

Constitution

Transurban

Holding Trust

(Consolidated to include the Seventh Supplemental Deed)

As amended and approved by the responsible entity
(Transurban Infrastructure Management Limited)
on 13 October 2016

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This trust deed

is made on 15 November 2001 by:

Transurban Infrastructure Management Limited
ACN 098 147 678

of Level 43, Rialto Tower South, 525 Collins Street, Melbourne.
(Trustee)

Recital

The Trustee intends that this trust deed will be the constitution for a managed investment scheme to be registered under section 601EB(1) of the Corporations Act and known as Transurban Holding Trust.

This deed witnesses that:

1 Definitions and Interpretation

1.1 Definitions

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

AMIT means an attribution managed investment trust as that term is defined in section 276-10 of the Tax Act;

AMMA Statement means an AMIT member annual statement as that term is defined in section 276-460 of the Tax Act;

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

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

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

Approved Valuer means a valuer appointed by the Trustee;

ASIC means the Australian Securities and Investments Commission.

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

Associate has the meaning given in the Corporations Act;

ASX means ASX Limited or the market operated by it as the context requires;

Attached Security in the context of:

- (1) this constitution, means a Unit;
- (2) the constituent document for any Other Attached Security, means those Attached Securities.

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

Australian Accounting Standards means Australian accounting standards as applied and determined by the Australian Accounting Standards Board and, if no relevant standard exists, generally accepted accounting principles applied in Australia;

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

CARS means a convertible adjusting rate security governed by the CARS Terms of Issue and other provisions of this deed;

CARS Terms of Issue means the terms of the CARS and the collateral agreement as set out in the offer document for the CARS;

CHES Approved Securities means securities in respect of which approval has been given by the relevant operator of the CS Facility in accordance with the Operating Rules;

Commission means the Australian Securities and Investments Commission;

Companies means:

- (1) immediately prior to the Restructure Implementation Date, THL and TL; and
- (2) after the steps taken to implement the Restructure, as described in the Information Memorandum, have been taken, THL and TIL;

Compliance Committee means the compliance committee (if any) for the Trust as required by section 601JA of the Corporations Act;

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

Conversion for the purposes of clause 5.12, has the meaning as in the CARS Terms of Issue;

Corporations Act means the Corporations Act 2001 (Cth);

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

CS Facility has the meaning given to it in the Corporations Act.

Current Unit Value means the amount calculated as follows:

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

where:

CUV is Current Unit Value

NAV is Net Asset Value

NU is the number of Units on Issue;

Destapled means, in relation to a Unit, not being Stapled to a share in the Companies;

Distributable Amount means the amount (if any) determined in accordance with clause 12.3(a);

Distributable Income is the amount to be distributed to Unitholders (if any);

Distribution Calculation Date means each 30 June or any date the Trustee may determine to be a distribution calculation date from time to time;

Distribution Date means either:

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

Distribution Entitlement means the entitlement to any Distributable Amount determined in accordance with clause 11.3(c);

Distribution Period means:

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

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

Face Value in respect of each CARS is \$100;

Financial Year means:

- (1) for the first Financial Year, the period beginning on the date of this deed and ending on 30 June 2002;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

Foreign Interests means the Units or Options a Foreign Holder would have been entitled to but for clause 4.7(a);

Foreign Holder means a Holder whose address appearing in the Register is in a country other than Australia;

Forfeited Unit means a Partly Paid Unit which is forfeited pursuant to clause 3.7(c) by non-payment of an Instalment;

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

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

Gross Asset Value means the sum of:

- (1) the value of the Fund; and
- (2) any other amounts which, in the opinion of the Trustee, should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles;

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

Income means, for any Distribution Period, the gross income realised by the Trust from its operations including rent, interest, dividends, distributions and otherwise less the expenses of deriving that income including, but not limited to interest and other borrowing costs, fees paid to the Trustee and any other amount that the Trustee determines, prior to the end of the Distribution Period, is prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust;

Information Memorandum means the document of that title made available to unitholders in connection with the Restructure and dated 21 September 2006;

Initial Unitholders means Paul O'Shea and Kim Edwards;

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

Interest means a Unit or an Option;

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

Issuer:

- (1) in the context of this constitution, means the Trustee; and

- (2) in the context of the constituent document of any Other Attached Security, means the issuer of the Other Attached Security.

Liabilities mean liabilities of the Trust including any provision the Trustee decides should be taken into account and includes:

- (1) unpaid administrative costs and expenses including fees of the Trustee;
- (2) accrued charges in respect of or owing in relation to any asset of the Fund;
- (3) amounts required to meet present liabilities;
- (4) amounts of all borrowings;
- (5) any provision for Tax which in the opinion of the Trustee should be taken into account; and
- (6) any other amounts required to meet liabilities or other expenditure (including deferred liabilities) which in the opinion of the Trustee should be taken into account in determining the amount of liabilities in any of the preceding paragraphs,

but excludes the amount representing Unitholders' capital, undistributed profits, interest attributable to Unitholders accruing on Unitholder capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust and excluding any amount relating to derivative instruments used for hedging;

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

Market Price has the meaning given in clause 1.3;

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

month means calendar month;

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

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

Nominee means the entity appointed by the Trustee to receive Units pursuant to clause 6.1(a) and 6.2;

Official List means the official list of ASX;

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

Operating Rules means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the company or generally) from time to time;

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

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

Other Attached Security means:

- (1) in respect of a Unit, an identical number of each Attached Security other than a Unit; and
- (2) in respect of any Attached Security other than a Unit, an identical number of each Attached Security other than that Attached Security.

Other Issuer means:

- (1) in respect of the Trustee, each Issuer other than the Trustee; and
- (2) in respect of the issuer of any Other Attached Security, each Issuer other than that issuer of the Other Attached Security.

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

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

Prospectus means a prospectus, product disclosure statement or disclosure document issued under Part 6D.2 or Part 7.9 of the Corporations Act in respect of an issue of Units or Options;

Related Body Corporate has the meaning given to it in the Corporations Act;

Register means the register of Unitholders or Optionholders maintained by the Trustee pursuant to Chapter 2C of the Corporations Act;

Registered Scheme means a managed investment scheme registered under section 601EB(1) of the Corporations Act;

Restructure means the restructure of the Stapled Security which, immediately prior to the Restructure Implementation Date, comprises a THL Share, a TL Share and a Unit and after the implementation of the necessary steps identified in the Information Memorandum, comprises a THL Share, a TL Share and a Unit;

Restructure Implementation Date means the date and time fixed by the Trustee at its discretion;

Share means a share in each of the Companies;

Stapled means, in the case of two or more things, being linked together so that one may not be dealt with without the other and with such restriction on dealing being denoted in the Stapled Security Register;

Stapling means the process that results in things being Stapled;

Stapled Security means:

- (1) immediately prior to the Restructure Implementation Date, one THL Share, one TL Share and one Unit which are Stapled together; and

- (2) immediately after the steps to implement the Restructure, as described in the Information Memorandum, have been taken, one THL Share, one TIL Share and one Unit which are Stapled together;

Stapled Security Register means the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 21.4;

