

9 December 2010



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Dear Sir/Madam

**WESTFIELD GROUP (ASX:WDC)  
WHL, WT AND WAT CONSOLIDATED CONSTITUTIONS**

Following today's Westfield Group Extraordinary General Meeting of members at which amendments to the constitutions of Westfield Holdings Limited, Westfield Trust and Westfield America Trust were approved, copies of the consolidated constitutions for each entity are attached.

Yours faithfully  
**WESTFIELD GROUP**

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

**Simon Tuxen  
Company Secretary**

Encl.

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**Westfield Management Limited** ABN 41 001 670 579 AFS Licence 230329  
as responsible entity for **Westfield Trust** ABN 55 191 750 378 ARSN 090 849 746

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MALLESONS STEPHEN JAQUES

# Westfield Holdings Constitution

of

**Westfield Holdings Limited  
(ACN 001 671 496)**

**A Company Limited by Shares**

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# Westfield Holdings Constitution

## Contents

<b>1</b>	<b>Share capital and variation of rights</b>	<b>1</b>
1.1	Power of Directors to issue shares	1
1.2	Issue of further shares - no variation	1
1.3	Class Meetings	1
1.4	Non-recognition of interests	1
1.5	Joint holders of shares	2
<b>2</b>	<b>Issue of Westfield Group Stapled Securities</b>	<b>2</b>
2.1	Paramountcy	2
2.2	Stapling	2
2.3	Registration	2
2.4	No issue without corresponding issue of Attached Securities	3
2.5	Partly-paid shares	3
2.6	Shares to remain Stapled	3
2.7	Westfield Group Stapled Security Register	3
<b>3</b>	<b>Lien</b>	<b>4</b>
3.1	Lien on share	4
3.2	Lien on loans under employee incentive schemes	4
3.3	Lien on distributions	4
3.4	Exemption from article 3.1 or 3.2	4
3.5	Extinguishment of lien	5
3.6	Company's rights to recover payments	5
3.7	Reimbursement is a debt due	5
3.8	Sale under lien	5
3.9	Limitations on sale under lien	5
3.10	Transfer on sale under lien	5
3.11	Irregularity or invalidity	6
3.12	Proceeds of sale	6
<b>4</b>	<b>Calls on shares</b>	<b>6</b>
4.1	Directors to make calls	6
4.2	Time of call	6
4.3	Members' liability	6
4.4	Joint holders' liability	6
4.5	Non-receipt of notice	6
4.6	Interest on default	7
4.7	Fixed instalments	7
4.8	Differentiation between holders as to calls	7
4.9	Prepayment of calls and interest	7
4.10	Payment of calls	7
<b>5</b>	<b>Transfer of shares</b>	<b>7</b>
5.1	Forms of instrument of transfer	7
5.2	Execution and delivery of transfer	8
5.3	Effect of registration	8
5.4	Company to register forms without charge	8
5.5	Power to refuse to register	8

5.6	Obligation to refuse to register	8
5.7	Written notice to security holder of holding lock or refusal	9
5.8	Company to retain instrument of transfer	9
5.9	Refusal to register	9
5.10	Effect of Stapling	9
<b>6</b>	<b>Transmission of shares</b>	<b>9</b>
6.1	Transmission of shares on death of holder	9
6.2	Information given by personal representative	9
6.3	Death of joint owner	10
6.4	Transmission of shares on bankruptcy	10
6.5	Transmission of shares on mental incapacity	10
6.6	Stapling	11
<b>7</b>	<b>Forfeiture of shares</b>	<b>11</b>
7.1	Notice requiring payment of call	11
7.2	Contents of notice	11
7.3	Forfeiture for failure to comply with notice	11
7.4	Dividends and distributions included in forfeiture	12
7.5	Sale or re-issue of forfeited shares	12
7.6	Notice of forfeiture	12
7.7	Surrender instead of forfeiture	12
7.8	Cancellation of forfeiture	12
7.9	Effect of forfeiture on former holder's liability	12
7.10	Evidence of forfeiture	13
7.11	Transfer of forfeited share	13
7.12	Registration of transferee	13
7.13	Irregularity or invalidity	13
7.14	Forfeiture applies to non-payment of instalment	13
7.15	Attached Securities	13
<b>8</b>	<b>General meetings</b>	<b>14</b>
8.1	Annual general meeting	14
8.2	Convening general meeting	14
8.3	Notice of general meeting	14
8.4	Calculation of period of notice	14
8.5	Cancellation or postponement of a meeting	14
8.6	Notice of cancellation or postponement of a meeting	14
8.7	Contents of notice of postponement of meeting	14
8.8	Number of clear days for postponement of meeting	15
8.9	Business at postponed meeting	15
8.10	Proxy, attorney or Representative at postponed meeting	15
8.11	Non-receipt of notice	15
8.12	Stapling	16
8.13	Director entitled to notice of meeting	16
<b>9</b>	<b>Proceedings at general meetings</b>	<b>16</b>
9.1	Reference to a Member	16
9.2	Membership at a specified time	16

9.3	Number for a quorum	16
9.4	Requirement for a quorum	16
9.5	Quorum and time	17
9.6	Adjourned meeting	17
9.7	Appointment and powers of chairman of general meeting	17
9.8	Absence of chairman at general meeting	17
9.9	Conduct of general meetings	17
9.10	Adjournment of general meeting	18
9.11	Notice of adjourned meeting	18
9.12	Questions decided by majority	18
9.13	Poll	18
9.14	Equality of votes - casting vote for chairman	18
9.15	Voting on show of hands	19
9.16	Entitlement to vote	19
9.17	Voting on a poll for partly paid shares	19
9.18	Fractions disregarded for a poll	20
9.19	Joint shareholders' vote	20
9.20	Effect of unpaid call	20
9.21	Validity of vote in certain circumstances	20
9.22	Objection to voting qualification	20
9.23	Proxy form while Stapling applies	20
<b>10</b>	<b>The Directors</b>	<b>21</b>
10.1	Number of Directors	21
10.2	Change of number of Directors	21
10.3	Rotation of Directors	21
10.4	Office held until conclusion of meeting	21
10.5	Directors to retire	21
10.6	Director elected at general meeting	21
10.7	Eligibility for election as Director	22
10.8	Casual vacancy	22
10.9	Directors' fees	22
10.10	Additional or special duties	23
10.11	Retirement benefit	23
10.12	Expenses	23
10.13	Director's interests	23
10.14	Signing documents	24
10.15	Vacation of office of Director	24
10.16	Share Qualification of Directors	24
<b>11</b>	<b>Powers and duties of Directors</b>	<b>25</b>
11.1	Directors to manage Company	25
11.2	Specific powers of Directors	25
11.3	Appointment of attorney	25
11.4	Provisions in power of attorney	25
11.5	Security over Company assets	25
11.6	Minutes	25
11.7	Signing of cheques	26

<b>12</b>	<b>Proceedings of Directors</b>	<b>26</b>
12.1	Directors' meetings	26
12.2	Director may convene a meeting	26
12.3	Questions decided by majority	26
12.4	Alternate Director or proxy and voting	26
12.5	Chairman's Casting Vote	26
12.6	Appointment of Alternate Director	26
12.7	Alternate Director and meetings	26
12.8	Alternate Director's powers	27
12.9	Alternate Director responsible for own acts and defaults	27
12.10	Alternate Director and remuneration	27
12.11	Termination of appointment of Alternate Director	27
12.12	Appointment or termination in writing	27
12.13	Alternate Director and number of Directors	27
12.14	Director attending and voting by proxy	27
12.15	Quorum for Directors' meeting	28
12.16	Remaining Directors may act	28
12.17	Chairman of Directors	28
12.18	Absence of chairman at Directors' meeting	28
12.19	Committees	28
12.20	Powers delegated to Committees	28
12.21	Chairman of Committee	28
12.22	Meetings of Committee	29
12.23	Determination of questions	29
12.24	Circulating resolutions	29
12.25	Validity of acts of Directors	29
12.26	Appointment of Managing and Executive Directors	30
12.27	Ceasing to be Managing or Executive Director	30
12.28	One Managing Director exempt from retirement by rotation	30
12.29	Remuneration of Managing and Executive Directors	30
12.30	Powers of Managing and Executive Directors	30
12.31	Powers of delegation	30
<b>13</b>	<b>Secretary</b>	<b>30</b>
13.1	Appointment of Secretary	30
13.2	Suspension and removal of Secretary	31
13.3	Powers, duties and authorities of Secretary	31
<b>14</b>	<b>Seals</b>	<b>31</b>
14.1	Safe custody of common seals	31
14.2	Use of common seal	31
<b>15</b>	<b>Inspection of records</b>	<b>31</b>
15.1	Inspection by Members	31
15.2	Right of a Member to inspect	31
<b>16</b>	<b>Dividends and reserves</b>	<b>31</b>
16.1	Payment of dividend	31

16.2	No interest on dividends	32
16.3	Reserves and profits carried forward	32
16.4	Calculation and apportionment of dividends	32
16.5	Deductions from dividends	32
16.6	Distribution of specific assets	33
16.7	Resolution of distribution difficulties	33
16.8	Payment by cheque and receipts from joint holders	33
16.9	Unclaimed dividends	34
16.10	Effectual receipt from one joint holder	34
16.11	Election to reinvest dividend	34
16.12	Election to accept shares in lieu of dividend	34
<b>17</b>	<b>Capitalisation of profits</b>	<b>34</b>
17.1	Capitalisation of reserves and profits	34
17.2	Applying a sum for the benefit of Members	35
17.3	Effecting the resolution	35
17.4	Issue of further shares while Stapling applies	35
<b>18</b>	<b>Service of documents</b>	<b>36</b>
18.1	Document includes notice	36
18.2	Methods of service	36
18.3	Post	36
18.4	Fax or electronic transmission	36
18.5	Evidence of service	36
18.6	Joint holders	37
18.7	Persons entitled to shares	37
18.8	Service on the Company	37
<b>19</b>	<b>Winding up</b>	<b>37</b>
19.1	Distribution of assets	37
19.2	Powers of liquidator to vest property	37
19.3	Notice to Trust Managers	37
19.4	Shares issued on special terms	37
<b>20</b>	<b>Indemnity and insurance</b>	<b>38</b>
20.1	Indemnity	38
20.2	Insurance	38
20.3	Contract	38
<b>21</b>	<b>Restricted Securities</b>	<b>38</b>
21.1	Disposal during Escrow Period	38
21.2	Breach of Restriction Agreement or Listing Rules	39
21.3	Interpretation - Restricted Securities	39
<b>22</b>	<b>Small Holdings</b>	<b>39</b>
22.1	Divestment Notice	39
22.2	Relevant Period	40
22.3	Company can sell Relevant Shares	40
22.4	No obligation to sell	40

22.5	Company as Member's attorney	40
22.6	Conclusive evidence	40
22.7	Registering the purchaser	41
22.8	Payment of proceeds	41
22.9	Costs	41
22.10	Remedy limited to damages	41
22.11	Dividends and voting suspended	41
22.12	Twelve month limit	42
22.13	Effect of takeover bid	42
22.14	Definitions	42
22.15	While Stapling applies	43
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<b>23</b>	<b>Definitions and Interpretation and Stapling generally</b>	<b>43</b>
23.1	Definitions	43
23.2	Interpretation	47
23.3	Corporations Act	48
23.4	Headings	48
23.5	Replaceable rules not to apply	48
23.6	Currency	48
23.7	Application of Listing Rules	48
23.8	Application of Stapling Provisions	49
23.9	Effective time for Stapling	49
23.10	Listing and consistency with the Trust Constitutions	49
23.11	Intentions concerning issue and transfer of Westfield Group Stapled Securities	49
23.12	Power to unstack shares	50



# Westfield Holdings Constitution

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## 1 Share capital and variation of rights

### 1.1 Power of Directors to issue shares

The issue of shares in the Company is under the control of the Directors who:

- (a) may issue or cancel shares at any time and on any terms and conditions;
- (b) may grant options over unissued shares in the Company; and
- (c) have the right to settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Stapling Provisions, the Corporations Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares.

### 1.2 Issue of further shares - no variation

The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with the first-mentioned shares unless:

- (a) expressly provided by the terms of issue of the first-mentioned shares; or
- (b) required by the Corporations Act or, while the Company remains on the official list of ASX, the Listing Rules.

### 1.3 Class Meetings

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares held under the Corporations Act except that:

- (a) a quorum is constituted by at least two persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

### 1.4 Non-recognition of interests

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or

- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the interest or right.

## **1.5 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

The Company is not required to recognise any different addresses for joint holders and may enter a single address on the Register for all joint holders.

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## **2 Issue of Westfield Group Stapled Securities**

### **2.1 Paramountcy**

The provisions of this article 2 (“Issue of Westfield Group Stapled Securities”) apply notwithstanding the provisions of article 1 (“Share capital and variation of rights). Articles 2.3 (“Registration”) to 2.8 (“Amendment to stapling provisions”) apply from the Stapling Commencement Date.

### **2.2 Stapling**

From the Stapling Commencement Date, each Ordinary Share will be Stapled to one Trust 1 Unit and one Trust 2 Unit to form a Stapled Security.

Each Ordinary Share (if any) allotted and issued before Stapling applies will from the Stapling Commencement Date become Stapled to one Trust 1 Unit and one Trust 2 Unit to form a Stapled Security.

If further Attached Securities are from time to time Stapled to the Ordinary Shares the intention is that, so far as the law permits, an Ordinary Share and one of each of the Attached Securities which are stapled together shall be treated as one security (a Stapled Security).

While Stapling applies, the number of issued Ordinary Shares must equal the number of issued Attached Securities (except Company Held Units) at that time.

This article 2 (“Issue of Westfield Group Stapled Securities”) does not restrict the issue of shares which are not Ordinary Shares. Only Ordinary Shares will be stapled to Attached Units or other Attached Securities.

### **2.3 Registration**

The Westfield Group Stapled Securities must be registered in the Westfield Group Stapled Security Register. Subject to articles 1.4 (“Non-recognition of

interests) and 1.5 (“Joint holders of shares”), the Company must issue a certificate or a holding statement in accordance with the requirements of the CHES system, in respect of the Westfield Group Stapled Securities, identifying the Westfield Group Stapled Securities to which the certificate or holding statement relates.

## **2.4 No issue without corresponding issue of Attached Securities**

The Directors may not allot or issue an Ordinary Share unless there is an issue at the same time, and to the same person, of Attached Securities to form a Stapled Security.

## **2.5 Partly-paid shares**

The Directors may allot or issue any share on the basis that the issue price is payable by instalments. If an Ordinary Share is to be issued as part of a Stapled Security and the Attached Securities are to be partly paid the Ordinary Share must also be issued with terms for the making and payment of calls and forfeiture which are compatible with the terms of issue of the Attached Securities.

## **2.6 Shares to remain Stapled**

Subject to articles 2.7 (“Automatic stapling”), 23.12 (“Power to unstack shares”) and 23.13 (“Automatic unstapling”):

- (a) each issued Ordinary Share will remain Stapled for so long as those shares remain on issue; and
- (b) the Directors and the Company must not do any act, matter or thing (and must refrain from doing any act, matter or thing) if to do so (or refrain from doing so, as the case may be,) would result directly or indirectly in any Ordinary Share no longer being Stapled to the relevant Attached Securities to form a Stapled Security. In particular, the Directors and the Company must not re-organise any Ordinary Shares unless at the same time there is a corresponding re-organisation of the relevant Attached Securities that are Stapled to those shares to form Stapled Securities so that the person holding Ordinary Shares holds an equal number of Attached Securities of each category.

For the purposes of this article 2.6 (“Shares to remain Stapled”), the term “re-organise” has the meaning given in Listing Rules 7.18 to 7.24 (inclusive) and the term “re-organisation” has a corresponding meaning and includes any consolidation, division, cancellation, subdivision, buy back or reduction of any share capital.

## **2.7 Automatic stapling**

Without limiting article 2.6, immediately upon the occurrence of the Westfield Retail Trust Distribution, the Westfield Retail Trust Securities will each be stapled to each of the WDC Securities without the need for any determination or consent, so that all the Stapled Securities then on issue will have 5 components. This 5 component Stapling will continue until the automatic unstapling under article 23.13.

## **2.8 Westfield Group Stapled Security Register**

The Directors must maintain or cause to be maintained the Westfield Group Stapled Security Register which records the names and addresses of the Members holding Ordinary Shares, the number of Ordinary Shares held, the number of relevant Attached Securities held by the Members and any additional information required by the Corporations Act, the Listing Rules or by the Directors from time to time.

The Directors must also maintain in accordance with the Corporations Act a register of Members recording details of any class of shares other than Ordinary Shares.

The Westfield Group Stapled Security Register (together with a register referred to in the previous paragraph) will comprise the Register. All provisions of this Constitution applicable to the Register will apply only to the Register as a whole or the relevant part of it, as the context may require.

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## **3 Lien**

### **3.1 Lien on share**

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company has been called on by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default on payment.

### **3.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

### **3.3 Lien on distributions**

A lien on a share under article 3.1 (“Lien on share”) or 3.2 (“Lien on loans under employee incentive schemes”) extends to all distributions in respect of that share, including dividends.

### **3.4 Exemption from article 3.1 or 3.2**

The Directors may at any time exempt a share wholly or in part from the provisions of article 3.1 (“Lien on share”) or 3.2 (“Lien on loans under employee incentive schemes”).

### **3.5 Extinguishment of lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **3.6 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

### **3.7 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

### **3.8 Sale under lien**

Subject to article 3.9 ("Limitations on sale under lien"), the Company may sell or cause to be sold, in any manner the Directors think fit, any share on which the Company has a lien and an equal number of Attached Securities.

### **3.9 Limitations on sale under lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

### **3.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 3.8 ("Sale under lien"), the Company or its nominee may receive the consideration, if any, given for the share and any Attached Securities so sold and may execute or cause to be executed a transfer of the share and the Attached Securities sold in favour of

the purchaser of the share and the Attached Securities, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

### **3.11 Irregularity or invalidity**

The title of the purchaser to the share and any Attached Securities is not affected by any irregularity or invalidity in connection with the sale or disposal of the share and the Attached Securities.

### **3.12 Proceeds of sale**

The proceeds of a sale under article 3.8 (“Sale under lien”) must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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## **4 Calls on shares**

### **4.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **4.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **4.3 Members’ liability**

Each Member must upon receiving not less than the period of notice required by the Listing Rules specifying the time or times and place of payment, pay to the Company by the time or times and at the place so specified the amount called on that Member’s shares.

### **4.4 Joint holders’ liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **4.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

#### **4.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

#### **4.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, any sum that, by the terms of issue of a share, becomes payable on issue of the share or at a fixed date, is to be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **4.8 Differentiation between holders as to calls**

The Directors may, on the issue of shares, differentiate between the holders of the shares as to the amount of calls to be paid and the times of payment.

#### **4.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed on between the Directors and the Member paying the sum.

#### **4.10 Payment of calls**

While Stapling applies any issue of partly paid Ordinary Shares will be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

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## **5 Transfer of shares**

### **5.1 Forms of instrument of transfer**

Subject to the Listing Rules and to this Constitution, shares in the Company are transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable;
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX and is approved by the Directors.

## **5.2 Execution and delivery of transfer**

If an instrument of transfer is:

- (a) used to transfer a share in accordance with article 5.1(b); and
- (b) left for registration at the share registry of the Company, accompanied by any information the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

## **5.3 Effect of registration**

Except as provided by any applicable Operating Rules of a CS Facility, a transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

## **5.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where a charge is permitted by the Listing Rules.

## **5.5 Power to refuse to register**

If permitted to do so by the Listing Rules the Directors may:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's sub-register; or
- (b) refuse to register a transfer of shares in the Company to which paragraph (a) does not apply.

## **5.6 Obligation to refuse to register**

The Directors must :

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's sub-register; or
- (b) refuse to register any transfer of shares in the Company to which paragraph (a) does not apply,

if:

- (c) the Listing Rules require the Company to do so;
- (d) article 5.10(b) requires the Directors not to register the transfer; or



- (e) the transfer is in breach of the Listing Rules or a Restriction Agreement.

#### **5.7 Written notice to security holder of holding lock or refusal**

If in the exercise of their rights under articles 5.5 (“Power to refuse to register) and 5.6 (“Obligation to refuse to register”) the Directors request application of a holding lock to prevent a transfer of shares in the Company or refuse to register a transfer of a share they must give written notice of the request or refusal to the holder of the share, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Directors.

#### **5.8 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for such period as the Directors determine, subject to the requirements of applicable law.

#### **5.9 Refusal to register**

If the Directors refuse registration of a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

#### **5.10 Effect of Stapling**

- (a) A transfer of an Ordinary Share will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this article 5 (“Transfer of shares”) or article 6 (“Transmission of shares”), as the case may be, the transfer relates to or is accompanied by a transfer or a copy of a transfer of the relevant Attached Securities to which the share is Stapled in favour of the same transferee.
- (b) Subject to the applicable Operating Rules and the Listing Rules, the Directors must not register a transfer of an Ordinary Share unless the relevant Attached Securities are also to be transferred, or are capable of transfer, simultaneously.

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## **6 Transmission of shares**

### **6.1 Transmission of shares on death of holder**

If a Member who does not hold shares jointly dies, the Company will recognise only the personal representative of the Member as being entitled to the Member’s interest in the shares.

### **6.2 Information given by personal representative**

If the personal representative gives the Directors the information they reasonably require to establish the representative’s entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

### **6.3 Death of joint owner**

If a Member who holds shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **6.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article has effect subject to the Bankruptcy Act 1966 (Cwlth).

### **6.5 Transmission of shares on mental incapacity**

If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) the person may:

- (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; and
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

## **6.6 Stapling**

Notwithstanding any other provision of this Constitution, no person may under this article 6 (“Transmission of shares”) become a registered holder of Ordinary Shares unless that person is also entitled to become (and does become) the registered holder of each category of Attached Securities to which those shares are Stapled.

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## **7 Forfeiture of shares**

### **7.1 Notice requiring payment of call**

If a Member fails to pay a call or instalment of a call (with respect to a share or an Attached Security) on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice on the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

### **7.2 Contents of notice**

The notice must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares and an equal number of any Attached Securities to which the shares are Stapled will be liable to be forfeited. If the shares and/or the Attached Securities are officially quoted by ASX, the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

### **7.3 Forfeiture for failure to comply with notice**

A share in respect of which the notice under article 7.1 (“Notice of requiring payment of call”) has not been complied with may at any time, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

#### **7.4 Dividends and distributions included in forfeiture**

A forfeiture under article 7.3 (“Forfeiture for failure to comply with notice”) includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

#### **7.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act and Listing Rules:

- (a) a share (other than an Ordinary Share) forfeited under article 7.3 (“Forfeiture for failure to comply with notice”) may be sold, re-issued or otherwise disposed of to whom and on such terms as the Directors think fit; and
- (b) an Ordinary Share forfeited under article 7.3 (“Forfeiture for failure to comply with notice”) (together with the Attached Securities) may be sold or otherwise disposed of as a fully paid Ordinary Share (together with the Attached Securities) at a price for the Ordinary Share determined by the Directors (with the balance of the sale price of the Stapled Security being allocated between the Attached Securities).

#### **7.6 Notice of forfeiture**

If any share is forfeited under article 7.3 (“Forfeiture for failure to comply with notice”) notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

#### **7.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any surrendered share is taken to be a forfeited share. While Stapling applies an Ordinary Share may not be surrendered unless the Attached Securities are also surrendered.

#### **7.8 Cancellation of forfeiture**

At any time before a sale or disposition of a share, the forfeiture of that share may be cancelled on such terms as the Directors think fit. A forfeiture of an Ordinary Share may only be cancelled if, simultaneously, the forfeiture of any Attached Securities is cancelled.

#### **7.9 Effect of forfeiture on former holder’s liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares and ceases to be a member of each Stapled Entity in respect of any Attached Securities and loses all entitlement to dividends and other distributions or entitlements on the shares and relevant Attached Securities; and

- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and also reasonable expenses of sale, but the former Member's liability ceases if and when the Company receives payment in full of all such money and, if applicable, interest and expenses in respect of forfeited shares.

#### **7.10 Evidence of forfeiture**

A statement in writing declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

#### **7.11 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share (and, to the extent permitted by the Trust Constitutions, also the consideration payable in respect of any forfeited Attached Securities) on any sale or disposition and may execute or otherwise effect a transfer of the share in favour of the person to whom the share is sold or disposed of and is not obliged to ensure that any part of the money which the person has paid for the share or any Attached Securities is paid to the former holder of the share.

#### **7.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and any Attached Securities and is not bound to see to the application of any money paid as consideration.

#### **7.13 Irregularity or invalidity**

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share under this article 7 ("Forfeiture of shares").

#### **7.14 Forfeiture applies to non-payment of instalment**

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

#### **7.15 Attached Securities**

Where the share is an Ordinary Share, a reference to a share in this article is deemed to be a reference to the Ordinary Share and the Attached Securities where applicable. Ordinary Shares may be subject to forfeiture and sold pursuant to this article 7 ("Forfeiture of shares") even if they are fully paid in circumstances where there is default in payment of a call on any Attached Security.

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## **8 General meetings**

### **8.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **8.2 Convening general meeting**

The Directors may:

- (a) convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act; and
- (b) while Stapling applies, convene a meeting of Members in conjunction with a meeting of the Unitholders and if applicable, the holders of other Attached Securities and, subject to the Corporations Act, make such rules for the conduct of such a meeting as they think fit.

### **8.3 Notice of general meeting**

Notice of a meeting of Members must be given in accordance with article 18 (“Service of documents”) and the Corporations Act.

### **8.4 Calculation of period of notice**

In computing the period of notice under article 8.3 (“Notice of general meeting”), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **8.5 Cancellation or postponement of a meeting**

Where a meeting of Members (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place of the meeting. This article does not apply to a meeting convened in accordance with the Corporations Act by a single director, by Members or by the Directors on the request of Members or to a meeting convened by a court.

### **8.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be:

- (a) published in a daily newspaper circulating in Australia;
- (b) given to ASX; or
- (c) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the Directors.

### **8.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

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

### **8.8 Number of clear days for postponement of meeting**

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

### **8.9 Business at postponed meeting**

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

### **8.10 Proxy, attorney or Representative at postponed meeting**

Where:

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

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

### **8.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## **8.12 Stapling**

While Stapling applies, the auditor of each Stapled Entity, the Trust Managers and representatives of each other Stapled Entity (if any) may attend and speak at any general meeting.

## **8.13 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate general meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

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# **9 Proceedings at general meetings**

## **9.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in article 9 (“Proceedings at general meetings”) means a person who is a Member, a proxy, attorney or a Representative of that Member.

## **9.2 Membership at a specified time**

The Directors may determine, for the purposes of a particular general meeting, that all the shares that are quoted on (or a component of Westfield Group Stapled Securities quoted on) ASX at a specified time before the meeting are taken to be held at the time of the meeting by the persons who hold them at the specified time. The determination must be made and published in accordance with the Corporations Act.

## **9.3 Number for a quorum**

Subject to article 9.6 (“Adjourned meeting”) three Members present in person or by proxy, attorney or Representative, are a quorum at a general meeting unless the Company has only one Member entitled to vote, in which case that one Member constitutes a quorum. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted;
- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

## **9.4 Requirement for a quorum**

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



## **9.5 Quorum and time**

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

- (a) if convened by a Director, or by or on requisition of Members, is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## **9.6 Adjourned meeting**

At a meeting adjourned under article 9.5(b), those Members present in person or proxy, attorney or Representative are a quorum.

## **9.7 Appointment and powers of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

## **9.8 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) a deputy chairman (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

## **9.9 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

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

#### **9.10 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **9.11 Notice of adjourned meeting**

No new notice of the adjourned meeting need be given unless required by the Corporations Act. Notice of any adjourned meeting which may become necessary may be included in the notice convening the original meeting.

#### **9.12 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **9.13 Poll**

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **9.14 Equality of votes - casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to any votes

to which the chairman is entitled as a Member or proxy or attorney or Representative.

### **9.15 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **9.16 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

### **9.17 Voting on a poll for partly paid shares**

Subject to article 9.20 (“Effect of unpaid call”) and the terms on which shares are issued, if a Member holds partly paid shares, the number of votes the Member has in respect of those shares on a poll is determined as follows:

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

where:

A is the number of those shares held by the Member;

B is the amount paid on each of those shares excluding any amount:

- (a) paid or credited as paid in advance of a call; and
- (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of those shares) of the consideration received for the issue of those shares;

C is the issue price of each of those shares; and

D is the number of votes attached to those shares.

**9.18 Fractions disregarded for a poll**

On the application of article 9.17 (“Voting on a poll for partly paid shares”), disregard any fraction which arises.

**9.19 Joint shareholders’ vote**

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

**9.20 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

**9.21 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share in respect of which the appointment or authority was given.

**9.22 Objection to voting qualification**

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

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

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

**9.23 Proxy form while Stapling applies**

While Stapling applies, unless the Corporations Act requires otherwise, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

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## **10 The Directors**

### **10.1 Number of Directors**

The number of Directors is to be not less than three nor more than:

- (a) sixteen; or
- (b) any lesser number than sixteen determined by the Directors from time to time (but the number must not be less than the number of Directors in office at the time any determination takes effect).

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

### **10.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

### **10.3 Rotation of Directors**

At each annual general meeting one-third of the Directors for the time being, or, if their number is not three nor a multiple of three, then the number nearest one-third, and any other Director who has held office for three years or more since last being elected, must retire from office.

In determining the number of Directors to retire, no account is to be taken of a Director who only holds office until the conclusion of the meeting in accordance with article 10.8 (“Casual vacancy”) or the Managing Director who is exempted from retirement by rotation in accordance with article 12.28 (“One Managing Director exempt from retirement by rotation”).

### **10.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

### **10.5 Directors to retire**

The Directors to retire at any annual general meeting must be those who have been longest in office since their last election, but, as between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

### **10.6 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

## **10.7 Eligibility for election as Director**

Except for:

- (a) a person who is eligible for election or re-election under article 10.4 (“Office held until conclusion of meeting”) or 10.8 (“Casual vacancy”); or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least 30 business days before the general meeting or any other period permitted under the Listing Rules or the Corporations Act.

## **10.8 Casual vacancy**

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with article 10.1 (“Number of Directors”).

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting. This provision does not apply to the one Managing Director who is exempted from retirement by rotation in accordance with article 12.28 (“One Managing Director exempt from retirement by rotation”).

## **10.9 Directors’ fees**

The Directors are to be entitled to receive fees for their services as Directors as follows:

- (a) the total amount or value of the fees of the Directors must not exceed the amount per annum as determined from time to time by the Company in general meeting. (The notice convening the meeting must include the proposal to increase the Directors’ fees and specify both the amount of the increase and the new yearly sum proposed for determination);
- (b) the fees are to be divided among the Directors in the proportion and manner they agree or, in default of agreement, among them equally;
- (c) the fees are to be provided wholly in cash unless the Directors, with the agreement of the Director concerned, determine that part is to be satisfied in the form of non-cash benefits (including the issue or purchase of shares in the Company or the grant of options to subscribe for such shares);
- (d) in making a determination under paragraph (c), the Directors may fix the value of any non-cash benefit;

- (e) the Directors' fees accrue from day to day, except for any non-cash benefit which is taken to accrue at the time the benefit is provided, subject to the terms on which the benefit is provided; and
- (f) this article 10.9 ("Directors' fees") does not apply to the remuneration of the Managing Director or any other Director appointed under article 12.26 ("Appointment of Managing and Executive Directors").

#### **10.10 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's fees under article 10.9 ("Directors' fees").

#### **10.11 Retirement benefit**

Subject to the Listing Rules and Corporations Act, the Company may pay a former Director, or the personal representatives of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retiring benefit. A retirement benefit paid under this article is not remuneration to which article 10.9 ("Directors' fees") applies.

For the purpose of this article, the period of service by a Director as a director of a related body corporate of the Company, which appointment precedes the first appointment or election of that Director as a Director of the Company may, if the Directors so determine at the time of such first appointment, count as service as a Director of the Company.

#### **10.12 Expenses**

A Director is also entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

#### **10.13 Director's interests**

- (a) Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:
  - (i) hold any office or place of profit in the Company, except that of auditor;
  - (ii) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
  - (iii) enter into any contract or arrangement with the Company;

- (iv) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or persons dependent on or connected with them;
  - (v) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor; and
  - (vi) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors.
- (b) A Director may do any of the above despite the fiduciary relationship of the Director's office:
- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this article is also a reference to each Related Body Corporate of the Company and to each of the Stapled Entities.

#### **10.14 Signing documents**

A Director is not disqualified because of a material personal interest from signing or participating in the execution of a document by or on behalf of the Company.

#### **10.15 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from the office by notice in writing to the Company;
- (c) is not present personally or by proxy or represented by an Alternate Director at meetings of the Directors for a continuous period of six months without leave of absence from the Directors; or
- (d) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that as a Director.

#### **10.16 Share Qualification of Directors**

A Director is not required to own any shares as a qualification for office.



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## **11 Powers and duties of Directors**

### **11.1 Directors to manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting. To the extent permitted by law, while Stapling applies, the Directors may have regard to the interests of Unitholders and, if applicable, the members of any other Stapled Entity and must act in the best interests of the Westfield Group as a whole constituted by the Company and the Trusts (and, if applicable, other Stapled Entities) rather than only the interests in the Company.

### **11.2 Specific powers of Directors**

Without limiting the generality of article 11.1 (“Directors to manage Company”), the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **11.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **11.4 Provisions in power of attorney**

Any power of attorney under article 11.3 (“Appointment of attorney”) may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **11.5 Security over Company assets**

If the Directors or any of them or any other person becomes or is about to become personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of such liability.

### **11.6 Minutes**

The Directors must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

## **11.7 Signing of cheques**

The Directors may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

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## **12 Proceedings of Directors**

### **12.1 Directors' meetings**

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

### **12.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### **12.3 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote. Their decision is for all purposes a decision of the Directors.

### **12.4 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

### **12.5 Chairman's Casting Vote**

In the event of an equality of votes, the chairman of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

### **12.6 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person, approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit.

An Alternate Director is not required to own any shares as a qualification for office.

### **12.7 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's place.

## **12.8 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.

## **12.9 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

## **12.10 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 10.9 ("Directors' fees") or 10.11 ("Retirement benefit").

## **12.11 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

## **12.12 Appointment or termination in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

## **12.13 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

## **12.14 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the meeting has one vote for that other Director and one vote as a Director in that capacity.

### **12.15 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is two or any greater number determined by the Directors from time to time.

### **12.16 Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 10.1 ("Number of Directors"), the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

### **12.17 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

### **12.18 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 12.17 ("Chairman of Directors"); or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

### **12.19 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of at least one Director and such other persons as they think fit.

### **12.20 Powers delegated to Committees**

A committee to which any powers have been delegated under article 12.19 ("Committees") must exercise those powers in accordance with any directions of the Directors.

### **12.21 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

#### **12.22 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

#### **12.23 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members present and voting. In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

#### **12.24 Circulating resolutions**

- (a) A resolution in writing assented to by all the Directors who are then in Australia and who are eligible to vote on a resolution and which contains a statement to the effect that the Directors are in favour of the resolution is as valid and effectual as if it had been passed at a meeting of the Directors held at the time when the written resolution was last signed by an eligible Director, provided that the resolution is signed by a majority of all the Directors.
- (b) Any resolution under this article 12.24 (“Circulating resolutions”) may consist of several documents in like form each signed by one or more Directors.
- (c) A Director may signify assent to a document under this article 12.24 (“Circulating resolutions”) by signing the document or by notifying the Company of the assent of the Director by any technology, including telephone and e-mail.
- (d) Where a Director signifies assent to a document under this article 12.24 (“Circulating resolutions”) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of Directors attended by that Director. The resolution the subject of a document under this article 12.24 (“Circulating resolutions”) is not invalid if a Director does not sign the document by way of confirmation in accordance with this article 12.24 (“Circulating resolutions”).

#### **12.25 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

## **12.26 Appointment of Managing and Executive Directors**

The Directors may:

- (a) appoint one or more of their number to the office of Managing Director or as an Executive Director or to any other office, except auditor, or employment under the Company for the period and on the terms they think fit;
- (b) subject to the terms of any contract between the relevant Director and the Company, at any time remove or dismiss any Managing Director or Executive Director from that office and appoint another Director to that office.

## **12.27 Ceasing to be Managing or Executive Director**

A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

## **12.28 One Managing Director exempt from retirement by rotation**

One Managing Director, nominated by the Directors, is exempt from retirement by rotation and is not counted under article 10.3 (“Rotation of Directors”) for determining the number of Directors to retire by rotation.

## **12.29 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

## **12.30 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

## **12.31 Powers of delegation**

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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# **13 Secretary**

## **13.1 Appointment of Secretary**

There must be at least one secretary of the Company who is to be appointed by the Directors.

### **13.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **13.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **14 Seals**

### **14.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **14.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **15 Inspection of records**

### **15.1 Inspection by Members**

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

### **15.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **16 Dividends and reserves**

### **16.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the rights of persons (if any) entitled to shares with special rights to dividend, the Directors may determine that a dividend is payable, fix the amount and the time for payment

and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

#### **16.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

#### **16.3 Reserves and profits carried forward**

The Directors may, before paying any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.

Pending any application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

#### **16.4 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of any shares issued to the contrary, the profits of the Company are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

#### **16.5 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member all sums of money (if any) presently payable by that Member to



the Company on account of calls or otherwise in relation to shares in the Company.

#### **16.6 Distribution of specific assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate;
- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash.

#### **16.7 Resolution of distribution difficulties**

If a difficulty arises in regard to a distribution under article 16.6 (“Distribution of specific assets”), the Directors may:

- (a) settle the matter as they consider expedient;
- (b) fix the value for distribution of the specific assets or any part of those assets;
- (c) determine that cash payments will be made to, or at the direction of, any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Directors’ opinion, impracticable the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

#### **16.8 Payment by cheque and receipts from joint holders**

A dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) by cheque sent through the post directed to the address of the holder as shown in the Register or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

## **16.9 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

## **16.10 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

## **16.11 Election to reinvest dividend**

Subject to Listing Rules and the following paragraph, the Directors may grant to Members or any class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for shares in the Company of the same class on such terms and conditions as the Directors think fit. The Directors may at any time on notice to the Members or class of Members terminate or suspend any reinvestment plan granted to Members or a class of Members under this article.

While Stapling applies, no reinvestment by Members holding Ordinary Shares may occur unless at the same time the Member acquires an identical number of each category of Attached Securities which when issued or acquired are Stapled to the additional Ordinary Shares. The Directors may make provisions governing the amount of the reinvested dividends to be used to subscribe for shares in the Company and the amount to be used to subscribe for the Attached Securities having regard to the issue price of the Attached Securities.

## **16.12 Election to accept shares in lieu of dividend**

Subject to the Listing Rules, the Directors may determine in respect of any dividend which it is proposed to pay on any shares of the Company that Members may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

The provisions of the second paragraph of article 16.11 (“Election to reinvest dividend”) apply (with such changes as may be necessary) to this article 16.12 (“Election to accept shares in lieu of dividend”). While Stapling applies no Ordinary Shares may be issued to a Member pursuant to this article 16.12 unless the Member also receives an equal number of Attached Securities.

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# **17 Capitalisation of profits**

## **17.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 17.2 (“Applying a sum for the benefit of Members”), for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

## **17.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under article 17.1 (“Capitalisation of reserves and profits”) are:

- (a) in paying up any amounts unpaid on shares and, while Stapling applies, any Attached Securities held by Members;
- (b) subject to article 17.4 (“Issue of further shares while Stapling applies”), in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

## **17.3 Effecting the resolution**

The Directors may do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement so made is effective and binding on all the Members concerned.

## **17.4 Issue of further shares while Stapling applies**

While Stapling applies, the Directors must not resolve to issue any Ordinary Shares to Members under this article 17 (“Capitalisation of profits”) unless, at

the same time as the issue, an identical number of Attached Securities are issued to those Members.

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## **18 Service of documents**

### **18.1 Document includes notice**

In this article 18 (“Service of documents”), a reference to a document includes a notice.

### **18.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a fax number or electronic address nominated by the Member.

### **18.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

### **18.4 Fax or electronic transmission**

If a document (other than a notice of meeting of Members) is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) in the case of a fax, to be effected at the time shown in the transmission report as the time that the whole of the fax was sent; and
- (c) in the case of electronic transmission, to be effected at the time when the sender receives an acknowledgment from the computer system sending the transmission that the transmission was sent.

### **18.5 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

## **18.6 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

## **18.7 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this article to the person from whom that person derives title prior to registration of that person's title in the Register.

## **18.8 Service on the Company**

A document required under this Constitution or the Corporations Act to be given to the Company must be given in writing (which includes a fax), or in such other manner as the Directors determine. The Document must bear the actual, facsimile or electronic signature of the Member or a duly authorised office or representative of the Member unless the Directors dispense with this requirement. Service is only effective at the time of receipt.

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# **19 Winding up**

## **19.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

## **19.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a Special Resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.

## **19.3 Notice to Trust Managers**

On or before commencement of a winding up of the Company in accordance with this article 19 ("Winding up"), the liquidator must give the Trust Managers written notice that the Company is to be wound up. Notwithstanding any other terms of this Constitution, should either Trust be terminated under the provisions of its constitution, the Stapling Provisions will cease to apply.

## **19.4 Shares issued on special terms**

Articles 19.1 ("Distribution of assets"), 19.2 ("Powers of liquidator to vest property") and 19.3 ("Notice to Trust Managers") do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **20 Indemnity and insurance**

### **20.1 Indemnity**

The Company may indemnify any current or former Director, Secretary or executive officer of the Company or Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **20.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, except to the extent that:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

### **20.3 Contract**

The Company may enter into an agreement with a person referred to in articles 20.1 (“Indemnity”) and 20.2 (“Insurance”) with respect to matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to books of the Company or a Related Body Corporate conferred by the Corporations Act or otherwise by law.

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## **21 Restricted Securities**

### **21.1 Disposal during Escrow Period**

Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or ASX.

The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

## **21.2 Breach of Restriction Agreement or Listing Rules**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

## **21.3 Interpretation - Restricted Securities**

In this article, the expressions “disposed of”, “disposed”, “Escrow Period” and “Restricted Securities” have the same meaning as in the Listing Rules.

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# **22 Small Holdings**

## **22.1 Divestment Notice**

This article 22 applies while the shares or Stapled Securities are Officially Quoted

Subject to the provisions of this article 22, the Company may, at the discretion of the Directors, from time to time, sell or redeem any Shares held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.

If the Directors determine that a Member is a Small Holder or a New Small Holder, the Company may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Shares comprising and the Market Price of the Small Holding or New Small Holding and the date on which the Market Price was determined;
- (b) that the Company intends to sell the Relevant Shares in accordance with this article after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initiate a holding adjustment to move those Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

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

## **22.2 Relevant Period**

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

## **22.3 Company can sell Relevant Shares**

At the end of the Relevant Period, the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that the Member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) the Relevant Shares of a Member who is a New Small Holder.

## **22.4 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this article 22 (“Small Holdings”); however, unless the Relevant Shares are sold within six weeks after the end of the Relevant Period, the Company’s right to sell the Relevant Shares under the Divestment Notice relating to those shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

## **22.5 Company as Member’s attorney**

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

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

## **22.6 Conclusive evidence**

A statement in writing by or on behalf of the Company under this article 22 (“Small Holdings”) is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this article 22 (“Small Holdings”) is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.



## **22.7 Registering the purchaser**

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

## **22.8 Payment of proceeds**

Subject to article 22.9 (“Costs”), where:

- (a) Relevant Shares of a Member are sold by the Company on behalf of the Member under this article; and
- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are not certificated) has been received by the Company,

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

## **22.9 Costs**

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this article, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

## **22.10 Remedy limited to damages**

The remedy of a Member to whom this article 22 (“Small Holdings”) applies in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person. The Company is only liable if it has failed to comply with the requirements of this article 22 and its liability is limited to the value of the Relevant Shares at the time of sale.

## **22.11 Dividends and voting suspended**

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this article, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are

suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this article, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that Member are transferred; and
- (b) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.

#### **22.12 Twelve month limit**

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by article 22.13 (“Effect of takeover bid”)).

#### **22.13 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company’s powers under this article 22 (“Small holdings”) to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite article 22.12 (“Twelve month limit”) and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

#### **22.14 Definitions**

In this article 22 (“Small Holdings”):

**Divestment Notice** means a notice given under article 22.1 (“Divestment Notice”) to a Small Holder or a New Small Holder.

**Market Price** means, in relation to a Share or Stapled Security, the Weighted Average Market Price of Shares or Stapled Securities during the ten Stock Exchange trading days ending two Stock Exchange trading days prior to the date of the calculation.

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding** means a holding of Shares or, while Stapling applies, Stapled Securities (created by the transfer of a parcel of Shares) created after the date on which article 22 (“Small Holdings”) came into effect, the aggregate Market Price of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares, or, while Stapling applies, Stapled Securities as provided under the Listing Rules.

**Relevant Period** means the period specified in a Divestment Notice under article 22.2 (“Relevant Period”).

**Relevant Shares** are the Shares specified in a Divestment Notice.

**Shares** for the purposes of article 22 (“Small Holdings”) are shares in the Company all of the same class.

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

**Small Holding** means a holding of Shares or, while Stapling applies, Stapled Securities the aggregate Market Price of which at the relevant date is less than a marketable parcel of Shares or, while Stapling applies, Stapled Securities as provided under the Listing Rules.

**Stock Exchange** means Australian Stock Exchange Limited and each and every other stock exchange and marketing institution in Australia on which for the time being Shares or Stapled Securities are listed for quotation with the approval of the Directors.

**Weighted Average Market Price** means:

- (a) the aggregate of the prices at which each Relevant Share or Stapled Security was sold during the relevant period divided by the number of Shares or Stapled Securities sold during that period, in the case of both the sales prices and numbers, as reported by the Stock Exchange; or
- (b) if no such sale occurred, the price at which the last recorded sale of a Relevant Share or Stapled Security occurred prior to the commencement of the relevant period.

### 22.15 While Stapling applies

While Stapling applies, no sale or transfer under this article 22 (“Small Holdings”) may occur unless, at the same time as Ordinary Shares are sold and transferred, an identical number of each category of Attached Securities are also sold and transferred.

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## 23 Definitions and Interpretation and Stapling generally

### 23.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 12.6 (“Appointment of Alternate Director”).

**Attached Securities** means Attached Units and any other security or securities which are from time to time Stapled or to be Stapled to an Ordinary Share.

**Attached Units** means Units in Trust 1 and Trust 2.

**ASX** means Australian Stock Exchange Limited or the market operated by it as the context requires.

**CHESS** means Clearing House Electronic Sub-register System.

**Committee** means a committee of Directors constituted under article 12.19 (“Committees”).

**Company** means Westfield Holdings Limited (ABN 66 001 671 496).

**Company Held Units** means Units in Trust 2 held by the Company and any of its subsidiaries.

**Constitution** means this constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Executive Director** means a person appointed as an executive director under article 12.26 (“Appointment of Managing and Executive Directors”).

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules.

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

**Managing Director** means a person appointed as a managing director under article 12.26 (“Appointment of Managing and Executive Directors”).

**Member** means a person entered in the Register as the holder of shares in the capital of the Company.

**Ordinary Shares** means ordinary voting shares in the capital of the Company having the rights and being subject to the restrictions specified in this Constitution or by the Directors. **Ordinary Share** has a corresponding meaning.

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

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

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution and in the absence of a determination means 10% per annum, calculated daily.

**Register** means the register of Members of the Company under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office of the Company.

**Related Body Corporate** has the same meaning as related body corporate has in the Corporations Act.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

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

**SEATS** has the same meaning as in the Listing Rules.

**Secretary** means a person appointed under article 13.1 (“Appointment of Secretary”) as secretary of the Company and, where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**security** means any financial product within section 764A of the Corporations Act.

**share** means a share in the capital of the Company.

**Special Resolution** has the same meaning as in the Corporations Act.

**Stapled** means the linking together of Ordinary Shares and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others.

**Stapled Entity** means the Trusts and any other corporation or registered managed investment scheme whose securities are at the relevant time Stapled to the Ordinary Shares.

**Stapled Security** means a share and each Attached Security which are Stapled together.

**Stapling** means the process that results in Ordinary Shares and Attached Securities being and remaining Stapled to each other.

**Stapling Commencement Date** means the date upon which Stapling of the shares to Attached Units is to commence as determined by the Trust Managers and the Directors but, if it is determined that Stapling will occur in stages, means the date upon which the last stage occurs.

