conditions as the RE determines. Options may be issued with Units or separately.

3.7 Issue of Options

Subject to this constitution, the Corporations Act (and the conditions of any applicable ASIC Relief from it) and the Listing Rules, the RE may determine that Options will be issued:

- (a) for consideration or no consideration;
- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the RE, provided that the exercise price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 99%, and
- (c) conferring on the holder of the Option such other entitlements under this constitution as the RE determines,

and otherwise on terms and conditions and with such entitlements as determined by the RE. The terms of issue of the Option may allow the RE to buy back the Options.

3.8 Offers of Options

Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC Relief from it), if the RE is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the RE is not required to offer Options to persons whose address on the Register is in a place other than Australia.

3.9 Exercise of Options

On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.

3.10 Rights attaching to Relevant Securities

- (a) A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.
- (b) The holder of an Option holds the Option subject to the terms and conditions attaching to that Option.



3.11 Fractions and rounding

- (a) Fractions of a Unit may not be issued by the RE.
- (b) Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is, subject to this constitution, to be rounded down to the nearest whole Unit.
- (c) Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Trust.

3.12 Reorganisation of Relevant Securities

- (a) Subject to the Listing Rules and the Corporations Act, Relevant Securities may be consolidated, divided or converted in a ratio determined by the RE ("Reorganisation")⁵. If any Unit is a Partly Paid Unit at the time of Reorganisation the unpaid amount of the Application Price and any instalment payable in respect thereof will be amended in the same ratio.
- (b) It is a term of issue of each Relevant Security, that the Relevant Security may be Reorganised. Each holder by subscribing for or taking a transfer of, or otherwise acquiring a Relevant Security will be taken to have consented to Reorganisations.
- (c) To effect any Reorganisation of a Relevant Security of a Member, the Member appoints the RE as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the RE considers necessary, desirable or reasonably incidental to effect the Reorganisation of the Relevant Security.

3.13 Transfer of Relevant Securities if Officially Quoted

If the Relevant Securities are Officially Quoted, Relevant Securities may be transferred in any manner permitted by the Operating Rules of a CS Facility. Before registration of any such transfer, the RE may require that it be provided with any documents that the rules of the uncertificated system require, or permit the RE to require, for authorisation of the registration. This article 3.13 prevails over any other provision of this constitution that may be inconsistent with it but it does not permit the RE to refuse to register a proper transfer in accordance with the Operating Rules of a CS Facility.

3.14 Transfer of Relevant Securities if not Officially Quoted

- (a) Subject to paragraph (b), while the Relevant Securities are not Officially Quoted, the RE may refuse to record any transfer in the Register without giving any reason for the refusal.
- (b) Despite any other provision of this constitution, while Units are not Officially Quoted the RE must record in the Register a transfer of Units left for registration in accordance with clause 3.16 where the transferor or the transferee is:

⁵ If applicable, refer Listing Rules, Chapter 7 - reorganisations of capital.



- (i) a person entitled to the benefit of any mortgage or charge granted in respect of the Units; or
- (ii) any receiver, receiver and manager, agent or attorney appointed or purported to be appointed under that mortgage or charge.

The RE may rely on the certificate of a person referred to in subparagraph (i) or (ii) that the mortgage or charge has become enforceable. Paragraph (a) does not apply to a transfer to which this paragraph (b) applies.

3.15 Registration

A transfer is not effective until Registered.

3.16 Form of transfer

Subject to this constitution, Relevant Securities may be transferred in any form approved by the RE, accompanied by any evidence reasonably required by the RE to show the right of the transferor to make the transfer and (if the RE requires) presented for Registration duly stamped.

3.17 Instruments of transfer

- (a) The Trust must retain every instrument of transfer which is registered for such period as the RE determines.
- (b) If the RE refuses to Register an instrument of transfer, the instrument of transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to Register unless there has been an allegation of fraud concerning the instrument of transfer or the transaction to which it relates.

3.18 RE may request holding lock or refuse to register transfer

If the Relevant Securities are Officially Quoted, and if permitted to do so by the Listing Rules, the RE may:

- (a) request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Relevant Securities from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to Register a transfer of other Relevant Securities to which paragraph (a) does not apply.

3.19 RE must request holding lock or refuse to register transfer

The RE must:

- (a) request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Relevant Securities from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to register any transfer of Relevant Securities to which paragraph (a) does not apply,



if the Corporations Act or Listing Rules require the Trust to do so or the transfer is in breach of article 3.27.

3.20 Notice of holding locks and refusal to register transfer

If, in the exercise of its rights under articles 3.18 and 3.19, the RE requests application of a holding lock to prevent a transfer of Relevant Securities or refuses to Register a transfer of Relevant Securities, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

- (a) the holder of the Relevant Securities ;
- (b) the transferee; and
- (c) the broker lodging the transfer, if any.

Failure to give notice does not, however, invalidate the decision of the RE.

3.21 Proportional takeover offers

Notwithstanding articles 3.13 or 3.14, if offers are made under a proportional takeover bid for Units in accordance with the Corporations Act:

- (a) articles 3.22 to 3.26 apply;
- (b) the registration of a transfer giving effect to a takeover contract resulting from acceptance of an offer made under the takeover bid is prohibited unless and until a resolution to approve the bid is passed in accordance with articles 3.22 and 3.23; and
- (c) the RE must ensure that a resolution to approve the bid is voted on in accordance with article 3.22 to 3.25 before the fourteenth day before the last day of the bid period.

3.22 Approval of takeover bids

The RE may determine whether the approving resolution is voted on:

- (a) at a meeting of persons entitled to vote on the resolution convened and conducted, subject to the provisions of article 3.24, as if it were a meeting of Members convened and conducted in accordance with this constitution and the Corporations Act with such modifications as the RE determines the circumstances require; or
- (b) by means of a postal ballot conducted in accordance with the following procedures:
 - (i) a notice of postal ballot and ballot paper must be sent to all persons entitled to vote on the resolution not less than 14 days before the date specified in the notice for closing of the postal ballot, or such lesser period as the RE determines the circumstances require;
 - (ii) the non-receipt of a notice of postal ballot or ballot paper by, or the accidental omission to give a notice of postal ballot or ballot paper to, a person entitled to receive them does not



- invalidate the postal ballot or any resolution passed under the postal ballot;
- (iii) the notice of postal ballot must contain the text of the resolution and the date for closing of the ballot and may contain any other information the RE considers appropriate;
 - (iv) each ballot paper must specify the name of the person entitled to vote;
 - (v) a postal ballot is only valid if the ballot paper is duly completed and:
 - (A) if the person entitled to vote is an individual, signed by the individual or a duly authorised attorney; or
 - (B) if the person entitled to vote is a corporation, executed under seal or as permitted in the Corporations Act or under the hand of a duly authorised officer or duly authorised attorney;
 - (vi) a postal ballot is only valid if the ballot paper and the power of attorney or other authority, if any, under which the ballot paper is signed or a copy of that power of attorney certified as a true copy by statutory declaration is or are received by the Trust before close of business on the date specified in the notice of postal ballot for closing of all postal ballot at the office of the RE or unit registry of the Trust or at such other place as specified for that purpose in the notice of postal ballot; and
 - (vii) a person may revoke a postal ballot vote by notice in writing to be received by the RE before the close of business on the date for closing of the postal ballot.

3.23 Entitlement to vote on approving resolution

- (a) The only persons entitled to vote on the approving resolution are those persons who, as at the end of the day on which the first offer under the bid was made, held bid class securities. Each person who is entitled to vote is entitled to one vote for each bid class security held by that person at that time.
- (b) Neither the bidder nor any associate of the bidder is entitled to vote on the resolution.

3.24 When approving resolution passed

If the resolution is voted on in accordance with articles 3.21 to 3.23 then it is to be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one-half, and otherwise is taken to have been rejected.



3.25 If approving resolution has not been voted on

If a resolution to approve the bid has not been voted on as at the end of the day before the fourteenth day before the last day of the offer period, then a resolution to approve the bid is taken to have been passed in accordance with articles 3.21 to 3.24.

3.26 Cessation of articles 3.21 to 3.25

Articles 3.21 to 3.25 cease to have effect on the day three years after the later of their adoption or last renewal.

3.27 Restricted Securities

- (a) While the Relevant Securities are Officially Quoted and, if the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- (b) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.

3.28 Joint tenancy

Persons Registered jointly as the holder of a Relevant Security hold as joint tenants and not as tenants in common unless the RE otherwise agrees.

3.29 Death, legal disability of Member

- (a) If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Relevant Securities Registered in the Member's name.
- (b) A person who becomes entitled to a Relevant Security because of the death, bankruptcy, insanity or other disability of a Member is entitled to receive and may give a discharge of all money payable in respect of the Relevant Security but is not entitled to receive notices of or to attend or vote at any meeting of Members until that person is Registered as the holder of a Relevant Security.

4 Partly Paid Units

4.1 Payment of Application Price by instalments

The Application Price of Units may be payable by instalments as set out in this article 4.

4.2 Determination of amount and timing of instalments

The RE may determine at any time that Units to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the RE determines or, if the RE so determines, by a single instalment payable at such time as the RE determines.



4.3 Variation or waiver of terms and conditions

Subject to any applicable statutory duty requiring the RE to treat Members of the same Class equally and those of different Classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with article 4.2, those terms and conditions may be varied or compliance therewith waived only with the consent of the RE. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units were offered for sale or subscription.