State means State of Victoria;

Substantial Holder means a person who has a substantial holding in the Trust as that term is defined under section 9 of the Corporations Act;

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

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

TCT means Transurban CARS Trust ARSN 103 090 928;

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

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

THL means Transurban Holdings Limited ACN 098 143 429;

THL Share means one share in THL;

TIL means Transurban International Limited, a mutual fund company incorporated under the laws of Bermuda;

TIL Share means one ordinary fully paid share in TIL;

TL means Transurban Limited ACN 098 143 410;

TL Share means one share in TL;

Trust means the trust constituted under this deed;

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

Unders and Overs means the system set out in Subdivision 276-F of the Tax Act;

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

Unitholder means a person registered as the holder of a Unit, including any persons jointly registered, and a person who holds a Unit which is taken to be issued in accordance with clause 4.4(b);

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

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

Unless otherwise specified in this deed, terms defined in the Corporations Act are used in this deed with the same defined meaning.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental or semi governmental agency;
- (e) a reference to a Part, clause or schedule is a reference to a Part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to any statute or regulation

includes all statutes and regulations amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;

- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day;
- (i) a reference to cash includes cheques and bank cheques;
- (j) references to sums of money are to amounts in Australian dollars; and
- (k) a reference to the proper performance of a duty is a reference to the proper performance of the duty after all available appeals from each judgment in respect of the matter have been exhausted.

1.3 Market Price

- (a) The "Market Price" for a Stapled Security on any Business Day is (subject to clause 1.3(b)) the weighted average traded price for a Stapled Security for all sales on ASX for the period of 10 Business Days immediately preceding the relevant Business Day, whether or not a sale was recorded on any particular day, provided that:
 - (1) if the Trustee considers the period of 10 Business Days referred to above to be inappropriate in the circumstances, it can extend or reduce the period or change the timing of the period;
 - (2) if a Stapled Security will be offered or issued ex-distribution and the weighted average traded price referred to above is (in whole or in part) cum-distribution, the Market Price will be reduced by the amount of that distribution (with corresponding adjustments made to the extent some but not all sales included in the weighted average traded price were for Stapled Securities cum-distribution); and
 - (3) the Trustee may exclude from the

calculation of Market Price any transactions as defined in the Operating Rules as special crossings, any crossings prior to the commencement of normal trading or during the closing phase or after hours adjust phase on the ASX or any other trade considered by the Trustee not to be reflective of normal supply and demand.

- (b) If the Trustee believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Stapled Security in the circumstances, the Market Price for a Stapled Security on any Business Day is:
 - (1) the price obtained pursuant to a book build arranged by a reputable merchant bank with experience in arranging book builds in the Australian equity market, provided that the Auditor or an Approved Valuer has provided written confirmation that the book build was conducted in accordance with normal market practices; or
 - (2) an amount as determined by an Approved Valuer, as being the fair market price of the Stapled Security.
- (c) Notwithstanding clauses 1.3(a) and 1.3(b), for the purposes of Part 5 in cases where Stapled Securities are not Officially Quoted and where this deed does not otherwise provide, the "Market Price" for a Stapled Security means an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and which in the opinion of an Approved Valuer will approximate the market price of Stapled Securities at or around the relevant date.
- (d) The "Market Price" of an Option on any Business Day is, to the extent it is appropriate, to be determined in the same manner as the Market Price for a Stapled Security is determined. If the Trustee believes it is not appropriate to determine the Market Price in the above way, the Market Price of an Option is to be determined by the Trustee or by an Approved Valuer, as being the fair market price of the Option.

1.4 General compliance provision

On and from the date that the Trust becomes a Registered Scheme:

- (a) a provision of this deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency;
- (b) this clause 1.4 is subject to any declarations made by or exemptions granted by the Commission which are current in respect of or applicable to this deed;
- (c) this clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it;
- (d) to the extent that a provision in this deed is inconsistent with any relief applicable to the Trust issued by the Commission, then the terms of the relief prevail and are deemed to be contained in this deed.

1.5 Inconsistency with the Listing Rules

If the Trust is admitted to the Official List, the following clauses apply:

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

1.6 Additional Listing Rule requirements

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

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit except in any of the following cases:
 - (1) an Instalment which is due and payable on that Unit under Part 3 has not been paid;
 - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Schedule; or
 - (3) in the case of the voting right, the Holder became the holder of that Unit after the time determined under Regulation 7.11.37 of the Corporations Regulations 2001 (Cth) as the "specified time" for deciding who held the Unit for the purpose of the Meeting;
 - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
 - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
 - (6) the right is removed or changed under a court order;
- (b) a holder of a Unit must not be divested of that Unit except in any of the following cases:
 - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit is set out in the legislation or is approved by ASX as appropriate and equitable;
 - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
 - (3) the divestment is under a provision in this deed that is permitted by the Listing

- Rules or that ASX has approved as appropriate and equitable;
- (4) the divestment is under a court order;
 - (5) the divestment is under clause 3.7 and 3.8; or
 - (6) the divestment is under Part 22;
 - (7) the divestment is under Part 24; and
- (c) the Trustee must not divest a Holder of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASX Settlement Operating Rules. Without limitation to clause 1.5, at all times that the Trust is admitted to the Official List the Trustee must comply with ASX Settlement Operating Rule 5.12.

1.7 Accounting Standards

To the extent to which:

- (a) the calculation of the Issue Price;
- (b) the extent of any limitation on borrowings; or
- (c) the calculation of the Distributable Amount, may involve the application of generally accepted accounting principles or accounting standards, the principles or standards to be applied are the current Australian Accounting Standards.

1.8 Corporations Act and ASIC Relief

If:

- (a) the Corporations Act requires that this constitution contain certain provisions, or if ASIC Class Order [CO 13/655] (or any other ASIC Relief on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust and the Trustee) requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("Required Provisions"); or
- (b) any part of this constitution (a "Required Part") is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX ("Regulatory Requirement") and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that

the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

- (1) authorise the Trustee to make the amendments referred to in this clause 1.8 in a deed and, if required, to lodge it with ASIC; and
- (2) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

2 The Trust

2.1 Trustee

As at the date of the establishment of this Trust, Transurban Infrastructure Management Limited is and agrees to act as Trustee of the Trust.

2.2 Name of Trust

The name of the Trust is Transurban Holding Trust. The Trustee may change the name of the Trust provided that such change of name must be approved by unanimous resolution of the board of directors of the Trustee.

2.3 Vesting of assets in Trustee

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

2.4 Initial Unitholders

The Trust is settled by the subscription of \$6 from, and the issue of 6 units to each of the Initial Unitholders.

3 Interest of Unitholder

3.1 Division into Units

- (a) The beneficial interest in the Fund is divided into Units. No Unit confers an interest in a particular part of the Trust or the Fund.
- (b) A Holder may not:

- (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
 - (2) claim or exercise any right in respect of any asset of the Fund or lodge any caveat or other notice affecting any asset of the Fund; or
 - (3) require that any asset of the Fund be transferred to a Holder.
- (c) Holders may not give any directions to the Trustee (whether at a Meeting convened pursuant to sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Trustee to do or omit doing anything which may result in:
- (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 4.7; or
 - (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

3.2 Splitting

The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:

- (a) immediately amend the Register to record the consolidation or split;
- (b) notify the Unitholder within 30 days of the consolidation or split;
- (c) ensure that each Unit is consolidated or split on the same basis as each other Unit subject to the rounding policy which the Trustee adopts in its absolute discretion.

