



ASX Release

11 November 2009

LISTING RULE WAIVERS AND FULL TERMS OF DBCT PRE-EMPTIVE RIGHTS AND RIGHT OF FIRST REFUSAL

As foreshadowed in section 13.16 of the Prospectus and Product Disclosure Statement lodged by Babcock & Brown Infrastructure (ASX: BBI) on 8 October 2009 (**Prospectus**), BBI has applied to ASX for various waivers, including a waiver from Listing Rule 10.1 in respect of the exercise of pre-emptive rights by Brookfield¹ and BBI over each other's interests in the Dalrymple Bay Coal Terminal portfolio of assets (**DBCT**).

ASX has advised BBI that it will grant the waivers sought² subject to various conditions, including that the full terms of the DBCT pre-emptive rights are released to the market. The full terms of the pre-emptive rights are attached below.

The terms of Brookfield's right of first refusal in respect of DBCT (**ROFR**) that will come into effect if the Recapitalisation is not completed (other than solely as a result of a breach by Brookfield), which lasts for a period of 12 months after the date that the Implementation Agreement is terminated by either party, are also attached.

The terms of the DBCT pre-emptive rights and the terms of the ROFR will also be made available at BBI's website: www.bbinfrastructure.com

ENDS

Further Enquiries

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ABOUT BABCOCK & BROWN INFRASTRUCTURE

Babcock & Brown Infrastructure (ASX: BBI) is a specialist infrastructure entity which provides investors access to a diversified portfolio of quality infrastructure assets. BBI's investment strategy focuses on owning, managing and operating quality infrastructure assets in Australia and internationally.

For further information please visit our website: www.bbinfrastructure.com

¹ Terms used in this announcement have the meanings given in the Prospectus.

² Other than PIT2's application for usual 'stapling' waivers and confirmations, which is expected to be dealt with later this week.

Agreement

Project Burgundy

Voting agreement

8.5 Notice of Sale

- (a) If an Interest Holder (the **Seller**) wishes to Dispose of all of its Interests (other than in the circumstances specified in clause 8.4(a)(2) to 8.4(a)(5)), it must serve a written notice to that effect on the other Interest Holders (the **Recipients**).
- (b) Each notice of sale issued under clause 8.5(a) (a **Notice of Sale**) must specify:

- (1) that the sale relates to all of the Interest Holder's Interests (**Sale Interests**);
 - (2) the aggregate sale price for the Sale Interests (which must be a cash consideration) or the method by which that sale price will be determined (which must be an entirely objective method, not dependent upon any subjective factor or the discretion of any person and must be accompanied by appropriate formulas or calculations which clearly set out the operation of such method, including a detailed calculation of the aggregate sale price which would apply if such method were applied on the date of the Notice of Sale as though the Sale Interests were being sold on that date) (**Sale Price**);
 - (3) the payment terms on which the Seller proposes to sell the Sale Interests; and
 - (4) a statement to the effect that the Recipients have the option to purchase all (but not part of) the Sale Interests, either severally in proportion to their Percentage Interests in the case where all Recipients elect to exercise their option, or in the proportions determined under clause 8.6 where not all Recipients elect to exercise their option, at the price and on the payment terms set out in the Notice of Sale if they comply with clause 8.6.
- (c) A Notice of Sale is irrevocable.

8.6 Exercise of option to purchase Sale Interests

- (a) Subject to clause 3.1, each Recipient may exercise its option under clause 8.5(b)(4) by giving notice to that effect to DBCT Trustee, the Seller and each other Recipient within 30 days after the date of service of the Notice of Sale. Following receipt of the notices, DBCT Trustee must notify each Interest Holder which exercises its option (each an **Exercising Participant**) of the number of Sale Interests which each of the Exercising Participants has agreed to acquire. Each Exercising Participant will then have 5 Business Days to provide the DBCT Trustee with a revised offer for the number of Sale Interests it wishes to acquire.
- (b) If the number of Sale Interests which Exercising Participants offer to acquire is less than all of the Sale Interests, the Seller must (in its discretion) elect either:
- (1) to sell all of its Sale Interests to a single third party buyer in accordance with clause 8.7 (**Third Party Election**); or
 - (2) to sell those of its Sale Interests which the Exercising Participants have offered to acquire to those Exercising Participants in the proportions which they have offered to acquire and in the manner contemplated by clauses 8.6(h) to 8.6(n) and transfer the balance (**Unallocated Interests**) of the Sale Interests to the third party buyer in accordance with clause 8.7 (**Third Party Partial Election**).

The remainder of this clause 8.6 will only apply where no Third Party Election has been made.

- (c) If the number of Sale Interests which Exercising Participants offer to acquire is all of the Sale Interests, then each Exercising Participant will be allocated the number of Sale Interests which it has offered to acquire and the Seller must sell all of its Sale Interests in the manner contemplated by clauses 8.6(h) to 8.6(n).
- (d) If the number of Sale Interests which Exercising Participants offer to acquire is greater than the number of the Sale Interests, then subject to clauses 8.6(e), 8.6(f) and 6.8(g) each Exercising Participant will be allocated the number of Interests which is equal to N in the following formula:

$$N = SI \times (PPI/TPI)$$

Where: SI is the aggregate number of Sale Interests;

PPI is the Percentage Interest of the Exercising Participant before service of the Notice of Sale; and

TPI is the aggregate Percentage Interest of all Exercising Participants before service of the Notice of Sale.

- (e) If the number of Sale Interests allocated to an Exercising Participant calculated by applying clause 8.6(d) is more than the number of Sale Interests which that Exercising Participant has offered to acquire, then that Exercising Participant will be allocated only the number of Sale Interests which it has offered to acquire.
- (f) In the case where clause 8.6(e) applies, the DBCT Trustee must repeat the application of clause 8.6(d) in respect of the unallocated Sale Interests until all Sale Interests have been allocated or cannot be allocated.
- (g) Clauses 8.6(d), 8.6(e) and 8.6(f) will be applied:
 - (1) in respect of any Sale Interests offered where the Seller is a BBI Investor or a BBI Third Party Investor, only in relation to the BBI Investors and the BBI Third Party Investors;
 - (2) in respect of any Sale Interests offered where the Seller is a BAM Investor or a BAM Third Party Investor, only in relation to the BAM Investors and the BAM Third Party Investors; and
 - (3) finally, in respect of any additional Sale Interests which have not been allocated after application of clause 8.6(g)(1) and clause 8.6(g)(2), in relation to those Exercising Participants (if any) who have not already been allocated as many Sale Interests as they offered to take up.
- (h) As soon as reasonably practicable after the determination of the entitlements of each Participating Interest Holder under this clause 8.6, the DBCT Trustee must send to each Interest Holder a notice setting out the number of Sale Interests that each Exercising Participant is entitled to acquire as determined in accordance with this clause 8.6 and the day for completion of the sale (**Sale Allocation Notice**).
- (i) Subject to clause 3.1, each Participating Interest Holder must purchase the Sale Interests allocated to it under the Sale Allocation Notice in accordance with (and subject to the terms of) clause 8.6(j). In the case where any Sale Interests are left unallocated, the Seller must complete the sale of the allocated Sale Interests and clause 8.7(a) will apply in respect of the unallocated Sale Interests.
- (j) Subject to clause 3, on the day specified for completion in the Sale Allocation Notice or, if later, on the day which is 10 Business Days after the Condition Satisfaction Date, each Exercising Participant which has been allocated Sale Interests must pay (or make arrangements satisfactory to BBISL and the Seller, for the payment of) the portion of the Sale Price attributable to the Sale Interests allocated to it under the Sale Allocation Notice (**Applicable Sale Price**), and (subject to that payment) the applicable parties must otherwise effect the completion of the transaction, as follows:
 - (1) in the case where the Sale Interests are Convertible Notes and either the Exercising Participant also holds Convertible Notes or is a person other than a BBI Entity which holds Equity Interests, the Exercising Participant must pay the Applicable Sale Price to the Seller, and the Seller must transfer the relevant number of Convertible Notes to that Exercising Participant;
 - (2) in the case where the Sale Interests are Convertible Notes and the Exercising Participant is a BBI Entity which holds Equity Interests, the Exercising Participant must pay the Applicable Sale Price to the Seller and such amount will be deemed to be an optional early repayment resulting in repayment in full of the relevant Convertible Notes under clause 4.4 of the Convertible Note Deed;
 - (3) in the case where the Sale Interests are Equity Interests held by the BBI Entities and the Exercising Participant holds Convertible Notes, and the BBI Entities and the Exercising Participant agree to complete the transfer by way of subscription for further Convertible Notes, the Exercising Participant must pay the Applicable

Sale Price to BBISL, and BBISL must issue to the Exercising Participant such number of Convertible Notes as have an aggregate Face Value equal to the Applicable Sale Price. BBISL must issue the Convertible Notes to the Exercising Participant on the same terms as the existing Convertible Notes but with the Face Value per Convertible Note determined under clause 8.6(k) and with the purpose of the use of funds being such purpose as is nominated by BBISL; or

- (4) in the case where the Sale Interests are Equity Interests and clause 8.6(j)(3) does not apply, the Exercising Participant must pay the Applicable Sale Price to the Seller and the Seller must transfer the relevant Equity Interests to the Exercising Participant.
- (k) For the purpose of clause 8.6(j)(3), the Face Value per Convertible Note will be an amount equal to Applicable Percentage (for a single Convertible Note) of the amount EV calculated as follows:

$$EV = SP \times \frac{1}{PI},$$

where:

- EV is the amount calculated by applying the formula above (being the total value of all Equity Interests as implied from the Sale Price);
- SP is the Sale Price;
- PI is the Percentage Interest of the Seller.

- (l) If any fractions result from the calculations required under this clause 8.6, then, subject to clause 6.8(o), BBISL may round those fractions up or down as determined in its absolute discretion.
- (m) Where clauses 8.6(j)(1) or 8.6(j)(4) apply (or the Seller is otherwise transferring the relevant Sale Interests directly to the Exercising Participant), the Seller will be deemed to warrant in favour of each relevant Exercising Participant that the Seller transfers to that Exercising Participant clear and unencumbered legal and beneficial title to the Sale Interests, free of any Security Interests or third party rights.
- (n) The Seller appoints each relevant Exercising Participant as its attorney in accordance with clause 16 on default by it of performance of any of its obligations under this clause 8.6.