**Stapling Provisions** means the provisions of this Constitution relating to, referring to or connected with Stapling and, for avoidance of doubt, includes those provisions relating to, referring to or connected with Stapling contained in articles, 2 (“Issue of Westfield Group Stapled Securities”), 3.8 (“Sale under

lien”), 3.10 (“Transfer on sale under lien”), 3.11 (“Irregularity or invalidity”), 4.10 (“Payment of calls”), 5.10 (“Effect of Stapling”), 6.6 (“Stapling”), 7.1 (“Notice requiring payment of call”), 7.2 (“Contents of notice”), 7.5 (“Sale or re-issue of forfeited shares”), 7.8 (“Cancellation of forfeiture”), 7.9 (“Effect of forfeiture on former holder’s liability”), 7.11 (“Transfer of forfeited share”), 7.15 (“Attached Securities”), 8.2(b), 8.12 (“Stapling”), 9.23 (“Proxy form while Stapling applies”), 11.1 (“Directors to manage Company”), 16.11 (“Election to reinvest dividend”), 16.12 (“Election to accept shares in lieu of dividend”), 17.4 (“Issue of further shares while Stapling applies”), 19.3 (“Notice to Trust Manager”), 22.15 (“While Stapling applies”), 23.1 (“Definitions”) and 23.8 (“Application of Stapling Provisions”) to 23.12 (“Termination of Stapling Provisions”) (inclusive) and **Stapling Provision** has a corresponding meaning.

**State** means the State or Territory in which the Company is for the time being registered.

**Trust 1** means the registered scheme known as the “Westfield Trust” (ARSN 090 849 746).

**Trust 2** means the registered scheme known as “Westfield America Trust” (ARSN 092 058 449).

**Trust 1 Constitution** means the constitution dated 1 April 1982 in relation to Trust 1, as amended, which binds the Trust 1 Manager as responsible entity of Trust 1.

**Trust 2 Constitution** means the constitution dated 28 March 1996 in relation to Trust 2, as amended, which binds the Trust 2 Manager as responsible entity of the Trust 2.

**Trust Constitutions** means the Trust 1 Constitution and the Trust 2 Constitution.

**Trust 1 Manager** means Westfield Management Limited (ABN 41 001 670 579) as responsible entity of Trust 1.

**Trust 2 Manager** means Westfield America Management Limited (ABN 66 072 780 619) as responsible entity of Trust 2.

**Trust Managers** means collectively the Trust 1 Manager and the Trust 2 Manager.

**Trust 1 Unit** means a Unit in Trust 1.

**Trust 2 Unit** means a Unit in Trust 2.

**Trusts** means collectively Trust 1 and Trust 2.

**Unit** means an ordinary unit.

**Unitholder** means a person shown in the registers of the Trusts as the holder of Attached Units.

**Westfield Group** means the Company and the Stapled Entities once Stapling has commenced.

**WDC Securities** means each of the Ordinary Shares, Trust 1 Units, Trust 2 Units, or all of them as the context requires.

**Westfield Retail Trust Distribution** means a pro rata distribution of capital from each of Trust 1 and the Company, in each case in the form of a transfer of units which are part of Westfield Retail Trust Securities.

**Westfield Retail Trust Offer Document** means the product disclosure statement dated 3 November 2010 under which a public offer of Westfield Retail Trust Securities is made.

**Westfield Retail Trust Securities** means units in Westfield Retail Trust 1 and Westfield Retail Trust 2, which are or are to be stapled to each other.

**Westfield Group Stapled Security Register** means the register of Westfield Group Stapled Securities to be established and maintained in accordance with article 2.7 (“Westfield Group Stapled Security Register”).

## 23.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (e) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (g) **(amount paid)** a reference to an amount paid on a share includes an amount credited as paid on that share;
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and

- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

### **23.3 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

### **23.4 Headings**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

### **23.5 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

### **23.6 Currency**

The Directors may:

- (a) differentiate between Members as to the currency in which any amount payable to a Member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution in a currency other than Australian and the amount payable will be converted from Australian currency in any manner, at any time and at any exchange rate as the Directors think fit; and
- (c) in deciding the currency in which a payment is to be made to a Member, have regard to the registered address of the Member, the register on which a Member’s shares are registered and any other matters as the Directors consider appropriate.

### **23.7 Application of Listing Rules**

In this Constitution a reference to the Listing Rules only applies while the Company is admitted to the official list of ASX. While the Company is on the official list of ASX the following clauses apply:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;



- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

### **23.8 Application of Stapling Provisions**

If there is an inconsistency between any Stapling Provision and any other provision of this Constitution, then the Stapling Provision prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the Operating Rules of a CS Facility, the Corporations Act or any other law. The Stapling Provision prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.

### **23.9 Effective time for Stapling**

The Stapling Provisions only apply and come into effect in accordance with this article 23.9 (“Effective time for Stapling”). Each Ordinary Share will be Stapled to Attached Units on the Stapling Commencement Date and the Stapling Provisions will apply and come into effect from that time. The Directors may, subject to the Corporations Act and, while the Ordinary Shares are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities to the Ordinary Shares.

### **23.10 Listing and consistency with the Trust Constitutions**

The Directors must use every reasonable endeavour to procure that Westfield Group Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to Westfield Group Stapled Securities in the Trust Constitutions and the constitution of any other Stapled Entity.

### **23.11 Intentions concerning issue and transfer of Westfield Group Stapled Securities**

The Ordinary Shares are intended to be Stapled to Attached Units and any other Attached Securities in the ratio of one share to one Unit in each of Trust 1 and Trust 2 and one of each other category of Attached Securities (if any). It is the intention of the Company (and as more specifically set out in this Constitution) that:

- (a) the Members holding Ordinary Shares shall be identical to the Unitholders and the holders of other Attached Securities (if any);

- (b) as far as the law permits, an Ordinary Share and one of each of the Attached Securities which are Stapled together shall be treated as one security;
- (c) no transfer of an Ordinary Share is to occur without one of each of the Attached Securities being transferred at the same time from the same transferor to the same transferee; and
- (d) no Ordinary Share is to be issued unless one of each of the Attached Securities is issued at the same time to the same person.

### **23.12 Power to unstack shares**

If shares comprise part of Stapled Securities, subject to the Corporations Act and, while the shares are Officially Quoted, the Listing Rules and approval by Special Resolution, the Directors may at any time cause the Stapled Securities to be unstacked and, if the Stapled Securities are Officially Quoted, removed from quotation as stapled securities.

### **23.13 Automatic unstacking**

Without limiting article 23.12, immediately upon the first issue of Westfield Retail Trust Securities pursuant to the Westfield Retail Trust Offer Document, the WDC Securities will be automatically unstacked from each of the Westfield Retail Trust Securities without the need for any determination or consent, but the component parts of the WDC Securities will remain Stapled to each other.

# Constitution of Westfield Trust

Manager: Westfield Management Limited  
(ACN 001 670 579)

**Consolidated  
constitution of  
Westfield Trust  
incorporating all  
amendments up to and  
including the  
amendments made in  
December 2010**

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<b>1</b>	<b>Name of Trust</b>	<b>1</b>
<b>2</b>	<b>Assets held on trust</b>	<b>1</b>
<b>3</b>	<b>Units and Options</b>	<b>1</b>
	Nature of Units	1
	Stapling provisions	1
	Units	2
	Options	2
	Rights attaching to Units and Options	2
	Partly paid units	2
	Forfeiture	2
	No fractions of Units or Options	5
	Consolidation and division of Units and Options	5
	Consolidation, division and conversion while Stapling applies	5
	Uncertificated trading	5
	Transfer of Units and Options	6
	Single instrument of transfer for Stapled Securities	6
	Joint tenancy	6
	Death or legal disability of Member	6
	Number of Units	6
<b>4</b>	<b>Application Price</b>	<b>7</b>
	Proportionate Offers	7
	Non-Proportionate Offers	7
	Reinvestment	8
	Options	8
	Stapled Securities Price Allocation	9
	Rounding	9
<b>5</b>	<b>Application for Units or Options</b>	<b>10</b>
	Application form	10
	Application for identical number of Attached Securities	10
	Payment	10
	Manager may reject	10
	Manager must reject	10
	Minimum amounts	10
	Issue date	10
	Uncleared funds	11
	Register	11
	Holding statements	11
	Restriction on issue and redemption of Units	11
<b>6</b>	<b>Redemption Price of Units and Options and On-Market Buy-Back</b>	<b>11</b>
	Redemption Price	11
	On-market buy back	12
	Redemption or buy-back while Stapling applies	12

<b>7</b>	<b>No Withdrawal Right</b>	<b>12</b>
<b>8</b>	<b>Valuation of assets</b>	<b>12</b>
	Periodic valuations	12
<b>9</b>	<b>Income and Distributions</b>	<b>13</b>
	Distributable Income	13
	Accounts	13
	Entitlement and Distribution Dates	13
	Distribution Ranking	13
	Unit Holders' Entitlements	14
	Record Date	14
	Distribution of Capital to Distribution Account	14
	Reinvestment	14
	Reinvestment while Stapling applies	14
	Withholding Tax	15
	Distributions Paid in Different Currencies	15
	Classes	15
<b>10</b>	<b>Payments</b>	<b>15</b>
<b>11</b>	<b>Powers of the Manager</b>	<b>16</b>
	General powers	16
	Contracting powers	16
	Investment powers	16
	Power of delegation	16
	Exercise of discretion	17
	Underwriting	17
	Power to unstaple Units	17
	No limitation	17
<b>12</b>	<b>Retirement of Manager</b>	<b>18</b>
	Voluntary retirement	18
	Compulsory retirement	18
	New responsible entity	18
	Release	18
	Retirement payment	18
<b>13</b>	<b>Notices to Members</b>	<b>18</b>
<b>14</b>	<b>Notices to the Manager</b>	<b>19</b>
<b>15</b>	<b>Meetings and Resolutions of Members</b>	<b>19</b>
	Corporations Act	19
	Manager may determine	19
	Quorum	19
	No quorum	19
	Chairman	19
	Adjournment	20
	Circulated Resolution	20
	Resolutions binding	20
	Non-receipt	20
	Option holders	20

	Proxy form while Stapling applies	20
	Other attendees	20
	Joint meetings	20
<b>16</b>	<b>Rights and liabilities of Manager</b>	<b>20</b>
	Holding Units	20
	Other capacities	21
	Manager may rely	21
	Manager's duties while Stapling applies	21
<b>17</b>	<b>Limitation of liability and indemnity in favour of Manager</b>	<b>22</b>
	Limitation on Manager's liability	22
	Indemnity in favour of Manager	22
<b>18</b>	<b>Liability of Members and holders of Options</b>	<b>22</b>
	Liability limited	22
	Recourse	22
	Restrictions on Members	23
<b>19</b>	<b>Remuneration and expenses of Manager</b>	<b>23</b>
	Management fee	23
	Waiver of fees	23
	Expenses	23
	GST	25
<b>20</b>	<b>Duration of the Trust</b>	<b>26</b>
	Initial settlement	26
	Termination	26
<b>21</b>	<b>Procedure on termination</b>	<b>26</b>
	Realisation of Assets	26
	Audit of winding up	27
	Call on Partly Paid Units	27
	Distribution following termination	27
	Classes	28
<b>22</b>	<b>Amendments to this constitution</b>	<b>28</b>
	Manager may amend	28
	Statutory requirements	28
	Listing Rules	28
<b>23</b>	<b>Compliance committee</b>	<b>29</b>
<b>24</b>	<b>Complaints</b>	<b>29</b>
<b>25</b>	<b>Restricted Securities</b>	<b>30</b>
<b>26</b>	<b>Small holdings</b>	<b>30</b>
<b>26A</b>	<b>Stapling</b>	<b>33</b>
	Paramourncy of Stapling provisions	33
	Maintenance of listing and consistency with constitutions of the Stapled Entities	33

---

	Stapling - general information	33
<b>27</b>	<b>Restructure</b>	<b>34</b>
	Implementation of Proposal	34
	Express powers of Manager	34
	Sale Facility	35
	Appointment as agent and attorney for Members	35
	Manager's limitation of liability	36
	Options	36
	Definitions	37
<b>28</b>	<b>Interpretation</b>	<b>39</b>
	Definitions	39
	Interpretation	46
	Other documents	47
	Constitution legally binding	47
	Governing law	47
	Other obligations and limitations excluded	47

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# Constitution of Westfield Trust

## 1 Name of Trust

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- 1.1 The Trust is called Westfield Trust, or such other name as the Manager determines from time to time.
- 1.2 If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

## 2 Assets held on trust

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- 2.1 The Assets shall be vested in and held by the Manager on trust for the Members, subject to the terms and conditions of this constitution.
- 2.2 The Assets must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme, if and to the extent that the Corporations Act so requires.

## 3 Units and Options

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### Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any applicable Class Rights, each Fully Paid Unit confers on the holder an equal, undivided interest in the Trust.
- 3.3 Subject to any applicable Class Rights, a Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

### Stapling provisions

- 3.4
  - (a) The provisions of this constitution relating to Stapling take effect if determined by the Manager and, if so determined, on and from the Stapling Commencement Date and apply subject to all other provisions of this constitution which may suspend, abrogate or terminate Stapling.
  - (b) The Manager may, subject to this constitution, the Corporations Act and, while the Units are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities to the Units.
  - (c) Without limiting paragraph (b), immediately upon the occurrence of the Westfield Retail Trust Distribution as referred to in clause 10.5, the Westfield Retail Trust Securities will each be stapled to each of the WDC Securities without the



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need for any determination or consent, so that all the Stapled Securities then on issue will have 5 components. This 5 component Stapling will continue until the automatic unstapling under clause 11.10.

## **Units**

- 3.5 Subject to the Corporations Act, the Manager may create and issue Units, including classes of Units, with such Class Rights as it determines. While Stapling applies, the Manager may not issue different Classes of Units except Units which may temporarily be of a different class due to different income entitlements. While the Units are not Stapled, the Manager may issue Units of different Classes. Except to the extent specified in the terms of issue of Units, all Units will rank *pari passu*.
- 3.6 The Manager may alter the class of a Unit whether by converting the whole class of Units to another class or by re-allocating any particular Units to another class.

## **Options**

- 3.7 The Manager may, subject to the terms of this constitution, create and issue Options on such terms and conditions as the Manager determines. While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities which are then Stapled to the Units.

## **Rights attaching to Units and Options**

- 3.8 A Member holds a Unit subject to any applicable Class Rights. The holder of an Option holds an Option subject to any applicable Class Rights. Subject to the Corporations Act, the interests of Members holding Units will prevail over the interests of holders of Options in the case of conflict.

## **Partly paid units**

- 3.9 Subject to clause 4, the Manager may offer Units for sale or subscription on terms that the Application Price is payable by one or more instalments of such amounts payable at such times as the Manager determines. The Manager may determine that the rights and entitlements of those Units (including without limitation the right to participate in the Distributable Income) will be altered. All the terms and conditions of such an offer (including the details of any altered rights and entitlements) must be set out in the document offering the Units for sale. If any Partly Paid Units are issued with altered rights or entitlements, the provisions of this constitution as they apply to such Partly Paid Units must be read subject to those altered rights and entitlements. While Stapling applies Units may not be issued partly paid unless there is, at the same time, a corresponding issue of Attached Securities which are also partly paid. A call will not be regarded as having been validly paid unless any amount payable at the same time in relation to partly paid Attached Securities is also paid.

## **Forfeiture**

- 3.10 If a Member fails to pay in full any instalment due on any Partly Paid Unit on or by the due date, the Manager may, while any part of the instalment remains unpaid, notify the Member that, if the instalment is

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not paid in full on or by a specified time and day (not earlier than 14 days from the date of service of the notice) (“**Specified Date**”), the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited and, if Stapling applies, an equal number of Attached Securities will also be liable to be forfeited.

- 3.11 If any part of the instalment remains unpaid after the Specified Date:
- (a) any Partly Paid Unit in respect of which the notice has been given (together with the Attached Securities if Stapling applies) may, at any time after the Specified Date before the required instalment has been paid, be forfeited if the Manager so determines effective at such time as the Manager determines; and
  - (b) all voting rights and entitlements to the distribution of income and capital in connection with any Partly Paid Unit and, if Stapling applies, the Attached Securities in respect of which the notice has been given are suspended until reinstated by the Manager and, in the case of the Attached Securities, the Stapled Entities.

From the date of forfeiture:

- (a) the holder of the Partly Paid Unit and, if Stapling applies, Attached Securities ceases to be a Member of the Trust and of each Stapled Entity in respect of the Attached Securities (and has no claims against the Manager or the Trust or the Stapled Entities in respect of the forfeited Unit and the forfeited Attached Securities); and
  - (b) if required in order for ASIC relief to be effective, the Manager holds the Partly Paid Unit on trust for the Members.
- 3.12 A forfeited Partly Paid Unit and, if Stapling applies, any Attached Securities may, subject to compliance with the Corporations Act and the conditions of any ASIC relief and the Listing Rules, be sold or otherwise disposed of:
- (a) at a price equal to that received from the sale of the Partly Paid Units and, if Stapling applies, any Attached Securities in the normal course of business on ASX; or
  - (b) by public auction; or
  - (c) by private treaty.

At any time before a sale or disposition under this clause 3.12, the forfeiture may be cancelled on such terms as the Manager thinks fit and shall be cancelled when the Member pays to the Manager the full amount owing in respect of such Units and, if Stapling applies, to the Stapled Entities the full amount owing in respect of the Attached Securities.

- 3.13 The former holder of a Partly Paid Unit which has been forfeited remains liable to pay to the Manager on demand:

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- (a) all money which at the date of forfeiture were payable by the holder to the Manager in respect of the forfeited Partly Paid Unit;
  - (b) all costs incurred in connection with the forfeiture, including, without limitation, any costs incurred in connection with any proceedings brought against the former holder to recover the instalment or part of the instalment; and
  - (c) interest calculated at the Market Rate plus 3% per annum on the daily balance of the amounts in (a) and (b) from the date they become due for payment or were incurred to the date of payment.

The former Partly Paid Unit holder's liability under this clause 3.13 ceases if and when the Manager receives payment in full of all such amounts.

- 3.14 A statement signed by an authorised officer of the Manager that a Partly Paid Unit and, if Stapling applies, the relevant Attached Securities have been forfeited on a stated date is conclusive evidence of that fact as against all persons claiming to be entitled to the forfeited Partly Paid Unit and the Attached Securities.
- 3.15 Where a Partly Paid Unit and the relevant Attached Securities are forfeited pursuant to clauses 3.10 to 3.18, the Manager may:
  - (a) receive the consideration, if any, given for the forfeited Partly Paid Unit and relevant Attached Securities on the sale or disposal (or the Manager may determine that the consideration will be received in whole or in part by the Stapled Entities);
  - (b) execute (or procure that the Stapled Entities execute) a transfer of such Partly Paid Unit and relevant Attached Securities in favour of the person to whom the Partly Paid Unit and relevant Attached Securities are sold or disposed of and that person must then be registered as the holder of that Partly Paid Unit and relevant Attached Securities,

The Manager and the person acquiring the Partly Paid Units and relevant Attached Securities are not obliged to ensure that any part of the money which has been paid for the Partly Paid Unit and relevant Attached Securities is paid to the former holder of the Partly Paid Unit and relevant Attached Securities nor shall the person's title to that Partly Paid Unit or relevant Attached Securities be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Partly Paid Unit or the relevant Attached Securities.

- 3.16 Subject to the conditions of any applicable ASIC relief, where forfeited Partly Paid Units and relevant Attached Securities are sold or disposed of for cash, the Manager must deduct from the cash received:
  - (a) all moneys which at the date of forfeiture were payable to the Manager in respect of the forfeited Partly Paid Units;

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- (b) all costs incurred in connection with the forfeiture including, without limitation, any costs incurred in connection with any proceedings brought against the former holder to recover the instalment or part of the instalment;
  - (c) interest calculated at the Market Rate plus 3% on the daily balance of the amounts in (a) and (b) from the day they became due for payment or were incurred up to and including the date of forfeiture; and
  - (d) all amounts which have been or will be incurred for commissions, Taxes, transfer fees and other usual charges, if any, on the sale or disposal of the Partly Paid Unit.

The Manager may retain the amounts so deducted as Assets, but the balance remaining (if any) must be paid to the Member whose Partly Paid Units were forfeited.

- 3.17 Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.
- 3.18 The Manager is not liable to any former or current holder of Partly Paid Units and Attached Securities for any loss incurred in relation to the sale or disposal of the forfeited Partly Paid Units and Attached Securities.

#### **No fractions of Units or Options**

- 3.19 The Manager may not issue fractions of a Unit or an Option.
- 3.20 Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit or one Option, the number of Units or Options to be:
  - (a) issued is to be rounded down to the nearest whole Unit or Option (as the case may be);
  - (b) redeemed is to be rounded up to the nearest whole Unit or Option (as the case may be).
- 3.21 Any excess application or other money or property which results from rounding becomes an Asset.

#### **Consolidation and division of Units and Options**

- 3.22 Units and Options may be consolidated or divided as determined by the Manager with any resultant fraction of a Unit in a holding being rounded up to the next whole Unit.

#### **Consolidation, division and conversion while Stapling applies**

- 3.23 While Stapling applies, Units may only be consolidated, converted or divided if the related Attached Securities are also consolidated, divided or converted at the same time and to the same extent.

#### **Uncertificated trading**

- 3.24 The Manager is not required to, but may, subject to the Listing Rules and if it so determines in respect of some or all of the Units or Options,

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issue certificates in respect of any Units or Options while the Trust is admitted to any system or scheme which allows trading of uncertificated securities.

### **Transfer of Units and Options**

- 3.25 Subject to clause 3.26 and any applicable Class Rights, Members may transfer their Units and holders of Options may transfer their Options.
- 3.26 While the Trust is Listed, a Member may not transfer Restricted Securities during the applicable escrow period.
- 3.27 Transfers must be in a form approved by the Manager and, unless the Manager is otherwise satisfied that the requirements for the effective transfer of the Units or Options will otherwise be met, must be presented for Registration duly stamped.
- 3.28 A transfer is not effective until Registered.
- 3.29 Subject to the Listing Rules, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while the Trust is Listed, must refuse to record a transfer in the Register which would be in breach of clause 3.26.

### **Single instrument of transfer for Stapled Securities**

- 3.30 While Stapling applies and subject to the Corporations Act and the Listing Rules if the Listing Rules apply:
- (a) the Manager must not register any transfer of Units unless it is a single instrument of transfer comprising an equivalent number of Units and Attached Securities and any provision of clauses 3.25 to 3.29 (inclusive) of this constitution referring to a transfer of Units will be deemed to be a reference to such a transfer; and
  - (b) a reference in clauses 3.25 to 3.29 to a Unit will be deemed to be a reference to a Stapled Security.

### **Joint tenancy**

- 3.31 Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

### **Death or legal disability of Member**

- 3.32 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's name. The Manager may determine what evidence must be produced in order to establish the death, or legal disability of a Member.

### **Number of Units**

- 3.33 While Stapling applies, the number of issued Units at any time must equal the number of issued Attached Securities of each category but disregarding Stapled Units held by the Stapled Company and its subsidiaries.

## 4 Application Price

- 4.1 The application price for a Unit is usually its Market Price or, while Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities as determined by the Manager in accordance with clause 4.8. However, a Unit may be issued at another application price in the following cases:
- (a) in the case of a proportionate offer (including a rights issue), at a price calculated in accordance with clause 4.2;
  - (b) in the case of a non-proportionate offer (such as a placement of Units), at a price calculated in accordance with clause 4.3 or 4.4;
  - (c) in the case of reinvestment of income, at a price calculated in accordance with clause 4.5;
  - (d) in the case of Units issued pursuant to the exercise of an Option, at a price calculated in accordance with clause 4.6;
  - (e) in the case of Units issued pursuant to clause 27, at a price determined in accordance with the terms of any Proposal referred to in that clause.

Each of the possibilities referred to in this clause 4.1 is independent and any one of them is not limited by any other of them.

### Proportionate Offers

- 4.2 The Manager may offer Units for sale or subscription at a price determined by the Manager to those persons who were Members of a Class (whether or not the right to acquire those Units is renouncable), on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, if:
- (a) the Manager complies with the Listing Rules applicable to the issue and the conditions of any ASIC relief applicable to the issue; and
  - (b) the Application Price is not less than 50% of the relevant Market Price of the Units or, while Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities (as determined under clause 4.8).

Subject to the Listing Rules and the conditions of any ASIC relief applicable to the issue, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia.

### Non-Proportionate Offers

- 4.3 Subject to the Listing Rules and the conditions of any ASIC relief applicable to the issue, the Manager may at any time issue Units to any person, whether by way of placement or otherwise, on terms determined by it and at an Application Price equal to 95% of the Market Price of the Units or, while Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities

(as determined under clause 4.8 or such other percentage of the Market Price for the Units or, if Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities as an expert who is independent of the Manager determines at the Manager's request is appropriate having regard to the prevailing market conditions and the terms and circumstances of the issue.

- 4.4 The Manager may at any time issue Units to any person, whether by way of a placement or otherwise, at a price and on terms determined by it, provided that the Manager complies with the Listing Rules applicable to the issue and the conditions of any ASIC relief applicable to the issue.

### **Reinvestment**

- 4.5 The Application Price payable for each additional Unit on reinvestment of distributions (if any) is the Distribution Reinvestment Price.

### **Options**

- 4.6 Subject to this constitution, the Corporations Act (and the conditions of any ASIC relief applicable to the issue) and, if relevant, the Listing Rules, the Manager may issue Options:
- (a) for a consideration determined by it (which may include nil consideration) or for a consideration which an expert who is independent of the Manager determines at the Manager's request is appropriate having regard to prevailing market conditions and the terms and circumstances of the issue (which may include nil consideration);
  - (b) on the basis that the application price for a Unit to be issued on exercise of the Option is one of the following (as specified in the terms of issue of the Option):
    - (i) the Market Price of a Unit on or about the date of issue of the Option or, while Stapling applies, the Market Price of a Stapled Security on or about the date of issue of the Option minus the exercise price of the Option in relation to the Attached Securities as determined in accordance with the terms of the Option or as determined in accordance with clause 4.8; or
    - (ii) a price which an expert who is independent of the Manager determines, at the Manager's request, to be appropriate having regard to prevailing market conditions and the terms and circumstances of the issue, which price may be equal to or greater than the Market Price of a Unit or, while Stapling applies, the Market Price of a Stapled Security minus the exercise price at which the Attached Securities are to be issued pursuant to the Option as determined in accordance with the terms of the Option or as determined in accordance with clause 4.8; or
    - (iii) 50% of the relevant price that would otherwise apply as the application price of a Unit under this

constitution on or about at the date of exercise of the Option, or such greater exercise price as the Manager determines; and

- (c) conferring on the holder of the Option such other entitlements under this constitution as the Manager determines,

and otherwise with such Class Rights as determined by the Manager.

- 4.7 Subject to any applicable Class Rights, on exercise of an Option, the holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.

### **Stapled Securities Price Allocation**

- 4.8 Where:

- (a) Stapling applies;
- (b) as a consequence, a Unit is to be issued or repurchased as part of a Stapled Security; and
- (c) this constitution contains a provision for the calculation or determination of the application price for the Stapled Security from which the price for the Unit is to be derived,

the Manager must, in accordance with the next paragraph, determine what part of the application price for a Stapled Security is to be allocated respectively to a Unit and each Attached Security for the purposes of this constitution.

The application price for a Stapled Security will be allocated between the Application Price of the Unit and for the application prices for the Attached Securities on the basis of fair value as agreed between the Manager and the Stapled Entities or, failing agreement, determined by an independent accountant based on fair market value as determined by the accountant having regard to the respective net tangible asset backing of each of the Unit and the Attached Securities immediately prior to the issue, redemption or buy-back of the Stapled Security and any other factors which the accountant believes should be taken into account. However, where the Stapled Security is being issued pursuant to the exercise of one or more options and the terms of the option or options specified the application price of the Unit the application price of the Unit and each of the Attached Securities must be determined in accordance with any relevant provisions of the terms of the option or options.

### **Rounding**

- 4.9 Except in relation to Units issued on a distribution reinvestment, any Application Price or exercise price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the relevant Application Price or exercise price.



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## 5 Application for Units or Options

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### Application form

- 5.1 An applicant for Units or Options must complete an application form approved by the Manager, if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

### Application for identical number of Attached Securities

- 5.2 While Stapling applies, an applicant for Units must at the same time apply for an identical number of Attached Securities.

### Payment

- 5.3 Payment in respect of an application for Units or Options must be made in a form acceptable to the Manager, including by a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it. Payment must:
- (a) where required by the Manager, accompany the application;
  - (b) be received by or made available to the Manager or any other person nominated by the Manager for that purpose within such period before or after the Manager receives the application form as the Manager determines from time to time, or as the terms of issue of the relevant Unit or Option contemplate; or
  - (c) comprise a reinvestment of distribution in accordance with clauses 9.8 and 9.9.

### Manager may reject

- 5.4 Subject to the Listing Rules, the Manager may reject an application in whole or in part, without giving any reason for the rejection.

### Manager must reject

- 5.5 While Stapling applies, the Manager must reject an application for Units if the applicant does not apply at the same time for an identical number of Attached Securities or if an identical number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the applicant.

### Minimum amounts

- 5.6 The Manager may set a minimum application amount or a minimum holding for the Trust whether in respect of all Units or Options or a particular Class or in respect of Partly Paid Units. The Manager may alter or waive any such minimum application amount or minimum holding requirement at any time.

### Issue date

- 5.7 Units or Options are taken to be issued:
- (a) when:
    - (i) the Manager accepts the application; or
    - (ii) the Manager receives the application money, or the property against which the Units or Options are to be issued is vested in the Manager,

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whichever happens later; or

- (b) at such other time as the Manager determines.

### **Uncleared funds**

- 5.8 Units or Options issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if so determined by the Manager if the funds are not:
- (a) subsequently cleared; or
- (b) the property does not vest in the Manager;
- within one month of receipt of the application.

### **Register**

- 5.9 Subject to the Corporations Act, a single register may be kept in which details of the holders of Units and the holders of Attached Securities are recorded.

### **Holding statements**

- 5.10 Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.

### **Restriction on issue and redemption of Units**

- 5.11 No Units may be issued or redeemed after the 80<sup>th</sup> anniversary of the day the Trust commenced if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

## **6 Redemption Price of Units and Options and On-Market Buy-Back**

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### **Redemption Price**

- 6.1 Subject to the Corporations Act, the Manager may redeem or cancel Units or Options.
- 6.2 Unless clause 6.4 applies, the Redemption Price of a Unit is the Market Price of that Unit calculated, as at a date determined by the Manager, on or about the day on which the redemption takes place.
- 6.3 Unless clause 6.4 applies and subject to the Listing Rules, the Redemption Price of an Option will be the Market Price of that Option calculated, as at a date determined by the Manager, on or about the day on which redemption takes place unless the terms of issue of the Option indicate otherwise.
- 6.4 If the Unit or Option to be redeemed has been purchased by the Manager under clause 6.7, the Redemption Price of that Unit or Option will be equal to the total cost to the Manager of purchasing that Unit or Option.

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- 6.5 The Redemption Price is to be paid on the day on which the relevant Unit or Option is redeemed, or at such other time as the Manager determines.
- 6.6 The Redemption Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Redemption Price.

#### **On-market buy back**

- 6.7 While the Trust is Listed, the Manager may, subject to the Corporations Act and the Listing Rules, purchase Units or Options (whether forming part of Stapled Securities or otherwise) on the Stock Exchange and may cause those Units or Options to be redeemed.

#### **Redemption or buy-back while Stapling applies**

- 6.8 While the Trust is Listed, the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules, purchase or cause to be purchased Units or, where Stapling applies, Stapled Securities and cause the Units which in part comprise those Stapled Securities to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation by the respective Stapled Entities. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine, in a manner similar to that provided in clause 4.8, what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

## **7 No Withdrawal Right**

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Without limiting clause 6.1, Members do not have the right to withdraw from the Trust or to apply for the redemption of their Units or Options.

## **8 Valuation of assets**

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#### **Periodic valuations**

- 8.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.
- 8.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 8.3 The Manager may determine valuation methods and policies for each Asset or category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value.

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## 9 Income and Distributions

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### Distributable Income

- 9.1 The Manager must calculate the income of the Trust for each Accrual Period (“**Distributable Income**”). Unless the Manager determines by a resolution of its directors from time to time that the Distributable Income is to be calculated in some other manner, the Distributable Income for an Accrual Period is equal to the greater of:
- (a) the Net Income for the Accrual Period; and
  - (b) the Net Accounting Income of the Trust for the Accrual Period.

### Accounts

- 9.1A Notwithstanding that the Distributable Income of the Trust is to be determined in accordance with clause 9.1, the accounts of the Trust may be prepared in accordance with applicable accounting standards, including international financial reporting standards to the extent required or relevant, and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 9.1.

### Entitlement and Distribution Dates

- 9.2 The Manager must distribute all Distributable Income of the Trust for each Accrual Period within two months of the end of that Accrual Period.

### Distribution Ranking

- 9.3 Subject to any Class Rights and the terms of clause 27(2)(e):
- (a) each Unit ranks for distributions of Distributable Income from the first day following the date upon which it is created;
  - (b) where a Unit is created during an Accrual Period, that Unit participates in the Distributable Income in respect of that Accrual Period in the proportion that the part of the Accrual Period (calculated in days) for which the Unit ranks for distribution of Distributable Income bears to the total number of days in the Accrual Period; and
  - (c) in the case of a Unit which is a Partly Paid Unit for the whole or part of an Accrual Period, the Unit participates in the Distributable Income in respect of that Accrual Period according to the proportion or different proportions of the issue price that has been paid up on such Unit. For the purposes of that calculation, where an instalment of the issue price of a Partly Paid Unit is paid into the Trust, the Partly Paid Unit in respect of which the payment is made is entitled to rank for an increased participation in Distributable Income from the first day immediately following the day during which the payment was received.

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**Unit Holders' Entitlements**

- 9.4 Subject to clause 9.3 and any Class Rights, each person registered as a Member at the end of the last day of an Accrual Period is presently entitled to the Distributable Income for that Accrual Period in the proportion which the number of Units held by that Member bears to the total number of Units then on issue but excluding from this calculation Units which do not rank for distributions.

**Record Date**

- 9.5 The Manager must determine the Record Date for the purpose of determining the persons who are entitled to the distribution. The total amount to be distributed in respect of an Accrual Period is to be transferred to a distribution account as soon as practicable after the Record Date. The payment by the Manager in respect of any Units of an amount of the Distributable Income calculated in accordance with this constitution in respect of those Units to the Member registered in respect of those Units as at the Record Date is a good and sufficient discharge to the Manager in respect of any liability it may have to any person in respect of any such entitlement with respect to those Units.

**Distribution of Capital to Distribution Account**

- 9.6 The Manager may transfer capital to the distribution account to enable the distribution to Members of the minimum amount necessary to avoid the Manager becoming assessable for tax under the Tax Act.

**Other Distributions**

- 9.7 Subject to any Class Rights, the Manager may distribute any amount of capital or income to Members pro rata according to the number of Units in the Trust held as at a time decided by the Manager. The distribution may be in cash, by way of bonus Units or by way of transfer of Assets under clause 10.5. While Stapling applies, the Manager may not make a distribution by way of bonus Units unless, at the same time as the increase in the number of Units, Members are also issued an identical number of Attached Securities which when issued are then Stapled to the additional Units issued.

**Reinvestment**

- 9.8 If the Manager offers a facility under which Members may receive distributions by way of additional Units then, by prior notice, a Member may elect to reinvest some or all of any distribution by acquiring such additional Units in the Trust. In those cases, the Manager is treated as having received an application to reinvest distributions on that date on which the distribution is paid. The procedure for and the rules concerning reinvestment of distributions are to be determined by the Manager and notified to Members from time to time as and when the facility is offered. The Manager may at any time withdraw, amend or re-establish such a facility.

A request to participate in such a facility or cancellation of any such request is effective with respect to a distribution if received by the Manager before the Record Date for that distribution.

**Reinvestment while Stapling applies**

- 9.9 While Stapling applies no reinvestment may occur unless, contemporaneously with the reinvestment in additional Units, the Member subscribes for or purchases an identical number of Attached

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Securities which, when issued or acquired (respectively), are then Stapled to the additional Units. The Manager may make provision for and make payment of the subscription or purchase price for such Attached Securities out of the distribution or income (as applicable) which is otherwise available for reinvestment. Part of the application price of the Units may come from distributions or dividends paid on the Attached Securities.

### **Withholding Tax**

- 9.10 Where the Net Income is reduced by any Tax attributable to the ownership of Units by certain Members, the entitlement to Distributable Income of those Members may be adjusted by the Manager so that the entitlement to Distributable Income of all other Members is equivalent to the amount they would receive in the absence of such Taxes.

### **Distributions Paid in Different Currencies**

- 9.11 The Manager may from time to time provide a facility under which a Member may, if the Member so requests, receive his entitlement to the Distributable Income of the Trust from time to time in a currency or currencies other than Australian dollars. The Manager may determine which currency or currencies are offered under the facility, the procedure by which the facility would be offered, and the procedure by which a Member would elect to participate in that facility. If the Manager does offer such a facility, the Manager may arrange to convert the entitlement to Distributable Income of a Member who participates in the facility into the currency in which it is to be paid on a date being:
- (a) the date that the Distributable Income in respect of an Accrual Period is determined;
  - (b) the Closing Date in respect of an Accrual Period;
  - (c) the date of payment of distribution entitlements in respect of an Accrual Period; or
  - (d) any other date as the Manager may determine.

The Manager may maintain bank accounts in any currencies as may be appropriate for this purpose.

### **Classes**

- 9.12 The rights of a Member under this clause 9, are subject to any applicable Class Rights.

## **10 Payments**

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- 10.1 Money payable by the Manager to a Member may be paid in any manner the Manager decides.
- 10.2 Without limitation to clause 10.1, if the Manager attempts to make a payment of money to a Member by electronic transfer and that transfer is unsuccessful notwithstanding any instruction or agreement to the

contrary, the Manager may send that money by cheque to the Member to the last known address of that Member.

- 10.3 The Manager may cancel any cheque which is not presented within 12 months from its date of issue. Where a cheque which is cancelled was drawn in favour of a Member, the Manager may reinvest the money in Units and Attached Securities in the name of that Member at the application price for the Units and Attached Securities prevailing at the time the cheque is cancelled or deal with the money in accordance with any relevant legislation dealing with unclaimed moneys.
- 10.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 10.5 The Manager may transfer Assets comprising part of the Westfield Retail Trust Distribution to Members pro rata as at a time determined by the Manager, as a distribution of capital. The Manager may determine the value of that capital distribution. For the purposes of this clause 10.5, the Manager will be taken to have transferred Assets to a Member where the Manager has done everything reasonably necessary on its part to convey the Assets to the Member.
- 10.6 A payment to any one of joint Members will discharge the Manager in respect of the payment.
- 10.7 The Manager may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) or any other amount which the Manager is required or authorised to deduct in respect of that payment or receipt by any applicable law or by this constitution, or which the Manager considers should be deducted.

## 11 Powers of the Manager

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### General powers

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

### Contracting powers

- 11.2 The Manager in its capacity as trustee of the Trust has power to borrow or raise money (whether or not on security), enter into any form of contract and incur all types of obligations and liabilities.

### Investment powers

- 11.3 The Manager in its capacity as trustee of the Trust may invest in, dispose of, or otherwise deal with property and rights in its absolute discretion.

### Power of delegation

- 11.4 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the

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Manager's power, including the power to appoint in turn its own agent or delegate.

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

11.6 The agent or delegate may be an associate of the Manager.

#### **Exercise of discretion**

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

#### **Underwriting**

11.8 The Manager may enter into an arrangement with a person to underwrite:

- (a) the subscription, issue, offer for sale or purchase of Units, Options or Stapled Securities;
- (b) any instalment payment on Partly Paid Units;
- (c) the exercise of Options;
- (d) any security or debt instrument; or
- (e) any obligation (actual or prospective) or thing of any kind

on such terms as the Manager determines (including without limitation that the underwriter may take up any of those things not otherwise subscribed for or sold). Unless the agreement between the Manager and the underwriter expressly states the contrary intention, the underwriter will not be an agent or delegate of the Manager.

#### **Power to unstack Units**

11.9 If Units comprise part of Stapled Securities, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules and approval by Special Resolution, the Manager may at any time cause the Stapled Securities to be unstacked and, if the Stapled Securities are Officially Quoted, removed from quotation as Stapled Securities.

#### **Automatic unstacking**

11.10 Without limiting clause 11.9, immediately upon the first issue of Westfield Retail Trust Securities pursuant to the Westfield Retail Trust Offer Document, the WDC Securities will be automatically unstacked from each of the Westfield Retail Trust Securities without the need for any determination or consent, but the component parts of the WDC Securities will remain Stapled to each other.

#### **No limitation**

11.11 Nothing in this clause 11 limits anything else in this clause 11.



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## 12 Retirement of Manager

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### **Voluntary retirement**

- 12.1 The Manager may retire as the responsible entity of the Trust as permitted by law.

### **Compulsory retirement**

- 12.2 The Manager must retire as the responsible entity of the Trust when required by law.

### **New responsible entity**

- 12.3 Any replacement Manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

### **Release**

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

### **Retirement payment**

- 12.5 The Manager is, in consideration of its retirement as the responsible entity of the Trust, entitled to agree with the incoming Manager to be remunerated by, or to receive a benefit from, the incoming Manager and is not required to account to Members for such remuneration or benefit.

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## 13 Notices to Members

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- 13.1 Subject to the Corporations Act, a notice or other communication required to be given to a Member in connection with the Trust must be given in writing (which includes a facsimile) or in such other manner as the Manager determines, and be delivered or sent to the Member at the Member's physical address or facsimile number for delivery of notices last advised to the Manager. A Member may advise the Manager of an electronic address for delivery of notices, in which case the Manager may, at its discretion, subject to the Corporations Act, send to that electronic address a notice or other communication required to be given to that Member in connection with the Trust.
- 13.2 A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.
- 13.3 In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.
- 13.4 A notice, cheque or other communication sent by post is taken to be received on the day after it is posted and a fax is taken to be received one hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law, the Manager may determine the time at which other forms of communication will be taken to be received.

## 14 Notices to the Manager

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- 14.1 A notice required to be given to the Manager in connection with the Trust must be given in writing (which, unless the Manager determines otherwise, subject to the Corporations Act does not include a facsimile), or in such other manner as the Manager determines.
- 14.2 The notice is effective only at the time of receipt.
- 14.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Manager determines otherwise.

## 15 Meetings and Resolutions of Members

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### Corporations Act

- 15.1 The Manager may at any time convene a meeting of Members, or of a Class of Members, and must do so if required by the Corporations Act.

### Manager may determine

- 15.2 Subject to this clause 15, the Corporations Act and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

### Quorum

- 15.3 The quorum for a meeting of Members is two Members present in person or by proxy together holding at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

### No quorum

- 15.4 If a quorum is not present within 15 minutes after the scheduled time for the commencement of the meeting, the Manager may, at any time thereafter but prior to a quorum being present, declare that the meeting is:
- (a) if convened on the requisition of Members - dissolved; or
  - (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum. No new notice of the adjourned meeting need be given unless required by the Corporations Act. Notice of any adjourned meeting which may become necessary may be included in the notice convening the original meeting.

### Chairman

- 15.5 Subject to the Corporations Act, the Manager may appoint a person to chair a meeting of Members.
- 15.6 The decision of the chairman on any matter relating to the conduct of the meeting is final.

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**Adjournment**

- 15.7 The chairman has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

**Circulated Resolution**

- 15.8 Subject to the Corporations Act and the Listing Rules, the Manager may make arrangements whereby Members may pass written resolutions which have been circulated for that purpose by completing (in a form satisfactory to the Manager) and returning such resolutions to the Manager within the time specified in the circulated resolution.

**Resolutions binding**

- 15.9 A Resolution binds all Members, whether or not they were present at the meeting.
- 15.10 No objection may be made to any vote cast unless the objection is made at the meeting.

**Non-receipt**

- 15.11 If a Member does not receive a notice (including if notice was accidentally omitted to be given to them) the meeting is not invalidated.

**Option holders**

- 15.12 The Manager may convene a meeting of Option holders or a Class of Option holders and must do so if required by the Corporations Act. If it does so, clauses 15.2 to 15.11 inclusive apply as if they referred to Option holders rather than Members.

**Proxy form while Stapling applies**

- 15.13 While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

**Other attendees**

- 15.14 While Stapling applies, the Manager and the auditors or representatives of each Stapled Entity or the Stapled Trust Manager may attend and speak at any meeting, or invite any other person to attend and speak.

**Joint meetings**

- 15.15 While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Manager may make such rules for the conduct of such meetings as the Manager determines.

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## 16 Rights and liabilities of Manager

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**Holding Units**

- 16.1 The Manager and its associates may hold Units in the Trust in any capacity.

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**Other capacities**

- 16.2 Subject to the Corporations Act, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), the Stapled Company, the Stapled Trust Manager, any other Stapled Entity, or with any Member;
  - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), the Stapled Company, the Stapled Trust Manager, any other Stapled Entity, or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
  - (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

**Manager may rely**

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

and the Manager will not be liable for anything done, suffered or omitted to be done by it in good faith in reliance on that opinion, advice, statement, information or document.

**Manager's duties while Stapling applies**

- 16.4 Notwithstanding any other provision of this constitution, or any rule of law or equity to the contrary, in exercising any power or discretion conferred on it, the Manager must, subject to the Corporations Act, while Stapling applies, have regard to the interests of the Members of the Trust and the members of the Stapled Entities as a whole and not only to the interests of the Members of the Trust alone.

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## 17 Limitation of liability and indemnity in favour of Manager

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### Limitation on Manager's liability

- 17.1 Subject to the Corporations Act, if the Manager acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 17.2 Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust, including any liability under any contracts which it enters into as trustee of the Trust or in relation to any Assets, is limited to the Manager's ability to be indemnified out of the Assets.

### Indemnity in favour of Manager

- 17.3 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- 17.4 To the extent permitted by the Corporations Act, the indemnity under clause 17.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 17.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply in respect of any person who was the Manager after that person retires or is removed as trustee of the Trust.

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## 18 Liability of Members and holders of Options

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### Liability limited

- 18.1 Subject to clauses 18.3 and 18.4, the liability of a Member or holder of an Option is limited to the amount, if any, of any unpaid instalment of Application Price and any other amount, if any, which remains unpaid in relation to the Member's or holder's subscription for their Units or Options.
- 18.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or if the claim of any creditor of the Manager in respect of the Trust cannot be satisfied out of the Assets.
- 18.3 The Manager is entitled to be indemnified by a Member and a holder of an Option to the extent that the Manager incurs any liability for Tax as a result of that Member's or that holder's action or inaction.
- 18.4 Joint Members are jointly and severally liable in respect of all payments including payments of Tax to which clause 18.3 applies.

### Recourse

- 18.5 In the absence of separate agreement with a Member or holder of an Option, and except for the amounts referred to in clause 18.1, the recourse of the Manager and any creditor is limited to the Assets.

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**Restrictions on Members**

- 18.6 Neither a Member nor a holder of an Option may:
- (a) interfere with any rights or powers of the Manager under this constitution;
  - (b) exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
  - (c) require an Asset to be transferred to the Member.

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**19 Remuneration and expenses of Manager**

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**Management fee**

- 19.1 Subject to the Corporations Act, the Manager is entitled to be paid out of the Assets a management fee equal to the Manager's reasonable estimate of its costs, including all overheads and whether incurred directly by the Manager or reimbursed by the Manager to any of its related bodies corporate, in providing its services as Manager for which it is not otherwise reimbursed pursuant to clause 19.5. The entitlement to this fee commences from 1 July 2004 and continues to the date of final distribution in accordance with clause 21. The Manager is entitled to remuneration for the period up to 30 June 2004 in the manner calculated pursuant to the former clause 19.1 which was replaced by this current clause 19.1.
- 19.2 The fee payable pursuant to clause 19.1 is to be payable from time to time upon demand by the Manager. The Manager may make demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs.
- 19.3 The Manager must produce a statement within 1 month from the end of each Accrual Period setting out the management fee for the Accrual Period and any amount remaining unpaid.