3.3 Issue of Partly Paid Units

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The whole of the unpaid Issue Price of each

Partly Paid Unit is payable immediately upon termination of the Trust.

- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue and in accordance with this deed.
- (e) A Partly Paid Unit which forms part of a Stapled Security will not be credited or deemed to be fully paid until:
 - (1) the Trustee has received all moneys unpaid in relation to that Unit; and
 - (2) the Companies have received any amounts unpaid in relation to the Shares to which it is Stapled.

3.4 Joint Holders

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

- (a) the Trustee is not bound to register more than three persons as the Joint Holders of the Unit or Option;
- (b) the Joint Holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a Joint Holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;
- (d) any one of the Joint Holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the Joint Holders.

3.5 Benefits and obligations of Holders

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

3.6 No further liability

- (a) This clause 3.6 is subject to any separate agreement between a Unitholder and the Trustee and to any call on Partly Paid Units which the Trustee is entitled to make under clauses 3.3 and 3.7 to 3.14 (inclusive).
- (b) The liability of each Holder in its capacity as such is limited to the Holder's investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the assets of the Fund.
- (e) Except as provided in clauses 3.8(a), 3.12(h), 7 and 21.3(b) nothing in or under this deed makes the Trustee the agent of a Unitholder nor does it create any relationship other than that of beneficiary and trustee.

3.7 Failure to pay instalment on Partly Paid Unit

- (a) The Trustee must serve each Unitholder of a Partly Paid Unit with a notice not later than 60 Business Days prior to the due date for payment of an Instalment. The omission to give such notice by the Trustee or the non-receipt of such notice by the Unitholder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Unitholder to pay the Instalment.
- (b) If a Unitholder does not pay an Instalment

on the due date, the Trustee must serve the Unitholder with a notice not later than 7 days after the due date containing:

- (1) a demand for payment of all Instalments due and payable in respect of the Partly Paid Units and any interest payable;
- (2) a statement that interest:
 - (A) runs from the due date of the Instalment until the date the Trustee receives payment of the overdue amount in full; and
 - (B) is payable at a fair market rate determined by the Trustee;
- (3) a further due date for payment which may not be earlier than the expiration of 7 days after the date of service of the notice; and
- (4) a warning that if payment in full is not received by the due date specified in the notice:
 - (A) the Partly Paid Unit is forfeited;
 - (B) the Trustee may offer the Forfeited Unit for sale; and
 - (C) all Costs associated with the forfeiture and any proceedings that may be necessary to recover the amount due from the Unitholder will lie with the Unitholder.

The omission to give such notice by the Trustee or the non-receipt of such notice by the Unitholder does not in any way whatsoever affect the obligation of the Unitholder to pay the Instalment.

- (c) A Partly Paid Unit is forfeited and the Trustee may offer that Partly Paid Unit for sale:
 - (1) if payment in full is not received by the due date specified in the notice issued under clause 3.7(b); or
 - (2) the Partly Paid Unit is Stapled to partly paid Shares and one or more of those partly paid Shares are forfeited under the constitution of the Companies because of non payment of a call on those Partly Paid Shares.

3.8 Sale of Forfeited Unit

- (a) If the Trustee offers a Forfeited Unit for sale it does so as agent for the Holder of the Forfeited Unit.
- (b) Subject to clause 3.8(c) if the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner and at a price determined by the Trustee.
- (c) The Trustee must ensure that the auction is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unitholder for any loss suffered by the Unitholder as a result of the sale.

3.9 Income and Capital of a Forfeited Unit

Distribution of income and capital under Part 11:

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

must be applied in accordance with clause 3.13 as if they formed part of the proceeds of sale of a Forfeited Unit.

3.10 Notice of sale of Forfeited Unit

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.8(b), the Trustee must give notice of the sale of a Forfeited Unit by placing an advertisement in a daily newspaper circulating generally throughout Australia.

3.11 Cancellation of Forfeiture

The Trustee must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Trustee the full amount of the Instalment due together with interest on that Instalment calculated under clause 3.7(b) and any other amount payable in respect of the forfeiture.

3.12 Consequences of sale and continuing liability

- (a) On completion of the sale of the Forfeited Unit, the Unitholder ceases to be the Unitholder of that Unit but remains liable to the Trustee for the total amount set out in the notice served under clause 3.7(b).
- (b) The Unitholder's liability under this clause

ceases as soon as the Trustee receives:

- (1) payment in full of the amount set out in the notice under clause 3.7(b) (excluding any amount paid by an underwriter pursuant to an underwriting agreement entered into under clause 5.2);
 - (2) the Costs associated with the forfeiture; and
 - (3) the Costs of all proceedings instituted against the Unitholder to recover the amount due.
- (c) A statement signed by a director or secretary of the Trustee setting out:
 - (1) that a Partly Paid Unit has been forfeited; and
 - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
 - (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 3.13.
 - (e) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must register the transferee as the Unitholder of the Forfeited Unit.
 - (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
 - (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
 - (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

3.13 Proceeds of sale of Forfeited Unit

- (a) If a Forfeited Unit is sold under clause 3.8, the Trustee must apply the proceeds of the sale in the following order and manner:
 - (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
 - (2) by paying any Costs incurred by the

Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit to recover unpaid Instalments;

- (3) by holding as an asset of the Fund, the interest accrued in respect of the outstanding Instalments calculated under clause 3.7(b);
 - (4) by holding as an asset of the Fund, the balance of all Instalments due and payable in respect of the Forfeited Units; and
 - (5) by paying the balance to the Unitholder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the expenses listed in clause 3.13(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
- (c) Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

3.14 Lien for Amounts Owing

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

4 Issue of Options and Units

4.1 Number of Units issued

- (a) If the Trustee accepts an Application for Units in whole or in part, the number of Units issued is the number determined by the Trustee by dividing the relevant Application Moneys by the Issue Price.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Moneys by the amount of the Issue Price for a Unit which is to be paid on Application.

- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

4.2 Application for Units or Options

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

- (a) complete or make an Application in the form or manner determined by the Trustee;
- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee; and
- (c) include with the Application the Application Moneys in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee.

4.3 Payments to the Trustee

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

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Moneys for the Units or Options.

- (d) All income in respect of the payment or

property received on an application for Units or Options (which has been accepted by the Trustee) prior to the issue of those Units or Options forms part of the Fund.

4.4 Issue and Allotment

A Unit is taken to be issued at a time which is the earlier of:

- (a) the time the issue of Units is recorded in the Register; and
- (b) the later of the time when:
 - (1) the Trustee accepts an Application for Units; and
 - (2) the Trustee or its agent receives the Application Moneys (even if paid into an account held for the purposes of section 1017E of the Corporations Act).