4.4 Notice of instalments

- (a) The RE must give Members at least 30 Business Days' notice (but not more than 40 Business Days' notice) of the time and date each instalment is due to be paid (the "First Notice").
- (b) If the Trust is Listed:
 - (i) the First Notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules); and
 - (ii) at least 4 Business Days before the date each instalment is due to be paid, the RE must send a second notice to all new Members and those Members whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

4.5 Interest on instalments

- (a) If a Member does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the RE determines not exceeding BBSW plus 4% per annum. Interest is calculated daily and payable monthly in arrears. The RE may waive payment of that interest in whole or part.
- (b) The RE may revoke or postpone the payment of an instalment.
- (c) Subject to the Listing Rules, an instalment shall be deemed to be due on the date determined by the RE.
- (d) Subject to the Listing Rules, the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to, a Member, shall not invalidate the instalment being due.
- (e) Subject to the Corporations Act and the Listing Rules, the RE may extinguish in full or in part any liability of Members in respect of any moneys unpaid on Members' Units.
- (f) Subject to the Listing Rules, any instalment which, by the terms of issue of the Unit, becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment which the RE has given Members notice of in



accordance with article 4.4. In the case of non-payment, all the provisions of this constitution as to payment of interest, forfeiture or otherwise shall apply as if such notice had been given.

4.6 Failure to pay instalments

If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the RE may, during such time as the instalment or any part of the instalment remains unpaid, serve a notice on that Member requiring payment of so much of the instalment as is unpaid, any interest owing and all reasonable expenses incurred by the RE as a result of the non-payment. The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited. If Units are Officially Quoted, the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

4.7 If requirements of any notice not complied with

If the requirements of any notice issued under article 4.4 are not complied with:

- (a) any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited on the RE so determining;
- (b) subject to the Listing Rules, the Corporations Act and this constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the RE; and
- (c) if the Partly Paid Units in respect of which the notice has not been complied with are Units in respect of which the RE has granted a charge over its right to receive an instalment, the provisions of article 4.18 apply to the forfeiture and sale of the Units and prevail over other provisions of this article 4 to the extent of any inconsistency.

4.8 Sale of forfeited Securities

- (a) Partly Paid Units which are subject to forfeiture under article 4.7 will be sold by the RE and the RE must apply the proceeds as follows:
 - (i) in payment of the amount outstanding against the Partly Paid Units (and any accrued interest if applicable) after deducting the costs of sale including, without limitation, any brokerage and duties; and
 - (ii) in payment of the balance (if any) to the Member.



- (b) If the proceeds of sale of the forfeited Partly Paid Units are less than the amount outstanding in relation to the unpaid amount on the Partly Paid Units, the Member remains liable for the balance owing on the Partly Paid Units (and any accrued interest), unless otherwise determined in the absolute discretion of the RE to waive any shortfall.

4.9 Disposal of forfeited Units

- (a) Subject to the Listing Rules if Units are Officially Quoted, a forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either:
 - (i) subject to any necessary relief from ASIC, at a price equal to that received from the sale of the Unit in the normal course of business on ASX; or
 - (ii) by private treaty or public auction, if ASIC has given any necessary relief from the provisions of the Corporations Act and if the RE complies with the conditions of that relief.
- (b) At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the RE thinks fit.

4.10 Holder of forfeited Units

The holder of Partly Paid Units which have been forfeited ceases to be a Member in respect of the forfeited Units (and has no claims or demands against the RE or the Trust in respect of the forfeited Units) but remains liable to pay to the RE all moneys which at the date of forfeiture were payable by the former Member to the RE in respect of the forfeited Units (including interest owing under article 4.5 and expenses) but the former Member's liability ceases if and when the RE receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.

4.11 Evidence of forfeiture

A statement signed by a duly authorised officer of the RE that a Partly Paid Unit has been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units.

4.12 Consideration for forfeited Units

Where a Partly Paid Unit is forfeited and sold pursuant to this article 4 the RE may receive the consideration, if any, given for a forfeited Unit on the sale or disposal, and the RE or agent may execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of and that person must then be registered as the holder of that Unit and is not obliged to ensure that any part of the money which the person has paid for the Unit is paid to the former holder of the Unit nor shall the person's title to that Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

4.13 Deductions from consideration for forfeited Units

Where forfeited Units are sold or disposed of for cash, the RE must deduct from the amount of the consideration the amount of the instalment owing at



the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Member or former Member to recover the instalment or part thereof owing. The RE may retain the amounts so deducted, but the balance remaining must be paid to the Member or former Member whose Units were forfeited.

4.14 Joint holders

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

4.15 Rights and obligations attaching to a Partly Paid Unit

Subject to the Corporations Act and the provisions of this constitution, the rights and obligations attaching to a Partly Paid Unit will be the same as those of a Fully Paid Unit, subject to the liability to pay calls for the balance of the Application Price of the Unit.

4.16 Liability of holder of forfeited Units

Where:

- (a) the RE has appointed an underwriter to underwrite the payment of a call in respect of Units;
- (b) in discharging its obligations, the underwriter has purchased Units at a public auction or otherwise as contemplated by the relevant underwriting agreement at a price which is more than the Current Price of a Unit (in respect of which the relevant call has been paid); and
- (c) the RE is liable or required to pay the underwriter in respect of each Unit purchased in accordance with paragraph (b) of this article an amount equal to the difference between the Current Price of a Unit (in respect of which the relevant call has been paid) and the price paid by the underwriter for the Unit,

then the former holder of the Units that were forfeited and sold to the underwriter is liable to the RE in respect of those forfeited Units, and may be sued for:

- (i) all monies payable by the RE to the underwriter as contemplated by paragraph (c) of this article;
- (ii) interest (as provided in article 4.5 of this constitution); and
- (iii) all costs incurred by the RE in procuring payment from the former holder of the Unit.

For the purposes of this article 4.16, the "*Current Price*" of a Stapled Security (in respect of which the relevant call has been paid) is the weighted average price at which such Units traded on the ASX over the five Business Days immediately preceding the day of public auction, or, if there is no such price, then the last sale price of Units on the ASX prior to that date.



4.17 Assignment of right of action

The RE must ensure that where the RE is liable to the underwriter as contemplated by article 4.16(c) above, the RE's liability to the underwriter may be satisfied by the assignment of the RE's right of action under article 4.16 above against the former holder of the Unit in full satisfaction of such liability of the RE to the underwriter.

4.18 Charge over right to receive an instalment

- (a) Subject to its duties to Members under the general law and the Corporations Act, the RE may grant a charge to any person ("Chargee") over its right to receive the proceeds of a call on a Partly Paid Unit. The Chargee has the right to do anything that could be done by the RE in respect of Units over which a charge has been granted and to enforce the provisions of this article 4 as agent for the RE. The preceding provisions of this article 4 apply to the Chargee when acting as the RE's agent with any necessary adaptations.
- (b) If the charge referred to in article 4.18(a) has been granted, a Unit in respect of which the notice under article 4.4 has been given and not complied with may be sold as a Fully Paid Unit by the Chargee as agent for the RE in the manner and at the price that the RE could have effected the sale itself in accordance with article 4.9. The Chargee may deduct from the net proceeds of the sale and retain for the Chargee's own benefit amounts it has lent in respect of the Unit that has been forfeited together with interest payable up to the date of receipt by the Chargee of the proceeds of sale of the Unit, up to the limit of the amount that could be retained by the RE if the RE itself had sold the Unit. The Chargee must pay to the RE any remaining proceeds, and clause 4.8 applies to the remaining amount as if the RE had sold the Unit.
- (c) A Member or former Member whose Units have been sold by the RE or its agent in accordance with article 4.18(b) has no right to have the Units transferred back to them on payment of the amounts that were outstanding at the time of the sale.

5 Classes of Units

Subject to the Corporations Act, the RE may from time to time without amending this constitution, issue Units in different Classes with different rights, obligations and restrictions attaching to them. The RE may from time to time prescribe other rights, obligations and restrictions pertaining to those Classes which are not inconsistent with the provisions of this constitution or contrary to the Corporations Act.

6 Application Price for Units⁶

6.1 Units issued on or before First Closing Date

All Units to be issued on or before the First Closing Date will be issued at the Application Price of \$1.00.

⁶ Required to be included by Section 601GA(1)(a)



6.2 While Units are not Officially Quoted

While Units are not Officially Quoted the Application Price for a Unit issued in respect of an application accepted after the First Closing Date must be calculated as:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of fully paid Units in issue} + \text{Paid - up Proportion}}$$

6.3 Determination of variables in article 6.2

Each of the variables in article 6.2 must be determined as at the next Valuation Time after:

- (a) the RE receives the application for Units; or
- (b) the RE receives the application money, or the property against which Units are to be issued or vested in the RE,

whichever happens later.

6.4 While Units are Officially Quoted but not Stapled

- (a) Subject to article 6.4(b) or (c) and article 20.5(g), while Units are Officially Quoted, the Application Price for any Unit will be equal to the Market Price for the Units.
- (b) The RE may determine a different Application Price in relation to the issue of any Units consistently with the Corporations Act, as modified by any applicable ASIC Relief, and the Listing Rules in the case of:
 - (i) offers made at substantially the same time to those persons who were Members on a date determined by the RE not being more than 20 Business Days immediately prior to the offer, where:
 - (A) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right to acquire those Units is renounceable); and
 - (B) the Application Price is not less than 50% of the Market Price for the Units, calculated as at the last Business Day prior to the date of the offer document under which the offer is made,

but subject to the Corporations Act, as modified by any applicable ASIC Relief, and the Listing Rules, the RE is not required to offer Units under this article 6.4 to persons whose address on the Register is in a place other than Australia, and such other jurisdictions (if any) as the RE may determine;

- (ii) a distribution reinvestment where the Application Price is determined in accordance with article 10.13;



- (iii) Units issued upon the exercise of an Option where the Application Price is determined in accordance with article 3.7(b); and
- (iv) a placement, where the Application Price is not less than 50% of the Market Price for the Units calculated as at the last Business Day on which sales were recorded prior to the date of the issue;
- (v) a security purchase plan, where the Application Price is not less than 80% of the Market Price for the Units, calculated as at the last Business Day on which sales were recorded prior to the day on which the offer was announced; and
- (vi) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Relief.