**Waiver of fees**

- 19.4 The Manager may in respect of any period accept lower fees than it is entitled to receive or waive fees that it is entitled to receive under this constitution in respect of that period, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

**Expenses**

- 19.5 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust are payable or reimburseable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes, without limitation, any expenses or overheads connected with:
- (a) this constitution and any amendment or proposed amendment to this constitution;
  - (b) the preparation, review, distribution and promotion of any prospectus, product disclosure statement or offering

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- memorandum in respect of Units, Stapled Securities, Options or other promotion of the Trust or the Stapled Entities;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
  - (d) any proposed acquisition, disposal or other dealing with an investment;
  - (e) the acts of the Manager or its agents in connection with the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register;
  - (f) the admission of the Trust or Stapled Entities to the official list of Stock Exchange, compliance with the Listing Rules and quotation of any Units, Stapled Securities, options, securities, debt instruments or other things of any kind;
  - (g) any issue of Units, Stapled Securities, Options or any interests in, or rights associated with Units, Stapled Securities or Options or any other obligation (including without limitation any other securities or debt instruments of any kind) issued by the Trust or a Stapled Entity;
  - (h) any underwriting arrangement, including without limitation underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in any underwriting arrangement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting arrangement;
  - (i) convening and holding meetings of Members and/or holders of Options, the implementation of any Resolutions and communications with Members and attending any meeting of the Stapled Entities;
  - (j) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
  - (k) the engagement of agents, delegates, valuers, contractors, advisers (including legal advisers) and any other persons whether or not they are associates of the Manager;
  - (l) preparation and audit of the taxation returns and accounts of the Trust;
  - (m) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
  - (n) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any

expenses paid or reimbursed under this clause 19.5(n) must be repaid;

- (o) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to, or insurance premiums paid in respect of Compliance Committee Members;
- (p) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to, or insurance premiums paid in respect of, external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (q) the preparation, implementation, operation, amendment and audit of the compliance plan;
- (r) complying with any law, and any request or requirement of the ASIC;
- (s) the registration of the Trust as a managed investments scheme and anything incidental to obtaining such registration;
- (t) interest, discount, acceptance fees and all other borrowing costs and like amounts, banks fees and other charges; and
- (u) the costs of preparing, printing and sending to Members and/or holders of Options accounts, reports, distribution statements, cheques, circulars and other notices.

but does not include the amount of any credit or refund of GST to which the Manager is entitled as a result of incurring such expenses.

## **GST**

- 19.6 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this agreement (including, without limitation, the supply of any goods, services, rights, benefits or things) then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.
- 19.7 If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:
- (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this constitution (including, without limitation, any increase in the amount



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charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or

- (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with proper performance of the Manager's duties under this constitution (including, without limitation, the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);

and such increased cost or reduction is not compensated for by any other provision of this constitution, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.

## 20 Duration of the Trust

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### Initial settlement

- 20.1 The Trust commenced on 1 April 1982 in accordance with clauses 2(2) and 11(1) of the deed dated 1 April 1982 between Westfield P.T.M. Limited, Perpetual Trustee Company Limited and P.T. Limited.

### Termination

- 20.2 The Trust terminates on the earliest of:
- (a) **[Deleted]**
  - (b) the date on which all the Units in issue which are Officially Quoted are unconditionally removed from Official Quotation by every Stock Exchange and not re-admitted for Official Quotation on any Stock Exchange within sixty (60) days after such removal (but Units will not be regarded as ceasing to be Officially Quoted if they become jointly quoted with other securities);
  - (c) the date specified by the Manager as the date of termination of the Trust in a notice given to Members; and
  - (d) the date on which the Trust terminates in accordance with another provision of this constitution or by law.

## 21 Procedure on termination

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### Realisation of Assets

- 21.1 Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as practical after that time, unless the Manager determines to delay, for any amount of time, the realisation of the Assets. The Manager will not be liable for any loss or damage incurred in respect of any such delay.

**Audit of winding up**

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

**Call on Partly Paid Units**

- 21.3 If there is or (in the Manager's reasonable opinion) will be a deficiency in the Assets after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, any holder of Partly Paid Units must pay to the Manager on demand an amount determined by the Manager being whichever of the following the Manager requires:

- (a) the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the holder; or
- (b) the amount calculated as:

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

Where:

P = the amount to be paid to the Manager;

A = the amount of the deficiency referred to in this clause 21.3;

B = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue; and

C = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the holder.

- 21.4 Subject to any Class Rights, a reference in clauses 21.3 and 21.6 to Partly Paid Units includes a reference to partly paid Options.

**Distribution following termination**

- 21.5 Any net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members on the basis that such proceeds are divided amongst all Units in proportion to the respective proportions of the Application Price paid on such Units.

If any holders of Options have an entitlement to participate in the net proceeds of realisation, this calculation must be adjusted in a manner determined by the Manager to take that entitlement into account.

- 21.6 If any holder of a Partly Paid Unit fails to pay any amount remaining unpaid on that Partly Paid Unit in accordance with clause 21.3, the Manager may apply (with or without the consent of the holder) part or all of any distribution payable to that holder in full or partial satisfaction of the amount due under clause 21.3.

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- 21.7 The entitlement, if any, of a holder of an Option to any distribution of net proceeds of realisation will be determined by the terms of issue of that Option.
- 21.8 The Manager may distribute the proceeds of realisation in instalments.
- 21.9 Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the later of:
- (a) the date on which there are no amounts owing under clauses 21.3 or 21.4 which the Manager reasonably believes are recoverable; and
  - (b) the date of final distribution under clauses 21.5 to 21.8.

During that period, the Manager may not accept any application for Units from a person who is not an existing Member.

### **Classes**

- 21.10 The rights and obligations of a holder of Units or Options under this clause 21 are subject to any applicable Class Rights.

## **22 Amendments to this constitution**

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### **Manager may amend**

- 22.1 If the Corporations Act allows, this constitution may be amended:
- (a) by Resolution; or
  - (b) by deed executed by the Manager.

If the constitution is amended by Resolution, the Manager may give effect to the amendment by executing a supplemental deed.

### **Statutory requirements**

- 22.2 If:
- (a) a provision of the Corporations Act relevant to the Trust requires that this constitution contain certain provisions; or
  - (b) any relevant relief from the provisions of the Corporations Act granted by the ASIC directly or indirectly requires that this constitution contain certain provisions in order for that relief to be effective in respect of the Trust,

then those provisions are deemed to be incorporated into this constitution at all times at which they are so required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency.

### **Listing Rules**

- 22.3 While the Trust is Listed:
- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act must not be done;

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

22.4 In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 22.3 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

## 23 Compliance committee

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

## 24 Complaints

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If and for so long as the Corporations Act or ASIC policy requires, a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:

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- (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
- (i) the determination in relation to the complaint;
  - (ii) the remedies (if any) available to the Member; and
  - (iii) information regarding any further avenue for complaint.

## 25 Restricted Securities

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- 25.1 Clause 25.2 only operates:
- (a) while the Trust is Listed; and
  - (b) to the extent that it is not inconsistent with the Corporations Act.
- 25.2 During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.

## 26 Small holdings

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- 26.1 This clause 26 applies while the Units or Stapled Securities are Officially Quoted.
- 26.2 Subject to the provisions of this clause 26, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.
- 26.3 If the Manager determines that a Member is a Small Holder or a New Small Holder the Manager may give the Member a Divestment Notice to notify the Member:
- (a) that the Member is a Small Holder or a New Small Holder, the number of Units comprising and the Market Price of the Small Holding or New Small Holding and the date on which the Market Price was determined;
  - (b) that the Manager intends to sell the Relevant Units in accordance with this clause 26 after the end of the Relevant Period specified in the Divestment Notice;

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- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Manager in writing that the Member desires to retain the Relevant Units and that, if the Member does so, the Manager will not be entitled to sell the Relevant Units under that Divestment Notice; and
  - (d) after the end of the Relevant Period the Manager may for the purpose of selling the Relevant Units that are in a CHES holding initiate a holding adjustment to move those Units from that CHES holding to an issuer sponsored holding or certificated holding.

If the ASTC Settlement Rules apply to the Relevant Units, the Divestment Notice must comply with the ASTC Settlement Rules.

- 26.4 For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.
- 26.5 At the end of the Relevant Period the Manager is entitled to sell on-market or in any other way determined by the Manager:
  - (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Manager in writing before the end of the Relevant Period that the Member desires to retain the Relevant Units, in which event the Manager must not sell those Relevant Units under that Divestment Notice; and
  - (b) the Relevant Units of a Member who is a New Small Holder.
- 26.6 The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 26 but unless the Relevant Units are sold within six weeks after the end of the Relevant Period the Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.
- 26.7 To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each of its directors and secretaries jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:
  - (a) to initiate a holding adjustment to move the Relevant Units from a CHES holding to an issuer sponsored holding or a certificated holding; and
  - (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.

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- 26.8 A statement in writing by or on behalf of the Manager under this clause 26 is binding on and conclusive against (in the absence of manifest error) a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 26 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.
- 26.9 The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause 26. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 26.
- 26.10 Subject to this clause 26, where:
- (a) Relevant Units of a Member are sold by the Manager on behalf of the Member under this clause; and
  - (b) the certificate for the Relevant Units (unless the Manager is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the Manager,
- the Manager must, within 60 days of the completion of the sale, send by mail or cheque for the proceeds of sale to the Member entitled to those proceeds in accordance with clause 13. Payment of any money under this clause 26 is at the risk of the Member to whom it is sent.
- 26.11 In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause 26, the Manager is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Manager. In the case of a sale of the Relevant Units of a Small Holder, the Manager or a purchaser must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Manager in connection with the sale and transfer of the Relevant Units.
- 26.12 The remedy of a Member to whom this clause 26 applies, in respect of the sale of the Relevant Units of that Member, is expressly limited to a right of action in damages against the Manager to the exclusion of any other right, remedy or relief against any other person. The Manager is only liable if it has failed to comply with the requirements of this clause 26 and its liability is limited to the value of the Relevant Units at the time of sale.
- 26.13 Unless the Manager determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause 26, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a New Small Holder. Any distributions that would, but for this clause 26, have been paid to that Member must be held by the Manager and paid

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to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.

- 26.14 If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by this clause 26).
- 26.15 From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this article to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite this clause 26 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.
- 26.16 While Stapling applies:
- (a) the references to Units and Relevant Units in this clause 26 will apply to the Stapled Securities held by the Member; and
  - (b) no sale under this clause 26 may occur unless, at the same time as Units are sold, an identical number of Attached Securities are also sold.

## 26A Stapling

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### **Paramourncy of Stapling provisions**

- 26A.1 The provisions of this constitution relating to Stapling prevail over all other provisions of this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.

### **Maintenance of listing and consistency with constitutions of the Stapled Entities**

- 26A.2 The Manager must use every reasonable endeavour to procure that, if the Stapled Securities are and continue to be Officially Quoted as one joint security, that the Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

### **Stapling - general information**

- 26A.3 If the Manager determines that Stapling will apply, the Units are to be stapled to the Stapled Shares and the Stapled Units in the ratio of one Unit to one Stapled Share and one Stapled Unit as from the Stapling Commencement Date. The Manager must not cause Stapling to commence while the Trust has more than one Class of Units. The intention is that, so far as the law permits, a Unit, a Stapled Share and a Stapled Unit which are Stapled together will be treated as one security. If further Attached Securities are from time to time Stapled to the Units the intention is that, so far as the law permits, a Unit and one of each of the Attached Securities which are Stapled together will be treated as one security.



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## 27 Restructure

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### Implementation of Proposal

- 27.1 At any time upon and after the Effective Date, the Manager has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal in accordance with the Implementation Deed.

### Express powers of Manager

- 27.2 Without limiting clause 27.1 but subject to clause 27.3 and despite any other provision in this constitution, the Manager has power:
- (a) on the Implementation Date to consolidate the Units in the ratio of each pre-consolidation Unit being converted into 0.28 post-consolidation Units with any resultant fraction of a Unit in a holding being rounded up to the next whole number of Units. In the case of Units which are acquired by the Investment Bank pursuant to the Sale Facility the number of post-consolidation Units which the Investment Bank is to receive will be rounded up as if the respective numbers of Units which the Investment Bank acquires pursuant to the Sale Facility from Members were separate holdings of those Members so that the Investment Bank will receive the same number of post-consolidation Units which the participants in the Sale Facility would have received in aggregate if they had respectively held the pre-consolidation Units on the Stapling Record Date;
  - (b) immediately following the consolidation described in (a), but subject to (c), to pay to each Member, by way of a capital distribution, \$1.01 per Unit held;
  - (c) to apply all the respective distributions paid to each Member under (b) to acquire, on behalf of and in the name of that Member, an equivalent number of units in the Stapled Trust and an equivalent number of ordinary shares in the Stapled Company on the basis that the subscription price for each of those units and shares will be \$1.00 and \$0.01 respectively;
  - (d) to procure that the Acquired Units and the Acquired Shares are registered in the name of the relevant Member with the result that the Member is bound:
    - (i) by the terms of issue of the Acquired Units and the Acquired Shares (including, without limitation, restrictions which cause a Member's Units to be Stapled to Acquired Units and Acquired Shares); and
    - (ii) generally, by the constitution of the Stapled Company and the Stapled Trust;
  - (e) to the extent that this will facilitate Stapled Trust Unitholders and Stapled Company Shareholders holding an equivalent number of units and shares in each of the Stapled Company, Stapled Trust and the Trust, to issue to Stapled Trust
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Unitholders (other than the Stapled Company and its subsidiaries) one Unit in respect of each \$1.00 and Stapled Company Shareholders one Unit in respect of each 0.1 of a cent paid by or on that person's behalf in subscription for Units pursuant to the Implementation Deed with such new Units to rank pari passu with all of the existing Units including ranking for full participation in Distributable Income for the Accrual Period during which the Units are issued;

- (f) to issue to Members new holding statements or other evidence of entitlement in respect of Units of which the Member is the registered holder after the Proposal is implemented and, in the alternative, to issue or cooperate in the issuing of a single holding statement reflecting the Member's holding of Units, Acquired Units and Acquired Shares;
- (g) to execute all documents and do all things which it considers necessary, desirable or reasonably incidental to give effect to the Proposal and to appoint any individual or individuals of its choosing to execute any such documents or do any such things.

### **Sale Facility**

- 27.3 Notwithstanding the foregoing provisions of this clause 27 where a Member has validly elected to participate in the Sale Facility or is a Designated Foreign Unitholder ("Sale Facility Participant"), the Manager must transfer the Units held by the Sale Facility Participant, or such number of those Units which are to be the subject of the Sale Facility, to the Investment Bank so that the Investment Bank will receive the distribution pursuant to clause 27.2(b) and apply that distribution in accordance with clause 27.2(c) in order to acquire the Acquired Units and Acquired Shares which would otherwise have been issued to the Sale Facility Participant and be obliged to provide to each Sale Facility Participant the Sale Consideration to which it is entitled.

### **Appointment as agent and attorney for Members**

- 27.4 At all times on and after the Effective Date, the Manager is irrevocably appointed the agent and attorney for each Member to do all things which the Manager considers are necessary, desirable or reasonably incidental to give effect to the Proposal.
- 27.5 Without limiting clause 27.4, the Manager is irrevocably appointed as the agent and attorney of each Member to:
- (a) receive and apply the distributions referred to in clause 27.2(b) in the manner contemplated in clause 27.2(c);
  - (b) execute an application form (which may be a master application form) in relation to the Acquired Units and the Acquired Shares;
  - (c) act in accordance with clause 27.3; and
  - (d) execute transfers of Units which are to be the subject of the Sale Facility.

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- 27.6 The Manager is authorised to execute the documents and do all things under clauses 27.2 and 27.3 without needing further authority or approval from Members and may do so even if it has an interest in the outcome of such exercise.

### **Manager's limitation of liability**

- 27.7 Without derogating from any limitation of the Manager's liability in terms of this constitution, the Manager has no liability to Members of any nature whatsoever beyond the Assets whether arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of any document) in exercising its powers pursuant to this clause 27 in connection with the implementation of the Proposal in accordance with the Implementation Deed.

### **Options**

- 27.8 If following the Effective Date the Stapled Company or the Stapled Trust is under any obligation, whether actual or contingent, to issue shares or units in the future pursuant to any option or comparable arrangement to any person the Manager may:
- (a) give an undertaking to the Stapled Company and/ or the Stapled Trust Manager to issue Units at the same time to each person to whom shares in the Stapled Company and units in the Stapled Trust are to be issued to ensure that the person receives Stapled Securities, or
  - (b) grant an option or comparable right to the person to acquire an equal number of Units to the number of shares in the Stapled Company and units in the Stapled Trust which the person is entitled to be issued on exercise of the option or comparable right, on the basis that the option or comparable right may only be exercised if required to ensure that the person receives Stapled Securities.
- 27.9 The undertakings, options or rights which the Manager may issue pursuant to clause 27.8 may be issued without consideration. The price at which the Units are to be issued pursuant to the undertakings or upon the exercise of those options or rights is to be calculated as follows:
- (a) where an Executive Option is exercised and the Stapled Company elects to procure the issue of Stapled Securities to satisfy its obligations on exercise of that option, the issue price of a Unit is the WFT Proportion of the exercise price of that Executive Option (or if that Executive Option has a nil exercise price, the issue price of a Unit is the WFT Proportion of \$13.76, being the volume weighted average sale price of a Stapled Share sold on ASX during the five trading day period up to but not including the Announcement Date);
  - (b) where a Possfund Option is exercised and the Stapled Company elects to procure the issue of Stapled Securities to satisfy its obligations on exercise of that option, the issue price of a Unit is the WFT Proportion of \$12.84, being the exercise price of a Possfund Option;

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- (c) where exercise of a WFA Option is satisfied by delivery of a series F preferred share in Westfield America, Inc., an amount equal to the WFT Proportion of US\$1,000 for each such WFA Option divided by the number of Units issued under clause 27.8 in respect of the exercise of that option;
  - (d) where exercise of a WFA Option is satisfied by delivery of a series G cumulative convertible redeemable preferred share in Westfield America, Inc., an amount per Unit equal to the WFT Proportion of the value of that share in Westfield America, Inc. at the time of exercise of the WFA Option divided by the number of Units to be issued in relation to the exercise of that WFA Option;
  - (e) where exercise of a WFA Option is satisfied by delivery of the number of common shares in Westfield America, Inc. into which a series G cumulative convertible redeemable preferred share has been converted, an amount per Unit equal to the WFT Proportion of the value of that share in Westfield America, Inc. at the time of exercise of the WFA Option divided by the number of Units to be issued in relation to the exercise of that WFA Option;
  - (f) where exercise of a WFA Option is satisfied by delivery of a series D cumulative convertible redeemable preferred share in Westfield America, Inc., an amount per Unit equal to the WFT Proportion of the value of that share in Westfield America, Inc. at the time of exercise of the WFA Option divided by the number of Units to be issued in relation to the exercise of that WFA Option;
  - (g) where exercise of a WFA Option is satisfied by delivery of the number of common shares in Westfield America, Inc. into which a series D cumulative convertible redeemable preferred share has been converted, an amount per Unit equal to the WFT Proportion of the value of that share in Westfield America, Inc. at the time of exercise of the WFA Option divided by the number of Units to be issued in relation to the exercise of that WFA Option; or
  - (h) where exercise of a WFA Option is satisfied by delivery of a common share in Westfield America, Inc., an amount per Unit equal to the WFT Proportion of the value of that share in Westfield America, Inc. at the time of exercise of the WFA Option divided by the number of Units to be issued in relation to the exercise of that WFA Option,

and in each case the issue price is to be adjusted in the same manner as any adjustment to the exercise price of the relevant option under the terms of that option.

## Definitions

- 27.10 In this clause 27, the following words and expressions have these meanings unless the contrary intention clearly appears.

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**Acquired Units** means the units in the Stapled Trust acquired by the Manager on behalf of Members, under clause 27.2(c).

**Acquired Shares** means the ordinary shares in the Stapled Company acquired by the Manager on behalf of Members, under clause 27.2(c).

**Announcement Date** means 22 April 2004.

**Cash Price** means for each Unit sold under the Sale Facility prior to consolidation as part of the Proposal, an amount equal to 28% of the weighted average selling price of the Stapled Securities sold by the Investment Bank for cash pursuant to the Sale Facility plus, where the consolidation of the Units sold by the Member pursuant to the Sale Facility resulting in a rounding up pursuant to clause 27.2(a), the additional sum received by the Investment Bank from the sale of Stapled Securities attributable to that rounding in respect of the particular Unit.

**Designated Foreign Unitholder** means a Member who is a citizen or resident of a jurisdiction outside Australia and New Zealand or whose address in the Register is a place outside Australia and New Zealand and their respective external territories, unless the Manager and the Stapled Entities are satisfied before the Effective Date that the Stapled Entities are not precluded from lawfully issuing Acquired Units or Acquired Shares to the Member either unconditionally or after compliance with conditions which the Manager and the Stapled Entities in their sole discretion regard as acceptable and not unduly onerous.

**Effective Date** means the Effective Date as that term is defined in the Implementation Deed.

**Executive Option** means an option granted by the Stapled Company to an employee of the Stapled Company or a subsidiary of the Stapled Company under the Westfield Executive Option Plan or the Westfield Executive Performance Share Plan.

**Implementation Date** means the Implementation Date as that term is defined in the Implementation Deed.

**Implementation Deed** means the deed made between the Manager, the Stapled Trust Manager and the Stapled Company dated 21 May 2004 as amended.

**Investment Bank** means ABN AMRO Equities Australia Limited (ACN 002 768 701).

**Possfund Option** means an option granted by the Stapled Company under the option deed dated 1 April 2004 between Westfield and Possfund Custodian Trustee Limited.

**Proposal** means the transactions contemplated and described in the Implementation Deed.

**Sale Facility** means the facility under which Designated Foreign Unitholders are required to sell their Units and other Members may

elect to sell all or some of their Units to the Investment Bank for the Sale Consideration and on the basis that the Investment Bank is entered in the Register in respect of those Units on the Stapling Record Date, and will participate in the Proposal in respect of these Units, receive the Acquired Shares and Acquired Units pursuant to the Proposal and sell the required number of the resultant Stapled Securities for cash to pay the Cash Price and transfer the remaining Stapled Securities in satisfaction of the Stapled Securities Consideration.

**Sale Consideration** means in respect of Units participating in the Sale Facility either:

- (a) the Cash Price; or
- (b) the Stapled Securities Consideration.

**Stapled Company Shareholders** means holders of ordinary shares in the Stapled Company on the Stapling Record Date, excluding ordinary shares issued under clause 27.2(c).

**Stapled Securities Consideration** means the same number of Stapled Securities which the Member participating in the Sale Facility and electing to receive the Stapled Securities Consideration would have held if the Member had retained the Units in respect of which the election was made and received Acquired Units and Acquired Shares in relation thereto pursuant to clauses 27.2(a) to (d).

**Stapled Trust Unitholders** means holders of units in the Stapled Trust on the Stapling Record Date (other than Westfield Holdings Limited and its subsidiaries), excluding units issued under clause 27.2(c).

**Stapling Record Date** means 5.00 pm (Sydney time) on the sixth Business Day following the Effective Date or such other time agreed between the Manager and the Stapled Entities and permitted by ASX.

**WFA Option** means an option to acquire a unit or units in the Stapled Trust on issue as at the Effective Date and in respect of which the Manager has given an undertaking under clause 27.8.

**WFT Proportion** means 37.5%.

## 28 Interpretation

### Definitions

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

**Accrual Period:** the six monthly periods commencing on 1 January and 1 July, or such other period as the Manager determines, provided that, if the Manager determines that Accrual Periods will be quarterly, then Accrual Period means the three month periods ending 31 March, 30 June, 30 September and 31 December of each year.

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**Application Price:** the relevant price calculated in accordance with, or pursuant to, clause 4.

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

**ASIC relief:** any declaration or modification made or exemption granted by ASIC at any time and containing in force and applicable to the Trust.

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

**Attached Securities:** a Stapled Share, Stapled Unit and any other security or securities which are from time to time Stapled or to be Stapled to a Unit.

**Business Day:** has the same meaning as in the Listing Rules, or if not defined, a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney and Melbourne.

**Class:** a class of Units or Options.

**Class Rights:** the rights, obligations and restrictions attaching to any particular Units or Options or Classes of Units or Options, and the terms and conditions of issue of any Units or Options.

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

**Corporations Act:** Corporations Act 2001 (Cwlth).

**Distributable Income:** the amount determined by the Manager under clause 9.1 as being the distributable income of the Trust for an Accrual Period.

**Distribution Calculation Date:** the last day of each Financial Year and such other days as the Manager designates.

**Distribution Reinvestment Plan:** a plan operated and administered by the Manager which enables Members to reinvest distributions of Distributable Income in taking up new Units being a plan which is governed by the Rules.

**Distribution Reinvestment Price** in relation to a Class of Units or, while Stapling applies, the Unit and the Attached Securities and an Issue Date means:

- (a) the volume weighted average of the sale price (if any) of fully participating Units of the relevant Class or Stapled Securities traded on the market operated by the Home Exchange during the Pricing Period excluding any transaction defined in the Market Rules as 'special', crossings prior to the commencement of normal trading, crossings during the closing

phase and the after hours adjust phase, any overseas trades or trades pursuant to the exercise of options over Units or Stapled Securities, any overnight crossings and any other trades that the Manager considers may not be fairly reflective of natural supply and demand; or

- (b) if no sale was made in the Pricing Period, the average of the price offered by a willing purchaser for such Units or Stapled Securities (“bid price”) and the price offered by a willing vendor for such Units or Stapled Securities (“ask price”) as quoted on the Home Exchange during the Pricing Period; or
- (c) if either no bid or ask prices were quoted during the Pricing Period, the last sale price as quoted on the Home Exchange prior to the Pricing Period,

such price being:

- (d) first, if the Units or Stapled Securities whose prices used under paragraph (a), (b), or (c) have an entitlement to dividends and/or distributions which is different to the dividends and/or distributions to which the new Units or Stapled Securities will be entitled, adjusted by the Manager by such an amount as it considers to be appropriate to reflect this difference;
- (e) secondly, subject to any relevant conditions of any ASIC relief applicable to the issue, reduced by 2% or such other percentage (being zero or a percentage less than 10%) as the Manager may notify to all Members from time to time; and
- (f) thirdly, rounded to the nearest whole cent (0.5 of one cent being rounded down).

For the purposes of this definition, a fully participating Unit or Stapled Security (as applicable) is a fully paid Unit or Stapled Security (as applicable) which will participate fully in the distribution of income for the Accrual Period in which the Issue Date occurs.

Where the reinvestment price is calculated for a Stapled Security the allocation of that price between the Application Price for the Unit and the application prices for the Attached Securities is to be determined in accordance with clause 4.8.

**Divestment Notice:** a notice given under clause 26 to a Small Holder or a New Small Holder.

**Financial Year:**

- (a) for the last financial year, the period from 1 January before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (b) in all other circumstances, the 12 month period ending on 31 December in each year.



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

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

**Home Exchange:** Australian Stock Exchange Limited and its successors and assigns.

**Issue Date:** the proposed date of issue of a Unit or Option (as applicable).

**Liabilities:** all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

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

**Listed:** admitted to the official list of the Stock Exchange whether or not quotation of Units, Stapled Securities or Options is deferred, suspended or subjected to a trading halt.

**Listing Rules:** the listing rules of the Stock Exchange as applied to the Trust from time to time or otherwise as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

**Manager:** the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

**Market Price:** in relation to a Unit, Stapled Security or Option means the Weighted Average Market Price of Units, Stapled Securities or Options of the relevant Class during the ten Stock Exchange trading days ending two Stock Exchange trading days prior to the date of the calculation, provided that if the Weighted Average Market Price is calculated in respect of Units or Stapled Securities which have an entitlement to dividends and/or distributions which is different to the dividends and/or distributions to which the new Units or Stapled Securities will be entitled the Manager is required to make such adjustment to the Weighted Average Market Price as it considers to be appropriate to reflect this difference.

However, if the relevant Unit or Option is not listed, then "Market Price" in relation to that Unit or Option means a price for that Unit or Option which an expert who is independent of the Manager determines at the Manager's request having regard to any applicable Class Rights, the market price of Units or Options and the Net Asset Value (to the extent the expert considers each of these factors to be relevant and appropriate), and any other matters which the expert believes should be taken into account.

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**Market Rate:** the average mid rate for bills of exchange which have a tenor of three months which average is displayed on the “BBSW” page of the Reuters Monitor System on the first day of each three month period for which the rate is to be determined or, if there is a manifest error in the calculation of that average rate or it is not displayed by 10.30am Sydney time on that day, then the rate specified in good faith by the Manager as the average rate for bills of that tenor bid and offered by at least four leading financial institutions in Sydney on that date (whether such bids and offers are displayed on the “BBSW” page or otherwise evidenced).

**Market Rules:** the market rules of the Home Exchange, each as amended or replaced from time to time, except to the extent of any express written waiver by the Home Exchange (which has not been revoked).

**Member:** the person Registered as the holder of a Unit (including persons jointly Registered).

**Net Accounting Income:** subject to the Manager (in conjunction with the Auditor) being able to decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made, the Net Accounting Income of the Trust for an Accrual Period is the income of the Trust net of expenses determined in accordance with generally accepted Australian accounting standards in effect as at 30 June 2004 or such later date as from time to time determined by the Manager subject to such adjustments (if any) as determined by the Manager prior to the end of the relevant Accrual Period.

**Net Asset Value:** the value of the Assets calculated in accordance with clause 8 less the Liabilities.

**Net Income:** the Net Income for an Accrual Period is the “net income” of the Trust determined in accordance with the Tax Act on the assumption that the Accrual Period is a year of income but reduced by any amount that would, on the assumption that an Accrual Period were a year of income, be included in the assessable income of the Trust in accordance with Section 6AC or Division 207 of the Tax Act.

**New Small Holder:** a member who is the holder or a joint holder of a New Small Holding.

**New Small Holding:** a holding of Units or, while Stapling applies, Stapled Securities (created by the transfer of a parcel of Units) created after the current clause 26 comes into effect, the aggregate Market Price of which at the time a proper ASTC transfer was initiated or a paper based transfer was lodged was less than a marketable parcel of Units or, while Stapling applies, Stapled Securities as provided under the Listing Rules.

**Officially Quoted:** means quoted on a Stock Exchange. Related terms such as Official Quotation are to be interpreted accordingly.

**Option:** an option to subscribe for a Unit and, where the context permits, includes an interest in or right associated with such an Option.

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

**Pricing Period:** means the period of ten consecutive Stock Exchange trading days ending on the Stock Exchange trading day determined by the Manager.

**Redemption Price:** the redemption price calculated in accordance with clause 6.

**Record Date:** the date for the lodgement of transfers for the purpose of identifying the Members or, if applicable, Option holders who are to have relevant entitlements.

**Register:** the register of Members and, if applicable, Option holders kept under the Corporations Act.

**Registered:** recorded in the Register.

**Registration:** recording in the Register.

**Relevant Period:** the period specified in a Divestment Notice under clause 26.

**Relevant Units:** the Units specified in a Divestment Notice.

**Resolution:**

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

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

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

**Rules:** the rules governing any Distribution Reinvestment Plan administered or operated by the Manager from time to time.

**security:** any financial product within section 764A of the Corporations Act.

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

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**Small Holding:** a holding of Units or, while Stapling applies, Stapled Securities the aggregate Market Price of which at the relevant date is less than a marketable parcel of Units or, while Stapling applies, Stapled Securities as provided under the Listing Rules.

**Special Resolution:** has the same meaning as in the Corporations Act in relation to registered schemes.

**Stapled:** the linking together of Units and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others.

**Stapled Company:** Westfield Holdings Limited (ABN 66 001 671 496).

**Stapled Entity:** the Stapled Company, the Stapled Trust and any other trust, corporation or managed investment scheme whose securities are at the relevant time Stapled to the Units.

**Stapled Security:** a Unit and each Attached Security which are Stapled together.

**Stapled Security Holder:** the Member under this constitution and the holder of Attached Securities.

**Stapled Share:** an ordinary share in the Stapled Company.

**Stapled Trust:** Westfield America Trust (ARSN 092 058 449).

**Stapled Trust Manager:** the responsible entity of the Stapled Trust.

**Stapled Unit:** an ordinary unit in the Stapled Trust.

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

**Stapling Commencement Date:** the date upon which Stapling of the Units to Stapled Shares and Stapled Units is to commence as determined by the Manager and approved by the directors of the Stapled Company and the Stapled Trust Manager but, if it is determined that Stapling will occur in stages, means the date upon which the last stage occurs.

**Stock Exchange:** Australian Stock Exchange Limited and each and every other stock exchange and marketing institution in Australia on which for the time being Units or Options are listed for quotation with the approval of the Manager.

**Tax:** all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties.

**Tax Act:** the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act, as appropriate, and any provisions of any succeeding legislation replacing sections of the 1936 Act and the 1997 Act referred to in this constitution.

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

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution and, where the context permits, includes an interest in or right associated with such an undivided share.

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

**WDC Securities** means each of Units in the Trust, units in the Stapled Trust and shares in the Stapled Company, or all of them as the context requires.

**Weighted Average Market Price:** means:

- (a) the aggregate of the prices at which each relevant Unit, Stapled Security or Option was sold during the relevant period divided by the number of Units, Stapled Securities or Options sold during that period, in the case of both the sales prices and numbers, as reported by the Stock Exchange; or
- (b) if no such sales occurred, the price at which the last recorded sale of a relevant Unit, Stapled Security or Option occurred prior to the commencement of the relevant period.

**Westfield Retail Trust Distribution** means a pro rata distribution to Members of capital from each of the Trust and the Stapled Company, in each case in the form of a transfer of units which are part of Westfield Retail Trust Securities.

**Westfield Retail Trust Offer Document** means the product disclosure statement dated 3 November 2010 under which a public offer of Westfield Retail Trust Securities is made.

**Westfield Retail Trust Securities** means units in Westfield Retail Trust 1 and Westfield Retail Trust 2, which are or are to be stapled to each other.

## Interpretation

28.2 In this constitution, unless the contrary intention appears:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;

- 
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
  - (g) headings are for convenience only and do not affect interpretation of this constitution;
  - (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively; and
  - (i) references to relief granted by the ASIC include reference to any exemption, modification, declaration or relief granted or issued by the ASIC.

28.3 Any cover page, table of contents, footnotes, marginal notes and finding lists are for convenience only and do not form part of this constitution.

28.4 An expert will be independent of the Manager for the purposes of this constitution if the expert delivers to the Manager a signed statement to the effect that it regards itself as being independent of the Manager. The fact that the Manager may have selected or instructed the expert does not itself mean that the expert is not independent of the Manager.

#### **Other documents**

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

#### **Constitution legally binding**

28.6 This constitution binds the Manager and each present and future Member and (to the extent relevant) each present and future holder of an Option, and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

#### **Governing law**

28.7 This constitution is governed by the law of New South Wales.

#### **Other obligations and limitations excluded**

28.8 Except as required by the Corporations Act:

- (a) all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute; and
- (b) anything in any statute or regulation which might limit the powers or discretions of the Manager under this constitution is expressly excluded to the extent permitted by law.

# Consolidated Trust Deed constituting Westfield America Trust

Consolidated constitution of Westfield America Trust incorporating all amendments up to and including the amendments made in December 2010

# Consolidated Trust Deed constituting Westfield America Trust Contents

<b>1</b>	<b>Interpretation</b>	<b>2</b>
1.1	Definitions	2
1.2	Interpretation	10
1.3	Parties bound	11
<b>2</b>	<b>Corporations Act</b>	<b>11</b>
2.1	Corporations Act	11
2.2	ASX Listing Rules	11
2.3	ASIC Class Orders	12
2.4	Supremacy	12
<b>3</b>	<b>The Trust</b>	<b>12</b>
3.1	The Trust	12
3.2	Manager	12
3.3	Assets vest in Trustee	12
3.4	Appointment of Custodian	12
<b>4</b>	<b>Duration of Trust</b>	<b>13</b>
4.1	Initial settlement	13
4.2	Termination	13
4.3	Termination Date	13
4.4	No dissolution	13
<b>5</b>	<b>Interest of Unit Holders</b>	<b>14</b>
5.1	Units	14
5.1A	Stapling provisions	14
5.1B	Automatic Stapling	14
5.2	Fractions	14
5.3	Classes of Units	14
5.4	Partly Paid Units	14
5.4A	Partly Paid Units while Stapling applies	15
5.5	Consolidation and Division	15
5.5A	Consolidation, division and conversion while stapling applies	15
5.6	Restrictions	15
5.7	Additional Units	15
5.7A	Number of Units	15
5.8	Stock Exchange Listing	15
5.9	Quotation	16
5.10	Rights attaching to Units	16
5.11	Series F Special Options	16
5.13	Series G Special Options	16
5.14	Series GI Special Options	16
5.15	Series H Special Options	16
5.16	Series I Special Options	16



<b>6</b>	<b>Applications for Units and Options</b>	<b>17</b>
6.1	Procedure	17
6.1A	Application for identical number of Attached Securities	17
6.2	Non-cash Contributions	17
6.3	Payment to Manager	17
6.4	Uncleared Funds	18
6.5	Manager may reject	18
6.5A	Manager must reject	18
6.6	Minimum Application	18
6.7	Issue Date	18
6.8	Nomination of Holder	18
6.9	Option	18
6.10	Option Terms	18
6.10A	Consideration for certain Options	19
6.11	Option Exercise	19
6.12	Calls by Manager	19
6.13	Offers which do not require disclosure	19
6.14	Restriction on issue and redemption of Units	20
<b>7</b>	<b>Redemption, Repurchase and Forfeiture of Units</b>	<b>20</b>
7.1	Redemption Notice	20
7.2	Suspension while Units Quoted	20
7.3	Trust Liquid	20
7.4	Repurchase and Redemption - Trust Liquid	20
7.5	Minimum Holding - Trust Liquid	20
7.6	Small Holdings	20
7.7	Minimum Redemption or Repurchase - Trust Liquid	23
7.8	Notice Irrevocable	23
7.9	Order	23
7.10	Sums owed to Manager	23
7.11	Transfer of Assets	24
7.12	Trust not Liquid	24
7.13	Withdrawal offers	24
7.14	Manager not obliged	24
7.15	Treatment of request	24
7.15A	While Stapling applies	24
7.15B	Redemption of Stapled Company Held Units	24
7.16	Forfeiture of Unit	24
7.17	If requirements of any notice not complied with	25
7.18	Sale of Forfeited Unit	25
7.19	Cessation of Status of Member	26
7.20	Buy Back of Units	27
<b>8</b>	<b>Unit Price and Valuation</b>	<b>27</b>
8.1	Application Price	27
8.2	Application Price where Units Officially Quoted	27
8.2A	Consideration where Units issued on Exercise of Options	28
8.3	Rights Issues	28
8.4	Re-offer	29
8.5	Placement	29
8.6	Reinvestment	29
8.6A	Underwritten Distribution Reinvestment Plan	29
8.7	Periodic Valuations	29
8.8	Valuation Methods	29

8.9	Rounding	30
8.10	Redemption or Repurchase Price	30
8.11	Determination of Application Price or Redemption Price where Stapled Securities are issued	30
<hr/>		
<b>9</b>	<b>Manager</b>	<b>31</b>
9.1	Powers	31
9.2	Powers	33
9.3	Disposal of main undertaking	33
9.4	Delegation	33
9.5	Agents and Advisors	33
9.6	Retirement	33
9.7	New Manager	33
9.8	Removal	33
9.9	Release	33
9.10	Name of Trust	34
9.11	Futures Contracts	34
9.12	WEA Arrangements	34
9.13	Power to unstaple Units	35
9.13A	Automatic unstapling	35
9.14	Power to Staple additional Securities	35
<hr/>		
<b>10</b>	<b>Investment</b>	<b>35</b>
10.1	Manager's Role	35
10.1A	Investment Powers	35
10.2	Investment Policy	35
10.3	Voting	36
10.4	Nomination of WEA Directors	36
10.5	Insurance	36
<hr/>		
<b>11</b>	<b>Income and Distributions</b>	<b>36</b>
11.1	Distributable Income	36
11.1A	Accounts	36
11.2	Entitlement and Distribution Dates	36
11.3	Distribution Ranking	36
11.4	Members' Entitlements	37
11.5	Record Date	37
11.6	Distribution of Capital to Distribution Account	37
11.7	Separate Accounts	37
11.8	Other Distributions	38
11.9	Reinvestment	38
11.9A	Acquisition of identical number of Attached Securities	38
11.10	Payment	38
11.11	Withholding Tax	38
11.12	Distributions Paid in Different Currencies	39
11.13	Classes	39
<hr/>		
<b>12</b>	<b>Accounts and Audit</b>	<b>39</b>
12.1	Accounts	39
<hr/>		
<b>13</b>	<b>Administration and Reporting</b>	<b>39</b>
13.1	Register	39
13.2	Certificates	39
13.3	Uncertified Trading	39

13.4	Transfers	40
13.4A	Single instrument of transfer for Stapled Securities	40
13.5	Death, Legal Disability	40
13.6	Payments	40
13.7	Deductions	40
13.8	Reports	40
<hr/>		
<b>14</b>	<b>Meetings of Unit Holders</b>	<b>41</b>
14.1	Corporations Act	41
14.2	Notice Period	41
14.3	Non-receipt	41
14.4	Quorum	41
14.5	No Quorum	41
14.6	Chairman	41
14.7	Adjournment	41
14.8	Voting	41
14.9	Poll	42
14.10	Casting Vote	42
14.11	Proxies	42
14.12	Representatives	42
14.13	Other Attendees	42
14.14	Resolutions Binding	42
14.15	Minutes	42
14.16	Option Holders	42
14.17	Proxy form while Stapling applies	42
14.18	Joint meetings	43
<hr/>		
<b>15</b>	<b>Rights and Liabilities of Manager</b>	<b>43</b>
15.1	Holding Units	43
15.2	Other Capacities	43
15.3	Limitation on Liability	43
15.4	Specific Limitations - Manager	43
15.5	Exercise of Discretion	44
15.6	Indemnity	44
15.7	Limitation of Liability to Contracting Parties	44
15.8	Manager's duties in relation to Stapling	44
<hr/>		
<b>16</b>	<b>Liability of Unit Holders</b>	<b>45</b>
16.1	Liability Limited	45
16.2	Recourse Limited	45
<hr/>		
<b>17</b>	<b>Exclusion of Partnership or Agency</b>	<b>45</b>
17.1	No Partnership or Agency	45
<hr/>		
<b>18</b>	<b>Remuneration and Expenses</b>	<b>45</b>
18.1	Management fee	45
18.2	Waiver of Fees	45
18.3	Expenses	45
18.4	Deferral	48
18.5	GST	48
18.6	Change in GST	48
<hr/>		
<b>19</b>	<b>Termination</b>	<b>48</b>
19.1	Procedure	48

19.2	Final Distribution	48
19.3	Audit of winding up	49
<b>20</b>	<b>Amendments to Constitution</b>	<b>49</b>
<b>21</b>	<b>DELETED</b>	<b>49</b>
<b>22</b>	<b>DELETED</b>	<b>49</b>
<b>23</b>	<b>Restructure</b>	<b>49</b>
23.1	Implementation of Proposal	49
23.2	Express powers of Manager	49
23.3	Sale Facility	50
23.4	Appointment as agent and attorney for Members	51
23.5	Specific appointment	51
23.6	Authority of Manager	51
23.7	Manager's limitation of liability	51
23.8	Options	51
23.9	Issue price	52
23.10	Definitions	52
<b>24</b>	<b>Preservation of REIT Status</b>	<b>54</b>
24.1	REIT Status	54
<b>25</b>	<b>General</b>	<b>55</b>
25.1	Relevant Law	55
25.2	Submission to Jurisdiction	55
25.3	Notices to Members and Option Holders	55
<b>26</b>	<b>Complaints</b>	<b>55</b>
<b>27</b>	<b>Compliance Committee</b>	<b>56</b>
<b>28</b>	<b>Stapling</b>	<b>56</b>
28.1	Paramourncy of Stapling provisions	56
28.2	Maintenance of Listing and consistency with constitutions of the Stapled Entities	56
28.3	Stapling – general information	56
	<b>Schedule 1 - Westfield America Trust (clause 1.1)</b>	<b>58</b>
	<b>Schedule 2 - Terms of Issue of Series A Class Units, Series B Class Units and Series C Class Units</b>	<b>59</b>
	<b>Schedule 3 - Terms of Issue of Series F Special Options</b>	<b>60</b>
	<b>Schedule 4 - Terms of Issue of RCP Units</b>	<b>67</b>
	<b>Schedule 5 - Terms of Issue of Series G Special Options</b>	<b>68</b>
	<b>Schedule 6 - Terms of Issue of Series G1 Special Options</b>	<b>95</b>
	<b>Schedule 7 - Terms of Issue of Series H Special Options</b>	<b>121</b>
	<b>Schedule 8 - Terms of Issue of Series I Special Options</b>	<b>146</b>
	<b>Schedule 9- Terms of Offer of Priority Units</b>	<b>170</b>

# Consolidated Trust Deed constituting Westfield America Trust

Comprising:

Deed dated 28 March 1996 between Westfield America Management Limited (“**Manager**”) and Perpetual Trustee Company Limited (“**Perpetual**”) as amended by:

1. Deed of Variation dated 9 May 1996 between Perpetual and the Manager
2. Deed of Variation No. 2 dated 24 June 1996 between Perpetual and the Manager
3. Deed of Variation No. 3 dated 13 June 1997 between Perpetual and the Manager
4. Deed of Variation No. 4 dated 29 May 1998 between Perpetual and the Manager
5. Deed of Variation No. 5 dated 11 August 1998 between Perpetual and the Manager
6. Deed of Variation No. 6 dated 23 June 1999 between Perpetual and the Manager
7. Deed of Variation No. 7 dated 17 March 2000 between Perpetual and the Manager
8. Deed of Variation No. 8 dated 30 May 2000 signed by the Manager as responsible entity
9. Deed of Variation No. 9 dated 27 March 2001 signed by the Manager as responsible entity
10. Deed of Variation No. 10 dated 29 June 2001 signed by the Manager as responsible entity
11. Deed of Variation No. 11 dated 22 February 2002 signed by the Manager as responsible entity
12. Deed of Variation No. 12 dated 29 April 2002 signed by the Manager as responsible entity
13. Supplemental Deed Poll dated 30 June 2004 signed by the Manager as responsible entity
14. Supplemental Deed Poll dated 12 May 2005 signed by the Manager as responsible entity
15. Supplemental Deed Poll dated 12 June 2007 signed by the Manager as responsible entity
16. Supplemental Deed Poll dated 23 December 2008 signed by the Manager as responsible entity
17. Supplemental Deed Poll dated 16 December 2009 signed by the Manager as responsible entity
18. Supplemental Deed Poll dated [insert] December 2010 signed by the Manager as responsible entity

# Consolidated Trust Deed constituting Westfield America Trust

Date: 28 March 1996

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## 1 Interpretation

### 1.1 Definitions

In this deed, these words and phrases have this meaning unless the contrary intention appears:

**Accrual Period:** the six monthly periods commencing on 1 January and 1 July, or such other period as the Manager determines, provided that, if the Manager determines that Accrual Periods will be quarterly, then Accrual Period means the three month periods ending 31 March, 30 June, 30 September and 31 December of each year.

**Agreement and Plan of Reorganisation:** an agreement between WEA, Westfield U.S. Investments Pty. Limited, Westfield Corporation Inc., Annatar Pty. Limited, the Trustee and Westfield America Management relating to various transactions connected with the restructuring of the ownership of WEA.

**Application Price:** the price calculated for the issue of a Unit under this deed.

**ASIC:** the Australian Securities & Investments Commission.

**Assets:** all the property, rights and income of the Trust.

**ASX:** Australian Stock Exchange Limited and its successors.

**Attached Securities:** a Stapled Share, Stapled Unit and any other security or securities which are from time to time Stapled or to be Stapled to a Unit.

**Auditor:** the auditor for the time being of the Trust.

**Business Day:** has the same meaning as in the Listing Rules.

**Buy Rate:** the highest of the buy rates for Australian Dollars quoted in United States Dollars by the Panel Banks at 11.00 a.m. (Sydney time) on the Buy Rate Determination Day.

**Buy Rate Determination Day:** any date falling between and including the Closing Date and the 28th June, 1996 as selected by the Manager.

**CenterMark Option Deed:** any deed entered into by the Trustee, Westfield America Management and other parties including WEA which provides for the issue of Options to the holders of WEA Stock on terms which enable such holders to acquire Stapled Securities for an Application Price determined in accordance with clause 8 whether or not such Application Price is satisfied by the exchange of WEA Stock.

**CenterMark Option Units:** Stapled Securities that may be issued from time to time as a consequence of the exercise of Options granted under the CenterMark Option Deed.

**CenterMark Option Units Issue Date:** a date when CenterMark Option Units are issued.

**CenterMark Stockholders Agreement:** any agreement entered into by the Trustee, Westfield America Management, WEA and the other holders of WEA Stock which, amongst other things, regulates the composition of the board of WEA.

**Class:** a class of Units.

**Closing Date:** the date of closing of the offer made pursuant to the Initial Prospectus.

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

**Cordera Subscription Agreement:** an agreement between Cordera Holdings Pty Limited, the Trustee and Westfield America Management pursuant to which Cordera is to subscribe for Units.