8.7 Sale to third party buyer

- (a) If the Seller complies with clause 8.6 but all of its Sale Interests are not allocated to the Exercising Recipients and the Seller makes a Third Party Election, then, subject to clause 3.1, the Seller may within a period of 90 days after making the Third Party Election enter into a binding agreement, subject to clause 3.1, to sell all (but not part) of the Sale Interests in the case of a Third Party Election or all (but not part) of the Unallocated Interests in the case of a Third Party Partial Election to a third party (**Third Party Buyer**) provided that:
- (1) the sale price is for a cash price that is not less than the Sale Price specified in the Notice of Sale (or the relevant proportion of the Sale Price applicable to the Unallocated Interests as the case may be); and
 - (2) the proposed sale is to a bona fide third party buyer (not being a Related Corporation or Affiliate of the Seller) on an arm's length basis.
- (b) The Seller must give to each Recipient a copy of any agreement with the Third Party Buyer relating to the Sale Interests within 5 Business Days after execution of the agreement.

- (c) If the BBI Entities are the Seller under clause 8.7(a), they may elect to effect the sale either by way of direct transfer of the relevant Equity Interests held by them to the Third Party Buyer or (subject to, in the case only where after the transfer the BBI Entities would have an aggregate Percentage Interest of less than 10%, obtaining the prior written consent of a Noteholder Majority) by requiring the Third Party Buyer to subscribe for Convertible Notes (and in the latter case, clause 8.6(j)(3) will apply with such changes as are necessary).
- (d) If:
- (1) on expiry of the 90 day period referred to in clause 8.7(a) the Seller has not entered into a binding agreement, subject to the applicable conditions under clause 3.1, (which agreement remains on foot) to sell all the Sale Interests to a Third Party Buyer on terms which comply with clause 8.7(a); or
 - (2) the Seller does not complete the sale of the Sale Interests to the applicable Third Party Buyer within 10 Business Days after satisfaction or waiver of each applicable condition under clause 3.1,

then the Seller must not sell those Sale Interests without complying again with this clause 8.

9 Exit

9.1 En Bloc Sale

- (a) Subject to clause 3.8, annually after the fifth anniversary of the date of this agreement, or earlier in accordance with clause 9.4 (**Security**), either the BAM Investors or the BBI Investors will be entitled (subject to obtaining any necessary consents under clause 3) to require that all Equity Interests (the **En Bloc Sale Interests**) be sold en bloc to a third party purchaser in accordance with the provisions of this clause 9 (the **En Bloc Sale**).
- (b) To make a demand for an En Bloc Sale, the relevant party (**Demanding Party**) must give the other party and each of their Third Party Investors (**Recipient Parties**), and each other Interest Holder, notice in writing (**Demand Notice**). The Demand Notice must provide the following information:
- (1) the minimum aggregate sale price that is to be paid by a third party purchaser for the En Bloc Sale Interests (**En Bloc Sale Price**);
 - (2) the minimum aggregate sale price (**Minimum Interest Specified Price**) for which the Demanding Party and its Third Party Investors would be prepared to sell all of their Interests (**Demanding Parties' Interests**), which for these purposes must be calculated as the Demanding Parties' aggregate Percentage Interest multiplied by the En Bloc Sale Price; and
 - (3) the terms on which the Demanding Party proposes to sell the En Bloc Sale Interests to a third party purchaser (**En Bloc Sale Terms**).
- (c) If either party serves a Demand Notice, the Recipient Parties will be entitled (subject to obtaining any necessary consents under clause 3) to acquire all of the Demanding Parties' Interests at the Minimum Interest Specified Price and on substantially the same terms as the material En Bloc Sale Terms. The material En Bloc Sale Terms are the terms which would impact on total value delivered (such as potential liabilities retained by the vendors under any En Bloc Sale or purchase price adjustments for costs or duties). Allocation of the Demanding Parties' Interests as between the Recipient Parties and completion of the acquisition of those interests must take place in the manner contemplated by clause 8.6 (with the Demanding Parties' Interests being deemed to be Sale Interests for the purposes of that clause, and otherwise with all other necessary changes being made).
- (d) Without limiting any other obligation of the parties under clauses 9.2 or 9.3, on and from service of a Demand Notice, each party must use all reasonable endeavours to obtain the consents referred to in clauses 9.2 and 9.3 as soon as practicable.

9.2 Where the En Bloc Sale proceeds

- (a) If the Recipient Parties do not in aggregate elect to purchase all the Demanding Parties' Interests within 60 days of the date of demand (the **Sale Notice Period**) on substantially the same terms as the material En Bloc Sale Terms (as determined by the Demanding Party, acting reasonably, in accordance with clause 9.1(c)), the Demanding Party must require that all holders of Equity Interests sell, and each holder of Equity Interests must sell, their Equity Interests in accordance with the En Bloc Sale Terms, to a third party

purchaser nominated by the Demanding Party at no less than the En Bloc Sale Price, on the En Bloc Sale Terms, subject to receipt of all applicable approvals and consents required under clause 3.

- (b) Other than where clause 9.4 applies, all costs of the holders of Equity Interests effecting the sale are required to be borne by the Demanding Party unless and until a sale is effected at which time such costs will be reimbursed to that party from the proceeds of sale.
- (c) Immediately following a sale of all En Bloc Sale Interests in accordance with clause 9.2(a), BBISL must pay an amount equal to the Applicable Percentage of the applicable En Bloc Sale Price paid under clause 9.2(a) to each Noteholder in respect of each Convertible Note held by it on account of the Outstanding Principal and accrued interest in respect of that Convertible Note and BBISL will be deemed to have made an optional early repayment resulting in repayment in full of each Convertible Note under clause 4.4 of the Convertible Note Deed.
- (d) In the event that consent is required under clause 3.1(d) for the En Bloc Sale, the BBI Investors must use all reasonable endeavours to satisfy any such consent requirement within 30 days of the date on which final details of the material terms of the En Bloc Sale (being the identity of the purchaser, the sale price and the En Bloc Sale terms) are confirmed in writing to the BBI Investors. If such consent is not received within 30 days of the provision of such information, the BBI Investors must use reasonable efforts to repay amounts drawn, and/or to terminate the facilities available under, the BBI Corporate Debt Documents, including by committing to use the proportion of the En Bloc Sale Price payable to the BBI Investors to repay the facility such that no consent is required under the BBI Corporate Debt Documents.

9.3 Where the En Bloc Sale does not proceed

- (a) If any one or more of the Recipient Parties make an election to purchase in aggregate all of the Demanding Parties' Interests (**Election**), such transaction will be completed and settled in cash at the Minimum Interest Specified Price on substantially the same terms as the material En Bloc Sale Terms (as determined by the Demanding Party, acting reasonably, in accordance with clause 9.1(c)), subject to receipt of all applicable approvals and consents required under clause 3, within 180 days of the expiry of the Sale Notice Period or where further time is required to obtain applicable approvals and consents prior to the Applicable Cut-Off Date. If all applicable approvals and consents are not received by the later of 180 days of the expiry of the Sale Notice Period or the Applicable Cut-Off Date, the Recipient Parties will lose their right to purchase the Demanding Parties' Interests unless the parties agree otherwise and the Demanding Parties shall be entitled to proceed with the En Bloc Sale in accordance with clause 9.2, as if no Election had ever been made.
- (b) Notwithstanding clause 9.3(a), to the extent that BBI Investors (but not any BBI Third Party Investor) are the acquirers of the Demanding Parties' Interests under the Election, the BBI Investors may satisfy their obligations (in whole or in part) by issuing (or procuring their relevant Affiliates to issue) BBI Securities (as that expression is defined in the Implementation Agreement), but including any securities issued by a trust which is stapled to BBIL and BBIT to form a new listed stapled security in place of the BBI Securities currently on issue (which for the purposes of this clause 9 will be taken to be included in the expression "BBI Securities"), provided that:
 - (1) the BBI Securities continue to be listed on the Australian Stock Exchange (**ASX**);
 - (2) subject to clause 9.3(d), the BBI Securities that are issued to the Demanding Parties are capable of being on-sold and will be otherwise freely tradable on

and from the time of their issue, without any requirement for disclosure under Chapter 6D.2 or Part 7.9 of the Corporations Act 2001 (Cth);

- (3) there is a Liquid Market for such securities;
 - (4) the market capitalization of BBIL and BBIT at the time of the Election is not less than 5 times the Minimum Interest Specified Price; and
 - (5) the issue of the BBI Securities to the Demanding Parties will not have the effect of causing any one or more of the Demanding Parties to infringe Chapter 6 of the Corporations Act, the Foreign Acquisitions and Takeovers Act 1975 (Cth) or Australian foreign investment policy. The Demanding Parties will use their reasonable endeavours to assist in obtaining any necessary approvals and consents, if required by any issuer of BBI Securities.
- (c) Any consideration satisfied in BBI Securities will be valued at 95% of the market price of such BBI Securities, with such market price to be calculated based on the average of the volume weighted average sale price ("VWAP") per BBI Security on the ASX during the 20 trading days immediately preceding completion of the transaction, but does not include any transaction defined in the ASX Market Rules as a "special" crossing prior to the commencement of normal trading, crossings during the after hours adjust phase, crossings during the closing phase, overnight crossings or any overseas trades or trades pursuant to the exercise of options over BBI Securities. For the purposes of calculating VWAP, if, on some or all of the Business Days in the relevant period, BBI Securities have been quoted on ASX as cum dividend, or cum any other distribution or entitlement, but BBI Securities will be issued under this clause 9 ex such dividend other distribution or entitlement, then the VWAP on the Business Days on which those BBI Securities have been quoted cum dividend, other distribution or entitlement shall be reduced by an amount equal to:
- (1) in the case of a dividend or other distribution, the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of the recipient of the dividend or other distribution who is a natural person;
 - (2) in the case of an entitlement which is traded on ASX on any of those Business Days, the average of the daily volume weighted average sale price for such entitlement sold on ASX during the relevant period on the Business Days on which those entitlements were traded; or
 - (3) in the case of an entitlement not traded on ASX during the relevant period, the value of the entitlement as reasonably determined by the Issuer.