7 Application procedure

7.1 Application form

An applicant for Units must complete a form approved by the RE if the RE so requires. The form may be transmitted electronically if approved by the RE.

7.2 Payment

Payment in a form acceptable to the RE, or a transfer of property of a kind acceptable to the RE and able to be vested in the RE or a Custodian appointed by it (accompanied by a recent valuation of the property, if the RE requires), must:

- (a) accompany the application;
- (b) be received by or made available to the RE or the Custodian within such period before or after the RE receives the application form as the RE determines from time to time or as the terms of issue of the relevant Partly Paid Unit contemplate; or
- (c) comprise a reinvestment of a distribution in accordance with this constitution.

If the RE accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the Member either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the RE decides.

7.3 RE may reject

The RE may reject an application in whole or in part without giving any reason for the rejection⁷.

7.4 Minimum Holding

The RE may set a minimum application amount and a minimum holding and alter or waive those amounts at any time⁸.

⁷ Refer Listing Rule 10.11 if the Trust is Listed - restriction on issue of Units to related parties.



7.5 Issue Date

- (a) Except in the case of a reinvestment of distribution in accordance with this constitution, Units are taken to be issued when:
- (i) the RE accepts the application; or
 - (ii) the RE receives the application money, or the property against which Units are to be issued is vested in the RE or the Custodian on behalf of the RE,
- whichever happens later.
- (b) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the day the distribution is applied in payment for the Units.
- (c) Subject to the Corporations Act⁹, the RE may hold applications without accepting them for such period as it determines and, in particular, may hold applications received prior to the First Closing Date until the First Closing Date.

7.6 Uncleared funds

Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the RE within 1 month of receipt of the application.

8 Redemption¹⁰

8.1 Redemption Price

- (a) Subject to paragraph (b), a Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{A - B}{C + D}$$

less in the case of a Partly Paid Unit, the amount of the Application Price which has not been paid, where:

A = Net Asset Value

B = Transaction Costs

C = number of Fully Paid Units in issue

D = Paid-up Proportion.

- (b) A Unit redeemed on or before the First Closing Date must only be redeemed at a Redemption Price equal to its Application Price less the amount, if any, of the Application Price which remains unpaid.

⁸ If the Trust is Listed see Clause 27 "Small Holdings".

⁹ Section 1017E(4) - Units must be issued within one month of receipt of application money.

¹⁰ These procedures must be fair to all Members: Section 601GA(4)



8.2 Determination of variables

Each of the variables in article 8.1(a) must be determined:

- (a) while the Trust is Liquid, as at the close of business on the day before the payment of the Redemption Price; or
- (b) while the Trust is not Liquid, as at the close of business on the day before the withdrawal offer is made.

8.3 Rounding

The Redemption Price may be rounded down to the nearest whole cent.

8.4 While Units Officially Quoted - Member has no right to withdraw

While Units are Officially Quoted, none of the following provisions of this article 8 apply, except articles 8.17, 8.18 and 8.19.

8.5 Request for redemption

A Member may make a request for the redemption of some or all of their Units in any manner approved by the RE and, while the Trust is Liquid, the RE may (but is not required to) give effect to that request at the time and in the manner set out in this article 8.

8.6 While the Trust is Liquid - RE may redeem

While the Trust is Liquid, the RE may decide to satisfy a Redemption Request either in relation to all or some of the Units which are the subject of the request.

8.7 While the Trust is Liquid - time for payment of Redemption Price

While the Trust is Liquid, if the RE decides to satisfy a Redemption Request¹¹ in respect of a Unit it must pay from the Assets the Redemption Price calculated in accordance with this constitution. The payment must be made within 60 days of the RE's decision.

8.8 RE not obliged to pay Redemption Price out of own funds

The RE is not obliged to pay any part of the Redemption Price out of its own funds.

8.9 Aggregate Redemption Price less than Minimum Holding amount

While the Trust is Liquid, if compliance with a Redemption Request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current Minimum Holding amount, the RE may treat the Redemption Request as relating to the balance of the Member's holding.

8.10 Increase of Minimum Holding amount

While the Trust is Liquid, if the RE increases the Minimum Holding amount, the RE may after giving 30 days' notice to a Member who holds Units with

¹¹ There is no legal requirement to offer a right of withdrawal. When setting up a new trust the RE can choose whether or not to offer such a right. For a registered scheme, if a right is offered, it must be specified in the constitution.



an aggregate Redemption Price less than the then current Minimum Holding amount redeem that Member's holding without the need for a Redemption Request.

8.11 When Trust is not Liquid¹²

While the Trust is not Liquid¹³, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the RE which, if the Trust is a registered scheme, is in accordance with the provisions of the Corporations Act¹⁴. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

8.12 RE not obliged to make a withdrawal offer

The RE is not at any time obliged to make a withdrawal offer.

8.13 Redemption request received before withdrawal offer

If the RE receives a Redemption Request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

8.14 Articles applicable whether or not the Trust is Liquid

Articles 8.15 and 8.16 apply whether or not the Trust is Liquid.

8.15 Sums owed to RE

The RE may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member.

8.16 Transfer of Assets

The RE may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a Redemption Request, pursuant to a withdrawal offer (if applicable) or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the Redemption Request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). The costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member, as the RE decides.

8.17 RE's power of compulsory redemption

Subject to the Listing Rules, while the Trust is Liquid the RE may redeem the Units of any Member without the need for a Redemption Request if the Member holds less than the Minimum Holding.

8.18 Buy-back of Units¹⁵

While the Trust is Listed, the RE may, subject to and in accordance with the Corporations Act (including the conditions of any applicable ASIC Relief) and any requirements under the Listing Rules, purchase Units and cause the

¹² Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

¹³ For definition of a liquid scheme see Section 601KA(1)

¹⁴ Refer sections 601KB to 601KE

¹⁵ See Listing Rule 7.36



Units to be cancelled. No Redemption Price is payable upon cancellation of the Units.

8.19 Discretionary redemption

Subject to the Corporations Act and the Listing Rules, if the RE is not obliged to give effect to a Redemption Request, it may redeem some or all of the Units which are the subject of the request.

9 Valuation of Assets

9.1 RE may value

The RE may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.¹⁶

9.2 Determination of Net Asset Value

The RE may determine Net Asset Value at any time, including more than once on each day.

9.3 Value of Assets

Unless the RE determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value subject to the terms of any applicable ASIC Relief from the requirements of the Corporations Act¹⁷.

The RE may determine whether an item should be recognised and the amount attributable to that particular item for the purpose of calculating Net Asset Value.

10 Income and distributions to Members

10.1 RE must determine distributable income

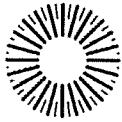
- (a) The RE must determine the distributable income of the Trust (“**Distributable Income**”) for each Financial Year. The RE may do this by way of a standing determination of principles for calculating the Distributable Income, and may change the principles from time to time.
- (b) The RE may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

10.2 Distributable income

Unless the RE determines otherwise under article 10.1 prior to the end of a Financial Year, Distributable Income for that Financial Year will be the net income of the Trust calculated in accordance with the Tax Act reduced by any amount which would be included in the assessable income of the Trust in accordance with section 6AC or Division 207 of the Tax Act and reduced by any amount which would be included in the assessable income of any sub-trust in accordance with section 6AC or Division 207 of the Tax Act to the

¹⁶ See section 601FC(j) for the responsible entity's obligations concerning valuation

¹⁷ Section 601GA(1)(a).



extent that that amount would subsequently be included in the assessable income of the Trust under section 97 of the Tax Act.

10.3 Preparation of statutory accounts

The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income pursuant to article 10.1.

10.4 Distribution account

The amount of Distributable Income to be distributed in respect of a Distribution Period is to be calculated in accordance with article 10.6 and must be transferred to a special account in the name of the RE or its agent and designated a distribution account. Any amount in the distribution account does not form part of the Assets but must be held by the RE, on trust for distribution among the Members entitled to that Distributable Income. Members entitled to that Distributable Income are not entitled to any income earned by the RE by investing any money standing to the credit of the distribution account pending disbursement. The RE may invest any moneys standing to the credit of the distribution account pending disbursement and the RE shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly.

10.5 Present entitlement

A person who at any time during the Financial Year is or has been a Member, is presently entitled as at midnight on the last day of the Financial Year to the Distributable Income for the Financial Year, in the proportion that the Income Distributions made (or allocated under article 10.6) to the Member in respect of the Financial Year bear to the sum of the Income Distributions made (or allocated under article 10.6) to all persons who are or have been Members at any time during the Financial Year.

10.6 Income Distributions

Subject to the rights conferred on a Class of Units, an Income Distribution in respect of a Member means an amount calculated by the RE as follows:

- (a) subject to the terms of issue of any Units, in respect of a Distribution Period ending on a Distribution Calculation Date other than the last day of a Financial Year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

A is the aggregate of the number of Units held by the Member as at the close of business on the Record Date for that Distribution Period which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds at the close of business on the Record Date for that Distribution Period Units issued during that Distribution



Period which have a proportionate income entitlement in accordance with article 3.5, the aggregate number of such Units held by that Member multiplied by the relevant proportion;

B is the aggregate of the total number of Units entitled to a full income distribution for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate income entitlement in accordance with article 3.5, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the Record Date for that Distribution Period; and

C is an estimate of the Distributable Income for the Distribution Period calculated as if the Distribution Period were a year of income; and

(b) subject to the terms of issue of any Units, in respect of a Distribution Period ending on the last day of a Financial Year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

A is the aggregate of the number of Units held by the Member as at the close of business on the Record Date for that Distribution Period which are entitled to a full income distribution for the relevant Distribution Period plus, if the Member holds at the close of business on the Record Date for that Distribution Period Units issued during that Distribution Period which have a proportionate income entitlement in accordance with article 3.5, the aggregate number of such Units held by that Member multiplied by the relevant proportion;

B is the aggregate of the total number of Units entitled to a full income distribution for the relevant Distribution Period plus, if Units have been issued during the relevant Distribution Period which have a proportionate income entitlement in accordance with article 3.5, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the Record Date for that Distribution Period; and

C is the amount (if any) by which the Distributable Income for the Financial Year exceeds the aggregate of the amounts calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year.