**Corporations Act:** *Corporations Act 2001* (Cwlth).

**Custodian:** a corporation appointed by the Manager, for the purposes of clause 3.4.

**Distributable Income:** the amount determined by the Manager under clause 11.1 as being the distributable income of the Trust for an Accrual Period.

**Distribution Reinvestment Plan:** a plan operated and administered by the Manager which enables Members to reinvest distributions of Distributable Income in taking up new Units or Stapled Securities, as the case may be, being a plan which is governed by the Rules.

**Distribution Reinvestment Price** in relation to a Class of Units or, while stapling applies, Stapled Securities:

- (a) the volume weighted average of the sale price (if any) of fully participating Units of the relevant Class or Stapled Securities traded on the market operated by the ASX during the Pricing Period excluding any transaction defined in the Market Rules as ‘special’, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, any overseas trades or trades pursuant to the exercise of options over Units or Stapled Securities, any overnight crossings and any other trades that the Manager considers may not be fairly reflective of natural supply and demand; or
- (b) if no sale was made in the Pricing Period, the average of the price offered by a willing purchaser for such Units or Stapled Securities (“bid price”) and the price offered by a willing vendor for such Units or Stapled Securities (“ask price”) as quoted on ASX during the Pricing Period; or
- (c) if either no bid or ask prices were quoted during the Pricing Period, the last sale price as quoted on ASX prior to the Pricing Period,

such price being:

- (d) first, if the Units or Stapled Securities whose prices used under paragraph (a), (b), or (c) have an entitlement to dividends and/or distributions which is different to the dividends and/or distributions to which the new Units or Stapled Securities will be entitled, adjusted by the Manager by such an amount as it considers to be appropriate to reflect this difference;
- (e) secondly, subject to any relevant conditions of any Relief applicable to the issue, reduced by 2% or such other percentage (being zero or a percentage less than 10%) as the Manager may notify to all Members from time to time; and
- (f) thirdly, rounded to the nearest whole cent (0.5 of one cent being rounded down).

For the purposes of this definition, a fully participating Unit or Stapled Security (as applicable) is a fully paid Unit or Stapled Security (as applicable) which will participate fully in the distribution of income for the Accrual Period in which the Issue Date occurs.

Where the reinvestment price is calculated for a Stapled Security the allocation of that price between the Application Price for each Unit and the application price for the Attached Securities is to be determined in accordance with clause 8.11 and the amount allocated to the Unit is the Distribution Reinvestment Price for the purposes of clause 8.6.

**Divestment Notice:** a notice given under clause 7.6 to a Small Holder or a New Small Holder.

**Entity Interest:** an Asset comprising a shareholding or other equity interest in a corporation or other entity other than such a shareholding or equity interest which the Manager determines should not be regarded as an Entity Interest.

**Entity's Liabilities:** all borrowings, unpaid costs, charges, expenses, outgoings and fees and any provision which the directors of the entity decide in consultation with the auditor of the entity should be taken into account in determining the liabilities of the entity, each determined in accordance with the accounting standards applicable to the entity and generally accepted accounting principles consistently applied.

**Exchange Rate:** the spot rate for the exchange of Australian Dollars to US Dollars determined for the date upon which the exchange of currencies is to take place as quoted on the Reuters Screen "HSRA" or any equivalent replacement reference page at 4.00 p.m. on that date provided that if no such rate is available then the "Exchange Rate" means the average of mid-rates as quoted by any two of National Australia Bank, Commonwealth Bank of Australia, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited at 4.00 p.m. on that date.

**Financial Year:** a year ending on 31 December, or that part of such a year occurring at the commencement or termination of the Trust.

**Home Exchange:** that state branch of the ASX designated as such for the Trust to the Manager by the ASX.

**Initial Prospectus:** the first Prospectus issued by the Manager after the date of this deed offering Units for subscription by investors.



**Issue Date:** the date of issue of a Unit, Stapled Security or Option.

**Land:** land under the Trustee Act 1925 (NSW) or land located anywhere in the world.

**Liabilities:** all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

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

**Listed:** admitted to the official list of ASX whether or not quotation of Units, Stapled Securities or Options is deferred, suspended or subjected to a trading halt.

**Listing Rules:** the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the Official List of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX (which has not been revoked).

**Manager:** the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act.

**Market Price:** in relation to a Unit, Stapled Security or Option means the Weighted Average Market Price of Units, Stapled Securities or Options of the relevant Class during the ten ASX trading days ending two ASX trading days prior to the date of the calculation, provided that if the Weighted Average Market Price is calculated in respect of Units or Stapled Securities which have an entitlement to dividends and/or distributions which is different to the dividends and/or distributions to which the new Units or Stapled Securities will be entitled the Manager is required to make such adjustment to the Weighted Average Market Price as it considers to be appropriate to reflect this difference.

However, if the relevant Unit or Option is not listed, then "Market Price" in relation to that Unit or Option means a price for that Unit or Option which an expert who is independent of the Manager determines at the Manager's request having regard to any applicable Class rights, the market price of the Units or Options and the Net Asset Value (to the extent the expert considers each of these factors to be relevant and appropriate), and any other matters which the expert believes should be taken into account.

**Market Rate:** the average mid rate for bills of exchange which have a tenor of 3 months which average is displayed on the "BBSW" page of the Reuters Monitor System on the first day of the period for which the rate is to be determined, or if there is a manifest error in the calculation of that average rate or it is not displayed by 10.30am Sydney time on that day then the rate specified in good faith by the Manager as the average rate for bills of that tenor bid and offered by at least 4 leading financial institutions in Sydney on that date (whether such bids and offers are displayed on the "BBSW" page or otherwise evidenced).

**Market Rules:** the market rules of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX (which has not been revoked).

**Member:** the person registered as the holder of a Unit (including persons jointly registered).

**Month:** calendar month.

**Net Accounting Income:** subject to the Manager (in conjunction with the Auditor) being able to decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made, the Net Accounting Income of the Trust for an Accrual Period is the income of the Trust net of expenses determined in accordance with generally accepted Australian accounting standards in effect as at 30 June 2004 or such later date as from time to time determined by the Manager subject to such adjustments (if any) as determined by the Manager prior to the end of the relevant Accrual Period.

**Net Assets:** the Assets of the Trust less its Liabilities.

**Net Asset Value:** the value of the Net Assets of the Trust.

**Net Income:** the Net Income for an Accrual Period is the “net income” of the Trust determined in accordance with subsection 95(1) of the Tax Act on the assumption that the Accrual Period is a year of income but reduced by any amount that would, on the assumption that an Accrual Period were a year of income, be included in the assessable income of the Trust in accordance with Section 6AC or Division 207 of the Act.

**New Small Holder:** a member who is the holder or a joint holder of a New Small Holding.

**New Small Holding:** a holding of Units, or while Stapling applies, Stapled Securities (created by the transfer of a parcel of Units) the aggregate market price of which at the time a proper ASCT transfer was initiated or a paper based transfer was lodged was less than a marketable parcel of Units created after the current clause 7.6 came into effect as provided under the Listing Rules.

**Officially Quoted:** quoted on the ASX. Related terms such as Official Quotation are to be interpreted accordingly.

**Option:** an option to subscribe for a Unit or Units or a Stapled Security or Stapled Securities, as the case may be.

**Option Holder:** a person registered as the holder of an Option (including persons registered jointly).

**Ordinary Units:** means fully paid ordinary Units which do not have any special rights, obligations or restrictions.

**Panel Banks:** the Commonwealth Bank of Australia, Westpac Banking Corporation, Australian and New Zealand Banking Group Limited, National Australia Bank Limited, UBS A.G., Australia Branch, Goldman Sachs J.B. Were Limited and Macquarie Bank Limited.

**Quarter:** a period of 3 calendar months ending on 31 March, 30 June, 30 September and 31 December in each year.

**Quarterly Period:** a calendar quarter commencing on 1 January, 1 April, 1 July or 1 September.

**Pricing Period:** means the period of ten consecutive ASX trading days ending on the ASX trading day determined by the Manager.

**Record Date:** the date for lodgment of transfers for the purpose of identifying the Members, or if applicable, Option Holders who are to have relevant entitlements.

**Relevant Period:** the period specified in a Divestment Notice under clause 7.6.

**Relevant Units:** the Units specified in a Divestment Notice.

**Relief:** any declaration or modification made or exemption granted by the ASIC at any time, and continuing in force and applicable to the Trust.

**Resolution:**

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

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

**Rules:** the rules governing any Distribution Reinvestment Plan administered or operated by the Manager from time to time.

**security:** any financial product within section 764A of the Corporations Act.

**Series F Special Option:** the same meaning as in the Third Schedule.

**Series G Special Option:** means an Option issued on the terms described in the Fifth Schedule.

**Series G1 Special Option:** means an Option issued on the terms described in the Sixth Schedule.

**Series H Special Option:** means an Option issued on the terms described in the Seventh Schedule.

**Series I Special Option:** means an Option issued on the terms described in the Eighth Schedule.

**Share Sale and Unit Subscription Agreement:** an agreement entered into between Annatar Pty. Limited, Westfield Holdings Limited, the Trustee and Westfield America Management which relates to the purchase by the Trustee of WEA Stock from Annatar and the issue by Westfield America Management to Annatar of Units.

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

**Small Holding:** a holding of Units or, while stapling applies, Stapled Securities (created by the transfer of a parcel of Units or Stapled Securities), the aggregate market price of which at the relevant date is less than a marketable parcel of Units or, while Stapling applies, Stapled Securities as provided under the Listing Rules.

**Special Resolution:** a Resolution where the required majority is 75%.

**Stapled:** the linking together of Units and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others.

**Stapled Company:** Westfield Holdings Limited (ABN 66 001 671 496).

**Stapled Company Held Units:** Units held by the Stapled Company and/or any of its subsidiaries.

**Stapled Entity:** the Stapled Company, the Stapled Trust and any other trust, corporation or managed investment scheme whose securities are at the relevant time Stapled to the Units.

**Stapled Security:** a Unit and each Attached Security which are Stapled together.

**Stapled Security Holder:** the Member under this deed and the holder of Attached Securities.

**Stapled Share:** an ordinary share in the Stapled Company.

**Stapled Trust:** Westfield Trust (ARSN 090 849 746).

**Stapled Trust Manager:** the responsible entity of the Stapled Trust.

**Stapled Unit:** an ordinary unit in the Stapled Trust.

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

**Stapling Commencement Date:** the date upon which Stapling of the Units to Stapled Shares and Stapled Units is to commence as determined by the Manager and approved by the directors of the Stapled Company and the Stapled Trust Manager but, if it is determined that Stapling will occur in stages, means the date upon which the last stage occurs.

**Subscription Amount:** in respect of an application for a Unit, the Application Price less the Uncalled Amount.

**Tax:** all kinds of taxes, duties, deductions and charges imposed by any government or other authority, together with interest and penalties thereon.

**Tax Act:** the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act as appropriate, and any provisions of any succeeding legislation replacing sections of the 1936 Act and the 1997 Act referred to in this deed.

**Transaction Costs:**

- (a) when calculating the Application Price of a Unit in accordance with clause 8:

The Manager’s estimate of the total transaction costs, (or a portion of total transaction costs, if appropriate, having regard to actual transaction costs which would be incurred because of the issue or sale of the Units taking into account contemporaneous redemptions) which would be incurred in acquiring afresh the Assets of the Trust.

- (b) when calculating the redemption price of a Unit in accordance with clause 8.10:

The Manager’s estimate of the total transaction costs (or a portion of the total transaction costs, if appropriate, having regard to the actual transaction costs which would be incurred because of the redemption or the buy-back, as the case may be, taking into account contemporaneous issues and sales of Units) which would be incurred in selling the Assets of the Trust.

**Trust:** the trust hereby constituted and to be known as the “**Westfield America Trust**”, (subject to clause 9.10).

**Trustee:** the trustee or responsible entity of the Trust from time to time, and includes the Manager when acting as the trustee.

**Uncalled Amount:** in respect of a Unit, the Application Price less the amount remaining unpaid and which has not been called.

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

“**Units are Officially Quoted**” or “**Units are officially quoted**” means the admission of the Trust to the Official List of the ASX.

**US Dollar Equivalent:** in relation to Australian Dollars, the equivalent at any time of that amount in US Dollars determined by multiplying the Australian Dollar amount by the Exchange Rate at that time.

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

**Valuer:** an independent qualified valuer selected by the Manager.

**WDC Securities:** each of the Units in the Trust, units in the Stapled Trust and shares in the Stapled Company, or all of them as the context requires.

**WEA:** means Westfield America, Inc. (formerly called CenterMark Properties, Inc.), a United States corporation incorporated in Missouri.

**WEA Dividend Date:** a date when the entitlement of holders of WEA Stock to receive dividends payable in respect of a Quarterly Period is determined by WEA.

**WEA Dividend Reinvestment Plan:** any plan or arrangement in operation from time to time which enables the holders of WEA Stock to reinvest dividends to which they are entitled in respect of such WEA Stock in the acquisition of new WEA Stock.

**WEA Stock:** shares of common or preference stock in WEA outstanding from time to time.

**Weighted Average Market Price:** means:

- (a) the aggregate of the prices at which each relevant Unit, Stapled Security or Option was sold during the relevant period divided by the number of Units, Stapled Securities or Options sold during that period, in the case of both the sales prices and numbers, as reported by the ASX; or
- (b) if no such sales occurred, the price at which the last recorded sale of a relevant Unit, Stapled Security or Option occurred prior to the commencement of the relevant period.

**Westfield America Management:** Westfield America Management Limited ACN 072 780 619.

**Westfield Retail Trust Distribution:** a pro rata distribution of capital from each of the Stapled Trust and the Stapled Company, in each case in the form of a transfer of units which are part of Westfield Retail Trust Securities.

**Westfield Retail Trust Offer Document:** the product disclosure statement dated 3 November 2010 under which a public offer of Westfield Retail Trust Securities is made.

**Westfield Retail Trust Securities:** units Westfield Retail Trust 1 and Westfield Retail Trust 2, which are or are to be stapled to each other.

## 1.2 Interpretation

Unless the contrary intention appears, in this deed (including its schedules and appendices):

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “including” and “for example” when introducing a list of items does not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;

- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) headings and marginal notes are for convenience only and do not affect interpretation of this deed;
- (h) a reference to a “business day” is to a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney and Melbourne;
- (i) a reference to a “foreign person” has the same meaning as in the Foreign Acquisitions and Takeovers Act 1975 (Commonwealth); and
- (j) a reference to this deed or another instrument includes any variation or replacement of any of them.

### **1.3 Parties bound**

This deed as amended binds the Manager and the Members of the Trust and any person claiming through any of them as if each of them had been a party to this deed.

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## **2 Corporations Act**

### **2.1 Corporations Act**

If:

- (a) the Corporations Act requires that this deed contain certain provisions; or
- (b) any relevant Relief from the provisions of the Corporations Act directly or indirectly requires that this deed contain certain provisions,

then those provisions are deemed to be incorporated into this deed and prevail over the provisions of this deed to the extent of any inconsistency.

This clause 2.1 prevails over all other provisions of this deed (including any which purport to prevail).

### **2.2 ASX Listing Rules**

This clause 2.2 applies while the Trust is admitted to the Official List of ASX. If the Listing Rules prohibit an act being done, the act shall not be done. Nothing contained in this deed prevents an act being done that the Listing Rules require to be done. If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be). If the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision. If the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision. If any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency. The obligations imposed by this clause 2.2 are additional to those imposed by any other clause of this deed.

## **2.3 ASIC Class Orders**

In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this deed because of the operation of clause 2.2 is not a modification of, or the repeal and replacement of, the constitution of the Trust for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

## **2.4 Supremacy**

If any provision incorporated or deemed to be incorporated in this deed by the Corporations Act or Corporations Regulations or Listing Rules is inconsistent with any other provision contained or deemed to be contained in this deed, the covenants or provisions will prevail in the following order of priority:

- (a) provisions incorporated or deemed to be incorporated in this deed by the Corporations Act;
- (b) provisions incorporated or deemed to be incorporated in this deed by the Corporations Regulations;
- (c) provisions required to be contained in this deed by the Listing Rules; and
- (d) the other provisions contained in this deed.

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# **3 The Trust**

## **3.1 The Trust**

There is constituted by this deed the Trust under which property shall be vested in and held by the Trustee upon trust for the Members, subject to the terms and conditions of this deed.

## **3.2 Manager**

Westfield America Management agrees to act as Manager of the Trust.

## **3.3 Assets vest in Trustee**

The Trustee must hold the Assets of the Trust on trust for the Members. The Assets of the Trust vest in the Trustee, but must be held as a separate fund which is not available to meet liabilities of any other trust.

## **3.4 Appointment of Custodian**

The Manager, subject to law, may from time to time appoint in relation to the Trust any one or more corporations (whether or not related to or associated with the Manager) to perform the following actions in the name of the Manager or in the name of the Custodian:

- (a) purchase or sell Assets at the direction of the Manager and execute all transfers and assurances necessary for that purpose;
- (b) receive and hold on behalf of the Manager Assets and any document of title relating to the Trust in safe custody;



- (c) receive all income on behalf of the Manager arising from any of the Assets referred to in paragraph (b) of this clause 3.4;
- (d) procure registration of those Assets;
- (e) hold and disburse monies in the name of the Manager at the direction of the Manager; and
- (f) perform all actions incidental to any of the above powers.

The Manager, by the terms of an appointment under this clause 3.4 may insert provisions for the protection and convenience of others dealing with the Custodian as it thinks fit. If the Manager appoints a Custodian, the Manager remains liable for any act or omission of the Custodian as if the act or omission was an act or omission of the Manager.

The Manager is responsible for payment of the fees and expenses of the Custodian but is entitled to be reimbursed out of the Trust in respect of those fees and expenses subject to a maximum in any Financial Year of 1% of the Assets under the control of the Custodian. If the aggregate of the fees and expenses of the Custodian exceeds the above maximum in any Financial Year, the excess is to be paid from the Manager's own funds.

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## **4 Duration of Trust**

### **4.1 Initial settlement**

The Trust commenced on 28 March 1996.

### **4.2 Termination**

The Trust terminates if:

- (a) the Trust terminates in accordance with another provision of this deed or by law; or
- (b) the Members so resolve by a Special Resolution passed at a meeting of Members convened by the Manager.

### **4.3 Termination Date**

The Trust terminates on the earlier of:

- (a) **[Deleted]**;
- (b) the date on which the Trust is terminated under this deed or by law.

### **4.4 No dissolution**

Notwithstanding any other provision of this deed the death, insanity, bankruptcy, retirement, resignation or expulsion of a Member or of the Manager will not of itself cause or result in the dissolution or termination of the Trust.

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## **5 Interest of Unit Holders**

### **5.1 Units**

Subject to the other provisions of this deed and the terms of issue of a Unit, each Unit confers an equal undivided interest in the Assets, and does not confer any interest in a particular Asset, but only an interest in the Assets of the Trust as a whole, subject to the Liabilities of the Trust.

#### **5.1A Stapling provisions**

The provisions of this deed relating to Stapling take effect if determined by the Manager and, if so determined, on and from the Stapling Commencement Date and apply subject to all other provisions of this deed which may suspend, abrogate or terminate Stapling. The Manager may, subject to this deed, the Corporations Act and, while the Units are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities to the Units.

#### **5.1B Automatic Stapling**

Without limiting clause 5.1A, immediately upon the occurrence of the Westfield Retail Trust Distribution, the Westfield Retail Trust Securities will each be stapled to each of the WDC Securities without the need for any determination or consent, so that all the Stapled Securities then on issue will have 5 components. This 5 component Stapling will continue until the automatic unstapling under clause 9.13A.

### **5.2 Fractions**

Fractions of a Unit may be issued calculated to such number of decimal places as the Manager determines. In spite of any other provision of this deed but subject to the rights, obligations and restrictions attaching to any Units or any Classes, any right or interest conferred by a fraction of a Unit will be calculated in accordance with that fraction. If the Manager determines not to issue fractional Units or if under any provision of this deed or the Rules a fraction is to be disregarded, any application moneys that would otherwise result in a fraction of a Unit becomes an Asset of the Trust. While Stapling applies, no fractions of Units may be issued.

### **5.3 Classes of Units**

Without in any way limiting the Manager's power to issue Units on the terms of this deed, while Stapling applies, the Manager may not issue different Classes of Units except units held by the Stapled Company or any of its subsidiaries or Units which may temporarily be of a different Class due to different income entitlements.

### **5.4 Partly Paid Units**

Subject to the Corporations Act and the Listing Rules, Units may be issued on the basis that the Application Price is payable at such time or times as the Manager may determine. In spite of any other provision of this deed, if Units are issued on that basis and until such time as the Application Price has been paid in full, the interest conferred by those Units, and the rights attaching to them will be reduced by the same proportion as the Uncalled Amount for the time being bears to the Application Price at which those Units were issued.

#### **5.4A Partly Paid Units while Stapling applies**

While Stapling applies:

- (a) Units may not be issued partly paid unless there is at the same time a corresponding issue of Attached Securities which are also partly paid; and
- (b) a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

#### **5.5 Consolidation and Division**

Subject to the Listing Rules and Corporations Act, Units may be consolidated, divided, reclassified or converted to a different Class as determined by the Manager, with any resultant fraction of a Unit in a holding being rounded up to the next whole Unit, provided that any such reclassification or conversion is:

- (a) not adverse to the rights or interests of all affected Members; or
- (b) if the reclassification or conversion is or may be adverse to the interests of some or all of affected Members, the reclassification or conversion is in accordance with the terms of issue of the affected Units.

#### **5.5A Consolidation, division and conversion while stapling applies**

While Stapling applies, Units may only be consolidated, divided or converted if the related Attached Securities are also consolidated, divided or converted at the same time and to the same extent.

#### **5.6 Restrictions**

A Member must not:

- (a) interfere with any rights or powers of the Manager under this deed;
- (b) exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) require an Asset to be transferred to the Member.

#### **5.7 Additional Units**

The Manager may from time to time issue additional Units in accordance with the procedure set out in clause 6 and the other provisions of this deed.

#### **5.7A Number of Units**

While Stapling applies, the number of issued Units except Stapled Company Held Units at any time must equal the number of issued Attached Securities of each category.

#### **5.8 Stock Exchange Listing**

The Manager must use its best endeavours to ensure that the Units are Officially Quoted (including, where applicable, as part of Stapled Securities) and that

subject to the rights, obligations and restrictions attaching to any Units or Classes, such official quotation is maintained. Notwithstanding any other provisions of this deed, the Trust will at all times remain as a separate legal entity and separately admitted to the official list of ASX notwithstanding that its Units are jointly quoted as part of a Stapled Security.

## **5.9 Quotation**

To the extent permitted by the Listing Rules and the ASX, Units or Stapled Securities of which they form part may be listed for quotation on the ASX in Australian dollars, United States dollars and any other currency whatsoever. The Trust will at all times be maintained as an Australian unit trust registered as a “managed investment scheme” under the Corporations Act, with its main class of Units Officially Quoted on ASX.

## **5.10 Rights attaching to Units**

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.

## **5.11 Series F Special Options**

Units may be issued on the exercise of a Series F Special Option on the terms set out in the Third Schedule of this deed and the Manager must ensure that an equal number of Attached Securities are issued at the same time to the person to whom the Units are issued.

## **5.13 Series G Special Options**

Units may be issued on the exercise of a Series G Special Option on the terms set out in the **Fifth Schedule** of this deed and the Manager must ensure that an equal number of Attached Securities are issued at the same time to the person to whom the Units are issued.

## **5.14 Series G1 Special Options**

Units may be issued on the exercise of a Series G1 Special Option on the terms set out in the **Sixth Schedule** of this deed and the Manager must ensure that an equal number of Attached Securities are issued at the same time to the person to whom the Units are issued.

## **5.15 Series H Special Options**

Units may be issued on the exercise of a Series H Special Option on the terms set out in the **Seventh Schedule** of this deed and the Manager must ensure that an equal number of Attached Securities are issued at the same time to the person to whom the Units are issued.

## **5.16 Series I Special Options**

Units may be issued on the exercise of a Series I Special Option on the terms set out in the **Eighth Schedule** of this deed and the Manager must ensure that an equal number of Attached Securities are issued at the same time to the person to whom the Units are issued.

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## **6 Applications for Units and Options**

### **6.1 Procedure**

An applicant for Units must complete a form approved by the Manager if the Manager requires this. The form must be accompanied by the Application Price or, where the Application Price is to be partly paid, the Subscription Amount, for each Unit applied for either by payment in a form that the Manager approves, or by the transfer of property of a kind able to be vested in the Manager or any other person nominated by the Manager for that purpose, and must be payable in accordance with clause 6.3.

#### **6.1A Application for identical number of Attached Securities**

While Stapling applies, an applicant for Units, other than Units which are to be Stapled Company Held Units, must at the same time make an application for an identical number of Attached Securities.

### **6.2 Non-cash Contributions**

If the Manager intends to accept property rather than cash as a contribution to the Trust, the Manager must obtain:

- (a) an effective transfer to the Manager or any other person nominated by the Manager for that purpose of title to the property; and
- (b) except where the Manager acquires WEA Stock as a consequence of the exercise of:
  - (i) Options granted under the CenterMark Option Deed;
  - (ii) Series G Special Options;
  - (iii) Series GI Special Options;
  - (iv) Series H Special Options; or
  - (v) Series I Special Options,

a valuation acceptable to the Manager stating the market value of that property.

### **6.3 Payment to Manager**

The payment or transfer of property under clause 6.1 must be paid or transferred by the applicant directly to the Manager or any other person nominated by the Manager for that purpose to be placed in a special trust account until such time as the minimum subscription (under any prospectus, product disclosure statement or offering memorandum) or minimum application (in the case of an issue, offer or invitation which does not require a prospectus or product disclosure statement) has been reached, and the Manager proceeds with the allotment of Units. Until such time as the Manager proceeds with the allotment of Units, the Manager will arrange for such money or property as the case may be to be held for the applicant. The Manager may invest or cause the investment of any such money in accordance with the power to invest set out in clause 9.1(n). Any interest received in respect of such money shall form part of the Assets. The Manager will comply with all obligations imposed on it by law, the Listing Rules or this

deed, in the same manner as it would be required to do if it were a company offering shares for subscription or purchase.

#### **6.4 Uncleared Funds**

The issue of Units against application money paid other than as cleared funds is void if the funds are not subsequently cleared.

#### **6.5 Manager may reject**

The Manager may in its absolute discretion reject an application for Units in whole or part without reason.

#### **6.5A Manager must reject**

While Stapling applies, the Manager must reject an application for Units, other than Units which are to be Stapled Company Held Units, if the applicant does not apply at the same time for an identical number of Attached Securities or if an identical number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the applicant.

#### **6.6 Minimum Application**

The Manager may set a minimum application amount for the Trust, and alter that amount at any time.

#### **6.7 Issue Date**

Units are taken to be issued when the Manager allots the Units.

#### **6.8 Nomination of Holder**

The Manager alone may nominate the person to be registered as the holder of a Unit, and the Manager may treat the registered holder as the absolute owner of the Unit. The Manager's power of nomination ceases once a person has been registered as the holder of a Unit. The Manager need not recognise any claim or interest in a Unit by any person other than the registered holder or holders of the Unit, even if they have notice of such interest.

#### **6.9 Option**

The Manager may from time to time create and issue Options. Any Series G Special Options, Series G1 Special Options, Series H Special Options and Series I Special Options shall, respectively, be subject to the terms and conditions in the **Fifth Schedule**, the **Sixth Schedule**, the **Seventh Schedule** and the **Eighth Schedule** to this deed and (when created and issued) constitute separate classes of Options. While Stapling applies, an Option may only be exercised if, except in the case of Units which are to be Stapled Company Held Units at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.

#### **6.10 Option Terms**

Options may be issued:

- (a) for no consideration or at a consideration, as determined by the Manager or for a consideration that is otherwise specified in this deed;

- (b) on the basis that the Application Price for a Unit or Units to be issued on exercise of the Option is a price determined in accordance with clause 8 and (except where such price is determined pursuant to paragraph 8.2(b) of this deed or in accordance with the Third Schedule, Fifth Schedule, Sixth Schedule, Seventh Schedule or Eighth Schedule) is a price not less than 50% of the Application Price of Units as otherwise determined in accordance with clause 8 provided that any relevant ASIC instrument is complied with;
- (c) only on terms that the Option does not confer:
  - (i) any right to require the Manager to redeem or repurchase the Option; or
  - (ii) except as expressly provided in this deed or the terms and conditions of issue of the Option, any other entitlement under this deed, consequent upon holding the Option; and
- (d) otherwise on terms and conditions determined by the Manager.

#### **6.10A Consideration for certain Options**

The Manager may issue the following Options for the prices specified:

- (a) 694,445 Series G Special Options for US\$427,449;
- (b) 277,778 Series G1 Special Options for US\$171,051;
- (c) 14,070,072 Series H Special Options for US\$100,000;
- (d) 13,260,859 Series I Special Options for A\$100,000.

#### **6.11 Option Exercise**

Subject to clause 6.9 on exercise of an Option in accordance with its terms and conditions of issue, the Option Holder is entitled to subscribe for and be allotted the number of Units or Stapled Securities (as applicable) to which the Option relates, credited as fully paid.

#### **6.12 Calls by Manager**

Subject to clause 5.4A and the rights, obligations and restrictions attaching to any Units or Classes, the Manager may call on each Member to pay all or any part of the Uncalled Amount of the Application Price of Units to the Manager at any time. The Manager may only make a call in respect of Units of a Member if the Manager also makes the same call on all other Members who hold Units of that Class which are similarly partly paid.

#### **6.13 Offers which do not require disclosure**

If the Manager is requested to issue Units pursuant to an offer which does not require a product disclosure statement, the Manager may rely on information provided by other persons to determine if the issue in the absence of a product disclosure statement is lawful. Each Member indemnifies the Manager for any loss, damage or other consequence which may arise if such issue, offer or invitation of Units to that Member should have been made under a product disclosure statement.

## **6.14 Restriction on issue and redemption of Units**

No Units may be issued or redeemed after the 80<sup>th</sup> anniversary of the day the Trust commenced if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

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## **7 Redemption, Repurchase and Forfeiture of Units**

### **7.1 Redemption Notice**

A Member may give the Manager a redemption notice in such form as may be approved by the Manager from time to time specifying the name of the Trust and the number of Units to be redeemed or (with the Manager's approval) the amount of the proceeds which the Member wishes to receive from the redemption. A redemption notice shall be accompanied by any Unit certificates the Member may hold in respect of the Units which are the subject of the redemption notice.

### **7.2 Suspension while Units Quoted**

Notwithstanding anything else in this clause 7, the Manager is not obliged to repurchase or redeem Units under this clause 7 while the Units are Officially Quoted.

### **7.3 Trust Liquid**

Clauses 7.4, 7.5, and 7.7 apply only while the Trust is Liquid.

### **7.4 Repurchase and Redemption - Trust Liquid**

Subject to the other provisions of this deed, on receipt of a redemption notice pursuant to clause 7.1, the Manager shall redeem (or at the option of the Manager, repurchase) all of the Units required by the Member to be redeemed at a price calculated in accordance with clause 8.10.

### **7.5 Minimum Holding - Trust Liquid**

If compliance with a redemption notice would result in the Member holding Units having a value less than the then current minimum application amount, the Manager may treat the redemption notice as relating to the Member's entire holding of Units.

### **7.6 Small Holdings**

- (a) This clause 7.6 applies while Units or Stapled Securities are Officially Quoted.
- (b) Subject to the provisions of this clause 7.6, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.
- (c) If the Manager determines that a Member is a Small Holder or a New Small Holder the Manager may give the Member a Divestment Notice to notify the Member:



- (i) that the Member is a Small Holder or a New Small Holder, the number of Units making up and the Market Price of the Small Holding or New Small Holding and the date on which the Market Price was determined;
- (ii) that the Manager intends to sell the Relevant Units in accordance with this clause after the end of the Relevant Period specified in the Divestment Notice;
- (iii) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Manager in writing that the Member desires to retain the Relevant Units and that, if the Member does so, the Manager will not be entitled to sell the Relevant Units under that Divestment Notice; and
- (iv) after the end of the Relevant Period the Manager may for the purpose of selling the Relevant Units that are in a CHES holding initiate a holding adjustment to move those Units from that CHES holding to an issuer sponsored holding or certificated holding.

If the ASTC Settlement Rules apply to the Relevant Units, the Divestment Notice must comply with the ASTC Settlement Rules.

- (d) For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.
- (e) At the end of the Relevant Period the Manager is entitled to sell on-market or in any other way determined by the Manager:
  - (i) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Manager in writing before the end of the Relevant Period that the Member desires to retain the Relevant Units, in which event the Manager must not sell those Relevant Units under that Divestment Notice; and
  - (ii) the Relevant Units of a Member who is a New Small Holder.
- (f) The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 7.6 but unless the Relevant Units are sold within six weeks after the end of the Relevant Period the Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.
- (g) To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each of its directors and secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:

- (i) to initiate a holding adjustment to move the Relevant Units from a CHESS holding to an issuer sponsored holding or a certificated holding; and
  - (ii) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.
- (h) A statement in writing by or on behalf of the Manager under this clause 7.6 is binding on and conclusive against (in the absence of manifest error) a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 7.6 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.
- (i) The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause 7.6. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 7.6.
- (j) Subject to this clause 7.6, where:
- (i) Relevant Units of a Member are sold by the Manager on behalf of the Member under this clause; and
  - (ii) the certificate for the Relevant Units (unless the Manager is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the Manager,

the Manager must, within 60 days of the completion of the sale, send by mail or cheque for the proceeds of sale to the Member entitled to those proceeds in accordance with clause 13.6. Payment of any money under this clause 7.6 is at the risk of the Member to whom it is sent.

- (k) In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause 7.6, the Manager is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Manager. In the case of a sale of the Relevant Units of a Small Holder, the Manager or a purchase must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Manager in connection with the sale and transfer of the Relevant Units.
- (l) The remedy of a Member to whom this clause 7.6 applies, in respect of the sale of the Relevant Units of that Member, is expressly limited to a right of action in damages against the Manager to the exclusion of any other right, remedy or relief against any other person. The Manager is only liable if it has failed to comply with the requirements of this

clause 7.6 and its liability is limited to the value of the Relevant Units at the time of sale.

- (m) Unless the Manager determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause 7.6, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a New Small Holder. Any distributions that would, but for this clause 7.6, have been paid to that Member must be held by the Manager and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.
- (n) If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by this clause 7.6).
- (o) From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this article to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite this clause 7.6 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.
- (p) While Stapling applies:
  - (i) the references to Units or Relevant Units in this clause 7.6 will apply to the Stapled Securities held by the Member; and
  - (ii) no sale under this clause 7.6 may occur unless, at the same time as Units are sold, an identical number of Attached Securities are also sold.

## **7.7 Minimum Redemption or Repurchase - Trust Liquid**

If a Member gives a redemption notice under clause 7.1, the Manager need not cause the redemption or repurchase of Units having a value less than the minimum application amount (if any) for Units of that class, unless the redemption notice relates to all of the Member's holding.

## **7.8 Notice Irrevocable**

A Member may not withdraw or revoke a redemption notice unless the Manager agrees.

## **7.9 Order**

Unless the Manager decides otherwise, the first Units issued to a Member are the first to be redeemed or (at the option of the Manager) repurchased.

## **7.10 Sums owed to Manager**

The Manager may deduct from the proceeds of redemption any unpaid moneys due by the Member to the Manager.

### **7.11 Transfer of Assets**

The Manager may if the Member agrees transfer Assets to a Member rather than pay cash on redemption of Units. These Assets must be of equal value to the total proceeds of redemption actually due to the Member (based on a valuation done within 2 months before the date of the proposed transfer). Clause 8.7 applies to the valuation.

### **7.12 Trust not Liquid**

Clauses 7.13, 7.14 and 7.15, apply only while the Trust is not Liquid.

### **7.13 Withdrawal offers**

A Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

### **7.14 Manager not obliged**

The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by:

- (a) publishing it by any means (for example in a newspaper or on the internet); or
- (b) giving a copy to all Members or Members of a Class (as relevant).

### **7.15 Treatment of request**

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

### **7.15A While Stapling applies**

While Stapling applies, except in relation to Stapled Company Held Units, no redemption or repurchase under this clause 7 may occur unless, at the same time as Units are redeemed, an identical number of Attached Securities are also redeemed or repurchased.

### **7.15B Redemption of Stapled Company Held Units**

Subject to any applicable ASIC relief, on receipt of a redemption notice pursuant to clause 7.1 provided by the Stapled Company and/or any of its subsidiaries in relation to Stapled Company Held Units, the Manager may redeem (or at the option of the Manager, repurchase) all of the Stapled Company Held Units required by the Stapled Company and/or any of its subsidiaries to be redeemed for no consideration provided that the notice states that the amount of the proceeds which the Member wishes to receive from the redemption is zero.

### **7.16 Forfeiture of Unit**

Subject to the rights, obligations and restrictions attaching to any Units or Classes, if a Member fails to pay in full any call on a Unit made in accordance

with clause 6.12, the Manager may, at any time during such time as any call or part thereof remains unpaid, serve a notice on that Member requiring payment of so much as is unpaid together with interest at the Market Rate for each 3 monthly period (determined at 3 monthly intervals commencing on the date the call becomes payable) such interest to be calculated on and accrue due and payable on the daily balance from the date the call becomes payable to the date of payment or forfeiture of the Units pursuant to clause 7.17 whichever is the earlier. The notice must state a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or by which the payment as required by the notice is to be made, and must state that in the event of non-payment on or before the time appointed the Units in respect of which the call is then due and owing will be liable to be forfeited and an equal number of Attached Securities will also be liable to be forfeited.

#### **7.17 If requirements of any notice not complied with**

If the requirements of a notice under clause 7.16 are not complied with, any Unit in respect of which the notice has been given (together with the Attached Securities) may at any time thereafter before the required payment has been made, be forfeited at the discretion of the Manager, effective at such time as the Manager determines. Such forfeiture shall include all entitlements to income accrued in respect of the forfeited Unit and the Attached Securities, before the forfeiture other than income to which the Member has become presently entitled. All voting rights and entitlements to the distribution of income and capital in connection with any such Unit (and the Attached Securities) are suspended until reinstated by the Manager and in the case of the Attached Securities, the Stapled Entities. If required in order for any Relief to be effective, the Manager holds the Partly Paid Unit on trust for the Member.

#### **7.18 Sale of Forfeited Unit**

- (a) A forfeited Partly Paid Unit and any Attached Securities may, subject to compliance with the Corporations Act and the conditions of any Relief and the Listing Rules, be sold or otherwise disposed of:
- (i) at a price equal to that received from the sale of the Partly Paid Units and, if Stapling applies, any Attached Securities in the normal course of business on ASX; or
  - (ii) by public auction, in accordance with any Relief; or
  - (iii) by private treaty,
- and such Unit or Stapled Security will be:
- (i) credited as paid up to the sum of the amount paid up on the Unit or Stapled Security on the day of the forfeiture and the amount of the call and the amount of any other calls becoming payable on or before the day of the sale; and
  - (ii) continue to be subject to a liability to pay an amount equal to the Uncalled Amount (if any) in accordance with this deed.
- (b) At any time before a sale or disposition under paragraph (a), forfeiture may be cancelled on such terms as the Manager thinks fit and shall be cancelled where the Member pays to the Manager the full amount owing in respect of such Units.

- (c) Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.
- (d) Where a Partly Paid Unit and relevant Attached Securities are forfeited pursuant to paragraph (a), the Manager may:
  - (i) receive the consideration, if any, given for the forfeited Partly Paid Unit and relevant Attached Securities on the sale or disposal (or the Manager may determine that the consideration will be received in whole or in part by the Stapled Entities);
  - (ii) execute (or procure that the Stapled Entities execute) a transfer of such Partly Paid Unit and relevant Attached Securities in favour of the person to whom the Partly Paid Unit and relevant Attached Securities are sold or disposed of and that person must then be registered as the holder of that Partly Paid Unit and relevant Attached Securities, and shall not be bound to see to the application of the proceeds of such sale or disposition nor shall his title to the Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture or sale or disposition of the Units. The defaulting holder of the Unit will remain liable to pay the amount of the unpaid call.
- (e) Subject to the conditions of any applicable Relief, where forfeited Partly Paid Units and relevant Attached Securities are sold or disposed of for cash, the Manager must deduct from the cash received:
  - (i) all moneys which at the date of forfeiture were payable to the Manager in respect of the forfeited Partly Paid Units;
  - (ii) all costs incurred in connection with the forfeiture including, without limitation, any costs incurred in connection with any proceedings brought against the former holder to recover the instalment or party of the instalment;
  - (iii) interest calculated at the Market Rate plus 3% on the daily balance of the amounts in (a) and (b) from the day they became due for payment or were incurred up to and including the date of forfeiture; and
  - (iv) all amounts which have been or will be incurred for commissions, Taxes, transfer fees and other usual charges, if any, on the sale or disposal of the Partly Paid Unit.

The Manager may retain the amounts so deducted as Assets, but the balance remaining (if any) must be paid to the Member whose Partly Paid Units were forfeited.

## **7.19 Cessation of Status of Member**

A Member whose Units and Attached Securities have been forfeited shall cease to be a Member of the Trust and of each Stapled Entity from the date of the forfeiture as determined by the Manager in accordance with clause 7.17 but shall notwithstanding:

- (a) remain liable to pay to the Manager all unpaid calls and interest in respect of the Units and the costs and expenses of and incidental to the forfeiture and sale or disposition; and
- (b) have no claim against the Manager or the Trust or the Stapled Entities in respect of the forfeited Unit and the forfeited Attached Securities.

## 7.20 Buy Back of Units

While the Trust is Listed, the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules, purchase or cause to be purchased Units or, where Stapling applies, Stapled Securities and cause the Units which in part comprise those Stapled Securities to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy back and cancellation by the respective Stapled Entities. Where Units are purchased as part of a Stapled Security pursuant to a buy back arrangement, the Manager must determine, in a manner similar to that provided in clause 8.11, what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

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## 8 Unit Price and Valuation

### 8.1 Application Price

Subject to clause 6.10 except in the case of Units offered pursuant to or in connection with transactions referred to in the Initial Prospectus which will have an issue price of One Australian Dollar (\$A1.00) per Unit, while Ordinary Units are not Officially Quoted, a Unit must only be issued at an application price calculated as:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue}}$$

The application price must be determined as at the last Valuation Time before the Manager received (or is taken to have received) the application for Units.

### 8.2 Application Price where Units Officially Quoted

Whilst Ordinary Units are officially quoted, subject to clauses 8.2A, 8.3, 8.4, 8.5, 8.6, 8.11, and the Third Schedule a Unit must only be issued at an Application Price equal to:

- (a) except where paragraphs (b) or (c) applies, the Weighted Average Market Price of Units during the ten (10) ASX business days immediately prior to the date upon which the Application Price is to be calculated or, while Stapling applies, a Stapled Security must be issued at its Market Price and clause 8.11 shall apply to determine which portion of the application price is attributable to the Unit comprising part of that Stapled Security;
- (b) where the Unit is issued as the consequence of the exercise of Options under a CenterMark Option Deed which provides for an issue price per Unit equal to the amount of United States Dollars required to buy One

Australian Dollar determined by reference to the Buy Rate, such issue price;

- (c) where the a Stapled Security is issued as a consequence of the exercise of a Series F Special Option, such issue price as is determined in accordance with the Third Schedule.

The price of Units, Stapled Securities or Options issued to an underwriter may be reduced by such lawful fee, brokerage or commission as the Manager determines.

## **8.2A Consideration where Units issued on Exercise of Options**

Whilst Ordinary Units are officially quoted and notwithstanding anything in clause 8.2 of this deed:

- (a) where a Unit is issued as a consequence of the exercise of a Series G Special Option, the consideration that is to be paid for that Unit shall be determined in accordance with the Fifth Schedule;
- (b) where a Unit is issued as a consequence of the exercise of a Series G1 Special Option, the consideration that is to be paid for that Unit shall be determined in accordance with the Sixth Schedule;
- (c) where a Unit is issued as a consequence of the exercise of a Series H Special Option, the consideration that is to be paid for that Unit shall be determined in accordance with the Seventh Schedule; and
- (d) where a Unit is issued as a consequence of the exercise of a Series I Special Option, the consideration that is paid for that Unit shall be determined in accordance with the Eighth Schedule.

## **8.3 Rights Issues**

The Manager may, subject to clause 6.5A, offer further Units for subscription at a price determined by the Manager to those persons who are Members on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, provided that:

- (a) all Member are offered Units at the same application price on a pari passu basis (whether or not the right of entitlement is renounceable); and
- (b) the application price is not less than 50% of the Market Price of the Units or, while Stapling applies, the Market Price of Stapled Securities minus the application price of the Attached Securities

and further provided that, subject to the Listing Rules, the reference to all Members in paragraph (a) excludes Members who are not resident in Australia (“**Overseas Members**”) and, if all Members that hold Stapled Company Held Units consent in writing to the offer not being made to them, those Members. Where the right of entitlement is renounceable, the Manager is, as the agent of each Overseas Member, to sell the Overseas Member’s entitlement and account to the Overseas Member for the proceeds of the sale, after deducting any costs or Taxes incurred in connection with the sale.

The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, clause 5.2 shall apply. Any Member may, unless the terms



of issue provide otherwise, renounce its entitlement in favour of some other person.

#### **8.4 Re-offer**

Any Units offered under clause 8.3 which are not subscribed for within the period during which the offer is capable of acceptance may be offered for subscription by the Manager to any person, provided that the application price is not less than that at which the Units were originally offered to Members. If an underwriter has underwritten any offer for subscription under clause 8.3, the underwriter may take up any Units not subscribed for by the Member.

#### **8.5 Placement**

The Manager may at any time issue Units to any person at any price and on any terms it thinks fit, provided that the Corporations Act, the Listing Rules and any Relief are complied with.

#### **8.6 Reinvestment**

The Manager may from time to time issue Units pursuant to a Distribution Reinvestment Plan and while Units are Officially Quoted, the application price payable for each additional Unit upon reinvestment of distributions shall be the Distribution Reinvestment Price .

#### **8.6A Underwritten Distribution Reinvestment Plan**

The Manager may from time to time issue Units pursuant to an underwriting arrangement in respect of a Distribution Reinvestment Plan to either:

- (a) the underwriter of the Distribution Reinvestment Plan ('DRP Underwriter'); or
- (b) a person procured by the DRP Underwriter,

at an Application Price that is the same as the Application Price of Units issued under the Distribution Reinvestment Plan which is the subject of the underwriting arrangement.

#### **8.7 Periodic Valuations**

The Manager is not to be regarded as having any special expertise in valuation. Except where an Asset comprises an Entity Interest the Manager may cause an Asset to be valued at any time (and must do so if required by the Corporations Act) by a Valuer using the valuation method set out in clause 8.8. A copy of any such valuation must be given to the Auditor. Where an Asset comprises an Entity Interest the value of such Entity Interest shall be the Manager's proportionate interest in the then value of the entity's assets net of the Entity's Liabilities. The Manager may determine Net Asset Value at any time in its absolute discretion, including more than once on each day, but unless Units are Officially Quoted must do so at least once every Quarter.

#### **8.8 Valuation Methods**

Subject to clause 8.7, the valuation method or the manner of valuation of an Asset is to be determined by the Valuer and approved by the Manager.

## 8.9 Rounding

The Manager may round the application price and redemption price of a Unit calculated under this clause 8 respectively to the nearest fraction of a cent as determined by the Manager.

## 8.10 Redemption or Repurchase Price

- (a) Subject to paragraph (b), clause 7.15B and clause 7.20 and the terms of issue of any Units, the Third Schedule, the Fifth Schedule, the Sixth Schedule, the Seventh Schedule and the Eighth Schedule, a Unit must only be redeemed or (at the option of the Manager) repurchased at a price calculated as:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units in issue}}$$

provided that, in the case of a partly paid Unit, the Uncalled Amount in respect of that Unit is to be deducted from the price calculated in accordance with this formula.

- (b) If a Unit is to be redeemed or repurchased out of the proceeds of an application for a Unit made at the same time as the redemption notice, the Unit may be redeemed at the Application Price. A certificate from the Manager will be conclusive evidence as to whether or not this paragraph (b) applies to the redemption of a Unit.
- (c) The prices in paragraphs (a) and (b) must be determined as at the last Valuation Time before the Units the subject of the redemption notice are redeemed or repurchased.

## 8.11 Determination of Application Price or Redemption Price where Stapled Securities are issued

While:

- (a) Stapling applies;
- (b) as a consequence, a Unit is to be issued as part of a Stapled Security or redeemed or repurchased in conjunction with the redemption or repurchase of Attached Securities; and
- (c) this deed contains a provision for the calculation or determination of the application price or redemption or repurchase price for the Stapled Security but not for the Unit,

the Manager must, in accordance with this clause 8.11, determine what part of the application price or redemption or repurchase price of a Stapled Security is to be allocated to a Unit and each Attached Security for the purposes of this deed. For the avoidance of doubt, this clause does not apply in relation to a redemption of Stapled Company Held Units redeemed in accordance with clause 7.15B.

