

## Proposal to acquire FSREC Property Fund

On 6 August 2025, Equity Trustees Limited ACN 004 031 298 ("**Fund RE**") in its capacity as responsible entity of:

- Fort Street Real Estate Capital Fund I (ARSN 163 688 346);
- Fort Street Real Estate Capital Fund II (ARSN 169 190 498); and
- Fort Street Real Estate Capital Fund III (ARSN 605 335 957),

(collectively, the "**FSREC Property Fund**" or "**Fund**") entered into a scheme implementation deed ("**SID**") with ISPT Pty Ltd ACN 064 041 283 as trustee for the ISPT Retail Australia Property Trust No. 1 ("**Acquirer**") to acquire all the stapled securities in the Fund it does not own ("**Fund Scheme Securities**") pursuant to concurrent trust schemes (the "**Proposal**"). A copy of the SID is attached to this announcement.

Under the Proposal, Fund securityholders will receive \$1.85 for each Fund Scheme Security held, reflecting the value of the Fund's unaudited net tangible assets on a per Fund stapled security basis using the most recent valuation of the Fund as at 30 June 2025. Fund securityholders will continue to receive the economic benefits of ownership including any permitted distributions and an implementation distribution covering accrued distributions up to the implementation date.

The implementation of the Proposal is subject to conditions precedent customary for a transaction of this nature, including:

- ASIC issuing or providing the consents, waivers or approvals necessary to implement the Proposal;
- Fund securityholders approving the scheme resolutions;
- an independent expert opining that the Proposal is in the best interests of holders of Fund Scheme Securities; and
- the court granting judicial advice in respect of the Proposal.

## Next Steps

Fund securityholders do not need to take any action at this present time.

An explanatory memorandum and notices of meeting ("**Explanatory Memorandum**"), containing detailed information relating to the Proposal is expected to be sent to Fund securityholders in late August 2025.

Fund securityholders are encouraged to read the Explanatory Memorandum in its entirety. If the Proposal becomes effective and is implemented, Fund securityholders will be bound by the terms of the Proposal.

The schemes are expected to be implemented in early October 2025.

ISPT Pty Ltd as trustee for the ISPT Retail Australia Property Trust No. 1  
Equity Trustees Limited as responsible entity for FSREC Property Fund

## Scheme Implementation Deed

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This Deed is made on 6 August 2025

## Parties

- 1 **ISPT Pty Ltd** (ACN 064 041 283) as trustee for the **ISPT Retail Australia Property Trust No. 1** (ABN 19 915 864 713), Level 11, 8 Exhibition Street, Melbourne VIC 3000 (**Acquirer**).
- 2 **Equity Trustees Limited** (ACN 004 031 298) as responsible entity for the **FSREC Property Fund**, a stapled group comprising the unlisted registered managed investment schemes: Fort Street Real Estate Capital Fund I (ARSN 163 688 346), Fort Street Real Estate Capital Fund II (ARSN 169 190 498) and Fort Street Real Estate Capital Fund III (ARSN 605 335 957) (**Fund**) (together, **Fund RE**), of Level 1, 575 Bourke Street, Melbourne VIC 3000.

## Recitals

- A The Acquirer proposes to acquire all of the Fund Securities pursuant to the Schemes, subject to the terms and conditions of this Deed.
- B Fund RE has agreed to propose the Schemes to the Fund Securityholders and to issue the Explanatory Memorandum to the Fund Securityholders, and the Acquirer and Fund RE have agreed to implement the Schemes, upon and subject to the terms and conditions of this Deed.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Acquirer Executive Team** means [REDACTED].

**Acquirer Group Member** means:

- (a) the Acquirer; and
  - (b) any of the Acquirer's Related Bodies Corporate,
- excluding, for the avoidance of doubt, the Fund Group.

**Acquirer Information** means all information provided by the Acquirer to Fund RE for inclusion in the Explanatory Memorandum regarding the Acquirer. For the avoidance of doubt, Acquirer Information does not include the Fund Provided Information, the Independent Expert's Report, any third party tax advice or any other information about Fund Group.

**Acquirer Party** means Acquirer Group Members and each of their respective Officers and Advisers.

**Acquirer Representations and Warranties** means the representations and warranties of the Acquirer set out in Schedule 1.

**Acquirer Trust** means the ISPT Retail Australia Property Trust No. 1.

**Acquirer Trust Deed** means the trust deed of the Acquirer Trust.

**Adviser** means, in relation to an Entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity in the ordinary course of its business and to the market in general and who has been engaged in that capacity in connection with the Schemes by that Entity.

**Approved Person** means each Representative of the Recipient to whom the Recipient may

disclose the Confidential Information under clause 13.3.

**Approved Purpose** has the meaning given in clause 7.2(a).

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Relief** means an approval or consent referred to in clause 3.1(a).

**Associate** has the meaning set out in section 12(2)(b) and (c) of the Corporations Act, as modified by section 12(3) where the registered scheme is the Fund.

**ATO** means the Australian Taxation Office.

**Board** means the board of directors of Fund RE.

**Business Day** means a day that banks are open for business in Sydney, New South Wales.

**Claim** means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Competing Proposal** means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any Associates):

- (a) acquiring, directly or indirectly, a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, all the Fund Securities not held by the Acquirer;
- (b) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part or material part of all of the business or assets of the Fund Group; or
- (c) directly or indirectly acquiring or merging with the Fund Group,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved transaction, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger) or other transaction or arrangement.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidential Information** means all information (whether written, oral, electronic or in any other form) provided by a Discloser or any of its Representatives on or after the date of this Deed to the Recipient or any of their Representatives which relates to the Schemes or to the Discloser Group's business, assets or affairs (including all analyses, compilations, forecasts, studies, calculations, conclusions, summaries or other material to the extent derived or produced by the Recipient or any of their Representatives partly or wholly from any of such information), but excludes any Excluded Information.

**Control** has the meaning given in section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

**Controlled Entities** means, in relation to an Entity, another Entity which is a Subsidiary of it, or which is Controlled by it.

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

**Corporations Regulations** means the *Corporations Regulations 2001* (Cth).

**Costs** includes costs, charges and expenses, including those incurred by advisers, and any legal costs, on a full indemnity basis.

**Court** means the Supreme Court of New South Wales or such other court of competent jurisdiction as the Acquirer and Fund RE may agree in writing.

**Covered Costs** has the meaning given in clause 17.1(a).

**Days in Distribution Period** has the meaning given in clause 4.5(b).

**Deed Poll** means a deed poll to be executed by the Acquirer in favour of the Fund Scheme Securityholders substantially in the form of Schedule 7 (or in such other form as the Acquirer and Fund RE may agree in writing).

**Director** means each director of the Board.

**Discloser** means the entity who provides the Confidential Information.

**Effective** means the Supplemental Deeds taking effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which the Schemes become Effective.

**End Date** means the date which is six months from the date of this Deed, or such later date as the Acquirer and Fund RE may agree in writing.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**Excluded Information** means information which is or becomes generally available to the public other than because of a breach of this Deed or of any obligation of confidence owed by the Recipient or any of its Representatives.

**Explanatory Memorandum** means the explanatory memorandum to be prepared in respect of the Schemes in accordance with the terms of this Deed and to be despatched to Fund Securityholders.

**Fairly Disclosed** means, in relation to a matter, that sufficient information about the matter is disclosed in to enable a reasonable person experienced in the industries in which the Fund Group operates or transactions similar to the Schemes to identify the nature and scope of the relevant matter.

**First Court Date** means the first day on which an application made to the Court to seek the First Judicial Advice or, if the hearing of that application is adjourned for any reason, means the first day of the adjourned hearing.

**First Judicial Advice** means confirmation from the Court under section 63 of the *Trustee Act* 1925 (NSW) that:

- (a) Fund RE would be justified in convening the Scheme Meetings for the purposes of considering the Scheme Resolutions; and
- (b) subject to the Fund Securityholders passing the Scheme Resolutions, Fund RE would be justified in proceeding on the basis that amending the Fund Constitutions as set out in the Supplemental Deeds would be within the powers of alteration conferred by the Fund Constitutions and section 601GC of the Corporations Act.

**Fund Constitutions** means the constitutions of the Fund (as amended from time to time).

**Fund Executive Team** means [REDACTED].

**Fund Group** means each registered scheme comprising the Fund and each of their Controlled Entities.

**Fund Group Member** means a member of the Fund Group.

**Fund Group Party** means Fund RE and the trustee of any other Fund Group Member and their Officers and Advisers (excluding any Acquirer Group Member).

**Fund Provided Information** means all information included in the Explanatory Memorandum, and any updates to that information prepared by or on behalf of Fund RE other than:

- (a) Acquirer Information;
- (b) the Independent Expert's Report; and
- (c) any description of the taxation effect of the Schemes prepared by an Adviser to Fund RE.

**Fund Register** means the register of holders of Fund Securities maintained in accordance with the Corporations Act.

**Fund Registry** means Boardroom Pty Limited or any replacement provider of share registry services to Fund RE.

**Fund RE Representations and Warranties** means the representations and warranties of Fund RE set out in Schedule 2.

**Fund Scheme Securities** means all Fund Securities on issue as at the Record Date except for Fund Securities held by the Acquirer.

**Fund Scheme Securityholder** means each person who is registered on the Fund Register as a holder of Fund Scheme Securities as at the Record Date.

**Fund Security** means a stapled security on issue in the Fund.

**Fund Securityholder** means a person who is registered on the Fund Register as a holder of Fund Securities from time to time.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity.

**Guidance Note 15** means *Guidance Note 15: Trust Scheme Mergers* issued by the Takeovers Panel of Australia.

**Immediately Available Funds** means cash, bank cheque, telegraphic or other electronic transfer of cleared funds into a bank account nominated in advance by the payee.

**Implementation Date** means four Business Days following the Record Date, or such other date as Fund RE and the Acquirer may agree in writing.

**Implementation Distribution** means a distribution declared or determined by the Board to be paid to Fund Securityholders as at the Record Date determined in accordance with clause 4.5(b).

**Incurred Costs** has the meaning given in clause 17.2.

**Independent Expert** means an independent expert engaged by Fund RE.

**Independent Expert's Report** means the report from the Independent Expert stating whether or not in its opinion the Schemes are in the best interests of Fund Scheme Securityholders, and any update to such report that the Independent Expert issues prior to the Scheme Meetings.

**Insolvency Event** means, in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;

- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this Deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation);
- (f) the entity being deregistered as a company or otherwise dissolved; or
- (g) something having a substantially similar effect to (a) to (f) happens in connection with that entity under the law of any jurisdiction.

**ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth).

**Judicial Advice** means the First Judicial Advice and the Second Judicial Advice.

**Liabilities** means debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Notice** has the meaning given in clause 18.1.

**Officer** means, in relation to an Entity, any of its directors, officers and employees.

**Payment Request** has the meaning given in clause 17.2.

**Permitted Distribution** means a distribution declared or determined by the Board to be paid to Fund Securityholders in the ordinary course and consistent with past practice on a quarterly basis.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPS Register** means the register established under the PPSA.

**Recipient** means the entity who receives Confidential Information.

**Recommendation** has the meaning given in clause 9.1(a)(i).

**Record Date** means 7.00pm on the date that is the third Business Day after the Effective Date, or such other date (after the Effective Date) as may be agreed in writing between the Acquirer and Fund RE.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without notification.

**Related Body Corporate** has the meaning given in the Corporations Act but as if references to "body corporate" and "body" were to "Entity".

**Relevant Interest** has the meaning given in the Corporations Act.

**Representative** means, in relation to the Acquirer or Fund RE:

- (a) each other Acquirer Group Member or a trustee of a Fund Group Member (as applicable);
- (b) an Officer of an Acquirer Group Member or of Fund RE or a trustee of another Fund Group Member (as applicable); or

- (c) an Adviser to an Acquirer Group Member or Fund RE or a trustee of another Fund Group Member (as applicable).

**Schemes** means the arrangements under which the Acquirer acquires all of the Fund Scheme Securities held by the Fund Scheme Securityholders, facilitated by amendments to the Fund Constitutions as set out in the Supplemental Deeds.

**Scheme Consideration** means the consideration to be provided by the Acquirer to each Fund Scheme Securityholder for the transfer to the Acquirer of their Fund Scheme Securities, being \$1.85 in aggregate for each Fund Scheme Security held by a Fund Scheme Securityholder.

**Scheme Meetings** means the meetings of Fund Securityholders to be convened by Fund RE pursuant to the Fund Constitutions and section 252A of the Corporations Act to consider Scheme Resolutions and includes any adjournment of those meetings.

**Scheme Resolutions** means the following resolutions to be put to Fund Securityholders to approve the Schemes:

- (a) a special resolution to approve amendments to the Fund Constitutions as set out in the Supplemental Deeds and to authorise Fund RE to execute and lodge with ASIC the Supplemental Deeds to give effect to those amendments; and
- (b) any other resolutions that the parties (acting reasonably) may agree.

**Second Court Date** means the first day on which an application made to the Court to seek the Second Judicial Advice or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Second Judicial Advice** means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that, the Fund Securityholders having approved the Scheme Resolutions by the requisite majorities, Fund RE would be justified in implementing the Scheme Resolutions, giving effect to the provisions of the Fund Constitutions (as amended by the Supplemental Deeds) and in doing all things and taking all necessary steps to put Schemes into effect.

**Subsidiary** has the meaning given in the Corporations Act, provided that an entity will also be taken to be a Subsidiary of another entity if it is Controlled by that entity and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the accounting standards to be consolidated with that entity.

**Superior Proposal** means a bona fide written Competing Proposal received after the date of this Deed that would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to Fund Securityholders than the Schemes.

**Supplemental Deeds** means the deeds poll pursuant to which Fund RE will amend the Fund Constitutions, to be executed by Fund RE in the form of Schedule 4, Schedule 5 and Schedule 6 (or in such other form as the Acquirer and Fund RE agree in writing).

**TAA** means the *Taxation Administration Act 1953* (Cth).

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any Governmental Agency together with any fines, penalties and interest in connection with them.

**Third Party** means a person other than any Acquirer Group Member or any Associate of an

Acquirer Group Member.

**Timetable** means the indicative timetable in relation to the Schemes set out in Schedule 3, or such other timetable as Fund RE and the Acquirer may agree in writing.

**Transaction Documents** means:

- (a) this Deed;
- (b) the Supplemental Deeds; and
- (c) the Deed Poll.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (c) The following rules apply unless the context requires otherwise.
- (d) The singular includes the plural and conversely.
- (e) A gender includes all genders.
- (f) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (g) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (h) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Deed.
- (i) A reference to an *agreement or document* (including a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (j) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (l) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (m) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form and includes a communication by electronic mail.
- (n) A reference to \$, A\$ or Australian dollars is to the lawful currency of Australia.
- (o) Words and phrases not specifically defined in this Deed have the same meanings (if any) given to them in the Corporations Act.
- (p) A reference to time is a reference to time in Sydney, New South Wales, Australia.

- (q) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (r) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (s) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.

### 1.3 Best or reasonable endeavours

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours or all reasonable endeavours does not oblige that party to:

- (a) pay money:
  - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers and costs associated with relevant regulatory applications, to procure the relevant thing); or
  - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

### 1.4 Knowledge, belief or awareness

- (a) Certain statements made in this Deed (including certain representations and warranties) are given and made by Fund RE or the Acquirer (as the case may be) only on the basis of its knowledge, belief or awareness. For the purposes of this Deed:
  - (i) Fund RE's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the Fund Executive Team; and
  - (ii) the Acquirer's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the Acquirer Executive Team.
- (b) The knowledge, belief or awareness of any person other than the persons identified in clause 1.4(a)(i) or 1.4(a)(ii) will not be imputed to Fund RE or the Acquirer (as the case may be).
- (c) None of the persons named in clause 1.4(a)(i) or 1.4(a)(ii) will bear any personal liability in respect of the Fund RE Representations and Warranties or the Acquirer Representations and Warranties (as the case may be) or otherwise under this Deed.

### 1.5 Consents or approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

### 1.6 References to the parties

Unless the context requires otherwise, a reference to a right or obligation as between the parties (including an obligation to seek consent or provide notice as between the parties) is a reference

to a right or obligation as between the Acquirer and Fund RE (and not as between those parties and any other Acquirer Group Member).

## **2 Agreement to Proceed with Schemes**

### **2.1 Fund RE to propose Schemes**

Fund RE agrees to propose and implement the Schemes on and subject to the terms and conditions of this Deed.

### **2.2 Acquirer to assist**

The Acquirer agrees to assist Fund RE to implement the Schemes on and subject to the terms and conditions of this Deed.

## **3 Conditions Precedent and Pre-Implementation Steps**

### **3.1 Conditions Precedent**

Subject to this clause 3, the Schemes will not become Effective, and the obligations of Fund RE under clauses 5.2(l) and 5.2(s) and the obligations of the Acquirer under clause 4.3 are not binding, unless each of the following Conditions Precedent is satisfied or waived in accordance with clause 3.2):

- (a) **(ASIC Relief)** ASIC issues or provides such consents, waivers and approvals or does such other acts that are necessary to implement the Schemes and none of those consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date;
- (b) **(Fund Securityholder approval)** Fund Securityholders approve the Scheme Resolutions by the requisite majorities under section 601GC(1) of the Corporations Act at the Scheme Meetings;
- (c) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to Fund RE, stating that in its opinion the Schemes are in the best interests of the Fund Scheme Securityholders, and the Independent Expert does not adversely change its conclusion or withdraw the Independent Expert's Report by notice in writing to Fund RE before 8:00am on the Second Court Date;
- (d) **(no restraints)** no applicable law shall have been enacted and no temporary, preliminary or final restraining order, injunction or other order made by a court of competent jurisdiction or Governmental Agency is in effect that would prevent, make illegal or prohibit the implementation of the Schemes at 8.00am on the Second Court Date; and
- (e) **(Court approval)** the Court grants the Judicial Advice.

### **3.2 Waiver of Conditions Precedent**

- (a) The Condition Precedent in clauses 3.1(a), 3.1(b), 3.1(d) and 3.1(e) cannot be waived.
- (b) The Condition Precedent in clause 3.1(c) is for the sole benefit of Fund RE and may only be waived by Fund RE (in its absolute discretion) in writing. If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (c) If a party waives the breach or non-satisfaction of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this Deed constituted by the same event that gave rise to the breach or non-satisfaction of the Condition Precedent.

- (d) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event or circumstances; or
  - (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event or circumstances.

### **3.3 Best endeavours and co-operation**

Without prejudice to any other obligations of the parties under this Deed:

- (a) each of the Acquirer and Fund RE must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d) and 3.1(e); and
- (b) neither party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, the Transaction Documents, or is required by law.

### **3.4 Regulatory Approvals**

Without limiting clauses 3.3 and 3.5, and except to the extent prohibited by law or a Governmental Agency, each of Fund RE and the Acquirer must:

- (a) promptly apply for all relevant Regulatory Approvals necessary to give effect to the Schemes and take all steps reasonably required as part of the approval process, including responding to requests for information from the relevant Governmental Agency; and
- (b) keep the other party reasonably informed of progress in relation to the relevant Regulatory Approval (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, the relevant Governmental Agency) and provide the other party with all information reasonably requested in connection with the progress of the Regulatory Approval,

provided that before providing any document or other information to the other party under this clause 3.4, the relevant party may redact any part of that document, or not disclose any part of that information, which contains or constitutes competitively sensitive or privileged information relating to the existing business or affairs of the party, to the extent that it reasonably considers that the disclosure of such information to the other party would be unlawful or damaging to the commercial or legal interests of the disclosing party (including, in the case of the Acquirer, an Acquirer Group Member and, in the case of Fund RE, the Fund Group), or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege.

### **3.5 Notifications**

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and

- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms.