Conversely, where on some or all of the Business Days in the relevant period, BBI Securities have been quoted on ASX as ex dividend or any other distribution or entitlement, but BBI Securities will be issued under this clause 9 cum such dividend, other distribution or entitlement, then the VWAP on the Business Days on which those BBI Securities have been quoted ex dividend, other distribution or entitlement shall be increased in accordance with clauses 9.3(c)(1), (2) or (3) above in this definition of VWAP (with the necessary changes).

Where on any of the Business Days during the 20 day calculation period referred to above BBI Securities were subject to a trading halt or suspended, the period shall be extended by the number of Business Days on which the BBI Securities were not able to be traded or were suspended.

- (d) The BAM Investors and, if applicable, any BAM Third Party Investors, will be subject to a standstill in respect of (and limited to) all BBI Securities issued to the BAM Investors and any BAM Third Party Investors pursuant to the Election but excluding, for greater clarity, any other such securities held by any BAM Investors or BAM Third Party Investors, for a period of three months following the issue of those securities.

- (e) If the BBI Investors elect to settle in BBI Securities but fail to do so for any reason, the BBI Investors will, at their option, be able to elect to settle in cash; provided, however, that, if the BBI Investors then fail to settle in cash, then they will be deemed to not have made the Election and the Demanding Party must proceed with the sale of the En Bloc Sale Interests in accordance with clause 9.2.
- (f) The BAM Investors must not, and must procure that each of their Affiliates do not, directly or indirectly (including through a third party broker, investment bank, financial institution or otherwise) deal in relevant interests (as defined in the Corporations Act) in BBI Securities (including by way of on market trading, short selling, entering into or closing out swaps (including cash settled equity swaps)) (each a **Dealing**) at any time during the 20 trading days over which the VWAP is calculated or at any time during the 20 trading days prior to the commencement of the period over which the VWAP is calculated (**Relevant Period**). In addition, the BAM Investors must not, unless they are required by any applicable law and have consulted the BBI Entities first, make any public announcement concerning BBI Securities or their investments in any BBI Entities or any Subsidiary of a BBI Entity during the Relevant Period. If the BAM Investors breach this clause 9.3(f), the BBI Entities may:
- (1) change their decision to satisfy their obligations under the Election in BBI Securities and make a fresh Election. If, pursuant to any fresh Election, the BBI Entities choose again to satisfy their obligations (in whole or part) under the Election by issuing BBI Securities, the VWAP will be re-determined pursuant to the regime described in clause 9.3(c) above, but commencing on the day on which the fresh Election is made; or
 - (2) utilise the VWAP as determined pursuant to the regime described in clause 9.3(c) above, but determined over the 20 qualifying trading days before (and not including) the day of the breach.

9.4 Security

For such time as the BAM Investors hold Convertible Notes, BBIL, BBITC and BBISL will use all reasonable endeavours to grant to a security trustee (as trustee for and on behalf of all the Noteholders), as collateral security for its entitlements under the Swap Agreement and the Convertible Notes and for delivery on Conversion of the DBCT Shares, DBCT Units, Trustee Shares and Interest Holder Loans, a second ranking security interest in the Aggregate Applicable Percentage of the DBCT Shares, DBCT Units, Trustee Shares, the BBIT Loan and the BBIL Loan (the **Second Ranking Security**) or equivalent collateral security that is acceptable to the BAM Investors and BAM Third Party Investors who hold Convertible Notes, acting reasonably (the parties acknowledging that a charge over a proportion of the Interest Holder Loans (such proportion to be equal to the value of the Interests of BAM Investors and BAM Third Party Investors (to the extent that those Interests are Convertible Notes or rights under a Swap), subject to a margin of 15%, and adjusted annually to account for changes in the value of the relevant Interests of BAM Investors and BAM Third Party Investors) will constitute acceptable security) by no later than February 2013; provided that, in the event that BBIL, BBITC and BBISL are unable to grant the Second Ranking Security by February 2013, the BAM Investors may exercise their rights under clauses 9.1 and 9.2 to carry out an En Bloc Sale and such rights may be exercised as if the BBI Investors and the BBI Third Party Investors (if any) did not have any right to acquire BAM's Interests and to make an Election pursuant to clause 9.3.

10 Events of Default

10.1 Events of Default

An Event of Default occurs in relation to an Interest Holder if:

- (a) **material breach:** the Interest Holder commits a material breach of a term of this agreement and that breach is incapable of remedy or, if capable of remedy, is not remedied within 30 days of being notified in writing by the relevant Interest Holder of the breach;
- (b) **repeated breach:** the Interest Holder commits a material breach of a term of this agreement within 6 months of remedying a breach of the same term under clause 10.1(a), whether or not that breach is capable of remedy;
- (c) **change in law:** the Interest Holder is prohibited from being an Interest Holder by a change in any law;
- (d) **administrator:** an administrator, liquidator or provisional liquidator is appointed to the Interest Holder or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the Interest Holder;
- (e) **winding up:** an application or order is made for the winding-up or dissolution of the Interest Holder or a resolution is passed or any steps are taken to pass a resolution for the winding-up or dissolution of the Interest Holder;
- (f) **receiver:** a receiver, receiver and manager, trustee, other controller or similar officer is appointed over the assets or undertaking of the Interest Holder or any steps are taken to appoint, or to pass a resolution to appoint, any of those persons to the Interest Holder;
- (g) **arrangements:** the Interest Holder suspends payment of its debts generally or is unable to pay its debts as and when they fall due or is presumed to be insolvent under applicable law, or enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (h) **Disposal of Interests:** the Interest Holder Disposes, or purports to Dispose, of any Interest in breach of a DBCT Entity's constituent documents or this agreement; or
- (i) **breach:** the Interest Holder ceases to be an Affiliate under clause 8.9(c) and:
 - (1) fails to comply with clause 8.9(c); or
 - (2) attempts to comply with clause 8.9(c) but is prevented from doing so because any applicable conditions in clause 3.1 are unable to be satisfied in respect of the transfer required by clause 8.9(c).

10.2 Interpretation

In clauses 10.3 to 10.6 a reference to BBISL in the capacity of a "Defaulting Interest Holder" is also a reference to BBIL (being the owner of all of the DBCT Shares and the BBIL Loan) and BBITC (being the owner of the Trustee Shares), and any right or obligation conferred or imposed upon BBISL under clauses 10.3 to 10.6 in respect of a sale or transfer of DBCT Units will also be taken to be a right or obligation conferred or imposed upon:

- (a) BBIL with respect to a sale or transfer of the DBCT Shares;
- (b) BBITC with respect to a sale or transfer of the Trustee Shares;
- (c) BBIL with respect to a novation of the BBIL Loan; and
- (d) BBISL with respect to a novation of the BBIT Loan.

10.3 Effect of Events of Default

- (a) Subject to clause 3 and to clause 10.3(b), if an Event of Default occurs in respect of an Interest Holder (the **Defaulting Interest Holder**), each Non Defaulting Interest Holder will have the rights set-out in clause 10.4, without prejudice to any other rights which those Interest Holder may have.
- (b) If an Event of Default occurs in respect of a BBI Investor, the BAM Investors will be entitled to give written notice to each other Interest Holder within [20] Business Days of the BAM Investors' becoming aware of the Event of Default that they may wish to exercise their rights under clauses 9.1 and 9.2 to carry out an En Bloc Sale, in which event:
- (1) no Interest Holder will be entitled to exercise its Call Option under clause 10.4 unless and until confirmation of Conversion Consent is received in accordance with clause 10.3(b)(3);
 - (2) the BAM Investors and BBISL must seek confirmation from DBCT Holdings Pty Ltd that it will consent to the Conversion by the BAM Investors of the Convertible Notes held by them under clause 5.2(b) of the Convertible Note Deed (**Conversion Consent**);
 - (3) the BAM Investors and BBISL must, within 10 Business Days of receipt of a Conversion Consent, notify each other Interest Holder of such receipt, in which event the provisions of clause 10.4 will apply as though the Event of Default had just occurred;
 - (4) if the Conversion Consent is not received:
 - (A) in the case where the request is made for Conversion in respect of a person who has previously been expressly approved by DBCT Holdings Pty Ltd as a Noteholder, on or before the date which is 30 days after the date on which the BAM Investors provide all information reasonably requested by DBCT Holdings Pty Ltd to enable it to consider such request; or
 - (B) in the case where the request is made for Conversion in respect of a person who has not previously been expressly approved by DBCT Holdings Pty Ltd as a Noteholder, or on before the date which is 60 days after the date on which the BAM Investors provide all information reasonably requested by DBCT Holdings Pty Ltd to enable it to consider such request,the BAM Investors will be entitled to elect to exercise their rights under clauses 9.1 and 9.2 to carry out an En Bloc Sale;
 - (5) if the BAM Investors elect to pursue an En Bloc Sale in accordance with clause 10.3(b)(4):
 - (A) subject to clause 10.3(b)(6), the Call Options under clause 10.4 will cease to apply;
 - (B) the BBI Investors in default will bear the costs under clause 9.2(b); and
 - (C) the BAM Investors may exercise their rights under clauses 9.1 and 9.2 as if the BBI Investors and the BBI Third Party Investors (if any) did not have any right to acquire BAM's Interests and to make an Election pursuant to clause 9.3; and
 - (6) if an En Bloc Sale does not proceed for any reason under clause 9.2, the BAM Investors must notify the other Interest Holders and clause 10.4 will apply as though the Event of Default had occurred immediately prior to the date of such notice.

10.4 Call option

Subject to clause 3 and to clause 10.3(b), immediately on the occurrence of an Event of Default, each Non-Defaulting Interest Holder has an option to purchase such number of the Defaulting Interest Holder's Interests as is calculated under clause 10.6 at the Fair Market Value of those Interests (the **Call Option**).