- (c) A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the distribution of income for that Distribution Period, subject to the terms of issue of the Unit, according to:
 - (i) the proportion or different proportions of the Application Price paid up on the Unit; and
 - (ii) the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Trust, that Unit may be eligible for increased participation in income at a date determined by the RE but at the latest from the first day of the month immediately following the date set for payment of the instalment.

10.7 Satisfaction of present entitlement

The present entitlement of a Member to Distributable Income for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year. Income Distributions must be paid to a Member within three months after the Distribution Calculation Date.

10.8 Minimum distribution

The RE may transfer capital to enable distribution to Members of the minimum amount necessary to avoid the RE as trustee of the Trust becoming assessable to pay tax under the Tax Act.

10.9 Other distributions

The RE may at any time distribute any amount of capital to Members pro rata according to the number of Units held as at a time decided by the RE. The distribution may be in cash or by way of additional Units.

10.10 RE may permit or require reinvestment

The RE may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units. Reinvestment may be by issue or transfer of Units to Members.

10.11 Notification of reinvestment procedures

If the RE decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

10.12 Deemed application if reinvestment applies

If reinvestment applies, the RE is deemed to have received and accepted an application to reinvest the distribution after the deduction of any Tax which the RE is required to deduct on the date upon which the distribution is to be paid.

10.13 Application Price while Trust Listed if reinvestment applies

- (a) If reinvestment applies while the Units in the Trust are Officially Quoted, the Application Price for each additional Unit issued or transferred upon reinvestment is the average of the VWAP for Units



for each of the ten Trading Days from and including the third Trading Day after the Record Date for the relevant Distribution Period (“DRP VWAP Price”) less such discount, if any, not exceeding 10% as the RE may determine. However, if the RE believes that the DRP VWAP Price does not provide a fair reflection of the market price of the Units during the relevant period, an expert (independent of the RE whose identity and instructions will be determined by the RE) will determine the market price to be used in the calculation of the Application Price of each additional Unit.

- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust at the next time that reinvestment is to occur.

10.14 Money held for future reinvestment

Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may in the discretion of the RE be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit be applied in the acquisition of a Unit by the Member.

10.15 Units issued on reinvestment

Units issued under articles 10.10 to 10.14 inclusive are to participate fully for income in respect of the Distribution Period in which they are issued.

10.16 Position on transfer of Units

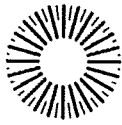
Income to which a Member is entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

10.17 Position on transfer of Assets

The RE may effect a distribution to Members by transferring or procuring the transfer of Assets to all Members rather than paying in cash or issuing additional Units. If the RE wishes to do so, it must effect the distribution to all Members in the same way. The Assets transferred to each Member must be of the same type, have the same rights and be fully paid. The Assets transferred may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the RE:

- (a) to act as their agent to agree to obtain the Assets; and
- (b) where the Assets comprise shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). The costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member, as the RE decides.



10.18 Deductions from Distributable Income

The RE may deduct from any Distributable Income or other distribution payable to a Member any sums of money presently payable by the Member to the RE on account of an instalment due in respect of Units or otherwise.

11 Payments

11.1 Manner of payment to Members

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

11.2 Unpresented cheques

Cheques issued by the RE that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the RE for the Member or paid by the RE in accordance with the legislation relating to unclaimed money unless the RE in its discretion decides to reinvest the money in Units in which event the provisions of articles 10.10 to 10.15 will apply.

11.3 Unsuccessful transfers

Where the RE attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed moneys.

11.4 Only whole cents to be paid

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

11.5 Payment to joint Members

A payment to any one of joint Members will discharge the RE in respect of the payment.

11.6 RE may deduct amounts

The RE may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any amount owed by the Member to the RE or any other person which

the RE is required or authorised to deduct by law or by this constitution or which the RE considers should be deducted.



12 Powers of the RE

12.1 General powers

Subject to this constitution, the RE has all the powers in respect of the Trust that it is possible under the law to confer on a trustee as though it were the absolute owner of the Assets and acting in its personal capacity.

12.2 Contracting powers¹⁸

- (a) Without limiting the effect of article 12.1, the RE in its capacity as trustee of the Trust has power to:
- (i) incur all types of obligations and liabilities including guarantees and indemnities; and
 - (ii) enter into an arrangement with a person to underwrite the subscription or purchase of Relevant Securities on such terms as the RE determines. Unless the agreement between the RE and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the RE, but may be a related body corporate of the RE.

12.3 Borrowing powers

Without limiting the effect of article 12.1 or article 12.2, the RE in its capacity as trustee of the Trust has power to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and/or debt facilities or instruments, hedging arrangements and derivatives) and to grant all types of security (whether for obligations of the RE or another person).

12.4 Investment powers

- (a) Without limiting article 12.1, the RE may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.¹⁹
- (b) For the purpose of giving effect to the investment policy specified in article 12.5 but without limiting any other provision of this constitution the RE may:
- (i) invest the Assets in cash and cash equivalents, interests, securities or other instruments including those issued by an associate of the RE;
 - (ii) make loans or provide any other financial accommodation including to an associate of the RE; and
 - (iii) enter into hedging arrangements and derivatives in connection with any actual or prospective investment of the Trust or any borrowing or raising of money by the Trust.

¹⁸ Required to be included by Section 601GA(3)

¹⁹ Subject to Section 601FC(4)



12.5 Principal Investment Policy

The principal investment policy of the RE in relation to the Trust is investment either directly or indirectly (for example through the purchase of interests in a managed investment scheme, equities or debentures) in real property and the making of such other investments with the Assets which in the RE's opinion are not from time to time required for that purpose²⁰. The RE may vary the principal investment policy, provided reasonable notice is given to Members in order that Members may, if they see fit, dispose of their Units prior to the variation taking effect.

12.6 Power of delegation²¹

The RE may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the RE's power, including the power to appoint in turn its own agent or delegate.

12.7 Protection and assistance for those dealing with agents and delegates

The RE may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the RE thinks fit.

12.8 Agents and delegates may be associates

The agent or delegate may be an associate of the RE.²²

12.9 Exercise of discretion

The RE may in its absolute discretion decide how and when to exercise its powers.

12.10 Listing of the Trust

The RE may apply for the Trust to be Listed and Units to be Officially Quoted, and for this purpose the RE is authorised on its own behalf and on behalf of each Member to do all things necessary to effect a Listing.

12.11 Stapling

- (a) The RE may determine that the Stapling Provisions will take effect in accordance with article 1.3.
- (b) In relation to an initial Stapling as contemplated by paragraph (a) and any subsequent Stapling of further securities to the Units, the RE has power to do everything necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions, including power to:
 - (i) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or proceeds on behalf of Members; and

²⁰ The types of financial products and other assets which the RE may acquire for the Trust may be limited by the terms of the RE's Australian financial services licence.

²¹ See also Section 601FB

²² Subject to Part 5C.7



- (ii) to apply for or purchase securities on behalf of the Members.
 - (c) Without limiting paragraph (b), to give effect to the provisions of this article 12.11, the RE is irrevocably appointed the agent and attorney of each Member to:
 - (i) apply any proceeds referred to in paragraph (b)(i) on behalf of the Member;
 - (ii) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member; and
 - (iii) execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Member to give effect to the Stapling.
- The RE is authorised to execute these documents and do these things without needing further authority or approval from Members.
- (d) The RE shall have no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the RE doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling proposal.
 - (e) Subject only to article 26, the provisions of paragraphs 12.11(a) to (d) apply despite any other provision of this constitution and prevail over any other provisions of this constitution to the extent of any inconsistency.

(e) **12A**

12A.1 Power to implement Brookfield Proposal

Subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules, the RE has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Brookfield Proposal and those powers apply notwithstanding, and are not limited by, any article of this constitution other than article 26.

12A.2 Appointment of RE as agent and attorney

- (a) The RE is irrevocably appointed as the agent and attorney of each Member 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 Member to effect the Brookfield Proposal, including, without limitation:
 - (i) executing transfers of Units for and on behalf of the Member; and
 - (ii) taking any other action to transfer all Units held by each Member other than members of the Brookfield Group in the manner contemplated by the EM in order to give effect to the Brookfield Proposal.



and the RE accepts such appointment.

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

12A.3 Members' agreements and warranties

- (a) Each Member:

- (i) (other than Members who are members of the Brookfield Group) agrees to the transfer of its Units together with all rights and entitlements attaching to those Units in accordance with this article 12A in order to give effect to the Brookfield Proposal and agrees to any variation, cancellation or modification of their rights constituted by or resulting from this article 12A or the implementation of the Brookfield Proposal; and
- (ii) acknowledges that this article 12A binds all members (including those who did not attend the meeting in respect of the Brookfield Proposal, did not vote at that meeting or voted against the resolutions put to Members at that meeting).

- (b) Each Member is taken to have warranted to the RE and the Brookfield Acquirer, and appointed and authorised the RE as its attorney and agent to warrant to the Brookfield Acquirer:

- (i) that all their Units (including any rights and entitlements attaching to them) which are transferred for the purpose of giving effect to the Brookfield Proposal will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- (ii) that they have full power and capacity to transfer their Units to the Brookfield Acquirer together with any rights attaching to them.

12A.4 Paramourncy

- (~~⊕~~) Subject only to article 26, this article 12A has effect notwithstanding any other article of this constitution and any article of this constitution which is inconsistent with this article 12A does not operate to the extent of any inconsistency.