### 3.6 Failure of Conditions Precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2 by the time or date specified in this Deed for the satisfaction of the Condition Precedent;
  - (ii) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this Deed for the satisfaction of the Condition Precedent (and the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this Deed); or
  - (iii) one or more of the Conditions Precedent has not been satisfied or waived by the End Date or becomes incapable of being satisfied by the End Date,

either party may serve notice on the other party, and the parties must then consult in good faith with a view to determining whether:

  - (iv) the Schemes may proceed by way of alternative means or methods;
  - (v) to extend the relevant time or date for satisfaction of the Condition Precedent;
  - (vi) to change the date of the application to be made to the Court for the granting of the Court orders in connection with the Schemes or the Judicial Advice or to adjourn such application (as applicable) to another date agreed by the parties; or
  - (vii) to extend the End Date,

provided that, notwithstanding anything in this Deed, each party may make a determination with respect to the matters in clauses 3.6(a)(iv) to 3.6(a)(vii) in its sole, absolute and unfettered discretion.
- (b) If the Acquirer and Fund RE are unable to reach agreement under clauses 3.6(a)(iv), 3.6(a)(v), 3.6(a)(vi) or 3.6(a)(vii) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5.00 pm on the day before the Second Court Date, either party may terminate this Deed by notice in writing to the other party, provided that where:
  - (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
  - (ii) there has been no failure by that party to comply with its obligations under this Deed, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 12.5 will apply.

### 3.7 Certificates in relation to Conditions Precedent

- (a) On the Second Court Date, each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its

knowledge) whether or not as at 8.00am on the Second Court Date the Conditions Precedent have been satisfied or waived in accordance with this Deed.

- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.7(a) by 5.00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## **4 Schemes**

### **4.1 Outline of Schemes**

The parties agree that:

- (a) Fund RE will propose the Schemes to Fund Securityholders on and subject to the terms of this Deed, and will use reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as reasonably practicable; and
- (b) the Acquirer will use reasonable endeavours to assist Fund RE in implementing the Schemes on and subject to the terms of this Deed, and will use reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as reasonably practicable.

### **4.2 Scheme Consideration**

Subject to and in accordance with this Deed (including the Deed Poll), each Fund Scheme Securityholder is entitled to receive the Scheme Consideration in respect of each Fund Scheme Security held by that Fund Scheme Securityholder.

### **4.3 Payment of Scheme Consideration**

- (a) Subject to this Deed (including the Deed Poll), the Acquirer undertakes and warrants to Fund RE that, in consideration of the transfer to the Acquirer of each Fund Scheme Security by a Fund Scheme Securityholder held by a Fund Scheme Securityholder on the Implementation Date, the Acquirer will:
  - (i) accept that transfer to it of each Fund Scheme Security;
  - (ii) pay or procure the payment of the Scheme Consideration to each Fund Scheme Securityholder,in accordance with the terms and conditions of this Deed (including the Deed Poll).
- (b) If the number of Fund Scheme Securities held by a Fund Scheme Securityholder as at the Record Date is such that the aggregate entitlement of the Fund Scheme Securityholder to Scheme Consideration includes a fractional entitlement to a cent, then the entitlement of that Fund Scheme Securityholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of cents (as applicable).

### **4.4 Permitted Distributions**

- (a) The Acquirer acknowledges and agrees that Fund RE may (in its discretion), subject to clause 4.4(b)(iv), declare and determine to pay to Fund Securityholders one or more Permitted Distributions.
- (b) If Fund RE declares or determines to pay one or more Permitted Distributions in accordance with clause 4.4(a):

- (i) any such Permitted Distribution must be paid in cash;
  - (ii) any such Permitted Distribution must be announced no later than the Implementation Date;
  - (iii) the record date of any such Permitted Distribution must be a date on or before the Record Date; and
  - (iv) any such Permitted Distribution must be permitted by, and made in accordance with, applicable laws and accounting standards including the Corporations Act.
- (c) To facilitate the payment of any Permitted Distributions, Fund RE and the trustee of any other Fund Group Member may make or repay loans, or pay distributions, as between Fund Group Members.

#### 4.5 Implementation Distribution

- (a) The Acquirer acknowledges and agrees that subject to the Conditions Precedent being satisfied or waived in accordance with this Deed, the Fund RE will, subject to clause 4.5(c)(ii), declare and determine to pay to Fund Securityholders as at the Record Date, the Implementation Distribution for each Fund Security held by the Fund Securityholders.
- (b) The Implementation Distribution for each Fund Security will be calculated as follows:

$$\text{Implementation Distribution} = 1.85 \text{ cents} \times \frac{\text{Days in Distribution Period}}{92}$$

where **Days in Distribution Period** is the number of days between the last record date of any Permitted Distribution and Implementation Date. If there are no Permitted Distributions, the Days in Distribution Period will be equal to the number of dates between the last Fund distribution before the date of this Deed and the Implementation Date.

- (c) The Implementation Distribution must:
- (i) be paid in cash within 5 Business Days of the Implementation Date; and
  - (ii) be permitted by, and made in accordance with, applicable laws and accounting standards including the Corporations Act.
- (d) The Implementation Distribution will be paid to all Fund Securityholders that hold Fund Securities as at the Record Date.

#### 4.6 Other Distributions

Other than any Permitted Distributions, but subject to its duties to Fund Securityholders, Fund RE must not declare, pay, make, or incur a liability to pay or make, a distribution of income, profits, assets or capital out of the Fund, other than by agreement with the Acquirer.

### 5 Steps for Implementation

#### 5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must each use all reasonable endeavours to take all necessary steps and exercise all rights necessary to implement the Schemes in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control (including, for the avoidance of doubt, any delays caused by a Governmental Agency).

- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control (including, for the avoidance of doubt, any delays caused by a Governmental Agency), the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

## 5.2 Fund RE's obligations in respect of the Schemes

Fund RE must take all steps reasonably necessary to propose and implement the Schemes as soon as is reasonably practicable after the date of this Deed and otherwise in accordance with the Timetable, and in particular Fund RE must:

- (a) **(preparation of Explanatory Memorandum)** prepare the Explanatory Memorandum so that it complies with all applicable laws and has regard to regulatory policy set out in ASIC Regulatory Guide 60, ASIC Regulatory Guide 74 and Guidance Note 15.
- (b) **(Independent Expert)** appoint the Independent Expert and promptly provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(consultation with the Acquirer in relation to Explanatory Memorandum)** consult with the Acquirer as to the content and presentation of the Explanatory Memorandum, such consultation to include providing the Acquirer with successive drafts of the Explanatory Memorandum and the Independent Expert's Report for the purposes of allowing the Acquirer a reasonable opportunity to review and make comments on successive drafts of the Explanatory Memorandum and the Independent Expert's Report in a reasonable timeframe before lodgement with ASIC (if required) and obtain the Acquirer's written consent to the inclusion of the Acquirer Information (including in respect of the form and context in which the Acquirer Information appears in the Explanatory Memorandum) prior to any requisite lodgement with ASIC. Fund RE must consider in good faith any comments on drafts of the Explanatory Memorandum and the Independent Expert's Report provided by or on behalf of the Acquirer, provided that each reference in this clause to the Independent Expert's Report is limited to the Acquirer's review for factual accuracy and subject to the Independent Expert consenting to the Acquirer receiving any drafts of their report;
- (d) **(liaison with ASIC)** as soon as practicable after the date of this Deed:
  - (i) if required, provide an advanced draft of the Explanatory Memorandum to ASIC for its review and approval; and
  - (ii) keep the Acquirer reasonably informed of any matters raised by ASIC in relation to the Explanatory Memorandum (and of any resolution of those matters) and use reasonable endeavours to resolve those matters in consultation with the Acquirer (which will, to the extent reasonably practicable, include inviting the Acquirer to participate in Fund RE's meetings and discussions with ASIC);
- (e) **(ASIC Relief)** apply to ASIC for the ASIC Relief;
- (f) **(Approval of Explanatory Memorandum)** as soon as practicable and in any event before the First Court Date, procure that a meeting of the Board is convened for the purpose of approving the Explanatory Memorandum for despatch to Fund Securityholders (subject to receipt of the First Judicial Advice);

- (g) **(First Court Date)**
  - (i) lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the First Judicial Advice; and
  - (ii) apply to the Court for orders directing Fund RE to convene the Scheme Meetings, and in each case consult with the Acquirer as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders. Such consultation must include providing the Acquirer with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Fund RE must consider in good faith any comments provided by or on behalf of the Acquirer;
- (h) **(Scheme Meetings)** take all reasonable steps necessary to comply with the orders of the Court, including, as required, despatching the Explanatory Memorandum to Fund Securityholders, convening and holding the Scheme Meetings in accordance with the Court orders, and putting the Scheme Resolutions to Fund Securityholders at the Scheme Meetings, provided that if this Deed is terminated under clause 12, Fund RE will take all steps reasonably required so that the Scheme Meetings are not held;
- (i) **(update Explanatory Memorandum)** until the date of the Scheme Meetings, promptly update the Explanatory Memorandum with, or where appropriate otherwise inform the Fund Securityholders of, any information that arises after the Explanatory Memorandum have been despatched to Fund Securityholders that is necessary so that the Explanatory Memorandum does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and, where relevant, seek the Court's approval for the dispatch of any updated or supplementary Explanatory Memorandum. Fund RE must consult with the Acquirer as to the content of any documents it proposes to issue to Fund Securityholders under this clause 5.2(i), and such consultation must include providing the Acquirer with a reasonable opportunity to review and comment on the relevant documents before they are lodged, and Fund RE must consider in good faith any comments provided by or on behalf of the Acquirer;
- (j) **(Second Court Date)** if Fund Securityholders approve Scheme Resolutions by the requisite majority, lodge all documents with the Court and take all other reasonable steps so that:
  - (i) an application is heard by the Court for the Second Judicial Advice and
  - (ii) an application is made to the Court for orders approving the Schemes,and in each case, consult with the Acquirer as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing the Acquirer with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Fund RE must consider in good faith any comments provided by or on behalf of the Acquirer;
- (k) **(Court order)** (if required) lodge with ASIC an office copy of any Court order approving Schemes by not later than the first Business Day after the day such office copy is received (or such later date as the Acquirer may agree in writing);
- (l) **(execution and lodgement of the Supplemental Deeds)** if the Court grants the Second Judicial Advice, as soon as practicable after, and in any event by no later than 5.00pm on the first Business Day after the later of the Second Court Date and the date on which all of the Conditions Precedent are satisfied or waived in accordance with this Deed, execute the Supplemental Deeds and lodge with ASIC a copy of the executed

Supplemental Deeds (and if requested by ASIC, a consolidated copy of the Fund Constitutions as amended pursuant to the Supplemental Deeds);

- (m) **(Acquirer Information)** during the period until the Acquirer Information becomes publicly available (other than due to an act of Fund RE without the consent or agreement of the Acquirer), only use the Acquirer Information with the prior written consent of the Acquirer (not to be unreasonably withheld);
- (n) **(implementation of the Schemes)** if all Conditions Precedent in clause 3.1 are satisfied or waived, close the Fund Register as at the Record Date (in accordance with clause 5.10) to determine the identity of Fund Scheme Securityholders and determine their entitlements to the Scheme Consideration in accordance with the Schemes;
- (o) **(Proxy solicitation)** subject to applicable laws, provide the Acquirer with information, access and assistance in relation to discussions regarding proxy solicitation, associated strategy and arrangements that Acquirer reasonably requests;
- (p) **(Promote Schemes)** subject to applicable laws and the approval of the Court (to the extent required), participate in efforts reasonably requested by Acquirer to promote the merits of the Schemes and the Scheme Consideration, including:
  - (i) where requested by Acquirer, meeting with key Fund Scheme Securityholders; and
  - (ii) providing Acquirer with such information and assistance that Acquirer reasonably requests to enable it to promote the merits of the Schemes;
- (q) **(information)** provide all necessary information, or have the Fund Registry provide all necessary information, to the Acquirer about the Schemes and Fund Securityholders, in each case in a form reasonably requested by the Acquirer, which the Acquirer reasonably requires in order to facilitate the provision by the Acquirer of the Scheme Consideration;
- (r) **(proxy reports)** keep the Acquirer reasonably informed on the status of proxy or other voting instructions or revocations received for the Scheme Meetings before the Scheme Meetings; and
- (s) **(all things necessary)** do all other things contemplated by or necessary to lawfully give effect to the Schemes and ensure that the Schemes are in effect in accordance with applicable laws and regulations.

### 5.3 Appeal process

If the Court refuses to make any orders convening the Scheme Meetings or approving the Schemes, subject to Fund RE's obligations under the Fund Constitutions:

- (a) Fund RE and Acquirer must consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) Fund RE must reasonably consider appealing the Court's decision unless the parties agree otherwise, or an independent senior counsel of the New South Wales bar advises Fund RE that, in their view, an appeal would have no reasonable prospect of success before the End Date.

### 5.4 Acquirer's obligations in respect of the Schemes

The Acquirer must take all steps reasonably necessary to assist Fund RE to propose and implement the Schemes as soon as is reasonably practicable after the date of this Deed and otherwise in accordance with the Timetable, and in particular the Acquirer must:

- (a) **(Acquirer Information)** as soon as reasonably practicable after the date of this Deed, prepare and promptly provide to Fund RE the Acquirer Information for inclusion in the Explanatory Memorandum (to the extent not already provided as at the date of this Deed), including all information regarding the Acquirer Group Members and the Scheme Consideration required by all applicable laws, ASIC Regulatory Guide 60, ASIC Regulatory Guide 74 and Guidance Note 15, and consent to the inclusion of that information in the Explanatory Memorandum, and take into account all reasonable and timely comments from Fund RE on those drafts;
- (b) **(review of Explanatory Memorandum)** review the drafts of the Explanatory Memorandum prepared by Fund RE and provide comments promptly on those drafts in good faith;
- (c) **(Independent Expert information)** provide all assistance and information reasonably requested by Fund RE or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(reasonable assistance)** provide reasonable assistance to Fund RE to assist Fund RE in applying for the ASIC Relief;
- (e) **(liaison with ASIC)** provide reasonable assistance to Fund RE to assist Fund RE to resolve any matter raised by ASIC (if applicable) regarding the Explanatory Memorandum or the Schemes during its review of the Explanatory Memorandum;
- (f) **(accuracy of Acquirer Information)** confirm in writing to Fund RE that the Acquirer Information in the Explanatory Memorandum does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (g) **(approval and consent to inclusion of Acquirer Information)** as soon as reasonably practicable after the conclusion of any review by ASIC of the Explanatory Memorandum, confirm in writing to Fund RE that the Acquirer consents to the inclusion of the Acquirer Information in the Explanatory Memorandum, in the form and context in which the Acquirer Information appears;
- (h) **(keep Fund RE informed)** promptly inform Fund RE if it becomes aware that Acquirer Information contains a statement that, in the form and context in which it appears in the Explanatory Memorandum, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required so that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (i) **(Court representation)** procure that it is represented by counsel at the Court hearings convened in relation to the Schemes, at which, through its counsel and if requested by the Court, the Acquirer will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this Deed and the Schemes;
- (j) **(Deed Poll)** no later than the Business Day prior to the First Court Date, execute and deliver to Fund RE, the Deed Poll;
- (k) **(Scheme Consideration)** if the Schemes become Effective, provide, or procure the provision of, the Scheme Consideration in accordance with the Schemes and the Deed Poll on the Implementation Date;

- (l) **(Fund Provided Information)** during the period until the Fund Provided Information becomes publicly available, only use the Fund Provided Information with the prior written consent of Fund RE (not to be unreasonably withheld); and
- (m) **(all things necessary)** do all other things contemplated by or necessary to lawfully give effect to the Schemes and ensure that the Schemes are in effect in accordance with applicable laws and regulations.

## 5.5 Responsibility statement

Fund RE and Acquirer will have responsibility for preparation of the following information:

- (a) Fund RE is responsible for the Fund Provided Information contained in the Explanatory Memorandum;
- (b) the Acquirer is responsible for Acquirer Information contained in the Explanatory Memorandum; and
- (c) the Independent Expert is responsible for the Independent Expert's Report.

## 5.6 Responsibility for information

- (a) Each of Fund RE and the Acquirer will be responsible:
  - (i) generally, for the content of those sections of the Explanatory Memorandum to the extent it provides information to be included in that content; and
  - (ii) in particular, for the information designated in clause 5.5 above.
- (b) For the avoidance of doubt:
  - (i) the Acquirer accepts no responsibility for, and no liability in relation to, the Fund Provided Information or any other information referred to in clause 5.6(a)(i) that is not provided by the Acquirer;
  - (ii) Fund RE accepts no responsibility for, and no liability in relation to, the Acquirer or any other information referred to in clause 5.6(a)(i) that is not provided by Fund RE;
  - (iii) the Explanatory Memorandum shall contain statements to the effect of clauses 5.6(b)(i) and 5.6(b)(ii); and
  - (iv) the parties agree that the Independent Expert is responsible for the Independent Expert's Report.

## 5.7 Verification

Each party must undertake appropriate verification processes for the information supplied by that party for the Explanatory Memorandum.

## 5.8 Disagreement on content

- (a) Subject to clause 5.8(b), if the Acquirer and Fund RE disagree on the form or content of the Explanatory Memorandum, they must consult in good faith to try to settle an agreed form of the Explanatory Memorandum. If complete agreement is not reached after reasonable consultation, then:
  - (i) if the disagreement relates to the form or content of Acquirer Information (or any information solely derived from, or prepared solely in reliance on, the Acquirer Information) contained in the Explanatory Memorandum, Fund RE will, acting in good faith, make the amendments that the Acquirer reasonably requires; and

- (ii) if the disagreement relates to the form or content of any other part of the Explanatory Memorandum, the Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Memorandum.
- (b) At no time shall the form or content of any part of the Explanatory Memorandum cause the Explanatory Memorandum to not comply with all applicable laws or be inconsistent with Guidance Note 15, ASIC Regulatory Guide 60 and ASIC Regulatory Guide 74.

## **5.9 Dealings in Fund Securities**

- (a) For the purpose of establishing the persons who are Fund Scheme Securityholders and the number of Fund Scheme Securities held by them, Fund RE will only recognise dealings in Fund Securities provided that registrable transfers or transmission applications in respect of those dealings are received by the Fund Registry by 5.00pm on the day which is the Record Date (in which case Fund RE must register, or procure the Fund Registry registers, such transfers or transmission applications before 11.00am on the Business Day following the Record Date).
- (b) Fund RE will not accept for registration, nor recognise for the purpose of establishing the persons who are Fund Scheme Securityholders, any transfer or transmission application in respect of Fund Securities received after the time specified in clause 5.9(a) (other than as contemplated by the Schemes in relation to the transfer of the Fund Scheme Securities to the Acquirer), or received prior to that time but not in registrable form.

## **5.10 Fund Register**

- (a) On and from the Effective Date, Fund RE will, until the Scheme Consideration has been provided and the name and address of the Acquirer has been entered into the relevant sections of the Fund Register as the holder of all of the Fund Scheme Securities, respectively, maintain, or procure the maintenance of, the Fund Register and the Fund Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) As from the Record Date (and other than for the Acquirer Group Members following the Implementation Date), each entry in the Fund Register as at the Record Date relating to Fund Scheme Securities will cease to have any effect other than as evidence of the entitlements of Fund Scheme Securityholders to the Scheme Consideration in respect of those Fund Scheme Securities.

## **6 Public announcements**

- (a) Where a party is required by law or a memorandum of understanding with a Governmental Agency to make any announcement or make any disclosure relating to a matter the subject of the Schemes, it may do so only after it has to the extent legally permissible given the other party as much notice as practically possible and has reasonably consulted with the other party and its legal advisers. For the avoidance of doubt, nothing in this clause 6(a) prevents a party from making any announcement in the ordinary course in relation to its business generally or, in the case of Fund RE, relating to activities or business undertaken in any capacity other than as Fund RE.
- (b) Subject to clause 6(a), no party may make any public announcement or disclosure in connection with the Schemes or any other transaction contemplated by this Deed other than in a form approved in writing by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable and such approval will not be unreasonably withheld, conditioned or delayed. For the avoidance of

doubt, this clause 6 does not apply to any announcement or disclosure relating to any Competing Proposal.