10.5 Determination of Fair Market Value

- (a) At any time within 60 days of a Non-Defaulting Interest Holder becoming aware of the occurrence of an Event of Default that Non-Defaulting Interest Holder may serve a written notice on DBCT Trustee, the Defaulting Interest Holder and each other Non-Defaulting Interest Holder setting out the details of the Event of Default and stating its opinion as to the Fair Market Value of the Defaulting Interest Holder's Interests (**Default Notice**). Within 30 days of receipt of a Default Notice, the Defaulting Interest Holder or any other Non-Defaulting Interest Holder may provide the Non-Defaulting Interest Holders with a notice (**Dispute Notice**) stating that it disagrees with the Fair Market Value specified in the Default Notice. If no Dispute Notice is provided within the relevant 30 day period, the Fair Market Value specified in the Default Notice will become final. If a Dispute Notice is provided within the relevant 30 day period, the parties must use reasonable endeavours to attempt to agree the Fair Market Value within a period of 10 days. If agreement is reached, the price agreed will become the applicable Fair Market Value for the Defaulting Interest Holder's Interests. If agreement cannot be reached, the parties must use their best endeavours to appoint (as expeditiously as possible) an accountancy firm of international standing or a recognised specialist in the field of valuation (**Expert**) to determine the Fair Market Value of the Defaulting Interest Holder's Interests.
- (b) If the Interest Holders cannot agree on the identity of the Expert within 14 days, either Interest Holder may request the President of the Institute of Chartered Accountants in New South Wales to nominate the Expert, whom the Interest Holders must then appoint and instruct in accordance with this clause 10.5.
- (c) The Interest Holders must instruct the Expert to:
- (1) accept submissions from each Interest Holder made within 14 days of the date of appointment of the Expert;
 - (2) determine the Fair Market Value of the Defaulting Interest Holder's Interests in accordance with the valuation procedures set out in Schedule 2; and
 - (3) issue to each Interest Holder and DBCT Trustee a certificate specifying the Fair Market Value determined by the Expert as soon as practicable and in any event within 30 days following its appointment.
- (d) The Interest Holders agree that the decision of the Expert, as detailed in the certificate provided under clause 10.5(c)(3), is final and binding on each of them in the absence of fraud or manifest error.
- (e) The Defaulting Interest Holder must bear the costs of the Expert.
- (f) The parties must promptly provide all information and assistance reasonably requested by the Expert.

10.6 Exercise of options

- (a) If a Non-Defaulting Interest Holder gives a notice under clause 10.5(a), then the DBCT Entities must provide to each Non-Defaulting Interest Holder all information and assistance reasonably required by the Non-Defaulting Interest Holder in order for it to consider and, if it so determines, exercise its rights under this clause 10 (including all information and assistance reasonably required for due diligence investigations in respect of the DBCT Entities) and the Non-Defaulting Interest Holder may, subject to clause 15,

disclose any such information on a confidential basis to its Related Corporations, advisers and financiers.

- (b) Within 30 days of the Fair Market Value stated in the Dispute Notice becoming final or being agreed in accordance with clause 10.5(a), or alternatively, where an Expert is instructed, within 30 days of receipt of the certificate issued by the Expert under clause 10.5(c)(3), each Non-Defaulting Interest Holder may exercise its Call Option (subject to clause 3.1), by giving written notice to that effect to the Defaulting Interest Holder and DBCT Trustee specifying the number of the Default Interest Holder's interests (**Default Interests**) that it wishes to acquire (**Call Option Notice**). Following receipt of the Call Option Notices, the DBCT Trustee must notify each Interest Holder exercising their Call Option (**Exercising Recipients**) of the number of Default Options which each of the Exercising Recipients have agreed to acquire. Each Exercising Recipient will then have 5 Business Days to provide the DBCT Trustee with a revised offer of the number of Default Options it wishes to acquire and its Call Option Notice will be deemed to be amended accordingly. The Call Option Notice of any Exercising Recipient which does not make a revised offer within the period for such notification will be taken to be unchanged.
- (c) If the aggregate number of Default Interests which the Exercising Recipients offer to acquire under all Call Option Notices is less than or equal to the total number of Default Interests, then each Exercising Recipient will be allocated the number of Default Interests specified in its Call Option Notice
- (d) If the number of Default Interests which the Exercising Recipients offer to acquire under all Call Option Notices is greater than the total amount of Default Interests, then, subject to clauses 10.6(e), 10.6(f) and 10.6(g), each Exercising Recipient will be allocated, the number of Default Interests which is equal to N in the following formula:
- $$N = \text{NDI} \times (\text{PPI}/\text{TPI})$$
- where:
- NDI is the aggregate number of Default Interests;
- PPI is the Percentage Interest of the Exercising Recipient before service of the Call Option Notice; and
- TPI is the aggregate Percentage Interest of all Exercising Recipients immediately before any Call Option Notice has been served.
- (e) If the amount of Default Interests allocated to an Exercising Recipient calculated by applying clause 10.6(d) is more than the number of Default Interests which that Exercising Recipient has offered to acquire, then that Exercising Recipient will be allocated only the number of Default Interests which it has offered to acquire.
- (f) In the case where clause 10.6(e) applies, DBCT Trustee must repeat the application of clause 10.6(d) in respect of the unallocated Default Interests until all Default Interests have been allocated or cannot be allocated.
- (g) Clauses 10.6(d), 10.6(e) and 10.6(f) will be applied:
- (1) in respect of Default Interests offered where the Defaulting Interest Holder is a BBI Investor or a BBI Third Party Investor, only in relation to Non Defaulting Interest Holders which are BBI Investors or BBI Third Party Investors;
 - (2) in respect of Default Interests offered where the Defaulting Interest Holder is a BAM Investor or a BAM Third Party Investor, only in relation to Non Defaulting Interest Holders which are BAM Investors or the BAM Third Party Investors; and
 - (3) finally, in respect of any additional Default Interests which have not been allocated after application of clause 10.6(g)(1) and 10.6(g)(2), in relation to those Exercising Recipients (if any) who have not already been allocated as many Default Interests as they offered to take up.

- (h) As soon as reasonably practicable after the determination of the entitlements of each Exercising Recipient under this clause 10.6, DBCT Trustee must send to each Exercising Recipient a notice setting out the number of Default Interests that each Exercising Recipient is entitled to acquire as determined in accordance with this clause 10.6 (**Call Option Allocation Notice**).
- (i) The Defaulting Interest Holder must (subject to clause 3) sell to each Exercising Recipient the relevant number of Default Interests as specified in the Call Option Allocation Notice and each Exercising Recipient must purchase those Interests at their Fair Market Value.
- (j) The purchase price payable for the Default Interests is payable in Immediately Available Funds on the closing of the purchase and sale, which must take place on the date which is 5 Business Days after the date upon which all consents required under clause 3 have been obtained (**Call Option Completion Date**).
- (k) On the Call Option Completion Date, each Exercising Recipient must pay (or make arrangements satisfactory to BBISL and the Defaulting Interest Holder, for the payment of) the purchase price in respect of the Default Interests allocated to it in the Call Option Allocation Notice as follows:
- (1) in the case where the Default Interests are Convertible Notes and the Exercising Recipient also holds Convertible Notes, the Exercising Recipient must pay the applicable purchase price to the Defaulting Interest Holder, and the Defaulting Interest Holder must transfer the relevant number of Interests to that Exercising Recipient;
 - (2) in the case where the Default Interests are Convertible Notes and the Exercising Recipient is a BBI Entity, the Exercising Recipient must pay the applicable purchase price to the Defaulting Interest Holder and such amount will be deemed to be an optional early repayment resulting in repayment in full of the relevant Convertible Notes under clause 4.4 of the Convertible Note Deed;
 - (3) in the case where the Default Interests are Convertible Notes and the Exercising Recipient is not a BBI Entity and does not hold Convertible Notes, the Exercising Recipient must pay the applicable purchase price to the Defaulting Interest Holder, and the Defaulting Interest Holder must transfer the relevant number of Interests to that Exercising Recipient;
 - (4) subject to clause 10.6(k)(5), in the case where the Default Interests are Equity Interests held by the BBI Entities but not representing all of the Interests held by the BBI Entities and the Exercising Recipient holds Convertible Notes and elects to complete the transfer by way of subscription for further Convertible Notes, the Exercising Recipient must pay the applicable purchase price to BBISL, and BBISL must issue to the Exercising Recipient, such number of Convertible Notes as have an aggregate Face Value equal to the applicable purchase price. BBISL must issue the Convertible Notes to the Exercising Recipient on the same terms as the existing Convertible Notes but with the purpose of the use of funds being such purpose as is nominated by BBISL;
 - (5) in the case where the Default Interests are Equity Interests held by the BBI Entities representing all of the Interests held by the BBI Entities, clause 10.6(k)(4) will not apply (unless any consents required under clause 3 for the application of this clause 10.6(k)(5) can not be satisfied or waived in accordance with clause 3, in which case clause 10.6(k)(4) will apply), and the Exercising Recipient must pay the applicable purchase price to the Defaulting Interest Holder, and the Defaulting Interest Holder must transfer the relevant number of Equity Interests to that Exercising Recipient; and
 - (6) in the case where the Default Interests are Equity Interests and clauses 10.6(k)(4) and 10.6(k)(5) do not apply, the Exercising Recipient must pay the applicable purchase price to the Defaulting Interest Holder and the Defaulting

Interest Holder must transfer the relevant Equity Interests to the Exercising Recipient.

- (l) For the purpose of clause 10.6(k)(4), the Face Value per Convertible Note will be an amount equal to Applicable Percentage (for a single Convertible Note), of the amount EV calculated as follows:

$$EV = SP \times \frac{1}{PI},$$

where:

- EV is the amount calculated by applying the formula above (being the total value of all Equity Interests as implied from the applicable purchase price);
- SP is the aggregate applicable purchase price for all Interests of the Defaulting Interest Holder; and
- PI is the Percentage Interest of the Defaulting Interest Holder.

