

## ASX ANNOUNCEMENT

20 September 2021

**Announcement No. 21/21**  
**Corporate Announcement Office**  
**Australian Securities Exchange**

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### Recommended Proposal to acquire ALE Property Group

ALE Property Group (**ASX:LEP, ALE**) today announces that it has entered into a scheme implementation deed (**SID**) with a consortium managed by Charter Hall Group (**ASX:CHC**), comprising Charter Hall Long WALE REIT (**ASX:CLW**) and Hostplus (together, the **Charter Hall Consortium**), pursuant to which the Charter Hall Consortium would acquire 100% of ALE securities (the **Proposal**).

The Proposal is to be implemented by way of a company scheme of arrangement and a trust scheme (the **Schemes**), which will require ALE securityholder approval. Detailed information in relation to the Schemes will be sent to ALE securityholders in due course. ALE securityholders do not need to take any action at the present time.

### Value of the Proposal

Subject to the Proposal being implemented, ALE securityholders will receive the following:

- 0.4080 CLW securities and cash of \$3.673 for each ALE security (**Mixed Consideration**); and
- The ALE September quarter distribution announced today of 5.5 cents per ALE security;

Based on the closing price of CLW securities on Friday 17 September 2021 of \$5.28 the Proposal has an implied value of \$5.88 per ALE security, which reflects a:

- 25.2% premium to the closing price of ALE securities of \$4.70 on 17 September 2021;
- 23.1% premium to the 1 month VWAP of ALE securities of \$4.78 on 17 September 2021;
- 22.8% premium to the 3 month VWAP of ALE securities of \$4.79 on 17 September 2021;
- 58.7% premium to the 30 June 2021 NTA of \$3.71 per ALE security; and
- 43.0% premium to the pro forma 30 June NTA of \$4.11 per ALE security taking into account the revised independent valuation assessments described in more detail below.

CLW securities to be issued to ALE securityholders under the Schemes will rank equally with all other CLW securities.

Whilst it is currently expected that the Schemes will be implemented in December 2021, in the event that there is an unforeseen delay in the timetable, ALE will be entitled to pay a distribution for the December quarter however the consideration payable under the Proposal will be reduced by the value of any December quarter distribution paid.

## Mix & Match Consideration

Whilst the Mixed Consideration will be the default, the Proposal also provides ALE securityholders with the option to 'mix and match' the consideration offered and elect to receive one of the following alternatives (in addition to the 5.5 cents per ALE security September quarter distribution):

- 1.1546 CLW securities for 100% of their securities (**Maximum Scrip Consideration**) which has an implied value of \$6.10 based on the closing price of CLW securities on Friday 17 September 2021 of \$5.28; or
- \$5.681 cash per ALE security for 100% of their securities (**Maximum Cash Consideration**).

The Maximum Scrip Consideration and Maximum Cash Consideration alternatives will be subject to scaleback arrangements on a pro-rata basis. Information in relation to the various consideration options and the scaleback arrangements will be included in the Scheme Booklet.

## Background to the Schemes

In July 2021, ALE received an unsolicited, confidential, conditional, non-binding indicative proposal from the Charter Hall Consortium (**NBIO**).

The ALE board established an Independent Board Committee (**IBC**) comprising all Directors other than the Caledonia (Private) Investments Pty Ltd (**Caledonia**) nominee Directors to evaluate the Proposal. These governance arrangements were established to manage any potential conflict of interest for the Caledonia nominee Directors, should one arise.

The IBC, in conjunction with ALE's advisers, assessed the NBIO and determined to grant the Charter Hall Consortium a period of due diligence in order to advance the Proposal including the negotiation of the SID.

As part of the evaluation of the Proposal, ALE discussed the terms of the NBIO with Caledonia, ALE's largest securityholder.

## Revised Independent Property Valuation Assessments

As part of its evaluation of the Proposal, ALE obtained revised valuation assessments for its portfolio<sup>1</sup> as at 30 August 2021. The result of these independent assessments is set out in Appendix A to this announcement. These assessments take into account recent market transactions, in particular ALE's recent non-core asset sales.

As a result of these updated property valuation assessments, the carrying value of ALE's portfolio has increased by \$73.98 million relative to carrying values at 30 June 2021 (+6.04%)<sup>2</sup>. The impact of this uplift would imply an increase in NTA per security from \$3.71 at 30 June 2021 to \$4.11 on a pro forma basis<sup>3</sup>.

<sup>1</sup> Excluding Western Australia (2.7% of portfolio value as at June 2021)

<sup>2</sup> June 2021 portfolio excluding properties that were being offered for sale

<sup>3</sup> Reflects the updated independent valuation assessments and the sale of Tudor Inn and Royal Exchange Hotel at a premium to book value

## ALE Directors' Recommendation

The Directors of ALE unanimously recommend that ALE securityholders vote in favour of the Schemes, in the absence of a superior proposal and subject to the Independent Expert concluding that the Schemes are in the best interests of ALE securityholders.

Subject to those same qualifications, each ALE Director intends to vote all the securities held or controlled by them in favour of the Schemes.

## Reasons for ALE Board Recommendation

In recommending the Schemes, the ALE Board has carefully considered the options available to ALE to maximise securityholder value, including continuing its strategy as a standalone entity. While the ALE Board notes the stable growth exhibited by ALE historically, and the potential for substantial future benefit arising from the rent reviews due to occur in 2028, the Directors consider that the consideration offered under the Proposal represents attractive value and accelerates the realisation of the valuation uplift that could otherwise reasonably be expected to occur as a result of the open market rent review in 2028.

In reaching their recommendation, the Directors have taken into account the following factors:

- The consideration provided under the Schemes represents a material premium to the recent trading price of ALE securities;
- The consideration provided under the Schemes reflects a significant premium to the revised independent valuation of ALE's portfolio, conducted with the benefit of market evidence from ALE's recent non-core asset sales;
- The consideration provided under the Schemes appropriately compensates ALE securityholders for the potential future benefit of the uncapped rent reviews that are due to occur in relation to ALE's properties in 2028. The directors had regard to the process of obtaining the recent capped rent review and the related litigation in the Victorian Supreme Court
- The ability for ALE securityholders to 'mix and match' consideration alternatives provides flexibility and choice (subject to the scaleback arrangements); and
- The Schemes provide an opportunity to participate in the merged group with continued exposure to ALE properties and potentially benefit from the increased scale, diversification and liquidity of the merged group.

Robert Mactier, Chairman of ALE, stated "the Proposal is highly attractive for ALE securityholders, as it reflects a material premium to ALE's trading price and the revised independent valuation of ALE's portfolio. After careful consideration, the ALE Board has concluded that the proposal is in the best interests of ALE securityholders and unanimously recommends that securityholders vote in favour of the Schemes, subject to no superior proposal and the Independent Expert concluding that the Schemes are in the best interests of ALE securityholders."

## Independent Expert

The Directors have appointed Duff & Phelps Australia Pty Limited as the Independent Expert to opine on whether the Schemes are in the best interests of ALE securityholders. The Independent Expert's report will be provided to securityholders as part of the Scheme Booklet.

### **Caledonia voting intentions**

Caledonia currently holds a voting interest in approximately 33.6% of all ALE securities<sup>4</sup>. Caledonia has confirmed to ALE that, based on the disclosed terms of the Schemes, it intends to vote in favour of the Schemes in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Schemes are in the best interests of ALE securityholders.

### **Details of the SID**

The implementation of the Schemes is subject to ALE securityholders approving the Schemes by the requisite majorities at the Scheme Meetings expected to be held in December 2021.

The implementation of the Schemes is also subject to other conditions customary for a transaction of this nature, including:

- Necessary ASIC and ASX approvals and exemptions being obtained;
- No prescribed occurrence, regulatory actions or restraints preventing the Proposal;
- The Independent Expert concluding that the Schemes are in the best interests of ALE securityholders; and
- Court approval.

The SID contains customary exclusivity provisions, including no shop, no talk, notification obligations and matching rights. A break fee will be payable by ALE to the Charter Hall Consortium in certain circumstances and a reverse break fee will be payable by the Charter Hall Consortium to ALE in certain circumstances.

The Schemes are not subject to any due diligence, financing or material adverse change conditions.

A full copy of the SID, including all applicable conditions, is attached to this announcement as Appendix B.

### **Victorian litigation**

The Schemes are not conditional on the outcome of the Victorian litigation, details of which were announced to ASX on 19 October 2020. Whilst the Victorian litigation remains ongoing and uncertain, the Directors have had regard to the potential outcomes in determining to recommend the Schemes.

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<sup>4</sup> Based on the latest substantial holder filing provided to ASX on 18 September 2020. According to that notice, Caledonia also holds an interest in approximately 7.61% via a cash settled swap but do not control the voting of that interest

### Indicative timetable and next steps

ALE securityholders do not need to take any action at the present time.

A Scheme Booklet, containing information relating to the Schemes, reasons for the ALE Directors' unanimous recommendation, the Independent Expert's Report and details of the Scheme Meetings is expected to be sent to ALE securityholders in November 2021. Subject to the conditions of the Schemes being satisfied or (if applicable) waived in accordance with the SID, the Schemes are expected to be implemented in mid December 2021.

#### Indicative timetable

Submit draft scheme booklet to ASIC	mid October 2021
First court hearing	early November 2021
Dispatch of Scheme Booklet to ALE securityholders	early November 2021
Scheme Meetings	early December 2021
Second court hearing	early December 2021
Record date	mid December 2021
Implementation date	mid December 2021

This timetable is indicative only and subject to change.

ALE's financial advisors are Macquarie Capital and E&P Corporate Advisory, and its legal advisor is Allens.

*This ASX release was approved and authorised for release by the Board of Directors*

Contact:

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**ALE Property Group**

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*Appendix A: Revised Independent Valuation Assessments*  
*Appendix B: Scheme Implementation Deed*

## Appendix A: Revised Independent Valuation Assessments

### Highlights

ALE Property Group (ASX code: LEP, "ALE") has obtained updated independent valuation assessments and is pleased to provide the following update:

- Unaudited NTA per stapled security increases to \$4.11<sup>5</sup>
  - 6.04% increase in the value of ALE's 78 properties<sup>6</sup> over June 2021 levels to \$1,299.35m, an increase of \$73.98m
- Average Passing Yield of the 78 properties has decreased by 25bps from June 2021 levels to 4.33%
- Under-renting as assessed by the independent valuers<sup>7</sup> has increased from 35.6% in June 2021 to 36.5%, a 2.5% increase

### 1. Updated Property Valuation Assessments

ALE has recently sold a number of non-core assets at a premium to book value, and is aware of other market evidence indicating heightened demand for high quality hotel assets. ALE determined that as part of assessing the proposal from the Charter Hall Consortium it was prudent to seek updated independent valuation assessments for the property portfolio.

ALE obtained updated independent valuation assessments for all properties in its portfolio, with the exception of Western Australia (2.7% of portfolio value as at June 2021) given valuers were not available. Due to travel and time constraints, the valuation assessments have been undertaken by way of a desktop assessment by the existing valuer for each asset.

The unaudited valuation assessment process has resulted in an increase in carrying value of \$73.98m (or 6.04%) since June 2021.

#### *a. Changes in key valuation metrics*

The increase in valuation assessments was driven by a reduction in capitalisation rates supported by sales evidence, highlighting the strong lease covenant and strategic nature of the ALE portfolio:

- The total value of the property portfolio has **increased by 6.04%** since June 2021<sup>8</sup>
- The average Passing Yield of the property portfolio has **decreased by 25bps** since June 2021 from 4.58% to 4.33%

<sup>5</sup> Reflects the updated independent valuation assessments and the sale of Tudor Inn and Royal Exchange Hotel at a premium to book value

<sup>6</sup> June 2021 portfolio excluding properties that were being offered for sale

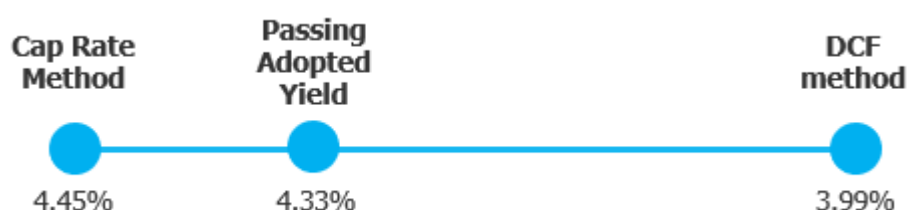
<sup>7</sup> See below for how this is calculated

<sup>8</sup> Excludes any properties held for sale as at 30 June 2021

June 2021			September 2021		Movement		
	Passing Adopted Yield	Valuation \$m	Passing Adopted Yield	Valuation \$m	Valuation Increase \$m	% change	Change in Passing Adopted
<b>NSW</b>	4.31%	198.430	3.98%	216.200	17.770	8.96%	(0.33%)
<b>QLD</b>	4.38%	375.595	4.24%	387.570	11.975	3.19%	(0.14%)
<b>SA</b>	4.95%	44.200	4.70%	46.500	2.300	5.20%	(0.25%)
<b>VIC</b>	4.69%	574.670	4.37%	616.600	41.930	7.30%	(0.32%)
<b>WA</b>	6.28%	32.480	6.36%	32.480	-	-	0.08%
<b>Total Properties</b>	4.58%	1,225.375	4.33%	1,299.350	73.975	6.04%	(0.25%)

#### *b. Discounted Cash Flow (DCF) Valuations for Independently Valued Properties*

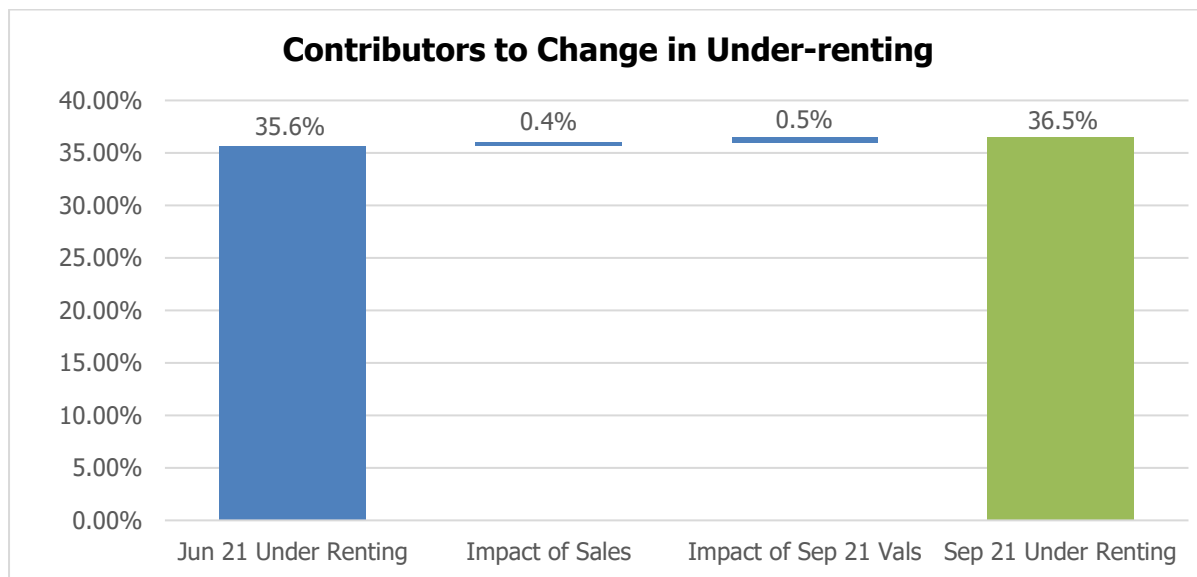
In assessing each property, independent valuers applied both the traditional capitalisation rate method along with DCF based valuation methods. The valuation assessments typically reflect a combination of both methods, but with greater weighting to the traditional capitalisation rate method.



#### *c. Uncapped/Uncollared Rent Levels*

Consistent with previous practice, the independent valuers have provided an opinion of the uncapped/uncollared rent of the properties. This analysis indicates that the under-renting for the overall portfolio has increased from 35.6% in June 2021 to 36.5% in September 2021, a 2.5% increase.

The increase in aggregate under-renting reflects the benefits of the strategic decision to dispose of Non-Core properties, including the impact of the recent sales of Royal Exchange Hotel and Tudor Inn hotel.