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

4.5 Trustee's discretion on Application

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

4.6 Certificates

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

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

4.7 Foreign Holders

The Trustee may determine that Foreign Holders are not to be offered Units or Options under clauses 5.9, 5.10, 5.11, 5.12 or any other rights issue (where it is able to do so in accordance with the Listing Rules, the Corporations Act and any ASIC Relief).

5 Power to issue Units and Options

5.1 Powers Cumulative

- (a) The Trustee may issue Units only in accordance with this deed, the Corporations Act and any applicable ASIC Relief.
- (b) No clause of this Part 5 (other than this clause 5.1) limits any other such clause.

5.2 Underwriting of Issue

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

5.3 Issues of Options

The Trustee may, subject to clauses 5.5 to 5.11 (inclusive), offer Options for subscription in accordance with the Terms of Offer and Terms of Issue.

5.4 Issue of Units pursuant to Options

The Trustee may, subject to clauses 5.5 to 5.11 (inclusive), issue a Unit or Units in accordance with the Terms of Offer and Terms of Issue of an Option.

5.5 Issue at Market Price or Current Unit Value

Subject to clause 5.8A, in addition to any other power the Trustee has to issue Units under this deed, the Trustee may issue Units or Options at any time to any person at an Issue Price being any of the following:

- (a) for the issue of Units to the Initial Unitholders pursuant to clause 2.4, \$1.00 per Unit;

- (b) Units at an Issue Price per Unit as set out in or calculated in accordance with a Prospectus or other offer document issued by the Trustee;
- (c) where the Trust has been admitted to the Official List and the Units form part of Stapled Securities and those Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily):
 - (1) Units at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the aggregate issue price of the Shares to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the day on which the offer or issue is made;
 - (2) Options at the dollar value of the total consideration (including nil consideration for the Option) payable or otherwise provided for the issue of the Option specified in the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to the exercise of those Options are to be Stapled to Shares in the Companies and issued at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the aggregate issue price of the Shares to which that Unit will be Stapled is at least the Market Price for Stapled Securities immediately prior to the date upon which the Option is issued;
 - (3) Options at the dollar value of the total consideration (including nil consideration for the Option) payable or otherwise provided for the issue of Options specified in the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to the exercise of those Options are to be Stapled to Shares in the Companies and issued at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the aggregate issue price of the Shares to which that Unit will be Stapled is equal to \$4.4042, as approved at a meeting of the unit holders of the Transurban City Link Trust held on 27 November 2001 and held in accordance with Corporations Act 2001; or
 - (4) 2,350,000 Options at the dollar value of the total consideration (including nil consideration for the Option) payable or otherwise provided for the issue of Options specified in the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to the exercise of those options are to be Stapled to Shares in the Companies and issued at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the aggregate issue price of the Shares to which that Unit will be Stapled is equal to \$3.817, following cancellation of options previously granted to executives of Transurban City Link Limited over units in the Transurban City Link Unit Trust and over shares in Transurban City Link Limited; or
- (d) where Units form part of Stapled Securities and those Stapled Securities have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust has been removed from the Official List, Units at the Current Unit Value on the Business Day prior to the day the offer to issue the Units is made.

5.6 Placements of Units without Unitholder approval

Subject to clause 5.8A, the Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clause 5.2 or 5.5, where the Trust has been admitted to the Official List and the issuance is otherwise in accordance with the Listing Rules.

5.7 Placements of Options without Unitholder approval

Subject to clause 5.8A, the Trustee may issue

Options at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clause 5.2 to 5.5, where:

- (a) the Options are issued at a price determined by the Trustee that is not less than the price at which Options are issued in accordance with paragraph 5.9;
- (b) all the Options are in the same class;
- (c) the Issue Price for all the Options is the same; and
- (d) the means of calculating the Exercise Price is set out in the terms of issue of the Options.

5.8 Placements of Units with Unitholder approval

Subject to clause 5.8A, the Trustee may issue Interests at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clause 5.2 or 5.5, where:

- (a) the Trust has been admitted to the Official List and the Interests form part of Stapled Securities and those Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
- (b) the issue is not to the Trustee or any person associated with the Trustee;
- (c) the Holders approve the issue;
- (d) if the Interests to be issued are in a particular class, Holders in that class approve the issue;
- (e) unless the Trustee reasonably considers that the issue will not adversely affect the interests of Holders in another class, Holders in that other class approve the issue;
- (f) any notice convening a Meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;
- (g) an approval for the purposes of paragraphs (c), (d) and (e) of this clause is given by special resolution of the Holders where Holders with at least 25% of the total value of all the Interests of Holders entitled to vote on the question vote on the question at the Meeting; and
- (h) if, in making the calculations referred to in paragraph (g) of this clause, any vote of a person to whom the Interests are to be

issued or any vote of any Associate of such a person were not counted, the resolutions would be passed.

5.9 Maximisation of Price

The Trustee will endeavour to maximise the Issue Price of Units pursuant to clauses 5.5, 5.6, and 5.8 having regard to all relevant considerations at the time of issue.

5.10 Rights issues of Units

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

- (a) the Trustee offers the Interests to persons who are Unitholders on a date not more than 20 Business Days before the date of the offer, in proportion to the value of each Unitholder's Interests at that date (subject to paragraph (f), Interests offered to, but not acquired by, Unitholders may be issued to other persons);
- (b) all the Units offered are in the same class; and
- (c) the Issue Price of all the Units offered is the same.

5.11 Rights issues of Options

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

- (a) the Options are issued pursuant to offers first made to only and all the then Unitholders in proportion to the value of their Unit Holding;
- (b) Options not taken up by members of the scheme are only issued to either:
 - (1) a bona fide underwriter or sub-underwriter who is not associated with the Trustee or to persons (who are not associated with the Trustee) whose subscriptions have been procured by such an underwriter or sub-underwriter in accordance with an underwriting agreement entered into between the underwriter and the Trustee, the terms of which were included in the disclosure document for the offer; or

- (2) a person (other than the Trustee or its associates) pursuant to an offer contained in a disclosure document;
- (c) the number of Options offered to each Unitholder is proportionate to the value of the Unitholders interest;
- (c) the Units to be issued pursuant to the exercise of those Options are to be Stapled to Shares in the Companies;
- (d) all the Options offered are in the same class;
- (e) the Issue Price of all the Options offered is the same;
- (f) the Exercise Price of all the Units to be issued on exercise of the Options is the same; and
- (g) the means of calculating the Exercise Price is set out in the Terms of Issue.

5.12 Issues of Units - distribution reinvestment

- (a) The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clause 5.2 or 5.5 pursuant to a distribution reinvestment arrangement referred to in clause 12.5 where:
 - (1) the whole or part of a Unitholder's Distribution Entitlement is applied in payment for the subscription for Units;
 - (2) each Unitholder may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the Distribution Entitlement which is or would otherwise be, payable to that Unitholder;
 - (3) all the Units issued under the arrangement are of the same class;
 - (4) the Issue Price of each Unit issued pursuant to that arrangement at substantially the same time is the same; and
 - (5) the aggregate of the Issue Price of those Units and the issue price of Shares to which those Units will be Stapled is not less than 90% of the Market Price of a Stapled Security as at the 13th Business Day immediately following the record date for the determination

of entitlements to the distribution (or any other date set by the Trustee in accordance with the rules relating to the distribution reinvestment arrangement).