- (m) If any fractions result from the calculations required under this clause 10.6, then, subject to clause 6.8(o), BBISL may round those fractions up or down as determined in its absolute discretion.
- (n) Where clause 10.6(k)(1), 10.6(k)(3), 10.6(k)(5) or 10.6(k)(6) applies (or the Defaulting Interest Holder is otherwise transferring the relevant Default Interests directly to the Exercising Recipient, including under clause 10.6(k)(5)), the Defaulting Interest Holder will be deemed to warrant in favour of each Exercising Recipient that it transfers to that Exercising Recipient clear and unencumbered legal title to the relevant Default Interests, free of any Security Interests or third party rights.
- (o) The Defaulting Interest Holder appoints each relevant Non-Defaulting Interest Holder as its attorney in accordance with clause 16 on default by it of performance of any of its obligations under clause 10.6(k).
- (p) If a Non-Defaulting Interest Holder does not exercise the Call Option within the time specified in clause 10.6(a), the Call Option held by that Non-Defaulting Interest Holder will lapse and be no longer capable of exercise.
- (q) In the case where the Default Interests are Equity Interests held by the BBI Entities representing all of the Interests held by the BBI Entities and clause 10.6(k)(4) applies, after completion under clause 10.6(k)(4) the parties must continuously use all reasonable endeavours to satisfy all the conditions precedent to a Conversion of all Convertible Notes and to then effect a Conversion of all Notes.

Definitions

Term	Meaning
<p>Affiliate of a party</p>	<p>1 in relation to BAM, means, is given a meaning such that a person is an "affiliate" of another person, if one is directly or indirectly controlled by that other person or if both are directly or indirectly controlled by another person; and for the purposes of this definition only "control" of a person means (i) the right to elect or appoint a majority of the directors (or persons or entities performing a similar function) of such person, (ii) the ability to otherwise exercise a majority of the voting rights in respect of that person, or (iii) the ability to otherwise control the management of such person whether by virtue of the terms of its constitutional documents, contractual rights, or otherwise; and "controlled" and "controlling" have a corresponding meaning and includes a partnership or other fund or account which is exclusively managed by BAM, Brookfield Infrastructure L.P. or any of their Subsidiaries; or</p> <p>2 in any other case:</p> <ul style="list-style-type: none"> • a Related Corporation of the party; • a director, secretary or officer of the party; • an entity the party controls; • an entity that controls the party; • an entity that is controlled by an entity that controls the party; and • in the case of a BBI Entity, each BBI Entity, any entity or trust whose securities are stapled to units in BBIT and/or shares in BBIL for the purpose of trading on ASX, and any Affiliate (within the limbs of this paragraph 2) of any such person, <p>(where 'control' has the meaning given in s50AA of the Corporations Act).</p>
<p>Aggregate Applicable Percentage</p>	<p>in respect of a Noteholder, the aggregate "Applicable Percentage" (as defined in the Convertible Note Deed) of all Convertible Notes held by that Noteholder.</p>
<p>Applicable Cut Off Date</p>	<p>in relation to any Disposal or issue, the date which is 9 months after the first attempt to satisfy a condition in clause 3.1 is made or such other day as agreed by the relevant Interest Holders.</p>
<p>Applicable Percentage</p>	<p>1 in clause 6.8(m) and clause 8.13, refers to the percentage which is "C" in the definition of Applicable Percentage in the Convertible Note Deed;</p> <p>2 otherwise, in respect of the Convertible Notes, the meaning given in</p>

	the Convertible Note Deed.
As If Converted Basis	in relation to a holding of DBCT Units, DBCT Shares, Trustee Shares, or some other calculation, means calculating that holding or other matter as if all Convertible Notes then on issue had just been converted (and the resulting DBCT Units, DBCT Shares and Trustee Shares had just been transferred and the relevant portions of the BBIL and BBIT Loans had just been novated accordingly).
BAM Investor	at any time: <ol style="list-style-type: none"> 3 BAM; and 4 any BAM Affiliate, in each case, provided that such person holds an Interest at that time.
BAM Third Party Investor	at any time: <ol style="list-style-type: none"> 1 any third party which holds any part of the Interests subscribed for by BAM (or holds any Converted Interests resulting from the Conversion of such Interests) which is not a BAM Affiliate; and 2 any BAM Third Party Investor Affiliate, in each case, provided that such person holds an Interest at that time.
BBI Corporate Debt Documents	each of the following: <ol style="list-style-type: none"> 1 the Deed of Common Provisions dated 30 November 2005 between BBI Finance Pty Limited, BBI Networks (New Zealand) Limited, BBI Networks (Australia) Pty Limited, Australia and New Zealand Banking Group Limited (as the Head Agent), BNY Trust Company of Australia Limited (as Security Trustee) and others as amended and restated on 12 February 2008 and on or about the date of this agreement (BBI DCP); 2 the Security Trust Deed dated 24 December 2002 between BBI Finance Pty Limited, the Security Trustee named therein and others as amended from time to time prior to the date of the Implementation Agreement; 3 the Finance Parties Co-ordination Deed dated 30 November 2005 between BBI Finance Pty Limited, BBI Networks (New Zealand) Limited, Australia and New Zealand Banking Group Limited (as Head Agent), the Security Trustee named therein and others; and 4 each other "Finance Document" as defined in the BBI DCP.
BBI Entities	BBIL, BBISL and BBITC and BBI Entity means any of these.
BBI Investor	at any time: <ol style="list-style-type: none"> 1 any BBI Entity; and 2 any BBI Affiliate, in each case, provided that such person holds an Interest at that time.

BBI Proportion	the aggregate Percentage Interests of the BBI Investors and the BBI Third Party Investors.
BBIL Loan	the loan facility agreement between BBIL and DBCT Management comprising the BBI Group Loan Facility Standard Terms 1 and the BBI Group Loan Facility Term Sheet.
BBI Third Party Investors	<p>at any time:</p> <ol style="list-style-type: none"> 1 any third party which holds any part of the Interests formerly held by a BBI Entity (or which holds Convertible Notes issued upon a transfer of such Interests, or which holds or acquires the Converted Interests resulting from Conversion of such Convertible Notes) which is not a BBI Affiliate; and 2 any BBI Third Party Investor Affiliate, <p>in each case, provided that such person holds an Interest at that time.</p>
BBIT	Babcock & Brown Infrastructure Trust (ARSN 100 375 479), a managed investment scheme registered with the Australian Securities and Investments Commission.
BBITC	BBI TC Holdings Pty Limited ACN 125 138 383.
BBIT Loan	the loan facility agreement between BBISL and the Trustee comprising the BBI Group Loan Facility Standard Terms 1 and the BBI Group Loan Facility Term Sheet.
BBIT Trust Deed	the deed entitled the 'Prime Infrastructure Trust Deed' dated 29 April 2002.
Business Day	a day (not being a Saturday) on which trading banks are open for business in Sydney.
Condition Satisfaction Date	in relation to any Disposal or issue to which clause 3.1 applies, the date upon which all applicable conditions under clause 3.1 have been satisfied or waived in accordance with clause 3.6.
Conversion	the meaning given in the Convertible Note Deed.
Converted Interest	Equity Interests issued or transferred on Conversion (whether held by the party which acquired or subscribed for them on Conversion or by a successor in title).
Convertible Note	each Note (as defined in the Convertible Note Deed).

Convertible Note Deed	the convertible note deed between BAM (in the capacity of initial noteholder) and BBISL (in the capacity of issuer) dated the same date as this agreement, and each other convertible note deed on substantially the same terms which is entered into by reason of a Disposal or issue of Interests pursuant to this agreement.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
DBCT Entities	DBCT Management, DBCT Trustee and the DBCT Trust.
DBCT Finance	DBCT Finance Pty Limited ACN 097 955 934.
DBCT Group Entity	the DBCT Entities and any Subsidiary or Subsidiary trust of a DBCT Entity (including DBCT Finance).
DBCT Group Facilities	<p>each of the following:</p> <ol style="list-style-type: none"> 1 the DBCT DCP (as defined in the Convertible Note Deed); 2 the security trust deed dated 7 September 2001 between, among others, DBCT Finance, DBCT Management, BBITC (in its capacity as trustee of the DBCT Trust) and the DBCT Security Trustee named therein, as amended by a First Deed of Amendment (Security Trust Deed, Share and Unit Mortgage, Deed of Charge and Property Mortgages) dated 24 May 2006 and a Second Deed of Amendment (Security Trust Deed and Deed of Common Provisions) dated 7 December 2006; 3 the DBCT Share and Unit Mortgage; 4 the A\$680 million notes (A\$350 million Tranche A notes due 9 June 2006, A\$230 million Tranche B notes due 9 June 2021 and A\$100 million Tranche C Notes due 9 June 2026) issued by DBCT Finance on 9 June 2006 initially guaranteed by DBCT Management and BBITC (in its capacity as trustee of the DBCT Trust) and guaranteed by Syncora Guarantee Inc. as Financial Guarantor (XL Capital Guaranteed Notes); 5 the A\$295,020,000 CF (Phase 1) Subscription Agreement dated 7 December 2006 between DBCT Finance (as the Borrower), each financier listed in schedule 1 to that agreement (each as a CF (Phase 1) Loan Financier), Australia and New Zealand Banking Group Limited (as CF (Phase 1) Loan Facility Agent), BWA Custodians Limited (as Security Trustee), FGIC UK Limited (as Financial Guarantor) and BTA Institutional Services Australia Limited (as CF (Phase 1) Loan Facility Guarantee Trustee, as amended on 16 May 2007 (CF (Phase 1) Facility); 6 the A\$200,000,000 CF (Phase 1) Notes due 12 December 2022 issued by DBCT Finance on 12 December 2006 initially guaranteed by DBCT Management and BBITC (in its capacity as trustee of the DBCT Trust) and guaranteed by FGIC UK Limited as Financial Guarantor (CF (Phase 1) Notes); 7 the A\$574,000,000 Syndicated Facility Agreement (DBCT Construction Phase 2) dated 11 February 2008 between DBCT Finance (as the Borrower), each financier listed in schedule 1 to that agreement (each as a Construction Financier), Australia and New