Under-renting is not evenly distributed across the portfolio and includes some properties that are leased at market rates and some that are over-rented.

*This ASX release was approved and authorised for release by the Board of Directors*

Contact:

Guy Farrands  
Managing Director  
**ALE Property Group**

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## Appendix B: Scheme Implementation Deed

For personal use only

Australian Leisure and Entertainment Property Management Limited as responsible entity for  
Australian Leisure and Entertainment Property Trust

Bieson Pty Limited as trustee for CH LEP Investment Trust

Charter Hall WALE Limited as responsible entity for Charter Hall Direct Industrial Fund and LWR  
Finance Trust

Host-Plus Pty Limited as trustee for Hostplus Pooled Superannuation Trust

## Scheme Implementation Deed

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This Deed is made on 20 September 2021

## Parties

- 1 **Bieson Pty Limited** (ACN 110 465 168) as trustee for the CH LEP Investment Trust of Level 20, 1 Martin Place, Sydney NSW 2000 (**Consortium Acquirer**).
- 2 **Australian Leisure and Entertainment Property Management Limited** (ACN 105 275 278) in its own capacity and as responsible entity for the **Australian Leisure and Entertainment Property Trust** (ARSN 106 063 049) of Suite 28.02, Level 28, 264-278 George Street, Sydney, NSW 2000 (**ALE Property RE**).
- 3 **Charter Hall WALE Limited** (ACN 610 772 202) as responsible entity for **Charter Hall Direct Industrial Fund and LWR Finance Trust** of Level 20, 1 Martin Place, Sydney NSW 2000 (**CLW**).
- 4 **Host-Plus Pty Limited** (ABN 79 008 634 704) as trustee for the **Hostplus Pooled Superannuation Trust** (ABN 13 140 019 340) of Level 9, 114 William Street, Melbourne VIC 3000 (**Hostplus**).

## Recitals

- A The Consortium Acquirer proposes to acquire all of the ALE Scheme Units, and for the Consortium Acquirer Nominee to acquire all the ALE Scheme Shares, pursuant to the Schemes, subject to the terms and conditions of this Deed.
- B ALE Property RE has agreed to propose the Schemes to ALE Securityholders and to issue the Scheme Booklet to ALE Securityholders, and the Consortium Acquirer and ALE Property RE have agreed to implement the Schemes, upon and subject to the terms and conditions of this Deed.
- C CLW and Hostplus have each guaranteed certain obligations of the Consortium Acquirer under this Deed.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

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

**AFSL** means Australian Financial Services Licence.

**Agreed Public Announcements** means the public announcements to be made by each of ALE Property RE and CLW in the form of Schedule 7.

**ALE Due Diligence Material** means:

- (a) the documents and information contained in the data room (including in response to requests for information) made available by or on behalf of ALE Property RE to the Consortium Acquirer and its Representatives, as at 5.00pm on Friday, 17 September

2021, as included on a USB delivered to Arnold Bloch Leibler (acting on behalf of the Consortium Acquirer) within three Business Days of execution of this Deed; and

- (b) any other documents, information, responses or disclosures agreed in writing by the parties to comprise the ALE Due Diligence Material.

**ALE Executive Team** means Mr Guy Farrands, Mr Mark Crick and Mr Michael Clarke.

**ALE Group** means ALE Property RE, ALE Trust and each of their Controlled Entities.

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

**ALE Party** means each ALE Group Member and each of their respective Officers and Advisers.

**ALE Prescribed Occurrence** means any of the occurrences set out in Schedule 8, other than an occurrence:

- (a) required or expressly permitted by this Deed or the Schemes;
- (b) to the extent that it was Fairly Disclosed in the ALE Due Diligence Materials;
- (c) Fairly Disclosed to ASX within five years prior to the date of this Deed or Fairly Disclosed in a document lodged with ASIC, or which would be disclosed in a search of ASIC records or the PPS Register, in each case prior to the date of this Deed;
- (d) required by law, regulation or by an order of a court or Governmental Agency; or
- (e) with the written consent of the Consortium Acquirer.

**ALE Provided Information** means all information included in the Scheme Booklet, and any updates to that information prepared by or on behalf of ALE Property RE other than:

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

**ALE Register** means the register of holders of ALE Securities maintained in accordance with the Corporations Act, and includes, for the avoidance of doubt, the register on which the Company Shares and Trust Units are recorded on or after the Unstapling.

**ALE Registry** means Link Market Services Limited or any replacement provider of share registry services to ALE Property RE.

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

**ALE Scheme Shares** means all Company Shares on issue as at the Record Date.

**ALE Scheme Securities** means all ALE Securities on issue as at the Record Date.

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

**ALE Scheme Units** means all Trust Units on issue as at the Record Date.

**ALE Security** means a stapled security in ALE Group consisting of one Company Share and one Trust Unit.

**ALE Securityholder** means a person who is registered on the ALE Register as a holder of ALE Securities from time to time, and, for the avoidance of doubt, includes a person who is registered on the ALE Register as the holder of Trust Units and/or Company Shares on or after the Unstapling.



**ALE Trust** means the Australian Leisure and Entertainment Property Trust (ARSN 106 063 049).

**ALE Trust Constitution** means the constitution of ALE Trust (as amended from time to time).

**ALE Trust Property** means the scheme property of ALE Trust including all of ALE Property RE's rights, property and undertaking the subject of ALE Trust of whatever kind and wherever situated and whether present or future.

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

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

**Associate** has the meaning set out in section 12(2)(b) and (c) of the Corporations Act, where for the purposes of section 12, the 'designated body' is ALE Property RE.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

**ASX Listing Rules** means the official listing rules of ASX.

**ASX Waivers** means an approval or consent referred to in clause 3.1(h).

**ATO** means the Australian Taxation Office.

**Board** means the board of directors of ALE Property RE provided that where ALE Property RE determines from time to time, a reference to the Board will mean the Independent Board Committee of ALE Property RE which has overseen the process of entry into this Deed.

**Break Fee** means \$11,000,000.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Sydney, New South Wales.

**CHESS** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited, a wholly-owned subsidiary of ASX.

**CHH** means Charter Hall Holdings Pty. Limited (ACN 051 363 547) of Level 20, 1 Martin Place, Sydney, NSW 2000.

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

**CLW Due Diligence Material** means:

- (a) the documents and information (including in response to requests for information) made available by or on behalf of the Consortium Members to ALE Property RE and its Representatives in connection with CLW, CLW Trusts and CLW Securities, as at 6.00pm on Saturday, 18 September 2021, including the CLW Due Diligence Questionnaire Responses, as included on a USB delivered to Allens (or delivered to Allens by email) (acting on behalf of ALE Property RE) prior to execution of this Deed; and
- (b) any other documents, information, responses or disclosures agreed in writing by the parties to comprise the CLW Due Diligence Material.

**CLW Due Diligence Questionnaire Responses** means the written responses to the due diligence questionnaire provided by or on behalf of CLW to ALE Property RE and its Representatives dated 18 September 2021.

**CLW Group** means CLW, the CLW Trusts and each of their Controlled Entities.

**CLW Prescribed Occurrence** means any of the occurrences set out in Schedule 9, other than

an occurrence:

- (a) required or expressly permitted by this Deed or the Schemes;
- (b) to the extent that it was Fairly Disclosed in the CLW Due Diligence Materials;
- (c) Fairly Disclosed to ASX within five years prior to the date of this Deed or Fairly Disclosed in a document lodged with ASIC, or which would be disclosed in a search of ASIC records or the PPS Register, in each case prior to the date of this Deed;
- (d) required by law, regulation or by an order of a court or Governmental Agency; or
- (e) with the written consent of ALE Property RE.

**CLW Security** means a security comprising one unit in each of the CLW Trusts stapled together such that they cannot be dealt with separately.

**CLW Trusts** means each of LWR Finance Trust (ARSN 614 713 138) and Charter Hall Direct Industrial Fund (ARSN 144 613 641).

**CLW Trust Deeds** means the trust deeds of each CLW Trust (as amended from time to time).

**CLW Trust Property** means the property of the CLW Trusts including all of CLW's rights, property and undertaking the subject of the CLW Trusts of whatever kind and wherever situated and whether present or future.

**CLW Registry** means Link Market Services Limited or any replacement provider of share registry services to CLW.

**Company Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between ALE Property RE in its own right and ALE Scheme Securityholders in the form of Schedule 10 (or such other form agreed to in writing between the parties to this Deed).

**Company Scheme Meeting** means the meeting of ALE Securityholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Company Scheme, and includes any adjournment of that meeting.

**Company Share** means a fully paid ordinary share in ALE Property RE.

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

- (a) acquiring, directly or indirectly, a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, or the right to vote, 20% or more of ALE Securities;
- (b) directly or indirectly acquiring Control of ALE Property RE;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part or material part of all of the business or assets of the ALE Group; or
- (d) directly or indirectly acquiring or merging with the ALE Group,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved transaction, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger) or other transaction or arrangement. For the purposes of paragraph (a) above, a Third Party does not include any party that as at the date of this Deed has a Relevant Interest in 20% or more of all ALE Securities.

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

**Confidentiality and Process Deed** means the deed between CHH, CLW, Hostplus and ALE Property RE dated 9 August 2021.

**Consortium Acquirer Group** means each of the Consortium Acquirer, CLW and Hostplus.

**Consortium Acquirer Trust** means the CH LEP Investment Trust.

**Consortium Acquirer Trust Deed** means the trust deed of the Consortium Acquirer Trust (as amended from time to time).

**Consortium Acquirer Executive Team** means Mr David Harrison, Mr Avi Anger, Mr Mark Bryant and Mr Philip Schretzmeyer.

**Consortium Acquirer Information** means all information provided by the Consortium Acquirer to ALE Property RE for inclusion in the Scheme Booklet regarding the Consortium Members (including in relation to the CLW Securities). For the avoidance of doubt, Consortium Acquirer Information does not include the ALE Provided Information, the Independent Expert's Report, any third party tax advice or any other information about ALE Group.

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

**Consortium Acquirer Nominee** means CHH or a wholly owned subsidiary of CHH.

**Confidential Information** has the meaning given to that term in the Confidentiality and Process Deed.

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

**Consortium Member** means:

- (a) CHH;
- (b) CLW;
- (c) Hostplus;
- (d) the Consortium Acquirer; and
- (e) any of their Related Bodies Corporate.

**Constitutions** means ALE Property RE Constitution and ALE Trust Constitution (in each case as amended from time to time) and **Constitution** means any one of them (as the context requires).

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

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

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

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

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

**D&O Policy** has the meaning given in clause 7.6(b).

**Debt Facility** means any loan or other debt instrument to which an ALE Group Member is a party.

**Derivative** means any derivative to which an ALE Group Member is a party.

**Deed Poll** means a deed poll to be executed by the Consortium Acquirer in favour of the ALE Scheme Securityholders substantially in the form of Schedule 6 (or in such other form as the Consortium Acquirer and ALE Property RE may agree in writing).

**Director** means each director of the Board of ALE Property RE.

**Effective** means:

- (a) in relation to the Trust Scheme, the Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act; and
- (b) in relation to the Company Scheme, the coming into effect under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act.

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

**Election** has the meaning given in the Schemes.

**Election Date** has the meaning given in clause 4.5(a).

**Election Form** has the meaning given in clause 4.4(a).

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

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

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

**ESSS Rights** means rights granted by ALE Property RE under ALE Property RE's Executive Stapled Security Scheme which entitles the holder to receive an ALE Security in certain circumstances.

**Exclusivity Period** means the period commencing on the date of this Deed and ending on the earlier of:

- (a) the termination of this Deed in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

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

**First Court Date** means the first day:

- (a) on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard; and
- (b) of hearing of an application made to the Court by ALE Property RE for the First Judicial Advice,

or, if the hearing of that application is adjourned for any reason, means the first day of the adjourned hearing.

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

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

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

**Guarantors** has the meaning given in clause 19.1(a).

**Guarantor Representations and Warranties** means the representations and warranties of each of CLW and Hostplus set out in Schedule 3.

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

**Hostplus Fund** means a fund Controlled by Hostplus or a related entity of Hostplus or of which Hostplus or a related entity of Hostplus is the trustee, manager or advisor.

**Hostplus Trust** means Hostplus Pooled Superannuation Trust (ABN 13 140 019 340).

**Hostplus Trust Deed** means the trust deed of the Hostplus Trust (as amended from time to time).

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

**Independent Expert** means an independent expert engaged by ALE Property RE.

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

**Ineligible Foreign Securityholder** means an ALE Scheme Securityholder whose address, as shown in the ALE Register (as at the Record Date), is in a place outside Australia and Australia's external territories, unless ALE Property RE is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of CLW Securities to that ALE Scheme Securityholder pursuant to the Schemes, either unconditionally or after compliance with conditions that ALE Property RE in its sole discretion regards as acceptable and not unduly onerous or impracticable.

**Insolvent or insolvency** means, in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this Deed;

- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation);
- (f) the entity being deregistered as a company or otherwise dissolved; or
- (g) something having a substantially similar effect to (a) to (f) happens in connection with that entity under the law of any jurisdiction.

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

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

**Maximum Cash Consideration** means an amount of \$5.736 for each ALE Scheme Security held by an ALE Scheme Securityholder, as reduced in accordance with clause 4.8.

**Maximum Scrip Consideration** means 1.1658 CLW Securities for each ALE Scheme Security held by an ALE Scheme Securityholder, as reduced in accordance with clause 4.8.

**Mixed Consideration** means \$3.728 and 0.4080 CLW Securities for each ALE Scheme Security held by an ALE Scheme Securityholder, as reduced in accordance with clause 4.8.

**Notice** has the meaning given in clause 21.1.

**NIVUS** means no income voting units in the ALE Trust.

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

**Permitted Distribution** means a distribution declared or determined to be paid by the Board to ALE Securityholders in the ordinary course on a quarterly basis.

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

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

**Prohibited Interest** has the meaning given to that term in Schedule 1.

**Property** means any real property or any trusts owning real property in which the ALE Group have an interest including any interest that is owned, leased or licensed and any interest that is legal, equitable, direct or indirect.

**Recommendation** has the meaning given in clause 8.1.

**Record Date** means 7.00pm on the date that is the third Business Day after the Effective Date, or such other date as may be agreed in writing between the Consortium Acquirer and ALE Property RE or as may be required by ASX.

**Redemption Offer** has the meaning given in clause 4.11(a).

**Registered Address** in relation to an ALE Securityholder, the address shown in the ALE Register as at the Record Date.

**Regulatory Approval** means:

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

**Related Body Corporate** has the meaning given in the Corporations Act but as if references to



"body corporate" and "body" were to "Entity".

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

**Representative** means, in relation to the Consortium Acquirer or ALE Property RE:

- (a) each other member of the Consortium Acquirer Group or ALE Group (as applicable);
- (b) an Officer of a member of the Consortium Acquirer Group or ALE Group (as applicable); or
- (c) an Adviser to a member of the Consortium Acquirer Group or ALE Group (as applicable).

**Reverse Break Fee** means \$11,000,000.

**Sale Facility** has the meaning specified in the Schemes.

**Scaleback Arrangements** has the meaning specified in the Schemes.

**Schemes** means the Trust Scheme and the Company Scheme and **Scheme** means either of them (as the case may be).

**Scheme Booklet** means the scheme booklet and explanatory memorandum to be prepared in respect of the Schemes in accordance with the terms of this Deed and to be despatched to ALE Securityholders.

**Scheme Consideration** means the consideration to be provided to ALE Scheme Securityholders under the terms of the Schemes for the transfer to the Consortium Acquirer of their ALE Scheme Securities, being either:

- (a) the Maximum Cash Consideration;
- (b) the Maximum Scrip Consideration; or
- (c) the Mixed Consideration.

**Scheme Meeting** means Company Scheme Meeting and Trust Scheme Meeting.

**Second Court Date** means the first day:

- (a) on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Company Scheme is heard; and
- (b) of hearing of an application made to the Court by ALE Property RE for the Second Judicial Advice,

or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

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

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

**Supplemental Deed** means the deed poll pursuant to which ALE Property RE will amend the ALE Trust Constitution, to be executed by ALE Property RE in the form of Schedule 5 (or in such other form as the Consortium Acquirer and ALE Property RE agree in writing).