13 Retirement of RE

13.1 Voluntary retirement

- (a) The RE may retire as the responsible entity of the Trust as permitted by law²³.

²³ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ



- (b) If permitted by law or by any relief from the Corporations Act granted by the ASIC, the RE may appoint its successor by deed.
- (c) Any replacement responsible entity must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

13.2 Compulsory retirement

The RE must retire as the responsible entity of the Trust when required by law²⁴.

13.3 Release

When it retires or is removed, the RE is released from all obligations in relation to the Trust arising after the time it retires or is removed.²⁵

13.4 Retirement benefit

The RE is entitled to agree with the incoming RE to be remunerated by, or to receive a benefit from, the incoming RE in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming RE as its replacement, or
- (b) its retirement as the RE,

and is not required to account to Members for such remuneration or benefit.

14 Notices to Members

14.1 Form of notices

Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the RE determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the RE for delivery of notices.

14.2 Cheques payable to Members

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.

14.3 Joint Members

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

²⁴ See Section 601FM and 601FA.

²⁵ See section 601FR for the Scheme Operator's obligation to transfer records, etc. Section 601FS restricts this release.



14.4 Receipt of communications

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a document (other than a notice of meeting of Members) sent by fax or electronic transmission is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine or computer to which the message was transmitted. Proof of actual receipt is not required. Subject to the Corporations Act²⁶, the RE may determine²⁷ the time at which other forms of communication will be taken to be received.

15 Notices to RE

15.1 Form of notices

A notice required under this constitution to be given to the RE must be given in writing (which includes a fax), or in such other manner as the RE determines.

15.2 When notice effective

The notice is effective only at the time of receipt.

15.3 Signing of notices

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the RE dispenses with this requirement.

16 Meetings of Members

16.1 Convening of meetings

The RE may at any time convene a meeting of Members, and must do so if the Corporations Act requires.²⁸

16.2 RE may determine

Subject to the specific provisions of this constitution relating to meetings of Members and to the Corporations Act²⁹, the RE may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

16.3 Notice of meeting

Notice of a meeting of Members must be given in accordance with article 14 and the Corporations Act.

In computing the period of notice under this article 16.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

The non-receipt of notice of a meeting or cancellation or postponement of a meeting by, or the accidental omission to give notice of a meeting or

²⁶ See Section 601FC(1)(d)

²⁷ See Section 252G(4)

²⁸ Refer Part 2G.4

²⁹ Refer Part 2G.4



cancellation or postponement of a meeting to, a person entitled to receive notice does not invalidate any resolution passed at the meeting or at a postponed meeting or the cancellation or postponement of a meeting.

16.4 Quorum

The quorum for a meeting of Members is at least 2 Members present in person or by attorney, representative or proxy unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

An item of business may not be transacted at a meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairman of the meeting (on the chairman's own motion or at the instance of a Member, proxy, attorney or representative who is present) declares otherwise.

16.5 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the RE decides by notice to the Members and others entitled to notice of the meeting.

At any adjourned meeting, those Members present in person or by attorney, representative or proxy constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

16.6 Chairman

Subject to the Corporations Act³⁰ the RE may appoint a person to chair a meeting of Members.

16.7 Role of chairman

The chairman of a meeting of Members:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

³⁰ Refer Part 2G.4 and Section 601FC(1)



and a decision by the chairman under this article 16.7 is final.

16.8 Postponement or cancellation

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

16.9 Notice of Cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

16.10 Contents of notice or postponement of meeting

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

16.11 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Corporations Act.

16.12 Business at postponed meeting

The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

16.13 Proxy, attorney or representative at postponed meeting

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,



then, by force of this article 16.13, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the RE notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

16.14 Proxies and voting

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust.

16.15 Proxies containing some of the required information

The RE may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

16.16 Adjournment of meeting

- (a) The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

16.17 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

16.18 Demand for a poll

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

16.19 Declaration of poll

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.



16.20 Resolutions

- (a) Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.
- (b) The RE may have an issue of Units approved or ratified by Members in accordance with the requirements of section 601GAA or another provision of the Corporations Act, as modified by any applicable ASIC Relief.

16.21 Poll

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

16.22 Equality of votes - no casting vote for chairman

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or representative.

16.23 Entitlement to vote

- (a) Subject to any rights or restrictions for the time being attached to any Class or Classes of Units and to this constitution:
 - (i) on a show of hands, each Member present in person and each other person present as a proxy, attorney or representative of a Member has one vote; and
 - (ii) on a poll, each Member present in person has one vote for each one dollar of the value of the Units held by the Member and each person present as proxy, attorney or representative of a Member has one vote for each one dollar of the value of the Units held by the Member that the person represents.
- (b) A Member is not entitled to vote at a general meeting in respect of Units which are the subject of a current Restriction Agreement so long as any breach of that agreement subsists.

16.24 Voting on a poll for Partly Paid Units

If a Member holds Partly Paid Units, the number of votes the Member has in respect of those Partly Paid Units on a poll is one vote for each dollar of value of the Partly Paid Units held by the Member.



16.25 Joint Members' vote

If a Unit is held jointly and more than one Member votes in respect of that Unit, only the vote of the Member whose name appears first in the Register counts.

16.26 Vote of unitholder of unsound mind

If a Member 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, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

16.27 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

16.28 Validity of vote in certain circumstances

A vote cast by a person as a proxy, attorney or representative is valid notwithstanding:

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise; or
- (b) the execution of a transfer of those Units by that holder,

unless a notice in writing of the revocation or transfer has been received by the RE or by the chairman of the meeting before the vote is cast.

16.29 Meetings by technology

A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

16.30 Meetings of Class or Option holders

If any meeting of the holders of a Class or of Option holders is required to be held the foregoing provisions of this article 16 will apply with any necessary amendments.



17 Rights and liabilities of RE

17.1 Holding Units

The RE and its associates may hold Units in the Trust in any capacity³¹.

17.2 Other capabilities

Subject to the Corporations Act³², nothing in this constitution restricts the RE (or its associates) from:

- (a) dealing with itself (as trustee of the Trust or in another capacity), an associate or with any Member;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate or with any Member or (when acting in a capacity other than as trustee of the Trust) and retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

17.3 RE may rely

The RE may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the RE, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the RE who are in each case believed by the RE in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the RE believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the RE in connection with the Trust upon which it is reasonable for the RE to rely;

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

³¹ See Section 601FG, Section 253E and Part 5C.7

³² Refer Part 5C.7



18 Limitation of liability and indemnity in favour of RE

18.1 RE not liable except to the extent Corporations Act imposes liability

The RE is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

18.2 Limitation on RE's liability

Subject to the Corporations Act, the liability of the RE to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the RE's ability to be indemnified from the Assets.

18.3 Indemnity in favour of RE

The RE is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust³³.

18.4 Indemnity includes acts and omissions of an agent or delegate

To the extent permitted by the Corporations Act³⁴, the indemnity under article 18.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the RE.

18.5 Indemnity in addition to indemnity allowed by law

This indemnity is in addition to any indemnity allowed by law. It continues to apply after the RE retires or is removed from the office it holds in relation to the Trust.

18.6 Indemnity unaffected by unrelated breach of trust

The RE may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the RE (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the RE or by any delegate or agent appointed by the RE.

19 Liability of Members

19.1 Liability limited

Subject to articles 19.2 and 19.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

19.2 Recourse limited to the Assets

In the absence of separate agreement with a Member, the recourse of the RE and any creditor is limited to the Assets.

³³ See Section 601GA(2)

³⁴ See Sections 601FB(2) and 601GA(2)



19.3 Tax and User Pays Fees

The RE is entitled to be indemnified by a Member or former Member to the extent that the RE incurs any liability for Tax or User Pays Fees as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member. The RE may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

19.4 Joint Members

Joint Members and former joint Members are jointly and severally immediately liable in respect of all payments including payments of Tax to which article 19.3 applies, and User Pays Fees.

19.5 Deficiency in the Assets

A Member need not indemnify the RE if there is a deficiency in the Assets or meet the claim of any creditor of the RE in respect of the Trust.

19.6 Restrictions on Members

Except as otherwise set out in this constitution, a Member:

- (a) must not interfere with any rights or powers of the RE under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.

20 Remuneration and Expenses of the RE

20.1 Fees payable from the Assets

The fees in this article 20 are payable to the RE from the Assets or can be taken from the assets of any controlled sub-trust of the Trust. The RE's entitlement to these fees begins on the date the Trust commences and continues to the date of final distribution in accordance with article 22.3.

20.2 Fees subject to Corporations Act

While the Trust is a Registered Scheme, the fees in this article 20 may only be paid to the RE to the extent not prohibited by the Corporations Act³⁵.

20.3 Equity raising and asset acquisition fee

The RE will provide services to the Trust associated with the raising of equity, sourcing and undertaking due diligence inquiries in relation to real property assets and the acquisition of assets by the Trust or any controlled sub-trust. For provision of these services, the RE is entitled to a fee of 5% of the Gross Value of the assets which the RE acquires or agrees to acquire for the Trust or any controlled sub trust of the Trust.

The fee is payable:

³⁵ See section 601GA(2) of the Corporations Act.



- (a) in respect of each such acquisition or agreement to acquire which occurs before the First Closing Date on the later of the First Closing Date or the date of completion of the acquisition; and
- (b) in respect of each such acquisition after the First Closing date, at the date of the acquisition or agreement to acquire.