The application price for a Stapled Security will be allocated between the Application Price of the Unit and for the application prices for the Attached Securities on the basis of fair value as agreed between the Manager and the Stapled Entities or, failing agreement, determined by an independent accountant

based on fair market value as determined by the accountant having regard to the respective net tangible asset backing of each of the Unit and the Attached Securities immediately prior to the issue, redemption or buy-back of the Stapled Security and any other factors which the accountant believes should be taken into account. However, where the Stapled Security is being issued pursuant to the exercise of one or more options and the terms of the application price of the Unit and each of the Attached Securities must be determined in accordance with any relevant provisions of the terms of the option or options.

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## **9 Manager**

### **9.1 Powers**

Subject to this deed, the Manager shall have all the powers over and in respect of the Assets and Liabilities of the Trust that it is legally possible for a natural person or a corporation to have as if it were the absolute owner of the Assets. Without in any way affecting the generality of the foregoing, the Manager shall be deemed to have the full and absolute and beneficial powers of:

- (a) purchase and sale of any real or personal property of any nature or investments for cash or upon terms;
- (b) leasing and acceptance of surrender of leases with power to compromise the lessees and others and execute and pay for repairs and improvements;
- (c) instituting and compromising legal proceedings;
- (d) attending and voting at meetings;
- (e) paying all outgoings connected with this deed which are not otherwise payable by the Manager;
- (f) lending money with or without security;
- (g) raising or borrowing money with or without security and incurring all types of obligations and liabilities;
- (h) building, altering, repairing, extending, replacing and re-building any real or personal property;
- (i) drawing, endorsing, discounting, selling, purchasing and otherwise dealing with bills of exchange either alone or jointly;
- (j) entering into any financial facility or agreement of any kind whatsoever;
- (k) obtaining or providing guarantees, indemnities or sureties on such terms and conditions as the Manager thinks fit, with or without security;
- (l) entering into, purchasing or becoming a party by any means (including without limitation assignment or novation) to any contracts or arrangements solely for the purpose of or incidental to liability or debt management or currency exchange management including (without limitation):

- (i) the management of actual or contingent interest rate or foreign exchange exposures of the Trust in respect of any existing or proposed borrowing or obligation of the Trust;
  - (ii) futures contracts traded on a futures market;
  - (iii) options contracts;
  - (iv) currency swap, interest rate swap, forward exchange rate contracts, forward interest rate contracts or combinations or variations of any of the foregoing;
- (m) any scheme or undertaking, common enterprise or investment contract (as defined in the Corporations Act), or any equivalent or substantially similar scheme or undertaking, enterprise or investment contract in any other jurisdiction, including, without limitation, units in a unit trust or like scheme, provided such scheme or undertaking, enterprise or investment contract, unit trust or like scheme complies with the Corporations Act (subject to any Relief) or the corresponding law of any relevant jurisdiction;
- (n) investing (whether by way of purchase, lease, acquisition of options or other rights, or otherwise) in all or any of the following:
- (i) real estate of every description including (without limitation) Land and buildings, fixtures and fittings and other improvements erected or installed on Land;
  - (ii) plant, equipment, furnishings and fittings whether used in association with buildings or Land forming part of the Assets or otherwise;
  - (iii) monies on deposit at any bank or building society or with any company listed on any stock exchange and debentures of any company so listed;
  - (iv) negotiable instruments of every type and description, including (without limitation) promissory notes and bills of exchange;
  - (v) monies deposited with authorised short term money market dealers;
  - (vi) investment of money on security (whether by way of mortgage taken severally or otherwise) of any property of the type referred to in paragraph (i) for a term not exceeding 30 years and an amount which when added to monies owing on any charge ranking prior to or pari passu with a security to be taken by the Manager does not exceed:
    - (A) two-thirds; or
    - (B) if repayment of the whole of the principal and interest under any mortgages is insured under a mortgage insurance policy acceptable to the Manager, then nine-tenths,

of the value of the property as determined by a Valuer.

- (vii) preference or ordinary shares or stock, debentures, options, convertible notes and other securities of any corporation.

## **9.2 Powers**

The Manager must manage the Trust until it retires or is removed. This power extends to the management of the Assets and Liabilities of the Trust.

## **9.3 Disposal of main undertaking**

Notwithstanding clauses 9.1 and 9.2 or any other provision of this deed except on termination of the Trust, any sale or disposal by the Manager of the main undertaking of the Trust shall be subject to the prior approval of Members in general meeting. At the meeting held to approve any sale or disposal, any person who may benefit (in the capacity other than only as a Member of the Trust) from the sale or disposal and any person who for the purposes of Part 1.2 Division 2 of the Corporations Act would be regarded as a person associated with that person, shall not vote on the Resolution.

## **9.4 Delegation**

The Manager may authorise, by power of attorney or otherwise, one or more persons (whether or not related to or associated with the Manager) to act as its delegate or agent (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's powers.

The authorisation must be written. The Manager remains liable for the acts or omissions of a delegate or agent. However, the Manager may include provisions in the authorisation to protect and assist those dealing with the delegate or agent as the Manager thinks fit.

## **9.5 Agents and Advisors**

The Manager has the power to appoint the solicitor, licensed land broker or conveyancer to act on the purchase of any real estate on behalf of the Trust. The Manager may engage any agent, adviser, valuer, broker, underwriter or other contractor to assist the Manager in managing the Trust or dealing with any Asset.

## **9.6 Retirement**

The Manager must retire as Manager of the Trust when required to retire by law. Subject to the Corporations Act, the Manager may retire at any time.

## **9.7 New Manager**

A replacement Manager must execute a deed by which it covenants to be bound by this deed as if it had originally been a party to it.

## **9.8 Removal**

The Manager may not be removed, except in accordance with clause 9.6.

## **9.9 Release**

When it retires or is removed, the former Manager is released from all obligations in relation to the Trust arising after the date it retires except that the

former Manager is still obliged at the cost of the Trust to vest the Assets in the new Manager and to deliver all books and records relating to the Trust to the new Manager. On the retirement or removal of a Manager, the former Manager is indemnified out of the Assets against any claims arising out of its conduct as Manager except claims arising in respect of negligence, fraud, breach of trust or breach of duty.

#### **9.10 Name of Trust**

On retirement of a Manager, that former Manager may require the name of the Trust to be changed to a name which does not include the current (or any former) name of the former Manager and which is not substantially or deceptively similar to those names. In addition, the Manager may change the name of the Trust at any time.

#### **9.11 Futures Contracts**

Notwithstanding clauses 9.1 and 9.2 or any other provision of this deed, the Manager must not enter into or become a party to any futures contract unless the following conditions are fulfilled:

- (a) where the futures contract is entered into for any speculative purpose the total actual and contingent liability of the Manager pursuant to such contract is limited to an amount not greater than 10% of the Assets;
- (b) the Manager's liability in respect of such futures contract is limited in a manner which the Manager in its sole discretion considers satisfactory; and
- (c) the Manager ensures that at all times the Assets include sufficient cash available to the Manager to make any deposits and/or pay any margin calls in respect of any futures contracts as same become due for payment.

#### **9.12 WEA Arrangements**

The Manager has full power to enter into:

- (a) the CenterMark Stockholders Agreement;
- (b) a CenterMark Option Deed;
- (c) the Share Sale and Unit Subscription Agreement;
- (d) the Cordera Subscription Agreement;
- (e) the Agreement and Plan of Reorganisation; and
- (f) any other agreement to which it is a party which is described in the Initial Prospectus,

and to perform all of its obligations and to discharge all of its duties under those documents (including, without limitation, the acquisition of WEA Stock on the terms set out in those agreements) without the need to make any enquiries or conduct any investigations (whether legal or factual) with respect to WEA or the WEA Stock. The Manager is not liable to the Members in any manner

whatsoever for entering into those documents and performing its obligations and discharging its duties under them.

### **9.13 Power to unstaple Units**

If Units comprise part of Stapled Securities, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules and approval by Special Resolution, the Manager may at any time apply to have the Stapled Securities unstapled and, if the Stapled Securities are Officially Quoted, removed from quotation.

#### **9.13A Automatic unstapling**

Without limiting clause 9.13, immediately upon the first issue of the Westfield Retail Trust Securities pursuant to the Westfield Retail Trust Offer Document, the WDC Securities will be automatically unstapled from each of the Westfield Retail Trust Securities without the need for any determination or consent, but the component parts of the WDC Securities will remain Stapled to each other.

### **9.14 Power to Staple additional Securities**

The Manager may, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities to the Units.

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## **10 Investment**

### **10.1 Manager's Role**

Except where provided otherwise in this deed the Manager has absolute discretion as to how Assets are invested or otherwise dealt with.

#### **10.1A Investment Powers**

Without limiting the effect of clause 10.1, the Manager may in its capacity as Trustee invest in, dispose of or otherwise deal with property and rights in its absolute discretion. For the purpose of giving effect to the investment policy specified in clause 10.2 but without limiting any other provision of this deed the Manager may:

- (a) invest the Assets in cash and cash equivalents, interests, securities or other instruments issued by the Stapled Company (except Stapled Shares) or any other Stapled Entity;
- (b) make loans to or provide any other financial accommodation to the Stapled Company or any other Stapled Entity; and
- (c) enter into hedging contracts in connection with any actual or prospective investment of the Trust or any borrowing by the Trust.

### **10.2 Investment Policy**

The Manager must specify its principal investment policy in the first prospectus or offering memorandum for the Trust but may vary that policy from time to time.

### **10.3 Voting**

Subject to clause 10.4, the Corporations Act and any Relief applicable from time to time, the Manager may exercise all voting rights conferred by the Assets of the Trust as it determines.

### **10.4 Nomination of WEA Directors**

In exercising its right to designate or nominate four directors for election as directors of WEA pursuant to the CenterMark Stockholders Agreement and in exercising its right to vote in respect of the election of such directors, the Manager may act in its absolute discretion.

### **10.5 Insurance**

The Manager must insure and keep insured in the name of the Manager for such amounts as the Manager believes prudent (having regard to normal commercial practice) all the real property and personal property investments forming part of the Assets against fire, loss of rent and other usual risks. If the Manager believes prudent (having regard to normal commercial practice) the Manager shall ensure that the property comprised in every security constituting a mortgage investment comprised in the Assets (other than intangible property) is insured and kept insured in the names of the Manager and the mortgagors and other persons (if any) for the respective interests, against fire, loss of rent and other usual risks.

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## **11 Income and Distributions**

### **11.1 Distributable Income**

The Manager must determine the Distributable Income of the Trust for each Accrual Period. Unless, in its sole and absolute discretion, the Manager determines by a resolution of its directors from time to time that the Distributable Income is to be calculated in some other manner, the Distributable Income for an Accrual Period is equal to the greater of (i) Net Income for the Accrual Period, and (ii) Net Accounting Income of the Trust for the Accrual Period.

#### **11.1A Accounts**

Notwithstanding that the Distributable Income of the Trust is to be determined in accordance with clause 11.1, the accounts of the Trust may be prepared in accordance with applicable accounting standards, including international financial reporting standards to the extent required or relevant, and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 11.1.

### **11.2 Entitlement and Distribution Dates**

The Manager must distribute all Distributable Income of the Trust for each Accrual Period within two months of the end of that Accrual Period.

### **11.3 Distribution Ranking**

Except for CenterMark Option Units and Units issued pursuant to clause 23.2(e) Units shall, subject to the rights, obligations and restrictions attaching to any particular Units or Classes, rank for distributions of Distributable Income from



the first day immediately following their creation so that where Units are created during an Accrual Period, such Units shall participate in the Distributable Income in respect of that Accrual Period in the proportion that the part of the Accrual Period (calculated in days) for which such Units rank for distribution of Distributable Income bears to the total number of days in such Accrual Period and in the case where such Units are partly paid for the whole or part of an Accrual Period (“**Partly Paid Units**”), such Partly Paid Units shall participate in the Distributable Income in respect of that Accrual Period according to the proportion or different proportions of the issue price that has been paid up thereon. For the purposes of such calculation where an instalment of the issue price of a Partly Paid Unit is paid into the Trust, the Partly Paid Unit in respect of which such payment is made shall thereby be entitled to rank for an increased participation in Distributable Income from the first day immediately following the day during which such payment was received. CenterMark Option Units issued during a Quarterly Period shall rank for distributions of Distributable Income from the first day of that Quarterly Period unless the CenterMark Option Units Issue Date in respect of such CenterMark Option Units occurs prior to the WEA Dividend Date in respect of a previous Quarterly Period in which event such CenterMark Option units shall rank for distributions of Distributable Income from the first day of that previous Quarterly Period.

#### **11.4 Members’ Entitlements**

Subject to clause 11.3 and the rights, restrictions and obligations attaching to any particular Units or Classes each person registered as a Member at the end of the last day of an Accrual Period, shall be presently entitled to the Distributable Income for the Accrual Period, in proportion to the number of Units held by such Member to the total number of Units then on issue but excluding from this calculation Units which do not rank for distributions.

#### **11.5 Record Date**

The Manager must determine the Record Date for the purpose of determining the persons who are entitled to the distribution. The total amount to be distributed in respect of a distribution period is to be transferred to a distribution account as soon as practicable after the Record Date. The payment by the Manager of a Member’s entitlement to Distributable Income to the Member registered in respect of those Units as at the Record Date shall be a good and sufficient discharge to the Manager in respect of any liability that they may have to any person in respect of such entitlement.

#### **11.6 Distribution of Capital to Distribution Account**

The Manager may transfer capital to the distribution account, to enable distribution to Members of the minimum amount necessary to avoid the Manager becoming assessable for tax under section 99A of the Tax Act.

#### **11.7 Separate Accounts**

The Manager may keep separate accounts of different categories or sources of income and may allocate income from a particular category or source to particular Members. The Manager must notify the Members concerned of that allocation.

## **11.8 Other Distributions**

Subject to the rights, obligations and restrictions attaching to any Units or Classes, the Manager may distribute any amount of capital or income to Members pro rata according to the number of Units in the Trust held as at a time decided by the Manager. The distribution may be in cash or by way of bonus Units. While Stapling applies, the Manager may not make a distribution by way of bonus Units unless, at the same time as the increase in the number of Units, the Members other than the holders of any Stapled Company Held Units are also issued an identical number of Attached Securities which when issued are then Stapled to the additional Units issued.

## **11.9 Reinvestment**

If the Manager offers a facility under clause 8.6 whereby Members may receive distributions by way of additional Units, then by prior notice a Member may elect to reinvest some or all of any distribution by acquiring such additional Units in the Trust. In those cases, the Manager is treated as having received an application by the Member to reinvest distributions at the time that the distribution is paid. The procedure for reinvestment of distributions is to be determined by the Manager and notified to Members from time to time as and when the facility is offered. The Manager may at any time withdraw, amend or re-establish such a facility.

A request to participate in such a facility or cancellation of any such request is effective with respect to a particular distribution if received in a form acceptable to the Manager prior to the Record Date for that distribution.

### **11.9A Acquisition of identical number of Attached Securities**

While Stapling applies no reinvestment may occur unless contemporaneously with the reinvestment in additional Units the Member subscribes for or purchases an identical number of Attached Securities which when issued or acquired (respectively) are then Stapled to the additional Units. The Manager may make provision for and make payment of the subscription or purchase price for such Attached Securities out of the distribution or income (as applicable) which is otherwise available for reinvestment. Part of the application price of the Units may come from distributions or dividends paid on the Attached Securities.

## **11.10 Payment**

The Manager must prepare distribution cheques or arrange for distributions to be paid. Cheques not presented within 6 months may be cancelled and reinvested in Units in the Trust and Attached Securities on behalf of the recipient Members at the application price prevailing at the time the cheque is cancelled.

## **11.11 Withholding Tax**

Where the Net Income is reduced by taxes attributable to the ownership of Units by certain Members the entitlement to Distributable Income of such Members may be adjusted by the Manager so that the entitlement to Distributable Income of all other Members is equivalent to the amount they would receive in the absence of such taxes. In particular, if and to the extent distributions from WEA to the Trust are not eligible for reduced withholding rates under the U.S.-Australia income tax treaty as a result of a Member's Unitholding in the Trust and/or WEA, this clause 11.11 shall be applied such that the incremental

withholding tax is borne by such Member or Members causing such incremental taxes.

#### **11.12 Distributions Paid in Different Currencies**

The Manager may provide a facility whereby Members may receive their entitlement to the Distributable Income of the Trust from time to time in such currency or currencies as they may request by notice to the Manager in writing and which the Manager in its absolute discretion may approve and in such event the Manager may arrange to convert a Member's entitlement to Distributable Income into the currency in which it is to be paid on a date being the date that the Distributable Income in respect of an Accrual Period is determined, the Closing Date in respect of an Accrual Period, the date of payment of distribution entitlements in respect of an Accrual Period or such other date as the Manager may determine and the Manager may maintain bank accounts in such currencies as may be appropriate for this purpose.

#### **11.13 Classes**

Under this clause 11, the rights of a Member are subject to the rights, obligations and restrictions attaching to the Units which they hold.

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## **12 Accounts and Audit**

### **12.1 Accounts**

The financial reports and directors reports of the Trust must be prepared, audited, lodged with ASIC and distributed to Members by the Manager in accordance with the Corporations Act and the Listing Rules.

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## **13 Administration and Reporting**

### **13.1 Register**

The Manager must establish and maintain a register of Members and Option Holders (if any) in accordance with the Corporations Act and Listing Rules. The Manager need not enter notice of any trust on any register. The Manager may treat the registered Member as the absolute owner of Units registered in that Member's name and not be bound to take notice of any trust or equity affecting any Unit. While Stapling applies, the register may form part of a combined register of the Trust and the Stapled Entities recording the holders of Stapled Securities.

### **13.2 Certificates**

Certificates may be issued by or on behalf of the Manager for Options. Such certificates shall contain such information as may be prescribed by the law, the Listing Rules or any Relief as applicable. No certificates will be issued for Units. The Manager at any time may send any Member details of Units held by, transactions of, or distributions to, the Member.

### **13.3 Uncertified Trading**

The Trust is permitted to participate in any system or scheme approved by the ASX which allows for simultaneous settlement of transfers of Units and

uncertificated holdings, including (without limitation) the CHESSE system. Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.

### **13.4 Transfers**

Members may transfer Units. Option Holders may transfer Options (subject to their terms of issue). Transfers must be in a form approved by the Manager and the ASX and be presented for registration duly stamped. A transfer is not effective until registered. Except while the Trust is included in the Official List of the ASX, the Manager may refuse to register any transfer of a Unit or Option but such refusal shall not be unreasonable. In all other respects, the Manager must deal with a transfer of a Unit or Option in accordance with the Listing Rules.

#### **13.4A Single instrument of transfer for Stapled Securities**

While Stapling applies and subject to the Corporations Act and the Listing Rules if the Listing Rules apply:

- (a) the Manager must not register any transfer of Units [except any Stapled Company Held Units] unless it is a single instrument of transfer of Stapled Securities and clause 13.4 of this deed referring to a transfer of Units will be deemed to be a reference to such a transfer; and
- (b) a reference in clause 13.4 to a Unit will be deemed to be a reference to a Stapled Security.

### **13.5 Death, Legal Disability**

If a Member or Option Holder dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (in the case of joint holders) or legal personal representative (in any other case) will be recognised as having any claim to Units or Options registered in the Member's or Option Holder's name.

### **13.6 Payments**

Money payable by the Manager to a Member or Option Holder may be paid in any manner approved by the Manager. Only whole cents are to be paid. Any remaining fraction of a cent becomes an Asset of the Trust.

### **13.7 Deductions**

The Manager may deduct from any amount to be paid to a Member or an Option Holder any amount of Tax (or an estimate of it) which it is required or authorised to deduct in respect of that payment by law or by this deed or which the Manager considers should be deducted.

### **13.8 Reports**

The form and content of any report sent by the Manager to Members or Option Holders is (subject to the law) at its discretion.

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## **14 Meetings of Unit Holders**

### **14.1 Corporations Act**

The Manager may at any time convene a meeting of Members, or a Class of Members and must do so if required by the Corporations Act.

### **14.2 Notice Period**

The Manager must give notice of any meeting in accordance with the Corporations Act and, if applicable, the Listing Rules.

### **14.3 Non-receipt**

If a Member does not receive a notice (including if notice was accidentally omitted to be given to them) the meeting is not invalidated.

### **14.4 Quorum**

The quorum for a meeting of Members is 2 Members present in person or by proxy together holding between them at least 10% of all issued Units unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

### **14.5 No Quorum**

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

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum. No new notice of the adjourned meeting need be given unless required by the Corporations Act. Notice of any adjourned meeting which may become necessary may be included in the notice convening the original meeting.

### **14.6 Chairman**

Subject to and to the extent permitted by the Corporations Act, the Chairman of a meeting of Members shall be a person nominated by the Manager but need not be a Member. The decision of the chairman on any matter is final.

### **14.7 Adjournment**

The Chairman has power to adjourn a meeting for any reason to such place and time as the Chairman thinks fit.

### **14.8 Voting**

Subject to the law and this deed, a resolution is passed if a simple majority of votes are cast in favour.

#### **14.9 Poll**

[Deleted]

#### **14.10 Casting Vote**

[Deleted]

#### **14.11 Proxies**

A Member may be represented at a meeting by proxy. Proxies are governed by the Corporations Act. A proxy shall have the same rights as its appointing Member to vote whether on a poll or a show of hands, to speak and to be reckoned in a quorum. The Manager is not obligated to enquire whether a proxy has been validly given. A proxy expires after 12 months. A proxy is still valid after it is revoked or after the Member who gave it dies or becomes under a legal disability, unless the Manager has received written notice of that fact before the meeting at which the proxy is used.

#### **14.12 Representatives**

A body corporate may be represented at a meeting by a person appointed in the manner provided by the Corporations Act. The Manager may accept a certificate executed by the body corporate as evidence of the person's appointment. The person may exercise on the body's behalf the same powers as the body could if it were a natural person and the body is taken to be present at the meeting in person.

#### **14.13 Other Attendees**

The Manager and its advisors and the Auditor and, while Stapling applies, representatives of each Stapled Entity may attend and speak at any meeting, or invite any other person to attend and speak.

#### **14.14 Resolutions Binding**

A Resolution binds all Members of the Trust, whether or not they are present at the meeting. No objection may be made to any vote cast unless the objection is made at the meeting.

#### **14.15 Minutes**

The minutes of a meeting of Members signed by the Chairman of the meeting are evidence of the matters stated in them unless the contrary is proved.

#### **14.16 Option Holders**

The Manager may convene a meeting of Option Holders or a Class of Option Holders and must do so if required by the Corporations Act. If it does so, clauses 14.2 to 14.15 inclusive apply as if they referred to Option Holders rather than Members.

#### **14.17 Proxy form while Stapling applies**

While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

#### **14.18 Joint meetings**

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Manager may make such rules for the conduct of such meetings as the Manager determines.

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### **15 Rights and Liabilities of Manager**

#### **15.1 Holding Units**

The Manager and its associates may hold Units and Options in the Trust.

#### **15.2 Other Capacities**

Subject to their acting at all times with good faith to all Members and Option Holders nothing in this deed restricts the Manager or its associates from:

- (a) dealing with the Trust, the Stapled Company, the Stapled Trust, any other Stapled Entity, or any Member or Option Holder; or
- (b) being interested in any contract or transaction with the Trust, the Stapled Company, the Stapled Trust, any other Stapled Entity, or any Member or Option Holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other scheme,

and neither the Manager nor its associates shall be liable to account to any Member in relation to any act, matter, transaction or dealing of a kind described in this clause 15.2.

#### **15.3 Limitation on Liability**

Subject to the Corporations Act, if the Manager acts in good faith and without default or negligence, it is not responsible to Members or Option Holders for any loss suffered in respect of the Trust. The liability of the Manager in relation to the Trust is in any case limited to the Assets of the Trust.

#### **15.4 Specific Limitations - Manager**

Without limiting clause 15.3, when acting in good faith, without negligence, fraud, breach of trust or breach of duty, the Manager will not be liable to any Member or any future Manager or any other person for loss caused by:

- (a) the Manager's acts or omissions in reliance on:
  - (i) provided it has been maintained in good faith by the Manager, the register;
  - (ii) the authenticity of any document;
  - (iii) opinion, advice or information of any barrister, solicitor, accountant, valuer or other expert instructed by the Manager; or
  - (iv) information from any banker or the Auditor;

provided the Manager has no reason to believe the relevant material not to be authentic or the expert not to have the relevant expertise;

- (b) any act, omission, neglect or default of any person;
- (c) any act or omission required by law or by any court of competent jurisdiction;
- (d) any particular price or reserve not having been realised;
- (e) any unnecessary payment having been made to any fiscal authority;
- (f) any act or omission of an operator of any securities title, transfer or holding system; or
- (g) the Manager relying on any register of members of a Stapled Entity;

to any greater extent than the amount which the Manager is entitled to and does recover through its right of indemnity from the Assets of the Trust actually vested in the Manager in accordance with this deed.

### **15.5 Exercise of Discretion**

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

### **15.6 Indemnity**

The Manager is entitled to be indemnified out of the Assets of the Trust for any liability incurred by the Manager in properly performing or exercising any of its powers or duties in relation to the Trust. This indemnity is in addition to any indemnity allowed by law, but does not extend to liabilities arising:

- (a) from a breach of trust; or
- (b) where the Manager fails to show the degree of care and diligence required of a Manager having regard to its powers, authorities and discretions under this deed,

unless the Members decide otherwise by Special Resolution with respect to specific acts or omissions or on the Manager ceasing to act.

### **15.7 Limitation of Liability to Contracting Parties**

Any contract or agreement entered into by the Manager in its capacity as Manager may incorporate a term whereby the extent of the Manager's liability with respect to obligations that it incurs under such contract or agreement is limited to the Assets of the Trust except for any liability which the Manager may have as a result of its fraud, negligence, default or breach of duty.

### **15.8 Manager's duties in relation to Stapling**

Notwithstanding any other provision of this deed, or any rule of law or equity to the contrary, in exercising any power or discretion conferred on it, the Manager must, subject to the Corporations Act, while Stapling applies, have regard to the interests of the Members of the Trust and the members of the Stapled Entities as a whole and not only to the interests of the Members of the Trust alone.



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## **16 Liability of Unit Holders**

### **16.1 Liability Limited**

The liability of a Member is limited to the Application Price paid or agreed to be paid for a Unit. A Member need not indemnify the Manager if there is a deficiency in the Net Assets of the Trust or meet the claim of any creditor of the Manager in respect of the Trust.

### **16.2 Recourse Limited**

The recourse of the Manager and any creditor is limited to the Assets of the Trust.

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## **17 Exclusion of Partnership or Agency**

### **17.1 No Partnership or Agency**

Nothing in this deed gives rise to any relationship of partnership or agency between the Manager and/or any Member. Nothing contained or implied in this deed is to be construed as creating an association, joint venture or partnership among the Trust and any Stapled Entity for any purpose or authorising the sharing of the benefit of any assets (and any profits therefrom) of the Trust or any Stapled Entity as a result of the Stapling.

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## **18 Remuneration and Expenses**

### **18.1 Management fee**

Subject to the Corporations Act, the Manager is entitled to be paid out of the Assets a management fee equal to the Manager's reasonable estimate of its costs, including all overheads and whether incurred directly by the Manager or reimbursed by the Manager to any of its related bodies corporate, in providing its services as Manager for which it is not otherwise reimbursed pursuant to clause 18.3. The entitlement to this fee commences from 1 July 2004 and continues to the date of final distribution in accordance with clause 19.2. The Manager is entitled to remuneration for the period up to 30 June 2004 in the manner calculated pursuant to the former clause 18.1 which was replaced by this current clause 18.1. The fee payable pursuant to clause 18.1 is to be payable from time to time upon demand by the Manager. The Manager may make demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs. The Manager must produce a statement within 1 month from the end of each Accrual Period setting out the management fee for the Accrual Period and any amount remaining unpaid.

### **18.2 Waiver of Fees**

The Manager may accept a lower fee than it is entitled to receive under this deed, and may defer payment of its fee for any period. Where payment is deferred, the fee still accrues daily until paid.

### **18.3 Expenses**

All expenses reasonably and properly incurred by the Manager in connection with the Trust or in properly performing its obligations under this deed are

payable or reimburseable out of the Assets of the Trust. This includes (without limitation) expenses or overheads connected with:

- (a) this deed and the formation of the Trust, any supplemental deed and the approval of this deed and of any supplemental deed by the ASIC and ASX;
- (b) preparation, review, lodgement, registration, distribution and promotion of any prospectus, product disclosure statement or offering memorandum in respect of Units, Stapled Securities or Options;
- (c) the sale, purchase, insurance and/or custody of and any other dealing with Assets;
- (d) investigating and evaluating any proposed purchase, sale or other dealing with an investment;
- (e) the acts of the Manager or its agents in connection with the administration, management and promotion of the Trust or the Stapled Entities, its Assets and Liabilities and property and project management fees and expenses;
- (f) the issue of Units, Stapled Securities, Options or any interests in, or rights associated with Units, Stapled Securities or Options or any other obligation (including any securities or debt instruments of any kind) issued by the Trust;
- (g) any underwriting arrangement including, without limitation, underwriting fees, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
- (h) convening and holding meetings of Members and Option Holders, the implementation of any Resolutions and communications with Members and Option Holders and attending any meeting of the Stapled Entities;
- (i) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
- (j) the engagement of underwriters, agents, valuers, legal (on a full indemnity basis) and other advisers and contractors of all kinds;
- (k) preparation and audit of the Taxation returns and accounts of the Trust;
- (l) termination of the Trust and the retirement or removal of the Manager and the appointment of a new Manager;
- (m) institution, prosecution, defence and compromise any court proceedings, arbitration or other dispute concerning the Trust or any Asset or Liability, including proceedings against the Manager (except to the extent that the person incurring the expenses is found by a court to be in breach of trust, in default or to have been negligent); and

- (n) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums paid in respect of compliance committee members;
- (o) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to, or insurance premiums paid in respect of, external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (p) the preparation, implementation, operation, amendment and audit of the compliance plan;
- (q) any costs incurred in connection with or as a result of any agreement in connection with the Trust to which any Member is a party and any costs which such agreement provides are to be borne by the Trust;
- (r) interest, discount and acceptance fees for bill facilities, all borrowing, hedging or facility costs and like amounts;
- (s) any actual or proposed investment, acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Assets;
- (t) fees payable to any person (not associated with the Manager) authorised by the Manager to hold the Assets;
- (u) establishing and maintaining the register of Members and of Option Holders, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on costs);
- (v) fees payable to the ASIC or any other regulatory authority;
- (w) ASX and share registry fees (including listing and quotation fees);
- (x) preparing, printing and posting accounts, cheques and documents, or making payments, to Members and Option Holders;
- (y) amounts payable to advisers, agents, brokers, contractors, underwriters or other persons engaged by the Manager under the Deed (including legal costs on a full indemnity basis);
- (z) entering the Trust in any survey;
- (aa) fees payable to any ratings organisation;
- (bb) performance of the Manager's duties, exercise of the Manager's rights or powers, compliance with the law and the Listing Rules, and any request or requirement of the ASIC;
- (cc) fees payable to Austraclear Limited or any other securities system authorised by the Manager to hold Assets;
- (dd) dealing with applications for and redemption of, and determining the Application Price and Redemption Price of, Units or Stapled Securities,

but does not include the amount of any credit or refund of GST to which the Manager is entitled as a result of incurring such expenses.

#### **18.4 Deferral**

The Manager may defer reimbursement of any or all expenses under clause 18.3 for any period it determines.

#### **18.5 GST**

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

#### **18.6 Change in GST**

If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:

- (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this deed (including, without limitation, any increase in the amount charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or
- (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with the proper performance of the Manager's duties under this deed (including, without limitation, the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);

and such increased cost or reduction is not compensated for by any other provision of this deed, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.

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## **19 Termination**

### **19.1 Procedure**

On termination of the Trust, the Manager must realise the Assets of the Trust. This must be completed in 180 days if practical and in any event as soon as reasonably possible after that. The Manager may make partial distributions.

### **19.2 Final Distribution**

Subject to the rights, obligations and restrictions attaching to any particular Units or Classes, any net proceeds of realisation, after discharging or providing for all

Liabilities of the Trust and meeting the expenses of termination, must be distributed pro rata to Members according to the number of Units they hold (but excluding from this calculation Units which do not have any rights to participate in the net proceeds of realisation).

### **19.3 Audit of winding up**

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

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## **20 Amendments to Constitution**

The Manager may by supplemental deed alter this deed in accordance with and subject to the Corporations Act.

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## **21 DELETED**

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## **22 DELETED**

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## **23 Restructure**

### **23.1 Implementation of Proposal**

At any time upon and after the Effective Date, the Manager has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Proposal in accordance with the Implementation Deed.

### **23.2 Express powers of Manager**

Without limiting clause 23.1 but subject to clause 23.3 and despite any other provision in this constitution, the Manager has power:

- (a) on the Implementation Date to consolidate the Units in the ratio of each pre-consolidation Unit being converted into 0.15 post-consolidation Units with any resultant fraction of a Unit in a holding being rounded up to the next whole number of Units. In the case of Units which are acquired by the Investment Bank pursuant to the Sale Facility the number of post-consolidation Units which the Investment Bank is to receive will be rounded up as if the respective numbers of Units which the Investment Bank acquires pursuant to the Sale Facility from Members were separate holdings of those Members so that the Investment Bank will receive the same number of post-consolidation Units which the participants in the Sale Facility would have received in aggregate if they had respectively held the pre-consolidation Units on the Stapling Record Date;
- (b) immediately following the consolidation described in (a), but subject to (c), to pay to each Member except the Members holding Stapled

Company Held Units, by way of a capital distribution, \$1.01 per Unit held;

- (c) to apply all the respective distributions paid to each Member under (b) to acquire, on behalf of and in the name of that Member, an equivalent number of units in the Stapled Trust and an equivalent number of ordinary shares in the Stapled Company on the basis that the subscription price for each of those units and shares will be \$1.00 and \$0.01 respectively;
- (d) to procure that the Acquired Units and the Acquired Shares are registered in the name of the relevant Member with the result that the Member is bound:
  - (i) by the terms of issue of the Acquired Units and the Acquired Shares (including, without limitation, restrictions which cause a Member's Units to be Stapled to Acquired Units and Acquired Shares); and
  - (ii) generally, by the constitution of the Stapled Company and the Stapled Trust;
- (e) to the extent that this will facilitate Stapled Trust Unitholders and Stapled Company Shareholders holding an equivalent number of units and shares in each of the Stapled Company, Stapled Trust and the Trust, to issue to Stapled Trust Unitholders one Unit in respect of each \$1.00 and Stapled Company Shareholders one Unit in respect of each 0.1 of a cent paid by or on that person's behalf in subscription for Units pursuant to the Implementation Deed with such new Units to rank pari passu with all of the existing Units including ranking for full participation in Distributable Income for the Accrual Period during which the Units are issued;
- (f) to issue to Members new holding statements or other evidence of entitlement in respect of Units of which the Member is the registered holder after the Proposal is implemented and, in the alternative, to issue or cooperate in the issuing of a single holding statement reflecting the Member's holding of Units, Acquired Units and Acquired Shares;
- (g) to execute all documents and do all things which it considers necessary, desirable or reasonably incidental to give effect to the Proposal and to appoint any individual or individuals of its choosing to execute any such documents or do any such things.

### **23.3 Sale Facility**

Notwithstanding the foregoing provisions of this clause 23 where a Member has validly elected to participate in the Sale Facility or is a Designated Foreign Unitholder ("Sale Facility Participant"), the Manager must transfer the Units held by the Sale Facility Participant, or such number of those Units which are to be the subject of the Sale Facility, to the Investment Bank so that the Investment Bank will receive the distribution pursuant to clause 23.2(b) and apply that distribution in accordance with clause 23.2(c) in order to acquire the Acquired Units and Acquired Shares which would otherwise have been issued to the Sale Facility Participant and be obliged to provide to each Sale Facility Participant the Sale Consideration to which it is entitled.

#### **23.4 Appointment as agent and attorney for Members**

At all times on and after the Effective Date, the Manager is irrevocably appointed the agent and attorney for each Member to do all things which the Manager considers are necessary, desirable or reasonably incidental to give effect to the Proposal.

#### **23.5 Specific appointment**

Without limiting clause 23.4, the Manager is irrevocably appointed as the agent and attorney of each Member to:

- (a) receive and apply the distributions referred to in clause 23.2(b) in the manner contemplated in clause 23.2(c);
- (b) execute an application form (which may be a master application form) in relation to the Acquired Units and the Acquired Shares;
- (c) act in accordance with clause 23.3; and
- (d) execute transfers of Units which are to be the subject of the Sale Facility.

#### **23.6 Authority of Manager**

The Manager is authorised to execute the documents and do all things under clauses 23.2 and 23.3 without needing further authority or approval from Members and may do so even if it has an interest in the outcome of such exercise.

#### **23.7 Manager's limitation of liability**

Without derogating from any limitation of the Manager's liability in terms of this constitution, the Manager has no liability to Members of any nature whatsoever beyond the Assets whether arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of any document) in exercising its powers pursuant to this clause 23 in connection with the implementation of the Proposal in accordance with the Implementation Deed.

#### **23.8 Options**

If following the Effective Date the Stapled Company or the Stapled Trust is under any obligation, whether actual or contingent, to issue shares or units in the future pursuant to any option or comparable arrangement to any person the Manager may:

- (a) give an undertaking to the Stapled Company and/ or the Stapled Trust Manager to issue Units at the same time to each person to whom shares in the Stapled Company and units in the Stapled Trust are to be issued to ensure that the person receives Stapled Securities, or
- (b) grant an option or comparable right to the person to acquire an equal number of Units to the number of shares in the Stapled Company and units in the Stapled Trust which the person is entitled to be issued on exercise of the option or comparable right, on the basis that the option or comparable right may only be exercised if required to ensure that the person receives Stapled Securities.

### 23.9 Issue price

The undertakings, options or rights which the Manager may issue pursuant to clause 23.8 may be issued without consideration. The price at which the Units are to be issued pursuant to the undertakings or upon the exercise of those options or rights is to be calculated as follows:

- (a) where an Executive Option is exercised and the Stapled Company elects to procure the issue of Stapled Securities to satisfy its obligations on exercise of that option, the issue price of a Unit is the WAT Proportion of the exercise price of that Executive Option (or if that Executive Option has a nil exercise price, the issue price of a Unit is the WAT Proportion of \$13.76, being the volume weighted average sale price of a Stapled Share sold on ASX during the five trading day period up to but not including the Announcement Date);
- (b) where a Possfund Option is exercised and the Stapled Company elects to procure the issue of Stapled Securities to satisfy its obligations on exercise of that option, the issue price of a Unit is the WAT Proportion of \$12.84, being the exercise price of a Possfund Option;
- (c) where a WFT Option is exercised, the issue price of a Unit is the WAT Proportion of \$1,000 (being the exercise price of a WFT Option) divided by the number of Units required to be issued under the option or right granted under clause 23.8 in respect of that WFT Option,

and in each case the issue price is to be adjusted in the same manner as any adjustment to the exercise price of the relevant option under the terms of that option.

### 23.10 Definitions

In this clause 23, the following words and expressions have these meanings unless the contrary intention clearly appears:

**Acquired Units** means the units in the Stapled Trust acquired by the Manager on behalf of Members, under clause 23.2(c).

**Acquired Shares** means the ordinary shares in the Stapled Company acquired by the Manager on behalf of Members, under clause 23.2(c).

**Announcement Date** means 22 April 2004.

**Cash Price** means for each Unit sold under the Sale Facility prior to consolidation as part of the Proposal, an amount equal to 15% of the weighted average selling price of the Stapled Securities sold by the Investment Bank for cash pursuant to the Sale Facility plus, where the consolidation of the Units sold by the Member pursuant to the Sale Facility resulting in a rounding up pursuant to clause 23.2(a), the additional sum received by the Investment Bank from the sale of Stapled Securities attributable to that rounding in respect of the particular Unit.

**Designated Foreign Unitholder** means a Member who is a citizen or resident of a jurisdiction outside Australia and New Zealand or whose address in the Register is a place outside Australia and New Zealand and their respective external territories, unless the Manager and the Stapled Entities are satisfied before the Effective Date that the Stapled Entities are not precluded from



lawfully issuing Acquired Units or Acquired Shares to the Member either unconditionally or after compliance with conditions which the Managers and the Stapled Entities in their sole discretion regard as acceptable and not unduly onerous.

**Effective Date** means the Effective Date as that term is defined in the Implementation Deed.

**Executive Option** means an option granted by the Stapled Company to an employee of the Stapled Company or a subsidiary of the Stapled Company under the Westfield Executive Option Plan or the Westfield Executive Performance Share Plan.

**Implementation Date** means the Implementation Date as that term is defined in the Implementation Deed.

**Implementation Deed** means the deed made between the Manager, the Stapled Trust Manager and the Stapled Company dated 21 May 2004 as amended.

**Investment Bank** means ABN AMRO Equities Australia Limited (ACN 002 768 701).

**Possfund Option** means an option granted by the Stapled Company under an option deed dated 1 April 2004 between Westfield and Possfund Custodian Trustee Limited.

**Proposal** means the transactions contemplated and described in the Implementation Deed.

**Sale Facility** means the facility under which Designated Foreign Unitholders are required to sell their Units and other Members may elect to sell all or some of their Units to the Investment Bank for the Sale Consideration and on the basis that the Investment Bank is entered in the Register in respect of those Units on the Stapling Record Date, and will participate in the Proposal in respect of these Units, receive the Acquired Shares and Acquired Units pursuant to the Proposal and sell the required number of the resultant Stapled Securities for cash to pay the Cash Price and transfer the remaining Stapled Securities in satisfaction of the Stapled Securities Consideration.

**Sale Consideration** means in respect of Units participating in the Sale Facility either:

- (a) the Cash Price; or
- (b) the Stapled Securities Consideration.

**Stapled Company Shareholders** means holders of ordinary shares in the Stapled Company on the Stapling Record Date, excluding ordinary shares issued under clause 23.2(c).

**Stapled Securities Consideration** means the same number of Stapled Securities which the Member participating in the Sale Facility and electing to receive the Stapled Securities Consideration would have held if the Member had retained the Units in respect of which the election was made and received Acquired Units and Acquired Shares in relation thereto pursuant to clauses 23.2(a) to (d).

**Stapled Trust Unitholders** means holders of units in the Stapled Trust on the Stapling Record Date, excluding units issued under clause 23.2(c).

**Stapling Record Date** means 5.00 pm (Sydney time) on the sixth Business Day following the Effective Date or such other time agreed between the Manager and the Stapled Entities and permitted by ASX.

**WAT Proportion** means 28.7%

**WFT Option** means an option granted by the Stapled Trust Manager under the document entitled 'Westfield Trust 2009 Amended Option Terms Deed Poll' entered into by the Stapled Trust Manager on or about the Implementation Date.

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## 24 Preservation of REIT Status

### 24.1 REIT Status

Where the Assets comprise shares or stock in a corporation ("relevant corporation") which qualifies as a real estate investment trust ("REIT") for the purposes of the Internal Revenue Code of 1986 of the United States of America ("Code") and the preservation of the status of the relevant corporation as a REIT is advantageous to the Trust or to the Members then subject to the requirements of and to the extent permitted by the law, the Listing Rules, the terms of any waiver of the Listing Rules and any Relief (collectively "Requirements"), the Manager will take such measures as it is able to ensure that the relevant corporation continues to qualify as a REIT and will refrain from taking any action that would impair the status of the relevant corporation as a REIT and shall take or refrain from taking any action necessary to prevent any other material adverse change to the Trust in connection with the ownership by the Manager of WEA Stock including, but not limited to the exchange of any WEA Stock owned by the Manager for excess shares or stock in WEA. Except while the Trust is included in the Official List of the ASX, without limiting the generality of the foregoing, but subject to and to the extent permitted by the Requirements the Manager may:

- (a) refuse to register any transfer, which, if registered, may result in the relevant corporation being "closely held" within the meaning of Section 856(h) of the Code;
- (b) cause an appropriate number of Units in respect of which such notice has been given to be forfeited in order to ensure that the relevant corporation is not "closely held" within the meaning of Section 856(h) of the Code and in such event:
  - (i) subject to the terms of this deed a forfeited Unit may be sold or otherwise disposed of by private sale at a price per Unit calculated in accordance with any Relief or equal to the prevailing application price of Units at the date of the sale;
  - (ii) at any time before a sale or disposition under sub-paragraph (i), forfeiture may be cancelled on such terms as the Manager thinks fit;
  - (iii) on a sale or other disposition under sub-paragraph (i) the Manager shall receive the proceeds of such sale or disposition and may execute a transfer of the forfeited unit in favour of the

purchaser of the Unit and such purchaser shall thereupon be registered as the Member and shall not be bound to see to the application of the proceeds of such sale or disposition nor shall his title to the Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture or sale or disposition of the Units;

- (iv) the proceeds of sale or disposition of any forfeited Unit shall be applied first towards the payment of all costs and expenses incidental to the forfeiture and sale or disposition and the balance, if any, remaining shall be paid to the Member whose Units have been forfeited and sold or otherwise disposed of.

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## **25 General**

### **25.1 Relevant Law**

This deed is governed by the laws from time to time in force in the State of New South Wales.

### **25.2 Submission to Jurisdiction**

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New South Wales.

### **25.3 Notices to Members and Option Holders**

A notice required under this deed to be given to a Member or Option Holder must be given in writing (which includes a fax) and be delivered or sent to the Member or Option Holder at the Member's or Option Holder registered address or the facsimile number (if any) last advised to the Manager for delivery of notices. For joint Members or Option Holders, this means the registered address or the facsimile number of the Member or Option Holder first named in the register. A notice sent by post is taken to be received on the day after it is posted and a facsimile is taken to be received one hour after receipt by the transmitter of confirmation of transmission from the receiving facsimile machine, and proof of actual receipt is not required.

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## **26 Complaints**

If and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;

- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
  - (i) the determination in relation to the complaint;
  - (ii) the remedies (if any) available to the Member; and
  - (iii) information regarding any further avenue for complaint.

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## **27 Compliance Committee**

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

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## **28 Stapling**

### **28.1 Paramountcy of Stapling provisions**

Subject to clauses 2.1, 2.2, 5.8, 5.10 and 17 the provisions of this deed relating to Stapling prevail over all other provisions of this deed including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.

### **28.2 Maintenance of Listing and consistency with constitutions of the Stapled Entities**

The Manager must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Listed as one joint security, that the Stapled Securities are dealt with under this deed in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

### **28.3 Stapling – general information**

If the Manager determines that Stapling will apply, the Units are to be stapled to the Stapled Shares and the Stapled Units in the ratio of one Unit to one Stapled Share and one Stapled Unit as from the Stapling Commencement Date. The Manager must not cause Stapling to commence while the Trust has more than

one Class of Units. The intention is that, so far as the law permits, a Unit, a Stapled Share and a Stapled Unit which are Stapled together shall be quoted jointly on ASX. If further Attached Securities are from time to time Stapled to the Units the intention is that, so far as the law permits, a Unit and one of each of the Attached Securities which are Stapled together shall be quoted jointly on ASX. This clause 28.3 does not prevent the Stapled Company or any of its subsidiaries from holding Units which are not subject to Stapling.

**Consolidated Trust Deed constituting  
Westfield America Trust**  
Schedule 1 - Westfield America Trust (clause 1.1)

**Deleted**

# **Consolidated Trust Deed constituting Westfield America Trust**

Schedule 2 - Terms of Issue of Series A Class  
Units, Series B Class Units and Series C Class  
Units

**Second Schedule deleted**

# Consolidated Trust Deed constituting Westfield America Trust

## Schedule 3 - Terms of Issue of Series F Special Options

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### 1 Definitions and Interpretation

#### 1.1 Interpretation

Terms defined in clause 1.1 of the Constitution of the Trust (as amended) (**'Constitution'**) have the same meanings in this Schedule unless the context otherwise requires.

#### 1.2 Definitions

In this Schedule:

**Preferred Share** means one fully paid share of Series F Preferred Stock in WEA and **'Preferred Shareholder'** or **'Preferred Shares'** has a corresponding meaning.

**Reconstruction** means a capital reconstruction (including, without limitation, any consolidation, stock split or stock dividend, subdivision or reduction of capital), merger or any return of capital or other capital distribution, except for ordinary periodic distributions made pro-rata among shareholders of a class or issues of stock or units which are not in redemption of any shares of stock or units, or any similar capital transaction that would affect the capital structure of the Trust or WEA, in each case of or in respect of WEA or the Trust (as the case may be), excluding the payment of an ordinary periodic cash distributions in respect of the operations of WEA or the Trust (as the case may be).