**Takeovers Panel** means the Takeovers Panel of Australia.

**Third Party** means a person other than any Consortium Member or any Associate of a Consortium Member.

**Timetable** means the indicative timetable in relation to the Schemes set out in Schedule 4, or such other timetable as ALE Property RE and the Consortium Acquirer may agree in writing or as may be required by ASX.

**Transaction Documents** means:

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

**Trust Scheme** means the arrangement in accordance with Guidance Note 15 under which the Consortium Acquirer acquires all of the ALE Scheme Units, facilitated by amendments to the ALE Trust Constitution as set out in the Supplemental Deed.

**Trust Scheme Meeting** means the meeting of ALE Securityholders to be convened by ALE Property RE pursuant to the ALE Trust Constitution and section 252A of the Corporations Act to consider Trust Scheme Resolutions, and includes any adjournment of that meeting.

**Trust Scheme Resolutions** means the following resolutions to be put to ALE Securityholders to approve the Trust Scheme:

- (a) a special resolution to approve amendments to the ALE Trust Constitution as set out in the Supplemental Deed and to authorise ALE Property RE to execute and lodge with ASIC the Supplemental Deed to give effect to those amendments;
- (b) an ordinary resolution of holders of Company Shares and of holders of Trust Units to approve the Unstapling on the Implementation Date;
- (c) an ordinary resolution for the purpose of item 7 of section 611 of the Corporations Act to approve the acquisition of all of the ALE Securities by the Consortium Acquirer; and
- (d) any other resolutions that the parties (acting reasonably) may agree.

**Trust Unit** means a fully paid ordinary unit in ALE Trust.

**Unstapling** means the unstapling of Trust Units and Company Shares in accordance with clause 38.5 of the ALE Trust Constitution and clause 77(h) of the ALE Property RE Constitution.

**Voting Statement** has the meaning given in clause 8.1.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.



- (e) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Deed.
- (f) A reference to an *agreement or document* (including a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (h) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form and includes a communication by electronic mail.
- (k) A reference to \$, A\$ or Australian dollars is to the lawful currency of Australia.
- (l) Words and phrases not specifically defined in this Deed have the same meanings (if any) given to them in the Corporations Act.
- (m) A reference to time is a reference to time in Sydney, New South Wales, Australia.
- (n) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (o) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (p) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.

### 1.3 Best or reasonable endeavours

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

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

### 1.4 Knowledge, belief or awareness

- (a) Certain statements made in this Deed (including certain representations and warranties) are given and made by ALE Property RE or the Consortium Acquirer (as the case may

be) only on the basis of its knowledge, belief or awareness. For the purposes of this Deed:

- (i) ALE Property RE's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the ALE Executive Team;
  - (ii) the Consortium Acquirer's and CLW's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the Consortium Acquirer Executive Team; and
  - (iii) Hostplus' knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of Spiros Deftereos.
- (b) The knowledge, belief or awareness of any person other than the persons identified in clause 1.4(a)(i), 1.4(a)(ii) or 1.4(a)(iii) will not be imputed to ALE Property RE, the Consortium Acquirer, or the Guarantors (as the case may be).
- (c) None of the persons named in clause 1.4(a)(i), 1.4(a)(ii) or 1.4(a)(iii) will bear any personal liability in respect of the ALE Representations and Warranties, the Consortium Acquirer Representations and Warranties, or the Guarantor Representations and Warranties (as the case may be) or otherwise under this Deed.

## 1.5 Consents or approvals

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

## 1.6 References to the parties

Unless the context requires otherwise, a reference to a right or obligation as between the parties (including an obligation to seek consent or provide notice as between the parties) is a reference to a right or obligation as between the Consortium Acquirer and ALE Property RE (and not as between those parties and the Guarantors or any other Consortium Member).

## 2 Agreement to Proceed with Schemes

### 2.1 Company to propose Schemes

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

### 2.2 Consortium Acquirer to assist

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

## 3 Conditions Precedent and Pre-Implementation Steps

### 3.1 Conditions Precedent

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

- (a) **(ASIC Relief)** ASIC issues or provides such consents, waivers and approvals or does such other acts that are necessary to implement Schemes and none of those consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date;

- (b) **(ALE Securityholder approval)** ALE Securityholders approve the:
- (i) Company Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act; and
  - (ii) Trust Scheme Resolutions by the requisite majorities under section 601GC(1) and item 7 of section 611 of the Corporations Act,
- at the Scheme Meetings;
- (c) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to ALE Property RE, stating that in its opinion the Schemes are in the best interests of ALE Securityholders, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to ALE Property RE before 8:00am on the Second Court Date;
- (d) **(no restraints)** no applicable law shall have been enacted and no temporary, preliminary or final restraining order, injunction or other order made by a court of competent jurisdiction or Government Agency is in effect that would prevent, make illegal or prohibit the implementation of the Schemes at 8:00am on the Second Court Date;
- (e) **(no ALE Prescribed Occurrence)** no ALE Prescribed Occurrence occurs between the date of this Deed and 8:00am on the Second Court Date;
- (f) **(no CLW Prescribed Occurrence)** no CLW Prescribed Occurrence occurs between the date of this Deed and 8:00am on the Second Court Date;
- (g) **(quotation approval for CLW Securities)** before 8:00am on the Second Court Date, ASX provides approval for the official quotation of the CLW Securities to be issued pursuant to the Schemes, subject to any conditions that ASX may reasonably require, including customary pre-quotation conditions and conditions relating the Schemes becoming Effective;
- (h) **(ASX Waivers)** before 8:00am on the Second Court Date, ASX issues or provides such consents, waivers and approvals or does such other acts that are necessary to implement Schemes and none of those consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8:00am on the Second Court Date; and
- (i) **(Court approval)** the Court approves the Company Scheme in accordance with section 411(4)(b) of the Corporations Act and grants the Judicial Advice.

### 3.2 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(d), 3.1(g), 3.1(h) and 3.1(i) cannot be waived.
- (b) The Condition Precedent in clause 3.1(e) is for the sole benefit of the Consortium Acquirer and may only be waived by the Consortium Acquirer (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clauses 3.1(c) and 3.1(f) are for the sole benefit of ALE Property RE and may only be waived by ALE Property RE (in its absolute discretion) in writing.
- (d) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.

- (e) If a party waives the breach or non-satisfaction of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this Deed constituted by the same event that gave rise to the breach or non-satisfaction of the Condition Precedent.
- (f) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event or circumstances; or
  - (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event or circumstances.

### 3.3 Best endeavours and co-operation

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

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

### 3.4 Regulatory Approvals

Without limiting clauses 3.3 and 3.5, and except to the extent prohibited by law or a Government Agency, each of ALE Property RE and the Consortium Acquirer must:

- (a) promptly apply for all relevant Regulatory Approvals necessary to give effect to the Schemes (including the ASIC Relief, ASX Waivers and the ASX approval contemplated in clause 3.1(g)) and take all steps reasonably required as part of the approval process, including responding to requests for information from the relevant Government Agency; and
- (b) keep the other party reasonably informed of progress in relation to the relevant Regulatory Approval (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, the relevant Government Agency) and provide the other party with all information reasonably requested in connection with the progress of the Regulatory Approval,

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

**3.5 Notifications**

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms.

**3.6 Failure of Conditions Precedent**

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

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

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

provided that, notwithstanding anything in this Deed, each party may make a determination with respect to the matters in clauses 3.6(a)(iv) to 3.6(a)(vii) in its sole, absolute and unfettered discretion.

- (b) If the Consortium Acquirer and ALE Property RE are unable to reach agreement under clauses 3.6(a)(iv), 3.6(a)(v), 3.6(a)(vi) or 3.6(a)(vii) within five Business Days after the delivery of the notice under clause 3.7(a) or any shorter period ending at 5.00 pm on the day before the Second Court Date, either party may terminate this Deed by notice in writing to the other party, provided that where:
  - (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
  - (ii) there has been no failure by that party to comply with its obligations under this Deed, where that failure directly and materially contributed to the Condition

Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 15.5 will apply.

### **3.7 Certificates in relation to Conditions Precedent**

- (a) On the Second Court Date, each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00am on the Second Court Date the Conditions Precedent have been satisfied or waived in accordance with this Deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.7(a) by 5.00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## **4 Schemes**

### **4.1 Outline of Schemes**

The parties agree that:

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

### **4.2 Relationship between the Trust Scheme, the Company Scheme and the Unstapling**

- (a) The Trust Scheme and the Company Scheme are inter-conditional so that each Scheme must become Effective for the Schemes to proceed.
- (b) The Unstapling and the Schemes are inter-conditional such that the Unstapling may only occur if the Schemes are to be implemented immediately afterwards, and the Schemes will only be implemented if the Unstapling occurs.

### **4.3 Scheme Consideration**

- (a) If the Schemes become Effective, subject to clause 4.3(f):
  - (i) each ALE Scheme Securityholder that is not an Ineligible Foreign Securityholder is entitled to receive either the Maximum Cash Consideration, the Maximum Scrip Consideration or the Mixed Consideration in respect of each ALE Scheme Security held by that ALE Scheme Securityholder, in accordance with that ALE Scheme Securityholder's Election; and
  - (ii) each ALE Scheme Securityholder that is an Ineligible Foreign Securityholder is deemed to make a valid Election to receive Mixed Consideration in respect of each ALE Scheme Security held by that ALE Scheme Securityholder,subject to the terms and conditions of this Deed and the Schemes.
- (b) The Scheme Consideration in respect of each ALE Scheme Security is either:
  - (i) the Maximum Cash Consideration;
  - (ii) the Maximum Scrip Consideration; or



- (iii) the Mixed Consideration,  
to be allocated between each Company Share and each Trust Unit on the basis of the net asset value attributable to each Company Share and each Trust Unit, or as otherwise agreed in writing between ALE Property RE and the Consortium Acquirer.
- (c) Subject to clause 4.3(d) and the terms of the Schemes, the Consortium Acquirer undertakes and warrants to ALE Property RE (in ALE Property RE's own right and on behalf of each ALE Scheme Securityholder) that:
- (i) in consideration of the transfer to the Consortium Acquirer of each ALE Scheme Unit; and
  - (ii) in consideration of the transfer to the Consortium Acquirer Nominee of each ALE Scheme Share,
- in each case, held by an ALE Securityholder under the terms of the Schemes on the Implementation Date, the Consortium Acquirer will:
- (iii) accept that transfer to it of each ALE Scheme Unit;
  - (iv) procure that the Consortium Acquirer Nominee accepts the transfer to it of each ALE Scheme Share; and
  - (v) provide or procure the provision to each ALE Scheme Securityholder the Scheme Consideration for each ALE Scheme Unit and each ALE Scheme Share,
- in accordance with the terms and conditions of this Deed and the Schemes.
- (d) If the number of ALE Securities held by an ALE Scheme Securityholder as at the Record Date is such that the aggregate entitlement of the ALE Scheme Securityholder to Scheme Consideration:
- (i) includes a fractional entitlement to a CLW Security; and/or
  - (ii) includes a fractional entitlement to a cent,
- then the entitlement of that ALE Scheme Securityholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of CLW Securities or cents (as applicable), and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of CLW Securities or cents (as applicable).
- (e) The Consortium Acquirer undertakes and warrants in favour of ALE Property RE (in its own right and on behalf of each ALE Securityholder) that:
- (i) the CLW Securities issued as Maximum Scrip Consideration or Mixed Consideration will have the rights set out in the CLW Trust Deeds;
  - (ii) rank equally in all respects among themselves and with all other CLW Securities on issue in CLW from their date of issue; and
  - (iii) be fully paid and free from any Encumbrance.
- (f) The provision to each ALE Scheme Securityholder of the Scheme Consideration will be subject to the Scaleback Arrangements.

#### 4.4 Scheme Consideration election mechanism

- (a) ALE Property RE must ensure that the Scheme Booklet sent to ALE Securityholders is accompanied by a form of election under which each ALE Securityholder that is not an Ineligible Foreign Securityholder is requested to make an Election to receive:
- (i) the Maximum Cash Consideration;

- (ii) the Maximum Scrip Consideration; or
- (iii) the Mixed Consideration,
- in respect of all of their ALE Securities, and which sets out the Election process (***Election Form***).
- (b) The Election Form must include relevant matters set out in the Schemes and must otherwise be in a form agreed by the parties in writing.
- (c) ALE Property RE must procure that, to the extent practicable, ALE Securityholders who acquired ALE Securities after the date of the despatch of the Scheme Booklet and Election Form receive an Election Form on request to ALE Property RE.
- (d) The parties agree that the Election Form will include the following terms and conditions:
- (i) Ineligible Foreign Securityholders are deemed to make a valid Election to receive Mixed Consideration and any purported Election otherwise by such persons will be of no effect and clause 4.5(c) will apply to such persons;
  - (ii) if an ALE Securityholder, who is not an Ineligible Foreign Securityholder, does not make a valid Election, clause 4.5(b) will apply to that person;
  - (iii) ALE Securityholders who receive Maximum Scrip Consideration or Mixed Consideration (other than Ineligible Foreign Securityholders to whom CLW Securities would have been issued but for clause 4.5(c)(ii)) agree to become members of CLW from the Implementation Date and become bound by the CLW Trust Deeds pursuant to the Schemes;
  - (iv) ALE Securityholders who:
    - (A) receive Maximum Scrip Consideration will have such Maximum Scrip Consideration issued having the same holding name and address and other details as the holding of the relevant ALE Scheme Securities; and
    - (B) receive Mixed Consideration (other than Ineligible Foreign Securityholders to whom CLW Securities would have been issued but for clause 4.5(c)(ii)) will have such portion of their Mixed Consideration as comprises CLW Securities issued having the same holding name and address and other details as the holding of the relevant ALE Scheme Securities;
  - (v) such other terms and conditions as the parties agree (acting reasonably) to be stated on the Election Form; and
- (e) ALE Property RE must act reasonably in considering any reasonable request by the Consortium Acquirer to undertake actions for the purposes of classifying an ALE Scheme Securityholder or a category of ALE Scheme Securityholders whose address or addresses, as shown in the ALE Register, is or are in a place outside Australia and Australia's external territories or ALE Scheme Securityholder who are acting on behalf of such a person, as an ALE Scheme Securityholder who is not an Ineligible Foreign Securityholder (including, for the avoidance of doubt, obtaining legal advice as to whether the laws of that place would permit an allotment of CLW Securities to that ALE Scheme Securityholder or category of ALE Scheme Securityholders), having regard to the costs of obtaining such advice and the actions required in order for that classification to occur.

#### 4.5 Scheme Consideration upon Election

- (a) Subject to the Scaleback Arrangements, if an ALE Securityholder (not being an Ineligible Foreign Shareholder) makes a valid Election prior to the time and date on which such



Elections must be made as specified in the Schemes (the **Election Time**), that ALE Securityholder will be entitled to receive the Scheme Consideration as nominated by their Election.

- (b) Subject to the Scaleback Arrangements, if an ALE Securityholder (not being an Ineligible Foreign Securityholder) does not make a valid Election prior to the Election Time, that ALE Securityholder will be entitled to receive the Mixed Consideration.
- (c) If an ALE Securityholder is an Ineligible Foreign Securityholder, then regardless of any purported Election made by that Ineligible Foreign Securityholder:
  - (i) that ALE Securityholder will be deemed to make a valid Election to receive the Mixed Consideration; and
  - (ii) all CLW Securities that, but for this clause 4.5, would have been required to be issued to Ineligible Foreign Securityholders are to be dealt with on behalf of Ineligible Foreign Securityholders under the Sale Facility in accordance with the terms of the Schemes.

#### 4.6 Provision of election updates and Security information

- (a) In order to facilitate the provision of the Scheme Consideration, ALE Property RE must provide, or procure the provision of, to the Consortium Acquirer and/or the Consortium Acquirer Nominee:
  - (i) reasonable written updates of the Elections that have been received in the period up to the Election Time;
  - (ii) written details of the final Elections made by each ALE Scheme Securityholder, within one Business Day after the Record Date; and
  - (iii) a complete copy of the ALE Register as at the Record Date (which must include the name, Registered Address and registered holding of each ALE Scheme Securityholder as at the Record Date), within one Business Day after the Record Date.
- (b) The details and information to be provided under clause 4.6(a) must be provided in such form as the Consortium Acquirer or the CLW Registry may reasonably require.