## 7 Conduct of Business and Requests for Access

### 7.1 Conduct of business

- (a) During the period from the date of this Deed up to and including the Implementation Date, subject to Fund RE's obligations under the Fund Constitutions, Fund RE shall:
  - (i) procure that the business and operations of the Fund Group are conducted in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this Deed;
  - (ii) not take any of the following actions:
    - (A) **(conversion)** Fund RE converts all or any of the Fund's securities into a larger or smaller number of securities or a resolution is passed to do so;
    - (B) **(reduction of capital)** Fund RE reduces or resolves to reduce the Fund's capital in any way;
    - (C) **(redemption)** Fund RE redeems any of the Fund's securities or resolves to redeem any of the Fund's securities;
    - (D) **(buy back)** Fund RE buys back or redeems (or agrees to buy back or redeem) any of the Fund's securities;
    - (E) **(issuing units or options)** Fund RE or trustee of another Fund Group Member issues securities or grants an option over a Fund Group Member's units or securities, or agrees to make such an issue or grant such an option, other than to Fund RE or the trustee of another Fund Group Member; or
    - (F) **(convertible securities)** Fund RE or the trustee of another Fund Group Member issues or agrees to issue convertible notes or any other security or instrument convertible into Fund Group Member securities; and
    - (G) **(distributions)** other than a Permitted Distribution, Fund RE declares, resolves to pay or pays any distribution or other share of its profits or assets or returning or agreeing to return any capital to unitholders (whether in cash or in specie).
- (b) Subject to Fund RE's obligations under the Fund Constitutions, Fund RE must keep the Acquirer informed of any material developments concerning the Fund Group. Nothing in clause 7.1 restricts the ability of Fund RE to take any action:
  - (i) which is required or permitted by this Deed or the Schemes;
  - (ii) which has been approved in writing by the Acquirer (which must not be unreasonably withheld or delayed);
  - (iii) which is reasonably necessary or prudent in response to legal proceedings, where the substance of those proceedings has been Fairly Disclosed to the Acquirer prior to the date of this Deed;
  - (iv) Fairly Disclosed to the Acquirer prior to the date of this Deed;

- (v) Fairly Disclosed in a document lodged with ASIC prior to the date of this Deed, or which would be disclosed in a search of ASIC records or the PPS Register;
  - (vi) required to respond to an emergency, disaster or health advice of any Governmental Agency; or
  - (vii) required by law, regulation or by an order of a court or Governmental Agency, provided that, to the extent practicable, Fund RE must use all reasonable endeavours to consult in good faith with the Acquirer before taking any action permitted under clause 7.1(b)(vi) or 7.1(b)(vii).
- (c) For the avoidance of doubt, nothing in this clause 7.1 restricts the ability of Fund RE to respond to a Competing Proposal in accordance with clause 12.

## 7.2 Access to information and co-operation

- (a) During the period from the date of this Deed up to the Implementation Date, subject to Fund RE's obligations under the Fund Constitutions, Fund RE shall respond to reasonable requests from Acquirer and its Representatives for information concerning the Fund Group businesses, operations and affairs as soon as reasonably practicable after such requests are made, and give the Acquirer and its Representatives reasonable access to the Fund Executive Team and records, and otherwise provide reasonable co-operation to the Acquirer and its Representatives, in each case for the purposes of:
- (i) the implementation and facilitation of the Schemes, including satisfying the Conditions Precedent;
  - (ii) planning the transition of the Fund Group and other matters relating to the conduct of Fund Group following the Implementation Date; or
  - (iii) any other purpose that is agreed in writing between the parties, (the **Approved Purpose**).
- (b) The obligations in clause 7.2(a) do not require Fund RE to:
- (i) do anything which would cause undue disruption to the operation of the Fund in the ordinary course;
  - (ii) require a trustee of a Fund Group to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
  - (iii) require a trustee of a Fund Group Member to take any action that would breach an obligation to any person (including any confidentiality obligations) or prejudice its relationship with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with it in relation to the Fund Group Member;
  - (iv) provide information to the Acquirer concerning Fund RE's directors' and management's consideration of the Schemes; or
  - (v) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Fund Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege.
- (c) For the avoidance of doubt, the parties acknowledge that all information that is provided pursuant to this clause 7.2 will be provided subject to clause 13.

## **8 Not used**

## **9 Board Recommendations**

### **9.1 Board recommendation**

- (a) Fund RE must use reasonable endeavours to procure that:
  - (i) the Explanatory Memorandum includes (on the basis of written statements or resolutions made by the Board) a statement that the Board recommends that Fund Securityholders to vote in favour of the Schemes at the Scheme Meetings and all resolutions necessary to implement the Schemes, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Schemes are in the best interests of Fund Scheme Securityholders (the **Recommendation**); and
  - (ii) the Directors do not change or withdraw their Recommendation.

### **9.2 Withdrawal of Recommendation**

The obligations in clause 9.1 will cease to apply:

- (a) if the Independent Expert opines in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Schemes are not in the best interests of Fund Scheme Securityholders;
- (b) if Fund RE receives a Competing Proposal and has complied with its obligations under clause 9.4, where the Board has determined after consultation with its legal and financial advisors, that the Competing Proposal is or could reasonably be expected to become a Superior Proposal; or
- (c) in respect of the Recommendation of any Director:
  - (i) if a Court, ASIC or other Governmental Agency requires or requests that a Director to change, withdraw, qualify or modify, or abstain from making, his or her Recommendation; or
  - (ii) Fund RE reasonably determines that the relevant Director has an interest in the Schemes that renders it inappropriate for him or her to make or maintain such Recommendation and provided the Court would be unlikely to grant the orders contemplated under clause 3.1(e) as a result of such interest in circumstances where the Recommendation is made or maintained in respect of the relevant Director.

### **9.3 Qualification of Recommendation**

For the purposes of clause 9.1, customary qualifications and explanations contained in:

- (a) the Explanatory Memorandum or any other public announcement in relation to a Recommendation to the effect that the Recommendation is made:
  - (i) in the absence of a Superior Proposal; or
  - (ii) in respect of any public announcement issued before the dispatch of the Explanatory Memorandum to Fund Securityholders, or in respect of the Explanatory Memorandum or any public announcements issued at the time of or after the dispatch of the Explanatory Memorandum, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to

conclude) that the Schemes are in the best interests of Fund Scheme Securityholders'; and

- (b) any public announcement or other statement made by Fund RE, the Board or any Director to the effect that no action should be taken by Fund Securityholders pending the assessment of a Competing Proposal by the Board,

will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation, or an endorsement of a Competing Proposal, and will not contravene this clause 9 or trigger a right for the Acquirer to terminate this Deed.

## 9.4 Competing Proposal

- (a) For the period from the date of this Deed to 8.00am on the Second Court Date, Fund RE must as soon as reasonably practicable (and in any event within 48 hours) notify the Acquirer in writing if it, any of its Representatives, becomes aware of any:
  - (i) negotiations, discussions or other communications, or any other contact or approach, in relation to an actual or potential Competing Proposal;
  - (ii) approach or proposal made to, or received by, Fund RE or any of its Representatives, in connection with, or in respect of any, exploration or completion of, an actual or potential Competing Proposal; or
  - (iii) provision by Fund RE or any of its Representatives of any material non-public information concerning the business or operations of Fund or Fund Group to any Third Party (other than a Governmental Agency) in connection with an actual or potential Competing Proposal, whether direct or indirect, solicited or unsolicited, and in writing or otherwise.
- (b) A notice given under this clause 9.4 must include all material details of the Competing Proposal (including the price (or if not cash, implied value), funding, form of consideration, proposed deal protection provisions, conditions, timing, break fee provisions and other key terms of any Competing Proposal and the identity of the proponent(s) of any such proposal), in each case to the extent known by Fund RE or provided in writing to any of its Representatives.

## 10 Representations and Warranties

### 10.1 Acquirer Representations and Warranties

- (a) The Acquirer (in its own right and separately as trustee of the Acquirer Trust) represents and warrants to Fund RE each of the Acquirer Representations and Warranties.
- (b) Fund RE acknowledges and agrees that the Acquirer Representations and Warranties and the indemnity in clause 11.1 are given subject to those matters that:
  - (i) are expressly provided for in this Deed;
  - (ii) are Fairly Disclosed to Fund RE as at the date of this Deed;
  - (iii) have been Fairly Disclosed to Fund RE had Fund RE conducted a search of ASIC records or the PPS Register, in each case as at 2 Business Days prior to the date of this Deed, or public records maintained by any Australian court, in relation to any Acquirer Group Member, as at 30 Business Days prior to the date of this Deed; and
  - (iv) are within the actual knowledge of Fund RE as at the date of this Deed.

## 10.2 Fund RE Representations and Warranties

- (a) Fund RE (solely in its capacity as responsible entity of the Fund) represents and warrants to the Acquirer each of the Fund RE Representations and Warranties.
- (b) The Acquirer acknowledges and agrees that the Fund RE Representations and Warranties are given subject to those matters that:
  - (i) are expressly provided for in this Deed;
  - (ii) are Fairly Disclosed to the Acquirer as at the date of this Deed;
  - (iii) have been Fairly Disclosed to the Acquirer had the Acquirer conducted a search of ASIC records or the PPS Register, in each case as at 2 Business Days prior to the date of this Deed, or public records maintained by any Australian court, in relation to any Fund Group Member, as at 30 Business Days prior to the date of this Deed; and
  - (iv) are within the actual knowledge of the Acquirer as at the date of this Deed.

## 10.3 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this Deed the other party has relied on the representations and warranties provided by the Representor under this clause 10; and
- (b) it has not entered into this Deed in reliance on any warranty or representation made by or on behalf of the other party except those warranties and representations set out in this Deed.

This acknowledgment does not prejudice the rights any party may have in relation to the Fund Provided Information, Acquirer Information or any information filed by the other party with ASIC.

## 10.4 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given under this clause 10.

## 10.5 Status of representations and warranties

Each representation and warranty in this clause 10:

- (a) is severable;
- (b) will survive the termination of this Deed; and
- (c) is given with the intent that liability under it will not be confined to breaches that are discovered prior to the date of termination of this Deed.

## 10.6 Timing of representations and warranties

Each representation and warranty made or given under this clause 10 is given:

- (a) at the date of this Deed, the date of dispatch of the Explanatory Memorandum, on the date of the Scheme Meetings, and at 5.00pm on the Business Day before the Second Court Date; or
- (b) where expressed to be given at a particular time, at that time.

**10.7 Fund Group Party release**

- (a) On and from the date of this Deed to the Implementation Date, the Acquirer releases its rights, and agrees with Fund RE that it will not make a Claim, against any Fund Group Party (other than Fund RE) as at the date of this Deed in connection with:
- (i) any breach of any representations, covenants and warranties of Fund RE in this Deed; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission; or
  - (iii) any failure to provide information,
- whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Fund Group Party has engaged in fraud.
- (b) Fund RE receives and holds the benefit of clause 10.7(a) to the extent it relates to each Fund Group Party as trustee for each of them. Nothing in this clause 10.7 limits the Acquirer's rights to terminate this Deed under clause 12.
- (c) On and from the Implementation Date, the Acquirer releases its rights, and agrees with Fund RE that it will not make (and will procure that Fund Group Members do not make) a Claim, against any Fund Group Party as at the date of this Deed in connection with:
- (i) any breach of any representations, covenants and warranties of Fund RE in this Deed; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission; or
  - (iii) any failure to provide information,
- whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise.

**10.8 Acquirer release**

- (a) Subject to clause 10.8(c), Fund RE releases its rights, and agrees with the Acquirer that it will not make (and will procure that Fund Group Members do not make) a Claim, against any Acquirer Party (other than the Acquirer) as at the date of this Deed in connection with:
- (i) any breach of any representations, covenants and warranties of the Acquirer in this Deed; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission; or
  - (iii) any failure to provide information,
- whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Acquirer Party has engaged in fraud.
- (b) The Acquirer receives and holds the benefit of clause 10.8(a) to the extent it relates to each Acquirer Party as trustee for each of them. Nothing in this clause 10.8 limits Fund RE's rights to terminate this Deed under clause 12.
- (c) This clause 10.8 does not apply to any obligations of an Acquirer Group Member who has separately provided services to Fund RE under any contract or arrangement independent to this Deed.

## 10.9 Forecasts and budgets

In connection with this Deed:

- (a) the Acquirer acknowledges and agrees that:
  - (i) Fund RE and each of its Representatives make no representation or warranty in respect of any future matter, estimate, forecast or budget (**Forward Looking Information**);
  - (ii) Forward Looking Information is inherently uncertain and may prove to be incorrect;
  - (iii) the Acquirer has not relied on any Forward Looking Information in determining whether or not to enter into this Deed;
  - (iv) to the maximum extent permitted by law, Fund RE and its Representatives will not be liable for any Claim by the Acquirer or its Representatives using or acting on any Forward Looking Information; and
  - (v) to the extent permitted by law, the Acquirer waives and must procure that each of its Representatives waive all rights and Claims, that they may otherwise have against Fund RE or any of its Representatives in relation to any Forward Looking Information, except as expressly set out in this Deed; and
- (b) Fund RE acknowledges and agrees that:
  - (i) the Acquirer and each of its Representatives make no representation or warranty in respect of any Forward Looking Information;
  - (ii) Forward Looking Information is inherently uncertain and may prove to be incorrect;
  - (iii) Fund RE has not relied on any Forward Looking Information in determining whether or not to enter into this Deed;
  - (iv) to the maximum extent permitted by law, the Acquirer and each of its Representatives will not be liable for any Claim by Fund RE or its Representatives using or acting on any Forward Looking Information; and
  - (v) to the extent permitted by law, Fund RE waives and must procure that each of its Representatives waive all rights and Claims, that they may otherwise have against the Acquirer or any of its Representatives in relation to any Forward Looking Information, except as expressly set out in this Deed.

## 11 Indemnity

### 11.1 Indemnity by the Acquirer

The Acquirer agrees with Fund RE to indemnify and keep indemnified Fund RE from and against all loss that it may suffer or incur by reason of any breach of this Deed by the Acquirer or any of the representations and warranties of the Acquirer in clause 10.1.

### 11.2 Survival of indemnity

Each indemnity in clause 11.1 will:

- (a) be severable;
- (b) be a continuing obligation;

- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Deed; and
- (d) survive the termination of this Deed.

## 12 Termination

### 12.1 Termination by either party

Either party (**terminating party**) may terminate this Deed by notice to the other:

- (a) in accordance with clause 3.6;
- (b) if at any time before 8.00am on the Second Court Date, the other party is in material breach of any clause of this Deed (other than a breach of a Fund RE Representation and Warranty or an Acquirer Representation and Warranty), provided that the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this Deed, and the relevant circumstances have continued to exist for 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) from the time such notice is given;
- (c) if the Schemes have not become Effective on or before the End Date; or
- (d) if the Scheme Resolutions are not approved by the requisite majority at the Scheme Meetings.

### 12.2 Termination for breach of representation and warranties

- (a) The Acquirer may, at any time prior to 8.00am on the Second Court Date, terminate this Deed for breach of a Fund RE Representation and Warranty only if:
  - (i) the Acquirer has given written notice to Fund RE setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 12.2(a)(i); and
  - (iii) the loss that would reasonably be expected to follow from such a breach is material in the context of the Schemes taken as a whole.
- (b) Fund RE may, at any time before 8.00am on the Second Court Date, terminate this Deed for breach of an Acquirer Representation and Warranty only if:
  - (i) Fund RE has given written notice to the Acquirer setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 12.2(b)(i); and
  - (iii) the loss that would reasonably be expected to follow from such a breach is material in the context of the Schemes taken as a whole.

### 12.3 Termination by the Acquirer

The Acquirer may terminate this Deed by written notice to Fund RE before 8.00am on the Second Court Date if:

- (a) a majority of the Directors have changed, withdrawn or adversely modified their Recommendation or made a public statement supporting or endorsing a Competing Proposal; or
- (b) Fund RE enters into an agreement to implement a Competing Proposal.

#### **12.4 Termination by Fund RE**

Fund RE may terminate this Deed at any time before 8am on the Second Court Date by notice in writing to the Acquirer if, Fund RE has complied with its obligations under clause 9.4, and a majority of the Directors have withdrawn their Recommendation or made a public statement supporting or endorsing a Competing Proposal.

#### **12.5 Effect of termination**

In the event of termination of this Deed by either the Acquirer or Fund RE pursuant to clauses 3.6, 12.1, 12.2, 12.3, or 12.4, this Deed will have no further force or effect and the parties will have no further obligations under this Deed, provided that:

- (a) this clause 12 and clauses 1, 11, 13, 15, 16 and 17 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this Deed.

### **13 Confidentiality**

#### **13.1 Restrictions on disclosure and use of Confidential Information**

Each party agrees and acknowledges that, save to the extent of any inconsistency in this Deed or with the Discloser's prior written consent, the Recipient undertakes and warrants that it will and each of its Representatives will:

- (a) hold the Confidential Information in strict confidence and keep it secret;
- (b) not disclose any Confidential Information to any person (or allow or assist or make it possible for any person to observe or have access to any Confidential Information);
- (c) not use, or cause or permit to be used, any Confidential Information except for the Approved Purpose;
- (d) not use, or cause or permit to be used, any Confidential Information to the current or potential competitive disadvantage of a Discloser or any of its Related Bodies Corporate or the Business;
- (e) not reproduce or record, or cause or permit any reproduction or recording of, any Confidential Information except to the extent necessary for the Approved Purpose; and
- (f) not make, or cause or permit to be made, any documents based on or relating to any Confidential Information except for the Approved Purpose.

#### **13.2 Storage of Confidential Information**

The Recipient must:

- (a) keep all Confidential Information (including any document based on or relating to any of the Confidential Information) within the possession, power, custody or control of the Recipient or any Approved Person;
- (b) establish and maintain (or cause to be established and maintained) effective security, document management and data management measures to ensure that the Confidential

Information (including any document based on or relating to the Confidential Information) is properly and securely stored; and

- (c) otherwise use the same degree of care a prudent person would use to protect that person's Confidential Information.

### **13.3 Disclosure to Representatives**

The Recipient may disclose the Confidential Information to, or allow access to the Confidential Information by, a Representative of the Recipient if:

- (a) the disclosure or access is necessary for the Approved Purpose, and is only made or allowed to that extent;
- (b) before disclosure is made of or access allowed to the Confidential Information the Representative is informed of the confidentiality obligations contained in this Deed and has agreed to comply with the obligations contemplated under this Deed as if they were a party to it; and
- (c) in the case of a Representative who is an Adviser, on the Discloser's written request, the Recipient has notified the name of the Adviser to the Discloser in writing and the Discloser has objected to disclosure to that Adviser within 2 business days of notification from the Recipient of the identity of that Adviser on the basis that the Discloser can only object to an Adviser where that Adviser has an actual conflict of interest or duty in acting as an Adviser.

### **13.4 Recipient responsible for Approved Persons**

- (a) It is a condition of the Recipient's right under clause 13.3 to disclose to a Representative, or allow access by a Representative to, any Confidential Information that the Recipient remains at all times responsible for ensuring that the confidentiality of the Confidential Information is preserved.
- (b) If a Representative breaches this Deed (or would have breached this Deed if the Representative had been the Recipient), that breach will be deemed to be a breach by the Recipient, and the Disclosers will be entitled to all remedies available to them under this Deed or at law or in equity as if the breach was a breach by the Recipient.

### **13.5 Disclosure pursuant to legal or regulatory requirement**

- (a) Subject to clause 13.5(b), the Recipient:
  - (i) may disclose or allow access to the Confidential Information if required to comply with any applicable law or legally binding order of any Governmental Agency or the applicable rules of any securities exchange; and
  - (ii) is entitled to make any disclosure of the Confidential Information that is required by any applicable law, legally binding order of any Governmental Agency.
- (b) Before any disclosure is made in reliance on clause 13.5(a), the Recipient must:
  - (i) as soon as practical and to the extent permitted by law notify the Discloser, giving details of the circumstances of the proposed disclosure and of the relevant information to be disclosed;
  - (ii) ensure that only so much of the Confidential Information that is legally compelled to be disclosed, is actually disclosed; and
  - (iii) take all reasonable steps to preserve the confidentiality of the information being disclosed.