20.4 Management Fees

In consideration of the management and administration services to be provided by the RE, the RE is entitled to be paid the following fees:

- (a) a base management fee in respect of each Quarter equal to 0.65% per annum of the Gross Value of the Assets, calculated as at the last day of the relevant Quarter and payable within 5 Business Days of that date; and
- (b) a fee equal to 8.5% of the gross rental and other income from the leased property for the first year of any new or extended term of each lease granted over any real property in which the Trust has a direct or indirect interest, adjusted, if relevant, based on the proportion of the value of the property which the Trust's direct or indirect interest represents;
- (c) a fee equal to:
 - (i) the lesser of:
 - (A) 2% of the gross sale price of real property or units in any trust in which the Trust or any controlled sub-trust has an interest; and
 - (B) the difference between the net sale proceeds and the purchase price of the property or the units in the trust plus any acquisition costs; plus
 - (ii) an additional fee of 2% of the amount by which the net sale proceeds of the property or units exceed a figure which represents a greater than 50% profit on the purchase price plus acquisition costs;in each case adjusted if relevant based on the proportion of the value of the property or units which the Trust's direct or indirect interest represents; and

- (d) the Performance Fee pursuant to clause 20.5.

20.5 Performance fee

- (a) The RE is entitled to a performance fee calculated as follows:

$$\text{Performance Fee} = \text{PF} + \text{EPF}$$

where



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

EPF (Tier 2 Performance Fee) = $(NP_c - EP_b) \times MC_o \times 15\%$ but equals zero if NP_c is not greater than EP_b ;

NP_c = TR-BM (expressed as a percentage);

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

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

where

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

T_o = Opening Trust Index being the Trust Index at close of the prior Half Year or if $NP_o < 0$ then T_o = the Trust Index used as the opening Trust Index (T_o) for the previous period;

BM (Benchmark Return expressed as a percentage)
= $\frac{(B_c - B_o)}{B_o}$

where

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

B_o = Opening Benchmark Index being the Benchmark Index at close of the prior Half Year or if $NP_o < 0$ the B_o = the Benchmark Index used as the opening Benchmark Index (B_o) for the previous period;

MC_o (Market capitalisation) = $P_o \times U_o$

where

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

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

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

- (b) If the TR (as defined above) for the Trust for a Half Year is negative, no Performance Fee will be payable to the RE until the end of the first succeeding Half Year in which the TR is positive.



- (c) Except as provided in article 20.5(e) the maximum fees to be paid to the RE in respect of any Financial Year including the Base Fee and the Performance Fee is to be an amount equal to 1% of the Trust's direct or indirect proportionate interest in properties and other assets based on the fair market value of those properties and assets at the end of the Financial Year. In applying this limit, if a Performance Fee becomes payable in respect of the Half Year ending 31 December the maximum amount which may be paid in respect of that Half Year comprising both the Base Fee and the Performance fee for that Half Year will be an amount equal to 0.5% of the value of the Trust's direct or indirect proportionate interest in properties and other assets based on the fair market value of those properties and assets at the end of that Half Year and will represent a part payment on account of the total fees payable in respect of the Financial Year up to the limit for that Financial Year calculated in accordance with this article 20.5.
- (d) If the amount of the total fees for a Financial Year as calculated in accordance with articles 20.4 and 20.5 exceeds the limit for the Financial Year specified in article 20.5(c) only the Base Fee for that Financial Year and the part of the Performance Fee equal to the difference between the Base Fee and the limit shall be payable, and the remaining Performance Fee which would otherwise have been payable in respect of that Financial Year if the limit in article 20.5(c) did not apply ("Excess Performance Fee") will not be payable at that time. The amount of Excess Performance Fee must be recorded as a liability of the Trust payable to the RE and that Excess Performance Fee shall be paid to the RE in future Half Years if, and to the extent, that the total fees payable to the RE in relation to any future Half Year are less than the limit referred to in article 20.5(c). The amount of Excess Performance Fees to be paid in relation to a Financial Year shall be the aggregate value of the difference between the total fees for that Financial Year before the payment of Excess Performance Fees and the limit for that Financial Year under article 20.5(c). In carrying forward Excess Performance Fees into future Half Years to supplement the RE's total fees up to the limit under article 20.5(c) the Excess Performance Fees which may be issued in any future period shall be calculated at the same rate at which they accrued as a liability.
- (e) If at the end of any Half Year there are any Excess Performance Fees which accrued as a liability at least three years prior to the end of that Half Year and which have not been paid to the RE, those Excess Performance Fees will be paid to the RE, and disregarded for the purpose of calculating the limit under article 20.5(c) in relation to the Financial Year in which they are paid if the accumulated return of the Trust for that three year period expressed as a percentage exceeds the movement in the Benchmark Index over that three year period expressed as a percentage. If Brookfield Capital Management Limited ceases to be the responsible entity of the Trust or the Trust is wound up, Brookfield Capital Management Limited shall be entitled to a cash payment of the amount of Excess Performance Fees which have not previously been paid to it on the date on which it ceases to be the responsible entity of the Trust or the date on which the Trust is terminated, or within seven days after the relevant date.



- (f) Subject to the Corporations Act and the Listing Rules, the RE may elect to have payment of all or part of the Performance Fee to which it is entitled under paragraph (a) applied to subscribe for Units, or may issue Units to the Manager in respect of any performance fees payable under the Management Services Agreement. The number of Units to be issued is to be calculated as the amount of the fee, divided by the Application Price specified in article 20.5(g), rounded down to the nearest whole number of Units. To the extent that the performance fee to which the RE is entitled is not applied to the purchase of Units, the fee must be paid in cash to the RE out of the Assets.
- (g) The Application Price for the issue of Units pursuant to article 20.5(f) is the greater of the weighted average trading price of all Units traded on the ASX during the 10 Trading Days from and including the date on which the Units trade ex the distribution entitlement for the relevant Half Year and the net tangible asset backing per Unit at the end of the Half Year.

20.6 Fee offset and waiver of fees

- (a) The RE's entitlement to fees under articles 20.4 and 20.5 will be reduced to the extent that the Manager receives a base fee and a performance fee under the Management Services Agreement.
- (b) The RE may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

20.7 Expenses

All expenses incurred by the RE in relation to the proper performance of its duties in respect of the Trust³⁶ are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation of the Trust and registration of the Trust as a Registered Scheme;
- (b) the preparation, review, distribution and promotion of any product disclosure statement, prospectus or offering memorandum in respect of Units and other promotion of the Trust;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the administration or management of the Trust or its Assets and Liabilities including expenses in connection with the Register or the valuation of any Asset or the Trust as a whole;
- (f) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;

³⁶ Refer Section 601GA(2)(b)



- (g) underwriting of any subscription or purchase of Units including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the RE of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (i) Tax, including any amount charged by a supplier of goods or services, or both, to the RE by way of or as a reimbursement for GST;
- (j) financial institution fees;
- (k) the payment of remuneration for management services pursuant to the Management Services Agreement;
- (l) the engagement of agents (including real estate agents, managing agents and facilities managers), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the RE;
- (m) preparation and audit of the taxation returns, accounting records and accounts of the Trust;
- (n) termination of the Trust and the retirement or removal of the RE and the appointment of a replacement;
- (o) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the RE, except to the extent that the RE is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this article 20.7(o) must be repaid;
- (p) all damages, expenses, payments, legal and other costs and disbursements incurred by the RE in relation to or in connection with any claim, dispute or litigation (*Claim*) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document, information memorandum or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the RE;
- (q) the compliance committee established by the RE in connection with the Trust (if any), including any fees paid to, or insurance premiums³⁷ in respect of, compliance committee members;
- (r) while there is no compliance committee, any costs and expenses associated with the board of directors of the RE carrying out the

³⁷ See Section 601JG



functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;

- (s) the preparation, implementation, amendment and audit of the compliance plan;
- (t) the appointment of any compliance officer to undertake compliance work for the Trust;
- (u) the preparation of reports including compliance reports;
- (v) fees payable to any audit committee for the Trust, whether or not appointed in accordance with ASX corporate governance guidelines;
- (w) the promotion of the Trust generally;
- (x) recording, responding to and dealing with any complaints from Members in connection with the Trust;
- (y) complying with any law, and any request or requirement of the ASIC; and
- (z) the admission of the Trust to any stock exchange, the Official Quotation of Units and compliance with the rules of such an exchange.

20.8 GST

The User Pays Fees and other fees payable by an applicant or Member and the fees payable out of the Assets to the RE under this constitution do not include any amount referable to GST. If the RE is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the RE in respect of the supply, the RE is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the RE shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets or assets of any controlled sub-trust.

20.9 Input tax credits

In the event that the RE is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the RE by any person, or payable by the RE by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the RE is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the RE to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the RE's right



of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

20.10 GST and expenses

Where an expense covered by article 20.7 is paid from the Assets to the RE, the payment shall comprise part of the consideration for a supply by the RE to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the RE's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

21 Duration of the Trust

21.1 Initial settlement

The Trust commenced on 1 July 2005.

21.2 Termination

The Trust terminates on the earliest of:

- (a) the date specified by the RE as the date of termination of the Trust in a notice given to Members; and
- (b) the date on which the Trust terminates in accordance with another provision of this constitution or by law³⁸.

21.3 Perpetuity period and restriction on issue and redemption of Units

Despite any other provision in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day before the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities or any other rule of law or equity. This restriction does not require that the Trust terminate on the expiration of that period, but requires that the Trust be fully vested by the end of that period.

22 Procedure on termination

22.1 Realisation of Assets

Following termination, the RE must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

22.2 Audit of winding up

If and to the extent that ASIC policy so requires, the RE must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

22.3 Distribution following termination

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members in accordance with the following formula:

³⁸ See Part 5C.9 on winding up



$$\frac{(A + X) \times B}{C} - Y$$

Where:

- A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this article 22.3;
- B = the aggregate of the number of Units held by the Member as at termination, including both Fully Paid Units and Partly Paid Units; and
- C = the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid Units;
- X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any); and
- Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination.

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this article 22.3 results in a negative dollar amount, then that Member must pay to the RE within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

The RE may distribute proceeds of realisation in instalments.