	<p>Zealand Banking Group Limited (as Construction Facility Agent) and BWA Custodians Limited (as Security Trustee) (Phase 2 Syndicated Facility);</p> <p>8 the A\$40,000,000 Subscription Agreement dated 31 October 2008 between DBCT Finance (as the Borrower), the financiers listed in schedule 1 to that agreement (each as a Capex Financier), Australia and New Zealand Banking Group Limited (as the Facility Agent) and BOSI Security Services Limited (as Security Trustee) (NECAP Facility); and</p> <p>9 each other "Finance Document" under and as defined in the DBCT DCP.</p>
DBCTH	DBCT Holdings Pty Ltd ACN 096 395 783.
DBCT Management	DBCT Management Pty Ltd ACN 097 955 934.
DBCT Security Trustee	BOSI Security Services Limited ABN 63 009 413 852.
DBCT Shares	shares in the capital of DBCT Management.
DBCT Trust	the trust known as the 'BBI (DBCT) Trust' created under a trust deed dated on or about 22 August 2001.
DBCT Trustee	DBCT Investor Services Pty Limited ACN 052 156 082.
DBCT Units	<p>1 in relation to a Warranty, all of the issued units in the DBCT Trust; or</p> <p>2 in any other case, units in the DBCT Trust.</p>
DBCT Share and Unit Mortgage	the share and unit mortgage dated 18 June 2002 between BBIL, BBISL and BOSI Security Services Limited (as the Security Trustee), as amended pursuant to a First Deed of Amendment (Security Trust Deed, Share Mortgage, Property Mortgages and Charges) dated 24 May 2006.
DBCT Units	units in the DBCT Trust.
Dispose	includes sell, transfer, create a trust or option over, or alienate the right to exercise the vote attached to, or decrease any economic interest in, any Interest, and includes, in the case of any Interest Holder holding Convertible Notes, sell, transfer, create a trust or option over, alienate or otherwise dispose of the power to control, its rights under the Voting Mandate, but does not include, in the case of an Interest Holder Loan, the repayment, prepayment or forgiveness of that loan in full. Disposing or Disposal has a corresponding meaning.
Equity Interest	DBCT Shares, DBCT Units, Trustee Shares and the Interest Holder

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	Loans.
Event of Default	any event specified in clause 10.1.
Face Value	means the Face Value of a Convertible Note or Equity Interest (as the case may be) calculated in accordance with clauses 6.8(a) and (6.8(b), clause 8.6(k) or clause 10.6(l).
Fair Market Value of an Interest	<p>1 in the case of a Convertible Note and the corresponding rights under the Swap Agreement in respect of any given Interest Holder, the amount equal to FMV in the following formula:</p> $FMV = (EI \times PI) / NI$ <p>Where:</p> <p>EI is the fair market value of all Equity Interests;</p> <p>PI is the Percentage Interest of the holder of the relevant Convertible Note;</p> <p>NI is the total number of Convertible Notes held by the relevant holder.</p> <p>2 in the case of an Equity Interest, the amount determined as follows:</p> <ul style="list-style-type: none"> • determine the aggregate fair market value of all Equity Interests; • allocate that amount as between the different types of Equity Interests in such manner as the relevant parties agree or the expert determines (as applicable); • for each type of Equity Interest (other than Interest Holder Loans), divide the aggregate fair market value of all the Equity Interests of that type (as determined under the dot point above) by the aggregate number of Equity Interests of that type; and • for each type of Interest Holder Loan, allocate the amount determined under the second dot point above to the outstanding Interest Holder Loans of the relevant type in proportion to the amounts of principal and accrued but unpaid interest outstanding on those Loans.
Government Agency	any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity anywhere in the world.
Immediately Available Funds	<p>1 cash;</p> <p>2 bank cheque; or</p> <p>telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the payee.</p>
Implementation Agreement	the agreement so entitled dated 8 October 2009 between BBIL, BBISL, Brookfield Asset Management, Inc and others.

Interest Holder Loans	<p>the BBIL Loan and the BBIT Loan, and includes a reference to any loan held by an Interest Holder other than a BBI Entity resulting from:</p> <ol style="list-style-type: none"> 1 a novation of all or part of the BBIL Loan or the BBIT Loan as a result of a transfer of Interests or a Conversion; or 2 the creation of a new loans between an Interest Holder and DBCT Management or DBCT Trust (or both, as applicable) as part of a process of raising further capital pursuant to clause 6.8.
Interest	<p>an Equity Interest or a Convertible Note (and including, in respect of any Convertible Note, if and to the extent applicable, the corresponding rights and obligations of the relevant Noteholder under the Swap Agreement).</p>
Interest Holder	<p>any person who holds an Interest.</p>
Liquid Market	<p>means that during the period of 12 months before the date of any Election, the average daily trading value of the BBI Securities on the ASX was in excess of \$7,500,000.</p>
Non-BBI Investor	<p>any person who holds Interests other than the BBI Investors.</p>
Non Defaulting Interest Holder	<p>in respect of a Defaulting Interest Holder:</p> <ol style="list-style-type: none"> 1. in relation to an Event of Default under clause 10.1(i)(2), each other Interest Holder; and 2. in relation to any other Event of Default, each other Interest Holder which is not an Affiliate of the Defaulting Interest Holder.
Noteholder	<p>the meaning given in the Convertible Note Deed.</p>
Noteholder Majority	<p>a group of Noteholders, which must include the BAM Investors (if they are Noteholders), who hold more than 75% of all outstanding Notes.</p>
Outstanding Principal	<p>the meaning given in the Convertible Note Deed.</p>
Percentage Interest	<p>in relation to any person who holds Interests, the value for X in the following formula:</p> $X = \frac{I}{AI} \times 100,$ <p>where:</p> <p>I is the number of DBCT Units, Shares and Trustee Shares held by that person, calculated on an As If Converted Basis; and</p> <p>AI is the aggregate number of DBCT Units, Shares and Trustee Shares on issue, calculated on an As If Converted Basis.</p>

Permitted Security Interest	<ol style="list-style-type: none"> 1 in respect of any BBI Investor which holds an Interest, any Security Interest granted by that BBI Investor to secure the performance of obligations under the BBI Corporate Debt Documents or the BBI Corporate Facility Second Ranking Charge; or 2 in respect of any holder of Equity Interests, any Security Interest granted by that holder over their Equity Interests under the DBCT Share and Unit Mortgage or otherwise in connection with the DBCT Group Facilities.
Related Corporation of an entity	<p>each company:</p> <ol style="list-style-type: none"> 1 that is a Subsidiary of that entity; 2 of which the entity is a Subsidiary; or 3 that is a Subsidiary of a company of which the entity is also a Subsidiary.
Security	the meaning given in the Convertible Note Deed.
Security Interest	<p>an interest or power (excluding a Permitted Security Interest):</p> <ol style="list-style-type: none"> 1 reserved in or over an interest in any asset including, but not limited to, any retention of title; or 2 created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power, <p>by way of security for the payment of a debt or any other monetary obligation or the performance of any other obligation and includes, but is not limited to, any agreement to grant or create any of the above.</p>
Subsidiary	has the meaning given in the Corporations Act.
Swap Agreement	<ol style="list-style-type: none"> 1 each ISDA Master Agreement and Schedule and related Confirmation deemed to be entered into under clause 18.1(a)(1); and 2 each ISDA Master Agreement and Schedule and a related Confirmation between BBI Trustee and the Swap Counterparty dated on or after the date of this Agreement or entered into in accordance with clause 18.1(b).
Swap Counterparty	in respect of a Swap Agreement, the beneficiary of the BAM Security Trust (or, if relating to a Convertible Note held other than by a BAM Investor, the beneficiary of the relevant equivalent security trustee) that enters into that Swap Agreement with BBI Trustee.
Third Party	any person or entity (including a Governmental Agency) other than a BAM Investor or a DBCT Group Entity.
Third Party Investor	a BBI Third Party Investor or a BAM Third Party Investor.

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Trust Deed	the deed dated 22 August 2001 executed by the DBCT Trustee, as amended from time to time.
Trustee Share	any share in DBCT Trustee.
Warranties	the warranties in Schedule 4.

Implementation Agreement

General terms

1 Definitions and interpretation

Affiliate is given a meaning such that a person is an “affiliate” of another person, if one is directly or indirectly controlled by that other person or if both are directly or indirectly controlled by another person; and for the purposes of this definition only “control” of a person means the right to (i) elect or appoint a majority of the directors (or persons or entities performing a similar function) of such person, (ii) the ability to otherwise exercise a majority of the voting rights in respect of that person, or (iii) the ability to otherwise control the management of such person whether by virtue of the terms of its constitutional documents, contractual rights, or otherwise; and “controlled” and “controlling” have a corresponding meaning and includes a partnership or other fund or account which is exclusively managed by BAM, Brookfield Infrastructure or any of their wholly owned Subsidiaries.

Asset Transactions means each of the:

- (a) PD Ports Transaction; and
- (b) DBCT 49.9% Transaction.

Asset Transaction Agreements means each of the:

- (a) PD Ports Transaction Sale and Purchase Agreement; and
- (b) DBCT 49.9% Transaction Documents.

ASX means ASX Limited or Australian Securities Exchange, as appropriate.

BAM means Brookfield Asset Management, Inc.

BBI or **BBI Entities** means together BBIL and BBIT (acting through BBIS in its capacity as responsible entity of BBIT) and, if Stapling occurs, together with the New Trust, or any of them as the context requires.

BBI Corporate Debt Documents means each of the following:

- (a) Deed of Common Provisions dated 30 November 2005 between BBI Finance Pty Limited, BBI Networks (New Zealand) Limited, BBI Networks (Australia) Pty Limited, Australia and New Zealand Banking Group Limited (as the Head Agent), BNY Trust Company of Australia Limited (as Security Trustee) and others as amended and restated on 12 February 2008 and most recently on 24 February 2009 (**BBI DCP**);
- (b) Security Trust Deed dated 24 December 2002 between BBI Finance Pty Limited, the Security Trustee named therein and others as amended from time to time;

- (c) Finance Parties Co-ordination Deed dated 30 November 2005 between BBI Finance Pty Limited, BBI Networks (New Zealand) Limited, the Head Agent named therein, the Security Trustee named therein and others; and
- (d) each other “Finance Document” as defined in the BBI DCP.

BBI Group means the BBI Entities and each of their respective Subsidiaries and sub-trusts.

BBI Group Member means any member of the BBI Group.

BBI Security means a stapled security comprising one BBIL Share stapled to one BBIT Unit and **BBI Securities** means all of them.

BBI Securityholder means each person who is registered in the Register as the holder of any BBI Securities.

BBIL means Babcock & Brown Infrastructure Limited (ABN 61 100 364 234).

BBIT means the Babcock & Brown Infrastructure Trust (ARSN 100 375 479).