**13.6 Use or disclosure in legal proceedings**

The Recipient may use, disclose or allow access to the Confidential Information in any proceedings arising out of or in connection with this Deed to the extent necessary to protect the lawful interests of the Recipient, provided that the Recipient notifies the Disclosers of its intention to make that use or disclosure or allow that access, and gives the Disclosers details of the material and information to be used, disclosed or accessed.

**13.7 Return and destruction**

Except as provided by this clause 13, the Recipient must, as soon as practical on demand by a Discloser and at the Recipient's expense:

- (a) at the Recipient's election, destroy or return to the Disclosers all Confidential Information (including any document based on or relating to any of the Confidential Information) obtained directly or indirectly from the Disclosers or any of their Representatives by the Recipient or any of its Representatives; and
- (b) at the Recipient's election, destroy or provide to the Disclosers all documents based on or relating to any of the Confidential Information made or developed by, or on behalf of, the Recipient or any of its Representatives.

**13.8 No further use of Confidential Information**

Except as permitted by this Deed, the Recipient must (and must ensure that each Approved Person does), immediately on demand by the Discloser, cease to use or make any further disclosure of any Confidential Information, including use or disclosure for the Approved Purpose.

**13.9 Ensuring and confirming compliance**

- (a) The Recipient's obligations in this clause 13 extend to Confidential Information (including any document based on or relating to any of the Confidential Information) in the possession, custody or power of any of its Representatives, and the Recipient must ensure that all such material is returned, provided, permanently deleted or erased or destroyed in accordance with this clause 13.
- (b) The Recipient must confirm promptly to the Discloser, by notice signed by a director of the Recipient, when it has complied with all obligations in this clause 13.

**13.10 Exception**

Clause 13.7 does not apply to:

- (a) the directors' papers of the Recipient or any of its Related Bodies Corporate, or to the minutes of the board of the Recipient or any of its Related Bodies Corporate or of any committee of the board;
- (b) any Confidential Information which the Recipient is required to retain pursuant to applicable law or regulation, the rules of any recognised stock exchange or in accordance with a bona fide document retention policy in place as at the date of this Deed; and
- (c) an Approved Person who is required to retain copies of the Confidential Information for the purposes of applicable professional standards, practices, codes or insurance policies in the ordinary course of their business.

### 13.11 Survival of obligations

The return, provision, erasure, deletion or destruction of Confidential Information or documents under clauses 13.5, 13.6 or 13.7, or the retention of Confidential Information or documents under clause 13.10 does not release the Recipient from its obligations under this Deed.

### 13.12 No representation or warranty

- (a) Save to the extent of any inconsistency in this Deed, the Recipient (for itself and each of its Representatives) acknowledges and agrees that, to the maximum extent permitted by law, neither the Discloser nor its Representatives or Related Bodies Corporate makes any representation or warranty that the Confidential Information:
  - (i) is accurate, reliable or complete, or that reasonable care has been taken in compiling or preparing the Confidential Information; or
  - (ii) is the totality of the information that the Recipient may require for the Approved Purpose or that the Confidential Information is appropriate for the investment objectives, financial situation and particular needs of any person who reads or uses the Confidential Information.
- (b) To the maximum extent permitted by law, all terms and warranties expressed or implied by any legislation, common law, equity, trade, custom or usage or otherwise in relation to the grant by a Discloser or any of its Related Bodies Corporate of rights in respect of the Confidential Information, or otherwise in connection with this Deed, are expressly excluded.

## 14 Foreign resident CGT Withholding

### 14.1 Withholding

If the Acquirer is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the ATO in respect of the acquisition of the Fund Scheme Securities, the Acquirer is permitted to deduct such amounts from the payment of the Scheme Consideration to those Fund Scheme Securityholders, and remit such amounts to the ATO. The aggregate sum payable to relevant Fund Scheme Securityholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Fund Scheme Securityholders (less the amounts remitted to the ATO) shall be taken to be in full and final satisfaction of the amounts owing to those Fund Scheme Securityholders.

### 14.2 Clarification

- (a) Fund RE agrees that the Acquirer may (but is not obliged to) approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Schemes and will provide such information and assistance that the Acquirer reasonably requires in making that approach.
- (b) The Acquirer agrees:
  - (i) to provide Fund RE a reasonable opportunity to review the form and content of all materials to be provided to the ATO, and to take into account Fund RE's comments on those documents and more generally in relation to the Acquirer's engagement with the ATO; and
  - (ii) not to contact any Fund Securityholders (other than a Related Body Corporate of the Acquirer) in connection with the application of Subdivision 14-D to the Schemes without Fund RE's prior written consent.

### 14.3 Consultation

- (a) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process mentioned in clause 14.2.
- (b) The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, ensuring that relevant representations are obtained from Fund Scheme Securityholders.

## 15 GST

### 15.1 Recovery of GST

If GST is payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive.

### 15.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, in relation to the relevant cost, expense or other liability.

### 15.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

### 15.4 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Deed.

### 15.5 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

## 16 Limitation of liability

### 16.1 Acquirer limitation of liability

- (a) Except as provided elsewhere in this Deed, the Acquirer enters into this Deed and undertakes the obligations in it only in its capacity as trustee of the Acquirer Trust.
- (b) Subject to clause 16.1(d), and despite any other provisions of this Deed, a liability arising under or in connection with this Deed is limited and can be enforced against the Acquirer only to the extent to which the Acquirer, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Acquirer Trust.
- (c) No person will be entitled to:

- (i) claim from or commence proceedings against the Acquirer in respect of any liability under this Deed, in any capacity other than as trustee for the Acquirer Trust;
  - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Acquirer, or prove in any liquidation, administration or arrangement of or affecting the Acquirer, except in relation to the property of the Acquirer Trust; or
  - (iii) enforce or seek to enforce any judgment in respect of a liability under this Deed against the Acquirer in any capacity other than as trustee of the Acquirer Trust.
- (d) The limitation in clause 16.1(b) does not apply to any obligation or liability of the Acquirer to the extent to which there is, in respect of that obligation or liability, whether under the Acquirer Trust Deed or by operation of law, a reduction in the extent of the Acquirer's indemnity, or a loss of the Acquirer's right to indemnification, out of the assets of the Acquirer Trust because the Acquirer's behaviour was beyond power or involved fraud, negligence, default or breach of trust in relation to the Acquirer Trust.

## 16.2 Fund RE limitation of liability

- (a) The Acquirer agrees that Fund RE enters into this Deed in its capacity as responsible entity of the Fund and in no other capacity.
- (b) The Acquirer agrees that the liability of Fund RE to the Acquirer, its officers, or agents or any other person under or arising out of this Deed in relation to the Trust is limited to the amount that the Trustee actually receives in the exercise of its right of indemnity against the Trust.
- (c) The Acquirer may enforce its rights under this Deed against Fund RE only to the extent of Fund RE's right of indemnity out of the assets of the Fund.
- (d) If the Acquirer does not recover all money owing to it by enforcing the rights referred to in clause 16.2(c) it may not seek to recover the shortfall by:
  - (i) bringing proceedings against Fund RE in its personal capacity; or
  - (ii) applying to have Fund RE wound up or proving in the winding up of Fund RE unless another creditor has initiated proceedings to wind up Fund RE.
- (e) The Acquirer waives its rights and releases Fund RE from any personal liability whatsoever, in respect of any loss or damage which:
  - (i) it may suffer as a result of Fund RE's non-performance of its obligations and liabilities under this Deed; and
  - (ii) cannot be paid or satisfied out of the assets of the Fund out of which Fund RE is entitled to be indemnified in respect of any liability incurred as the responsible entity of the Fund.
- (f) The limitation in this clause 16.2 does not apply to the extent that any liability arises from fraud, gross negligence or breach of trust by Fund RE as responsible entity of the Fund. For these purposes, it is agreed that Fund RE cannot be regarded as having acted fraudulently, with gross negligence or in breach of trust to the extent to which the fraud, gross negligence or breach of trust has been caused or contributed to by a failure by the Acquirer to fulfil its obligations under this Deed or any other act or omission of the Acquirer or any other person.

- (g) Nothing in clause 16.2(f) shall make Fund RE liable to any claim for an amount greater than the amount which Fund RE would have been able to claim and recover from the assets of the Fund in relation to the relevant liability if Fund RE's right of indemnification out of the assets of the Fund has not been prejudiced by Fund RE's failure to properly perform its duties.
- (h) Fund RE is not obliged to do or refrain from doing anything under this Deed (including incur liability) unless Fund RE's liability is limited in the same manner as set out in clauses 16.2(a) to 16.2(g).
- (i) This clause 16.2 applies despite any other provision in this Deed or any law to the contrary and extends to all liabilities and obligations of Fund RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed. In the event of any inconsistency, this clause 16.2 prevails.

## 17 Expenses, costs and duty

### 17.1 Reimbursement of expenses

- (a) The Acquirer acknowledges that the Fund Group Parties will incur significant costs and expenses in connection with the Schemes and agrees to pay or reimburse Fund Group Parties for those costs and expenses to the extent provided for in, and on the terms of, this clause 17. While the costs and expenses incurred by any Fund Group Party may include those incurred internally (including those associated with work performed by employees of the Fund Group Parties) and through external sources, for the purposes of this Deed, and subject to clause 17.1(b), the **Covered Costs** will only be external Costs reasonably invoiced to any Fund Group Party, its appointed service providers or any of its Controlled Entities or the Acquirer in respect of the work performed:
  - (i) in the period prior to the date of this Deed; and
  - (ii) ending 10 Business Days after the Implementation Date,by external sources (including external financial, accounting, legal and other advisers), and all reasonable travel and out of pocket expenses incurred by a Fund Group Party, during the same period, in connection with the implementation and facilitation of the Schemes, including satisfying the Conditions Precedent, in accordance with this Deed, including GST and any other goods and services or value added tax, duty or levy incurred in relation to such costs and expenses and reasonable out of pocket expenses incurred by the relevant external sources.
- (b) The Acquirer acknowledges and agrees that the Covered Costs will include the Costs incurred in connection with the appointment of the Independent Expert and the preparation of the Independent Expert's Report.
- (c) For the avoidance of doubt, where this Deed is terminated in accordance with this Deed, the Acquirer must, to the extent permitted by law, pay or reimburse the Fund Group Parties for the Covered Costs incurred up to the date of termination in accordance with this clause 17.

### 17.2 Payment Request

- (a) Subject to Fund RE not being in breach of this Deed, where Fund RE considers that a Fund Group Party is entitled to reimbursement under clause 17.1, Fund RE may make a request for reimbursement to the Acquirer (**Payment Request**). Subject to clause 17.2(b), the request for reimbursement must:

- (i) specify the amount of Covered Costs incurred by or on behalf of the Fund Group Party (***Incurred Costs***);
  - (ii) nominate a bank account into which the Incurred Costs are to be paid;
  - (iii) be signed and dated by an authorised representative of the Fund RE; and
  - (iv) attach copies of all the invoices issued to the Fund Group Party, its appointed services providers or any of its Controlled Entities in relation to the relevant Incurred Costs, as well as proof of payment of such invoices.
- (b) For the avoidance of doubt, the Acquirer acknowledges and agrees that invoices may be addressed directly to the Acquirer as part of a Payment Request.
- (c) The Acquirer must pay the Incurred Costs specified in the Payment Request to Fund RE (into the bank account nominated by the Fund RE or otherwise by direction in writing), in immediately available funds, within 20 Business Days after the date of the Payment Request.
- (d) In the event that payment of the Incurred Costs specified in the Payment Request is not made to Fund RE, or as directed in writing, within the time limit set out in clause 17.2(c) above, interest of 5% per annum shall accrue on the Incurred Costs on a daily basis for the account of Fund RE.

### 17.3 Costs

The Acquirer agrees to pay its own Costs in connection with the preparation, negotiation, execution and implementation of this Deed.

### 17.4 Payments and effect of withholdings

- (a) Unless otherwise specified to the contrary, all payments required to be made by the Acquirer under clause 17.2 must be made:
  - (i) in Immediately Available Funds; and
  - (ii) in full without counterclaim or set-off.
- (b) All payments required to be made by the Acquirer under clause 17.2 must be made without any deductions of any present or future withholdings (including Taxes, duties, levies, imposts, deductions and charges of Australia or any other jurisdiction) except:
  - (i) any deduction permitted under clause 14 in relation to an amount payable under Subdivision 14-D of Schedule 1 to the TAA (in which case clause 17.4(c) will for clarity not apply to require any additional payment); or
  - (ii) as otherwise required by law (in which case clause 17.4(c) will apply).
- (c) If a party is compelled by law to deduct any withholding from any payment to any other party (the relevant recipient) under this Deed as contemplated by clause 17.4(b)(ii), then subject to clause 17.4(d) it must pay to the recipient such additional amount as is necessary to ensure that the net amount received by the recipient after withholding equals the amount the recipient would otherwise have been entitled to if not for the withholding.
- (d) A party is not required to make any additional payment to any other party under clause 17.4(c) to the extent that:
  - (i) the withholding is required pursuant to section 255 of the ITAA 1936 or section 260-5 of Schedule 1 to the TAA, or similar legislation in relation to any other Tax or duty;

- (ii) the amount required to be withheld is calculated by reference to the net income received or receivable by the recipient; or
- (iii) the recipient could have lawfully avoided the deduction or withholding by providing or complying with, or procuring that any third party provide or comply with, any statutory notification requirement (such as quoting an Australian Business Number, Tax File Number or providing its name and address).

### 17.5 Duty

All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction contemplated by this Deed must be borne by the Acquirer.

## 18 Miscellaneous

### 18.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Deed:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:

(i) to Fund RE:

**Equity Trustees Limited as responsible entity for  
FSREC Property Fund**

[REDACTED]

[REDACTED]

[REDACTED]

(ii) to the Acquirer:

**ISPT Pty Ltd as trustee for the ISPT Retail Australia  
Property Trust No. 1**

[REDACTED]

[REDACTED]

[REDACTED]

- (c) subject to clause 18.1(d), will be conclusively taken to be duly given or made:

- (i) in the case of delivery in person, when delivered;

- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of email, on the earlier of:
  - (A) when the sender receives an automated message from the email system of the intended recipient confirming delivery; and
  - (B) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5.00pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place; and

- (d) in the case of a notice of termination issued by the Acquirer or Fund RE under clause 12.2(a)(ii) or 12.2(b)(ii) respectively, notice by email will be conclusively taken to be duly given or made at the time the email is sent (as recorded on the device from which the Acquirer sent the email). Nothing in this clause 18.1(d) limits the manner in which such notice may be sent under this clause 18.1.

## 18.2 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing. For the avoidance of doubt, the doctrine of affirmation by election will not apply to any failure by a party to exercise, or delay by a party in exercising, any right, power or remedy under this Deed.

## 18.3 Remedies cumulative

The rights, powers and remedies provided to each party in this Deed are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

## 18.4 Entire agreement

This Deed contains the entire agreement between the parties with respect to its subject matter. This Deed set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with their subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Deed and completing the transactions contemplated by it.

## 18.5 Amendment

This Deed may be amended only by another deed executed by all parties.

## 18.6 Assignment

No party can assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of the other party.

**18.7 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

**18.8 Further assurances**

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

**18.9 Severability of provisions**

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

**18.10 Governing law and jurisdiction**

This Deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

**18.11 Counterparts**

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## Schedule 1

### Acquirer Representations and Warranties

Acquirer represents and warrants to Fund RE that, except as consented to in writing by Fund RE:

- 1 **(corporate status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this Deed and it has taken or will take all necessary corporate action to authorise the performance of this Deed;
  - (d) this Deed is its valid and binding obligation enforceable in accordance with its terms;
  - (e) the execution and performance by it of this Deed, and each transaction contemplated by this Deed, did not and will not violate in any respect a provision of:
    - (i) a law, treaty, judgment, ruling, order or decree binding on it;
    - (ii) its constitution; or
    - (iii) any other document or agreement that is binding on it; and
  - (f) it is not the subject of an Insolvency Event;
- 2 **(trustee status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) the Acquirer Trust has been duly established and has not been terminated;
  - (b) it was validly appointed trustee of the Acquirer Trust in accordance with the terms of the Acquirer Trust Deed, it is the sole trustee of the Acquirer Trust, and no action has been taken to remove or replace it as the trustee of the Acquirer Trust;
  - (c) it is not in default under the terms of the Acquirer Trust Deed and has no notice of any circumstances which will or are reasonably likely to lead to the removal of it as trustee of Acquirer Trust;
  - (d) no action has been taken or proposed to terminate, wind-up or otherwise extinguish the Acquirer Trust;
  - (e) it has the authorisations necessary for it to enter into the documents contemplated by this Deed or the Schemes to which it is a party, perform obligations under them and allow them to be enforced (including any authorisation required under Acquirer Trust Deed (if any));
  - (f) it has not exercised its powers under the Acquirer Trust Deed to release, abandon or restrict any power conferred on it by the Acquirer Trust Deed; and
  - (g) it has the right to be fully indemnified out of the assets of Acquirer Trust in respect of all its obligations and liabilities under this Deed other than in the case of the Acquirer's fraud, negligence or breach of trust;
- 3 **(no regulatory approvals)** no approval from any Governmental Agency is required to be obtained by Acquirer in order to execute and perform this Deed, other than those Regulatory Approvals disclosed to Fund RE in writing prior to the date of this Deed;

- 4 **(no regulatory action)** as at the date of this Deed, no regulatory action of any nature of which a Acquirer Group Member is aware has been taken or threatened that may prevent or in any way restrict its ability to fulfil its obligations under this Deed, the Supplemental Deeds, the Schemes or the Deed Poll;
- 5 **(information)** as far as the Acquirer is reasonably aware, at the time Fund RE commences sending the Explanatory Memorandum to Fund Securityholders, the Acquirer Information provided for inclusion in the Explanatory Memorandum is true and correct in all material respects, complies with all applicable laws, will not be misleading or deceptive in any material respect (including by way of omission or otherwise);
- 6 **(basis of information)** the Acquirer Information:
- (a) will be provided to Fund RE in good faith and on the understanding that Fund RE and each other Fund Group Party will rely on that information for the purposes of preparing the Explanatory Memorandum and determining to proceed with the Schemes; and
  - (b) as at the date the Explanatory Memorandum will be dispatched to Fund Securityholders, will comply in all material respects with the requirements of the Corporations Act, ASIC Regulatory Guide 60, ASIC Regulatory Guide 74 and Guidance Note 15,
- and all information provided by or on behalf of the Acquirer to the Independent Expert to enable the Independent Expert's Report to be prepared, as at the date that information is provided, has been provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- 7 **(new information)** it will, as a continuing obligation, provide to Fund RE all further or new information which arises after the Explanatory Memorandum has been despatched to Fund Securityholders until the date of the Scheme Meetings which is necessary to ensure that the Acquirer Information is not misleading or deceptive in any material respect (including by way of omission);
- 8 **(availability of funding)** it will, by 8:00 am on the Second Court Date, have available to it on an unconditional basis (other than conditions relating to, or which will cease to apply or be satisfied following, the approval of the Court and other conditions within the control of the Acquirer) sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy the Acquirer's obligations to pay the Scheme Consideration in accordance with its obligations under this Deed, the Schemes and the Deed Poll; and
- 9 **(compliance with laws)** as far as the Acquirer is aware, each Acquirer Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Governmental Agencies having jurisdiction over it and has all material licenses, authorisations and permits necessary for it to conduct its business as it has been conducted in the 12 months prior to the date of this Deed.