**Series F Special Option** means an option to subscribe for that number of Units equal to the Special Option Number on the Series F Special Option Terms, and **'Series F Special Optionholder'** has a corresponding meaning.

**Series F Special Option Deed** means a deed entered or to be entered into between the Manager and Westfield Capital Corporation Finance Pty Limited pursuant to which the Manager agrees to issue Series F Special Options.

**Series F Special Option Number** is 157.35 as may be adjusted in accordance with the Series F Special Option Deed.

**Series F Special Option Period** means the period:

- (a) commencing on the date which is the seventh anniversary from the date when the Series F Special Option is issued to the Series F Special Optionholder; and
- (b) expiring on the date which is the twentieth anniversary of the date when the Series F Special Options are issued to the Series F Special Optionholder pursuant to clause 2.1 of the Series F Special Option Deed; and



- (c) any additional period for exercise of the Series F Special Options in accordance with the Series F Special Option Deed.

**Series F Special Option Terms** means the terms of the Series F Special Options set out in this Schedule.

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## **2 Entitlement**

Each Series F Special Option will entitle a Series F Special Optionholder to subscribe for that number of Units equal to the Series F Special Option Number.

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## **3 Exercise Period**

A Series F Special Option may be exercised at any time during the Series F Special Option Period.

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## **4 Prerequisite to Exercise**

Each Series F Special Option must be exercised in compliance with all the securities law restrictions set out in paragraph 11 and as part of a parcel of Series F Special Options which, on exercise, entitles the Series F Special Optionholder to Units having a value not less than the minimum amount required under the *Corporations Law* (currently \$A500,000) for the issue by the Manager of Units on exercise of such Series F Special Option to constitute an issue which does not require disclosure to investors pursuant to section 708(8)(a) of the *Corporations Law* (or any successor statute).

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## **5 Exercise Price**

### **5.1 Payment or transfer**

On exercise of a Series F Special Option, the Exercise Price payable on exercise of each Series F Special Option may be satisfied by:

- (a) the payment of US\$1,000 to the Manager; or
- (b) the transfer of a Preferred Share to the Manager,

provided that if a Series F Special Option is exercised and the Series F Special Optionholder elects to deliver a Preferred Share rather than cash in satisfaction of the exercise price, a valuation of the Preferred Share must be undertaken by an independent valuer selected by the Manager. If the value of the Preferred Share as determined by the independent valuer is less than US\$1,000, the Series F Special Optionholder is required to pay an additional amount to the Manager, equal to the difference between that value and US\$1,000 (as adjusted for any Reconstruction occurring after the date of issue of the Series F Special Option).

### **5.2 Number of Units**

On exercise of a parcel of Series F Special Options, the Series F Special Optionholder will receive a number of Units equal to the number of that parcel of Series F Special Options multiplied by the Series F Special Option Number,

provided that if this multiplication results in a total that includes a fraction of one Unit, that fraction will be rounded up to be one additional Unit.

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## **6 Ranking of Units on Exercise of Series F Special Options**

### **6.1 Ranking of Units**

Subject to paragraph 6.2, a Unit allotted on exercise of a Series F Special Option will rank in all respects equally with the existing Units on issue at the date of allotment.

### **6.2 Distributions**

A Unit allotted on exercise of a Series F Special Option will rank for distribution of the Distributable Income from the first day following their creation so that where Units are created during an Accrual Period, such Units shall participate in the Distributable Income in respect of that Accrual Period in the proportion that the part of the Accrual Period (calculated in days) for which such Units rank for distribution of Distributable Income bears to the total number of days in such Accrual Period.

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## **7 Manner of Exercise**

### **7.1 Notice of Exercise**

If a Series F Special Optionholder wishes to exercise a Series F Special Option, it must give an irrevocable (subject to paragraph 7.2) written notice in the form determined by the Manager from time to time ('Notice of Exercise') specifying:

- (a) the number of Series F Special Options in the parcel of Series F Special Options which the Series F Special Optionholder wishes to exercise in compliance with paragraph 4;
- (b) the specific date (being not less than 6 and not more than 30 days from the date of the Notice of Exercise) on which it wishes to exercise those Series F Special Options ('Exercise Date');
- (c) the number of Units ('Relevant Number') (being equal to the Series F Special Option Number multiplied by the number of Series F Special Options to which the Notice of Exercise relates) which the Series F Special Optionholder should be allotted on the Exercise Date; and
- (d) those matters demonstrating compliance with the U.S. securities laws restrictions set forth in paragraph 11.

### **7.2 Provision of information**

Within 5 days from receipt of the Notice of Exercise, the Manager will provide the Series F Special Optionholder with all material filed by it with the ASX in respect of the Trust since the last annual report issued to Series F Special Optionholders and the Series F Special Optionholder will (by written notice to the Manager) be entitled to revoke the Notice of Exercise at any time during the 15 days immediately following receipt of such material.

### **7.3 Consideration**

Subject to paragraph 7.2, on the Exercise Date:

- (a) the Series F Special Optionholder must deliver to the Manager the total Exercise Price, either:
  - (i) in cash; or
  - (ii) by the transfer of that number of Preferred Shares equal to the number of Series F Special Options to which Notice of Exercise relates; or
  - (iii) partly in the manner referred to in paragraph (i) and partly in manner referred to paragraph (ii); and
- (b) in consideration of the payment of the total Exercise Price either in cash or by the transfer of Preferred Shares pursuant to paragraph (a), the Manager must issue to the Series F Special Optionholder the Relevant Number of Units.

### **7.4 Transfer of Preferred Shares**

A Series F Special Optionholder who elects to transfer Preferred Shares either in full or part payment of the Exercise Price, must ensure that any Preferred Share transferred pursuant to paragraph 7.3(b) (if any), is (immediately prior to transfer) owned by the Series F Special Optionholder, (free of all mortgages, charges, liens and other encumbrances or prior claims) and has attached all rights (including rights to receive dividends) attaching or accruing to the Preferred Share on the Exercise Date provided that if the Series F Special Option is exercised after the record date for a Quarterly dividend by WEA and prior to payment of such dividend, then the transfer of a Preferred Share shall not include such unpaid dividends.

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## **8 Transfer of Series F Special Options**

Subject to the securities law restrictions set out in paragraph 11, a Series F Special Option will be fully transferable.

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## **9 New Issues**

### **9.1 No rights**

A Series F Special Option will not confer any right on the Series F Special Optionholder to participate in any new issues of Units or Series F Special Options, to subscribe for new Units, or to be entitled to any distributions.

### **9.2 No distributions**

Series F Special Optionholders who exercise Series F Special Options prior to the Record Date for an issue or distribution, will be entitled to participate in that issue or distribution as a Unitholder to the extent set out in this Schedule.

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## 10 Right to Vote

No Series F Special Option confers on the Series F Special Optionholder:

- (a) any right to vote at a meeting of Unitholders; or
- (b) any right to require the Manager to redeem or repurchase the Series F Special Option; or
- (c) except as expressly provided in this deed or the Series F Special Option Deed, any other entitlement under this deed consequent on holding the Series F Special Option.

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## 11 Securities Law Restrictions

### 11.1 Options not registered

The Series F Special Options have not been registered under the U.S. Securities Act and may not be offered, sold or exercised except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act;
- (b) within the United States to or, in the case of exercise, by Institutional 'Accredited Investors' within the meaning of Rule 501(a)(1), (2), (3) and (7) under the Securities Act in a transaction exempt from registration requirements of the Securities Act upon delivery of a purchaser's letter in the form of Annexure B-1 or B-2 of the Series F Special Option Deed, as applicable;
- (c) outside the United States to or, in the case of exercise, by non U.S. persons in a transaction meeting the requirements of Rules 901, 903 or 904 of Regulation S under the U.S. Securities Act;
- (d) to WEA, its affiliates, the Manager or their affiliates; or
- (e) as otherwise agreed by the Manager.

The Series F Special Options shall bear a legend to the foregoing effect:

Series F Special Options issued to non U.S. persons pursuant to Regulation S under the U.S. Securities Act shall bear the following additional legend:

**'THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY A NON U.S. PERSON UPON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT IS NOT BEING EXERCISED ON BEHALF OF A U.S. PERSON OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED UPON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER AND (B) THE SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE TERMS OF THE OPTION DEED.'**

All other Series F Special Options shall bear the following additional legend:

‘THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY (1) A NON U.S. PERSON UPON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT HAS NOT BEEN EXERCISED ON BEHALF OF A U.S. PERSON, OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED UPON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR UPON DELIVERY OF A LETTER SUBSTANTIALLY IN THE FORM ANNEXED TO THE SERIES F SPECIAL OPTION DEED AND (B) THIS SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE TERMS OF THE OPTION DEED.’

### **11.2 Units not registered**

Units issuable upon exercise of the Series F Special Options will not be registered under the U.S. Securities Act and may not be offered or sold by an Optionholder after exercise of an Option except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act or pursuant to an exemption from the registration requirements thereunder;
- (b) outside the United States to non U.S. persons (which term shall include U.S. dealers or other professional fiduciaries acting on a discretionary basis for non U.S. beneficial owners (other than an estate or trust)) in reliance upon Rules 903 and 904 of Regulation S under the U.S. Securities Act;
- (c) in ‘regular way transactions’ on the ASX, provided that neither the seller, nor any person acting on its behalf, knows that the transaction has been pre-arranged with a buyer that is a US person or is located in the US;
- (d) to the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The foregoing restrictions shall be noted in the Unit register maintained by the Manager. The Manager agrees that it will cause the notation to be removed from the Unit register at such time as the Units may be transferred without restriction under applicable law.

### **11.3 Non U. S. persons**

A Series F Special Option may only be exercised by a non U.S. person upon delivery of either:

- (a) a written certification that the Series F Special Optionholder is not a U.S. person and the Series F Special Option is not being exercised on behalf of a U.S. person; or

- (b) a written opinion of counsel to the effect that the Series F Special Option and the Units delivered upon exercise thereof have been registered under the U.S. Securities Act or are exempt from registration thereunder.

#### **11.4 U. S. persons**

A Series F Special Option may only be exercised by a U.S. person upon delivery of a purchaser's letter for 'Accredited Investors' in the form of Annexure B-1 of the Series F Special Option Deed, certifying that the Series F Special Optionholder is an 'Accredited Investor' as defined in that letter, together with the other materials referred to therein.

#### **11.5 Transfers**

A Series F Special Option may not be transferred to any person if the effect of such transfer would be that the ownership limitations contained in WEA's Restated Articles of Incorporation would be violated.

#### **11.6 Withholding**

Any withholding obligation of the Manager upon receipt of a Preferred Share may be satisfied by delivery of an amount in United States dollars by the Series F Special Optionholder.

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### **12 Benefit of Covenants**

To the extent that any covenant contained in the Series F Special Option Deed is made for the benefit of Series F Special Optionholders, such covenant shall be enforceable against the Manager by a Series F Special Optionholder.

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### **13 OEF Election**

If a Series F Special Optionholder intends to make the election provided for in Section 1295(b) of the Internal Revenue Code of 1986, as amended ('Code'), then such Series F Special Optionholder shall so notify the Manager and the Manager shall be required, at the Trust's expense, to take such actions as may be required by the Code and the authorities thereunder to have the Trust be treated as a qualified electing fund (within the meaning of Section 1295 of the Code) with respect to a Unitholder or Series F Special Optionholder that makes the election provided for under Section 1295(b) of the Code.

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### **14 Renegotiation**

If prior to the earliest date on which the Series F Special Options may be exercised the laws of Australia are amended, varied or replaced, or the Commonwealth Government introduces a bill into Parliament, which may result in the Trust failing to qualify as a 'collective investment vehicle', then the Manager and the Series F Special Optionholders will enter into good faith negotiations to amend the terms of the Series F Special Options, including if necessary the Series F Special Option Period, in order to avoid such failure.

**Consolidated Trust Deed constituting  
Westfield America Trust**  
Schedule 4 - Terms of Issue of RCP Units

[Deleted]

# Consolidated Trust Deed constituting Westfield America Trust

## Schedule 5 - Terms of Issue of Series G Special Options

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### 1 Definitions

#### 1.1 Definitions

These words and phrases have the following meanings in these Special Option Terms unless the contrary intention appears:

**ASX** means Australian Stock Exchange Limited (ACN 008 624 691).

**Business Day** has the same meaning as in the Listing Rules of the ASX.

**Business Hours** means the hours between 9.00am and 5.00pm (Sydney time) on a Business Day.

**Continuing Security** means:

- (a) the Preference Shares; and/or
- (b) the Converted Common Stock.

**Conversion Number** in relation to a Special Option where the Continuing Securities the subject of the Notice of Exercise are Preference Shares, is 34.6632, subject to paragraphs 15.1 and 15.2, and in the case where the Continuing Securities the subject of the Notice of Exercise are Converted Common Stock, then the Conversion Number is 3.4663, subject to paragraphs 15.1 and 15.2.

**Converted Common Stock** means the shares of series A common stock in WEA into which Preference Shares have been converted by their holder in accordance with the terms and conditions specified in the Series G Certificate of Designation.

**Exchange Agreement** means the exchange agreement between WEA and SCPG to be entered into contemporaneously with the execution and delivery of the Series G Special Option Deed.

**Exercise Date** means the date specified in paragraph 7.2(b).

**Expert** means an internationally recognised accounting firm (provided that such firm is one of Arthur Andersen LLP, PricewaterhouseCoopers LLP, Ernst & Young LLP, Deloitte & Touche LLP and KPMG LLP or their respective affiliates or successors and provided further that the firm appointed is not the principal outside auditor for, and has not during the previous 24 months, received fees in excess of US\$5 million from, the Manager, WEA or any Optionholder holding a majority of the outstanding Special Options) agreed to by the Manager and Optionholders holding a majority of the outstanding Special Options on issue or in the absence of agreement between them and at the request of any of them an internationally recognised accounting firm appointed by the



President or the head for the time being of the Australian Institute of Chartered Accountants, provided, however, that if at the time an Expert is being selected for purposes of paragraph 15.1 or 19, an Expert is then engaged pursuant to the terms of paragraph 15.1 or 19 or is then engaged, or contemporaneously being engaged pursuant to Section 6 of the Series G Certificate of Designation, then the Expert being so selected shall be the same Expert that is then so engaged or being contemporaneously engaged.

**Financial Year** means a 12 month period from 1 January to 31 December.

**Issue Date** means the date on which the Special Options are issued to WEA pursuant to clause 2.1 of the Special Option Deed.

**Manager** means Westfield America Management Limited as responsible entity and trustee of WAT.

**Member** means a person registered as the holder of a Unit (including persons jointly registered) as provided in the Trust Deed.

**Notice of Exercise** means a notice in or substantially in the form set out in Attachment A.

**Notice of Intention to Exercise** means a notice given by the Optionholder under paragraph 7.1 of the Special Option Terms.

**Option Certificate** means a Special Option Certificate in or substantially in the form set out in Attachment C.

**Optionholder** means any person who is at any time registered as the holder of a Special Option (including persons jointly registered) in a register kept by the Manager.

**party** means each of the Manager and any Optionholder.

**Preference Share** means a Series G Cumulative Convertible Redeemable Preference Share in WEA.

**Quarter** means a three month period in a Financial Year commencing on one of the following dates:

- (a) 1 January (“**First Quarter**”);
- (b) 1 April (“**Second Quarter**”);
- (c) 1 July (“**Third Quarter**”); and
- (d) 1 October (“**Fourth Quarter**”).

**Reconstruction** means a capital reconstruction (including, without limitation, any consolidation, stock split or stock dividend, subdivision or reduction of capital), merger or any return of capital or other capital distribution but does not include the following:

- (a) periodic distributions (whether of income or capital) made pro rata among shareholders or unitholders of a class and whether interim or at the end of an Accrual Period;

- (b) issues of stock, shares or units which are not in redemption of any stock, shares or units;
- (c) any issues of options by WEA or WAT; or
- (d) the redemption, conversion or exercise of any securities issued by WAT or WEA in accordance with their terms.

**SCPG** means Security Capital Preferred Growth Incorporated.

**Sell** means a transfer, sale or assignment of the Special Options (or any part of the Special Options) or any other dealing or parting with possession of any right or interest (other than for the purposes of obtaining financing).

**Series G Certificate of Designation** means the certificate of designation for the Preference Shares.

**Special Option** means an option to subscribe for Units on the Special Option Terms.

**Special Option Deed** means the Series G Special Option Deed made between the Manager, WEA and SCPG including all schedules, attachments and annexures.

**Special Option Period** means the period commencing on the date being the earlier of the following:

- (a) 30 September 2003; and
- (b) the date upon which dividends under the Series G Certificate of Designation are not paid in full in accordance with Section 3 of that certificate and the dividend rate is therefore increased to 1.5 times the rate that would otherwise apply;
- (c) the date upon which a Fixed Charge Coverage Violation (as defined in the Series G Certificate of Designation) occurs;
- (d) the date upon which a Change of Control Repurchase Event (as defined in the Series G Certificate of Designation) occurs;
- (e) the date upon which Consolidated EBITDA (as defined in the Series G Certificate of Designation) from United States source income as a percentage of total EBITDA for WAT falls below 75%; and
- (f) the date upon which the Manager gives a notice in accordance with paragraphs 15.3(a) or (b) of the Special Option Terms;

and ending the date being 10 days prior to the termination date of WAT under clause 4.3 of the Trust Deed.

**Special Option Terms** means the terms as set out herein.

**Trust Deed** means the Trust Deed dated 28 March 1996 originally between Perpetual Trustee Company Limited and Westfield America Management Limited, as amended, being the constitution of WAT.

**Unit** means an undivided share in the beneficial interest in WAT as provided in the Trust Deed.

**WAT** means the managed investment scheme constituted by the Trust Deed and known as the Westfield America Trust (ARSN 092 058 449).

**WEA** means Westfield America, Inc.

## **1.2 Interpretation**

Words or phrases beginning in capitals and not otherwise defined in these Special Option Terms have the same meaning as in the Trust Deed.

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## **2 Entitlement**

Each Special Option entitles the Optionholder to subscribe for Units on the terms set out in these Special Option Terms.

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## **3 Exercise Period**

A Special Option may be exercised at any time during the Special Option Period, in accordance with these Special Option Terms.

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## **4 Prerequisite to Exercise**

### **4.1 Conditions**

A Special Option may not be exercised (and the Manager will be under no obligation to issue Units in respect of any Special Option) unless:

- (a) the Special Option is exercised as part of a parcel of Special Options which, on exercise, entitles the Optionholder to a parcel of Units having a value not less than the amount required by the *Corporations Law* (currently A\$500,000) for the issue of each such Unit to constitute an issue that does not need disclosure to investors pursuant to section 708(8)(a) of the *Corporations Law* (or any successor provision); and
- (b) the Optionholder complies in all material respects with all the other Special Option Terms; and
- (c) the issue of Units to the Optionholder would not breach the Australian *Corporations Law* or any applicable law.

### **4.2 Notice of Intention to Exercise**

If the Optionholder which wishes to exercise a Special Option, gives a Notice of Intention to Exercise and a Notice of Exercise and otherwise complies in all material respects with the requirements for exercise of a Special Option set out in these Special Option Terms, the Manager must comply with the provisions of the Trust Deed and of the Special Option Terms in respect of the exercise of the Special Option.

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## **5 Exchange Right**

### **5.1 Special Options**

One Special Option is exercisable for each Preference Share or for the Converted Common Stock issued upon conversion of such Preference Share, as the case may be, transferred to the Manager.

### **5.2 Fractions**

On exercise of a Special Option, the Optionholder will receive in respect of a Continuing Security, the Conversion Number of Units provided that, if this would have the effect that the Optionholder would receive a fraction of one Unit, the Optionholder will receive one additional Unit. The Conversion Number of Units must be issued within one Business Day after receipt of a Notice of Exercise given in accordance with paragraph 7.

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## **6 Ranking of Units on Exercise of Special Options**

### **6.1 Ranking of Units**

Subject to paragraph 6.2, a Unit allotted on exercise of a Special Option will rank equally in all respects with the existing Units on issue at the date of allotment.

### **6.2 Distributions**

A Unit allotted on exercise of a Special Option will rank for distribution of the Distributable Income from the date following the last day of the most recently completed dividend period for the Continuing Securities transferred so that where Units are allotted during an Accrual Period, such Units will participate in the Distributable Income in respect of that Accrual Period in the proportion that the part of the Accrual Period (calculated in days) for which such Units rank for distribution of Distributable Income bears to the total number of days in such Accrual Period.

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## **7 Manner of Exercise**

### **7.1 Notice of intention**

If an Optionholder wishes to exercise a Special Option, then the Optionholder must give a non-binding notice of intention to exercise the Special Option to the Manager during the Special Option Period at least 10 Business Days before giving a Notice of Exercise under paragraph 7.2.

### **7.2 Notice of Exercise**

If an Optionholder wishes to exercise a Special Option and has complied with paragraph 7.1, it must give an irrevocable Notice of Exercise to the Manager during the Special Option Period specifying:

- (a) the number of Special Options which the Optionholder wishes to exercise in compliance with paragraph 4 and the type of Continuing Security to be delivered;

- (b) the specific date on which those Special Options are to be exercised (“Exercise Date”) in accordance with the Special Option Terms;
- (c) the number of Units which are to be issued to the Optionholder on the exercise of the Special Options detailed in the Notice of Exercise (“Relevant Number”) (being equal to the number of Special Options to which the Notice of Exercise relates multiplied by the Conversion Number, subject to rounding up by one unit in the case of a fractional unit); and
- (d) confirmation of compliance with the U.S. securities laws restrictions contained in paragraph 12.

### **7.3 Delivery and issue**

On the Exercise Date:

- (a) the Optionholder must deliver to the Manager the Continuing Securities (together with any necessary instruments of transfer properly executed) to which the Notice of Exercise relates; and
- (b) in consideration of the transfer pursuant to paragraph 7.3(a), the Manager must issue to the Optionholder the Relevant Number of Units.

### **7.4 Transfers**

The Optionholder must ensure that any Continuing Security transferred pursuant to paragraph 7.3(a) (or specified in the Notice of Exercise) is (immediately prior to transfer) owned by the Optionholder (free of all mortgages, charges, liens and other encumbrances or prior claims), and has attached all rights (including rights to receive dividends) attaching or accruing to the Continuing Security on the Exercise Date except for that portion of the True-Up Dividend Amount as defined in the Series G Certificate of Designation, if any, for the period from the beginning of the year in which the applicable Special Option is exercised until the Exercise Date. The True-Up Dividend Amount payable for such period shall be computed by dividing the number of days in which the Optionholder held the Continuing Security during the applicable year by 365 and multiplying the result by the True-Up Dividend Amount determined in accordance with the Series G Certificate of Designation (and if such amount is received by the Manager instead of by the former holder of the Continuing Securities, the Manager must pay to that former holder the amount so received).

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## **8 Transfer of Special Options**

### **8.1 Process**

With the exception of the first transfer by WEA of the Special Options to SCPG, an Optionholder shall not Sell any Special Options or Continuing Securities owned by it, unless it first notifies the Manager in writing of its desire to so Sell such securities and allows the Manager five Business Days from the date of such notice to make an offer for such securities. The Optionholder may reject, in its absolute discretion, any offer to purchase such securities made by the Manager and may Sell such securities to any buyer after the five Business Day period has elapsed; provided that any offer by the Manager shall include both the Special Options and the related Preference Shares or Converted Common Stock, as the case may be, to the extent that the Optionholder notified the Manager that it will

sell such securities as a package and provided further that for a period of 90 days after such five Business Day period has elapsed, the Optionholder shall not Sell such securities (other than pursuant to an underwritten public offering) at a price (before deduction of underwriting commissions, placement fees and other selling expenses) less than 90% of the price offered by the Manager.

## **8.2 Transferee**

Any person to whom a Special Option is transferred must be a person to whom disclosure to investors under Chapter 6D of the *Corporations Law* is not required. A transferee must provide to the Manager, if requested, evidence that it is such a person.

## **8.3 Transfer of Special Options**

Subject to this paragraph 8 and the securities law restrictions set out in paragraph 12, a Special Option is fully transferable as follows:

- (a) by delivery to the Manager of a duly executed and, subject to paragraph 9, stamped transfer in the form of Attachment B-3 by the Optionholder or the transferee, together with the Option Certificates to which the transfer relates; and
- (b) the Manager registering the transfer of the Special Options, subject to the terms and conditions of the Trust Deed, which the Manager agrees to do promptly after receipt of the items referred to in paragraph 8.3(a).

## **8.4 Transferee is bound**

On registration of a transfer, the transferee is bound by the Trust Deed and the Special Options Terms and assumes the rights and obligations of an Optionholder in respect of the Special Options transferred.

## **8.5 Stamp duty**

All stamp duty (including fines and penalties and any other applicable payments) chargeable on or in relation to either:

- (a) the initial transfer of each Special Option by SCPG to a transferee (each an “Initial Transferee”); and
- (b) the first transfer by any Initial Transferee of such Special Option to a subsequent transferee

shall be borne by the Manager and the Manager hereby indemnifies SCPG and each transferee receiving a transfer to which sub-paragraph (a) or (b) of this paragraph 8.5 applies (an “Indemnified Transferee”) as a continuing indemnity for and against any such stamp duty (including fines and penalties and any other applicable payments) and any related costs and expenses including legal fees on an indemnity basis. The Manager shall be primarily responsible for attending to payment of such stamp duty (including fines and penalties and any other applicable payments) and the Manager shall provide SCPG and each Indemnified Transferee with such information and progress reports on such stamping as SCPG or the Indemnified Transferee may reasonably require and SCPG or the Indemnified Transferee shall be entitled to pay (but need not pay) such duty itself and to claim immediate indemnification from the Manager if SCPG or the

Indemnified Transferee reasonably believes that there will otherwise be a failure to pay the stamp duty within the period required by law.

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## **9 New Issues by WAT**

A Special Option does not confer any right on the Optionholder to participate in any new issues of Units, or to be entitled to any distributions by WAT.

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## **10 Right to Vote**

An Optionholder is entitled to vote at meetings of Members.

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## **11 No Other Rights**

In accordance with, and subject to, the provisions of the Trust Deed and the *Corporations Law*, no Special Option confers on the Optionholder:

- (a) any right to require the Manager to redeem or repurchase the Special Option; or
- (b) except as expressly provided in the Trust Deed, any other entitlement under the Trust Deed consequent on holding the Special Option.

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## **12 Securities Law Restrictions**

### **12.1 Options not registered**

This paragraph 12 operates in addition to restrictions on transfers of Special Options under paragraph 8. The Special Options have not been registered under the U.S. Securities Act of 1933, as amended (“U.S. Securities Act”), and may not be offered, sold or exercised except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act;
- (b) within the United States to or, in the case of exercise, by Institutional “Accredited Investors” within the meaning of Rule 501(a)(1), (2), (3) and (7) under the U.S. Securities Act in a transaction exempt from registration requirements of the U.S. Securities Act on delivery of a purchaser’s letter in the form of Attachment B-1 or B-2, as applicable;
- (c) outside the United States to or, in the case of exercise, by non U.S. persons in a transaction meeting the requirements of Rules 901, 903 or 904 of Regulation S under the U.S. Securities Act;
- (d) to WEA, its affiliates, the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The Special Options must bear a legend to the foregoing effect:

Special Options issued to non U.S. persons pursuant to Regulation S under the U.S. Securities Act must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT IS NOT BEING EXERCISED ON BEHALF OF A U.S. PERSON OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER AND (B) THE SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL OPTION TERMS.”

All other Special Options must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY (1) A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT HAS NOT BEEN EXERCISED ON BEHALF OF A U.S. PERSON, OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR ON DELIVERY OF A LETTER SUBSTANTIALLY IN THE FORM ANNEXED TO THE SPECIAL OPTION TERMS AND (B) THIS SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL OPTION TERMS.”

## 12.2 Units not registered

Units issuable on exercise of the Special Options will not be registered under the U.S. Securities Act and may not be offered or sold by an Optionholder after exercise of an Option except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act or pursuant to an exemption from the registration requirements thereunder;
- (b) outside the United States to non U.S. persons (which term includes U.S. dealers or other professional fiduciaries acting on a discretionary basis for non U.S. beneficial owners (other than an estate or trust)) in reliance on Rules 903 and 904 of Regulation S under the U.S. Securities Act;
- (c) in ‘regular way transactions’ on the ASX, provided that neither the seller, nor any person acting on its behalf, knows that the transaction has been pre-arranged with a buyer that is a U.S. person or is located in the U.S.;
- (d) to the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.



The foregoing restrictions must be noted in the Unit register maintained by the Manager. The Manager agrees that it will cause the notation to be removed from the Unit register at such time as the Units may be transferred without restriction under applicable law.

### **12.3 Non U. S. persons**

A Special Option may only be exercised by a non U.S. person on delivery of either:

- (a) a written certification that the Optionholder is not a U.S. person and the Special Option is not being exercised on behalf of a U.S. person; or
- (b) a written opinion of counsel to the effect that the Special Option and the Units delivered on exercise thereof have been registered under the U.S. Securities Act or are exempt from registration thereunder.

### **12.4 U. S. persons**

A Special Option may only be exercised by a U.S. person on delivery of a purchaser's letter for "Accredited Investors" in the form of Attachment B-1, certifying that the Optionholder is an "Accredited Investor" as defined in that letter, together with the other materials referred to therein.

### **12.5 Transfers**

A Special Option may not be transferred to any person if the effect of such transfer would be that the ownership limitations contained in WEA's Restated Articles of Incorporation would be violated.

### **12.6 Withholding**

Any withholding obligation of the Manager on receipt of a Continuing Security may be satisfied by delivery of an amount in United States dollars by the Optionholder.

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## **13 Redemption of Preference Shares**

### **13.1 Delivery**

If WEA redeems Preference Shares in accordance with their terms the Optionholder must deliver (for no consideration) to the Manager the same number of Options, subject to paragraph 15.1, as Preference Shares to be redeemed and the Manager must reissue the Option Certificate in respect of the Optionholders' remaining holding (if any) of Special Options and may cancel the Special Options so transferred.

### **13.2 Cancellation**

After all Preference Shares have either been redeemed or transferred to the Manager, the Manager may cancel any outstanding Special Options and if the Manager cancels the Special Options notify the Optionholder of the cancellation.

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## 14 QEF Election

If an Optionholder intends to make the election provided for in Section 1295(b) of the Internal Revenue Code of 1986, as amended (“Code”), then such Optionholder must so notify the Manager and the Manager must, at the Manager’s expense, take such actions as may be required by the Code and the authorities thereunder to have WAT be treated as a qualified electing fund (within the meaning of Section 1295 of the Code) with respect to a Unitholder or Optionholder that makes the election provided for under Section 1295(b) of the Code.

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## 15 Reconstructions

### 15.1 Adjustment of Options

Except as provided in paragraph 15.2, if:

- (a) WEA carries out a Reconstruction; or
- (b) WAT carries out a Reconstruction,

then, in each such event:

- (c) the number of Special Options held by an Optionholder; or
- (d) the Conversion Number; or
- (e) some of, or all, such factors,

will be adjusted, as appropriate, in a manner determined by the Manager which:

- (f) is fair and equitable to the Members and Optionholders; and
- (g) to the extent necessary, complies with the Listing Rules of the ASX applying to a reorganisation (as that term is defined in the Listing Rules of the ASX) of capital at the time of the reorganisation (and for the avoidance of doubt the parties agree that any reconstruction of WEA is carried out as if the Listing Rules of the ASX applied to the reorganisation of WEA),

and is approved by Optionholders holding a majority of the outstanding Special Options on issue provided that if such Optionholders fail to approve the manner of adjustment determined by the Manager, the Manager must, pursuant to paragraph 19, refer the matter to an Expert who will make a determination of any adjustment. The Expert must be directed to take into account paragraphs 15.1(f), (g) and 19.3 in making a determination.

### 15.2 Merger

- (a) If WAT is merged or consolidated with or into a new entity or WAT transfers all or substantially all of its assets to another entity then, on a subsequent exercise of the Special Options, the Optionholder is entitled to receive securities in the new transferee entity equal to those which the Optionholder would have received had it exercised such Special Options and held Units immediately prior to such transaction.

- (b) If WEA is merged or consolidated with or into a new entity or if WEA transfers all or substantially all of its assets to another entity and the Optionholder receives stock in such entity in consideration of its Continuing Securities then, on a subsequent exercise of the Special Options, the Optionholder is entitled to use such new securities received in such transaction (in lieu of the Continuing Securities) as the consideration for the issuance of ordinary Units based on a revised Conversion Number which is fair and equitable to the Members and the Optionholder.

### 15.3 Winding up

- (a) The Manager agrees for the benefit of the Optionholders that if, while any Special Options are on issue, it:
  - (i) announces an intention to wind up WAT; or
  - (ii) receives a requisition from Members, that meets the requirements of the *Corporations Law*, to convene a meeting of Members for the purpose of passing a resolution to direct the winding up of WAT,

then it will immediately give written notice to the Optionholders of the announcement or requisition. In the case of an announcement or if Members subsequently pass a resolution in accordance with the *Corporations Law* to terminate WAT then, before WAT is terminated, the Optionholders may exercise any or all of their Special Options in accordance with the provisions of these Special Option Terms.

- (b) The Manager agrees that until the expiration of the Special Option Period:
  - (i) prior to any Reconstruction of WAT it will provide not less than 30 days prior written notice of such Reconstruction to the Optionholder, and the Optionholder has the right at any time following delivery of such notice to exercise its Special Options; and
  - (ii) in the event WEA is merged or consolidated with or into a new entity or transfers all or substantially all of its assets to another entity, the Optionholder has the right at any time following such event to exercise its Special Options in accordance with the provisions of these Special Option Terms.

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## 16 Representations, Warranties and Covenants

### 16.1 Representations and warranties

The Manager represents and warrants for the benefit of the Optionholder that as at the date of the Special Option Deed, the Issue Date, the date of transfer of the Special Options by WEA to SCPG and the Exercise Date:

- (a) all Special Options have been duly authorised, validly issued, and the Optionholder is entitled to the rights in favour of the Optionholder under the Special Option Terms;

- (b) there are no pre-emptive rights or similar rights to purchase any Units issuable on exercise of the Special Options on the part of any holders of any class of securities of WAT; and
- (c) the Special Option Deed has been duly authorised, executed and delivered by the Manager and is a valid and binding obligation of the Manager and enforceable in accordance with its terms.

## **16.2 Covenants**

The Manager covenants that:

- (a) it will use its best endeavours to ensure that the ordinary Units (including the Units issued on the exercise of the Special Options) are officially quoted on the ASX as soon as possible after they are issued and that such official quotation is maintained;
- (b) at all times while the Special Options are outstanding, WAT will have sufficient authorised and unissued Units available for issue on exercise of the Special Options and all other options outstanding with respect to Units; and
- (c) subject to compliance by the Optionholder with the Special Option Terms, the Units issuable on exercise of the Special Options will be duly authorised, validly issued and fully paid.

## **16.3 Benefit**

To the extent that any covenant contained in the Special Option Deed is made for the benefit of the Optionholder, such covenant will be enforceable against the Manager by any person registered as a Optionholder.

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# **17 Registration and no Quotation of Special Options**

## **17.1 Registers**

The Manager will maintain registers of Optionholders. An Optionholder may:

- (a) inspect such register at any time during Business Hours; and
- (b) obtain copies of such register.

## **17.2 Notices**

The Manager must send to an Optionholder copies of all notices (including, without limitation, notices of Members' meetings), accounts and other statements sent to Members.

## **17.3 Joint Optionholders**

For the purposes of paragraph 17.2, notices, accounts and other statements sent to joint Optionholders will be deemed to be sent to all those Optionholders if sent to the Optionholder named first on the register.

## **17.4 Lost certificate**

If an Optionholder:

- (a) has lost a certificate in respect of any Special Options; and
- (b) provides the Manager with a statutory declaration of loss in respect of such certificate,

the Manager must cancel the lost certificate and issue a replacement certificate to the Optionholder.

## **17.5 Not quoted**

The Optionholder acknowledges that the Special Options will not be quoted on any stock exchange.

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## **18 Renegotiation**

If prior to the earliest date on which the Special Options may be exercised the laws of Australia are amended, varied or replaced, or the Commonwealth Government introduces a bill into Parliament, which may result in WAT failing to qualify as a 'collective investment vehicle', then the Manager and the Optionholders will enter into good faith negotiations to amend the terms of the Special Options, including if necessary the Special Option Period, in order to avoid such failure.

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## **19 Disputes**

### **19.1 Adjustments**

If a dispute arises in relation to an adjustment to:

- (a) the number of Special Options held by an Optionholder; or
- (b) the Conversion Number; or
- (c) some or all such factors,

or any other adjustment to be made pursuant to paragraph 15.1 or paragraph 15.2, either the Manager or the Optionholder is entitled to refer the dispute (but no other disputes) to an Expert.

### **19.2 Resolution by Expert**

The Expert must be directed by the party referring the dispute:

- (a) to resolve the dispute in a timely manner as an expert and not as an arbitrator; and
- (b) to determine the party or parties responsible for paying the costs of the Expert having regard to the Expert's findings concerning resolution of the dispute.

### **19.3 Factors to be considered**

The Expert must take into account (i) any adjustment or resolution of a dispute with respect to the same factual circumstances and (ii) any prior or contemporaneous adjustments or resolutions of disputes, in each case under Section 6 of the Series G Certificate of Designation such that the resolution of the dispute or disputes is fair and equitable to the Members and Optionholders.

### **19.4 Determination binding**

The determination of the Expert will be final and binding on the Manager and the Optionholders.

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## **20 Notices**

### **20.1 Delivery**

A party giving notice or notifying under these Special Option Terms must do so in writing:

- (a) directed to the recipient's address specified in this paragraph 20, as varied by any notice or, in the case of an Optionholder, to the address specified in the register kept in accordance with paragraph 17; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

The Manager's address and facsimile number are:

Westfield America Management Limited  
Level 24, Westfield Towers  
100 William Street  
SYDNEY NSW 2011  
Facsimile Number: (61 2) 9358 7077  
Attention: Company Secretary

WEA's address and facsimile number are:

Westfield America, Inc.  
11601 Wilshire Boulevard, Suite 1200  
Los Angeles California USA  
Facsimile Number: (310) 478 3987  
Attention: Company Secretary

SCPG's address and facsimile number are:

Security Capital Preferred Growth Incorporated  
2nd floor, 11 South La Salle Street  
Chicago Illinois 60603 USA  
Facsimile Number: (312) 345 5888  
Attention: David E Rosenbaum  
David T Novick

## 20.2 Time

A notice given in accordance with paragraph 20.1 is taken to be received:

- (a) if hand-delivered, on delivery;
- (b) if sent by prepaid post, 5 days after the date of posting;
- (c) if sent by courier, 2 days after being sent; or
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

## 20.3 Copies

The Manager will promptly deliver to an Optionholder copies of any notices received by it under the Special Option Terms, including any notice changing the foregoing addresses.

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## 21 Interpretation

In these Special Option Terms, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of these Special Option Terms;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to these Special Option Terms and a reference to the Special Option Terms includes any schedules, attachments and annexures;
- (e) a reference to a document or agreement, including the Special Option Deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (g) a reference to "US\$" is a reference to United States of America currency;
- (h) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (i) a reference to a party includes its executors, administrators, successors (including persons taking by novation) and permitted assigns;

- (j) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (k) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable.



# Attachment A (to Schedule)

## Notice of exercise of series G Special Options

**TO:** WESTFIELD AMERICA MANAGEMENT LIMITED  
Manager of Westfield America Trust  
[ ]

I/We [ ] of [ ] give notice that I/we wish to exercise [ ] Series G Special Options registered in my/our name on [ ] (“**Exercise Date**”). The number of Units, which are to be issued on exercise of the Special Options referred to in this Notice of Exercise, is [ ].

Defined terms in the Special Option Terms have the same meaning in this Notice of Exercise.

We have received a copy of the Series G Special Option Terms, a copy of which is annexed to the Westfield America Trust Deed.

I/We confirm that:

- (a) [ ] [*description of actual security – Preference Shares or Converted Common Stock*] being Continuing Securities in WEA registered in my/our name will on the Exercise Date be free of all mortgages, charges, liens and other encumbrances or prior claims;
- (b) the Units in Westfield America Trust (“**WAT**”) to be issued to me/us on exercise of the Special Options to which this Notice of Exercise relates, have a value of not less than the amount required by the *Corporations Law* for the issue of each such Unit to constitute an issue for which disclosure to investors is not required under section 708(8)(a) of the *Corporations Law* (or any successor provision);
- (c) this Notice of Exercise is irrevocable (subject to paragraph 7.2 of Special Option Terms);
- (d) I/we have read the restrictions on exercise of Special Options and on transferability of Units contained in the Special Option Deed. I/we understand that the Units have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), and may not be offered or sold except as permitted by the Special Option Terms and that such restrictions may be required to be noted in the Unit register as set out in the Special Option Deed. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should reoffer, resell, pledge or transfer any Units, we will do so only in accordance with the Special Option Terms; and
- (e) **[APPLICABLE PARAGRAPH TO BE INSERTED]**

**NOTE:** the following paragraph to be included in a Notice of Exercise by a non U.S. person requesting that Units be delivered to an address outside of the United States:

[We are not a U.S. person, we are not acquiring any units for the account of any U.S. person, and we have not offered, sold or delivered, and will not offer, sell or deliver, directly or indirectly, or as principal or agent, any Units acquired by us in the United States or to any U.S. person. "U.S. person" has the meaning set forth in Regulation S under the Securities Act, and includes, among other persons, any national, citizen or resident of the United States or the estate or trust of any such person, any corporation, partnership or other entity created or organized in or under the laws of the United States, or any political subdivision thereof, any trust or estate (other than a foreign trust or estate) and any United States branch of a non U.S. person. "United States" means the United States of America, its territories and possessions.]

**NOTE:** the following paragraph to be included in a notice of exercise by an "accredited investor" (a person meeting the requirements of Rule 501(a) of Regulation D under the Securities Act):

[We are delivering herewith a purchaser's letter for accredited investors in the form of Attachment B-1 to the Special Option Terms and the other materials referred to therein, and certify that each of us is an "accredited investor" as defined in that letter.]

**NOTE:** the following paragraph to be included in a notice of exercise by a non U.S. person requesting that units be delivered to an address in the United States or who does not meet the standards set forth in [Note 2].

[We are not a U.S. person]. [We are delivering herewith a written opinion of nationally recognized United States counsel to the effect that the Special Options and the Units delivered on exercise have been registered under the Securities Act or are exempt from registration thereunder.]



5. We understand that, on any proposed reoffer, resale, pledge or transfer of any Units, we will be required to furnish to the Manager and the registrar and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms pursuant to which the Units were issued. We further understand that the foregoing restrictions will be noted in the Unit register.

[Insert applicable paragraph.]

6. [We are an institutional “accredited investor” (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Units purchased by us for our own account or for one or more accounts (each of which is an “accredited investor”) as to each of which we exercise sole investment discretion and for each of which we are acquiring Units with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Units to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,  
[Purchaser]

By: \_\_\_\_\_

Name:

Title:

Dated:

Signed by [            ] through its    )  
duly authorised representative    )  
[            ] in the presence of:    )

or

**THE COMMON SEAL** of # is affixed in    )  
accordance with its **constitution** in the    )  
presence of                                    )

Secretary

Director

Name of secretary (print)

Name of director (print)

# Attachment B-2 (to Schedule) Form of Purchaser's Letter by Accredited Investor Acquisition or Transfer of Units

**TO:** WESTFIELD AMERICA MANAGEMENT LIMITED  
Manager of Westfield America Trust  
[                    ]

In connection with our proposed acquisition of Special Options in Westfield America Trust ("**Trust**"):

1. We have received a copy of the Series G Special Option Terms, a copy of which is annexed to the Westfield America Trust Deed.
2. We understand that the Special Options and the Units issuable on exercise thereof have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and may not be offered or sold except as permitted in the following sentence and in the Special Option Deed.
3. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should reoffer, resell, pledge or transfer any Special Options, we will do so only:
  - (a) outside the United States to a foreign person in a transaction meeting the requirements of Rule 903 or 904 of Regulation S under the Securities Act;
  - (b) to an institutional "accredited investor" (as defined below) pursuant to an exemption from the registration requirements of the Securities Act, subject to:
    - (i) the receipt by the Manager of a letter substantially in the form provided in the Special Option Deed,
    - (ii) unless such transfer is of Special Options with a purchase price of not less than US\$250,000 to an "accredited investor" (as defined below), the receipt by the Manager of an opinion of counsel acceptable to the Manager that such reoffer, resale, pledge or transfer is in compliance with the Securities Act;
  - (c) to Westfield America Inc, its affiliates, the Manager, or its affiliates; andin each case, in accordance with any applicable securities laws of any State or the United States of America or any other applicable jurisdiction.
4. The undersigned will, and each subsequent purchaser from it is required to, notify any subsequent purchaser from it of the resale restrictions set forth above.
5. We understand that, on any proposed reoffer, resale, pledge or transfer of any Special Options, we will be required to furnish to the Manager and the registrar

and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms governing the Special Options. We further understand that the foregoing restrictions will be noted in the legend on the Special Options.

[Insert applicable paragraph.]

6. [We are an institutional “accredited investor” (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Special Options purchased by us for our own account or for one or more accounts (each of which is an “accredited investor”) as to each of which we exercise sole investment discretion and for each of which we are acquiring Special Options with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Special Options to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,  
[Purchaser]

By: \_\_\_\_\_  
Name:  
Title:

Dated:

Signed by [ ] through its )  
duly authorised representative )  
[ ] in the presence of: )

or

**THE COMMON SEAL** of # is affixed in )  
accordance with its **constitution** in the )  
presence of )

Secretary

Director

Name of secretary (print)

Name of director (print)



# Attachment B-3 (to Schedule)

## TRANSFER FORM

For Non-Market Transactions

Affix stamp or similar duty here

Marking stamp

<b>FULL NAME OF REGISTERED SCHEME</b>	Westfield America Trust ARSN 092 058 449 ('WAT')		
<b>DESCRIPTION OF OPTIONS</b>	Class	Amount paid	Amount unpaid
	Series G Special Options		Register NSW
<b>QUANTITY</b>	Words	Figures	
<b>FULL NAME OF TRANSFEROR(S)</b>			Date of Purchase
<b>CONSIDERATION</b>			
<b>FULL NAME OF TRANSFEREE(S)</b>			
<b>FULL ADDRESS OF TRANSFEREE(S)</b>			
<b>BENEFICIAL INTEREST</b>	Upon registration of this transfer, the transferee will/will not hold the above options beneficially		

I, the registered holder and transferor (>Transferor=) named above, for the consideration specified above transfer to the transferee named above (>Transferee=) the special options specified above (>Special Options=) registered in my name in the books of WAT subject to the conditions on which I hold them at the time of signing this form. I, the Transferee agree to accept the transfer of the Special Options and the registration of the Special Options in my name in the books of WAT subject to the same conditions and agree to be bound by the constitution of WAT as amended from time to time and the terms of the Special Options.

<b>SIGNATURE OF TRANSFEROR(S)</b>		<b>FOR REGISTRAR USE</b>
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	
<b>SIGNATURE OF TRANSFEREE(S)</b>		
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	



# Consolidated Trust Deed constituting Westfield America Trust

## Schedule 6 - Terms of Issue of Series G1 Special Options

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### 1 Definitions

#### 1.1 Definitions

These words and phrases have the following meanings in these Special Option Terms unless the contrary intention appears:

**ASX** means Australian Stock Exchange Limited (ACN 008 624 691).

**Business Day** has the same meaning as in the Listing Rules of the ASX.

**Business Hours** means the hours between 9.00am and 5.00pm (Sydney time) on a Business Day.

**Co-operation Agreement** means the Co-Operation Agreement dated 15 February 2001 between the Manager and Westfield Holdings Limited.

**Continuing Security** means:

- (a) the Preference Shares; and/or
- (b) the Converted Common Stock.

**Conversion Number** in relation to a Special Option where the Continuing Securities the subject of the Notice of Exercise are Preference Shares, is 34.6632, subject to paragraphs 15.1 and 15.2, and in the case where the Continuing Securities the subject of the Notice of Exercise are Converted Common Stock, then the Conversion Number is 3.4663, subject to paragraphs 15.1 and 15.2.

**Converted Common Stock** means the shares of common stock in WEA into which Preference Shares have been converted by their holder in accordance with the terms and conditions specified in the Series D Certificate of Designation.