#### 4.7 Permitted Distribution

- (a) The Consortium Acquirer acknowledges and agrees that subject to clause 4.6(b), ALE Property RE may (in its discretion) declare and determine to pay to ALE Securityholders one or more Permitted Distributions.
- (b) If ALE Property RE declares or determines to pay one or more Permitted Distributions in accordance with clause 4.7(a):
  - (i) any such Permitted Distribution must be paid in cash;
  - (ii) any such Permitted Distribution must be announced no later than the Implementation Date;
  - (iii) the record date of any such Permitted Distribution must be a date on or before the Record Date; and
  - (iv) any such Permitted Distribution must comply with the Corporations Act.

- (c) To facilitate the payment of any Permitted Distributions, one or more ALE Group Members may settle intercompany balances or enter into other intercompany transactions or pay a distribution to another ALE Group Member.

#### 4.8 Effect of Permitted Distribution on Scheme Consideration

- (a) The Scheme Consideration will be reduced by the amount of any Permitted Distribution (including, for the avoidance of doubt, any franking credits attaching to such Permitted Distribution) to which ALE Securityholders become entitled, in accordance with clause 4.8(b).
- (b) A reduction in the Scheme Consideration required under clauses 4.8(a) will be effected:
  - (i) in the case of the Maximum Cash Consideration and the Mixed Consideration, as a reduction in the cash component of the Scheme Consideration in the amount of the Permitted Distribution(s); and
  - (ii) in the case of the Maximum Scrip Consideration, as a reduction in the cash component, if any, and if the cash component is nil or is reduced to nil, the excess will be applied as a reduction in the number of CLW Securities to be issued in accordance with the ratio: 1 cent distributed is equal to 0.0020325 CLW Securities.

#### 4.9 Other Distributions

Other than any Permitted Distributions, ALE Property RE in its own right and in its capacity as responsible entity of the ALE Trust must not declare, pay, make, or incur a liability to pay or make, a distribution of income, profits, assets or capital, other than by agreement with the Consortium Acquirer.

#### 4.10 ESSS Rights

- (a) ALE Property RE must ensure that, by no later than the Record Date, there are no outstanding ESSS Rights.
- (b) In order to comply with its obligation under clause 4.10(a), ALE Property RE may (in its discretion):
  - (i) cause some or all of the outstanding ESSS Rights to vest (including by modifying or waiving any conditions for vesting) and, following such vesting, cause the relevant number of ALE Securities to be transferred or issued (as applicable) to allow the relevant former holders of the relevant ESSS Rights to participate in the Schemes; and
  - (ii) take such action as may be necessary to cancel any outstanding ESSS Rights which it does not cause to vest in accordance with clause 4.10(b)(i) (if any).
- (c) ALE Property must notify the Consortium Acquirer of the number of ALE Securities that have or will be issued as a result of a determination to cause any outstanding ESSS Rights to vest in accordance with clause 4.10(b)(i) (if any), by no later than two Business Days before the Effective Date.

#### 4.11 NIVUS

- (a) On or before the date that is at least 21 days prior to the Implementation Date, ALE Property RE acting in its capacity as responsible entity of ALE Property RE, must make an offer to ALE Property RE acting in its personal capacity, to redeem all NIVUS on issue on the Implementation Date prior to the ALE Scheme Units being transferred to the Consortium Acquirer (the **Redemption Offer**).

- (b) The Redemption Offer must be made in accordance with section 601KB of the Corporations Act and the ALE Trust Constitution (including, for the avoidance of doubt, lodging a copy of the offer with ASIC in accordance with section 601KB(5)) and must close prior to the Implementation Date.
- (c) ALE Property RE acting in its personal capacity must accept the Redemption Offer prior to the Implementation Date and prior to the Redemption Offer closing.
- (d) Subject to the Consortium Acquirer satisfying its obligations under this clause 4.11, ALE Property RE acting in its capacity as responsible entity of the ALE Trust must:
- (i) pay the redemption price of \$1 per NIVUS to ALE Property RE acting in its personal capacity; and
  - (ii) update the register on which the NIVUS were recorded to show that all NIVUS have been redeemed,
- on the Implementation Date prior to the ALE Scheme Units being transferred to the Consortium Acquirer.

## 5 Steps for Implementation

### 5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must each use all reasonable endeavours to take all necessary steps and exercise all rights necessary to implement the Schemes in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control (including, for the avoidance of doubt, any delays caused by a Government Agency).
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control (including, for the avoidance of doubt, any delays caused by a Government Agency), the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

### 5.2 ALE Property RE's obligations in respect of the Schemes

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

- (a) **(preparation of Scheme Booklet)** prepare the Scheme Booklet so that it complies with all applicable laws, including the Corporations Act, ASIC Regulatory Guides 60 and 74, Guidance Note 15 and the ASX Listing Rules. The Scheme Booklet must include a statement that:
- (i) other than the Consortium Acquirer Information, the Independent Expert's Report and any description of the taxation effect of the Schemes prepared by an external adviser to ALE Property RE, the Scheme Booklet has been prepared by ALE Property RE and is the responsibility of ALE Property RE, and that no Consortium Member assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than the Consortium Acquirer Information); and

- (ii) the Consortium Acquirer Information has been provided by the Consortium Acquirer and is the responsibility of the Consortium Acquirer, and that no ALE Group Member assumes any responsibility for the accuracy or completeness of the Consortium Acquirer Information;
- (b) **(Independent Expert)** appoint the Independent Expert and promptly provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(consultation with the Consortium Acquirer in relation to Scheme Booklet)** consult with the Consortium Acquirer as to the content and presentation of the Scheme Booklet, such consultation to include allowing the Consortium Acquirer a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet a reasonable time before lodgement with ASIC and obtain the Consortium Acquirer's written consent to the inclusion of the Consortium Acquirer Information (including in respect of the form and context in which the Consortium Acquirer Information appears in the Scheme Booklet) prior to lodgement with ASIC. ALE Property RE must consider in good faith any comments on drafts of the Scheme Booklet provided by or on behalf of the Consortium Acquirer;
- (d) **(liaison with ASIC)** as soon as practicable after the date of this Deed:
- (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval ; and
- (ii) keep the Consortium Acquirer reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters) and use reasonable endeavours to resolve those matters in consultation with the Consortium Acquirer (which will, to the extent reasonably practicable, include inviting the Consortium Acquirer to participate in ALE Property RE's meetings and discussions with ASIC);
- (e) **(ASIC Relief)** apply to ASIC for the ASIC Relief;
- (f) **(First Court Date)**
- (i) lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the First Judicial Advice; and
- (ii) apply to the Court for orders directing ALE Property RE to convene the Scheme Meeting,
- and in each case consult with the Consortium Acquirer as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders. Such consultation must include providing the Consortium Acquirer with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and ALE Property RE must consider in good faith any comments provided by or on behalf of the Consortium Acquirer;
- (g) **(ASIC registration)** request ASIC to register the Scheme Booklet in the form approved by the Court;
- (h) **(no objection statement)** apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Company Scheme;
- (i) **(Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court, including, as required, despatching the Scheme Booklet to ALE Securityholders, convening and holding the Scheme Meeting in accordance with the Court orders, and

putting the Company Scheme and Trust Scheme Resolutions to ALE Securityholders at the Scheme Meeting, provided that if this Deed is terminated under clause 15, ALE Property RE will take all steps reasonably required so that the Scheme Meeting is not held;

- (j) **(update Scheme Booklet)** until the date of the Scheme Meeting, promptly update the Scheme Booklet with, or where appropriate otherwise inform the market by way of an announcement of, any information that arises after the Scheme Booklet have been despatched to ALE Securityholders that is necessary so that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and, where relevant, seek the Court's approval for the dispatch of any updated or supplementary Scheme Booklet. ALE Property RE must consult with the Consortium Acquirer as to the content of any documents it proposes to issue to ALE Securityholders under this clause 5.2(j), and such consultation must include providing the Consortium Acquirer with a reasonable opportunity to review and comment on the relevant documents before they are lodged, and ALE Property RE must consider in good faith any comments provided by or on behalf of the Consortium Acquirer;
- (k) **(Second Court Date)** if ALE Securityholders approve the Trust Scheme Resolutions and the Company Scheme by the requisite majorities:
  - (i) lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the Second Judicial Advice; and
  - (ii) apply to the Court for orders approving the Company Scheme,
 and in each case, consult with the Consortium Acquirer as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing the Consortium Acquirer with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and ALE Property RE must consider in good faith any comments provided by or on behalf of the Consortium Acquirer;
- (l) **(Court order)** lodge with ASIC an office copy of any Court order approving Company Scheme by not later than the first Business Day after the day such office copy is received (or such later date as the Consortium Acquirer may agree in writing);
- (m) **(execution and lodgement of the Supplemental Deed)** if the Court grants the Second Judicial Advice, as soon as practicable after, and in any event by no later than 5.00pm on the first Business Day after the later of the Second Court Date and the date on which all of the Conditions Precedent are satisfied or waived in accordance with this Deed, execute the Supplemental Deed and lodge with ASIC a copy of the executed Supplemental Deed (and if requested by ASIC, a consolidated copy of the ALE Trust Deed as amended pursuant to the Supplemental Deed in accordance with section 601GC(3) of the Corporations Act);
- (n) **(Consortium Acquirer Information)** during the period until the Consortium Acquirer Information becomes publicly available (other than due to an act of ALE Property RE without the consent or agreement of the Consortium Acquirer), only use the Consortium Acquirer Information with the prior written consent of the Consortium Acquirer (not to be unreasonably withheld);
- (o) **(Debt Facilities and Derivatives)** use reasonable endeavours to assist, and comply with any reasonable directions of, the Consortium Acquirer from time to time to enable the repayment or redemption of any Debt Facility (as specified in that direction) or Derivative

- (as specified in that direction) to occur on or as soon as practicable after the Implementation Date provided that ALE Property RE is under no obligation to deliver a binding repayment notice or take any other step prior to the Implementation Date that would commit ALE Property RE to repaying the Debt Facility or cancelling a Derivative;
- (p) **(implementation of the Schemes)** if all Conditions Precedent in clause 3.1 are satisfied or waived:
- (i) use best endeavours to ensure that ASX suspends trading in ALE Securities with effect from the close of trading on the Effective Date;
  - (ii) close the ALE Register as at the Record Date (in accordance with clause 5.10) to determine the identity of ALE Scheme Securityholders and determine their entitlements to the Scheme Consideration in accordance with the Schemes;
  - (iii) subject to the Consortium Acquirer satisfying its obligations under clause 4.3(c):
    - (A) unstaple the Trust Units and the Company Shares in accordance with the Unstapling;
    - (B) immediately following the Unstapling of the Trust Units from the Company Shares, promptly execute proper instruments of transfer of, and register all transfers of:
      - (1) the ALE Scheme Units to the Consortium Acquirer; and
      - (2) the ALE Scheme Shares to the Consortium Acquirer Nominee,
 in accordance with the Schemes;
- (q) **(listing)**
- (i) not do anything to cause the ALE Securities to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Schemes unless the Consortium Acquirer has agreed in writing; and
  - (ii) do all things reasonably necessary to maintain quotation of ALE Securities on ASX until after the implementation of the Schemes
- (r) **(information)** provide all necessary information, or have the ALE Registry provide all necessary information, to the Consortium Acquirer about the Schemes (including all Elections received and the details of Ineligible Foreign Securityholders and the ALE Securities held by Ineligible Foreign Securityholders) and ALE Securityholders (including the results of directions by ALE Property RE to ALE Securityholders under Part 6C.2 of the Corporations Act), in each case in a form reasonably requested by the Consortium Acquirer, which the Consortium Acquirer reasonably requires in order to facilitate the provision by the Consortium Acquirer of the Schemes Consideration;
- (s) **(proxy reports)** keep the Consortium Acquirer reasonably informed on the status of proxy or other voting instructions or revocations received for the Scheme Meeting before the Scheme Meetings; and
- (t) **(all things necessary)** do all other things contemplated by or necessary to lawfully give effect to the Schemes and ensure that the Schemes are effect in accordance with applicable laws and regulations.

### 5.3 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Schemes:



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

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

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

- (a) **(Consortium Acquirer Information)** as soon as reasonably practicable after the date of this Deed, prepare and promptly provide to ALE Property RE Consortium Acquirer Information for inclusion in the Scheme Booklet (to the extent not already provided as at the date of this Deed), including all information regarding the Consortium Acquirer Group, the Maximum Scrip Consideration and the Scheme Consideration required by all applicable laws (including the Corporations Act and the Corporations Regulations), ASIC Regulatory Guides 60 and 74, Guidance Note 15 and the ASX Listing Rules, and consent to the inclusion of that information in the Scheme Booklet, and take into account all reasonable and timely comments from ALE Property RE on those drafts;
- (b) **(review of Scheme Booklet)** review the drafts of the Scheme Booklet prepared by ALE Property RE and provide comments promptly on those drafts in good faith;
- (c) **(Independent Expert information)** provide all assistance and information reasonably requested by ALE Property RE or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(reasonable assistance)** provide reasonable assistance to ALE Property RE to assist ALE Property RE in applying for the ASIC Relief;
- (e) **(liaison with ASIC)** provide reasonable assistance to ALE Property RE to assist ALE Property RE to resolve any matter raised by ASIC regarding the Scheme Booklet or the Schemes during its review of the Scheme Booklet;
- (f) **(accuracy of Consortium Acquirer Information)** confirm in writing to ALE Property RE that the Consortium Acquirer Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (g) **(approval and consent to inclusion of Consortium Acquirer Information)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, confirm in writing to ALE Property RE that the Consortium Acquirer consents to the inclusion of the Consortium Acquirer Information in the Scheme Booklet, in the form and context in which the Consortium Acquirer Information appears;
- (h) **(keep ALE Property RE informed)** promptly inform ALE Property RE if it becomes aware that Consortium Acquirer Information contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required so that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;

- (i) **(official quotation)** procure that CLW apply to ASX for official quotation by ASX of the CLW Securities to be issued pursuant to the Schemes;
- (j) **(Court representation)** procure that it is represented by counsel at the Court hearings convened in relation to the Schemes, at which, through its counsel and if requested by the Court, the Consortium Acquirer will undertake to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this Deed and the Schemes;
- (k) **(Deed Poll)** no later than the Business Day prior to on the First Court Date, execute and deliver to ALE Property RE the Deed Poll;
- (l) **(Scheme Consideration)** if the Schemes become Effective, provide, or procure the provision of, the Scheme Consideration in accordance with the Schemes and the Deed Poll on the Implementation Date;
- (m) **(ALE Provided Information)** during the period until the ALE Provided Information becomes publicly available, only use the ALE Provided Information with the prior written consent of ALE Property RE (not to be unreasonably withheld); and
- (n) **(all things necessary)** do all other things contemplated by or necessary to lawfully give effect to the Schemes and ensure that the Schemes are effect in accordance with applicable laws and regulations.

## 5.5 Responsibility statement

ALE Property RE and the Consortium Acquirer will have responsibility for preparation of the following information:

- (a) ALE Property RE is responsible for the ALE Provided Information contained in the Scheme Booklet;
- (b) the Consortium Acquirer is responsible for Consortium Acquirer Information contained in the Scheme Booklet; and
- (c) the Independent Expert is responsible for the Independent Expert's Report.

## 5.6 Responsibility for information

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



## 5.7 Verification

Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet.

## 5.8 Disagreement on content

- (a) Subject to clause 5.8(b), if the Consortium Acquirer and ALE Property RE disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:
- (i) if the disagreement relates to the form or content of Consortium Acquirer Information (or any information solely derived from, or prepared solely in reliance on, the Consortium Acquirer Information) contained in the Scheme Booklet, ALE Property RE will, acting in good faith, make the amendments that the Consortium Acquirer reasonably requires; and
  - (ii) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.
- (b) At no time shall the form or content of any part of the Scheme Booklet cause the Scheme Booklet to not comply with all applicable laws, the ASX Listing Rules, Guidance Note 15 and ASIC Regulatory Guides 60 and 74.

## 5.9 Dealings in ALE Securities

For the purpose of establishing the persons who are ALE Scheme Securityholders, dealings in ALE Securities will be recognised by ALE Property RE provided that:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered as the holder of the relevant ALE Securities by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the ALE Registry by 5.00pm on the day which is the Record Date (in which case ALE Property RE must register, or procure that the ALE Registry registers, such transfers or transmission applications before 7.00pm on that day),

and ALE Property RE will not accept for registration, nor recognise for the purpose of establishing the persons who are ALE Scheme Securityholders, any transfer or transmission application in respect of ALE Securities received after such times (other than as contemplated by the Schemes in relation to the transfer of the ALE Scheme Units to the Consortium Acquirer and the ALE Scheme Shares to the Consortium Acquirer Nominee), or received prior to such times but not in registrable form.