## Schedule 2

### Fund RE Representations and Warranties

Fund RE represents and warrants to the Acquirer that, except as consented to in writing by the Acquirer:

- 1 **(corporate status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this Deed and has taken or will take all necessary corporate action to authorise the performance of this Deed;
  - (d) this Deed is its valid and binding obligation enforceable in accordance with its terms;
  - (e) the execution and performance by it of this Deed and each transaction contemplated by this Deed did not and will not violate in any respect a provision of:
    - (i) a law, treaty, judgment, ruling, order or decree binding on it;
    - (ii) its constitution; or
    - (iii) any other document or agreement that is binding on it; and
  - (f) no Fund Group Member is the subject of an Insolvency Event;
- 2 **(Fund Scheme Securities)** the Fund Scheme Securities constitute all Fund Securities on issue as at the Record Date other than the Fund Securities held by the Acquirer;
- 3 **(Material licences and authorisations)** Fund RE and the trustee of any Fund Group Member has all material licences, authorisations and permits necessary for it to conduct its activities in relation to the Fund Group as such activities have been conducted in the 12 months prior to the date of this Deed;
- 4 **(No litigation)** no person has announced, commenced or threatened any claim, dispute or litigation (including any court proceeding, arbitration or expert determination) relating to a member of the Fund Group that is still outstanding as at the date of this Deed and will or is reasonably likely to have a material impact on the operational or financial performance of the Fund Group; and
- 5 **(No enforcement action)** as at the date of this Deed, as far as Fund RE is aware, no enforcement action or investigation has been announced or commenced by an issuer of a material licence relating to the Fund Group, which will or is reasonably likely to have a material adverse impact on the operational or financial performance of the Fund Group.

**Schedule 3****Timetable**

<b>Event</b>	<b>Date</b>
If required, submit draft Explanatory Memorandum to ASIC	Early August 2025
First Court Date	Late August 2025
Explanatory Memorandum despatched to Fund Securityholders	Late August 2025
Scheme Meetings	Mid September 2025
Second Court Date	Mid September 2025
Effective Date	Mid September 2025
Record Date	Late September 2025
Implementation Date	Early October 2025

**Schedule 4**

**Supplemental Deed - Fort Street Real Estate Capital Fund I**



Equity Trustees Limited

## Supplemental Deed Poll

Amending the Constitution for Fort Street Real Estate Capital Fund I

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
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**This Deed Poll** is made on

## **Parties**

- 1 **Equity Trustees Limited** (ACN 004 031 298) as responsible entity for the Fort Street Real Estate Capital Fund I (ARSN 163 688 346) (the **Fund**) of Level 1, 575 Bourke Street, Melbourne VIC 3000 (the **Responsible Entity**).

## **Recitals**

- A The Responsible Entity is the responsible entity of the Fund.
- B The Fund is part of a stapled group together with the unlisted managed investment schemes: Fort Street Real Estate Capital Fund II and Fort Street Real Estate Capital Fund III.
- C The Responsible Entity and the Acquirer have agreed, by executing the Scheme Implementation Deed, to propose and implement the Scheme.
- D The Constitution must be amended to facilitate the Scheme.
- E Under clause 27 of the Constitution, subject to the Corporations Act, the Responsible Entity may amend the Constitution by executing a supplemental deed.
- F Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be amended by special resolution of the Members of the Fund.
- G At a meeting held on [ ] convened in accordance with the Corporations Act, the Fund Securityholders approved a special resolution to make the amendments to the Constitution contained in this Supplemental Deed Poll.
- H Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed Poll cannot take effect until a copy of this Supplemental Deed Poll has been lodged with ASIC.
- I The Acquirer has entered into a deed poll for the purpose of covenanting in favour of the Fund Scheme Securityholders that they will observe and perform the obligations contemplated of them under the Scheme and the Scheme Implementation Deed.

**It is declared** as follows.

## **1 Definitions and Interpretation**

### **1.1 Definitions**

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context otherwise requires.

**Acquirer** means ISPT Pty Ltd (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No 1 (ABN 19 915 864 713).

**Constitution** means the trust deed constituting the Fund dated 7 June 2013, as amended from time to time.


**Effective Time** means the date and time on which a copy of this Supplemental Deed Poll is, or the modifications set out in it are, lodged with ASIC under section 601GC(2) of the Corporations Act.

**Fund Scheme Securityholder** has the meaning given in the Scheme Implementation Deed.

**Fund Securityholder** has the meaning given in the Scheme Implementation Deed.

**Schedule** means Schedule 1 to this Supplemental Deed.

**Scheme** means the arrangement in respect of the Fund set out in the Scheme Implementation Deed and facilitated by the amendments to the Constitution set out in this Supplemental Deed Poll.

**Scheme Implementation Deed** means the deed of that name between the Responsible Entity and the Acquirer dated on , as amended from time to time.

## 1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.
- (b) Clauses 1.1 ('Definitions') and 1.2 ('Interpretation') of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

## 1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Fund Securityholders jointly and severally.

## 2 Amendment of Constitution

The Responsible Entity amends the Constitution so that, on and from the Effective Time, the Constitution is amended as set out in the Schedule.

## 3 No Resettlement

The Responsible Entity confirms that it is not by this Supplemental Deed Poll intending to:

- (a) settle or redeclare the Fund declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

## 4 Governing Law and Jurisdiction

This Supplemental Deed Poll is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

Each person executing this deed on behalf of a party states that they have no notice of revocation or suspension of their authority.

\_\_\_\_\_  
Signature of Attorney

Office &amp; Name of Attorney

Signature of Attorney

Office &amp; Name of Attorney

## Schedule 1

### Amendments to the Constitution of Fort Street Real Estate Capital Fund I

The Constitution is amended as follows:

#### 1 Clause 1.1 - Definitions

- (a) In clause 1.1 of the Constitution, the following definitions are inserted in alphabetical order:

**Acquirer** means ISPT Pty Ltd (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No 1 (ABN 19 915 864 713).


**Acquirer Group Member** means:

- (a) the Acquirer;
- (b) any of the Acquirer's Related Bodies Corporate, excluding, for the avoidance of doubt, the Fund Group.

**Board** means the board of directors of the Responsible Entity.

**Control** has the meaning given in section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

**Controlled Entities** means, in relation to an Entity, another Entity which is a Subsidiary of it, or which is Controlled by it.

**Deed Poll** means the deed poll dated  executed by the Acquirer in favour of each Fund Scheme Securityholder in relation to the Scheme.

**Effective** means, in relation to the Scheme, the supplemental deed poll making amendments to this Constitution to facilitate the Scheme, including the insertion of clause 36, taking effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which the Scheme becomes Effective.

**End Date** means the date which is six months from the date of the Scheme Implementation Deed, or such later date as the Acquirer and Responsible Entity may agree in writing.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**Fund Group** means each registered scheme comprising the Fund and each of their Controlled Entities.

**Fund Scheme Securities** means all Fund Securities on issue as at the Scheme Record Date except for Fund Securities held by the Acquirer.

**Fund Scheme Securityholder** means each person who is registered on the Register as a holder of Fund Scheme Securities as at the Scheme Record Date.

**Fund Security** means a Stapled Security on issue.

**Fund Securityholder** means a person who is registered on the Register as a holder of Fund Securities from time to time.

**Implementation Date** means four Scheme Business Days following the Scheme Record Date, or such other date as Responsible Entity and the Acquirer may agree in writing

**Registered Address** means, in relation to a Fund Scheme Securityholder, the address of that Fund Scheme Securityholder shown on the Register as at the Scheme Record Date.

**Regulatory Authority** includes:

- (a) ASIC;
- (b) Australian Taxation Office;
- (c) a government or governmental, semi-governmental or judicial entity or authority;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute.

**Related Body Corporate** has the meaning given in the Corporations Act but as if references to "body corporate" and "body" were to "Entity".

**Scheme** means the arrangement under which the Acquirer acquires all of the Fund Scheme Securities held by the Fund Scheme Securityholders for the Scheme Consideration, as set out in clause 36.

**Scheme Business Day** means a day that banks are open for business in Sydney, New South Wales.

**Scheme Consideration** means the consideration to be provided by the Acquirer to each Fund Scheme Securityholder pursuant to the terms of clause 36 for the transfer to the Acquirer of their Fund Scheme Securities, being \$1.85 in aggregate for each Fund Scheme Security held by a Fund Scheme Securityholder.

**Scheme Implementation Deed** means the deed of that name between the Responsible Entity and the Acquirer dated on 1 2025, as amended from time to time.

**Scheme Securityholder Custodian** means a Fund Scheme Securityholder that holds one or more parcels of Fund Scheme Securities as trustee, custodian or nominee for, or otherwise on account of, another person.

**Scheme Meeting** means the meeting of Fund Securityholders held on 1 2025 to consider the Scheme Resolution, and includes any adjournment of that meeting.

**Scheme Payment** means the consideration to be provided by the Acquirer to each Fund Scheme Securityholder pursuant to the terms of clause 36 for the transfer to the Acquirer of their Fund Scheme Securities, being \$1.85 in aggregate for each Fund Scheme Security held by a Fund Scheme Securityholder.

**Scheme Record Date** means 7.00pm (Sydney time) on the date that is three Scheme Business Days after the Effective Date, or such other date (after the Effective Date) as may be agreed in writing between the Acquirer and the Responsible Entity.

**Scheme Resolution** means the resolution of Fund Securityholders to approve the Scheme, being a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to this Constitution to facilitate the implementation of the Scheme.

**Scheme Transfer** means, for each Fund Scheme Securityholder, a proper instrument of transfer of their Fund Scheme Securities for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Fund Scheme Securities.

**Separate Parcel** means each:

- (a) parcel of Fund Scheme Securities held by a Scheme Securityholder Custodian as trustee, custodian or nominee for, or otherwise on account of, another person; and
- (b) parcel of Fund Scheme Securities held by the Fund Scheme Securityholder Custodian in its own right.

**Subsidiary** has the meaning given in the Corporations Act, provided that an entity will also be taken to be a Subsidiary of another entity if it is Controlled by that entity and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the accounting standards to be consolidated with that entity.

**Transfer Taxes** means all sales (including bulk sales), use, transfer, filing, recording, ad valorem, privilege, documentary gross receipts, registration, conveyance, excise, license, stamp, duties or similar taxes or fees, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties incurred in connection with any transaction contemplated by this Constitution, but, for the avoidance of doubt, not including any taxes on income, gain or other similar taxes (including withholding taxes with respect thereto).

**Trust Account** means the trust account nominated by the Responsible Entity, the details of which must be notified in writing to the Acquirer at least 5 Scheme Business Days before the Implementation Date.

## 2 Clause 36 – Scheme

A new clause 36 is inserted immediately after clause 35 of the Constitution, as set out below:

### 36 Scheme

#### 36.1 Implementation of Scheme

- (a) Each Fund Securityholder and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as the Responsible Entity considers are necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- (b) Without limiting the Responsible Entity's other powers under this clause 36, the Responsible Entity has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the Scheme, the Scheme Implementation Deed and the transactions contemplated by them.
- (c) Subject to the Corporations Act, the Responsible Entity, the Acquirer or any of their directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 36 even if they have an interest (financial or otherwise) in the outcome of such exercise.
- (d) Without limiting clause 14, the Responsible Entity may make the Implementation Distribution, as defined in the Scheme Implementation Deed.
- (e) This clause 36:

- (i) binds the Responsible Entity and all of the Fund Securityholders from time to time (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolution); and
- (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (excluding clause 28).

### **36.2 Entitlement to Scheme Consideration**

Each Fund Scheme Securityholder will be entitled to receive the Scheme Consideration for each Fund Scheme Security held by that Fund Scheme Securityholder, which must be paid in the manner referred to in this clause 36.

### **36.3 Treatment of Separate Parcels held by Scheme Securityholder Custodians**

For the purpose of implementing the Scheme (including for the purposes of calculating the Scheme Consideration, and the treatment of fractional entitlements), each Separate Parcel held by a Scheme Securityholder Custodian will be treated as though it were held by a separate Fund Scheme Securityholder.

### **36.4 Provision of Scheme Payment and Scheme Consideration**

- (a) The Responsible Entity acknowledges that the Acquirer has covenanted to pay, or procure the payment of, on or prior to the Scheme Business Day before the Implementation Date, the Scheme Payment in immediately available funds into the Trust Account on terms agreed with the Acquirer.
- (b) Subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 36.4(a), the Responsible Entity must procure that:
  - (i) the amount received from the Acquirer under clause 36.4(a) is held on trust for the Fund Scheme Securityholders, except that any interest on the amount will be for the account of the Acquirer; and
  - (ii) subject to clause 36.5, within five Scheme Business Days after the Implementation Date, the Scheme Consideration is drawn to pay to each applicable Fund Scheme Securityholder such amount as that Fund Scheme Securityholder is entitled to receive as Scheme Consideration, either by:
    - (A) electronic funds transfer to an account nominated by the Fund Scheme Securityholder for the purpose of payment of distributions or the Scheme Consideration; or
    - (B) cheque sent by pre-paid post to their Registered Address.
- (c) If the number of Fund Scheme Securities held by a Fund Scheme Securityholder as at the Scheme Record Date is such that the aggregate entitlement of the Fund Scheme Securityholder to Scheme Consideration includes a fractional entitlement to a cent, then the entitlement of that Fund Scheme Securityholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of cents (as applicable).
- (d) If the Responsible Entity believes that a Fund Scheme Securityholder is not known at their Registered Address, and no account has been notified in accordance with clause 36.4(b)(ii)(A), or a deposit into such an account is

rejected or refunded, the Responsible Entity may credit the amount payable to the relevant Fund Scheme Securityholder to a separate bank account of the Responsible Entity to be held until the Fund Scheme Securityholder claims the amount or the amount is dealt with in accordance with any applicable unclaimed money legislation. If the Responsible Entity elects to proceed in this manner:

- (i) the Responsible Entity must hold the amount on trust, but any interest accruing on the amount will be for the account of the Acquirer;
- (ii) an amount credited to the account is to be treated as having been paid to the Fund Scheme Securityholder when credited to the account;
- (iii) the Responsible Entity shall be entitled to deduct from the amount held on trust any amount that it determines is required to be so deducted under any applicable law and to remit such amount to the appropriate Regulatory Authority; and
- (iv) the Responsible Entity must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

### **36.5 Joint Holders**

In the case of Fund Scheme Securityholders that hold Fund Scheme Securities in joint names:

- (a) any document required to be sent under the Scheme (including any cheque required to be sent under clause 36.4(b)(ii)(B)), will be forwarded to either, at the sole discretion of the Responsible Entity, the Fund Scheme Securityholder whose name appears first in the Register as at the Scheme Record Date or to the joint Fund Scheme Securityholders; and
- (b) any Scheme Consideration paid to any one of joint Fund Scheme Securityholders will discharge the Responsible Entity in respect of the payment.

### **36.6 Transfer of Fund Scheme Securities to the Acquirer**

On the Implementation Date, subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 36.4(a) and providing the Responsible Entity with written confirmation of that having occurred, the following will occur:

- (a) all of the Fund Scheme Securities held by the Fund Scheme Securityholders, together with all rights and entitlements attaching to the Fund Scheme Securities as at the Implementation Date, will be transferred to the Acquirer, without the need for any further act by any Fund Scheme Securityholder (other than acts performed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as attorney and/or agent for Fund Scheme Securityholders under the Scheme);
- (b) the Responsible Entity will procure the delivery to the Acquirer for execution, duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Fund Scheme Securities held by the Fund Scheme Securityholders to the Acquirer, duly executed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as the attorney and/or agent of each Fund Scheme Securityholder as transferor under clause 36.9; and
- (c) the Responsible Entity will, immediately after receipt of the executed Scheme Transfers in respect of the Fund Scheme Securities from the Acquirer, enter or

procure the entry of, the name and address of the Acquirer in the Register in respect of all of the Fund Scheme Securities.

### **36.7 Dealings in Fund Securities**

- (a) For the purpose of establishing the persons who are Fund Scheme Securityholders and the number of Fund Securities held by them, the Responsible Entity will only recognise dealings in Fund Securities provided that registrable transfers or transmission applications in respect of those dealings are received by the Registrar by 5.00pm on the day which is the Scheme Record Date (in which case the Responsible Entity must register or procure that the Registrar registers, such transfers or transmission applications before 11.00am on the Scheme Business Day following the Scheme Record Date).
- (b) The Responsible Entity will not accept for registration, nor recognise for the purpose of establishing the persons who are Fund Scheme Securityholders, any transfer or transmission application in respect of Fund Securities received after the time specified in clause 36.7(a) (other than as contemplated by the Scheme in relation to the transfer of the Fund Scheme Securities to the Acquirer), or received prior to such time but not in registrable form.
- (c) The Responsible Entity will, until the name and address of the Acquirer has been entered in the Register as the holder of all of the Fund Scheme Securities, maintain, or procure the maintenance of, the Register in accordance with this clause 36.7. Immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 36.7(a), the Registrar will solely determine the persons who are Fund Scheme Securityholders and the number of Fund Scheme Securities held by them.
- (d) No Fund Scheme Securityholder (or any person purporting to claim through them) may dispose of, purport or agree to dispose of, or otherwise deal with, Fund Scheme Securities or any interest in them in any way after the Scheme Record Date other than to the Acquirer in accordance with the Scheme, and any attempt to do so will have no effect.
- (e) Other than in respect of the Acquirer (after registration of the Acquirer in respect of all Fund Scheme Securities under clause 36.6(c)), from the Scheme Record Date, all certificates and holding statements (as applicable) for Fund Scheme Securities as at the Scheme Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Scheme Record Date will cease to have any effect other than as evidence of the entitlements of Fund Scheme Securityholders to the Scheme Consideration.
- (f) As soon as reasonably practicable after the Scheme Record Date, and in any event at least 2 Scheme Business Days before the Implementation Date, the Responsible Entity must ensure details of the names, Registered Addresses and holdings of Fund Scheme Securities of every Fund Scheme Securityholder as shown in the Register as at the Scheme Record Date are given to the Acquirer (or as it directs) in such form as the Acquirer may reasonably require.

### **36.8 Covenants by Fund Scheme Securityholders**

Each Fund Scheme Securityholder:

- (a) irrevocably acknowledges that this clause 36 binds all of the Fund Scheme Securityholders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme

- Resolution) without the need for any further act by that Fund Scheme Securityholder;
- (b) irrevocably agrees to the transfer of their Fund Scheme Securities, together with all rights, entitlements and obligations attaching to those Fund Scheme Securities, to the Acquirer in accordance with the terms of the Scheme;
  - (c) irrevocably agrees to the modification or variation (if any) of the rights attaching to their Fund Scheme Securities arising from this clause 36;
  - (d) irrevocably consents to the Responsible Entity and the Acquirer doing all things and executing all deeds, instruments, transfers or other documents (including the Scheme Transfers) as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it; and
  - (e) irrevocably agrees to provide to the Responsible Entity such information as the Responsible Entity may reasonably require to comply with any law in respect of the Scheme and the transactions contemplated in this clause 36, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

### **36.9 Appointment of the Responsible Entity as attorney and as agent for implementation of the Scheme**

Each Fund Scheme Securityholder, without the need for any further act by that Fund Scheme Securityholder, irrevocably appoints the Responsible Entity as that Fund Scheme Securityholder's attorney and as that Fund Scheme Securityholder's agent for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including effecting a valid transfer or transfers of the Fund Scheme Securities to the Acquirer under clause 36.6(b), and including executing and delivering any Scheme Transfers; and
- (b) enforcing the Deed Poll against the Acquirer,

and the Responsible Entity accepts such appointment. The Responsible Entity, as attorney and as agent of each Fund Scheme Securityholder, may sub-delegate its functions, authorities or powers under this clause 36.9 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Fund Scheme Securityholder indemnifies the Responsible Entity and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 36.9.

### **36.10 Status of Fund Scheme Securities**

- (a) To the maximum extent permitted by law, the Fund Scheme Securities transferred to the Acquirer under this clause 36 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Fund Scheme Securityholder is deemed to have warranted to the Responsible Entity in its own right and on behalf of the Acquirer, that all their Fund Scheme Securities (including any rights, entitlements and obligations attaching to those Fund Scheme Securities) which are transferred to the Acquirer under this clause 36 will, at the time of the transfer of them to the Acquirer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges,

security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind not referred to in this Constitution, and that they have full power and capacity to sell and to transfer their Fund Scheme Securities to the Acquirer pursuant to the Scheme.