- (b) The Trustee may issue Units to an underwriter or underwriters to a distribution reinvestment arrangement that complies with clause 5.11(a) at an Issue Price equal to, or in excess of, the Issue Price at which Units are issued to Unitholders under clause 5.11(a).

5.13 Security Purchase Plan

The Trustee may issue Units at an Issue Price determined by the Trustee being a price other than the Issue Price calculated in accordance with clauses 5.2 to 5.5, under a security purchase plan where:

- (a) the Trust has been admitted to the Official List and the Units form part of Stapled Securities and those Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
- (b) the Units are offered to each Unitholder;
- (c) the Units are offered on the same terms and conditions;
- (d) the Issue Price of the Stapled Securities is not less than the Market Price of the Stapled Securities during a specified period in the 30 days before either the date of the offer or the date of the issue; and
- (e) no Unitholder is issued with Stapled Securities with an aggregate Issue Price totalling more than the maximum amount permitted by any applicable ASIC Relief.

5.14 Other issues of Units and Options

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

5.15 Issues of Units on Conversion of CARS

Notwithstanding anything else contained in this deed, if Units are issued upon a Conversion of CARS, the Issue Price for the Units is to

be determined as follows according to the circumstances in which Conversion applies:

- (a) If the applicant, being the person who held the CARS immediately prior to the time of Conversion, is to receive in accordance with the CARS Terms of Issue the minimum conversion number as defined in the CARS Terms of Issue, the Issue Price is the Face Value of the CARS divided by the minimum conversion number. Until otherwise determined by an amendment to this Constitution the minimum conversion number is to be subject to adjustment in accordance with the CARS Terms of Issue.
- (b) If the applicant, being the person who held the CARS immediately prior to the time of Conversion, is to receive in accordance with the CARS Terms of Issue more than the minimum conversion number of Units (as adjusted in accordance with the CARS Terms of Issue) the Issue Price is to be the Face Value of the CARS divided by the number of Units to be issued to the applicant on Conversion in accordance with the CARS Terms of Issue.

6 Buy backs

- (a) While the Units are Officially Quoted and not Stapled, the Trustee may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX or any other financial market on which the trading of Units is permitted, and also off-market, and cause the Units to be cancelled.
- (b) While the Units are Officially Quoted and Stapled, the Trustee and the Other Issuers together may, subject to the Corporations Act and the Listing Rules, purchase Stapled Securities on the ASX or any other financial market on which the trading of Stapled Securities is permitted, and also off-market. When they do so, each Other Issuer will be regarded as having purchased the Attached Securities that they have issued and the Trustee will be regarded as having purchased the Units, and upon such purchase Stapling will cease in relation to the Stapled Securities so purchased, and the Attached Securities (including the Units will be cancelled).
- (c) The price of each Other Attached Security and a Unit purchased under clause 6(b) will be such allocation of the purchase price of the Stapled Security as agreed between the Trustee and the

Other Issuers.

7 The Restructure

Solely for the purposes of implementing the Restructure, subject to the requirements of the Corporations Act and the Listing Rules and notwithstanding any of the other provisions of this constitution, the Trustee may take any action and execute any documents it deems necessary in respect of the:

- (a) destapling of TL Shares from THL Shares and Units; and
- (b) stapling of TIL Shares to THL Shares and Units.

8 Ancillary powers

Subject to the Corporations Act, the Trustee's common law duties to Unitholders and the Listing Rules:

- (a) the Trustee may distribute to Unitholders (either generally or to specific Unitholders) assets (including cash) held in the Trust;
- (b) each Unitholder appoints the Trustee as his or her attorney or agent to apply assets (including cash) distributed pursuant to clause 8(a) to subscribe for shares in the Companies on behalf of the Unitholder; and
- (c) the Trustee has the power to do anything needed to give effect to any arrangement or distribution pursuant to this clause, including agreeing on behalf of Unitholders to Unitholders becoming members of the Companies.

9 Trustee's Powers

9.1 General powers of Trustee

- (a) Subject to this deed, the Trustee has all the powers that it is possible to confer on a trustee and has all the powers that are incidental to ownership of the Fund as though it were the absolute and beneficial owner of the Fund.
- (b) In the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property and borrow or raise money, encumber any asset of the Fund, incur any liability, enter into joint venture arrangements or fetter any power.
- (c) The Trustee may take all actions and make any elections or choices under the Tax Act or other Tax legislation enacted by the Commonwealth of Australia, that in its absolute discretion it thinks

fit, including entering into or making any election or choice under any provisions or regime for the taxation of trusts that may be available.

9.2 Delegation by Trustee

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

9.3 Guarantees

Without limiting the generality of the powers of the Trustee contained in clause 9.1, the Trustee may:

- (a) guarantee the obligations of any entity controlled by the Trustee; or
- (b) guarantee the obligations of any other entity if the Trustee believes that the provision of such a guarantee is in the best interests of the Unitholders.

9.4 Unders and Overs

- (a) For the avoidance of doubt, the Trustee may in its absolute discretion use the Unders and Overs system and/or reissue AMMA Statements to Unitholders to reconcile variances.
- (b) The Trustee will not be liable to any Unitholder for any liability or cost borne by a Unitholder as a result of a reissued AMMA Statement.

This Part 9 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

10.2 Limitation of liability

- (a) Except where the Corporations Act expressly provides otherwise:
 - (1) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee; and
 - (2) the Trustee will not be liable to any Holder or any other person to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Fund actually vested in the Trustee in respect of the Trust.
- (b) The Trustee is not responsible for:
 - (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
 - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such items not to be genuine or not to have been passed, executed or signed by the proper parties; or
 - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,except where the Corporations Act provides otherwise.
- (c) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
 - (1) any provision of any present or future law or statute of Australia or any State or Territory; or
 - (2) any decree, order or judgement of any competent court,

the Trustee is prevented, forbidden or hindered from doing or performing.

10 Trustee's responsibilities and indemnities

10.1 No limitation of other undertakings

10.3 Indemnity

- (a) The Trustee is entitled to be indemnified out of the assets of the Fund for liability incurred by it in properly performing any of its powers or duties in relation to the Trust. To the extent permitted by the Corporations Act the indemnity includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Trustee.
- (b) This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Trustee retires or is removed as trustee of the Trust.

10.4 Trustee may rely on advice

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers, architects, engineers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted,

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

10.5 Interested dealings by Trustee

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

- (a) be a Holder;
- (b) act in any capacity including without limitation as a representative, delegate or agent of the Trustee or any Holder;
- (c) have an interest in or enter into a contract or transaction with:
 - (1) the Trustee or an Associate of the Trustee;
 - (2) any Holder; or

- (3) any other person, including one whose shares or other securities form an asset of the Fund; or
 - (d) hold or deal in or have any other interest in an asset of the Fund,
- and may retain and is not required to account for any benefit derived by doing so.