## 5.10 ALE Register

- (a) On and from the Effective Date, ALE Property RE will, until the Scheme Consideration has been provided and the name and address of the Consortium Acquirer and the Consortium Acquirer Nominee has been entered into the relevant sections of the ALE Register as the holder of all of the ALE Scheme Units and the ALE Scheme Shares, respectively, maintain, or procure the maintenance of, the ALE Register and the ALE Register in this form and the terms of the Schemes will solely determine entitlements to the Scheme Consideration.
- (b) As from the Record Date (and other than for the Consortium Acquirer Group following the Implementation Date), each entry in the ALE Register as at the Record Date relating to

ALE Scheme Securities will cease to have any effect other than as evidence of the entitlements of ALE Scheme Securityholders to the Scheme Consideration in respect of those ALE Scheme Securities.

## **6 Public announcements**

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

## **7 Conduct of Business and Requests for Access**

### **7.1 Conduct of ALE business**

- (a) During the period from the date of this Deed up to and including the Implementation Date, ALE Property RE shall:
  - (i) procure that the business and operations of ALE Group are conducted in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this Deed;
  - (ii) not take or fail to take any action that constitutes an ALE Prescribed Occurrence;
  - (iii) ensure that neither it, nor any other ALE Group Member nor the trustee and/or responsible entity of any ALE Group Member, waives any of its rights, or otherwise grants any concessions, under its leasing arrangements in respect of the Properties;
  - (iv) use reasonable endeavours, and procure that each ALE Group Member uses reasonable endeavours, to:
    - (A) preserve and maintain the value of the business and assets of the ALE Group;
    - (B) keep available the services of the directors, officers and key employees of each member of the ALE Group; and
    - (C) maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any ALE Group Member,

- in each case, in accordance with the ordinary course of business;
- (v) subject to clause 7.1(a)(vi), not acquire, lease or dispose of, or agree to acquire, lease or dispose of, any entity, business or assets where the value of such entity, business or assets, or the amount involved in the relevant transaction, exceeds \$100,000 (either individually or, in the case of related businesses or class of assets or a series of related transactions, collectively) other than as legally committed in any contract Fairly Disclosed to the Consortium Acquirer in the ALE Due Diligence Material;
  - (vi) not acquire or dispose or agree to acquire or dispose any Property; and
  - (vii) other than as legally committed in any contract Fairly Disclosed to the Consortium Acquirer in the ALE Due Diligence Material, not enter into any contract or commitment (or any series of related contracts or commitments) other than a contract or commitment entered in the ordinary course of business or that requires or is likely to result in expenditure by ALE Group of \$250,000 or less in any given year, or under which ALE Group undertakes total expenditure of 250,000 or less.
- (b) ALE Property RE must keep the Consortium Acquirer informed of any material developments concerning the ALE Group.
- (c) Nothing in clause 7.1 other than 7.1(a)(vi) restricts the ability of ALE Property RE to take any action:
- (i) which is required or permitted by this Deed or the Schemes;
  - (ii) which has been approved in writing by the Consortium Acquirer (which must not be unreasonably withheld or delayed);
  - (iii) which is reasonably necessary or prudent in response to legal proceedings, where the substance of those proceedings has been Fairly Disclosed in the ALE Due Diligence Material;
  - (iv) Fairly Disclosed in the ALE Due Diligence Material, including expenditure which is consistent with the budgets or other business plans for the ALE Group as provided in the ALE Due Diligence Material;
  - (v) Fairly Disclosed to ASX within five years prior to the date of this Deed or Fairly Disclosed in a document lodged with ASIC, or which would be disclosed in a search of ASIC records or the PPS Register;
  - (vi) required to respond to an emergency, disaster or health advice of any Government Agency (but, for the avoidance of doubt, the foregoing does not permit any ALE Group Member to undertake any action prohibited by clause 7.1(a)(iii)); or
  - (vii) required by law, regulation or by an order of a court or Governmental Agency, provided that, to the extent practicable, ALE Property RE must use all reasonable endeavours to consult in good faith with the Consortium Acquirer before taking any action permitted under clause 7.1(c)(vi) or 7.1(c)(vii).
- (d) For the avoidance of doubt, nothing in this clause 7.1 restricts the ability of ALE Property RE to respond to a Competing Proposal in accordance with clause 11.

## 7.2 Access to information and co-operation

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

## 7.3 Conduct of CLW Business

- (a) During the period from the date of this Deed up to and including the Implementation Date, the Consortium Acquirer shall procure that:
- (i) none of the CLW Trusts (acting through CLW):
    - (A) declares or pays a distribution to securityholders of CLW which is:
      - (1) not a distribution for a quarterly period; and
      - (2) not consistent with the guidance which CLW has provided to the market for the 2022 financial year; or
    - (B) issue securities, other than:
      - (1) the issue of any securities in accordance with the CLW Group's distribution reinvestment plan established as at the date of this Deed; or

- (2) as consideration for an acquisition of an entity, business or assets which has been disclosed to ALE Property RE in writing prior to the date of this Deed;
- (ii) the business and operations of CLW Group are conducted in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this Deed (including with respect to target balance sheet gearing); and
  - (iii) CLW does not take or fail to take any action that constitutes a CLW Prescribed Occurrence.
- (b) The Consortium Acquirer must keep ALE Property RE informed of any material developments concerning CLW Group.
- (c) Nothing in clause 7.3 restricts the ability of CLW to take any action:
- (i) which is required or permitted by this Deed or the Schemes;
  - (ii) which has been approved in writing by ALE Property RE (which must not be unreasonably withheld or delayed);
  - (iii) Fairly Disclosed in the CLW Due Diligence Material, including expenditure which is consistent with the budgets or other business plans for CLW as provided in the CLW Due Diligence Material;
  - (iv) Fairly Disclosed to ASX within five years prior to the date of this Deed or Fairly Disclosed in a document lodged with ASIC, or which would be disclosed in a search of ASIC records or the PPS Register;
  - (v) required to respond to an emergency, disaster or health advice of any Government Agency; or
  - (vi) required by law, regulation or by an order of a court or Governmental Agency.

#### 7.4 Appointment and resignation of directors

ALE Property RE must, as soon as practicable on the Implementation Date, subject to the Consortium Acquirer having complied with its obligations in the Schemes to deposit the Maximum Cash Consideration into the ALE Trust Account (as defined in the Schemes) and to issue or procure the issue of Maximum Scrip Consideration in each case in accordance with the terms of the Schemes, and further subject to receipt by ALE Property RE of signed consents to act, take all actions necessary to:

- (a) cause the appointment to ALE Property RE Board of those persons nominated by the Consortium Acquirer;
- (b) ensure that all directors on ALE Property RE Board, other than the Consortium Acquirer nominees and any other directors specified by the Consortium Acquirer resign; and
- (c) provided that ALE Property RE is not required to take any action under clause 7.4(a) or 7.4(b) which would cause any ALE Group Member to be in breach of any applicable law or regulation (including its AFSL).

#### 7.5 AFSL

- (a) Promptly following the receipt of the information in clause 7.5(b), ALE Property RE must apply to ASIC to vary its AFSL such that each existing 'key person' and 'responsible manager' under its AFSL is removed as a 'key person' and 'responsible manager' under its AFSL, and a nominee of the Consortium Acquirer is included as a 'key person' or

'responsible manager' under its AFSL if so required by ASIC (unless otherwise agreed in writing between ALE Property RE and the Consortium Acquirer) conditional on the Schemes becoming Effective, and take all steps reasonably required as part of the foregoing process to obtain such variation with effect on and from the Implementation Date, including responding to reasonable requests for information from ASIC.

- (b) The Consortium Acquirer must:
- (i) provide all necessary information to ALE Property RE (including the identity of and information in respect of any relevant individuals intended to replace the existing 'key persons' and/or 'responsible managers') as soon as practicable following the date of this Deed and in any event within 10 Business Days, for the purposes of ALE Property RE making the application contemplated in clause 7.5(a); and
  - (ii) otherwise provide reasonable assistance to ALE Property RE to assist ALE Property RE in applying for the variation to its AFSL as contemplated in clause 7.5(a).

## 7.6 Directors' and officers' insurance and indemnities

- (a) Subject to the Schemes becoming Effective, the Consortium Acquirer undertakes in favour of each ALE Group Member and each other person who is a director or officer of a ALE Group Member that it will:
- (i) for a period of seven years from the Implementation Date or until a company ceases to be part of the ALE Group (whichever is earlier), ensure that the constitutions of each ALE Group Member continues to contain such rules as are contained in those constitutions at the date of this Deed that provide for each company to indemnify each of its current and previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the ALE Group; and
  - (ii) procure that each ALE Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained, for a period of seven years from the retirement date of each director and officer (and ALE Property RE may, at its election, pay any amounts necessary to ensure such maintenance upfront prior to the implementation of the Schemes).
- (b) The Consortium Acquirer acknowledges that, notwithstanding any other provision of this Deed, ALE Property RE may, prior to the Implementation Date, enter into arrangements to secure directors' and officers' run-off insurance for up to such seven year period (**D&O Policy**), and that any actions to facilitate that insurance or in connection therewith will not be an ALE Prescribed Occurrence or breach any provision of this Deed, provided that:
- (i) the scope of cover of the policy will be on the same or substantially the same terms as the existing insurance policies in place for directors or officers of ALE Group at the date of this Deed;
  - (ii) ALE Property RE has consulted reasonably and in good faith with the Consortium Acquirer in relation to the applicable D&O Policy prior to securing the relevant policy; and
  - (iii) ALE Property RE has used reasonable endeavours to minimise its costs in relation to obtaining the D&O Policy.



- (c) The undertakings contained in clause 7.6(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) ALE Property RE receives and holds the benefit of clause 7.6(a), to the extent it relates to the other ALE Party, as trustee for them.
- (e) The undertakings contained in clause 7.6(a) are given until the earlier of the end of the relevant period specified in clause 7.6(a) or the relevant ALE Group Member ceasing to be part of the ALE Group.

## 8 Board Recommendations and Intentions

### 8.1 Board recommendation and Voting Statement

- (a) The Agreed Public Announcement to be issued by ALE Property RE immediately after execution of this Deed shall state (on the basis of written statements or resolutions made by each of the directors of ALE Property RE) that:
  - (i) the Board unanimously recommends that ALE Securityholders vote in favour of the Schemes at the Scheme Meeting and all resolutions necessary to implement the Schemes, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Schemes are in the best interests of ALE Securityholders (the **Recommendation**); and
  - (ii) each Director will, vote (or procure the voting of) all ALE Securities held or controlled by him or her in favour of the Schemes at the Scheme Meeting and all resolutions necessary to implement the Schemes, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Schemes are in the best interests of ALE Securityholders (the **Voting Statement**).
- (b) ALE Property RE must use reasonable endeavours to procure that:
  - (i) the Scheme Booklet includes the Recommendation;
  - (ii) the Scheme Booklet includes a Voting Statement from each Director; and
  - (iii) the Directors do not change or withdraw their Recommendation or Voting Statement.
- (c) For the purposes of clause 8.1(a)(ii) and 8.1(b)(ii), the parties acknowledge and agree that the Directors nominated by Caledonia (Private) Investments Pty Ltd (**Caledonia Nominees**) do not hold or control any ALE Securities, including any ALE Securities in which Caledonia (Private) Investments Pty Limited has voting power.

### 8.2 Withdrawal of Recommendation or Voting Statement

The obligations in clause 8.1 will cease to apply:

- (a) if the Independent Expert opines in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Schemes are not in the best interests of ALE Securityholders;
- (b) if ALE Property RE receives a Competing Proposal, where the Board has determined after consultation with its legal and financial advisors and subject to compliance with the obligations in clause 11 and acting in good faith, that the Competing Proposal is or could reasonably be expected to become a Superior Proposal; or
- (c) in respect of the Recommendation or Voting Statement of any Director:



- (i) if a Court, ASIC, the Takeovers Panel or other Government Agency requires or requests that Director to change, withdraw, qualify or modify, or abstain from making, his or her Recommendation or Voting Statement; or
- (ii) ALE Property RE reasonably determines that the relevant Director has an interest in the Schemes that renders it inappropriate for him or her to make or maintain such Recommendation or Voting Statement and provided the Court would be unlikely to grant the orders contemplated under clause 3.1(i) as a result of such interest in circumstances where the Recommendation or Voting Statement is made or maintained in respect of the relevant Director.

### 8.3 ALE Directors

ALE Property RE represents and warrants to the Consortium Acquirer that it has been advised by each Director in office at the date of this Deed that he or she will make and maintain the Recommendation and Voting Statement in accordance with clauses 8.1.

### 8.4 Qualification of Recommendation or Voting Statement

For the purposes of clause 8.1, customary qualifications and explanations contained in:

- (a) the Agreed Public Announcement to be released by ALE Property RE, the Scheme Booklet or any other public announcement in relation to a Recommendation or Voting Statement to the effect that the Recommendation or Voting Statement is made:
  - (i) in the absence of a Superior Proposal; or
  - (ii) in respect of any public announcement issued before the dispatch of the Scheme Booklet to ALE Securityholders, or in respect of the Scheme Booklet or any public announcements issued at the time of or after the dispatch of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Schemes are in the best interests of ALE Securityholders';
- (b) any public announcement or other statement made by ALE Property RE, the Board or any Director to the effect that no action should be taken by ALE Securityholders pending the assessment of a Competing Proposal by the Board,

will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Statement, or an endorsement of a Competing Proposal, and will not contravene this clause 8 or trigger a right for the Consortium Acquirer to terminate this Deed. The parties agree that a failure by ALE Property RE to comply with clause 8.1 does not, in and of itself, constitute a material breach of this Deed for the purposes of clause 15.1(b).

## 9 Representations and Warranties

### 9.1 Consortium Acquirer Representations and Warranties

- (a) The Consortium Acquirer represents and warrants to ALE Property RE each of the Consortium Acquirer Representations and Warranties.
- (b) ALE Property RE acknowledges and agrees that the Consortium Acquirer Representations and Warranties and the indemnity in clause 10.2 are given subject to those matters that:
  - (i) are expressly provided for in this Deed;
  - (ii) are Fairly Disclosed in the CLW Due Diligence Material;

- (iii) have been Fairly Disclosed to ALE Property RE had ALE Property RE conducted a search of ASIC records or the PPS Register, in each case as at 2 Business Days prior to the date of this Deed, or public records maintained by any Australian court, in relation to any Consortium Member, as at 30 Business Days prior to the date of this Deed; and
- (iv) are within the actual knowledge of ALE Property RE as at the date of this Deed.

## 9.2 ALE Representations and Warranties

- (a) ALE Property RE (in its own right and separately as responsible entity of the ALE Trust) represents and warrants to the Consortium Acquirer and each of the Guarantors each of the ALE Representations and Warranties.
- (b) The Consortium Acquirer acknowledges and agrees that the ALE Representations and Warranties and the indemnity in clause 10.1 are given subject to those matters that:
  - (i) are expressly provided for in this Deed;
  - (ii) are Fairly Disclosed in the ALE Due Diligence Material;
  - (iii) have been Fairly Disclosed to the Consortium Acquirer had the Consortium Acquirer conducted a search of ASIC records or the PPS Register, in each case as at 2 Business Days prior to the date of this Deed, or public records maintained by any Australian court, in relation to any ALE Group Member, as at 30 Business Days prior to the date of this Deed; and
  - (iv) are within the actual knowledge of the Consortium Acquirer as at the date of this Deed.

## 9.3 Reliance by parties

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

- (a) in entering into this Deed the other party has relied on the representations and warranties provided by the Representor under this clause 9 and clause 19.5; and
- (b) it has not entered into this Deed in reliance on any warranty or representation made by or on behalf of the other party except those warranties and representations set out in this Deed.