- (c) The Acquirer will be beneficially entitled to the Fund Scheme Securities transferred to it under this clause 36 pending registration by the Responsible Entity of the name and registered address of the Acquirer in the Register as the holder of the relevant Fund Scheme Securities.

### **36.12 Lapsing**

Clause 36 will lapse and have no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless the Responsible Entity and Acquirer otherwise agree in writing.

### **36.13 Orders of a court or Regulatory Authority**

- (a) Notwithstanding anything else in this clause 36, the Responsible Entity may deduct and withhold from any consideration which would otherwise be payable by the Responsible Entity to a Fund Scheme Securityholder in accordance with this clause 36, any amount that it determines is required to be so deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority.
- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under the Scheme as having been paid to the Fund Scheme Securityholder in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate taxation office or other Regulatory Authority.
- (c) If requested in writing by the Fund Scheme Securityholder, the Responsible Entity must provide a receipt or other appropriate evidence of such payment to the taxation office or other Regulatory Authority.
- (d) If written notice is given to the Responsible Entity of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that requires that Scheme Consideration that would otherwise be provided to a Fund Scheme Securityholder by the Responsible Entity in accordance with this clause 36, must instead be paid or provided to a Regulatory Authority or other third party, then:
  - (i) the Responsible Entity is entitled to pay the relevant money in accordance with that order, direction or notice; and
  - (ii) doing so will be treated for all purposes under the Scheme as having been paid or provided to that Fund Scheme Securityholder.
- (e) If written notice is given to the Responsible Entity of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that prevents the Responsible Entity from providing consideration to a particular Fund Scheme Securityholder in accordance with this clause 36, or if the payment or provision of any Scheme Consideration to a particular Fund Scheme Securityholder is otherwise

prohibited by applicable law, the Responsible Entity will be entitled to (as applicable) to refrain from paying the Scheme Consideration that would otherwise be payable to the Scheme Participant, until such time as the payment of Scheme Consideration in accordance with this clause 36 is permitted by that order or direction or otherwise by law.

#### **36.14 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Responsible Entity, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Responsible Entity's registered office or by the Registrar, as the case may be. The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Fund Securityholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

#### **36.15 Costs and stamp duty**

- (a) Without limiting the terms of the Scheme Implementation Deed and clause 24, all expenses incurred by the Responsible Entity in relation to the Scheme and the Scheme Implementation Deed are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act and not reimbursable by the Acquirer pursuant to the Scheme Implementation Deed.
- (b) The Acquirer will pay all stamp duty (including fines, penalties and interest) and Transfer Taxes payable on or in connection with the transfer to it of Fund Scheme Securities pursuant to the Scheme.

#### **36.16 Limitation of liability**

Without limiting clause 22, subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever to the Fund Securityholders, beyond the extent to which the Responsible Entity is actually indemnified out of the Assets, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Scheme.

**Schedule 5**

**Supplemental Deed - Fort Street Real Estate Capital Fund II**

Equity Trustees Limited

## Supplemental Deed Poll

Amending the Constitution for Fort Street Real Estate Capital Fund II

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
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**This Deed Poll** is made on

## **Parties**

- 1 **Equity Trustees Limited** (ACN 004 031 298) as responsible entity for the Fort Street Real Estate Capital Fund I (ARSN 163 688 346) (the **Fund**) of Level 1, 575 Bourke Street, Melbourne VIC 3000 (the **Responsible Entity**).

## **Recitals**

- A The Responsible Entity is the responsible entity of the Fund.
- B The Fund is part of a stapled group together with the unlisted managed investment schemes: Fort Street Real Estate Capital Fund I and Fort Street Real Estate Capital Fund III.
- C The Responsible Entity and the Acquirer have agreed, by executing the Scheme Implementation Deed, to propose and implement the Scheme.
- D The Constitution must be amended to facilitate the Scheme.
- E Under clause 27 of the Constitution, subject to the Corporations Act, the Responsible Entity may amend the Constitution by executing a supplemental deed.
- F Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be amended by special resolution of the Members of the Fund.
- G At a meeting held on [ ] convened in accordance with the Corporations Act, the Fund Securityholders approved a special resolution to make the amendments to the Constitution contained in this Supplemental Deed Poll.
- H Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed Poll cannot take effect until a copy of this Supplemental Deed Poll has been lodged with ASIC.
- I The Acquirer has entered into a deed poll for the purpose of covenanting in favour of the Fund Scheme Securityholders that they will observe and perform the obligations contemplated of them under the Scheme and the Scheme Implementation Deed.

**It is declared** as follows.

## **1 Definitions and Interpretation**

### **1.1 Definitions**

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context otherwise requires.

**Acquirer** means ISPT Pty Ltd (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No 1 (ABN 19 915 864 713).

**Constitution** means the trust deed constituting the Fund dated 21 May 2014, as amended from time to time.


**Effective Time** means the date and time on which a copy of this Supplemental Deed Poll is, or the modifications set out in it are, lodged with ASIC under section 601GC(2) of the Corporations Act.

**Fund Scheme Securityholder** has the meaning given in the Scheme Implementation Deed.

**Fund Securityholder** has the meaning given in the Scheme Implementation Deed.

**Schedule** means Schedule 1 to this Supplemental Deed.

**Scheme** means the arrangement in respect of the Fund set out in the Scheme Implementation Deed and facilitated by the amendments to the Constitution set out in this Supplemental Deed Poll.

**Scheme Implementation Deed** means the deed of that name between the Responsible Entity and the Acquirer dated on , as amended from time to time.

## 1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.
- (b) Clauses 1.1 ('Definitions') and 1.2 ('Interpretation') of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

## 1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Fund Securityholders jointly and severally.

## 2 Amendment of Constitution

The Responsible Entity amends the Constitution so that, on and from the Effective Time, the Constitution is amended as set out in the Schedule.

## 3 No Resettlement

The Responsible Entity confirms that it is not by this Supplemental Deed Poll intending to:

- (a) settle or redeclare the Fund declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

## 4 Governing Law and Jurisdiction

This Supplemental Deed Poll is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

Each person executing this deed on behalf of a party states that they have no notice of revocation or suspension of their authority.

\_\_\_\_\_  
Signature of Attorney

Signature of Attorney

Office &amp; Name of Attorney

Signature of witness

Signature of Attorney

(Print witness name)

Office &amp; Name of Attorney

## Schedule 1

### Amendments to the Constitution of Fort Street Real Estate Capital Fund II

The Constitution is amended as follows:

#### 1 Clause 1.1 - Definitions

- (a) In clause 1.1 of the Constitution, the following definitions are inserted in alphabetical order:

**Acquirer** means ISPT Pty Ltd (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No 1 (ABN 19 915 864 713).


**Acquirer Group Member** means:

- (a) the Acquirer;
- (b) any of the Acquirer's Related Bodies Corporate, excluding, for the avoidance of doubt, the Fund Group.

**Board** means the board of directors of the Responsible Entity.

**Control** has the meaning given in section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

**Controlled Entities** means, in relation to an Entity, another Entity which is a Subsidiary of it, or which is Controlled by it.

**Deed Poll** means the deed poll dated  executed by the Acquirer in favour of each Fund Scheme Securityholder in relation to the Scheme.

**Effective** means, in relation to the Scheme, the supplemental deed poll making amendments to this Constitution to facilitate the Scheme, including the insertion of clause 36, taking effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which the Scheme becomes Effective.

**End Date** means the date which is six months from the date of the Scheme Implementation Deed, or such later date as the Acquirer and Responsible Entity may agree in writing.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**Fund Group** means each registered scheme comprising the Fund and each of their Controlled Entities.

**Fund Scheme Securities** means all Fund Securities on issue as at the Scheme Record Date except for Fund Securities held by the Acquirer.

**Fund Scheme Securityholder** means each person who is registered on the Register as a holder of Fund Scheme Securities as at the Scheme Record Date.

**Fund Security** means a Stapled Security on issue.

**Fund Securityholder** means a person who is registered on the Register as a holder of Fund Securities from time to time.

**Implementation Date** means four Scheme Business Days following the Scheme Record Date, or such other date as Responsible Entity and the Acquirer may agree in writing

**Registered Address** means, in relation to a Fund Scheme Securityholder, the address of that Fund Scheme Securityholder shown on the Register as at the Scheme Record Date.

**Regulatory Authority** includes:

- (a) ASIC;
- (b) Australian Taxation Office;
- (c) a government or governmental, semi-governmental or judicial entity or authority;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute.

**Related Body Corporate** has the meaning given in the Corporations Act but as if references to "body corporate" and "body" were to "Entity".

**Scheme** means the arrangement under which the Acquirer acquires all of the Fund Scheme Securities held by the Fund Scheme Securityholders for the Scheme Consideration, as set out in clause 36.

**Scheme Business Day** means a day that banks are open for business in Sydney, New South Wales.

**Scheme Consideration** means the consideration to be provided by the Acquirer to each Fund Scheme Securityholder pursuant to the terms of clause 36 for the transfer to the Acquirer of their Fund Scheme Securities, being \$1.85 in aggregate for each Fund Scheme Security held by a Fund Scheme Securityholder.

**Scheme Implementation Deed** means the deed of that name between the Responsible Entity and the Acquirer dated on 1 2025, as amended from time to time.

**Scheme Securityholder Custodian** means a Fund Scheme Securityholder that holds one or more parcels of Fund Scheme Securities as trustee, custodian or nominee for, or otherwise on account of, another person.

**Scheme Meeting** means the meeting of Fund Securityholders held on 1 2025 to consider the Scheme Resolution, and includes any adjournment of that meeting.

**Scheme Payment** means the consideration to be provided by the Acquirer to each Fund Scheme Securityholder pursuant to the terms of clause 36 for the transfer to the Acquirer of their Fund Scheme Securities, being \$1.85 in aggregate for each Fund Scheme Security held by a Fund Scheme Securityholder.

**Scheme Record Date** means 7.00pm (Sydney time) on the date that is three Scheme Business Days after the Effective Date, or such other date (after the Effective Date) as may be agreed in writing between the Acquirer and the Responsible Entity.

**Scheme Resolution** means the resolution of Fund Securityholders to approve the Scheme, being a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to this Constitution to facilitate the implementation of the Scheme.

**Scheme Transfer** means, for each Fund Scheme Securityholder, a proper instrument of transfer of their Fund Scheme Securities for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Fund Scheme Securities.

**Separate Parcel** means each:

- (a) parcel of Fund Scheme Securities held by a Scheme Securityholder Custodian as trustee, custodian or nominee for, or otherwise on account of, another person; and
- (b) parcel of Fund Scheme Securities held by the Fund Scheme Securityholder Custodian in its own right.

**Subsidiary** has the meaning given in the Corporations Act, provided that an entity will also be taken to be a Subsidiary of another entity if it is Controlled by that entity and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the accounting standards to be consolidated with that entity.

**Transfer Taxes** means all sales (including bulk sales), use, transfer, filing, recording, ad valorem, privilege, documentary gross receipts, registration, conveyance, excise, license, stamp, duties or similar taxes or fees, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties incurred in connection with any transaction contemplated by this Constitution, but, for the avoidance of doubt, not including any taxes on income, gain or other similar taxes (including withholding taxes with respect thereto).

**Trust Account** means the trust account nominated by the Responsible Entity, the details of which must be notified in writing to the Acquirer at least 5 Scheme Business Days before the Implementation Date.

## 2 Clause 36 – Scheme

A new clause 36 is inserted immediately after clause 35 of the Constitution, as set out below:

### 36 Scheme

#### 36.1 Implementation of Scheme

- (a) Each Fund Securityholder and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as the Responsible Entity considers are necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- (b) Without limiting the Responsible Entity's other powers under this clause 36, the Responsible Entity has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the Scheme, the Scheme Implementation Deed and the transactions contemplated by them.
- (c) Subject to the Corporations Act, the Responsible Entity, the Acquirer or any of their directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 36 even if they have an interest (financial or otherwise) in the outcome of such exercise.
- (d) Without limiting clause 14, the Responsible Entity may make the Implementation Distribution, as defined in the Scheme Implementation Deed.
- (e) This clause 36:

- (i) binds the Responsible Entity and all of the Fund Securityholders from time to time (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolution); and
- (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (excluding clause 28).

### **36.2 Entitlement to Scheme Consideration**

Each Fund Scheme Securityholder will be entitled to receive the Scheme Consideration for each Fund Scheme Security held by that Fund Scheme Securityholder, which must be paid in the manner referred to in this clause 36.

### **36.3 Treatment of Separate Parcels held by Scheme Securityholder Custodians**

For the purpose of implementing the Scheme (including for the purposes of calculating the Scheme Consideration, and the treatment of fractional entitlements), each Separate Parcel held by a Scheme Securityholder Custodian will be treated as though it were held by a separate Fund Scheme Securityholder.

### **36.4 Provision of Scheme Payment and Scheme Consideration**

- (a) The Responsible Entity acknowledges that the Acquirer has covenanted to pay, or procure the payment of, on or prior to the Scheme Business Day before the Implementation Date, the Scheme Payment in immediately available funds into the Trust Account on terms agreed with the Acquirer.
- (b) Subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 36.4(a), the Responsible Entity must procure that:
  - (i) the amount received from the Acquirer under clause 36.4(a) is held on trust for the Fund Scheme Securityholders, except that any interest on the amount will be for the account of the Acquirer; and
  - (ii) subject to clause 36.5, within five Scheme Business Days after the Implementation Date, the Scheme Consideration is drawn to pay to each applicable Fund Scheme Securityholder such amount as that Fund Scheme Securityholder is entitled to receive as Scheme Consideration, either by:
    - (A) electronic funds transfer to an account nominated by the Fund Scheme Securityholder for the purpose of payment of distributions or the Scheme Consideration; or
    - (B) cheque sent by pre-paid post to their Registered Address.
- (c) If the number of Fund Scheme Securities held by a Fund Scheme Securityholder as at the Scheme Record Date is such that the aggregate entitlement of the Fund Scheme Securityholder to Scheme Consideration includes a fractional entitlement to a cent, then the entitlement of that Fund Scheme Securityholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of cents (as applicable).
- (d) If the Responsible Entity believes that a Fund Scheme Securityholder is not known at their Registered Address, and no account has been notified in accordance with clause 36.4(b)(ii)(A), or a deposit into such an account is

rejected or refunded, the Responsible Entity may credit the amount payable to the relevant Fund Scheme Securityholder to a separate bank account of the Responsible Entity to be held until the Fund Scheme Securityholder claims the amount or the amount is dealt with in accordance with any applicable unclaimed money legislation. If the Responsible Entity elects to proceed in this manner:

- (i) the Responsible Entity must hold the amount on trust, but any interest accruing on the amount will be for the account of the Acquirer;
- (ii) an amount credited to the account is to be treated as having been paid to the Fund Scheme Securityholder when credited to the account;
- (iii) the Responsible Entity shall be entitled to deduct from the amount held on trust any amount that it determines is required to be so deducted under any applicable law and to remit such amount to the appropriate Regulatory Authority; and
- (iv) the Responsible Entity must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

### **36.5 Joint Holders**

In the case of Fund Scheme Securityholders that hold Fund Scheme Securities in joint names:

- (a) any document required to be sent under the Scheme (including any cheque required to be sent under clause 36.4(b)(ii)(B)), will be forwarded to either, at the sole discretion of the Responsible Entity, the Fund Scheme Securityholder whose name appears first in the Register as at the Scheme Record Date or to the joint Fund Scheme Securityholders; and
- (b) any Scheme Consideration paid to any one of joint Fund Scheme Securityholders will discharge the Responsible Entity in respect of the payment.

### **36.6 Transfer of Fund Scheme Securities to the Acquirer**

On the Implementation Date, subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 36.4(a) and providing the Responsible Entity with written confirmation of that having occurred, the following will occur:

- (a) all of the Fund Scheme Securities held by the Fund Scheme Securityholders, together with all rights and entitlements attaching to the Fund Scheme Securities as at the Implementation Date, will be transferred to the Acquirer, without the need for any further act by any Fund Scheme Securityholder (other than acts performed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as attorney and/or agent for Fund Scheme Securityholders under the Scheme);
- (b) the Responsible Entity will procure the delivery to the Acquirer for execution, duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Fund Scheme Securities held by the Fund Scheme Securityholders to the Acquirer, duly executed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as the attorney and/or agent of each Fund Scheme Securityholder as transferor under clause 36.9; and
- (c) the Responsible Entity will, immediately after receipt of the executed Scheme Transfers in respect of the Fund Scheme Securities from the Acquirer, enter or

procure the entry of, the name and address of the Acquirer in the Register in respect of all of the Fund Scheme Securities.

### **36.7 Dealings in Fund Securities**

- (a) For the purpose of establishing the persons who are Fund Scheme Securityholders and the number of Fund Securities held by them, the Responsible Entity will only recognise dealings in Fund Securities provided that registrable transfers or transmission applications in respect of those dealings are received by the Registrar by 5.00pm on the day which is the Scheme Record Date (in which case the Responsible Entity must register or procure that the Registrar registers, such transfers or transmission applications before 11.00am on the Scheme Business Day following the Scheme Record Date).
- (b) The Responsible Entity will not accept for registration, nor recognise for the purpose of establishing the persons who are Fund Scheme Securityholders, any transfer or transmission application in respect of Fund Securities received after the time specified in clause 36.7(a) (other than as contemplated by the Scheme in relation to the transfer of the Fund Scheme Securities to the Acquirer), or received prior to such time but not in registrable form.
- (c) The Responsible Entity will, until the name and address of the Acquirer has been entered in the Register as the holder of all of the Fund Scheme Securities, maintain, or procure the maintenance of, the Register in accordance with this clause 36.7. Immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 36.7(a), the Registrar will solely determine the persons who are Fund Scheme Securityholders and the number of Fund Scheme Securities held by them.
- (d) No Fund Scheme Securityholder (or any person purporting to claim through them) may dispose of, purport or agree to dispose of, or otherwise deal with, Fund Scheme Securities or any interest in them in any way after the Scheme Record Date other than to the Acquirer in accordance with the Scheme, and any attempt to do so will have no effect.
- (e) Other than in respect of the Acquirer (after registration of the Acquirer in respect of all Fund Scheme Securities under clause 36.6(c)), from the Scheme Record Date, all certificates and holding statements (as applicable) for Fund Scheme Securities as at the Scheme Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Scheme Record Date will cease to have any effect other than as evidence of the entitlements of Fund Scheme Securityholders to the Scheme Consideration.
- (f) As soon as reasonably practicable after the Scheme Record Date, and in any event at least 2 Scheme Business Days before the Implementation Date, the Responsible Entity must ensure details of the names, Registered Addresses and holdings of Fund Scheme Securities of every Fund Scheme Securityholder as shown in the Register as at the Scheme Record Date are given to the Acquirer (or as it directs) in such form as the Acquirer may reasonably require.

### **36.8 Covenants by Fund Scheme Securityholders**

Each Fund Scheme Securityholder:

- (a) irrevocably acknowledges that this clause 36 binds all of the Fund Scheme Securityholders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme

Resolution) without the need for any further act by that Fund Scheme Securityholder;

- (b) irrevocably agrees to the transfer of their Fund Scheme Securities, together with all rights, entitlements and obligations attaching to those Fund Scheme Securities, to the Acquirer in accordance with the terms of the Scheme;
- (c) irrevocably agrees to the modification or variation (if any) of the rights attaching to their Fund Scheme Securities arising from this clause 36;
- (d) irrevocably consents to the Responsible Entity and the Acquirer doing all things and executing all deeds, instruments, transfers or other documents (including the Scheme Transfers) as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it; and
- (e) irrevocably agrees to provide to the Responsible Entity such information as the Responsible Entity may reasonably require to comply with any law in respect of the Scheme and the transactions contemplated in this clause 36, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

### **36.9 Appointment of the Responsible Entity as attorney and as agent for implementation of the Scheme**

Each Fund Scheme Securityholder, without the need for any further act by that Fund Scheme Securityholder, irrevocably appoints the Responsible Entity as that Fund Scheme Securityholder's attorney and as that Fund Scheme Securityholder's agent for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including effecting a valid transfer or transfers of the Fund Scheme Securities to the Acquirer under clause 36.6(b), and including executing and delivering any Scheme Transfers; and
- (b) enforcing the Deed Poll against the Acquirer,

and the Responsible Entity accepts such appointment. The Responsible Entity, as attorney and as agent of each Fund Scheme Securityholder, may sub-delegate its functions, authorities or powers under this clause 36.9 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Fund Scheme Securityholder indemnifies the Responsible Entity and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 36.9.