11 Valuation of the Fund

11.1 Valuation of assets

- (a) The Trustee may, at any time, cause the valuation of any asset of the Fund.
- (b) In determining whether a valuation accurately reflects the current value of an asset of the Fund, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of assets of the Fund.
- (c) Each asset of the Fund must be valued at its market value unless the Trustee determines:
 - (1) there is no market in respect of the asset of the Fund; or
 - (2) the market value does not represent the fair value of the asset of the Fund.
- (d) Where the Trustee makes a determination under clause 11.1(c), the Trustee must at the same time determine the method of valuation of the asset of the Fund.
- (e) Where any asset of the Fund is to be valued or the Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Trustee.
- (f) Where the calculation of the Issue Price is to be made as at a particular date, the Trustee need not cause a valuation of the Fund to be performed as at that date but may rely on the most recent valuations for the purposes of that calculation.

11.2 Currency Conversion

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

11.3 Trustee to determine Current Unit Value

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

12 Income and Distributions

12.1 Determination of income and reserves

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

12.2 Distribution of income

- (a) For each Distribution Period the Trustee:
- (1) may determine the Distributable Income for the Distribution Period; and
 - (2) must calculate and distribute each Unitholder's Distribution Entitlement.
- (b) If:
- (1) the Trust is an AMIT for a Distribution Period and no determination is made by the Trustee pursuant to clause 12.2(a) (1) by three months after the end of the Distribution Period; or
 - (2) the Trust is not an AMIT for a Distribution Period and no determination is made by the Trustee pursuant to clause 12.2(a)(1) by the end of the Distribution Period,
- the Distributable Income for that Distribution Period is an amount equal to the Income of the Trust for the relevant Distribution Period, and each Unitholder's Distribution Entitlement will be calculated accordingly.
- (c) In making the determinations under clause 12.1 and this clause 12.2, the Trustee does not have to take into account Australian Accounting Standards or generally accepted accounting principles and practices which apply to trusts.
- (d) The preparation of accounts of the Trust in accordance with current Australian Accounting Standards and generally accepted accounting principles is not to be regarded as determinative for the purposes of clauses 12.1, 12.2(a) and 12.2(b).

12.3 Distribution Entitlement

- (a) The Distributable Amount for a period is to be determined by applying the following formula:

$$DA = DI - R - ID$$

where:

DA is the amount of Distributable Amount.

DI is the Distributable Income of the Trust.

R is the sum of amounts which the Trustee has determined are to be distributed to redeeming Unitholders in accordance with clause 12.3(d).

ID is the sum of the amounts which have been distributed to Unitholders under clause 12.3(d).

- (b) Subject to the Terms of Issue for any Unit, each Unitholder's Distribution Entitlement is to be determined in accordance with the following formula:

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

where:

DE is the Distribution Entitlement

DA is the Distributable Amount

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

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

- (c) If the Trustee determines, it may notify a Unitholder in respect of a Unit redeemed by the Unitholder during the Distribution Period, that the Redemption Price paid in respect of that Unit includes that part of income which the Trustee has determined is to be distributed to the redeeming Unitholder equal to:

where:

A is that part of income which the Trustee has determined is to be distributed to the redeeming Unitholder.

B is the number of units redeemed by that Unitholder.

- (d) The Trustee may make an interim distribution

of income on account of Distributable Income at such intervals as it determines. On such an interim distribution, the entitlement of each Unitholder to any income is determined as if the date of the interim distribution were midnight on the last day of the distribution period to which the interim distribution relates.

12.4 Distribution of Entitlement

- (a) Subject to clause 12.8, the Trustee must pay to each Unitholder its Distribution Entitlement on or before the Distribution Date.
- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution, the persons who are Unitholders on the record date for that Distribution Period have an absolute, vested and indefeasible interest in the Distributable Amount of that Distribution Period.
- (c) The Trustee may retain from each Unitholder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unitholder an amount in or towards satisfaction of any amount payable by the Unitholder to the Trustee under this deed or are required to be deducted by law.

12.5 Distribution reinvestment arrangements

The Trustee may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in an arrangement under which Unitholders may request that all or a proportion of specified distributions due to them be satisfied by the issue of further Units.

12.6 Discharge of Trustee's obligation

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

12.7 Trust taxed as a company

Notwithstanding clauses 12.3 and 12.4, if in any Financial Year the Trustee in its capacity as trustee becomes taxable as if it were a company under the Tax Act:

- (a) the Trustee has complete discretion as to how much, if any, of:
 - (1) the Distributable Amount for that Financial Year; or
 - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,

is to be distributed to Unitholders on the Distribution Date.

- (b) Each Unitholder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 12.7(a)) is to be determined in accordance with clause 12.3(b).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 12.7(b)) to the persons who are Unitholders on the record date for that Distribution Period.

12.8 Transfer of assets of the trust

- (a) The Trustee may transfer assets of the Trust to a Unitholder rather than pay cash in payment of a distribution of income or capital.
- (b) The assets of the Trust transferred, together with any cash paid, must be of equal value to the total amount due to the Unitholder

(based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions). If paragraph (a) of this clause 12.8 applies, the costs involved in transfer of these assets of the Trust must be paid by the Unitholder or deducted from the amount due to the Unitholder.

- (c) For the purposes of this clause 12.8, the Trustee will be taken to have transferred assets of the Trust to a Unitholder or former Unitholder where the Trustee has done everything reasonably necessary on its part to convey the assets of the Trust to the Unitholder or former Unitholder.
- (d) If the Trustee transfers assets to Unitholders that are securities in a company or in another body corporate or trust, each of those Unitholders appoints the Trustee as his or her agent to do anything needed to give effect to that provision, including agreeing to become a member of that other body corporate or trust.

13 Remuneration of Trustee

13.1 Trustee's remuneration

The Trustee is entitled to receive out of the Fund an amount of up to 2% per annum of the Net Asset Value of the Fund calculated daily and payable monthly in arrears.

13.2 Waiver of remuneration

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

13.3 Priority of Trustee's remuneration

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

13.4 Indemnity

In addition to the Trustee's right of remuneration under clause 13.1 and any other right of indemnity

which it may have under this deed or at law, the Trustee is indemnified and entitled to be reimbursed out of or have paid from the Fund for all Costs incurred in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

13.5 Proper performance of duties

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

13.6 Reimbursement of GST

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

14 Indemnity and insurance

14.1 Persons to whom clauses 14.2 and 14.4 apply

Clauses 14.2 and 14.4 apply to each person who is or has been a member of the Trust's Compliance Committee (if any).

14.2 Indemnity

The Trustee must, from the Fund indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 14.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (in any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

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

14.3 Extent of indemnity

The indemnity in clause 14.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 14.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee (if any); and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

14.4 Insurance

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

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance, for any person to whom this clause 14.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

14.5 Savings

Nothing in clauses 14.2 or 14.4:

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

15 Transfers

15.1 Transfer

- (a) All transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 15.1(a) unless the instrument of transfer:
 - (1) is duly stamped;
 - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor; and
 - (3) complies with any requirements prescribed by the Trustee from time to time.
- (b) While the Trust is admitted to the Official List all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options.