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

## 9.4 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given under this clause 9 or clause 19.5.

## 9.5 Status of representations and warranties

Each representation and warranty in this clause 9 and clause 19.5:

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

## 9.6 Timing of representations and warranties

Each representation and warranty made or given under this clause 9 is given:

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

## 9.7 Company release

- (a) The Consortium Acquirer releases its rights, and agrees with ALE Property RE that it will not make (and will procure on and from the Implementation Date that ALE Group Members do not make) a Claim, against any ALE Party (other than ALE Property RE) as at the date of this Deed in connection with:
  - (i) any breach of any representations, covenants and warranties of ALE Property RE in this Deed; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission; or
  - (iii) any failure to provide information, except where the ALE Party has engaged in fraud.
- (b) ALE Property RE receives and holds the benefit of clause 9.7(a) to the extent it relates to each ALE Party as trustee for each of them. Nothing in this clause 9.7 limits the Consortium Acquirer's rights to terminate this Deed under clause 15.

## 9.8 Consortium Acquirer release

- (a) ALE Property RE releases its rights, and agrees with the Consortium Acquirer that it will not make (and will procure that ALE Group Members do not make) a Claim, against any Consortium Acquirer Party (other than the Consortium Acquirer) as at the date of this Deed in connection with:
  - (i) any breach of any representations, covenants and warranties of the Consortium Acquirer, CLW or Hostplus in this Deed; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission; or
  - (iii) any failure to provide information, except where the Consortium Acquirer Party has engaged in fraud.
- (b) The Consortium Acquirer receives and holds the benefit of clause 9.7(a) to the extent it relates to each Consortium Acquirer Party as trustee for each of them. Nothing in this clause 9.7 limits ALE Property RE's rights to terminate this Deed under clause 15.

## 9.9 Forecasts and budgets

In connection with this Deed:

- (a) the Consortium Acquirer acknowledges and agrees that:
  - (i) ALE Property RE and its Representatives make no representation or warranty in respect of any future matter, estimate, forecast or budget (**Forward Looking Information**);
  - (ii) Forward Looking Information is inherently uncertain and may prove to be incorrect;

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

## 10 Indemnities

### 10.1 Indemnity by ALE Property RE

Subject to clause 13.6, ALE Property RE agrees with the Consortium Acquirer to indemnify and keep indemnified the Consortium Acquirer from and against all loss that it may suffer or incur by reason of any breach of this Deed by ALE Property RE or any of the representations and warranties of ALE Property RE in clause 9.2.

### 10.2 Indemnity by Consortium Acquirer

The Consortium Acquirer agrees with ALE Property RE to indemnify and keep indemnified ALE Property RE from and against all loss that it may suffer or incur by reason of any breach of this Deed by the Consortium Acquirer or any of the representations and warranties of the Consortium Acquirer in clause 9.1.

### 10.3 Survival of indemnities

Each indemnity in clauses 10.1 and 10.2 will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Deed; and

- (d) survive the termination of this Deed.

## **11 Exclusivity**

### **11.1 No existing discussions**

ALE Property RE represents and warrants that as at the date of this Deed, other than the discussions with the Consortium Acquirer in respect of the Schemes, neither it nor any of its Representatives is currently in negotiations or discussions relating to any actual, proposed or potential Competing Proposal with any Third Party.

### **11.2 No-shop**

During the Exclusivity Period, ALE Property RE must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions with a Third Party; or
  - (b) communicates any intention to do any of these things,
- with a view to obtaining, or which may reasonably be expected to lead to, a Competing Proposal.

### **11.3 No-talk**

Subject to clause 11.5, during the Exclusivity Period, ALE Property RE must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person in relation to, a Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by ALE Property RE or any of its Representatives or the person has publicly announced the Competing Proposal.

### **11.4 Due diligence information**

Subject to clause 11.5, during the Exclusivity Period, ALE Property RE must ensure that neither it nor any of its Representatives:

- (a) enables a Third Party to undertake due diligence investigations on any ALE Group Member or their businesses or operations; or
  - (b) makes available to a Third Party, or permits a Third Party to receive, any non-public information relating to ALE Group Member or their businesses or operations,
- in connection with the formulation, development or finalisation of a Competing Proposal.

### **11.5 Exceptions**

Clauses 11.3 and 11.4 do not apply to the extent that they restrict ALE Property RE or any member of the Board from taking or omitting to take any action with respect to an actual, proposed or potential Competing Proposal where the Board has determined:

- (a) after consultation with its legal and financial advisors and acting in good faith, such a Competing Proposal is, or could reasonably be considered to become, a Superior Proposal, taking into account all material terms and conditions of the Competing Proposal; and

- (b) after receiving advice from its legal advisers, to take or omit to take such action in order to satisfy what the Board considers to be the fiduciary or statutory obligations of Directors.

#### 11.6 Further exceptions

Nothing in this clause 11 prevents ALE Property RE from:

- (a) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency; or
- (b) continuing to make normal presentations to, and responding to enquiries from, brokers, portfolio investors, analysts, and ALE Securityholders, in the ordinary course.

#### 11.7 Notice of approaches

- (a) During the Exclusivity Period, ALE Property RE must promptly notify the Consortium Acquirer if it or its Representatives become aware (and in any event within 2 Business Days of becoming aware) of any actual, proposed or potential Competing Proposal (whether or not in writing).
- (b) A notification given under this clause 11.7 must include the identity of the relevant person making or proposing to make the Competing Proposal (and if different, details of the proposed bidder or acquirer), together with the material terms and conditions (including price) of the actual, proposed or potential Competing Proposal.

#### 11.8 Matching right

During the Exclusivity Period, ALE Property RE must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which ALE Property RE agrees to implement or give effect to a Competing Proposal, unless:

- (a) the Board determines, after consultation with its legal and financial advisors and acting in good faith and in order to satisfy what the Directors consider to be their statutory or fiduciary duties, that the Competing Proposal is, or could reasonably be considered to lead to, a Superior Proposal, provided that the Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of this clause 11;
- (b) ALE Property RE has, in accordance with clause 11.7(b), provided the Consortium Acquirer with the material terms and conditions of the bona fide, written Competing Proposal, including price and the identity of the Third Party making the bona fide, written Competing Proposal;
- (c) ALE Property RE has given the Consortium Acquirer at least 5 Business Days after the date of the provision of the information referred to in clause 11.8(b) to provide an equivalent or superior proposal to the terms of the bona fide, written Competing Proposal (**Counterproposal**); and
- (d) the Consortium Acquirer has not announced or otherwise proposed in writing to ALE Property RE a proposal that the Board, acting reasonably and in good faith, determines to be superior to the terms of the Competing Proposal by the expiry of the 5 Business Day period referred to in clause 11.8(c).

Any material modification to any Competing Proposal notified to the Consortium Acquirer under clause 11.8(b) (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which ALE Property RE must comply with its obligations under this clause 11.8 again.



**11.9 Counterproposal**

- (a) If the Consortium Acquirer provides ALE Property RE with a Counterproposal before the expiry of the 5 Business Day period in clause 11.8(c), ALE Property RE must use reasonable endeavours to procure that the Board reviews the Counterproposal and if the Board, acting reasonably and in good faith, determines that the Counterproposal would provide an equivalent or superior outcome for ALE Securityholders as a whole compared with the Competing Proposal, taking into account all of the material terms and conditions of the Counterproposal, then:
- (i) ALE Property RE and the Consortium Acquirer must use their reasonable endeavours to agree the amendments to this Deed and the Schemes that are reasonably necessary to reflect the Counterproposal and to implement the Counterproposal, in each case as soon as reasonably practicable; and
  - (ii) ALE Property RE must use its reasonable endeavours to procure that each Director continues to recommend the Schemes (as modified by the Counterproposal) to ALE Securityholders, and vote or procure the voting of all ALE Securities held or controlled by him or her in favour of the Schemes (as modified by the Counterproposal), other than as permitted by this Deed.
- (b) Despite any other provision in this Deed, any public announcement or other statement by ALE Property RE, the Board or any Director to the effect that:
- (i) the Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in clause 11.8; or
  - (ii) ALE Securityholders should take no action pending the completion of the matching right process set out in clause 11.8,
- does not:
- (iii) constitute a failure to make, or an adverse change, withdrawal adverse modification or adverse qualification of, a Recommendation or Voting Statement or an endorsement of a Competing Proposal;
  - (iv) contravene clause 8.1 or any other provision of this Deed;
  - (v) give rise to an obligation to pay the Break Fee under clause 13; or
  - (vi) give rise to a termination right under clause 15 or any other provision of this Deed.

**12 Approach**

ALE Property RE acknowledges and agrees (and such acknowledgement and agreement shall constitute 'prior written consent' for the purpose of clause 10 of the Confidentiality and Process Deed) that any Consortium Acquirer Party may, during the Exclusivity Period, directly or indirectly:

- (a) approach or contact, or cause any other person to approach or contact, or solicit, initiate, enter into or continue any discussions (or cause any other person to do so) with any holder of ALE Securities (or an Affiliate of such a holder) including for the avoidance of doubt Endeavour Group Limited (ACN 159 767 843) and its Affiliates; or
- (b) solicit proxies and Elections from ALE Securityholders,

in relation to the Schemes or the Consortium Acquirer's ownership of all of the ALE Securities if the Schemes are implemented, provided that the Consortium Acquirer uses its reasonable endeavours to:



- (c) coordinate any approach or solicitation of ALE Securityholders with ALE Property RE; and
- (d) keep ALE Property RE informed of the status and progress of any communication and engagement with any ALE Securityholder under this clause 12.

### 13 Break Fee

#### 13.1 Background

This clause 13 has been agreed in circumstances where:

- (a) ALE Property RE believes, having taken advice from its legal advisers and financial advisors, that the Schemes will provide significant benefits to ALE Securityholders, and ALE Property RE acknowledges that, it is appropriate for ALE Property RE to agree to the payments referred to in this clause 13 in order to secure for ALE Securityholders the opportunity to vote on the Schemes;
- (b) the Consortium Acquirer has requested that provision be made for the Break Fee, without which the Consortium Acquirer would not have entered into this Deed;
- (c) both ALE Property RE and the Consortium Acquirer believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure the Consortium Acquirer's participation in the Schemes; and
- (d) both parties have received legal advice on this Deed and the operation of this clause.

#### 13.2 Break Fee triggers

- (a) Subject to clauses 13.3 and 13.7, ALE Property RE agrees to pay the Break Fee to the Consortium Acquirer if:
  - (i) **(Competing Proposal)** during the Exclusivity Period, a Competing Proposal is announced and within 12 months of the date of this Deed, the Third Party who announced or made the Competing Proposal (or any of its Associates):
    - (A) completes in all material respects a transaction of the kind referred to in paragraphs (b), (c) or (d) of the definition of Competing Proposal; or
    - (B) otherwise acquires (either alone or in aggregate any of its Associates) a relevant interest in at least 20% of ALE Securities under a transaction that is or has become wholly unconditional or comes to Control (either alone or together with its Associates) ALE Property RE;
  - (ii) **(change of recommendation)** during the Exclusivity Period, the Consortium Acquirer has terminated this Deed in accordance with clause 15.3 or ALE Property RE has terminated this Deed in accordance with clause 15.4, unless:
    - (A) the Independent Expert concludes that in the opinion of the Independent Expert the Schemes are not in the best interests of the ALE Securityholders (except in circumstances where the sole or predominate reason for that conclusion is the announcement of a Competing Proposal);
    - (B) the withdrawal or adverse change or modification of the relevant Recommendations or Voting Statements is permitted by clauses 8.2(c), 8.4 or 11.9(b); or
    - (C) as a result of any matter or thing giving ALE Property RE the right to terminate this Deed pursuant to clauses 15.1(b), or 15.2(b) or 15.1(d) and

ALE Property RE has validly served a written notice on the Consortium Acquirer in accordance with the terms of this Deed; or

- (iii) **(termination)** the Consortium Acquirer validly terminates this Deed in accordance with clauses 15.1(b) or 15.2(a), other than where, at the time of such termination, ALE Property RE has the right to terminate this Deed pursuant to clauses 15.1(b) or 15.2(b).

### 13.3 No amount payable if Schemes become Effective

Notwithstanding the occurrence of any event in clause 13.2, if the Schemes become Effective:

- (a) no amount is payable by ALE Property RE under clause 13.2; and
- (b) if any amount has already been paid under clause 13.2 that amount must be refunded by the Consortium Acquirer less the incremental costs incurred by the Consortium Acquirer as a result of the event giving rise to the obligation to pay the Break Fee.

### 13.4 Timing of payments

- (a) A demand by the Consortium Acquirer for payment of the Break Fee under clause 13.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account into which ALE Property RE must pay the Break Fee.
- (b) ALE Property RE must pay the Break Fee to the Consortium Acquirer under clause 13.2 within 5 Business Days of receipt by ALE Property RE of a valid demand for payment from the Consortium Acquirer under clause 13.4, which demand may only be made after the occurrence of an event referred to in clause 13.2.

### 13.5 Nature of payment

- (a) The Break Fee is an amount to compensate the Consortium Acquirer for:
  - (i) advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) out-of-pocket expenses;
  - (iv) the distraction of the Consortium Acquirer's management from conducting the Consortium Acquirer's business as usual caused by pursuing the Schemes;
  - (v) reasonable opportunity costs incurred by the Consortium Acquirer in pursuing the Schemes or in not pursuing alternative acquisitions or strategic initiatives which the Consortium Acquirer could have developed to further its business and objectives; and
  - (vi) damage to the Consortium Acquirer's reputation associated with a failed transaction and the implications of that damage to the Consortium Acquirer's business.
- (b) The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 13.2.

### 13.6 ALE limitation of liability

Notwithstanding any other provision of this Deed:

- (a) a payment by ALE Property RE in accordance with this clause 13 represents the sole and absolute liability of ALE Property RE and any ALE Group Member under or in connection with this Deed and no further damages, fees, expenses or reimbursements of any kind will be payable by ALE Property RE in connection with this Deed, ALE Property RE, other than in relation to a wilful or intentional breach by ALE Property RE of this Deed; and
- (b) the amount of the Break Fee paid to the Consortium Acquirer under this clause 13 shall be reduced by the amount of any loss or damage recovered by the Consortium Acquirer in relation to a breach of this Deed;
- (c) clause 13.6 does not apply to restrict any application to a court or claim for specific performance or injunctive relief (and ALE Property RE acknowledges that damages may not be an adequate remedy and, accordingly, the Consortium Acquirer may seek injunctive relief or specific performance as a remedy in circumstances where ALE Property RE fails to comply with the terms of this Deed).

### 13.7 Compliance with law

- (a) This clause 13 does not impose an obligation on ALE Property RE to the extent that the agreement by the parties under this clause 13 or any part of it:
  - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (ii) is determined to be unenforceable or unlawful (including by virtue of it being a breach of the fiduciary or statutory duties of the members of the Board) by a court,subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted. For the avoidance of doubt, any part of the Break Fee that would not constitute 'unacceptable circumstances' or that is not unenforceable or unlawful (as applicable) must be paid to the Consortium Acquirer.
- (b) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 13.7(a).

### 13.8 Break Fee payable only once

Notwithstanding any other provision of this Deed, where the Break Fee becomes payable to the Consortium Acquirer under clause 13.2 and is actually paid to the Consortium Acquirer, the Consortium Acquirer cannot make any Claim against ALE Property RE for payment of any subsequent Break Fee.

## 14 Reverse Break Fee

### 14.1 Background

This clause 14 has been agreed in circumstances where:

- (a) ALE Property RE has requested that provision be made for the Reverse Break Fee, without which ALE Property RE would not have entered into this Deed;
- (b) both ALE Property RE and the Consortium Acquirer believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure ALE Property RE's participation in the Schemes; and
- (c) both parties have received legal advice on this Deed and the operation of this clause.

**14.2 Reverse Break Fee trigger**

Subject to clauses 14.3 and 14.7, the Consortium Acquirer agrees to pay the Reverse Break Fee to ALE Property RE if ALE Property RE validly terminates this Deed in accordance with clauses 15.1(b) or 15.2(b), other than where, at the time of such termination, Consortium Acquirer has the right to terminate this Deed pursuant to clauses 15.1(b) or 15.2(a).

**14.3 No amount payable if Schemes become Effective**

Notwithstanding the occurrence of any event in clause 14.2, if the Schemes become Effective:

- (a) no amount is payable by the Consortium Acquirer under clause 14.2; and
- (b) if any amount has already been paid under clause 14.2 that amount must be refunded by ALE Property RE less the incremental costs incurred by ALE Property RE as a result of the event giving rise to the obligation to pay the Reverse Break Fee.