### **36.10 Status of Fund Scheme Securities**

- (a) To the maximum extent permitted by law, the Fund Scheme Securities transferred to the Acquirer under this clause 36 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Fund Scheme Securityholder is deemed to have warranted to the Responsible Entity in its own right and on behalf of the Acquirer, that all their Fund Scheme Securities (including any rights, entitlements and obligations attaching to those Fund Scheme Securities) which are transferred to the Acquirer under this clause 36 will, at the time of the transfer of them to the Acquirer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges,

security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind not referred to in this Constitution, and that they have full power and capacity to sell and to transfer their Fund Scheme Securities to the Acquirer pursuant to the Scheme.

- (c) The Acquirer will be beneficially entitled to the Fund Scheme Securities transferred to it under this clause 36 pending registration by the Responsible Entity of the name and registered address of the Acquirer in the Register as the holder of the relevant Fund Scheme Securities.

### **36.12 Lapsing**

Clause 36 will lapse and have no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless the Responsible Entity and Acquirer otherwise agree in writing.

### **36.13 Orders of a court or Regulatory Authority**

- (a) Notwithstanding anything else in this clause 36, the Responsible Entity may deduct and withhold from any consideration which would otherwise be payable by the Responsible Entity to a Fund Scheme Securityholder in accordance with this clause 36, any amount that it determines is required to be so deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority.
- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under the Scheme as having been paid to the Fund Scheme Securityholder in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate taxation office or other Regulatory Authority.
- (c) If requested in writing by the Fund Scheme Securityholder, the Responsible Entity must provide a receipt or other appropriate evidence of such payment to the taxation office or other Regulatory Authority.
- (d) If written notice is given to the Responsible Entity of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that requires that Scheme Consideration that would otherwise be provided to a Fund Scheme Securityholder by the Responsible Entity in accordance with this clause 36, must instead be paid or provided to a Regulatory Authority or other third party, then:
  - (i) the Responsible Entity is entitled to pay the relevant money in accordance with that order, direction or notice; and
  - (ii) doing so will be treated for all purposes under the Scheme as having been paid or provided to that Fund Scheme Securityholder.
- (e) If written notice is given to the Responsible Entity of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that prevents the Responsible Entity from providing consideration to a particular Fund Scheme Securityholder in accordance with this clause 36, or if the payment or provision of any Scheme Consideration to a particular Fund Scheme Securityholder is otherwise

prohibited by applicable law, the Responsible Entity will be entitled to (as applicable) to refrain from paying the Scheme Consideration that would otherwise be payable to the Scheme Participant, until such time as the payment of Scheme Consideration in accordance with this clause 36 is permitted by that order or direction or otherwise by law.

#### **36.14 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Responsible Entity, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Responsible Entity's registered office or by the Registrar, as the case may be. The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Fund Securityholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

#### **36.15 Costs and stamp duty**

- (a) Without limiting the terms of the Scheme Implementation Deed and clause 24, all expenses incurred by the Responsible Entity in relation to the Scheme and the Scheme Implementation Deed are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act and not reimbursable by the Acquirer pursuant to the Scheme Implementation Deed.
- (b) The Acquirer will pay all stamp duty (including fines, penalties and interest) and Transfer Taxes payable on or in connection with the transfer to it of Fund Scheme Securities pursuant to the Scheme.

#### **36.16 Limitation of liability**

Without limiting clause 22, subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever to the Fund Securityholders, beyond the extent to which the Responsible Entity is actually indemnified out of the Assets, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Scheme.

**Schedule 6**

**Supplemental Deed - Fort Street Real Estate Capital Fund III**



Equity Trustees Limited

## Supplemental Deed Poll

Amending the Constitution for Fort Street Real Estate Capital Fund III

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**This Deed Poll** is made on

## **Parties**

- 1 **Equity Trustees Limited** (ACN 004 031 298) as responsible entity for the Fort Street Real Estate Capital Fund I (ARSN 163 688 346) (the **Fund**) of Level 1, 575 Bourke Street, Melbourne VIC 3000 (the **Responsible Entity**).

## **Recitals**

- A The Responsible Entity is the responsible entity of the Fund.
- B The Fund is part of a stapled group together with the unlisted managed investment schemes: Fort Street Real Estate Capital Fund I and Fort Street Real Estate Capital Fund II.
- C The Responsible Entity and the Acquirer have agreed, by executing the Scheme Implementation Deed, to propose and implement the Scheme.
- D The Constitution must be amended to facilitate the Scheme.
- E Under clause 27 of the Constitution, subject to the Corporations Act, the Responsible Entity may amend the Constitution by executing a supplemental deed.
- F Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be amended by special resolution of the Members of the Fund.
- G At a meeting held on [ ] convened in accordance with the Corporations Act, the Fund Securityholders approved a special resolution to make the amendments to the Constitution contained in this Supplemental Deed Poll.
- H Pursuant to section 601GC(2) of the Corporations Act, the amendments to the Constitution set out in this Supplemental Deed Poll cannot take effect until a copy of this Supplemental Deed Poll has been lodged with ASIC.
- I The Acquirer has entered into a deed poll for the purpose of covenanting in favour of the Fund Scheme Securityholders that they will observe and perform the obligations contemplated of them under the Scheme and the Scheme Implementation Deed.

**It is declared** as follows.

## **1 Definitions and Interpretation**

### **1.1 Definitions**

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context otherwise requires.

**Acquirer** means ISPT Pty Ltd (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No 1 (ABN 19 915 864 713).

**Constitution** means the trust deed constituting the Fund dated 14 October 2016, as amended from time to time.


**Effective Time** means the date and time on which a copy of this Supplemental Deed Poll is, or the modifications set out in it are, lodged with ASIC under section 601GC(2) of the Corporations Act.

**Fund Scheme Securityholder** has the meaning given in the Scheme Implementation Deed.

**Fund Securityholder** has the meaning given in the Scheme Implementation Deed.

**Schedule** means Schedule 1 to this Supplemental Deed.

**Scheme** means the arrangement in respect of the Fund set out in the Scheme Implementation Deed and facilitated by the amendments to the Constitution set out in this Supplemental Deed Poll.

**Scheme Implementation Deed** means the deed of that name between the Responsible Entity and the Acquirer dated on , as amended from time to time.

## 1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution.
- (b) Clauses 1.1 ('Definitions') and 1.2 ('Interpretation') of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

## 1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of Fund Securityholders jointly and severally.

## 2 Amendment of Constitution

The Responsible Entity amends the Constitution so that, on and from the Effective Time, the Constitution is amended as set out in the Schedule.

## 3 No Resettlement

The Responsible Entity confirms that it is not by this Supplemental Deed Poll intending to:

- (a) settle or redeclare the Fund declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

## 4 Governing Law and Jurisdiction

This Supplemental Deed Poll is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

**Executed and delivered as a Deed Poll** in Sydney

Each person executing this deed on behalf of a party states that they have no notice of revocation or suspension of their authority.

**Signed, sealed and delivered** for and )  
on behalf of **EQUITY TRUSTEES** )  
**LIMITED** ACN 004 031 298 by its )  
attorneys under Power of Attorney dated )  
27<sup>th</sup> May 2016 in the presence of: )

\_\_\_\_\_  
Signature of Attorney

)  
)  
)  
)  
\_\_\_\_\_)

\_\_\_\_\_  
Office & Name of Attorney

Signature of witness )  
)  
)  
\_\_\_\_\_)  
(Print witness name) )  
)  
)

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Office & Name of Attorney

## Schedule 1

### Amendments to the Constitution of Fort Street Real Estate Capital Fund III

The Constitution is amended as follows:

#### 1 Clause 1.1 - Definitions

- (a) In clause 1.1 of the Constitution, the following definitions are inserted in alphabetical order:

**Acquirer** means ISPT Pty Ltd (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No 1 (ABN 19 915 864 713).


**Acquirer Group Member** means:

- (a) the Acquirer;
- (b) any of the Acquirer's Related Bodies Corporate, excluding, for the avoidance of doubt, the Fund Group.

**Board** means the board of directors of the Responsible Entity.

**Control** has the meaning given in section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

**Controlled Entities** means, in relation to an Entity, another Entity which is a Subsidiary of it, or which is Controlled by it.

**Deed Poll** means the deed poll dated  executed by the Acquirer in favour of each Fund Scheme Securityholder in relation to the Scheme.

**Effective** means, in relation to the Scheme, the supplemental deed poll making amendments to this Constitution to facilitate the Scheme, including the insertion of clause 36, taking effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on which the Scheme becomes Effective.

**End Date** means the date which is six months from the date of the Scheme Implementation Deed, or such later date as the Acquirer and Responsible Entity may agree in writing.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**Fund Group** means each registered scheme comprising the Fund and each of their Controlled Entities.

**Fund Scheme Securities** means all Fund Securities on issue as at the Scheme Record Date except for Fund Securities held by the Acquirer.

**Fund Scheme Securityholder** means each person who is registered on the Register as a holder of Fund Scheme Securities as at the Scheme Record Date.

**Fund Security** means a Stapled Security on issue.

**Fund Securityholder** means a person who is registered on the Register as a holder of Fund Securities from time to time.

**Implementation Date** means four Scheme Business Days following the Scheme Record Date, or such other date as Responsible Entity and the Acquirer may agree in writing

**Registered Address** means, in relation to a Fund Scheme Securityholder, the address of that Fund Scheme Securityholder shown on the Register as at the Scheme Record Date.

**Regulatory Authority** includes:

- (a) ASIC;
- (b) Australian Taxation Office;
- (c) a government or governmental, semi-governmental or judicial entity or authority;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute.

**Related Body Corporate** has the meaning given in the Corporations Act but as if references to "body corporate" and "body" were to "Entity".

**Scheme** means the arrangement under which the Acquirer acquires all of the Fund Scheme Securities held by the Fund Scheme Securityholders for the Scheme Consideration, as set out in clause 36.

**Scheme Business Day** means a day that banks are open for business in Sydney, New South Wales.

**Scheme Consideration** means the consideration to be provided by the Acquirer to each Fund Scheme Securityholder pursuant to the terms of clause 36 for the transfer to the Acquirer of their Fund Scheme Securities, being \$1.85 in aggregate for each Fund Scheme Security held by a Fund Scheme Securityholder.

**Scheme Implementation Deed** means the deed of that name between the Responsible Entity and the Acquirer dated on 1 July 2025, as amended from time to time.

**Scheme Securityholder Custodian** means a Fund Scheme Securityholder that holds one or more parcels of Fund Scheme Securities as trustee, custodian or nominee for, or otherwise on account of, another person.

**Scheme Meeting** means the meeting of Fund Securityholders held on 1 July 2025 to consider the Scheme Resolution, and includes any adjournment of that meeting.

**Scheme Payment** means the consideration to be provided by the Acquirer to each Fund Scheme Securityholder pursuant to the terms of clause 36 for the transfer to the Acquirer of their Fund Scheme Securities, being \$1.85 in aggregate for each Fund Scheme Security held by a Fund Scheme Securityholder.

**Scheme Record Date** means 7.00pm (Sydney time) on the date that is three Scheme Business Days after the Effective Date, or such other date (after the Effective Date) as may be agreed in writing between the Acquirer and the Responsible Entity.

**Scheme Resolution** means the resolution of Fund Securityholders to approve the Scheme, being a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to this Constitution to facilitate the implementation of the Scheme.

**Scheme Transfer** means, for each Fund Scheme Securityholder, a proper instrument of transfer of their Fund Scheme Securities for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Fund Scheme Securities.

**Separate Parcel** means each:

- (a) parcel of Fund Scheme Securities held by a Scheme Securityholder Custodian as trustee, custodian or nominee for, or otherwise on account of, another person; and
- (b) parcel of Fund Scheme Securities held by the Fund Scheme Securityholder Custodian in its own right.

**Subsidiary** has the meaning given in the Corporations Act, provided that an entity will also be taken to be a Subsidiary of another entity if it is Controlled by that entity and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the accounting standards to be consolidated with that entity.

**Transfer Taxes** means all sales (including bulk sales), use, transfer, filing, recording, ad valorem, privilege, documentary gross receipts, registration, conveyance, excise, license, stamp, duties or similar taxes or fees, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties incurred in connection with any transaction contemplated by this Constitution, but, for the avoidance of doubt, not including any taxes on income, gain or other similar taxes (including withholding taxes with respect thereto).

**Trust Account** means the trust account nominated by the Responsible Entity, the details of which must be notified in writing to the Acquirer at least 5 Scheme Business Days before the Implementation Date.

## 2 Clause 36 – Scheme

A new clause 36 is inserted immediately after clause 35 of the Constitution, as set out below:

### 36 Scheme

#### 36.1 Implementation of Scheme

- (a) Each Fund Securityholder and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as the Responsible Entity considers are necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- (b) Without limiting the Responsible Entity's other powers under this clause 36, the Responsible Entity has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the Scheme, the Scheme Implementation Deed and the transactions contemplated by them.
- (c) Subject to the Corporations Act, the Responsible Entity, the Acquirer or any of their directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 36 even if they have an interest (financial or otherwise) in the outcome of such exercise.
- (d) Without limiting clause 14, the Responsible Entity may make the Implementation Distribution, as defined in the Scheme Implementation Deed.
- (e) This clause 36:

- (i) binds the Responsible Entity and all of the Fund Securityholders from time to time (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolution); and
- (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (excluding clause 28).

### **36.2 Entitlement to Scheme Consideration**

Each Fund Scheme Securityholder will be entitled to receive the Scheme Consideration for each Fund Scheme Security held by that Fund Scheme Securityholder, which must be paid in the manner referred to in this clause 36.

### **36.3 Treatment of Separate Parcels held by Scheme Securityholder Custodians**

For the purpose of implementing the Scheme (including for the purposes of calculating the Scheme Consideration, and the treatment of fractional entitlements), each Separate Parcel held by a Scheme Securityholder Custodian will be treated as though it were held by a separate Fund Scheme Securityholder.

### **36.4 Provision of Scheme Payment and Scheme Consideration**

- (a) The Responsible Entity acknowledges that the Acquirer has covenanted to pay, or procure the payment of, on or prior to the Scheme Business Day before the Implementation Date, the Scheme Payment in immediately available funds into the Trust Account on terms agreed with the Acquirer.
- (b) Subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 36.4(a), the Responsible Entity must procure that:
  - (i) the amount received from the Acquirer under clause 36.4(a) is held on trust for the Fund Scheme Securityholders, except that any interest on the amount will be for the account of the Acquirer; and
  - (ii) subject to clause 36.5, within five Scheme Business Days after the Implementation Date, the Scheme Consideration is drawn to pay to each applicable Fund Scheme Securityholder such amount as that Fund Scheme Securityholder is entitled to receive as Scheme Consideration, either by:
    - (A) electronic funds transfer to an account nominated by the Fund Scheme Securityholder for the purpose of payment of distributions or the Scheme Consideration; or
    - (B) cheque sent by pre-paid post to their Registered Address.
- (c) If the number of Fund Scheme Securities held by a Fund Scheme Securityholder as at the Scheme Record Date is such that the aggregate entitlement of the Fund Scheme Securityholder to Scheme Consideration includes a fractional entitlement to a cent, then the entitlement of that Fund Scheme Securityholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of cents (as applicable).
- (d) If the Responsible Entity believes that a Fund Scheme Securityholder is not known at their Registered Address, and no account has been notified in accordance with clause 36.4(b)(ii)(A), or a deposit into such an account is

rejected or refunded, the Responsible Entity may credit the amount payable to the relevant Fund Scheme Securityholder to a separate bank account of the Responsible Entity to be held until the Fund Scheme Securityholder claims the amount or the amount is dealt with in accordance with any applicable unclaimed money legislation. If the Responsible Entity elects to proceed in this manner:

- (i) the Responsible Entity must hold the amount on trust, but any interest accruing on the amount will be for the account of the Acquirer;
- (ii) an amount credited to the account is to be treated as having been paid to the Fund Scheme Securityholder when credited to the account;
- (iii) the Responsible Entity shall be entitled to deduct from the amount held on trust any amount that it determines is required to be so deducted under any applicable law and to remit such amount to the appropriate Regulatory Authority; and
- (iv) the Responsible Entity must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

### **36.5 Joint Holders**

In the case of Fund Scheme Securityholders that hold Fund Scheme Securities in joint names:

- (a) any document required to be sent under the Scheme (including any cheque required to be sent under clause 36.4(b)(ii)(B)), will be forwarded to either, at the sole discretion of the Responsible Entity, the Fund Scheme Securityholder whose name appears first in the Register as at the Scheme Record Date or to the joint Fund Scheme Securityholders; and
- (b) any Scheme Consideration paid to any one of joint Fund Scheme Securityholders will discharge the Responsible Entity in respect of the payment.

### **36.6 Transfer of Fund Scheme Securities to the Acquirer**

On the Implementation Date, subject to the Acquirer having provided the Scheme Payment in the manner contemplated by clause 36.4(a) and providing the Responsible Entity with written confirmation of that having occurred, the following will occur:

- (a) all of the Fund Scheme Securities held by the Fund Scheme Securityholders, together with all rights and entitlements attaching to the Fund Scheme Securities as at the Implementation Date, will be transferred to the Acquirer, without the need for any further act by any Fund Scheme Securityholder (other than acts performed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as attorney and/or agent for Fund Scheme Securityholders under the Scheme);
- (b) the Responsible Entity will procure the delivery to the Acquirer for execution, duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Fund Scheme Securities held by the Fund Scheme Securityholders to the Acquirer, duly executed by the Responsible Entity (or any of its directors and officers appointed as sub-attorneys and/or agents of the Responsible Entity) as the attorney and/or agent of each Fund Scheme Securityholder as transferor under clause 36.9; and
- (c) the Responsible Entity will, immediately after receipt of the executed Scheme Transfers in respect of the Fund Scheme Securities from the Acquirer, enter or

procure the entry of, the name and address of the Acquirer in the Register in respect of all of the Fund Scheme Securities.

### **36.7 Dealings in Fund Securities**

- (a) For the purpose of establishing the persons who are Fund Scheme Securityholders and the number of Fund Securities held by them, the Responsible Entity will only recognise dealings in Fund Securities provided that registrable transfers or transmission applications in respect of those dealings are received by the Registrar by 5.00pm on the day which is the Scheme Record Date (in which case the Responsible Entity must register or procure that the Registrar registers, such transfers or transmission applications before 11.00am on the Scheme Business Day following the Scheme Record Date).
- (b) The Responsible Entity will not accept for registration, nor recognise for the purpose of establishing the persons who are Fund Scheme Securityholders, any transfer or transmission application in respect of Fund Securities received after the time specified in clause 36.7(a) (other than as contemplated by the Scheme in relation to the transfer of the Fund Scheme Securities to the Acquirer), or received prior to such time but not in registrable form.
- (c) The Responsible Entity will, until the name and address of the Acquirer has been entered in the Register as the holder of all of the Fund Scheme Securities, maintain, or procure the maintenance of, the Register in accordance with this clause 36.7. Immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 36.7(a), the Registrar will solely determine the persons who are Fund Scheme Securityholders and the number of Fund Scheme Securities held by them.
- (d) No Fund Scheme Securityholder (or any person purporting to claim through them) may dispose of, purport or agree to dispose of, or otherwise deal with, Fund Scheme Securities or any interest in them in any way after the Scheme Record Date other than to the Acquirer in accordance with the Scheme, and any attempt to do so will have no effect.
- (e) Other than in respect of the Acquirer (after registration of the Acquirer in respect of all Fund Scheme Securities under clause 36.6(c)), from the Scheme Record Date, all certificates and holding statements (as applicable) for Fund Scheme Securities as at the Scheme Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Scheme Record Date will cease to have any effect other than as evidence of the entitlements of Fund Scheme Securityholders to the Scheme Consideration.
- (f) As soon as reasonably practicable after the Scheme Record Date, and in any event at least 2 Scheme Business Days before the Implementation Date, the Responsible Entity must ensure details of the names, Registered Addresses and holdings of Fund Scheme Securities of every Fund Scheme Securityholder as shown in the Register as at the Scheme Record Date are given to the Acquirer (or as it directs) in such form as the Acquirer may reasonably require.