15.2 Transaction advice after transfer

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

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

15.3 No general restriction on transfer

- (a) Subject to Part 22, there is no restriction on the transfer of Units and, subject to clause 15.4, the Trustee may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 15.1(b).
- (b) Except as otherwise set out in this Part 14 and Part 22, there is no restriction on any other transfer of Units or Options.

15.4 Restricted Securities

Notwithstanding any other provisions of this deed and whilst the Trust is admitted to the Official List:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the Operating Rules in respect of CHES Approved Securities, the Trustee must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) in the event of a breach of the Listing Rules in relation to Units which are restricted securities, the Holder holding the Units in question ceases to be entitled to any distributions and to any voting rights in respect of those Units for so long as the breach subsists.

15.5 Death, legal disability

If a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the survivor (in the case of joint holders), legal personal representative or the person entitled to Units as a result of bankruptcy or liquidation, will be recognised as having a claim to Units or Options registered in the Holder's name. The Trustee need not register any transfer or transmission pursuant to this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.

15.6 Recognition of Holder

- (a) The Trustee:
 - (1) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
 - (2) except as required by law or this deed, need not recognise any claim or interest in any Unit or Option by any other person.

- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.

15.7 Participation in Transfer Systems

The Trustee may determine that Units or Options which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this Part 14.

16 Options

16.1 Terms and Subscription

- (a) This Part 15 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

16.2 Nominees

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

16.3 Exercise

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

16.4 Optionholder's Rights and Interest

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

16.5 Redemption or Repurchase

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Trustee must make any payment to an Optionholder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 16.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 16.5(a) will form part of the Fund and the Trustee must be recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee will retain title in law to each and every Option and right so purchased in its name until the Option or right is resold or

lapses and such title in law will not merge in such chooses as are constituted by the grant of such Options and rights.

17 Retirement or Removal of Trustee

- (a) Despite any other law, the Trustee may only retire as Trustee of the Trust in accordance with section 601FL of the Corporations Act.
- (b) On retirement or removal the Trustee must give the new Trustee all books, documents and records relating to the Trust.

18 Alterations to Trust

Subject to section 601GC of the Corporations Act and any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

19 Term of Trust and termination of Trust

19.1 Term of Trust

The term of the Trust ends on the earlier of:

- (a) the date determined by an extraordinary resolution of Unitholders at a Meeting of the Trust, convened by the Trustee in accordance with clause 19.1; and
- (b) the date on which the Trust is terminated under this deed or by law.

19.2 Procedure on winding up of Trust

- (a) In winding up the Trust the Trustee must:
 - (1) realise the Fund;
 - (2) pay any amount due to it under clause 19.2(c);
 - (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unitholder who is a creditor of the Trust; and
 - (4) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unitholders, distribute the net proceeds of realisation among the Unitholders pro rata in accordance with the Paid-Up Proportion of Units held by Unitholders.

- (b) The Trustee may distribute an asset of the Trust to a Unitholder in specie. The Trustee must determine the value of the asset of the Fund to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unitholders before the distribution is made.
- (c) The Trustee is entitled to:
 - (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unitholders all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Fund;
 - (C) by or on behalf of any creditor of the Trustee in relation to the Trust; or
 - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
 - (2) an indemnity against the amounts referred to in clause 19.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 19.2(a)(4) is made; and
 - (3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Part 12;
- (d) The Trustee may postpone the realisation of the Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Trustee may retain for as long as it thinks fit any part of the Fund which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 19.2(c).
- (f) The Trustee must distribute among the Unitholders in accordance with clause 19.2(a) anything retained under clause 19.2(e) which is subsequently not required.

19.3 Audit of accounts of Trust

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

20 Meetings

20.1 Meetings

- (a) The Trustee may convene a Meeting at any time.
- (b) Part 2G.4 of the Corporations Act, the Listing Rules and the provisions of the Schedule apply to a Meeting.

20.2 Resolution by Postal Ballot

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

20.3 Passing of resolution

A resolution passed at a Meeting of Holders held in accordance with this deed, the Corporations Act and the Listing Rules or by postal ballot under clause 20.2 is binding on all Holders.

21 Complaints

21.1 Complaints handling

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

21.2 Holder Complaints

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

21.3 Handling of Complaints

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 21.2 in accordance with this Part 20, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (c) The Trustee must inform the Holder by notice in writing of:
 - (1) its decision in relation to the complaint;
 - (2) the remedies available to the Holder in relation to the complaint; and
 - (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.

21.4 Assistance and Information

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

22 Stapling

22.1 Units to be Stapled

- (a) The Trustee must not issue Units unless satisfied that each of those Units will be Stapled to form a Stapled Security.
- (b) The Trustee and the Unitholders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security. In particular:
 - (1) the Trustee must not offer any Units for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Shares for issue or sale;
 - (2) any offer of Units for subscription or sale must require each offeree to subscribe for or buy a number of Shares equal to the number of Units subscribed for or bought;
 - (3) the Trustee must not issue or sell any Units to any person unless an identical number of Shares are also issued or sold to the same person at the same time; and
 - (4) the Trustee must not consolidate, subdivide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of Shares.

22.2 Transfer of Stapled Securities

- (a) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of Part 14, the transfer is accompanied by a transfer of the Shares to which the Unit is Stapled in favour of the same transferee.
- (b) A transfer of a Unit which is not accompanied by a transfer of the Shares to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Shares to which the Unit is Stapled to

the same transferee.

- (c) A transfer of any Shares to which a Unit is Stapled (other than a transfer of the Shares to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit to which the Shares are Stapled to the same transferee.
- (d) Each Unitholder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Trustee the transfer to the Trustee (as trustee of the Trust) or to a person nominated by the Trustee of any Shares which were Stapled to a Forfeited Unit which has been cancelled or sold.

22.3 Stapled Security Register

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

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

22.4 Variation of Stapling provisions

The consent of the members of THL and TL must be obtained by way of an ordinary resolution to any amendment to this deed which:

- (a) directly affects the terms on which Units are Stapled; or
- (b) removes any restriction on the transfer of a Stapled Security.

23 Substantial Unit Holdings

23.1 Restrictions on Acquisition of Units

Except as provided by this clause 23, a person must not acquire, and is not eligible to acquire, Units in the Trust if:

- (a) any person who does not have a relevant interest in any Units or who has a relevant interest in less than 20% of the Units on Issue would immediately after the acquisition, have a relevant interest in 20% or more of the Units on Issue;
- (b) any person who has a relevant interest in 20% or more of the Units on Issue would immediately after the acquisition, have a relevant interest in a greater percentage of Units on Issue than immediately before the acquisition; or
- (c) any person who is entitled to less than 20% of the voting shares in Transurban City Link Limited or less than 20% of the units on issue in the Transurban City Link Unit Trust would, immediately after the acquisition, be entitled to 20% or more of the voting shares in Transurban City Link Limited or 20% or more of the units on issue in the Transurban City Link Unit Trust.

23.2 Exceptions

The restrictions contained in clause 23.1 do not apply to or in relation to an acquisition of Units to which the State of Victoria has given its written consent.