**14.4 Timing of payments**

- (a) A demand by ALE Property RE for payment of the Reverse Break Fee under clause 14.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account into which the Consortium Acquirer must pay the Reverse Break Fee.
- (b) The Consortium Acquirer must pay the Reverse Break Fee to ALE Property RE under clause 14.2 within 5 Business Days of receipt by the Consortium Acquirer of a valid demand for payment from ALE Property RE under clause 14.4, which demand may only be made after the occurrence of an event referred to in clause 14.2.

**14.5 Nature of payment**

- (a) The Reverse Break Fee is an amount to compensate ALE Property RE for:
  - (i) advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) out-of-pocket expenses;
  - (iv) the distraction of ALE Property RE's management from conducting ALE Property RE's business as usual caused by pursuing the Schemes;
  - (v) reasonable opportunity costs incurred by ALE Property RE in pursuing the Schemes or in not pursuing alternative acquisitions or strategic initiatives which ALE Property RE could have developed to further its business and objectives; and
  - (vi) damage to ALE Property RE reputation associated with a failed transaction and the implications of that damage to ALE Property RE's business.
- (b) The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 14.2.

#### 14.6 Consortium Acquirer limitation of liability

Notwithstanding any other provision of this Deed:

- (a) a payment of the Reverse Break Fee by the Consortium Acquirer in accordance with this clause 14 represents the sole and absolute liability of the Consortium Acquirer under or in connection with this Deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Consortium Acquirer in connection with this Deed, other than in relation to a wilful or intentional breach by the Consortium Acquirer of this Deed;
- (b) the amount of the Reverse Break Fee paid to the ALE Property RE under this clause 14 shall be reduced by the amount of any loss or damage recovered by ALE Property RE in relation to a breach of this Deed; and
- (c) clause 14.6(a) does not apply to restrict any application to a court or claim for specific performance or injunctive relief (and the Consortium Acquirer acknowledges that damages may not be an adequate remedy and, accordingly, ALE Property RE may seek injunctive relief or specific performance as a remedy in circumstances where the Consortium Acquirer fails to comply with the terms of this Deed).

#### 14.7 Reverse Break Fee payable only once

Notwithstanding any other provision of this Deed, where the Reverse Break Fee becomes payable to ALE Property RE under clause 14.2 and is actually paid to ALE Property RE, ALE Property RE cannot make any Claim against the Consortium Acquirer for payment of any subsequent Reverse Break Fee.

### 15 Termination

#### 15.1 Termination by either party

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

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

#### 15.2 Termination for breach of representation and warranties

- (a) The Consortium Acquirer may, at any time prior to 8.00am on the Second Court Date, terminate this Deed for breach of an ALE Representation and Warranty only if:
  - (i) the Consortium Acquirer has given written notice to ALE Property RE setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;

- (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(a)(i); and
  - (iii) the loss that would reasonably be expected to follow from such a breach is material in the context of the Schemes taken as a whole.
- (b) ALE Property RE may, at any time before 8.00am on the Second Court Date, terminate this Deed for breach of a Consortium Acquirer Representation and Warranty or a Guarantor Representation and Warranty only if:
  - (i) ALE Property RE has given written notice to the Consortium Acquirer setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(i); and
  - (iii) the loss that would reasonably be expected to follow from such a breach is material in the context of the Schemes taken as a whole.

### 15.3 Termination by the Consortium Acquirer

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

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

### 15.4 Termination by ALE Property RE

ALE Property RE may terminate this Deed at any time before 8am on the Second Court Date by notice in writing to the Consortium Acquirer if:

- (a) a majority of the independent Directors have withdrawn their Recommendation or Voting Statement or made a public statement supporting or endorsing a Competing Proposal; and
- (b) ALE Property RE has complied with its obligations set out in clause 11 and clause 13 (including payment of the Break Fee, if applicable).

### 15.5 Effect of termination

In the event of termination of this Deed by either the Consortium Acquirer or ALE Property RE pursuant to clauses 3.6, 15.1, 15.2, 15.3, or 15.4, this Deed will have no further force or effect and the parties will have no further obligations under this Deed, provided that:

- (a) this clause 15 and clauses 1, 10, 13, 16, 18, 20 and 21 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this Deed.

## 16 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality and Process Deed save that the terms of this Deed will prevail over the Confidentiality and Process Deed to the extent of any inconsistency.



## 17 Foreign resident CGT Withholding

### 17.1 Withholding

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

### 17.2 Clarification

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

### 17.3 Consultation

- (c) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process mentioned in clause 17.2.
- (d) The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, ensuring that relevant representations are obtained from ALE Scheme Securityholders.

## 18 GST

### 18.1 Recovery of GST

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

### 18.2 Liability net of GST

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



### 18.3 Adjustment events

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

### 18.4 Survival

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

### 18.5 Definitions

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

## 19 Guarantee

### 19.1 Guarantee

- (a) In consideration of ALE Property RE entering into this Deed at the request of CLW and Hostplus (**Guarantors**), subject to clause 19.1(b), each Guarantor:
  - (i) unconditionally and irrevocably guarantees to ALE Property RE on demand, the due and punctual performance by Consortium Acquirer of all of its obligations under this Deed; and
  - (ii) separately indemnifies ALE Property RE against:
    - (A) any and all Liabilities which may be incurred or sustained by ALE Property RE in connection with any default or delay by the Consortium Acquirer in the due and punctual performance of any of its obligations under this Deed, and any Liability ALE Property RE is entitled to recover pursuant to this Deed which is not recoverable from the Consortium Acquirer; and
    - (B) any amount that the Consortium Acquirer would have been liable to pay to ALE Property RE, or which would have been recoverable by ALE Property RE, but for the Consortium Acquirer's liquidation.
- (b) Clause 19.1(a) does not apply to Hostplus, and Hostplus shall not guarantee or indemnify ALE Property RE in respect of, any obligations of the Consortium Acquirer under this Deed to the extent they relate to clauses 3.1(f), 3.1(g), 3.1(h), 3.4, 5.4(i) and 7.3 or the Consortium Acquirer Representations and Warranties set out at paragraphs 12 and 14 to 19 (inclusive).

### 19.2 Unconditional nature of obligation

Neither this Deed nor the obligations of the Guarantors under it will be affected by anything which but for this provision might operate to release, prejudicially affect or discharge the Deed or the obligations of the Guarantors or in any way relieve the Guarantors from any obligation. This includes:

- (a) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person;
- (b) any transaction or arrangement between ALE Property RE and any person;

- (c) ALE Property RE becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, deed of company arrangement, composition of debts or scheme of reconstruction by or relating to any person;
- (d) ALE Property RE exercising or delaying or refraining from exercising or enforcing any document or agreement or any right, power or remedy conferred on it by law or by any document or agreement;
- (e) all or any part of any document or agreement held by ALE Property RE at any time or of any right, obligation, power or remedy changing, ceasing or being transferred (this includes amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment or assignment);
- (f) the taking or perfection of any document or agreement or failure to take or perfect any document or agreement;
- (g) the failure by any person or ALE Property RE to notify a Guarantor of any default by any person under any document or agreement or other circumstance;
- (h) any change in any circumstance (including in the members or constitution of any person);
- (i) any increase in the Liabilities owing by the Consortium Acquirer to ALE Property RE under or in connection with this Deed for any reason (including as a result of anything referred to above);
- (j) any legal limitation, disability, Liquidation, incapacity or thing affecting any person or the operation of any law, including any law relating to Liquidation, fiduciary or other duties or obligations or the protection of creditors;
- (k) any release, discharge, termination, rescission, repudiation, extinguishment, abandonment or disclaimer;
- (l) any failure by any person to execute, or to execute properly, an agreement or document or to comply with some requirement; or
- (m) an agreement, document, obligation or transaction being or becoming illegal, invalid, void, voidable or unenforceable in any respect,

whether with or without the consent or knowledge a Guarantor. None of the paragraphs in this clause 19.2 limits the generality of any other.

### **19.3 Principal and independent obligation**

This clause 19 is a principal and independent obligation on each Guarantor. It is not ancillary or collateral to any other document, agreement, right or obligation and extends to cover this Deed as amended, varied or replaced, whether with or without the consent of the Guarantors.

### **19.4 Continuing guarantee and indemnity**

This clause:

- (a) is a continuing guarantee and indemnity; and
- (b) despite Implementation, remains in full force and effect for so long as the Consortium Acquirer has any Liability or obligation to ALE Property RE under this Deed and until all of those Liabilities or obligations have been fully discharged.

### **19.5 Guarantor Representations and Warranties**

- (a) CLW represents and warrants to ALE Property RE each of the CLW Guarantor Representations and Warranties.

- (b) Hostplus represents and warrants to ALE Property RE each of the Hostplus Guarantor Representations and Warranties.

## 20 Limitation of liability

### 20.1 Consortium Acquirer, CLW and ALE Property RE limitation of liability

- (a) The Consortium Acquirer, CLW and ALE Property RE enter into and perform this Deed as trustee of a trust or trusts (each a **Trustee Party**) do so in that, and in no other, capacity.
- (b) Subject to clause 20.1(d), any liability of a Trustee Party arising under or in connection with this Deed is limited to the extent to which the Trustee Party is, having sought indemnification, actually indemnified for that liability out of the assets of the relevant trust.
- (c) Subject to clause 20.1(d), no person will be entitled to:
  - (i) claim from or commence proceedings against a Trustee Party in respect of any liability under this Deed in any capacity other than as the trustee of the relevant trust;
  - (ii) seek the appointment of an administrator, a controller or a liquidator (all as defined in section 9 of the Corporations Act), or any similar officer under the laws of any relevant jurisdiction, to any assets of the relevant trust, or prove in any liquidation, administration or arrangement of or affecting the Trustee Party, except in relation to the assets of the relevant trust; or
  - (iii) enforce or seek to enforce any judgment in respect of a liability under this Deed against a Trustee Party in any capacity other than as trustee of the relevant trust.
- (d) The provisions of this clause 20 do not apply to any obligation or liability of a Trustee Party to the extent that it is not satisfied because there is (whether under the trust deed of the Trustee Party or by operation of law) a reduction in the extent, or an extinguishment, of the Trustee Party's indemnification out of the assets of the relevant trust as a result of:
  - (i) the Trustee Party's fraud, negligence or breach of trust;
  - (ii) the Trustee Party having acted beyond power or improperly in relation to the relevant trust; or
  - (iii) any act intended to reduce or extinguish the Trustee Party's indemnification out of the assets of the relevant trust.
- (e) This clause 20:
  - (i) applies despite any other provision of this Deed and extends to all liabilities and obligations of a Trustee Party in its capacity as trustee of the relevant trust in any way connected with any representation, warranty, conduct, omission or transaction related to this Deed;
  - (ii) applies to each Trustee Party severally and the obligations, undertakings, warranties and representations and liabilities under this clause 20 are several and not joint nor joint and several; and
  - (iii) survives termination of this Deed.

### 20.2 Hostplus limitation of liability

- (a) Hostplus enters into and performs this Deed and the transactions contemplated by it (including any past and future conduct in respect thereof) only as trustee of the Hostplus Trust.

- (b) Under and in connection with this Deed and any transactions contemplated by it, Hostplus' liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Hostplus Trust. Hostplus need not pay any such liability out of other assets. No person will be entitled to:
- (i) bring proceedings against Hostplus except as trustee of the Hostplus Trust;
  - (ii) take any steps to have Hostplus placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of the assets of the Hostplus Trust); or
  - (iii) seek by any means (including set-off) to have a liability of Hostplus to that party (including for negligence) satisfied out of any assets of Hostplus other than the assets of the Hostplus Trust.
- (c) The limitation in clause 20.2(b) applies despite any other provision in this Deed but does not apply with respect to any liability of Hostplus to the extent that Hostplus has no right or power to have assets of the Hostplus Trust applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because the Hostplus' behaviour was beyond power or improper.

## 21 Miscellaneous

### 21.1 Notices

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

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

(i) to ALE Property RE: **Australian Leisure and Entertainment Property Management Limited as responsible entity for Australian Leisure and Entertainment Property Trust**

Attention: Guy Farrands  
Address: '02 Australia Square Tower', Level 28, 264-278  
George Street, Sydney NSW 2000  
Email: [Guy.Farrands@alegroup.com.au](mailto:Guy.Farrands@alegroup.com.au)

**With a copy to: Allens**

Attention: Vijay Cugati & Chris Blane  
Address: 126 Phillip Street, Sydney NSW 2000  
Email: [Vijay.Cugati@allens.com.au](mailto:Vijay.Cugati@allens.com.au);  
[Chris.Blane@allens.com.au](mailto:Chris.Blane@allens.com.au)

(ii) to the Consortium Acquirer, CLW or Hostplus: **Bieson Pty Limited as trustee for CH LEP Investment Trust**

Attention: David Harrison  
Address: Level 20, No. 1 Martin Place, Sydney NSW 2000  
Email: [david.harrison@charterhall.com.au](mailto:david.harrison@charterhall.com.au)

**With a copy to: Arnold Bloch Leibler**

Attention: Jeremy Leibler & Scott Phillips  
Address: Level 24, 2 Chifley Square, Sydney NSW 2000  
Email: [JLeibler@abl.com.au](mailto:JLeibler@abl.com.au);  
[SPhillips@abl.com.au](mailto:SPhillips@abl.com.au)

- (c) subject to clause 21.1(d), will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of email, on the earlier of:
    - (A) when the sender receives an automated message from the email system of the intended recipient confirming delivery; and
    - (B) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,
- but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5.00pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place; and
- (d) in the case of a notice of termination issued by the Consortium Acquirer or ALE Property RE under clause 15.2(a)(ii) or 15.2(b)(ii) respectively, notice by email will be conclusively taken to be duly given or made at the time the email is sent (as recorded on the device from which the Consortium Acquirer sent the email). Nothing in this clause 21.1(d) limits the manner in which such notice may be sent under this clause 21.1.

## 21.2 No waiver

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

## 21.3 Remedies cumulative

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

## 21.4 Entire agreement

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

**21.5 Amendment**

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

**21.6 Assignment**

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

**21.7 No merger**

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

**21.8 Further assurances**

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

**21.9 Costs and duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction contemplated by this Deed must be borne by the Consortium Acquirer.