22.4 Constitution applies until date of final distribution

Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under this article 22, but during that period the RE may not accept any applications for Units from a person who is not an existing Member.

23 Amendments to this constitution

- (a) Subject to the Corporations Act³⁹, this constitution may be amended:
- (i) by Resolution⁴⁰; or
 - (ii) by deed executed by the RE.
- (b) If the constitution is amended by Resolution, the RE may give effect to the amendments by executing a supplemental deed.

³⁹ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC.

⁴⁰ The required majority for such a Resolution under section 601GC(1)(a) is 75% of eligible votes cast.



24 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act⁴¹.

25 Complaints

If a Member submits to the RE a Complaint alleging that the Member has been adversely affected by the RE's conduct in its management or administration of the Trust, the RE:

- (a) must acknowledge in writing receipt of the Complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the RE as appropriate to handle Complaints;
- (c) must act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the Complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant in relation to the Complaint as soon as practicable and in any event not more than 45 days after receipt by the RE of the Complaint:
 - (i) the determination in relation to the Complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for Complaint.

26 Statutory provisions

26.1 Statutory requirements

- (a) If:
 - (i) the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the RE has

⁴¹ See section 601JF.



determined it wishes to rely or which is expressly applicable to the Trust and the RE requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply (“**Required Provisions**”); or

- (ii) any part of this constitution (a “**Required Part**”) is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX (“**Regulatory Requirement**”) and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement; and the Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

(b) The Members:

- (i) authorise the RE to make the amendments referred to in this article 26.1 in a deed made for that purpose and, if required, to lodge it with ASIC; and
 - (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to any right that would be adversely affected by the operation of this article 26.1.
- (c) Where this article 26.1 operates to automatically amend this constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

26.2 Listing Rules

While the Units are Officially Quoted:

- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and



- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

26.3 Corporations Act and the Listing Rules

- (a) Any provision of this constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act while the Trust is a Registered Scheme.
- (b) Any provision of this constitution which is expressed to apply subject to the Listing Rules shall only be read as subject to the Listing Rules while the Units are Officially Quoted.

26.4 ASIC Class Orders

In accordance with ASIC Class Order 98/1808 or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this constitution because of the operation of article 26.1 or 26.2 that is covered by such instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this article 26.4 applies are made pursuant to the power in article 23 but in respect of such changes the requirements of article 23 are to be read subject to this article 26.

26.5 This clause prevails

Subject to the Corporations Act and the Listing Rules, the provisions of this clause 26 prevail over other provisions of this constitution to the extent of any inconsistency.

27 Small Holdings

27.1 Application of this article

This article 27 applies while the Units are Officially Quoted.

27.2 RE's right to sell Small Holdings

Subject to the provisions of this article 27, the RE may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder without request by the Small Holder.

27.3 Divestment Notice

If the RE determines that a Member is a Small Holder the RE may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder, the number of Units making up and the market value of the Small Holding and the date on which the market value was determined;
- (b) that, unless the Small Holder tells the RE that the Small Holder wishes to retain the Units making up the Small Holding before the Relevant Period lapses, the RE intends to sell the Relevant Units in



accordance with this article after the end of the Relevant Period specified in the Divestment Notice;

- (c) after the end of the Relevant Period, if the Small Holder has not informed the RE that it wishes to retain the Units making up the Small Holding, the RE may for the purpose of selling the Relevant Units that are in a CS Facility holding initiate a holding adjustment to move those Units from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with those Operating Rules.

27.4 Relevant Period

The Relevant Period must be at least six weeks from the date the Divestment Notice was given.

27.5 Limitation on RE's right to sell

The RE will not sell or redeem the relevant Units:

- (a) before the expiry of 6 weeks from the date of the notice given under article 27.3; or
- (b) if, within the 6 weeks allowed by article 27.4:
- (i) the Small Holder advises the RE that the Small Holder wishes to retain the Units making up the Small Holding; or
- (ii) the market value of the Small Holding held by the Small Holder increases to at least a marketable parcel as provided in the Listing Rules.

27.6 RE can sell Relevant Units

At the end of the Relevant Period, if the Small Holder has not advised the RE that the Small Holder wishes to retain the Units making up the Small Holding, the RE is entitled to sell on-market or in any other way determined by the RE the Relevant Units of a Member who is a Small Holder.

27.7 No obligation to sell

The RE is not bound to sell any Relevant Units which it is entitled to sell under this article 27 but unless the Relevant Units are sold within 10 weeks after the end of the Relevant Period the RE's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

27.8 RE as Member's attorney

To effect the sale and transfer by the RE of Relevant Units of a Member, the Member appoints the RE and each Director and Secretary of the RE jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the RE considers necessary, desirable or reasonably incidental or appropriate to effect the sale or transfer of the Relevant Units and, in particular:



- (a) to initiate a Holding Adjustment to move the Relevant Units from a CS Facility holding to an Issuer Sponsored Holding or a Certificated Holding; and
- (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.

27.9 Conclusive evidence

A statement in writing by or on behalf of the RE under this article 27 is binding on and conclusive against (in the absence of manifest error) a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this article 27 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.

27.10 Registering the purchaser

The RE must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this article. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the RE under this article 27.

27.11 Payment of proceeds

Subject to article 27.12, where:

- (a) Relevant Units of a Member are sold or redeemed by the RE on behalf of the Member under this article; and
- (b) the certificate for the Relevant Units (unless the RE is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the RE,

the RE must, within 60 days of the completion of the sale or redemption, send the net proceeds of sale or redemption (at the Redemption Price per Unit specified in article 8.1) to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this article is at the risk of the Member to whom it is sent.

27.12 Costs

The Trust or the purchaser of the Units making up the Small Holding must pay the costs of the sale or redemption as the RE decides.

27.13 Remedy limited to damages

The remedy of a Member to whom this article applies, in respect of the sale of the Relevant Units of that Member is expressly limited to a right of action in damages against the RE to the exclusion of any other right, remedy or relief against any other person.



27.14 Distributions and voting suspended

Unless the RE determines otherwise, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a Small Holder. Any distributions that would, but for this article 27.14, have been paid to that Member must be held by the RE and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.

27.15 12 month limit

If it is a requirement of the Listing Rules, the RE must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by article 27.16).

27.16 Effect of takeover bid

From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the RE's powers under this article to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the RE may give a Divestment Notice to a Member who is a Small Holder, despite article 27.15 and the fact that it may be less than 12 months since the RE gave a Divestment Notice to that Member.

28 Registers and inspection of records

28.1 Joint tenancy

Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the RE otherwise agrees.

28.2 Inspection by Members

Subject to the Corporations Act, the RE may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Trust or any of them will be open to the inspection of Members.

28.3 Right of a Member to inspect

A Member (other than the RE) does not have the right to inspect any document of the Trust except as provided by law or authorised by the RE or by the Members in general meeting.

28.4 Holding Statements

Subject to the Corporations Act, while the Trust is not admitted to an uncertified trading system, a holding statement may be issued to evidence the holding of Units.

29 Interpretation

29.1 Definitions

Words defined in the Stapling Provisions have the same meanings when used in this constitution unless otherwise defined in this constitution.



In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Application Price: the application price for a Unit calculated in accordance with this constitution⁴².

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

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Relief: an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, instalments of the Application Price which have not become due and payable, proceeds of redemption which have not yet been paid or any amount in the distribution account.

ASX Settlement Rules: the operating rules of the settlement facility provided by ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532), as amended from time to time.

ASX: the Australian ~~Stock~~ Securities Exchange Limited or the market operated by it as the context requires.

Base Fee: the fee payable to the RE under article 20.4.

Benchmark Index: the average of the UBS Commercial Property Accumulation (200 Index) (Code-SPCMAL.ASX) as calculated by Standard & Poor's, or other suitable body as determined by the RE from time to time and notified to Members, as at the close of normal trading on each of the 10 Trading Days from and including the date on which the Units trade ex the entitlement for the relevant Half Year. If this index ceases to be published or reasonably able to be calculated a comparable index reasonably selected by the RE may be substituted.

BBSW for a period:

- (a) the rate determined by the RE to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30am Sydney time on the first day of that period on the Reuters screen BBSW page for a term of one month after eliminating one of the highest and one of the lowest of those rates; or
- (b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the RE to be the average of the buying rates quoted to the RE by 3 Australian banks selected by the RE at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to one month.

⁴² See Clause 6 "Application Price for Units"



Brookfield Acquirer: Brookfield BPPF Investments Pty Limited ACN 110 184 006 as trustee for Brookfield BPPF Investments Trust.

Brookfield Group: Brookfield Australia Pty Limited ACN 126 164 145 and its related entities.

Brookfield Proposal: the proposal for the Brookfield Acquirer to acquire all of the Units that it or other members of the Brookfield Group do not hold, as described in the EM.

Business Day: a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney and Melbourne but if the Units are Officially Quoted has the meaning given to that term in the Listing Rules.

Complaint means an expression of dissatisfaction made to the RE, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

Compliance Committee Member: a member of a compliance committee established by the RE in connection with the Trust.

Corporations Act: the Corporations Act 2001 (Cwlth), and a reference to a particular provision of the Corporations Act includes a reference to that provision as modified by any applicable ASIC Relief.

CS Facility: has the same meaning as in the ASX Settlement Rules~~Corporations Act~~.

CS Facility holding : a Holding (as defined in the ASX Settlement Rules) in a CS Facility~~has the meaning given in the ASTC Settlement Rules.~~

CS Facility Operator: the operator of the prescribed CS Facility.

Custodian: a person for the time being holding Assets as custodian for the RE.

Defaulted Unit: a Partly Paid Unit on which:

- (a) an instalment is due and payable;
- (b) a valid call has been made; and
- (c) the call has not been paid on or by the day specified in the call.