Brookfield means Brookfield Acquisition Co 1 and Brookfield Acquisition Co 2.

Brookfield Infrastructure means Brookfield Infrastructure L.P.

Brookfield Investor means:

- (a) in respect of the Subscription Agreement, Brookfield or the Brookfield Entity notified to BBI two Business Days prior to Transaction Completion and who is described as ‘Brookfield’ in the Subscription Agreement;
- (b) in respect of the PD Ports Transaction, Brookfield or any other person notified to BBI two Business Days prior to the Transaction Completion Date;
- (c) in respect of the Relationship Deed, BAM or Brookfield Infrastructure;
- (d) in respect of any other Transaction Document, Brookfield or any other Brookfield Entity notified to BBI two Business Days prior to Transaction Completion Date; and
- (e) in respect of the DBCT ROFR, the entities nominated by Brookfield.

Business Day means a business day as defined in the Listing Rules.

CFIUS means the Committee on Foreign Investment in the United States.

Claim means any claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law; or

(d) under statute,

in any way relating to this agreement and includes a claim, demand, legal proceedings or cause of action arising from a breach of warranty or under an indemnity in this agreement.

Corporations Act means the Corporations Act 2001 (Cwlth).

DBCT Group means DBCT Management, the DBCT Trust and their respective subsidiaries and sub-trusts.

DBCT Group Facilities means each of the following:

- (a) the deed of common provisions dated 24 May 2006 made by DBCT Finance Pty Limited ACN 097 955 934 (**DBCT Finance**), DBCT Management and DBCT Trustee, as amended by a Second Deed of Amendment (Security Trust Deed and Deed of Common Provisions) dated 7 December 2006 (**DBCT DCP**);
- (b) the security trust deed dated 7 September 2001 between, among others, DBCT Finance, DBCT Management, DBCT Trustee and BOSI Security Services Limited ACN 009 413 852 (**DBCT Security Trustee**), as amended by a First Deed of Amendment (Security Trust Deed, Share and Unit Mortgage, Deed of Charge and Property Mortgages) dated 24 May 2006 and a Second Deed of Amendment (Security Trust Deed and Deed of Common Provisions) dated 7 December 2006;
- (c) the share and unit mortgage dated 18 June 2002 between BBIL, BBIS (in its capacity as the responsible entity of BBIT) and BOSI Security Services Limited (as the Security Trustee), as amended pursuant to a First Deed of Amendment (Security Trust Deed, Share Mortgage, Property Mortgages and Charges) dated 24 May 2006;
- (d) the A\$680 million Notes (A\$350 million Tranche A Notes due 9 June 2016, A\$230 million Tranche B Notes due 9 June 2021 and A\$100 million Tranche C Notes due 9 June 2026) issued by DBCT Finance on 9 June 2006 initially guaranteed by DBCT Management and DBCT Trustee and guaranteed by Syncora Guarantee Inc. as Financial Guarantor (**XL Capital Guaranteed Notes**);
- (e) the A\$295,020,000 CF (Phase 1) Subscription Agreement dated 7 December 2006 between DBCT Finance (as the Borrower), each financier listed in schedule 1 to that agreement (each as a CF (Phase 1) Loan Financier), Australia and New Zealand Banking Group Limited (as CF (Phase 1) Loan Facility Agent), BWA Custodians Limited (as Security Trustee), FGIC UK Limited (as Financial Guarantor) and BTA Institutional Services Australia Limited (as CF (Phase 1) Loan Facility Guarantee Trustee, as amended on 16 May 2007 (**CF (Phase 1) Facility**);
- (f) the A\$200,000,000 CF (Phase 1) Notes due 12 December 2022 issued by DBCT Finance on 12 December 2006 initially guaranteed by DBCT Management and DBCT Trustee (in its capacity as trustee of the DBCT Trust) and guaranteed by FGIC UK Limited as Financial Guarantor (**CF (Phase 1) Notes**);

- (g) the A\$574,000,000 Syndicated Facility Agreement (DBCT Construction Phase 2) dated 11 February 2008 between DBCT Finance (as the Borrower), each financier listed in schedule 1 to that agreement (each as a Construction Financier), Australia and New Zealand Banking Group Limited (as Construction Facility Agent) and BWA Custodians Limited (as Security Trustee) (**Phase 2 Syndicated Facility**);
- (h) the A\$40,000,000 Subscription Agreement dated 31 October 2008 between DBCT Finance (as the Borrower), the financiers listed in schedule 1 to that agreement (each as a Capex Financier), Australia and New Zealand Banking Group Limited (as the Facility Agent) and DBCT Security Trustee (as Security Trustee) (**NECAP Facility**); and
- (i) each other Finance Document under and as defined in the DBCT DCP.

DBCT Holdings means DBCT Holdings Pty Limited (ACN 096 395 783).

DBCT Management means DBCT Management Pty Limited (ACN 097 698 916).

DBCT Shares means all of the issued share capital in DBCT Management.

DBCT Units means all of the issued units in the trust known as the 'BBI (DBCT) Trust' created under the DBCT Trust Deed.

DBCT 49.9% Transaction means the acquisition by Brookfield of 49.9% of the economic interest in DBCT on the terms and conditions set out in this agreement and the DBCT Transaction Documents.

DBCT 49.9% Transaction Documents means:

- (a) the Convertible Note Deed as set out in Annexure F.1 (**Convertible Note**);
- (b) the swap confirmation as set out in Annexure F.2 (**Swap**);
- (c) the priority deed as set out in Annexure F.3 (**Priority Deed**);
- (d) the deed of security as set out in Annexure F.4 (**Deed of Security**);
- (f) the Voting Agreement;
- (g) a security trust deed (**Security Trust Deed**); and
- (h) the ISDA Schedule as set out in Annexure F.6 (**ISDA Schedule**),

in each case in substantially the same form as (and in any event no more adverse to Brookfield or BBI than) the terms of those documents as set out in Annexure F.

DBCT Trustee means the trustee of the DBCT Trust and who is at the date of this agreement DBCT Investor Services Pty Limited (ACN 052 156 082) (formerly known as the BBI (DBCT) Investor Services Pty Limited, Prime Infrastructure (DBCT) Investor Services Pty Limited, Prime Infrastructure (DBCT) Investor Services Limited and Babcock & Brown Investor Services Limited).

DBCT Trustee Shares means all the issued share capital in the DBCT Trustee.

DBCT Trust means the trust known at the date of this agreement as the DBCT Trust created by the DBCT Trust Deed.

DBCT Trust Deed means the deed dated 22 August 2001 executed by the DBCT Trustee, as amended from time to time.

Deal when used with respect to an item of property, includes sell, transfer, assign or grant any Encumbrance, trust, option or other right in relation to the whole or part of the item of property or entering, or agreeing to enter, into any arrangement having a similar commercial effect or transferring an economic interest in the whole or part of the item of property.

Distribution means the distribution by BBIT of an aggregate amount of not more than \$104 million pro-rata to BBI Securityholders as at the Record Date.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit à prendre, easement or any other security arrangement or any other arrangement having the same effect.

EPS means the Exchangeable Preference Shares issued by BBI EPS Limited (ACN 125 830 631) on 31 August 2007 under the EPS Terms.

FERC means the United States Federal Energy Regulatory Commission.

FIRB means the Australian Foreign Investment and Review Board.

Institutional Placement means the Institutional Placement as described in clause 2.3.

Intra-Group Loans means the following:

- (a) the loan facility agreement between BBIL and DBCT Management comprising the BBI Group Loan Facility Standard Terms 1 and the BBI Group Loan Facility Term Sheet; and
- (b) the loan facility agreement between BBIS (in its capacity as responsible entity of BBIT) and the DBCT Trustee comprising the BBI Group Loan Facility Standard Terms 1 and the BBI Group Loan Facility Term Sheet.

Lenders means any financier, security trustee or agent under a facility provided to a BBI Group Member.

Lender Approvals means the approvals referred to in item 1 of schedule 1, a list of which is annexed to this agreement as Annexure J.

Listing Rules means the Listing Rules of ASX Limited.

New Trust means the registered managed investment scheme known as the Prime SPARCS Trust ARSN 108 288 204 of which BBIS is the responsible entity (and which is to be renamed Prime Infrastructure Trust 2).

OIO means the New Zealand Overseas Investment Office.

PD Ports means BBI Port Acquisitions (UK) Limited.

PD Ports Transaction means the acquisition by the Brookfield Investor of all of the ownership interests in PD Ports, including the assumption of £315 million in debt, on the terms and conditions set out in this agreement and the PD Ports Transaction Sale and Purchase Agreement.

PD Ports Transaction Sale and Purchase Agreement means the PD Ports Transaction Sale and Purchase Agreement in substantially the same form as (and in any event no more adverse to Brookfield or BBI than) the terms as set out in Annexure D.

Placement Securities means the BBI Securities to be acquired by Brookfield (directly, or through one or more of its Affiliates) under the Private Placement pursuant to the Subscription Agreement, being such number of BBI Securities that will, following completion of the Institutional Placement, and completion of the Transaction, represent not less than 35% of the fully diluted capital of BBI.

Private Placement means the placement under which Brookfield (directly, or through one or more of its Affiliates) will subscribe for the Placement Securities at the Subscription Price on the terms and conditions set out in this agreement and the Subscription Agreement.

Register means the securities register of BBI and **Registry** has a corresponding meaning.

Regulatory Approval means any approval of a Regulatory Authority to the Transaction or any aspect of it which Brookfield and BBI, each acting reasonably, determine is necessary or desirable to implement the Transaction (or any aspect of it), and which includes:

- (a) waivers required from ASX to implement the Asset Transactions, the grant of the options referred to in clause 4.3 or confirmation from ASX that a waiver is not required;
- (b) the consents and approvals required from the European Union to implement the Transaction, as referred to in clause 20 of Schedule 1;
- (c) the consents and approvals required from FIRB to implement the Transaction, as referred to in clause 5(b) of Schedule 1;
- (d) the consents and approvals required from the OIO to implement the Transaction, as referred to in clause 5(c) of Schedule 1; and
- (e) Federal Power Act 203 authorization required from FERC (merger and acquisition approval) to implement the Transaction.