### **36.8 Covenants by Fund Scheme Securityholders**

Each Fund Scheme Securityholder:

- (a) irrevocably acknowledges that this clause 36 binds all of the Fund Scheme Securityholders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme

Resolution) without the need for any further act by that Fund Scheme Securityholder;

- (b) irrevocably agrees to the transfer of their Fund Scheme Securities, together with all rights, entitlements and obligations attaching to those Fund Scheme Securities, to the Acquirer in accordance with the terms of the Scheme;
- (c) irrevocably agrees to the modification or variation (if any) of the rights attaching to their Fund Scheme Securities arising from this clause 36;
- (d) irrevocably consents to the Responsible Entity and the Acquirer doing all things and executing all deeds, instruments, transfers or other documents (including the Scheme Transfers) as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it; and
- (e) irrevocably agrees to provide to the Responsible Entity such information as the Responsible Entity may reasonably require to comply with any law in respect of the Scheme and the transactions contemplated in this clause 36, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

### **36.9 Appointment of the Responsible Entity as attorney and as agent for implementation of the Scheme**

Each Fund Scheme Securityholder, without the need for any further act by that Fund Scheme Securityholder, irrevocably appoints the Responsible Entity as that Fund Scheme Securityholder's attorney and as that Fund Scheme Securityholder's agent for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including effecting a valid transfer or transfers of the Fund Scheme Securities to the Acquirer under clause 36.6(b), and including executing and delivering any Scheme Transfers; and
- (b) enforcing the Deed Poll against the Acquirer,

and the Responsible Entity accepts such appointment. The Responsible Entity, as attorney and as agent of each Fund Scheme Securityholder, may sub-delegate its functions, authorities or powers under this clause 36.9 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Fund Scheme Securityholder indemnifies the Responsible Entity and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 36.9.

### **36.10 Status of Fund Scheme Securities**

- (a) To the maximum extent permitted by law, the Fund Scheme Securities transferred to the Acquirer under this clause 36 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) Each Fund Scheme Securityholder is deemed to have warranted to the Responsible Entity in its own right and on behalf of the Acquirer, that all their Fund Scheme Securities (including any rights, entitlements and obligations attaching to those Fund Scheme Securities) which are transferred to the Acquirer under this clause 36 will, at the time of the transfer of them to the Acquirer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges,

security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind not referred to in this Constitution, and that they have full power and capacity to sell and to transfer their Fund Scheme Securities to the Acquirer pursuant to the Scheme.

- (c) The Acquirer will be beneficially entitled to the Fund Scheme Securities transferred to it under this clause 36 pending registration by the Responsible Entity of the name and registered address of the Acquirer in the Register as the holder of the relevant Fund Scheme Securities.

### 36.12 Lapsing

Clause 36 will lapse and have no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless the Responsible Entity and Acquirer otherwise agree in writing.

### 36.13 Orders of a court or Regulatory Authority

- (a) Notwithstanding anything else in this clause 36, the Responsible Entity may deduct and withhold from any consideration which would otherwise be payable by the Responsible Entity to a Fund Scheme Securityholder in accordance with this clause 36, any amount that it determines is required to be so deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority.
- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under the Scheme as having been paid to the Fund Scheme Securityholder in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate taxation office or other Regulatory Authority.
- (c) If requested in writing by the Fund Scheme Securityholder, the Responsible Entity must provide a receipt or other appropriate evidence of such payment to the taxation office or other Regulatory Authority.
- (d) If written notice is given to the Responsible Entity of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that requires that Scheme Consideration that would otherwise be provided to a Fund Scheme Securityholder by the Responsible Entity in accordance with this clause 36, must instead be paid or provided to a Regulatory Authority or other third party, then:
  - (i) the Responsible Entity is entitled to pay the relevant money in accordance with that order, direction or notice; and
  - (ii) doing so will be treated for all purposes under the Scheme as having been paid or provided to that Fund Scheme Securityholder.
- (e) If written notice is given to the Responsible Entity of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that prevents the Responsible Entity from providing consideration to a particular Fund Scheme Securityholder in accordance with this clause 36, or if the payment or provision of any Scheme Consideration to a particular Fund Scheme Securityholder is otherwise

prohibited by applicable law, the Responsible Entity will be entitled to (as applicable) to refrain from paying the Scheme Consideration that would otherwise be payable to the Scheme Participant, until such time as the payment of Scheme Consideration in accordance with this clause 36 is permitted by that order or direction or otherwise by law.

#### **36.14 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Responsible Entity, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Responsible Entity's registered office or by the Registrar, as the case may be. The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Fund Securityholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

#### **36.15 Costs and stamp duty**

- (a) Without limiting the terms of the Scheme Implementation Deed and clause 24, all expenses incurred by the Responsible Entity in relation to the Scheme and the Scheme Implementation Deed are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act and not reimbursable by the Acquirer pursuant to the Scheme Implementation Deed.
- (b) The Acquirer will pay all stamp duty (including fines, penalties and interest) and Transfer Taxes payable on or in connection with the transfer to it of Fund Scheme Securities pursuant to the Scheme.

#### **36.16 Limitation of liability**

Without limiting clause 22, subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever to the Fund Securityholders, beyond the extent to which the Responsible Entity is actually indemnified out of the Assets, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Scheme.

**Schedule 7**

**Deed Poll**



## Scheme Deed Poll

Project Finio

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**This Deed Poll** is made on

**By**

**ISPT Pty Ltd (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No. 1 (ABN 19 915 864 713) (the *Acquirer Trust*)** of Level 11, 8 Exhibition Street, Melbourne VIC 3000 (the *Acquirer*).

**In favour of each Fund Scheme Securityholder**

#### **Recitals**

- A The Acquirer and Equity Trustees Limited (ACN 004 031 298) as responsible entity for the FSREC Property Fund (the ***Fund RE***), a stapled group comprising the unlisted registered managed investment schemes: Fort Street Real Estate Capital Fund I (ARSN 163 688 346), Fort Street Real Estate Capital Fund II (ARSN 169 190 498) and Fort Street Real Estate Capital Fund III (ARSN 605 335 957) (***Fund***) have entered into an implementation deed dated  August 2025 (the ***Implementation Deed***).
- B The Fund RE has agreed in the Implementation Deed to propose the Schemes, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, the Acquirer will acquire all the Fund Scheme Securities from the Fund Scheme Securityholders for the Scheme Consideration.
- C In accordance with the Implementation Deed, Acquirer is entering into this Deed Poll for the purpose of covenanting in favour of the Fund Scheme Securityholders that it will observe and perform the obligations contemplated of it under the Schemes.

**It is agreed** as follows.

## **1 Definitions and Interpretation**

### **1.1 Definitions**

Terms defined in the Implementation Deed have the same meaning in this Deed Poll, unless the context requires otherwise.

***Trust Account*** means the trust account nominated by the Fund RE, the details of which must be notified in writing to the Acquirer at least 5 Business Days before the Implementation Date.

### **1.2 Interpretation**

The provisions of clause 1.2 of the Implementation Deed form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this Deed' and 'this document' in that clause are references to 'this Deed Poll' and clause references are amended as applicable.

## **2 Nature of Deed Poll**

The Acquirer acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Fund Scheme Securityholder in accordance with its terms, even though the Fund Scheme Securityholders are not party to it; and
- (b) under the Schemes, each Fund Scheme Securityholder appoints the Fund RE and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against the Acquirer on behalf of that Fund Scheme Securityholder.

### **3 Conditions Precedent and Termination**

#### **3.1 Conditions precedent**

The Acquirer's obligations under this Deed Poll are subject to the Schemes becoming Effective.

#### **3.2 Termination**

If the Implementation Deed is terminated before the Effective Date or the Schemes do not become Effective on or before the End Date, the obligations of the Acquirer under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless the Fund RE and Acquirer otherwise agree in accordance with the Implementation Deed.

#### **3.3 Consequences of termination**

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) the Acquirer is released from its obligations under this Deed Poll, except those obligations under clause 8.6; and
- (b) each Fund Scheme Securityholder retains any rights, powers or remedies that the Fund Scheme Securityholder has against the Acquirer in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

### **4 Compliance with Scheme Obligations**

#### **4.1 Obligations of the Acquirer**

Subject to clause 3, in consideration for the transfer to the Acquirer of the Fund Scheme Securities in accordance with the Schemes, the Acquirer covenants in favour of each Fund Scheme Securityholder that it will observe and perform all obligations contemplated of it under the Schemes, including the obligations relating to the provision of the Scheme Consideration in accordance with the terms of the Schemes.

#### **4.2 Undertaking to pay the Scheme Consideration**

On or prior to the Business Day before the Implementation Date, the Acquirer undertakes in favour of each Fund Scheme Securityholder to provide, or procure the provision of, the aggregate Scheme Consideration payable to the Fund Scheme Securityholders to the Trust Account in accordance with the terms of the Schemes.

#### **4.3 General warranties**

The Acquirer represents and warrants in favour of each Fund Scheme Securityholder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll;
- (d) its obligations under this Deed Poll are valid and binding and are enforceable in accordance with its terms;
- (e) the execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:

- (i) a law or treaty or a judgment, ruling, order or decree binding on it or any of its Controlled Entities;
  - (ii) the trust deed of the Acquirer Trust; or
  - (iii) any other document or agreement that is binding on it or any of its Controlled Entities;
- (f) neither it nor the Acquirer Trust is subject to an Insolvency Event;
- (g) the Acquirer Trust has been duly established and has not been terminated;
- (h) it is the trustee of the Acquirer Trust and no action has been taken or proposed to remove it as trustee of the Acquirer Trust;
- (i) no action has been taken or proposed to, either:
  - (i) dissolve the Acquirer Trust; or
  - (ii) wind-up the Acquirer Trust;
- (j) it has the authorisations necessary for it to enter into this Deed Poll and the Schemes, perform obligations under them and allow them to be enforced (including any authorisation required under the trust deed of the Acquirer Trust (if any));
- (k) entry into this Deed Poll and the Schemes is a valid exercise of its powers under the trust deed of the Acquirer Trust for the benefit of the unitholders of the Acquirer Trust; and
- (l) it has a right, in accordance with the terms of the trust deed of the Acquirer Trust, to be fully indemnified out of the property of the Acquirer Trust in respect of obligations and liabilities incurred by it under the documents to which it is a party, and, to the best of its knowledge and after reasonable and due enquiry, it is not aware of anything that would prevent it from being fully indemnified out of the property of the Acquirer Trust other than in the case of its behaviour being beyond power or involved fraud, negligence, default or breach of trust, in accordance with the terms of the trust deed of the Acquirer Trust, for any obligations under or in connection with this Deed Poll, or any of the transactions contemplated by this Deed Poll.

## **5 Limited liability of the Acquirer**

- (a) Except as provided elsewhere in this Deed Poll, the Acquirer enters into this Deed Poll only in its capacity as trustee of the Acquirer Trust.
- (b) Subject to clause 5(d), and despite any other provisions of this Deed Poll, a liability arising under or in connection with this Deed Poll is limited and can be enforced against the Acquirer only to the extent to which the Acquirer, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Acquirer Trust.
- (c) No person will be entitled to:
  - (i) claim from or commence proceedings against the Acquirer in respect of any liability under this Deed Poll, in any capacity other than as trustee for the Acquirer Trust;
  - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Acquirer, or prove in any liquidation, administration or arrangement of or affecting the Acquirer, except in relation to the property of the Acquirer Trust; or

- (iii) enforce or seek to enforce any judgment in respect of a liability under this Deed Poll against the Acquirer in any capacity other than as trustee of the Acquirer Trust.
- (d) The limitation in clause 5(b) does not apply to any obligation or liability of the Acquirer to the extent to which there is, in respect of that obligation or liability, whether under the trust deed of the Acquirer Trust or by operation of law, a reduction in the extent of the Acquirer's indemnity, or a loss of the Acquirer's right to indemnification, out of the assets of the Acquirer Trust because the Acquirer's behaviour was beyond power or involved fraud, negligence, default or breach of trust in relation to the Acquirer Trust.
- (e) This clause 5:
  - (i) applies despite any other provision of this Deed Poll and extends to all liabilities and obligations of the Acquirer in its capacity as trustee of the Acquirer Trust in any way connected with any representation, warranty, conduct, omission or transaction related to this Deed Poll; and
  - (ii) survives termination of this Deed Poll.

## 6 Continuing Obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) the Acquirer having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

## 7 Further Assurances

The Acquirer will, on its own behalf and, to the extent authorised by the Schemes, on behalf of each Fund Scheme Securityholder, do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

## 8 General

### 8.1 Notices

Any notice, demand, consent or other communication to the Acquirer (a **Notice**) given or made under this Deed Poll:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be delivered to the Acquirer by email to the email address below or the email address last notified by the Acquirer recipient to the sender:

**ISPT Pty Ltd as trustee for the ISPT Retail Australia Property Trust No. 1**

[REDACTED]

[REDACTED]

[REDACTED]

- (c) will be conclusively taken to be duly given or made:
  - (i) when the sender receives an automated message from the email system of the intended recipient confirming delivery; and

- (ii) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at a time that is later than 5.00pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

## **8.2 No waiver**

No failure to exercise nor any delay in exercising any right, power or remedy by the Acquirer or by any Fund Scheme Securityholder operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing and signed by the party granting the waiver.

## **8.3 Remedies cumulative**

The rights, powers and remedies of the Acquirer and of each Fund Scheme Securityholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

## **8.4 Amendment**

No amendment or variation of this Deed Poll is valid or binding unless either:

- (a) before the Second Court Date, the amendment or variation is agreed to in writing by the Acquirer and Fund RE (which such agreement may be given or withheld without reference to or approval by any Fund Scheme Securityholder); or
- (b) on or after the Second Court Date, the amendment or variation is agreed to in writing by the Acquirer and Fund RE (which such agreement may be given or withheld without reference to or approval by any Fund Scheme Securityholder), and is approved by the Court.

## **8.5 Assignment**

The rights and obligations of the Acquirer and of each Fund Scheme Securityholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of the Acquirer and the Fund RE.

## **8.6 Costs and duty**

The Acquirer (or an Acquirer Group Member) shall bear all costs arising out of the negotiation, preparation and execution of this Deed Poll. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll must be borne by the Acquirer (or an Acquirer Group Member). The Acquirer (or an Acquirer Group Member) must indemnify each Fund Scheme Securityholder on demand against any liability for that duty (including any related fines, penalties and interest).

## **8.7 Governing law and jurisdiction**

This Deed Poll is governed by the laws of New South Wales. Each party must submit to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

## Executed and delivered as a Deed Poll

**Signed, sealed and delivered** for **ISPT Pty Ltd** (ACN 064 041 283) as trustee for the ISPT Retail Australia Property Trust No. 1 (ABN 19 915 864 713) by sole attorney under power of attorney dated 25 May 2023 (Registered Book 4812 No. 985) in the presence of:

---

Witness Signature

---

Print Name

*If this deed poll was signed electronically, I certify that my electronic signature was affixed by me, or at my direction, on the date specified and that this deed poll was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).*

---

Attorney Signature

---

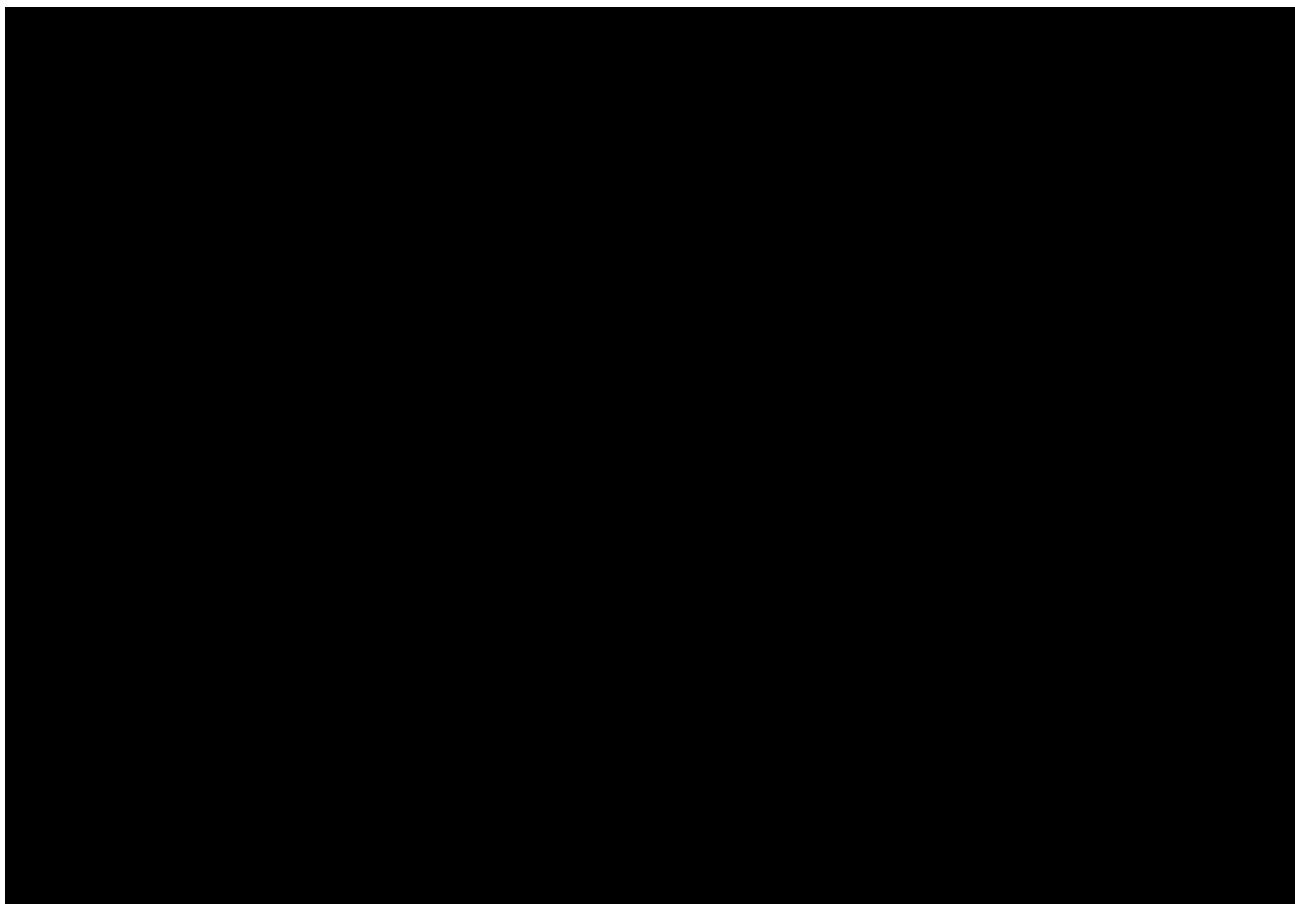
Print Name

*If this deed poll was signed electronically, I certify that my electronic signature was affixed by me, or at my direction, on the date specified and that this deed poll was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).*

**Execution Pages**

**Executed and delivered as a deed**

Each person executing this deed on behalf of a party states that they have no notice of revocation or suspension of their authority.



**Executed and delivered as a deed**

Each person executing this deed on behalf of a party states that they have no notice of revocation or suspension of their authority.