**Exercise Date** means the date specified in paragraph 7.2(b).

**Expert** means an internationally recognised accounting firm (provided that such firm is one of Arthur Andersen LLP, PricewaterhouseCoopers LLP, Ernst & Young LLP, Deloitte & Touche LLP and KPMG LLP or their respective affiliates or successors and provided further that the firm appointed is not the principal outside auditor for, and has not during the previous 24 months, received fees in excess of US\$5 million from, the Manager, WEA or any Optionholder holding a majority of the outstanding Special Options) agreed to by the Manager and Optionholders holding a majority of the outstanding Special Options on issue or in the absence of agreement between them and at the request of any of them an internationally recognised accounting firm appointed by the President or the head for the time being of the Australian Institute of Chartered Accountants, provided, however, that if at the time an Expert is being selected for

purposes of paragraph 15.1 or 19, an Expert is then engaged pursuant to the terms of paragraph 15.1 or 19 or is then engaged, or contemporaneously being engaged pursuant to Section 6 of the Series D Certificate of Designation, then the Expert being so selected shall be the same Expert that is then so engaged or being contemporaneously engaged.

**Financial Year** means a 12 month period from 1 January to 31 December.

**Issue Date** means the date on which the Special Options are issued to WEA pursuant to clause 2.1 of the Special Option Deed.

**Manager** means Westfield America Management Limited as responsible entity and trustee of WAT.

**Member** means a person registered as the holder of a Unit (including persons jointly registered) as provided in the Trust Deed.

**Notice of Exercise** means a notice in or substantially in the form set out in Attachment A.

**Notice of Intention to Exercise** means a notice given by the Optionholder under paragraph 7.1 of the Special Option Terms.

**Option Certificate** means a Special Option Certificate in or substantially in the form set out in Attachment C.

**Optionholder** means any person who is at any time registered as the holder of a Special Option (including persons jointly registered) in a register kept by the Manager.

**party** means each of the Manager and any Optionholder-.

**Preference Share** means a Series D Cumulative Convertible Redeemable Preference Share in WEA.

**Quarter** means a three month period in a Financial Year commencing on one of the following dates:

- (a) 1 January (“**First Quarter**”);
- (b) 1 April (“**Second Quarter**”);
- (c) 1 July (“**Third Quarter**”); and
- (d) 1 October (“**Fourth Quarter**”).

**Reconstruction** means a capital reconstruction (including, without limitation, any consolidation, stock split or stock dividend, subdivision or reduction of capital), merger or any return of capital or other capital distribution but does not include the following:

- (a) periodic distributions (whether of income or capital) made pro rata among shareholders or unitholders of a class and whether interim or at the end of an Accrual Period;
- (b) issues of stock, shares or units which are not in redemption of any stock, shares or units;

- (c) any issues of options by WEA or WAT; or
- (d) (d) the redemption, conversion or exercise of any securities issued by WAT or WEA in accordance with their terms.

**Sell** means a transfer, sale or assignment of the Special Options (or any part of the Special Options) or any other dealing or parting with possession of any right or interest (other than for the purposes of obtaining financing).

**Series D Certificate of Designation** means the certificate of designation for the Preference Shares.

**Special Option** means an option to subscribe for Units on the Special Option Terms (being a separate class of option in WAT).

**Special Option Deed** means the Series G1 Special Option Deed made between the Manager, WEA and WA IPL including all schedules, attachments and annexures.

**Special Option Period** means the period commencing on the date being the earlier of the following:

- (a) 30 September 2003; and
- (b) the date upon which dividends under the Series D Certificate of Designation are not paid in full in accordance with Section 3 of that certificate and the dividend rate is therefore increased to 1.5 times the rate that would otherwise apply;
- (c) the date upon which a Fixed Charge Coverage Violation (as defined in the Series D Certificate of Designation) occurs;
- (d) the date upon which a Change of Control Repurchase Event (as defined in the Series D Certificate of Designation) occurs,
- (e) the date upon which Consolidated EBITDA (as defined in the Series D Certificate of Designation) from United States source income as a percentage of total EBITDA for WAT falls below 75%; and
- (f) the date upon which the Manager gives a notice in accordance with paragraphs 15.3(a) or (b) of the Special Option Terms;

and ending the date being 10 days prior to the termination date of WAT under clause 4.3 of the Trust Deed.

**Special Option Terms** means the terms as set out herein.

**Trust Deed** means the Trust Deed dated 28 March 1996 originally between Perpetual Trustee Company Limited and Westfield America Management Limited, as amended, being the constitution of WAT.

**Unit** means an undivided share in the beneficial interest in WAT as provided in the Trust Deed.

**WA IPL** means Westfield American Investments Pty. Limited

**WAT** means the managed investment scheme constituted by the Trust Deed and known as the Westfield America Trust (ARSN 092 058 449).

**WEA** means Westfield America, Inc.

## **1.2 Interpretation**

Words or phrases beginning in capitals and not otherwise defined in these Special Option Terms have the same meaning as in the Trust Deed.

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## **2 Entitlement**

Each Special Option entitles the Optionholder to subscribe for Units on the terms set out in these Special Option Terms.

---

## **3 Exercise Period**

A Special Option may be exercised at any time during the Special Option Period, in accordance with these Special Option Terms.

---

## **4 Prerequisite to Exercise**

### **4.1 Conditions**

A Special Option may not be exercised (and the Manager will be under no obligation to issue Units in respect of any Special Option) unless:

- (a) the Special Option is exercised as part of a parcel of Special Options which, on exercise, entitles the Optionholder to a parcel of Units having a value not less than the amount required by the *Corporations Law* (currently A\$500,000) for the issue of each such Unit to constitute an issue that does not need disclosure to investors pursuant to section 708(8)(a) of the *Corporations Law* (or any successor provision); and
- (b) the Optionholder complies in all material respects with all the other Special Option Terms; and
- (c) the issue of Units to the Optionholder would not breach the Australian *Corporations Law* or any applicable law.

### **4.2 Notice of Intention to Exercise**

If the Optionholder which wishes to exercise a Special Option, gives a Notice of Intention to Exercise and a Notice of Exercise and otherwise complies in all material respects with the requirements for exercise of a Special Option set out in these Special Option Terms, the Manager must comply with the provisions of the Trust Deed and of the Special Option Terms in respect of the exercise of the Special Option.

---

## **5 Exchange Right**

### **5.1 Special Options**

One Special Option is exercisable for each Preference Share or for the Converted Common Stock issued upon conversion of such Preference Share, as the case may be, transferred to the Manager.

### **5.2 Fractions**

On exercise of a Special Option, the Optionholder will receive in respect of a Continuing Security, the Conversion Number of Units provided that, if this would have the effect that the Optionholder would receive a fraction of one Unit, the Optionholder will receive one additional Unit. The Conversion Number of Units must be issued within one Business Day after receipt of a Notice of Exercise given in accordance with paragraph 7.

---

## **6 Ranking of Units on Exercise of Special Options**

### **6.1 Ranking of Units**

Subject to paragraph 6.2, a Unit allotted on exercise of a Special Option will rank equally in all respects with the existing Units on issue at the date of allotment.

### **6.2 Distributions**

A Unit allotted on exercise of a Special Option will rank for distribution of the Distributable Income from the date following the last day of the most recently completed dividend period for the Continuing Securities transferred so that where Units are allotted during an Accrual Period, such Units will participate in the Distributable Income in respect of that Accrual Period in the proportion that the part of the Accrual Period (calculated in days) for which such Units rank for distribution of Distributable Income bears to the total number of days in such Accrual Period.

---

## **7 Manner of Exercise**

### **7.1 Notice of intention**

If an Optionholder wishes to exercise a Special Option, then the Optionholder must give a non-binding notice of intention to exercise the Special Option to the Manager during the Special Option Period at least 10 Business Days before giving a Notice of Exercise under paragraph 7.2.

### **7.2 Notice of Exercise**

If an Optionholder wishes to exercise a Special Option and has complied with paragraph 7.1, it must give an irrevocable Notice of Exercise to the Manager during the Special Option Period specifying:

- (a) the number of Special Options which the Optionholder wishes to exercise in compliance with paragraph 4 and the type of Continuing Security to be delivered;

- (b) the specific date on which those Special Options are to be exercised (“Exercise Date”) in accordance with the Special Option Terms;
- (c) the number of Units which are to be issued to the Optionholder on the exercise of the Special Options detailed in the Notice of Exercise (“Relevant Number”) (being equal to the number of Special Options to which the Notice of Exercise relates multiplied by the Conversion Number, subject to rounding up by one unit in the case of a fractional unit); and
- (d) confirmation of compliance with the U.S. securities laws restrictions contained in paragraph 12.

### **7.3 Delivery and issue**

On the Exercise Date:

- (a) the Optionholder must deliver to the Manager the Continuing Securities (together with any necessary instruments of transfer properly executed) to which the Notice of Exercise relates; and
- (b) in consideration of the transfer pursuant to paragraph 7.3(a), the Manager must issue to the Optionholder the Relevant Number of Units.

### **7.4 Transfers**

The Optionholder must ensure that any Continuing Security transferred pursuant to paragraph 7.3(a) (or specified in the Notice of Exercise) is (immediately prior to transfer) owned by the Optionholder (free of all mortgages, charges, liens and other encumbrances or prior claims), and has attached all rights (including rights to receive dividends) attaching or accruing to the Continuing Security on the Exercise Date except for that portion of the True-Up Dividend Amount as defined in the Series D Certificate of Designation, if any, for the period from the beginning of the year in which the applicable Special Option is exercised until the Exercise Date. The True-Up Dividend Amount payable for such period shall be computed by dividing the number of days in which the Optionholder held the Continuing Security during the applicable year by 365 and multiplying the result by the True-Up Dividend Amount determined in accordance with the Series D Certificate of Designation (and if such amount is received by the Manager instead of by the former holder of the Continuing Securities, the Manager must pay to that former holder the amount so received).

---

## **8 Transfer of Special Options**

### **8.1 Process**

With the exception of the first transfer by WEA of the Special Options to WAIP, an Optionholder shall not Sell any Special Options or Continuing Securities owned by it, unless it first notifies the Manager in writing of its desire to so Sell such securities and allows the Manager five Business Days from the date of such notice to make an offer for such securities. The Optionholder may reject, in its absolute discretion, any offer to purchase such securities made by the Manager and may Sell such securities to any buyer after the five Business Day period has elapsed; provided that any offer by the Manager shall include both the Special Options and the related Preference Shares or Converted Common Stock, as the case may be, to the extent that the Optionholder notified the Manager that



it will sell such securities as a package and provided further that for a period of 90 days after such five Business Day period has elapsed, the Optionholder shall not Sell such securities (other than pursuant to an underwritten public offering) at a price (before deduction of underwriting commissions, placement fees and other selling expenses) less than 90% of the price offered by the Manager.

## **8.2 Transferee**

Any person to whom a Special Option is transferred must be a person to whom disclosure to investors under Chapter 6D of the *Corporations Law* is not required. A transferee must provide to the Manager, if requested, evidence that it is such a person.

## **8.3 Transfer of Special Options**

Subject to this paragraph 8 and the securities law restrictions set out in paragraph 12, a Special Option is fully transferable as follows:

- (a) by delivery to the Manager of a duly executed and, subject to paragraph 9, stamped transfer in the form of Attachment B-3 by the Optionholder or the transferee, together with the Option Certificates to which the transfer relates; and
- (b) the Manager registering the transfer of the Special Options, subject to the terms and conditions of the Trust Deed, which the Manager agrees to do promptly after receipt of the items referred to in paragraph 8.38.3(a).

## **8.4 Transferee is bound**

On registration of a transfer, the transferee is bound by the Trust Deed and the Special Options Terms and assumes the rights and obligations of an Optionholder in respect of the Special Options transferred.

## **8.5 Stamp duty**

All stamp duty (including fines and penalties and any other applicable payments) chargeable on or in relation to either:

- (a) the initial transfer of each Special Option by WA IPL to a transferee (each an "Initial Transferee"); and
- (b) the first transfer by any Initial Transferee of such Special Option to a subsequent transferee

shall be borne by the Manager and the Manager hereby indemnifies WA IPL and each transferee receiving a transfer to which sub-paragraph (a) or (b) of this paragraph 8.5 applies (an "Indemnified Transferee") as a continuing indemnity for and against any such stamp duty (including fines and penalties and any other applicable payments) and any related costs and expenses including legal fees on an indemnity basis. The Manager shall be primarily responsible for attending to payment of such stamp duty (including fines and penalties and any other applicable payments) and the Manager shall provide SPCG and each Indemnified Transferee with such information and progress reports on such stamping as WA IPL or the Indemnified Transferee may reasonably require and WA IPL or the Indemnified Transferee shall be entitled to pay (but need not pay) such duty itself and to claim immediate indemnification from the Manager if WA IPL or the

Indemnified Transferee reasonably believes that there will otherwise be a failure to pay the stamp duty within the period required by law.

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## 9 New Issues by WAT

A Special Option does not confer any right on the Optionholder to participate in any new issues of Units, or to be entitled to any distributions by WAT.

---

## 10 Right to Vote

An Optionholder is entitled to vote at meetings of Members.

---

## 11 No Other Rights

In accordance with, and subject to, the provisions of the Trust Deed and the Corporations Law, no Special Option confers on the Optionholder:

- (a) any right to require the Manager to redeem or repurchase the Special Option; or
- (b) except as expressly provided in the Trust Deed, any other entitlement under the Trust Deed consequent on holding the Special Option.

---

## 12 Securities Law Restrictions

### 12.1 Options not registered

This paragraph 12 operates in addition to restrictions on transfers of Special Options under paragraph 8. The Special Options have not been registered under the U.S. Securities Act of 1933, as amended (“**U.S. Securities Act**”), and may not be offered, sold or exercised except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act;
- (b) within the United States to or, in the case of exercise, by Institutional “Accredited Investors” within the meaning of Rule 501(a)(1), (2), (3) and (7) under the U.S. Securities Act in a transaction exempt from registration requirements of the U.S. Securities Act on delivery of a purchaser’s letter in the form of Attachment B-1 or B-2, as applicable;
- (c) outside the United States to or, in the case of exercise, by non U.S. persons in a transaction meeting the requirements of Rules 901, 903 or 904 of Regulation S under the U.S. Securities Act;
- (d) to WEA, its affiliates, the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The Special Options must bear a legend to the foregoing effect:

Special Options issued to non U.S. persons pursuant to Regulation S under the U.S. Securities Act must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT IS NOT BEING EXERCISED ON BEHALF OF A U.S. PERSON OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER AND (B) THE SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL OPTION TERMS.”

All other Special Options must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY (1) A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT HAS NOT BEEN EXERCISED ON BEHALF OF A U.S. PERSON, OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR ON DELIVERY OF A LETTER SUBSTANTIALLY IN THE FORM ANNEXED TO THE SPECIAL OPTION TERMS AND (B) THIS SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL OPTION TERMS.”

## 12.2 Units not registered

Units issuable on exercise of the Special Options will not be registered under the U.S. Securities Act and may not be offered or sold by an Optionholder after exercise of an Option except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act or pursuant to an exemption from the registration requirements thereunder;
- (b) outside the United States to non U.S. persons (which term includes U.S. dealers or other professional fiduciaries acting on a discretionary basis for non U.S. beneficial owners (other than an estate or trust)) in reliance on Rules 903 and 904 of Regulation S under the U.S. Securities Act;
- (c) in ‘regular way transactions’ on the ASX, provided that neither the seller, nor any person acting on its behalf, knows that the transaction has been pre-arranged with a buyer that is a US person or is located in the US;
- (d) to the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The foregoing restrictions must be noted in the Unit register maintained by the Manager. The Manager agrees that it will cause the notation to be removed from

the Unit register at such time as the Units may be transferred without restriction under applicable law.

### **12.3 Non U. S. persons**

A Special Option may only be exercised by a non U.S. person on delivery of either:

- (a) a written certification that the Optionholder is not a U.S. person and the Special Option is not being exercised on behalf of a U.S. person; or
- (b) a written opinion of counsel to the effect that the Special Option and the Units delivered on exercise thereof have been registered under the U.S. Securities Act or are exempt from registration thereunder.

### **12.4 U. S. persons**

A Special Option may only be exercised by a U.S. person on delivery of a purchaser's letter for "Accredited Investors" in the form of Attachment B-1, certifying that the Optionholder is an "Accredited Investor" as defined in that letter, together with the other materials referred to therein.

### **12.5 Transfers**

A Special Option may not be transferred to any person if the effect of such transfer would be that the ownership limitations contained in WEA's Restated Articles of Incorporation would be violated.

### **12.6 Withholding**

Any withholding obligation of the Manager on receipt of a Continuing Security may be satisfied by delivery of an amount in United States dollars by the Optionholder.

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## **13 Redemption of Preference Shares**

### **13.1 Delivery**

If WEA redeems Preference Shares in accordance with their terms the Optionholder must deliver (for no consideration) to the Manager the same number of Options, subject to paragraph 15.1, as Preference Shares to be redeemed and the Manager must reissue the Option Certificate in respect of the Optionholders' remaining holding (if any) of Special Options and may cancel the Special Options so transferred.

### **13.2 Cancellation**

After all Preference Shares have either been redeemed or transferred to the Manager, the Manager may cancel any outstanding Special Options and if the Manager cancels the Special Options notify the Optionholder of the cancellation.

---

## **14 QEF Election**

If an Optionholder intends to make the election provided for in Section 1295(b) of the Internal Revenue Code of 1986, as amended ("Code"), then such

Optionholder must so notify the Manager and the Manager must, at the Manager's expense, take such actions as may be required by the Code and the authorities thereunder to have WAT be treated as a qualified electing fund (within the meaning of Section 1295 of the Code) with respect to a Unitholder or Optionholder that makes the election provided for under Section 1295(b) of the Code.

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## **15 Reconstructions**

### **15.1 Adjustment of Options**

Except as provided in paragraph 15.2, if:

- (a) WEA carries out a Reconstruction; or
- (b) WAT carries out a Reconstruction,

then, in each such event:

- (c) the number of Special Options held by an Optionholder; or
- (d) the Conversion Number; or
- (e) some of, or all, such factors,

will be adjusted, as appropriate, in a manner determined by the Manager which:

- (f) is fair and equitable to the Members and Optionholders; and
- (g) to the extent necessary, complies with the Listing Rules of the ASX applying to a reorganisation (as that term is defined in the Listing Rules of the ASX) of capital at the time of the reorganisation (and for the avoidance of doubt the parties agree that any reconstruction of WEA is carried out as if the Listing Rules of the ASX applied to the reorganisation of WEA),

and is approved by Optionholders holding a majority of the outstanding Special Options on issue provided that if such Optionholders fail to approve the manner of adjustment determined by the Manager, the Manager must, pursuant to paragraph 19, refer the matter to an Expert who will make a determination of any adjustment. The Expert must be directed to take into account paragraphs 15.1(f), (g) and 19.3 in making a determination.

### **15.2 Merger**

- (a) If WAT is merged or consolidated with or into a new entity or WAT transfers all or substantially all of its assets to another entity then, on a subsequent exercise of the Special Options, the Optionholder is entitled to receive securities in the new transferee entity equal to those which the Optionholder would have received had it exercised such Special Options and held Units immediately prior to such transaction.
- (b) If WEA is merged or consolidated with or into a new entity or if WEA transfers all or substantially all of its assets to another entity and the Optionholder receives stock in such entity in consideration of its Continuing Securities then, on a subsequent exercise of the Special

Options, the Optionholder is entitled to use such new securities received in such transaction (in lieu of the Continuing Securities) as the consideration for the issuance of ordinary Units based on a revised Conversion Number which is fair and equitable to the Members and the Optionholder.

### 15.3 Winding up

- (a) The Manager agrees for the benefit of the Optionholders that if, while any Special Options are on issue, it:
  - (i) announces an intention to wind up WAT; or
  - (ii) receives a requisition from Members, that meets the requirements of the *Corporations Law*, to convene a meeting of Members for the purpose of passing a resolution to direct the winding up of WAT,

then it will immediately give written notice to the Optionholders of the announcement or requisition. In the case of an announcement or if Members subsequently pass a resolution in accordance with the *Corporations Law* to terminate WAT then, before WAT is terminated, the Optionholders may exercise any or all of their Special Options in accordance with the provisions of these Special Option Terms.

- (b) The Manager agrees that until the expiration of the Special Option Period:
  - (i) prior to any Reconstruction of WAT it will provide not less than 30 days prior written notice of such Reconstruction to the Optionholder, and the Optionholder has the right at any time following delivery of such notice to exercise its Special Options; and
  - (ii) in the event WEA is merged or consolidated with or into a new entity or transfers all or substantially all of its assets to another entity, the Optionholder has the right at any time following such event to exercise its Special Options in accordance with the provisions of these Special Option Terms.

---

## 16 Representations, Warranties and Covenants

### 16.1 Representations and warranties

The Manager represents and warrants for the benefit of the Optionholder that as at the date of the Special Option Deed, the Issue Date, the date of transfer of the Special Options by WEA to WAIPL and the Exercise Date:

- (a) all Special Options have been duly authorised, validly issued, and the Optionholder is entitled to the rights in favour of the Optionholder under the Special Option Terms;
- (b) there are no pre-emptive rights or similar rights to purchase any Units issuable on exercise of the Special Options on the part of any holders of any class of securities of WAT; and

- (c) the Special Option Deed has been duly authorised, executed and delivered by the Manager and is a valid and binding obligation of the Manager and enforceable in accordance with its terms.

## **16.2 Covenants**

The Manager covenants that:

- (a) it will use its best endeavours to ensure that the ordinary Units (including the Units issued on the exercise of the Special Options) are officially quoted on the ASX as soon as possible after they are issued and that such official quotation is maintained;
- (b) at all times while the Special Options are outstanding, WAT will have sufficient authorised and unissued Units available for issue on exercise of the Special Options and all other options outstanding with respect to Units; and
- (c) subject to compliance by the Optionholder with the Special Option Terms, the Units issuable on exercise of the Special Options will be duly authorised, validly issued and fully paid.

## **16.3 Benefit**

To the extent that any covenant contained in the Special Option Deed is made for the benefit of the Optionholder, such covenant will be enforceable against the Manager by any person registered as a Optionholder.

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# **17 Registration and No Quotation of Special Options**

## **17.1 Registers**

The Manager will maintain registers of Optionholders. An Optionholder may:

- (a) inspect such register at any time during Business Hours; and
- (b) obtain copies of such register.

## **17.2 Notices**

The Manager must send to an Optionholder copies of all notices (including, without limitation, notices of Members' meetings), accounts and other statements sent to Members.

## **17.3 Joint Optionholders**

For the purposes of paragraph 17.2, notices, accounts and other statements sent to joint Optionholders will be deemed to be sent to all those Optionholders if sent to the Optionholder named first on the register.

## **17.4 Lost certificate**

If an Optionholder:

- (a) has lost a certificate in respect of any Special Options; and

- (b) provides the Manager with a statutory declaration of loss in respect of such certificate,

the Manager must cancel the lost certificate and issue a replacement certificate to the Optionholder.

### **17.5 Not quoted**

The Optionholder acknowledges that the Special Options will not be quoted on any stock exchange.

---

## **18 Renegotiation**

If prior to the earliest date on which the Special Options may be exercised the laws of Australia are amended, varied or replaced, or the Commonwealth Government introduces a bill into Parliament, which may result in WAT failing to qualify as a 'collective investment vehicle', then the Manager and the Optionholders will enter into good faith negotiations to amend the terms of the Special Options, including if necessary the Special Option Period, in order to avoid such failure.

---

## **19 Disputes**

### **19.1 Adjustments**

If a dispute arises in relation to an adjustment to:

- (a) the number of Special Options held by an Optionholder; or
- (b) the Conversion Number; or
- (c) some or all such factors,

or any other adjustment to be made pursuant to paragraph 15.1 or paragraph 15.2, either the Manager or the Optionholder is entitled to refer the dispute (but no other disputes) to an Expert.

### **19.2 Resolution by Expert**

The Expert must be directed by the party referring the dispute:

- (a) to resolve the dispute in a timely manner as an expert and not as an arbitrator; and
- (b) to determine the party or parties responsible for paying the costs of the Expert having regard to the Expert's findings concerning resolution of the dispute.

### **19.3 Factors to be considered**

The Expert must take into account (i) any adjustment or resolution of a dispute with respect to the same factual circumstances and (ii) any prior or contemporaneous adjustments or resolutions of disputes, in each case under Section 6 of the Series D Certificate of Designation such that the resolution of the dispute or disputes is fair and equitable to the Members and Optionholders.



#### **19.4 Determination binding**

The determination of the Expert will be final and binding on the Manager and the Optionholders.

---

## **20 Notices**

### **20.1 Delivery**

A party giving notice or notifying under these Special Option Terms must do so in writing:

- (a) directed to the recipient's address specified in this paragraph 20, as varied by any notice or, in the case of an Optionholder, to the address specified in the register kept in accordance with paragraph 17; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

The Manager's address and facsimile number are:

Westfield America Management Limited  
Level 24, Westfield Towers  
100 William Street  
SYDNEY NSW 2011  
Facsimile Number: (61 2) 9358 7077  
Attention: Company Secretary

WEA's address and facsimile number are:

Westfield America, Inc.  
11601 Wilshire Boulevard, Suite 1200  
Los Angeles California USA  
Facsimile Number: (310) 478 3987  
Attention: Company Secretary

WA IPL's address and facsimile number are:

Westfield American Investments Pty. Limited  
Level 24, Westfield Towers  
100 William Street  
SYDNEY NSW 2011  
Facsimile Number : (61 2) 9358 7033  
Attention : Company Secretary

### **20.2 Time**

A notice given in accordance with paragraph 20.1 is taken to be received:

- (a) if hand-delivered, on delivery;
- (b) if sent by prepaid post, 5 days after the date of posting;
- (c) if sent by courier, 2 days after being sent; or

- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

### **20.3 Copies**

The Manager will promptly deliver to an Optionholder copies of any notices received by it under the Special Option Terms, including any notice changing the foregoing addresses.

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## **21 Interpretation**

In these Special Option Terms, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of these Special Option Terms;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to these Special Option Terms and a reference to the Special Option Terms includes any schedules, attachments and annexures;
- (e) a reference to a document or agreement, including the Special Option Deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (g) a reference to "US\$" is a reference to United States of America currency;
- (h) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (i) a reference to a party includes its executors, administrators, successors (including persons taking by novation) and permitted assigns;
- (j) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (k) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth) or the equivalent State legislation, as applicable.

# Attachment A (to Schedule) Notice of Exercise of Series G Special Options

**TO:** WESTFIELD AMERICA MANAGEMENT LIMITED  
Manager of Westfield America Trust

[ ]

I/We [ ] of [ ] give notice that I/we wish to exercise [ ] Series G1 Special Options registered in my/our name on [ ] ("Exercise Date"). The number of Units, which are to be issued on exercise of the Special Options referred to in this Notice of Exercise, is [ ].

Defined terms in the Special Option Terms have the same meaning in his Notice of Exercise.

We have received a copy of the Series G1 Special Option Terms, a copy of which is annexed to the Westfield America Trust Deed.

I/We confirm that:

- (a) [ ] [description of actual security – Preference Shares or Converted Common Stock] being Continuing Securities in WEA registered in my/our name will on the Exercise Date be free of all mortgages, charges, liens and other encumbrances or prior claims;
- (b) the Units in Westfield America Trust ("WAT") to be issued to me/us on exercise of the Special Options to which this Notice of Exercise relates, have a value of not less than the amount required by the *Corporations Law* for the issue of each such Unit to constitute an issue for which disclosure to investors is not required under section 708(8)(a) of the *Corporations Law* (or any successor provision);
- (c) this Notice of Exercise is irrevocable (subject to paragraph 7.2 of Special Option Terms);
- (d) I/we have read the restrictions on exercise of Special Options and on transferability of Units contained in the Special Option Deed. I/we understand that the Units have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and may not be offered or sold except as permitted by the Special Option Terms and that such restrictions may be required to be noted in the Unit register as set out in the Special Option Deed. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should reoffer, resell, pledge or transfer any Units, we will do so only in accordance with the Special Option Terms; and
- (e) **[APPLICABLE PARAGRAPH TO BE INSERTED]**

**NOTE:** the following paragraph to be included in a Notice of Exercise by a non U.S. person requesting that Units be delivered to an address outside of the United States:

[We are not a U.S. person, we are not acquiring any units for the account of any U.S. person, and we have not offered, sold or delivered, and will not offer, sell or deliver, directly or indirectly, or as principal or agent, any Units acquired by us in the United States or to any U.S. person. “U.S. person” has the meaning set forth in Regulation S under the Securities Act, and includes, among other persons, any national, citizen or resident of the United States or the estate or trust of any such person, any corporation, partnership or other entity created or organised in or under the laws of the United States, or any political subdivision thereof, any trust or estate (other than a foreign trust or estate) and any United States branch of a non U.S. person. “United States” means the United States of America, its territories and possessions.]

**NOTE:** the following paragraph to be included in a notice of exercise by an “accredited investor” (a person meeting the requirements of Rule 501(a) of Regulation D under the Securities Act):

[We are delivering herewith a purchaser’s letter for accredited investors in the form of Attachment B-1 to the Special Option Terms and the other materials referred to therein, and certify that each of us is an “accredited investor” as defined in that letter.]

**NOTE:** the following paragraph to be included in a notice of exercise by a non U.S. person requesting that units be delivered to an address in the United States or who does not meet the standards set forth in [**Note 2**].

[We are not a U.S. person]. [We are delivering herewith a written opinion of nationally recognised United States counsel to the effect that the Special Options and the Units delivered on exercise have been registered under the Securities Act or are exempt from registration thereunder.]



5. We understand that, on any proposed reoffer, resale, pledge or transfer of any Units, we will be required to furnish to the Manager and the registrar and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms pursuant to which the Units were issued. We further understand that the foregoing restrictions will be noted in the Unit register.

[Insert applicable paragraph.]

6. [We are an institutional “accredited investor” (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Units purchased by us for our own account or for one or more accounts (each of which is an “accredited investor”) as to each of which we exercise sole investment discretion and for each of which we are acquiring Units with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Units to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Purchaser]

By: \_\_\_\_\_

Name:

Title:

Dated:

Signed by [ ] through its )  
duly authorised representative )  
[ ] in the presence of: )

or

**THE COMMON SEAL** of # is affixed in )  
accordance with its **constitution** in the )  
presence of )

Secretary

Director

Name of secretary (print)

Name of director (print)





and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms governing the Special Options. We further understand that the foregoing restrictions will be noted in the legend on the Special Options.

[Insert applicable paragraph.]

6. [We are an institutional “accredited investor” (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Special Options purchased by us for our own account or for one or more accounts (each of which is an “accredited investor”) as to each of which we exercise sole investment discretion and for each of which we are acquiring Special Options with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Special Options to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Purchaser]

By: \_\_\_\_\_

Name:

Title:

Dated:

Signed by [            ] through its    )  
duly authorised representative    )  
[            ] in the presence of:    )

or

**THE COMMON SEAL** of # is affixed in )  
accordance with its **constitution** in the )  
presence of )

Secretary

Director

Name of secretary (print)

Name of director (print)

# Attachment B-3 (to Schedule)

## TRANSFER FORM

For Non-Market Transactions

Affix stamp or similar duty here

Marking stamp

<b>FULL NAME OF REGISTERED SCHEME</b>	Westfield America Trust ARSN 092 058 449 ('WAT')		
<b>DESCRIPTION OF OPTIONS</b>	Class	Amount paid	Amount unpaid
	Series G1 Special Options		
			Register NSW
<b>QUANTITY</b>	Words		Figures
<b>FULL NAME OF TRANSFEROR(S)</b>			
<b>CONSIDERATION</b>			Date of Purchase
<b>FULL NAME OF TRANSFEREE(S)</b>			
<b>FULL ADDRESS OF TRANSFEREE(S)</b>			
<b>BENEFICIAL INTEREST</b>	Upon registration of this transfer, the transferee will/will not hold the above options beneficially		

I, the registered holder and transferor (>Transferor=) named above, for the consideration specified above transfer to the transferee named above (>Transferee=) the special options specified above (>Special Options=) registered in my name in the books of WAT subject to the conditions on which I hold them at the time of signing this form. I, the Transferee agree to accept the transfer of the Special Options and the registration of the Special Options in my name in the books of WAT subject to the same conditions and agree to be bound by the constitution of WAT as amended from time to time and the terms of the Special Options.

<b>SIGNATURE OF TRANSFEROR(S)</b>		<b>FOR REGISTRAR USE</b>
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	
<b>SIGNATURE OF TRANSFEREE(S)</b>		
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	



# Consolidated Trust Deed constituting Westfield America Trust

## Schedule 7 - Terms of Issue of Series H Special Options

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### 1 Definitions

#### 1.1 Definitions

These words and phrases have the following meanings in these Special Option Terms unless the contrary intention appears:

**ASX** means Australian Stock Exchange Limited (ACN 008 624 691).

**Business Day** has the same meaning as in the Listing Rules of the ASX.

**Business Hours** means the hours between 9.00am and 5.00pm (Sydney time) on a Business Day.

**Continuing Security** means shares of common stock in WEA.

**Conversion Number** in relation to a Special Option is the number equal to 3.049, subject to paragraphs 14.1 and 14.2.

**Co-Operation Agreement** means the co-operation agreement dated 15 February 2001 between the Manager and Westfield Holdings Limited.

**Exercise Date** means the date specified in paragraph 7.2(b)

**Expert** means an internationally recognised accounting firm (provided that such firm is one of Arthur Andersen LLP, PricewaterhouseCoopers LLP, Ernst & Young LLP, Deloitte & Touche LLP and KPMG LLP or their respective affiliates or successors and provided further that the firm appointed is not the principal outside auditor for, and has not during the previous 24 months, received fees in excess of US\$5 million from, the Manager, WCI or any Optionholder holding a majority of the outstanding Special Options) agreed to by the Manager and Optionholders holding a majority of the outstanding Special Options on issue or in the absence of agreement between them and at the request of any of them an internationally recognised accounting firm appointed by the President or the head for the time being of the Australian Institute of Chartered Accountants, provided, however, that if at the time an Expert is being selected for the purposes of paragraph 14.1 or 18, then the Expert being so selected shall be the same Expert that is then so engaged or being contemporaneously engaged.

**Financial Year** means a 12 month period from 1 January to 31 December.

**Issue Date** means the date on which the Special Options are issued to WCI or WA IPL (as the case may be) pursuant to clause 2.1 of the Special Option Deed.

**Manager** means Westfield America Management Limited as responsible entity and trustee of WAT.

**Member** means a person registered as the holder of a Unit (including persons jointly registered) as provided in the Trust Deed.

**Notice of Exercise** means a notice in or substantially in the form set out in Attachment A.

**Notice of Intention to Exercise** means a notice given by the Optionholder under paragraph 7.1 of the Special Option Terms.

**Option Certificate** means a Special Option Certificate in or substantially in the form set out in Attachment C.

**Optionholder** means any person who is at any time registered as the holder of a Special Option (including persons jointly registered) in a register kept by the Manager.

**party** means each of the Manager and any Optionholder.

**Quarter** means a three month period in a Financial Year commencing on one of the following dates:

- (a) 1 January (“**First Quarter**”);
- (b) 1 April (“**Second Quarter**”);
- (c) 1 July (“**Third Quarter**”); and
- (d) 1 October (“**Fourth Quarter**”).

**Reconstruction** means a capital reconstruction (including, without limitation, any consolidation, stock split or stock dividend, subdivision or reduction of capital), merger or any return of capital or other capital distribution but does not include the following:

- (a) periodic distributions (whether of income or capital) made pro rata among shareholders or unitholders of a class and whether interim or at the end of an Accrual Period;
- (b) issues of stock, shares or units which are not in redemption of any stock, shares or units;
- (c) any issues of options by WEA or WAT; or
- (d) the redemption, conversion or exercise of any securities issued by WAT or WEA in accordance with their terms.

**Sell** means a transfer, sale or assignment of the Special Options (or any part of the Special Options) or any other dealing or parting with possession of any right or interest (other than for the purposes of obtaining financing).

**Special Option** means an option to subscribe for Units on the Special Option Terms.

**Special Option Deed** means the Series H Special Option Deed made between the Manager, WCI and WA IPL including all schedules, attachments and annexures.

**Special Option Period** means the period commencing on the date being the earlier of the following:

- (a) 30 September 2003; and
- (b) the date upon which the Manager gives a notice in accordance with paragraphs 14.3 (a) or (b) of the Special Option Terms,

and ending the date being 10 days prior to the termination date of WAT under clause 4.3 of the Trust Deed.

**Special Option Terms** means the terms as set out herein.

**Trust Deed** means the Trust Deed dated 28 March 1996 originally between Perpetual Trustee Company Limited and Westfield America Management Limited, as amended, being the constitution of WAT.

**Unit** means an undivided share in the beneficial interest in WAT as provided in the Trust Deed.

**WA IPL** means Westfield American Investments Pty. Limited.

**WAT** means the managed investment scheme constituted by the Trust Deed and known as the Westfield America Trust (ARSN 092 058 449).

**WCI** means Westfield Corporation, Inc.

**WEA** means Westfield America, Inc.

## 1.2 Interpretation

Words or phrases beginning in capitals and not otherwise defined in these Special Option Terms have the same meaning as in the Trust Deed.

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## 2 Entitlement

Each Special Option entitles the Optionholder to subscribe for Units on the terms set out in these Special Option Terms.

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## 3 Exercise Period

A Special Option may be exercised at any time during the Special Option Period, in accordance with these Special Option Terms.

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## 4 Prerequisite To Exercise

### 4.1 Conditions

A Special Option may not be exercised (and the Manager will be under no obligation to issue Units in respect of any Special Option) unless:

- (a) the Special Option is exercised as part of a parcel of Special Options which, on exercise, entitles the Optionholder to a parcel of Units having a value not less than the amount required by the *Corporations Law*

(currently A\$500,000) for the issue of each such Unit to constitute an issue that does not need disclosure to investors pursuant to section 708(8)(a) of the *Corporations Law* (or any successor provision); and

- (b) the Optionholder complies in all material respects with all the other Special Option Terms; and
- (c) the issue of Units to the Optionholder would not breach the Australian *Corporations Law* or any applicable law.

#### **4.2 Notice of Intention to Exercise**

If the Optionholder which wishes to exercise a Special Option, gives a Notice of Intention to Exercise and a Notice of Exercise and otherwise complies in all material respects with the requirements for exercise of a Special Option set out in these Special Option Terms, the Manager must comply with the provisions of the Trust Deed and of the Special Option Terms in respect of the exercise of the Special Option.

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## **5 Exchange Right**

### **5.1 Special Options**

One Special Option is exercisable for each Continuing Security transferred to the Manager.

### **5.2 Fractions**

On exercise of a Special Option, the Optionholder will receive in respect of a Continuing Security, the Conversion Number of Units provided that, if this would have the effect that the Optionholder would receive a fraction of one Unit, the Optionholder will receive one additional Unit. The Conversion Number of Units must be issued within one Business Day after receipt of a Notice of Exercise given in accordance with paragraph 7.

---

## **6 Ranking of Units on Exercise of Special Options**

### **6.1 Ranking of Units**

Subject to paragraph 6.2, a Unit allotted on exercise of a Special Option will rank equally in all respects with the existing Units on issue at the date of allotment.

### **6.2 Distributions**

A Unit allotted on exercise of a Special Option will rank for distribution of the Distributable Income from the date following the last day of the most recently completed dividend period for the Continuing Security transferred so that where Units are allotted during an Accrual Period, such Units will participate in the Distributable Income in respect of that Accrual Period in the proportion that the part of the Accrual Period (calculated in days) for which such Units rank for distribution of Distributable Income bears to the total number of days in such Accrual Period.



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## 7 Manner of Exercise

### 7.1 Notice of intention

If an Optionholder wishes to exercise a Special Option, then the Optionholder must give a non-binding notice of intention to exercise the Special Option to the Manager during the Special Option Period at least 10 Business Days before giving a Notice of Exercise under paragraph 7.2.

### 7.2 Notice of Exercise

If an Optionholder wishes to exercise a Special Option and has complied with paragraph 7.1, it must give an irrevocable Notice of Exercise to the Manager during the Special Option Period specifying:

- (a) the number of Special Options which the Optionholder wishes to exercise in compliance with paragraph 4 and the type of Continuing Security to be delivered;
- (b) the specific date on which those Special Options are to be exercised (“**Exercise Date**”) in accordance with the Special Option Terms;
- (c) the number of Units which are to be issued to the Optionholder on the exercise of the Special Options detailed in the Notice of Exercise (“**Relevant Number**”) (being equal to the number of Special Options to which the Notice of Exercise relates multiplied by the Conversion Number, subject to rounding up by one unit in the case of a fractional unit); and
- (d) confirmation of compliance with the U.S. securities laws restrictions contained in paragraph 12.

### 7.3 Delivery and issue

On the Exercise Date:

- (a) the Optionholder must deliver to the Manager the Continuing Securities (together with any necessary instruments of transfer properly executed) to which the Notice of Exercise relates; and
- (b) in consideration of the transfer pursuant to paragraph 7.3(a), the Manager must issue to the Optionholder the Relevant Number of Units.

### 7.4 Transfers

The Optionholder must ensure that any Continuing Security transferred pursuant to paragraph 7.3(a) (or specified in the Notice of Exercise) is (immediately prior to transfer) owned by the Optionholder (free of all mortgages, charges, liens and other encumbrances or prior claims), and has attached all rights (including rights to receive dividends) attaching or accruing to the Continuing Security on the Exercise Date.

---

## **8 Transfer of Special Options**

### **8.1 Process**

An Optionholder shall not Sell any Special Options owned by it, unless it first notifies the Manager in writing of its desire to so Sell such Special Options or Continuing Securities and allows the Manager five Business Days from the date of such notice to make an offer for such securities. The Optionholder may reject, in its absolute discretion, any offer to purchase such securities made by the Manager and may Sell such securities to any buyer after the five Business Day period has elapsed; provided that any offer by the Manager shall include both the Special Options and the related Continuing Securities to the extent that the Optionholder notified the Manager that it will sell such securities as a package and provided further that for a period of 90 days after such five Business Day period has elapsed, the Optionholder shall not Sell such securities at a price (before deduction of underwriting commissions, placement fees and other selling expenses) less than 90% of the price offered by the Manager.

### **8.2 Transferee**

Any person to whom a Special Option is transferred must be a person to whom disclosure to investors under Chapter 6D of the *Corporations Law* is not required. A transferee must provide to the Manager, if requested, evidence that it is such a person.

### **8.3 Transfer of Special Options**

Subject to this paragraph 8 and the securities law restrictions set out in paragraph 12, a Special Option is fully transferable as follows:

- (a) by delivery to the Manager of a duly executed and, subject to paragraph 30, stamped transfer in the form of Attachment B-3 by the Optionholder or the transferee, together with the Option Certificates to which the transfer relates; and
- (b) the Manager registering the transfer of the Special Options, subject to the terms and conditions of the Trust Deed, which the Manager agrees to do promptly after receipt of the items referred to in paragraph 8.3(a) .

### **8.4 Transferee is bound**

On registration of a transfer, the transferee is bound by the Trust Deed and the Special Options Terms and assumes the rights and obligations of an Optionholder in respect of the Special Options transferred.

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## **9 New Issues by WAT**

A Special Option does not confer any right on the Optionholder to participate in any new issues of Units, or to be entitled to any distributions by WAT.

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## **10 Right to Vote**

An Optionholder is entitled to vote at meetings of Members.

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## 11 No Other Rights

In accordance with, and subject to, the provisions of the Trust Deed and the *Corporations Law*, no Special Option confers on the Optionholder:

- (a) any right to require the Manager to redeem or repurchase the Special Option; or
- (b) except as expressly provided in the Trust Deed, any other entitlement under the Trust Deed consequent on holding the Special Option.

---

## 12 Securities Law Restrictions

### 12.1 Options not registered

This paragraph 12 operates in addition to restrictions on transfers of Special Options under paragraph 8. The Special Options have not been registered under the U.S. Securities Act of 1933, as amended (“U.S. Securities Act”), and may not be offered, sold or exercised except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act;
- (b) within the United States to or, in the case of exercise, by Institutional “Accredited Investors” within the meaning of Rule 501(a)(1), (2), (3) and (7) under the U.S. Securities Act in a transaction exempt from registration requirements of the U.S. Securities Act on delivery of a purchaser’s letter in the form of Attachment B-1 or B-2, as applicable;
- (c) outside the United States to or, in the case of exercise, by non U.S. persons in a transaction meeting the requirements of Rules 901, 903 or 904 of Regulation S under the U.S. Securities Act;
- (d) to WEA, its affiliates, the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The Special Options must bear a legend to the foregoing effect:

Special Options issued to non U.S. persons pursuant to Regulation S under the U.S. Securities Act must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT IS NOT BEING EXERCISED ON BEHALF OF A U.S. PERSON OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER AND (B) THE SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL OPTION TERMS.”

All other Special Options must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY (1) A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT HAS NOT BEEN EXERCISED ON BEHALF OF A U.S. PERSON, OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR ON DELIVERY OF A LETTER SUBSTANTIALLY IN THE FORM ANNEXED TO THE SPECIAL OPTION TERMS AND (B) THIS SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL OPTION TERMS.”

## 12.2 Units not registered

Units issuable on exercise of the Special Options will not be registered under the U.S. Securities Act and may not be offered or sold by an Optionholder after exercise of an Option except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act or pursuant to an exemption from the registration requirements thereunder;
- (b) outside the United States to non U.S. persons (which term includes U.S. dealers or other professional fiduciaries acting on a discretionary basis for non U.S. beneficial owners (other than an estate or trust)) in reliance on Rules 903 and 904 of Regulation S under the U.S. Securities Act;
- (c) in “regular way transactions” on the ASX, provided that neither the seller, nor any person acting on its behalf, knows that the transaction has been pre-arranged with a buyer that is a U.S. person or is located in the U.S.;
- (d) to the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The foregoing restrictions must be noted in the Unit register maintained by the Manager. The Manager agrees that it will cause the notation to be removed from the Unit register at such time as the Units may be transferred without restriction under applicable law.

## 12.3 Non U. S. persons

A Special Option may only be exercised by a non U.S. person on delivery of either:

- (a) a written certification that the Optionholder is not a U.S. person and the Special Option is not being exercised on behalf of a U.S. person; or
- (b) a written opinion of counsel to the effect that the Special Option and the Units delivered on exercise thereof have been registered under the U.S. Securities Act or are exempt from registration thereunder.

## **12.4 U. S. persons**

A Special Option may only be exercised by a U.S. person on delivery of a purchaser's letter for "Accredited Investors" in the form of Attachment B-1, certifying that the Optionholder is an "Accredited Investor" as defined in that letter, together with the other materials referred to therein.

## **12.5 Transfers**

A Special Option may not be transferred to any person if the effect of such transfer would be that the ownership limitations contained in WEA's Restated Articles of Incorporation would be violated.

## **12.6 Withholding**

Any withholding obligation of the Manager on receipt of a Continuing Security may be satisfied by delivery of an amount in United States dollars by the Optionholder.

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## **13 QEF Election**

If an Optionholder intends to make the election provided for in Section 1295(b) of the Internal Revenue Code of 1986, as amended ("Code"), then such Optionholder must so notify the Manager and the Manager must, at the Manager's expense, take such actions as may be required by the Code and the authorities thereunder to have WAT be treated as a qualified electing fund (within the meaning of Section 1295 of the Code) with respect to a Unitholder or Optionholder that makes the election provided for under Section 1295(b) of the Code.

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## **14 Reconstructions**

### **14.1 Adjustment of Options**

Except as provided in paragraph 14.2, if:

- (a) WEA carries out a Reconstruction; or
- (b) WAT carries out a Reconstruction,

then, in each such event:

- (c) the number of Special Options held by an Optionholder; or
- (d) the Conversion Number; or
- (e) some of, or all, such factors,

will be adjusted, as appropriate, in a manner determined by the Manager which:

- (f) is fair and equitable to the Members and Optionholders; and
- (g) to the extent necessary, complies with the Listing Rules of the ASX applying to a reorganisation (as that term is defined in the Listing Rules of the ASX) of capital at the time of the reorganisation (and for the avoidance of doubt the parties agree that any reconstruction of WEA is

carried out as if the Listing Rules of the ASX applied to the reorganisation of WEA),

and is approved by Optionholders holding a majority of the outstanding Special Options on issue provided that if such Optionholders fail to approve the manner of adjustment determined by the Manager, the Manager must, pursuant to paragraph 18, refer the matter to an Expert who will make a determination of any adjustment. The Expert must be directed to take into account paragraphs 14.1(f) and (g) in making a determination.