Regulatory Authority includes:

- (a) ASX, ASIC, FIRB, OIO, European Union, FERC and CFIUS;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute.

Relationship Deed means the Relationship Deed as set out in Annexure I or, in the event that the Stapling is completed and implemented on or before Transaction Completion, in substantially the same form as (and in any event no more adverse to Brookfield or BBI than) the terms of that document as set out in Annexure I, but with such changes as the parties agree are necessary to take into account the effect of the Stapling.

Representative means any person acting for or on behalf of a person including any director, officer, employee, agent, contractor or professional adviser of a person.

ROFR Assets means any of BBI's direct or indirect ownership interests (whether equity or debt) in DBCT, or any material assets of DBCT, and includes:

- (a) the DBCT Shares;
- (b) the DBCT Units;
- (c) the DBCT Trustee Shares; and
- (d) the Intra-Group Loans,

or any part of those direct or indirect ownership interests or material assets of DBCT.

ROFR Period means the period from the date of a ROFR Trigger Event to 1 year following that ROFR Trigger Event.

ROFR Transaction means any transaction that, whether directly or indirectly:

- (a) involves the sale, transfer or disposal of, or any other Dealing with, any one or more (or any part of) the ROFR Assets;
- (b) synthesises the economic effect of a sale, transfer or disposal of any one or more (or any part of) the ROFR Assets; or
- (c) involves the provision of financing to any BBI Group Member through a loan or other form of financial indebtedness that is either:
 - (i) secured by an Encumbrance over any one or more (or any part of) the ROFR Assets; or
 - (ii) convertible into, or exchangeable for, any one or more (or any part of) the ROFR Assets,

other than an existing Encumbrance granted as at the date of this agreement or a refinancing of existing indebtedness of the DBCT Group with recognised banks or other financial institutions in Australia or recognised multinational banks or other financial institutions, on terms substantially similar to those currently contained in the DBCT Group Facilities.

ROFR Trigger Event means the Transaction not proceeding for any reason other than solely as a result of BBI validly terminating this agreement in accordance with clause 14.1(c).

SPP means the security purchase plan described in section 2.4(a).

Stapling means the proposed ‘stapling’ of the BBI Securities with the units of the New Trust such that one share in BBIL and one unit in BBIT and one unit in the New Trust are all stapled to one another.

Subscription Agreement means the Subscription Agreement as set out in Annexure B or, in the event that the Stapling is completed and implemented on or before Transaction Completion, in substantially the same form as (and in any event no more adverse to Brookfield or BBI than) the terms of that document as set out in Annexure B, but with such changes as the parties agree are necessary to take into account the effect of the Stapling.

Subscription Price means an aggregate amount of \$625 million, such amount payable for all of the Placement Securities acquired by Brookfield Investor under the Private Placement pursuant to the Subscription Agreement.

Subsidiaries has the meaning it has in the Corporations Act.

Transaction means the overall transaction that is the subject of this agreement, including the Private Placement, the Institutional Placement, the Asset Transactions, the Distribution, the conversion of EPS into BBI Securities and the SPP.

Transaction Completion means the completion of the Private Placement (being subscription and payment for the Placement Securities) and the Asset Transactions.

Transaction Documents means this agreement, and each other deed or agreement to be entered into to implement the Transaction.

12 Right of first refusal

12.1 Grant of right of first refusal

BBI hereby unconditionally and irrevocably grants Brookfield a right of first refusal (“ROFR”) in respect of the ROFR Assets. The ROFR will be on the terms and conditions contained in this clause 12.

12.2 Restrictions on dealings

Subject to clause 12.3, BBI agrees not to do any of the following during the ROFR Period:

- (a) Deal in the ROFR Assets, or do anything preparatory to Dealing with a ROFR Asset (other than as contemplated by this clause 12); or
- (b) enter into any ROFR Transaction, or do anything preparatory to entry into any ROFR Transaction (other than as contemplated by this clause 12).

12.3 When restrictions will cease to apply

The obligations of BBI under clause 12.2 in respect of a particular ROFR Asset cease to apply upon the earlier of:

- (a) expiry of the ROFR Period; and
- (b) completion of the sale of the ROFR Asset to the Brookfield Investor.

12.4 Terms of right of first refusal

- (a) During the ROFR Period, BBI may offer for sale the ROFR Assets or offer to enter into a ROFR Transaction for the sole purpose of soliciting from a third party a proposal of a nature that would trigger the ROFR.
- (b) During the ROFR Period, BBI must provide a notice ("**Sale Intention Notice**") if BBI proposes to enter into a ROFR Transaction with a third party in response to a bona fide offer received from any bona fide third party ("**Third Party Offer**").
- (c) The Sale Intention Notice must:
 - (i) specify the price of the Third Party Offer ("**Third Party Price**"); and
 - (ii) specify all terms of the Third Party Offer ("**Third Party Terms**"); and
 - (iii) attach a copy of any documentation received by BBI from the relevant third party outlining the Third Party Offer, or which is otherwise in connection with the Third Party Offer.
- (d) If Brookfield does not, within 60 days of receipt by Brookfield of the Sale Intention Notice, make an offer to BBI ("**Brookfield Offer**") to enter (whether itself, or through a nominee) into an equivalent ROFR Transaction to that contained in the Sale Intention Notice for the Third Party Price on terms no less favourable overall from BBI's perspective, acting reasonably, to the Third Party Terms summarised in the Sale Intention Notice (which for the avoidance of doubt includes failing to respond to the Sale Intention Notice), BBI may within a further 120 days ("**Third Party Sale Period**") enter into the ROFR Transaction the subject of the Sale Intention Notice:
 - (i) at a price not less than the Third Party Price that was notified to Brookfield in the Sale Intention Notice;
 - (ii) provided that the sale is not otherwise subject to any arrangement or adjustment which effectively reduces the cost of acquisition to the acquiring party (other than a purchase price adjustment mechanism, including in respect of representations and warranties disclosed in the Third Party Terms) or otherwise makes the transaction contemplated by the Third Party Offer materially more economically advantageous to the acquiring party; and

- (iii) provided that the material terms of the transaction are no less favourable to BBI overall than the Third Party Terms that were notified to Brookfield in the Sale Intention Notice.

For the purposes of determining whether the terms of a Brookfield Offer are on more or less favourable terms than the Third Party Terms, any requirement by Brookfield for approval from FIRB is to be disregarded by BBI.

- (e) If:
 - (i) any of clauses 12.5(c)(i)-(iii) are not satisfied; or
 - (ii) the transaction under the Third Party Offer is not capable of completion by the end of the Third Party Sale Period,

Brookfield will again have a ROFR under clause 12.1 which may be exercised by Brookfield, in its sole discretion:

- (iii) in the case of clause 12.5(d)(i), within 30 days following BBI providing written notice to Brookfield of the revised Third Party Offer (with this clause 12 applying as if the revised Third Party Offer was a new Third Party Offer); or
 - (iv) in the case of clause 12.5(d)(ii), in accordance with this clause 12.
- (f) Any sale or other ROFR Transaction to be entered into with Brookfield (or any Brookfield Entity nominated by Brookfield) pursuant to the ROFR shall be subject to:
 - (i) and will not be effective until the consent of DBCT Holdings has been obtained;
 - (ii) all other applicable consents of Lenders under the DBCT Group Facilities and the BBI Corporate Debt Documents and other third parties (including necessary approvals or consents from any identified Regulatory Authority) have been obtained.
 - (g) Any approvals or consents (other than under the BBI Corporate Debt Documents) to be obtained under clauses 12(f)(i) or 12(f)(ii) must be in a form satisfactory to Brookfield in its absolute discretion. Any consent under the BBI Corporate Debt Documents must also be in a form satisfactory to BBI in its absolute discretion.
 - (h) If Brookfield provides a Brookfield Offer that meets the requirements of clause 12.4(d), then the parties must use all reasonable endeavours to enter into full-form transaction documentation in order to document the relevant ROFR Transaction within 20 days of receipt by BBI of the Brookfield Offer (“**Sale Documentation**”).

12.5 Required approvals

- (a) Subject to clause 12.5(d), BBI and Brookfield will each exercise its reasonable endeavours to obtain all required third party approvals and consents, including Regulatory Approvals and any required Lender Approvals, required to implement a transaction contemplated by a

Brookfield Offer as soon as practicable after the Brookfield Offer is made, and each party must give the other party all reasonable assistance to obtain such approval or consent.

- (b) Brookfield and BBI each acknowledges that neither party will be responsible if implementation of any transfer of ROFR Assets cannot proceed because of a failure to receive any such third party approvals or consents, provided that each party has complied with clause 12.5(a).
- (c) Brookfield has the right to be represented at any proposed meeting with any Lender relating to any Lender Approval but must not engage in any material communication with any Lender in respect of the ROFR Transaction without a Representative of BBI being present.
- (d) Brookfield must ensure that the Brookfield Entities and their Representatives must not, and will not, at any stage make contact (whether verbal, written or otherwise) with DBCT Holdings or any person whose consent is required under the DBCT Group Facilities in relation to, or in connection with, the ROFR Transaction or the ROFR except, in each case, with (and in accordance with any conditions attached to) BBI's prior written consent. BBI must use all reasonable endeavours to procure the board of DBCT Holdings to meet with a Representative of Brookfield together with at least 1 Representative of BBI as soon as practicable after the date that BBI accepts a Brookfield Offer and in any event prior to the completion of the ROFR Transaction with Brookfield (or its nominee).
- (e) BBI must use reasonable endeavours to consult with Brookfield in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Lender relating to any Lender Approval ("**Communications**") and, without limitation:
 - (i) provide Brookfield with drafts of any material written Communications to be sent to a Lender and make such amendments as Brookfield reasonably requires; and
 - (ii) provide copies of any material written Communications sent to or received from a Lender to Brookfield promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

12.6 Specific performance

BBI acknowledges that damages are not a sufficient remedy for Brookfield for any breach of this clause 12, and Brookfield and its Affiliates are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach of threatened breach by the other party in addition to any other remedies that may be available to the affected party at law or in equity.

12.7 Survival

Notwithstanding anything else in this agreement, any obligations under this clause survive termination of this agreement during the ROFR Period.