23.3 Registration and Divestiture

- (a) No Unit may be issued or, in the case of a paper-based transfer, transferred if the issue or transfer would or might result in or have the effect of causing a contravention of clause 23.1.
- (b) Where a person has acquired Units in the Trust in such circumstances as might or would result in or have the effect of causing a contravention of clause 23.1 or where the Trustee is aware of a contravention of clause 23.1 or that a person has become or remains a holder of a relevant interest in 20% or

more of the Units on Issue or has become or remains a Substantial Holder without the State's prior written consent ("unauthorised holding"), the Trustee must, by notice in writing to the State advise the State of that fact within 7 days of becoming so aware. If the Trustee chooses to apply, on behalf of the person having the unauthorised holding, to the State for the State's consent to the person becoming and/or remaining a holder of a relevant interest in 20% or more of the Units on Issue or a Substantial Holder it must do so in the same 7 day period. If the State requires the Trustee to do so (irrespective of whether consent has been sought from the State), the Trustee must, as soon as practicable but no later than 7 days after advice from the State, by notice in writing to the person having an unauthorised holding, require that person to dispose of the Units held by it or any part thereof as soon as practicable but no later than 1 month after the end of 7 days after receipt of the advice from the State or such longer period agreed between the Trustee and the State, in order to cease such contravention or unauthorised holding, provided that in the absence of any such requirement by the Trustee, the person concerned is not entitled in any way to set aside or cancel the transaction whereby the person acquired the Units, nor to claim any refund or to otherwise recover any money paid in respect thereof.

In so acting, the Trustee must consult with the directors of the Companies and, while the Units are quoted on the Official List, the Trustee must consult with the ASX, and shall have regard to, without being bound by, the recommendations of those persons.

- (c) If the requirements of any notice to dispose of the Units are not complied with by the person to whom the notice is addressed within the time specified in the notice, the Trustee must cause the Units to be sold on the ASX as soon as practicable but no later than 3 months after the end of the 1 month period referred to in paragraph (b) above or such longer period agreed between the Trustee and the State, or, if they are not Officially Quoted, in such other manner as the Trustee may determine.
- (d) If the Units sold in accordance with clause

23.3(c) are registered on a branch register, the Trustee may cause such Units to be transmitted to the Register.

- (e) The Trustee may:
 - (1) appoint a person to execute as transferor a transfer in respect of any Units sold in accordance with the provisions of clause 23.3(c) and to receive and give a good discharge of the purchase money; and
 - (2) register the transfer notwithstanding that proof of title of such Units may not have been delivered to the Trustee.
- (f) The purchase money less the expenses on any sale made in accordance with the provisions of clause 23.3(c) must be paid to the Unitholder whose Units were sold provided such Unitholder has delivered to the Trustee such proof of title of the Units as the Trustee accepts.
- (g) Nothing in clause 23.3 renders the Trustee liable or responsible by reason of any person acquiring Units in the Trust in contravention of clause 23.1 or failing to comply with the obligations imposed by clause 23.1.
- (h) The Trustee, before or at any time after issuing any Units or, in the case of a paper-based transfer, rejecting any transfer of Units or at any other time and from time to time, may, by notice in writing to the applicant or issuee or Unitholder, require such person (or, where such person is a corporation, a competent officer thereof) to furnish to the Trustee such information or evidence (on oath or otherwise verified by law, if the Trustee should so require) as the Trustee may consider likely to be of assistance in determining whether or not such person is eligible to become or to remain a Unitholder.

23.4 Employees and agents

In this Part 22, a person is, unless the contrary is proved, presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person having duties or acting on behalf of the employer or principal in connection with a matter to which the fact or occurrence relates was aware at the time.

23.5 Definitions in this Part

For the purposes of this Part 22:

- (a) “acquire” has the meaning ascribed to it by Divisions 1 and 7 of Part 1.2 of Chapter 1 of the Corporations Law in its form as at 20 October 1995;
- (b) “associate” has the meaning ascribed to it by Division 2 of Part 1.2 of Chapter 1 of the Corporations Law in its form as at 20 October 1995;
- (c) “entitled” has the meaning ascribed to it by section 609 of the Corporations Law in the form as at 20 October 1995;
- (d) “relevant interest” has the meaning ascribed to it by Divisions 1 and 5 of Part 1.2 of Chapter 1 of the Corporations Law in its form as at 20 October 1995,

in each case as if the relevant provisions of the Corporations Law also applied to units in a unit trust; and

- (e) notwithstanding anything in clause 1.1, “Substantial Holder” has the meaning ascribed to it in the Concession Deed between the State of Victoria, Transurban City Link Limited, Perpetual Trustee Company Limited and City Link Management Limited with effect from 20 October 1995 as amended up to and including the 15th amending deed.

24 General

24.1 Service of notices

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
 - (1) must be in legible writing and in English addressed:
 - (A) if to the Trustee, to its registered office;
 - (B) if to a Holder, to the Holder’s

address specified in the Register, or as specified to the sender by any party by notice and in the case of a Holder, with the Trustee’s prior consent;

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

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 5.00pm (addressee’s time) it is regarded as received at 9.00 am on the following Business Day; and

- (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A notice or other communication to Joint Holders is validly given if it is given only to the Joint Holder whose name appears first on the Register.

24.2 Method of payment, repayment or redemption

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

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

24.3 Binding conditions

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

24.4 Governing law and jurisdiction

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of Victoria.

24.5 Severability

Schedule—Meetings of Holders (Part 18)

1 Notice of Meeting

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

2 Who may attend and address Meeting of Unitholders

The Trustee, the directors of the Trustee, the Auditor, the auditor of the Trust's Compliance Plan, and any person invited by any of them is entitled to attend and address a Meeting or an adjourned Meeting.

3 Quorum

- (a) No business may be transacted at any Meeting unless a quorum of Holders is present at the time when the Meeting proceeds to business.
- (b) The quorum for a Meeting of Unitholders is Holders present in person, by proxy or by representative holding not less than 10% by value of Units on Issue.
- (c) A Holder is counted towards a quorum even though the Holder may not be entitled to vote on the resolution at the Meeting.
- (d) If a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting must be adjourned as the chairman directs.
- (e) Other than for a Meeting to consider an extraordinary resolution, at an adjourned Meeting the Holders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

4 Adjournments

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

5 Proxies

- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
 - (1) under its common seal (if any);
 - (2) under the hand of an officer or attorney who has been authorised by the corporation;
- (3) under the hand of any 2 directors or a director and a secretary; or
- (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or notorially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 48 hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the Meeting at which the proxy proposes to vote.
- (e) If paragraph 5(d) is not complied with, the proxy is invalid.
- (f) The Trustee is not obliged to enquire whether a proxy has been validly given.
- (g) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (h) Paragraph 5(g) does not apply if the Trustee has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

6 Voting

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

7 Joint Holders

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

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

8 Class Meetings

The provisions of Part 2G.4 of the Corporations Act, Part 19 of this deed and this Schedule relating to Meetings apply so far as they can and with such changes as are necessary, to each separate meeting of Holders of Units or Options or in a class of Units or Options.