## 14.2 Merger

- (a) If WAT is merged or consolidated with or into a new entity or WAT transfers all or substantially all of its assets to another entity then, on a subsequent exercise of the Special Options, the Optionholder is entitled to receive securities in the new transferee entity equal to those which the Optionholder would have received had it exercised such Special Options and held Units immediately prior to such transaction.
- (b) If WEA is merged or consolidated with or into a new entity or if WEA transfers all or substantially all of its assets to another entity and the Optionholder receives stock in such entity in consideration of its Continuing Securities then, on a subsequent exercise of the Special Options, the Optionholder is entitled to use such new securities received in such transaction (in lieu of the Continuing Securities) as the consideration for the issuance of ordinary Units based on a revised Conversion Number which is fair and equitable to the Members and the Optionholder.

## 14.3 Winding up

- (a) The Manager agrees for the benefit of the Optionholders that if, while any Special Options are on issue, it:
  - (i) announces an intention to wind up WAT; or
  - (ii) receives a requisition from Members, that meets the requirements of the *Corporations Law*, to convene a meeting of Members for the purpose of passing a resolution to direct the winding up of WAT,

then it will immediately give written notice to the Optionholders of the announcement or requisition. In the case of an announcement or if Members subsequently pass a resolution in accordance with the *Corporations Law* to terminate WAT then, before WAT is terminated, the Optionholders may exercise any or all of their Special Options in accordance with the provisions of these Special Option Terms.

- (b) The Manager agrees that until the expiration of the Special Option Period:
  - (i) prior to any Reconstruction of WAT it will provide not less than 30 days prior written notice of such Reconstruction to the Optionholder, and the Optionholder has the right at any time following delivery of such notice to exercise its Special Options; and

- (ii) in the event WEA is merged or consolidated into a new entity or transfers all or substantially all of its assets to another entity, the Optionholder has the right at any time following such event to exercise its Special Options in accordance with the provisions of these Special Option Terms.

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## **15 Representations, Warranties and Covenants**

### **15.1 Representations and warranties**

The Manager represents and warrants for the benefit of the Optionholders that as at the date of the Special Option Deed, the Issue Date and the Exercise Date:

- (a) all Special Options have been duly authorised, validly issued, and the Optionholders are entitled to the rights in favour of the Optionholder under the Special Option Terms;
- (b) there are no pre-emptive rights or similar rights to purchase any Units issuable on exercise of the Special Options on the part of any holders of any class of securities of WAT; and
- (c) the Special Option Deed has been duly authorised, executed and delivered by the Manager and is a valid and binding obligation of the Manager and enforceable in accordance with its terms.

### **15.2 Covenants**

The Manager covenants that:

- (a) it will use its best endeavours to ensure that the ordinary Units (including the Units issued on the exercise of the Special Options) are officially quoted on the ASX as soon as possible after they are issued and that such official quotation is maintained;
- (b) at all times while Special Options are outstanding, WAT will have sufficient authorised and unissued Units available for issue on exercise of all Special Options and all other options outstanding with respect to Units; and
- (c) subject to compliance by the Optionholder with the Special Option Terms, the Units issuable on exercise of the Special Options will be duly authorised, validly issued and fully paid.

### **15.3 Benefit**

To the extent that any covenant contained in the Special Option Deed is made for the benefit of the Optionholder, such covenant will be enforceable against the Manager by any person registered as a Optionholder.

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## **16 Registration and No Quotation of Special Options**

### **16.1 Registers**

The Manager will maintain registers of Optionholders. An Optionholder may:

- (a) inspect such register at any time during Business Hours; and
- (b) obtain copies of such register.

### **16.2 Notices**

The Manager must send to an Optionholder copies of all notices (including, without limitation, notices of Members' meetings), accounts and other statements sent to Members.

### **16.3 Joint Optionholders**

For the purposes of paragraph 16.2, notices, accounts and other statements sent to joint Optionholders will be deemed to be sent to all those Optionholders if sent to the Optionholder named first on the register.

### **16.4 Lost certificate**

If an Optionholder:

- (a) has lost a certificate in respect of any Special Options; and
- (b) provides the Manager with a statutory declaration of loss in respect of such certificate,

the Manager must cancel the lost certificate and issue a replacement certificate to the Optionholder.

### **16.5 Not quoted**

The Optionholder acknowledges that the Special Options will not be quoted on any stock exchange.

---

## **17 Renegotiation**

If prior to the earliest date on which the Special Options may be exercised the laws of Australia are amended, varied or replaced, or the Commonwealth Government introduces a bill into Parliament, which may result in WAT failing to qualify as a "collective investment vehicle", then the Manager and the Optionholders will enter into good faith negotiations to amend the terms of the Special Options, including if necessary the Special Option Period, in order to avoid such failure.



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## **18 Disputes**

### **18.1 Adjustments**

If a dispute arises in relation to an adjustment to:

- (a) the number of Special Options held by an Optionholder; or
- (b) the Conversion Number; or
- (c) some or all such factors,

or any other adjustment to be made pursuant to paragraph 14.1 or paragraph 14.2, either the Manager or the Optionholder is entitled to refer the dispute (but no other disputes) to an Expert.

### **18.2 Resolution by Expert**

The Expert must be directed by the party referring the dispute:

- (a) to resolve the dispute in a timely manner as an expert and not as an arbitrator; and
- (b) to determine the party or parties responsible for paying the costs of the Expert having regard to the Expert's findings concerning resolution of the dispute.

### **18.3 Determination binding**

The determination of the Expert will be final and binding on the Manager and the Optionholders.

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## **19 Notices**

### **19.1 Delivery**

A party giving notice or notifying under these Special Option Terms must do so in writing:

- (a) directed to the recipient's address specified in this paragraph 19, as varied by any notice or, in the case of an Optionholder, to the address specified in the register kept in accordance with paragraph 16; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

The Manager's address and facsimile number are:

Westfield America Management Limited  
Level 24, Westfield Towers  
100 William Street  
SYDNEY NSW 2011  
Facsimile Number: (61 2) 9358 7077  
Attention: Company Secretary

WCI's address and facsimile number are:

Westfield Corporation, Inc.  
11601 Wilshire Boulevard, Suite 1200  
Los Angeles California USA  
Facsimile Number: (310) 478 3987  
Attention: Company Secretary

WA IPL's address and facsimile number are:

Westfield American Investments Pty. Limited  
Level 24, Westfield Towers  
100 William Street  
SYDNEY NSW 2011  
Facsimile Number: (61 2) 9358 7077  
Attention: Company Secretary

## **19.2 Time**

A notice given in accordance with paragraph 19.1 is taken to be received:

- (a) if hand-delivered, on delivery;
- (b) if sent by prepaid post, 5 days after the date of posting;
- (c) if sent by courier, 2 days after being sent; or
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

## **19.3 Copies**

The Manager will promptly deliver to an Optionholder copies of any notices received by it under the Special Option Terms, including any notice changing the foregoing addresses.

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## **20 Interpretation**

In these Special Option Terms, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of these Special Option Terms;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to these Special Option Terms and a reference to the Special Option Terms includes any schedules, attachments and annexures;

- (e) a reference to a document or agreement, including the Special Option Deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (g) a reference to 'US\$' is a reference to United States of America currency;
- (h) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (i) a reference to a party includes its executors, administrators, successors (including persons taking by novation) and permitted assigns;
- (j) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (k) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth) or the equivalent State legislation, as applicable.

# Attachment A (to Schedule)

## Notice of Exercise of Series H Special Options

**TO:** WESTFIELD AMERICA MANAGEMENT LIMITED  
Manager of Westfield America Trust  
[ ]

I/We [ ] of [ ] give notice that I/we wish to exercise [ ] Series H Special Options registered in my/our name on [ ] (“**Exercise Date**”). The number of Units, which are to be issued on exercise of the Special Options referred to in this Notice of Exercise, is [ ].

Defined terms in the Special Option Terms have the same meaning in this Notice of Exercise.

We have received a copy of the Series H Special Option Terms, a copy of which is annexed to the Westfield America Trust Deed.

I/We confirm that:

- (a) [ ] [description of actual Continuing Securities] in WEA registered in my/our name will on the Exercise Date be free of all mortgages, charges, liens and other encumbrances or prior claims;
- (b) the Units in Westfield America Trust (“**WAT**”) to be issued to me/us on exercise of the Special Options to which this Notice of Exercise relates, have a value of not less than the amount required by the *Corporations Law* for the issue of each such Unit to constitute an issue for which disclosure to investors is not required under section 708(8)(a) of the *Corporations Law* (or any successor provision);
- (c) this Notice of Exercise is irrevocable (subject to paragraph 7.2 of Special Option Terms);
- (d) I/we have read the restrictions on exercise of Special Options and on transferability of Units contained in the Special Option Deed. I/we understand that the Units have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), and may not be offered or sold except as permitted by the Special Option Terms and that such restrictions may be required to be noted in the Unit register as set out in the Special Option Deed. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should reoffer, resell, pledge or transfer any Units, we will do so only in accordance with the Special Option Terms; and
- (e) **[APPLICABLE PARAGRAPH TO BE INSERTED]**

**NOTE:** the following paragraph to be included in a Notice of Exercise by a non U.S. person requesting that Units be delivered to an address outside of the United States:

[We are not a U.S. person, we are not acquiring any units for the account of any U.S. person, and we have not offered, sold or delivered, and will not offer, sell or deliver,

directly or indirectly, or as principal or agent, any Units acquired by us in the United States or to any U.S. person. 'U.S. person' has the meaning set forth in Regulation S under the Securities Act, and includes, among other persons, any national, citizen or resident of the United States or the estate or trust of any such person, any corporation, partnership or other entity created or organised in or under the laws of the United States, or any political subdivision thereof, any trust or estate (other than a foreign trust or estate) and any United States branch of a non U.S. person. 'United States' means the United States of America, its territories and possessions.]

**NOTE:** the following paragraph to be included in a notice of exercise by an 'accredited investor' (a person meeting the requirements of Rule 501(a) of Regulation D under the Securities Act):

[We are delivering herewith a purchaser's letter for accredited investors in the form of Attachment B-1 to the Special Option Terms and the other materials referred to therein, and certify that each of us is an 'accredited investor' as defined in that letter.]

**NOTE:** the following paragraph to be included in a notice of exercise by a non U.S. person requesting that units be delivered to an address in the United States or who does not meet the standards set forth in [Note 2].

[We are not a U.S. person]. [We are delivering herewith a written opinion of nationally recognised United States counsel to the effect that the Special Options and the Units delivered on exercise have been registered under the Securities Act or are exempt from registration thereunder.]



5. We understand that, on any proposed reoffer, resale, pledge or transfer of any Units, we will be required to furnish to the Manager and the registrar and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms pursuant to which the Units were issued. We further understand that the foregoing restrictions will be noted in the Unit register.

[Insert applicable paragraph.]

6. [We are an institutional 'accredited investor' (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Units purchased by us for our own account or for one or more accounts (each of which is an 'accredited investor') as to each of which we exercise sole investment discretion and for each of which we are acquiring Units with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Units to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Purchaser]

By: \_\_\_\_\_

Name:

Title:

Dated:

Signed by [ ] through its )  
duly authorised representative )  
[ ] in the presence of: )

or

**THE COMMON SEAL** of # is affixed in )  
accordance with its **constitution** in the )  
presence of )

Secretary

Director

Name of secretary (print)

Name of director (print)





and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms governing the Special Options. We further understand that the foregoing restrictions will be noted in the legend on the Special Options.

[Insert applicable paragraph.]

6. [We are an institutional 'accredited investor' (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Special Options purchased by us for our own account or for one or more accounts (each of which is an 'accredited investor') as to each of which we exercise sole investment discretion and for each of which we are acquiring Special Options with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Special Options to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Purchaser]

By: \_\_\_\_\_

Name:

Title:

Dated:

Signed by [ ] through its )  
duly authorised representative )  
[ ] in the presence of: )

or

**THE COMMON SEAL** of # is affixed in )  
accordance with its **constitution** in the )  
presence of )

Secretary

Director

Name of secretary (print)

Name of director (print)

# Attachment B-3 (to Schedule)

## TRANSFER FORM

For Non-Market Transactions

Affix stamp or similar duty here

Marking stamp

<b>FULL NAME OF REGISTERED SCHEME</b>	Westfield America Trust ARSN 092 058 449 ('WAT')		
<b>DESCRIPTION OF OPTIONS</b>	Class	Amount paid	Amount unpaid
	Series H Special Options		
		Register	NSW
<b>QUANTITY</b>	Words		Figures
<b>FULL NAME OF TRANSFEROR(S)</b>			
<b>CONSIDERATION</b>			Date of Purchase
<b>FULL NAME OF TRANSFEREE(S)</b>			
<b>FULL ADDRESS OF TRANSFEREE(S)</b>			
<b>BENEFICIAL INTEREST</b>	Upon registration of this transfer, the transferee will/will not hold the above options beneficially		

I, the registered holder and transferor (>Transferor=) named above, for the consideration specified above transfer to the transferee named above (>Transferee=) the special options specified above (>Special Options=) registered in my name in the books of WAT subject to the conditions on which I hold them at the time of signing this form. I, the Transferee agree to accept the transfer of the Special Options and the registration of the Special Options in my name in the books of WAT subject to the same conditions and agree to be bound by the constitution of WAT as amended from time to time and the terms of the Special Options.

<b>SIGNATURE OF TRANSFEROR(S)</b>		<b>FOR REGISTRAR USE</b>
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	
<b>SIGNATURE OF TRANSFEREE(S)</b>		
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	

# Attachment C (to Schedule) Series H Special Option Certificate

## CERTIFICATE NUMBER

### WESTFIELD AMERICA TRUST

Constituted by Trust Deed dated 28 March 1996, as amended

### SERIES H SPECIAL OPTION CERTIFICATE

NUMBER OF OPTIONS	CLASS	DISTINCTIVE NUMBERS
[ ]	Series H Special Options	FROM [ ] TO [ ]

These options are issued in accordance with the Trust Deed of the Westfield America Trust, the Series H Special Option Deed and the Special Option Terms attached.

This is to certify that [ ] of [ ] is the registered holder of the options in Westfield America Trust set out in the panel above.

**SIGNED FOR AND ON BEHALF** of Westfield America Management Limited, in its capacity as responsible entity and trustee of Westfield America Trust.

.....  
Director

.....  
Secretary

# Consolidated Trust Deed constituting Westfield America Trust

## Schedule 8 - Terms of Issue of Series I Special Options

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### 1 Definitions

#### 1.1 Definitions

These words and phrases have the following meanings in these Special Option Terms unless the contrary intention appears:

**ASX** means Australian Stock Exchange Limited (ACN 008 624 691).

**Business Day** has the same meaning as in the Listing Rules of the ASX.

**Business Hours** means the hours between 9.00am and 5.00pm (Sydney time) on a Business Day.

**Continuing Security** means shares of common stock in WEA.

**Conversion Number** in relation to a Special Option is the number equal to 3.1616, subject to paragraphs 15.1 and 15.2.

**Exercise Date** means the date specified in paragraph 7.2(b).

**Expert** means an internationally recognised accounting firm (provided that such firm is one of PricewaterhouseCoopers, Ernst & Young, Deloitte & Touche and KPMG or their respective affiliates or successors and provided further that the firm appointed is not the principal outside auditor for, and has not during the previous 24 months, received fees in excess of US\$5 million from, the Manager, WQPL or any Optionholder holding a majority of the outstanding Special Options) agreed to by the Manager and Optionholders holding a majority of the outstanding Special Options on issue or in the absence of agreement between them and at the request of any of them an internationally recognised accounting firm appointed by the President or the head for the time being of the Australian Institute of Chartered Accountants, provided, however, that if at the time an Expert is being selected for the purposes of paragraph 15.1 or 19, then the Expert being so selected shall be the same Expert that is then so engaged or being contemporaneously engaged.

**Financial Year** means a 12 month period from 1 January to 31 December.

**Issue Date** means the date on which the Special Options are issued to WQPL pursuant to clause 2.1 of the Special Option Deed.

**Manager** means Westfield America Management Limited as responsible entity and trustee of WAT.

**Member** means a person registered as the holder of a Unit (including persons jointly registered) as provided in the Trust Deed.

**Notice of Exercise** means a notice in or substantially in the form set out in Attachment A.

**Notice of Intention to Exercise** means a notice given by the Optionholder under paragraph 7.1 of the Special Option Terms.

**Option Certificate** means a Special Option Certificate in or substantially in the form set out in Attachment C.

**Optionholder** means any person who is at any time registered as the holder of a Special Option (including persons jointly registered) in a register kept by the Manager.

**party** means each of the Manager and any Optionholder.

**“Quarter”** means a three month period in a Financial Year commencing on one of the following dates:

- (a) 1 January (“**First Quarter**”);
- (b) 1 April (“**Second Quarter**”);
- (c) 1 July (“**Third Quarter**”); and
- (d) 1 October (“**Fourth Quarter**”).

**Reconstruction** means a capital reconstruction (including, without limitation, any consolidation, stock split or stock dividend, subdivision or reduction of capital), merger or any return of capital or other capital distribution but does not include the following:

- (e) periodic distributions (whether of income or capital) made pro rata among shareholders or unitholders of a class and whether interim or at the end of an Accrual Period;
- (f) issues of stock, shares or units which are not in redemption of any stock, shares or units;
- (g) any issues of options by WEA or WAT; or
- (h) the redemption, conversion or exercise of any securities issued by WAT or WEA in accordance with their terms.

**Sell** means a transfer, sale or assignment of the Special Options (or any part of the Special Options) or any other dealing or parting with possession of any right or interest (other than for the purposes of obtaining financing).

**Special Option** means an option to subscribe for Units on the Special Option Terms.

**Special Option Deed** means the Series I Special Option Deed made between the Manager and WQPL including all schedules, attachments and annexures.

**Special Option Period** means the period commencing on the second anniversary of the Issue Date and terminating on the date being 10 days prior to the termination date of WAT under clause 4.3 of the Trust Deed.

**Special Option Terms** means the terms as set out herein.

**Trust Deed** means the Trust Deed dated 28 March 1996 originally between Perpetual Trustee Company Limited and Westfield America Management Limited, as amended from time to time, being the constitution of WAT.

**Unit** means an undivided share in the beneficial interest in WAT as provided in the Trust Deed.

**WAT** means the managed investment scheme constituted by the Trust Deed and known as the Westfield America Trust (ARSN 092 058 449).

**WEA** means Westfield America, Inc.

**WQPL** means Westfield Queensland Pty Limited (ABN 22 004 855 878).

## 1.2 Interpretation

Words or phrases beginning in capitals and not otherwise defined in these Special Option Terms have the same meaning as in the Trust Deed.

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## 2 Entitlement

Each Special Option entitles the Optionholder to subscribe for Units on the terms set out in these Special Option Terms.

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## 3 Exercise Period

A Special Option may be exercised at any time during the Special Option Period, in accordance with these Special Option Terms.

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## 4 Prerequisite to Exercise

### 4.1 Conditions

A Special Option may not be exercised (and the Manager will be under no obligation to issue Units in respect of any Special Option) unless:

- (a) the Special Option is exercised as part of a parcel of Special Options which, on exercise, entitles the Optionholder to a parcel of Units having a value not less than the amount required by the *Corporations Act 2001* (Cth) (currently A\$500,000) for the issue of each such Unit to constitute an issue that does not need disclosure to investors pursuant to s1012B of Part 7.9 of the *Corporations Act 2001* (Cth) (or any successor provision) because the person exercising the Special Option is a person of the kind described in s761G(7)(a) of the *Corporations Act 2001* (Cth) (or any successor provision); and
- (b) the Optionholder complies in all material respects with all the other Special Option Terms; and
- (c) the issue of Units to the Optionholder would not breach the Australian *Corporations Act 2001* (Cth) or any applicable law.



## **4.2 Notice of Intention to Exercise**

If the Optionholder which wishes to exercise a Special Option, gives a Notice of Intention to Exercise and a Notice of Exercise and otherwise complies in all material respects with the requirements for exercise of a Special Option set out in these Special Option Terms, the Manager must comply with the provisions of the Trust Deed and of the Special Option Terms in respect of the exercise of the Special Option.

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## **5 Exchange Right**

### **5.1 Special Options**

One Special Option is exercisable for each Continuing Security transferred to the Manager.

### **5.2 Fractions**

On exercise of a Special Option, the Optionholder will receive in respect of a Continuing Security, the Conversion Number of Units provided that, if this would have the effect that the Optionholder would receive a fraction of one Unit, the Optionholder will receive one additional Unit. The Conversion Number of Units must be issued within one Business Day after receipt of a Notice of Exercise given in accordance with paragraph 7.

---

## **6 Ranking of Units on Exercise of Special Options**

### **6.1 Ranking of Units**

Subject to paragraph 6.2, a Unit allotted on exercise of a Special Option will rank equally in all respects with the existing Units on issue at the date of allotment.

### **6.2 Distributions**

A Unit allotted on exercise of a Special Option will rank for distribution of the Distributable Income from the date following the last day of the most recently completed dividend period for the Continuing Security transferred so that where Units are allotted during an Accrual Period, such Units will participate in the Distributable Income in respect of that Accrual Period in the proportion that the part of the Accrual Period (calculated in days) for which such Units rank for distribution of Distributable Income bears to the total number of days in such Accrual Period.

---

## **7 Manner of Exercise**

### **7.1 Notice of intention**

If an Optionholder wishes to exercise a Special Option, then the Optionholder must give a non-binding notice of intention to exercise the Special Option to the Manager during the Special Option Period at least 10 Business Days before giving a Notice of Exercise under paragraph 7.2.

## 7.2 Notice of Exercise

If an Optionholder wishes to exercise a Special Option and has complied with paragraph 7.1, it must give an irrevocable Notice of Exercise to the Manager during the Special Option Period specifying:

- (a) the number of Special Options which the Optionholder wishes to exercise in compliance with paragraph 4 and the type of Continuing Security to be delivered;
- (b) the specific date on which those Special Options are to be exercised (“**Exercise Date**”) in accordance with the Special Option Terms;
- (c) the number of Units which are to be issued to the Optionholder on the exercise of the Special Options detailed in the Notice of Exercise (“**Relevant Number**”) (being equal to the number of Special Options to which the Notice of Exercise relates multiplied by the Conversion Number, subject to rounding up by one unit in the case of a fractional unit); and
- (d) confirmation of compliance with the U.S. securities laws restrictions contained in paragraph 12.

## 7.3 Delivery and issue

On the Exercise Date:

- (a) the Optionholder must deliver to the Manager the Continuing Securities (together with any necessary instruments of transfer properly executed) to which the Notice of Exercise relates; and
- (b) in consideration of the transfer pursuant to paragraph 7.3(a), the Manager must issue to the Optionholder the Relevant Number of Units.

## 7.4 Transfers

The Optionholder must ensure that any Continuing Security transferred pursuant to paragraph 7.3(a) (or specified in the Notice of Exercise) is (immediately prior to transfer) owned by the Optionholder (free of all mortgages, charges, liens and other encumbrances or prior claims), and has attached all rights (including rights to receive dividends) attaching or accruing to the Continuing Security on the Exercise Date.

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# 8 Transfer of Special Options

## 8.1 Process

An Optionholder shall not Sell any Special Options owned by it, unless it first notifies the Manager in writing of its desire to so Sell such Special Options or Continuing Securities and allows the Manager five Business Days from the date of such notice to make an offer for such securities. The Optionholder may reject, in its absolute discretion, any offer to purchase such securities made by the Manager and may Sell such securities to any buyer after the five Business Day period has elapsed; provided that any offer by the Manager shall include both the Special Options and the related Continuing Securities to the extent that the Optionholder notified the Manager that it will sell such securities as a package

and provided further that for a period of 90 days after such five Business Day period has elapsed, the Optionholder shall not Sell such securities (other than pursuant to an underwritten public offering) at a price (before deduction of underwriting commissions, placement fees and other selling expenses) less than 90% of the price offered by the Manager.

## **8.2 Transferee**

Any person to whom a Special Option is transferred must be a person to whom disclosure to investors under Chapter 6D or s1012B of Part 7.9 (as the case may be) of the *Corporations Act 2001* (Cth) is not required. A transferee must provide to the Manager, if requested, evidence that it is such a person.

## **8.3 Transfer of Special Options**

Subject to this paragraph 8 and the securities law restrictions set out in paragraph 12, a Special Option is fully transferable as follows:

- (a) by delivery to the Manager of a duly executed and, subject to paragraph 30, stamped transfer in the form of Attachment B-3 by the Optionholder or the transferee, together with the Option Certificates to which the transfer relates; and
- (b) the Manager registering the transfer of the Special Options, subject to the terms and conditions of the Trust Deed, which the Manager agrees to do promptly after receipt of the items referred to in paragraph 8.38.3(a).

## **8.4 Transferee is bound**

On registration of a transfer, the transferee is bound by the Trust Deed and the Special Options Terms and assumes the rights and obligations of an Optionholder in respect of the Special Options transferred.

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## **9 New Issues by WAT**

A Special Option does not confer any right on the Optionholder to participate in any new issues of Units, or to be entitled to any distributions by WAT.

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## **10 Right to Vote**

An Optionholder is entitled to vote at meetings of Members.

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## **11 No Other Rights**

In accordance with, and subject to, the provisions of the Trust Deed and the *Corporations Act 2001* (Cth), no Special Option confers on the Optionholder:

- (a) any right to require the Manager to redeem or repurchase the Special Option; or
- (b) except as expressly provided in the Trust Deed, any other entitlement under the Trust Deed consequent on holding the Special Option.

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## 12 Securities Law Restrictions

### 12.1 Options not registered

This paragraph 12 operates in addition to restrictions on transfers of Special Options under paragraph 8. The Special Options have not been registered under the U.S. Securities Act of 1933, as amended (“U.S. Securities Act”), and may not be offered, sold or exercised except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act;
- (b) within the United States to or, in the case of exercise, by Institutional “Accredited Investors” within the meaning of Rule 501(a)(1), (2), (3) and (7) under the U.S. Securities Act in a transaction exempt from registration requirements of the U.S. Securities Act on delivery of a purchaser’s letter in the form of Attachment B-1 or B-2, as applicable;
- (c) outside the United States to or, in the case of exercise, by non U.S. persons in a transaction meeting the requirements of Rules 901, 903 or 904 of Regulation S under the U.S. Securities Act;
- (d) to WEA, its affiliates, the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The Special Options must bear a legend to the foregoing effect:

Special Options issued to non U.S. persons pursuant to Regulation S under the U.S. Securities Act must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT IS NOT BEING EXERCISED ON BEHALF OF A U.S. PERSON OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER AND (B) THE SECURITY MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL OPTION TERMS.”

All other Special Options must bear the following additional legend:

“THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) THE SECURITY MAY BE EXERCISED ONLY BY (1) A NON U.S. PERSON ON DELIVERY OF EITHER (i) A WRITTEN CERTIFICATE THAT IT HAS NOT BEEN EXERCISED ON BEHALF OF A U.S. PERSON, OR (ii) A WRITTEN OPINION OF COUNSEL TO THE EFFECT THAT THE SECURITY AND THE UNITS DELIVERED ON EXERCISE THEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OR ARE EXEMPT FROM REGISTRATION THEREUNDER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR ON DELIVERY OF A LETTER SUBSTANTIALLY IN THE FORM ANNEXED TO THE SPECIAL OPTION TERMS AND (B) THIS SECURITY MAY BE

EXERCISED ONLY IN ACCORDANCE WITH THE SPECIAL  
OPTION TERMS.”

**12.2 Units not registered**

Units issuable on exercise of the Special Options will not be registered under the U.S. Securities Act and may not be offered or sold by an Optionholder after exercise of an Option except:

- (a) pursuant to an effective registration statement under the U.S. Securities Act or pursuant to an exemption from the registration requirements thereunder;
- (b) outside the United States to non U.S. persons (which term includes U.S. dealers or other professional fiduciaries acting on a discretionary basis for non U.S. beneficial owners (other than an estate or trust)) in reliance on Rules 903 and 904 of Regulation S under the U.S. Securities Act;
- (c) in “regular way transactions” on the ASX, provided that neither the seller, nor any person acting on its behalf, knows that the transaction has been pre-arranged with a buyer that is a U.S. person or is located in the U.S.;
- (d) to the Manager or its affiliates; or
- (e) as otherwise agreed by the Manager.

The foregoing restrictions must be noted in the Unit register maintained by the Manager. The Manager agrees that it will cause the notation to be removed from the Unit register at such time as the Units may be transferred without restriction under applicable law.

**12.3 Non U. S. persons**

A Special Option may only be exercised by a non U.S. person on delivery of either:

- (a) a written certification that the Optionholder is not a U.S. person and the Special Option is not being exercised on behalf of a U.S. person; or
- (b) a written opinion of counsel to the effect that the Special Option and the Units delivered on exercise thereof have been registered under the U.S. Securities Act or are exempt from registration thereunder.

**12.4 U. S. persons**

A Special Option may only be exercised by a U.S. person on delivery of a purchaser’s letter for “Accredited Investors” in the form of Attachment B-1, certifying that the Optionholder is an “Accredited Investor” as defined in that letter, together with the other materials referred to therein.

**12.5 Transfers**

A Special Option may not be transferred to any person if the effect of such transfer would be that the ownership limitations contained in WEA’s Restated Articles of Incorporation would be violated.

## **12.6 Cancellation**

Any withholding obligation of the Manager on receipt of a Continuing Security may be satisfied by delivery of an amount in United States dollars by the Optionholder.

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## **13 QEF Election**

If an Optionholder intends to make the election provided for in Section 1295(b) of the Internal Revenue Code of 1986, as amended (“Code”), then such Optionholder must so notify the Manager and the Manager must, at the Manager's expense, take such actions as may be required by the Code and the authorities thereunder to have WAT be treated as a qualified electing fund (within the meaning of Section 1295 of the Code) with respect to a Unitholder or Optionholder that makes the election provided for under Section 1295(b) of the Code.

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## **14 Reconstructions**

### **14.1 Adjustment of Options**

Except as provided in paragraph 15.2, if:

- (a) WEA carries out a Reconstruction; or
- (b) WAT carries out a Reconstruction,

then, in each such event:

- (c) the number of Special Options held by an Optionholder; or
- (d) the Conversion Number; or
- (e) some of, or all, such factors,

will be adjusted, as appropriate, in a manner determined by the Manager which:

- (f) is fair and equitable to the Members and Optionholders; and
- (g) to the extent necessary, complies with the Listing Rules of the ASX applying to a reorganisation (as that term is defined in the Listing Rules of the ASX) of capital at the time of the reorganisation (and for the avoidance of doubt the parties agree that any reconstruction of WEA is carried out as if the Listing Rules of the ASX applied to the reorganisation of WEA),

and is approved by Optionholders holding a majority of the outstanding Special Options on issue provided that if such Optionholders fail to approve the manner of adjustment determined by the Manager, the Manager must, pursuant to paragraph 19, refer the matter to an Expert who will make a determination of any adjustment. The Expert must be directed to take into account paragraphs 15.1(f) and (g) in making a determination.

## 14.2 Merger

- (a) If WAT is merged or consolidated with or into a new entity or WAT transfers all or substantially all of its assets to another entity then, on a subsequent exercise of the Special Options, the Optionholder is entitled to receive securities in the new transferee entity equal to those which the Optionholder would have received had it exercised such Special Options and held Units immediately prior to such transaction.
- (b) If WEA is merged or consolidated with or into a new entity or if WEA transfers all or substantially all of its assets to another entity and the Optionholder receives stock in such entity in consideration of its Continuing Securities then, on a subsequent exercise of the Special Options, the Optionholder is entitled to use such new securities received in such transaction (in lieu of the Continuing Securities) as the consideration for the issuance of ordinary Units based on a revised Conversion Number which is fair and equitable to the Members and the Optionholder.
- (c) The Manager agrees for the benefit of the Optionholders that if, while any Special Options are on issue, it:
  - (i) announces an intention to wind up WAT; or
  - (ii) receives a requisition from Members, that meets the requirements of the *Corporations Act 2001* (Cth), to convene a meeting of Members for the purpose of passing a resolution to direct the winding up of WAT,

then it will immediately give written notice to the Optionholders of the announcement or requisition. In the case of an announcement or if Members subsequently pass a resolution in accordance with the *Corporations Act 2001* (Cth) to terminate WAT then, before WAT is terminated, the Optionholders may exercise any or all of their Special Options in accordance with the provisions of these Special Option Terms.

- (d) The Manager agrees that until the expiration of the Special Option Period:
  - (i) prior to any Reconstruction of WAT it will provide not less than 30 days prior written notice of such Reconstruction to the Optionholder, and the Optionholder has the right at any time following delivery of such notice to exercise its Special Options; and
  - (ii) in the event WEA is merged or consolidated into a new entity or transfers all or substantially all of its assets to another entity, the Optionholder has the right at any time following such event to exercise its Special Options in accordance with the provisions of these Special Option Terms.

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## **15 Representations, Warranties and Covenants**

### **15.1 Representations and warranties**

The Manager represents and warrants for the benefit of the Optionholders that as at the date of the Special Option Deed, the Issue Date and the Exercise Date:

- (a) all Special Options have been duly authorised, validly issued, and the Optionholders are entitled to the rights in favour of the Optionholder under the Special Option Terms;
- (b) there are no pre-emptive rights or similar rights to purchase any Units issuable on exercise of the Special Options on the part of any holders of any class of securities of WAT; and
- (c) the Special Option Deed has been duly authorised, executed and delivered by the Manager and is a valid and binding obligation of the Manager and enforceable in accordance with its terms.

### **15.2 Covenants**

The Manager covenants that:

- (a) it will use its best endeavours to ensure that the ordinary Units (including the Units issued on the exercise of the Special Options) are officially quoted on the ASX as soon as possible after they are issued and that such official quotation is maintained;
- (b) at all times while Special Options are outstanding, WAT will have sufficient authorised and unissued Units available for issue on exercise of all Special Options and all other options outstanding with respect to Units; and
- (c) subject to compliance by the Optionholder with the Special Option Terms, the Units issuable on exercise of the Special Options will be duly authorised, validly issued and fully paid.

### **15.3 Benefit**

To the extent that any covenant contained in the Special Option Deed is made for the benefit of the Optionholder, such covenant will be enforceable against the Manager by any person registered as a Optionholder.

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## **16 Registration and No Quotation of Special Options**

### **16.1 Registers**

The Manager will maintain registers of Optionholders. An Optionholder may:

- (a) inspect such register at any time during Business Hours; and
- (b) obtain copies of such register.



## **16.2 Notices**

The Manager must send to an Optionholder copies of all notices (including, without limitation, notices of Members' meetings), accounts and other statements sent to Members.

## **16.3 Joint Optionholders**

For the purposes of paragraph 17.2, notices, accounts and other statements sent to joint Optionholders will be deemed to be sent to all those Optionholders if sent to the Optionholder named first on the register.

## **16.4 Lost certificate**

If an Optionholder:

- (a) has lost a certificate in respect of any Special Options; and
- (b) provides the Manager with a statutory declaration of loss in respect of such certificate,

the Manager must cancel the lost certificate and issue a replacement certificate to the Optionholder.

## **16.5 Not quoted**

The Optionholder acknowledges that the Special Options will not be quoted on any stock exchange.

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## **17 Renegotiation**

If prior to the earliest date on which the Special Options may be exercised the laws of Australia are amended, varied or replaced, or the Commonwealth Government introduces a bill into Parliament, which may result in WAT failing to qualify as a "collective investment vehicle", then the Manager and the Optionholders will enter into good faith negotiations to amend the terms of the Special Options, including if necessary the Special Option Period, in order to avoid such failure.

---

## **18 Disputes**

### **18.1 Adjustments**

If a dispute arises in relation to an adjustment to:

- (a) the number of Special Options held by an Optionholder; or
- (b) the Conversion Number; or
- (c) some or all such factors,

or any other adjustment to be made pursuant to paragraph 15.1 or paragraph 15.2, either the Manager or the Optionholder is entitled to refer the dispute (but no other disputes) to an Expert.

## **18.2 Resolution by expert**

The Expert must be directed by the party referring the dispute:

- (a) to resolve the dispute in a timely manner as an expert and not as an arbitrator; and
- (b) to determine the party or parties responsible for paying the costs of the Expert having regard to the Expert's findings concerning resolution of the dispute.

## **18.3 Determination binding**

The determination of the Expert will be final and binding on the Manager and the Optionholders.

---

# **19 Notices**

## **19.1 Delivery**

A party giving notice or notifying under these Special Option Terms must do so in writing:

- (a) directed to the recipient's address specified in this paragraph 20, as varied by any notice or, in the case of an Optionholder, to the address specified in the register kept in accordance with paragraph 17; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

The Manager's address and facsimile number are:

Westfield America Management Limited  
Level 24, Westfield Towers  
100 William Street  
SYDNEY NSW 2011  
Facsimile Number: (61 2) 9358 7077  
Attention: Company Secretary

WQPL's address and facsimile number are:

Westfield Queensland Pty. Limited  
Level 24, Westfield Towers  
100 William Street  
SYDNEY NSW 2011  
Facsimile Number: (61 2) 9358 7077  
Attention: Company Secretary

## **19.2 Time**

A notice given in accordance with paragraph 20.1 is taken to be received:

- (a) if hand-delivered, on delivery;
- (b) if sent by prepaid post, 5 days after the date of posting;
- (c) if sent by courier, 2 days after being sent; or

- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

### **19.3 Copies**

The Manager will promptly deliver to an Optionholder copies of any notices received by it under the Special Option Terms, including any notice changing the foregoing addresses.

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## **20 Interpretation**

In these Special Option Terms, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of these Special Option Terms;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to these Special Option Terms and a reference to the Special Option Terms includes any schedules, attachments and annexures;
- (e) a reference to a document or agreement, including the Special Option Deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (g) a reference to "US\$" is a reference to United States of America currency;
- (h) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (i) a reference to a party includes its executors, administrators, successors (including persons taking by novation) and permitted assigns;
- (j) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (k) a reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth) or the equivalent State legislation, as applicable.

# Attachment A (to Schedule)

## Notice of Exercise of Series H Special Options

**TO:** WESTFIELD AMERICA MANAGEMENT LIMITED  
Manager of Westfield America Trust  
[ ]

I/We [ ] of [ ] give notice that I/we wish to exercise [ ] Series I Special Options registered in my/our name on [ ] (“**Exercise Date**”). The number of Units, which are to be issued on exercise of the Special Options referred to in this Notice of Exercise, is [ ].

Defined terms in the Special Option Terms have the same meaning in this Notice of Exercise.

We have received a copy of the Series I Special Option Terms, a copy of which is annexed to the Westfield America Trust Deed.

I/We confirm that:

- (a) [ ] [description of actual Continuing Securities] in WEA registered in my/our name will on the Exercise Date be free of all mortgages, charges, liens and other encumbrances or prior claims;
- (b) the Units in Westfield America Trust (“**WAT**”) to be issued to me/us on exercise of the Special Options to which this Notice of Exercise relates, have a value of not less than the amount required by the *Corporations Act 2001* (Cth) for the issue of each such Unit to constitute an issue for which disclosure to investors is not required under section s1012B of Part 7.9 of the *Corporations Act 2001* (Cth) (or any successor provision) because I/we am/are a person/persons of the kind described in s761G(7)(a) of the *Corporations Act 2001* (Cth) (or any successor provision);
- (c) this Notice of Exercise is irrevocable (subject to paragraph 7.2 of Special Option Terms);
- (d) I/we have read the restrictions on exercise of Special Options and on transferability of Units contained in the Special Option Deed. I/we understand that the Units have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), and may not be offered or sold except as permitted by the Special Option Terms and that such restrictions may be required to be noted in the Unit register as set out in the Special Option Deed. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should reoffer, resell, pledge or transfer any Units, we will do so only in accordance with the Special Option Terms; and
- (e) **[APPLICABLE PARAGRAPH TO BE INSERTED]**

**NOTE:** the following paragraph to be included in a Notice of Exercise by a non U.S. person requesting that Units be delivered to an address outside of the United States:

[We are not a U.S. person, we are not acquiring any units for the account of any U.S. person, and we have not offered, sold or delivered, and will not offer, sell or deliver, directly or indirectly, or as principal or agent, any Units acquired by us in the United States or to any U.S. person. 'U.S. person' has the meaning set forth in Regulation S under the Securities Act, and includes, among other persons, any national, citizen or resident of the United States or the estate or trust of any such person, any corporation, partnership or other entity created or organised in or under the laws of the United States, or any political subdivision thereof, any trust or estate (other than a foreign trust or estate) and any United States branch of a non U.S. person. 'United States' means the United States of America, its territories and possessions.]

**NOTE:** the following paragraph to be included in a notice of exercise by an 'accredited investor' (a person meeting the requirements of Rule 501(a) of Regulation D under the Securities Act):

[We are delivering herewith a purchaser's letter for accredited investors in the form of Attachment B-1 to the Special Option Terms and the other materials referred to therein, and certify that each of us is an 'accredited investor' as defined in that letter.]

**NOTE:** the following paragraph to be included in a notice of exercise by a non U.S. person requesting that units be delivered to an address in the United States or who does not meet the standards set forth in [Note 2].

[We are not a U.S. person]. [We are delivering herewith a written opinion of nationally recognised United States counsel to the effect that the Special Options and the Units delivered on exercise have been registered under the Securities Act or are exempt from registration thereunder.]



5. We understand that, on any proposed reoffer, resale, pledge or transfer of any Units, we will be required to furnish to the Manager and the registrar and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms pursuant to which the Units were issued. We further understand that the foregoing restrictions will be noted in the Unit register.

[Insert applicable paragraph.]

6. [We are an institutional 'accredited investor' (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Units purchased by us for our own account or for one or more accounts (each of which is an 'accredited investor') as to each of which we exercise sole investment discretion and for each of which we are acquiring Units with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Units to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Purchaser]

By: \_\_\_\_\_

Name:

Title:

Dated:

Signed by [ ] through its )  
duly authorised representative )  
[ ] in the presence of: )

or

**THE COMMON SEAL** of # is affixed in )  
accordance with its **constitution** in the )  
presence of )

Secretary

Director

Name of secretary (print)

Name of director (print)



# Attachment B-2 (to Schedule) Form of Purchaser's Letter by Accredited Investor Transfer of Options

**TO:** WESTFIELD AMERICA MANAGEMENT LIMITED  
Manager of Westfield America Trust  
[                    ]

In connection with our proposed acquisition of Special Options in Westfield America Trust (“**Trust**”):

1. We have received a copy of the Series I Special Option Terms, a copy of which is annexed to the Westfield America Trust Deed.
2. We understand that the Special Options and the Units issuable on exercise thereof have not been, and will not be, registered under the U.S. Securities Act of 1933, as amended (the 'Securities Act'), and may not be offered or sold except as permitted in the following sentence and in the Special Option Deed.
3. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should reoffer, resell, pledge or transfer any Special Options, we will do so only:
  - (a) outside the United States to a foreign person in a transaction meeting the requirements of Rule 903 or 904 of Regulation S under the Securities Act;
  - (b) to an institutional 'accredited investor' (as defined below) pursuant to an exemption from the registration requirements of the Securities Act, subject to:
    - (i) the receipt by the Manager of a letter substantially in the form provided in the Special Option Deed,
    - (ii) unless such transfer is of Special Options with a purchase price of not less than US\$250,000 to an 'accredited investor' (as defined below), the receipt by the Manager of an opinion of counsel acceptable to the Manager that such reoffer, resale, pledge or transfer is in compliance with the Securities Act;
  - (c) to Westfield America Inc, its affiliates, the Manager, or its affiliates; andin each case, in accordance with any applicable securities laws of any State or the United States of America or any other applicable jurisdiction.
4. The undersigned will, and each subsequent purchaser from it is required to, notify any subsequent purchaser from it of the resale restrictions set forth above.
5. We understand that, on any proposed reoffer, resale, pledge or transfer of any Special Options, we will be required to furnish to the Manager and the registrar

and transfer agent for the Units, such certification and other information as the Manager may reasonably require to confirm that the proposed sale complies with the foregoing restrictions and the provisions of the Special Option Terms governing the Special Options. We further understand that the foregoing restrictions will be noted in the legend on the Special Options.

[Insert applicable paragraph.]

6. [We are an institutional 'accredited investor' (an entity meeting the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Units, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.]

7. [insert applicable paragraph]

[We are acquiring the Special Options purchased by us for our own account or for one or more accounts (each of which is an 'accredited investor') as to each of which we exercise sole investment discretion and for each of which we are acquiring Special Options with a purchase price of not less than US\$250,000 in each case for investment and not with a view to, or for sale in connection with any distribution thereof within the meaning of the Securities Act.]

[We have delivered to the Manager an opinion of counsel acceptable to the Manager that such offer, sale, pledge or transfer of the Special Options to us is in compliance with the Securities Act.]

Defined terms in the Special Option Terms have the same meaning in this letter.

You are entitled to rely on this letter and are irrevocably authorised to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Purchaser]

By: \_\_\_\_\_

Name:

Title:

Dated:

Signed by [            ] through its    )  
duly authorised representative    )  
[            ] in the presence of:    )

or

**THE COMMON SEAL** of # is affixed in )  
accordance with its **constitution** in the )  
presence of )

Secretary

Director

Name of secretary (print)

Name of director (print)

# Attachment B-3 (to Schedule)

## TRANSFER FORM

For Non-Market Transactions				
Affix stamp or similar duty here	Marking stamp			
<b>FULL NAME OF REGISTERED SCHEME</b>	Westfield America Trust ARSN 092 058 449 ('WAT')			
<b>DESCRIPTION OF OPTIONS</b>	Class	Amount paid	Amount unpaid	Register
	Series I Special Options			NSW
<b>QUANTITY</b>	Words	Figures		
<b>FULL NAME OF TRANSFEROR(S)</b>				
<b>CONSIDERATION</b>				Date of Purchase
<b>FULL NAME OF TRANSFEREE(S)</b>				
<b>FULL ADDRESS OF TRANSFEREE(S)</b>				
<b>BENEFICIAL INTEREST</b>	Upon registration of this transfer, the transferee will/will not hold the above options beneficially			

I, the registered holder and transferor (>Transferor=) named above, for the consideration specified above transfer to the transferee named above (>Transferee=) the special options specified above (>Special Options=) registered in my name in the books of WAT subject to the conditions on which I hold them at the time of signing this form. I, the Transferee agree to accept the transfer of the Special Options and the registration of the Special Options in my name in the books of WAT subject to the same conditions and agree to be bound by the constitution of WAT as amended from time to time and the terms of the Special Options.

<b>SIGNATURE OF TRANSFEROR(S)</b>		<b>FOR REGISTRAR USE</b>
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	
<b>SIGNATURE OF TRANSFEREE(S)</b>		
<b>SIGN HERE *</b>		
<b>DATE SIGNED</b>	/ /	



# Consolidated Trust Deed constituting Westfield America Trust

## Schedule 9- Terms of Offer of Priority Units

The Manager may offer Priority Units pursuant to offers made at substantially the same time where:

- (A) the Priority Units are in a class which is quoted on the stock market of Australian Stock Exchange Limited ('class') and ordinary Units in that class have not been suspended from quotation; and
- (B) the offers are made pursuant to an arrangement under which:
  - (I) an offer is made to all the then Members as at the Record Date other than the following Members ('Excluded Members'):
    - (1) persons in their capacity as Members holding Series F Special Options, Series G Special Options, Series G1 Special Options, Series H Special Options and Series I Special Options;
    - (2) persons who participated in the institutional placement approved by Members on 22 February 2002;
    - (3) persons whose address (as recorded in the register of Members) is in a jurisdiction in which the Manager reasonably considers it is not lawful or is not reasonably practicable for the Manager to offer and issue Priority Units to that person.
  - (II) each offer is made on a non-renounceable basis;
  - (III) each Member (other than Excluded Members), on a record date announced by the Manager ('Record Date') holding:
    - (1) ordinary Units will be offered an entitlement to subscribe for one ordinary Unit for every four ordinary Units held by that Member provided that Members holding less than 8,000 ordinary Units will be entitled to subscribe for up to 2,000 ordinary Units and Members holding 400,000 or more ordinary Units will be entitled to subscribe for no more than 100,000 ordinary Units;
    - (2) interests in the Trust known as Series B Class Units and Series C Class Units will be offered an entitlement to subscribe for up to 2,000 ordinary Units; and
    - (3) interests in the Trust known as RCP Units will be offered an entitlement to subscribe for up to 2,000 ordinary Units,each entitlement being cumulative and the minimum subscription being 1,000 Priority Units;

- (C) the following requirements are also satisfied:
- (I) Members approve the making of the offer, by way of special resolution of the Members where Members with at least 25% of the total value of all interests of Members entitled to vote on the question vote on the question at the meeting; and
  - (II) Members to whom the offer is made are provided with a copy of a disclosure document in respect of the offer; and
  - (III) Priority Units the subject of the offer are issued within 13 months of the date of the disclosure document referred to in sub-paragraph (C)(II) above.