Details: the section of this constitution headed "Details".

Distributable Income: has the meaning given in article 10.1.

Distribution Calculation Date: the Financial Year End Date and such other days as the RE designates.

Distribution Period:

- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;



- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

EM: the notice of meeting and explanatory memorandum dated November 2014 in relation to the Brookfield Proposal.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next Financial Year End Date;
- (b) for the last financial year, the period from the day immediately following the Financial Year End Date before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Financial Year End Date to the next occurring Financial Year End Date.

Financial Year End Date:

- (a) 30 June; and
- (b) the day on which the Trust becomes a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act),

or another financial year end date nominated by the RE.

First Closing Date: the date on which the issue of Units pursuant to the First Offer Document is completed.

First Offer Document: the first product disclosure statement under Part 7.9 of the Corporations Act pursuant to which Units are offered for subscription.

Fully Paid Unit: a Unit on which the Application Price has been fully paid.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Gross Value: when referring to an asset or assets, means the value of the asset or assets without deducting related liabilities such as debt funding.

Half Year: a period of 6 months ending on 30 June or 31 December. The first Half Year is the period from the date on which Units are first Officially Quoted to 31 December 2006, and in relation to calculations for that initial Half Year for the purposes of calculating Performance Fees, the expression



“last day of the prior Half Year” means the day prior to the commencement of that Half Year.

Income Distribution: in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under article 10.6.

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

Liabilities: all present liabilities of the Trust including any provision taken into account in accordance with applicable accounting standards in determining the liabilities of the Trust, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

Liquid: has the same meaning as in the Corporations Act.

Listed:

- (a) in the case of the Trust, the Trust being listed on the ASX; and
- (b) in the case of the Units, the Units being Officially Quoted,

and **Listing** has a corresponding meaning.

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

Management Services Agreement: the agreement with that title between the RE as responsible entity of the Trust, and the Manager.

Manager: Multiplex Investment Funds Pty Limited ACN 103 114 441.

Market Price: of a Unit on a particular day is:

- (a) the weighted average price per Unit for sales on the ASX (excluding any special crossings) for the period of 15 Trading Days immediately prior to the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
 - (i) Units have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
 - (ii) in the RE's opinion a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Unit having regard to the nature of the



proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit that an Approved Valuer determines to be the market price of the Unit on the relevant day.

Market Value: in relation to an Asset at a particular time means:

- (a) in the case of an Asset that is cash or a deposit with an Australian ADI, its face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest bid price on that market that is readily available to the RE, unless the RE reasonably believes that the bid price does not represent the true value of the Asset, in which case paragraph (d) will apply;
- (c) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the scheme on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the scheme is operated by the RE or a related body corporate of the RE, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the scheme; and
- (d) in the case of any other Asset, the value of the Asset determined in accordance with generally accepted accounting principles or, if the RE is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer approved by the RE at the expense of the Trust.

Member: the person Registered as the holder of a Unit (including persons jointly Registered) and where required by the Corporations Act or the context includes the holder of an Option.

Minimum Holding: means the amount from time to time determined by the RE pursuant to article 7.4.

Net Asset Value: the value of the Assets calculated in accordance with article 9 less the Liabilities.

Officially Quoted: quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.

Operating Rules: the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated Units as amended, varied or waived (whether in respect of the Trust or generally) from time to time.



Option: an option granted by the RE in respect of an unissued Unit.

Paid-up Proportion: the number obtained by multiplying the number of Partly Paid Units on issue as at the date of calculation by the fraction obtained by dividing the aggregate of all amounts paid or due but unpaid in respect of all Partly Paid Units in issue as at the date of calculation by the total of the Application Prices of those Partly Paid Units.

Partly Paid Unit: a Unit on which the Application Price has not been paid in full.

Quarter:

- (a) for the first quarter, the period from the establishment of the Trust to the next Quarter End Date;
- (b) for the last quarter, the period from the day immediately following the Quarter End Date before the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 3 month period from the day after the preceding Quarter End Date to the next occurring Quarter End Date.

Quarter End Date: 31 March, 30 June, 30 September and 31 December.

RE:

- (a) while the Trust is a Registered Scheme, the company which is shown in ASIC's records as the responsible entity for the Trust under the Corporations Act; and
- (b) if at any time the Trust ceases to be a Registered Scheme, the company last shown in ASIC's records as the responsible entity before deregistration, or any replacement trustee appointed by it.

Record Date: in relation to a Distribution Period:

- (a) if the Distribution Period ends on the last day of a Financial Year, the last day of the Financial Year; and
- (b) in all other circumstances, the date determined by the RE as the record date for that Distribution Period.

Redemption Price: the redemption price of a Unit calculated in accordance with this constitution⁴³.

Redemption Request: a written request to the RE to redeem Units.

Register: the register of Members kept by the RE under the Corporations Act.

Registered: recorded in the Register.

⁴³ See "Redemption Price of Units"



Registered Scheme: has the same meaning as in the Corporations Act.

Registrar: the person appointed to maintain the Register from time to time.

Registration: recording in the Register.

Relevant Period: the period specified in a Divestment Notice under articles 27.3 and 27.4.

Relevant Units: the Units specified in a Divestment Notice.

Relevant Security: a Unit or an Option.

Reorganisation: has the meaning given in article 3.12(a) and “Reorganise” is to be construed accordingly.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by attorney, representative or proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members present in person or by attorney, representative or proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority⁴⁴.

Restriction Agreement: a restriction agreement within the meaning and for the purposes of the Listing Rules.

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

Small Holder: a Member who is a holder or a joint holder of a Small Holding.

Small Holding: a holding of Units created by the transfer of a parcel of Units the aggregate market value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Units as provided under the Listing Rules.

Stapling Provisions: the provisions relating to Stapling contained in article 1.3 and in the schedule to this constitution.

Tax: all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the RE by way of

⁴⁴ Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.



reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the RE on account of GST, together with interest and penalties.

Tax Act: the Income Tax Assessment Act 1936 (*1936 Act*), the Income Tax Assessment Act 1997 (*1997 Act*) or both the 1936 Act and the 1997 Act, as appropriate.

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

Transaction Costs:

- (a) when calculating the Application Price of a Unit, the RE's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the RE's estimate of the total cost of selling the Assets.

The RE's estimate of total costs must be reasonable in light of the information available to the RE at the time the estimate is made.

Trust: the trust constituted under or governed by this constitution.

Trust Index: the accumulation index for the Trust as calculated by Standard & Poor's, or other suitable body as determined by the RE from time to time and notified to Members, using the closing market price series data except for the closing price at the end of the Half Year which shall be replaced by the 10 day volume weighted average trading price from and including the date on which the Units trade ex distribution entitlement for the relevant Half Year. The index will commence at 100 on the date on which Units are first Officially Quoted, utilising the initial \$0.60 instalment amount paid for each Unit.

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution.

User Pays Fees: any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the RE considers should be borne by that Member.

Valuation Time: a time at which the RE calculates Net Asset Value.

VWAP in respect of a Unit for a Trading Day means the volume weighted average of the Unit prices for that Trading Day for all sales of Units recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Units, any overnight crossings and any other



sales which the RE reasonably considers may not be fairly reflective of natural supply and demand.

29.2 Interpretation

Unless the contrary intention appears, in this constitution:

- (a) a reference to this constitution includes any schedule;
- (b) terms defined in the Corporations Act are used with their defined meaning;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (d) the singular includes the plural and vice versa;
- (e) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (f) amend includes delete or replace;
- (g) person includes a firm, a body corporate, an unincorporated association or an authority;
- (h) the cover page, contents, headings (except in so far as they are used as a means of cross reference), footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (i) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;
- (j) a reference to dollars or \$ is a reference to the currency of Australia.

29.3 Other documents

A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

29.4 Constitution legally binding⁴⁵

This constitution binds the RE and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

29.5 Severance

If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution

⁴⁵ Refer Section 601GB



without affecting the validity or operation of any other provision of this constitution.

29.6 Governing law

This constitution is governed by the law in force in the place specified in the Details.

29.7 Other obligations excluded

Except as required by the Corporations Act all obligations of the RE which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the RE in its capacity as trustee of the Trust arising under any statute.

29.8 Schedule

The schedule to this constitution is an operative part of it.



Constitution of Brookfield Prime Property Fund

Schedule - Stapling Provisions



Constitution of Brookfield Prime Property Fund

Finding List

This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Act	Constitution
601GA(1)(a)	Article 6
601GA(1)(b)	Article 12.4
601GA(1)(c)	Article 25
601GA(1)(d)	Article 22
601GA(2)(a)	Article 20
601GA(2)(b)	Article 20.2
601GA(3)(a)	Articles 12.2, 12.3
601GA(4)	Article 8
601GB	Article 29.4

This list is included to assist the ASX in identifying the provisions in this constitution which satisfy the requirements of the Listing Rules which relate to constitutions of registered managed investment schemes.

Listing Rules	Constitution
Chapter 7	Article 3
8.10	Article 3.13 - 3.20
7.7.1	Article 6.4
Appendix 6A	Article 4.4
Supremacy of Listing Rules	Article 26.2
18.6	Article 26.3
Small holdings	Article 27
Restricted Securities	Article 3.27



MALLESONS STEPHEN JAQUES

Constitution of Brookfield Prime Property Fund

Consolidated constitution prepared on 11 April 2011

Brookfield Capital Management Limited ("RE")
(ACN 094 936 866)

This document is a consolidated copy of the Constitution dated 16 July 2004 for Brookfield Prime Property Fund (ARSN 110 096 663) ("**Trust**") ("**Original Constitution**") incorporating amendments up to (and including) the Supplemental Deed dated 11 April 2011.

This is not a legally binding document. Reference should be made to the Original Constitution and each amending deed for the operative provisions. Section headings, indices and the provisions in square brackets do not form part of the text.

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