**21.10 Severability of provisions**

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

**21.11 Governing law and jurisdiction**

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

**21.12 Counterparts**

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

## Schedule 1

### Consortium Acquirer Representations and Warranties

Consortium Acquirer represents and warrants to ALE Property RE that, except as consented to in writing by ALE Property RE:

- 1 **(corporate status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this Deed and it has taken or will take all necessary corporate action to authorise the performance of this Deed;
  - (d) this Deed is its valid and binding obligation enforceable in accordance with its terms;
  - (e) the execution and performance by it of this Deed, and each transaction contemplated by this Deed, did not and will not violate in any respect a provision of:
    - (i) a law, treaty, judgment, ruling, order or decree binding on it;
    - (ii) its constitution; or
    - (iii) any other document or agreement that is binding on it; and
  - (f) it is not the subject of an Insolvency Event;
- 2 **(trustee status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (g) the Consortium Acquirer Trust has been duly established and has not been terminated;
  - (h) it was validly appointed trustee of the Consortium Acquirer Trust in accordance with the terms of the Consortium Acquirer Trust Deed, it is the sole trustee of the Consortium Acquirer Trust, and no action has been taken to remove or replace it as the trustee of the Consortium Acquirer Trust;
  - (i) it is not in default under the terms of the Consortium Acquirer Trust Constitution and has no notice of any circumstances which will or are reasonably likely to lead to the removal of it as trustee of Consortium Acquirer Trust;
  - (j) it has not been removed from the office of trustee nor ceased to act and no additional trustee has been appointed;
  - (k) no action has been taken or proposed to, either:
    - (i) terminate the Consortium Acquirer Trust; or
    - (ii) wind-up the Consortium Acquirer Trust whether under Chapter 5C of the Corporations Act or otherwise;
  - (l) it has the authorisations necessary for it to enter into the documents contemplated by this Deed or the Schemes to which it is a party, perform obligations under them and allow them to be enforced (including any authorisation required under Consortium Acquirer Trust Deed (if any));
  - (m) it has not exercised its powers under the Consortium Acquirer Trust to release, abandon or restrict any power conferred on it by the Consortium Acquirer Trust Deed; and



- (n) it has the right to be fully indemnified out of the assets of Consortium Acquirer Trust in respect of all its obligations and liabilities under this Deed other than in the case of the Consortium Acquirer's fraud, negligence or breach of trust;
- 3 **(no regulatory approvals)** no approval from any Government Agency is required to be obtained by Consortium Acquirer in order to execute and perform this Deed, other than those Regulatory Approvals disclosed to ALE Property RE in writing prior to the date of this Deed;
- 4 **(no regulatory action)** as at the date of this Deed, no regulatory action of any nature of which a Consortium Member is aware has been taken or threatened that may prevent or in any way restrict its ability to fulfil its obligations under this Deed, the Supplemental Deed, the Schemes or the Deed Poll;
- 5 **(no Voting Power)** no Consortium Member nor any of their Associates has any Voting Power in, or any right to acquire, any ALE Securities (whether issued or not or held by a Consortium Member or not), and no Consortium Member nor any of their Associates, have entered into any agreement, arrangement or understanding that confers rights or interests the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of ALE Securities (including cash-settled derivative contracts, contracts for difference or other derivative contracts) **(a Prohibited Interest)**, other than if such Prohibited Interest was acquired prior to the date of this Deed by a Hostplus Fund and:
- (a) the decision to acquire the Prohibited Interest was made by a person or persons who did not have access to, and had not received, Confidential Information at the time such decision was made; and
- (b) each member of the Consortium (as applicable) maintained information barriers restricting the dissemination of Confidential Information to the applicable Hostplus Fund or departments and their respective directors, officers and employees that are not involved in the consideration of the transactions contemplated by this Deed, at the time the decision to acquire the Prohibited Interest was made.
- 6 **(no dealings with securityholders)** no Consortium Member has any agreement, arrangement or understanding with any ALE Securityholder under which that ALE Securityholder (or an Associate of that ALE Securityholder) would be entitled to receive any collateral benefit in relation to the Schemes, or under which the ALE Securityholder has agreed to vote in favour of the Schemes (or against any Competing Proposal);
- 7 **(no dealings with directors or employees)** other than as disclosed to ALE Property RE and approved by the Board, no Consortium Member has any agreement, arrangement or understanding with any Officer of ALE Property RE relating in any way to the Schemes or operations of ALE Property RE after the Effective Date;
- 8 **(other dealings)** no Consortium Member has any written agreement, arrangement or understanding with any person in relation to the securities, business, operations or assets of an ALE Group Member or the performance or conduct of the business of the ALE Group (in whole or in part);
- 9 **(information)** at the time ALE Property RE commenced sending the Scheme Booklet to ALE Securityholders, the Consortium Acquirer Information provided for inclusion in the Scheme Booklet is true and correct in all material respects, complies with all applicable laws, will not be misleading or deceptive in any material respect (including by way of omission or otherwise);
- 10 **(basis of information)** the Consortium Acquirer Information:

- (a) will be provided to ALE Property RE in good faith and on the understanding that ALE Property RE and each other ALE Party will rely on that information for the purposes of preparing the Scheme Booklet and determining to proceed with the Schemes; and
- (b) as at the date the Scheme Booklet is dispatched to ALE Securityholders, will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, ASIC Regulatory Guides 60 and 74, Guidance Note 15 and the ASX Listing Rules,

and all information provided by or on behalf of the Consortium Acquirer to the Independent Expert to enable the Independent Expert's Report to be prepared, as at the date that information is provided, has been provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- 11 **(new information)** it will, as a continuing obligation, provide to ALE Property RE all further or new information which arises after the Scheme Booklet has been despatched to ALE Securityholders until the date of the Scheme Meeting which is necessary to ensure that the Consortium Acquirer Information is not misleading or deceptive in any material respect (including by way of omission);
- 12 **(Maximum Scrip Consideration)** the CLW Securities constituting the Maximum Scrip Consideration or part of the Mixed Consideration to be issued in accordance with this Deed and the terms of the Schemes will be duly authorised and validly issued or transferred without securityholder approval, fully paid and free of all Encumbrances and third party rights and will rank equally with all other CLW Securities then on issue;
- 13 **(availability of funding)** it will, by 8:00 am on the Second Court Date, have available to it on an unconditional basis (other than conditions relating to, or which will cease to apply or be satisfied following, the approval of the Court and other conditions within the control of the Consortium Acquirer) sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy the Consortium Acquirer's obligations to pay the Scheme Consideration in accordance with its obligations under this Deed, the Schemes and the Deed Poll;
- 14 **(capital structure)** as at the date of this Deed, the CLW Trusts each have 630,580,810 fully paid ordinary units on issue each of which are stapled together on a 1-for-1 basis to form CLW Securities;
- 15 **(continuous disclosure)** CLW has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, as at the date of this Deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Schemes or as disclosed to ALE Property RE prior to the date of this Deed);
- 16 **(no regulatory action)** as at the date of this Deed, no regulatory action of any nature of which the Consortium Acquirer is aware has been taken that would prevent or restrict CLW's ability to fulfil its obligations to issue CLW Securities as part of the Scheme Consideration under this Deed or under the Schemes;
- 17 **(compliance with laws)** as far as the Consortium Acquirer is aware, CLW has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Government Agencies having jurisdiction over it and has all material licenses, authorisations and permits necessary for it to conduct its business as it has been conducted in the 12 months prior to the date of this Deed;

- 18 **(CLW Due Diligence Materials)** the Consortium Acquirer has collated and prepared the CLW Due Diligence Material in good faith and those are accurate in all material respects and not materially misleading (including by omission); and
- 19 **(CLW Due Diligence Questionnaire Responses)** the content of the CLW Due Diligence Questionnaire Responses is accurate in all material respects and not materially misleading (including by omission).

For personal use only

**Schedule 2****ALE Representations and Warranties**

ALE Property RE represents and warrants to the Consortium Acquirer and the Guarantors that, except as consented to in writing by the Consortium Acquirer:

- 1 **(corporate status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this Deed and has taken or will take all necessary corporate action to authorise the performance of this Deed;
  - (d) this Deed is its valid and binding obligation enforceable in accordance with its terms;
  - (e) the execution and performance by it of this Deed and each transaction contemplated by this Deed did not and will not violate in any respect a provision of:
    - (i) a law, treaty, judgment, ruling, order or decree binding on it;
    - (ii) its constitution; or
    - (iii) any other document or agreement that is binding on it; and
  - (f) no ALE Group Member is the subject of an Insolvency Event;
- 2 **(trustee status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (g) ALE Trust has been duly established and has not been terminated and is a registered managed investment scheme;
  - (h) it was validly appointed trustee of the ALE Trust in accordance with the terms of the ALE Trust Constitution, it is the sole trustee of the ALE Trust, and no action has been taken to remove or replace it as the trustee of the ALE Trust;
  - (i) it is not in default under the terms of the ALE Trust Constitution and has no notice of any circumstances which will or are reasonably likely to lead to the removal of ALE Property RE as trustee of ALE Trust;
  - (j) it has not been removed from the office of trustee nor ceased to act and no additional trustee has been appointed;
  - (k) no action has been taken or proposed to, either:
    - (i) terminate ALE Trust; or
    - (ii) wind-up ALE Trust whether under Chapter 5C of the Corporations Act or otherwise;
  - (l) subject to the amendments to ALE Trust Constitution contemplated by this Deed, a true copy of ALE Trust Constitution (including any amending documents) has been provided to the Consortium Acquirer;
  - (m) it has the authorisations necessary for it to enter into the documents contemplated by this Deed or the Schemes to which it is a party, perform obligations under them and allow them to be enforced (including any authorisation required under ALE Trust Constitution (if any));

- (n) it has not exercised its powers under the ALE Trust Constitution to release, abandon or restrict any power conferred on it by the ALE Trust Constitution; and
- (o) it has the right to be fully indemnified out of the assets of ALE Trust in respect of all its obligations and liabilities under this Deed other than in the case of ALE Property RE's fraud, negligence or breach of trust;

3 **(capital structure)** as at the date of this Deed:

- (a) ALE Property RE has 200,407,523 Company Shares on issue;
- (b) ALE Trust has 200,407,523 Trust Units on issue;
- (c) there are 174,789 ESSS Rights on issue; and
- (d) ALE Trust has 9,080,010 NIVUS on issue,

and there are no other securities in ALE Property RE or ALE Trust, issued and outstanding at the date of this Deed;

4 **(no regulatory approvals)** no approval from any Government Agency is required to be obtained by ALE Property RE in order to execute and perform this Deed, other than those Regulatory Approvals disclosed to the Consortium Acquirer in writing prior to the date of this Deed;

5 **(continuous disclosure)** it has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, as at the date of this Deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Schemes);

6 **(no regulatory action)** as at the date of this Deed, no regulatory action of any nature of which ALE Property RE is aware has been taken or threatened that may prevent or in any way restrict its ability to fulfil its obligations under this Deed, the Supplemental Deed, or under the Schemes;

7 **(information)** at the time ALE Property RE commenced sending the Scheme Booklet to ALE Securityholders, the information contained in the Scheme Booklet (other than the Consortium Acquirer Information and the Independent Expert's Report) is true and correct in all material respects, complies with all applicable laws, and will not be misleading or deceptive in any material respect (including by way of omission or otherwise);

8 **(basis of information)** the ALE Provided Information:

- (a) has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Consortium Acquirer and each other Consortium Acquirer Party have relied on that information for the purposes of considering and approving Consortium Acquirer Information in the Scheme Booklet and determining to proceed with the Schemes;
- (b) the ALE Provided Information in the form and context in which it appears in the Scheme Booklet will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, ASIC Regulatory Guides 60 and 74, Guidance Note 15 and the ASX Listing Rules,

and all information provided by or on behalf of ALE Property RE to the Independent Expert to enable the Independent Expert's Report to be prepared, as at the date that information is provided, has been provided in good faith and on the understanding that the Independent Expert will rely on the information for the purposes of preparing the Independent Expert's Report; and

9 **(new information)** it will, as a continuing obligation (but in respect of the Consortium Acquirer Information, only to the extent that Consortium Acquirer provides ALE Property RE with updates to the Consortium Acquirer Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has

been despatched to ALE Securityholders until the date of the Scheme Meeting which is necessary to ensure that the information contained in the Scheme Booklet is not misleading or deceptive in any material respect (including by way of omission);

- 10 **(compliance with laws)** as far as ALE Property RE is aware, each ALE Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the ALE Group as it has been conducted in the 12 months prior to the date of this Deed; and
- 11 **(ALE Due Diligence Materials)** ALE Property RE has collated and prepared the ALE Due Diligence Material in good faith and those are accurate in all material respects and not materially misleading (including by omission).

## Schedule 3

### Guarantor Representations and Warranties

#### Part A - CLW Representations and Warranties

CLW represents and warrants to ALE Property RE that, except as consented to in writing by ALE Property RE:

- 1 **(corporate status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this Deed and it has taken or will take all necessary corporate action to authorise the performance of this Deed;
  - (d) this Deed is its valid and binding obligation enforceable in accordance with its terms;
  - (e) the execution and performance by it of this Deed, and each transaction contemplated by this Deed, did not and will not violate in any respect a provision of:
    - (i) a law, judgment, ruling, order or decree binding on it;
    - (ii) its constitution; or
    - (iii) any other document or agreement that is binding on it; and
  - (f) it is not the subject of an Insolvency Event;
- 2 **(trustee status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) each CLW Trust has been duly established and has not been terminated and is a registered managed investment scheme;
  - (b) it was validly appointed trustee of each CLW Trust in accordance with the terms of the CLW Trust Deeds, it is the sole trustee of each CLW Trust, and no action has been taken to remove or replace it as the trustee of the CLW Trusts;
  - (c) it is not in default under the terms of the CLW Trust Deeds and has no notice of any circumstances which will or are reasonably likely to lead to the removal of CLW as trustee of the CLW Trusts;
  - (d) it has not been removed from the office of trustee nor ceased to act and no additional trustee has been appointed;
  - (e) no action has been taken or proposed to, either:
    - (i) terminate the CLW Trusts; or
    - (ii) wind-up CLW Trusts whether under Chapter 5C of the Corporations Act or otherwise;
  - (f) it has the authorisations necessary for it to enter into the documents contemplated by this Deed or the Schemes, to which it is a party, perform obligations under them and allow them to be enforced (including any authorisation required under the CLW Trust Deeds (if any));



- (g) it has not exercised its powers under the CLW Trust Deeds to release, abandon or restrict any power conferred on it by the CLW Trust Deeds; and
- (h) it has the right to be fully indemnified out of the assets of the CLW Trusts in respect of all its obligations and liabilities under this Deed other than in the case of CLW's fraud, negligence or breach of trust.

## Part B - Hostplus Representations and Warranties

Hostplus represents and warrants to ALE Property RE that, except as consented to in writing by ALE Property RE:

- 1 **(corporate status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) it is a corporation validly existing under the laws of its place of incorporation;
  - (b) it has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed;
  - (c) it has taken all necessary corporate action to authorise the entry into this Deed and it has taken or will take all necessary corporate action to authorise the performance of this Deed;
  - (d) this Deed is its valid and binding obligation enforceable in accordance with its terms;
  - (e) the execution and performance by it of this Deed, and each transaction contemplated by this Deed, did not and will not violate in any respect a provision of:
    - (i) a law, judgment, ruling, order or decree binding on it;
    - (ii) its constitution; or
    - (iii) any other document or agreement that is binding on it; and
  - (f) it is not the subject of an Insolvency Event;
- 2 **(trustee status, capacity and solvency)** on each date from the date of this Deed until (and including) the Second Court Date:
  - (a) the Hostplus Trust has been duly established and has not been terminated;
  - (b) it was validly appointed trustee of the Hostplus Trust in accordance with the terms of the Hostplus Trust Deed, it is the sole trustee of the Hostplus Trust, and no action has been taken to remove or replace it as the trustee of the Hostplus Trust;
  - (c) it is not in default under the terms of the Hostplus Trust Deed and has no notice of any circumstances which will or are reasonably likely to lead to the removal of Hostplus as trustee of the Hostplus Trust;
  - (d) it has not been removed from the office of trustee nor ceased to act and no additional trustee has been appointed;
  - (e) no action has been taken or proposed to, either:
    - (i) terminate the Hostplus Trust; or
    - (ii) wind-up the Hostplus Trust;
  - (f) it has the authorisations necessary for it to enter into the documents contemplated by this Deed or the Schemes, to which it is a party, perform obligations under them and allow them to be enforced (including any authorisation required under the Hostplus Trust Deed (if any));

- (g) it has not exercised its powers under the Hostplus Trust Deed to release, abandon or restrict any power conferred on it by the Hostplus Trust Deed; and
- (h) it has the right to be fully indemnified out of the assets of Hostplus Trust in respect of all its obligations and liabilities under this Deed other than in the case of HostPlus' behaviour being beyond power or improper.

For personal use only

**Schedule 4****Timetable**

Event	Date
Submit draft Scheme Booklet to ASIC	Mid October 2021
First Court Date	Early November 2021
Scheme Booklet despatched to ALE Securityholders	Early November 2021
Scheme Meeting	Early December 2021
Second Court Date	Early December 2021
Effective Date	Early December 2021
Record Date	Mid December 2021
Implementation Date	Mid December 2021

**Schedule 5**

**Supplemental Deed**

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Australian Leisure and Entertainment Property Management Limited

## Supplemental Deed

Amending the Constitution for Australian Leisure and Entertainment Property Trust

Allens  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
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This Deed Poll is made on [ ] 2021

## Party

- 1 **Australian Leisure and Entertainment Property Management Limited** (ACN 105 275 278) as responsible entity of Australian Leisure and Entertainment Property Trust (ARSN 106 063 049) of Suite 28.02, Level 28, 264-278 George Street, Sydney NSW 2000 (the **Responsible Entity**).

## Recitals

- A The Responsible Entity is the responsible entity of the trust known as Australian Leisure and Entertainment Property Trust (ARSN 109 363 135) (the **Trust**).
- B The Trust has been registered pursuant to section 601EB of the Corporations Act 2001 (Cth) (the **Corporations Act**) as a managed investment scheme.
- C The units of the Trust are stapled to the shares of the Responsible Entity and are quoted and traded on the ASX as stapled securities of ALE Property Group (ASX:LEP).
- D The Responsible Entity, Consortium Acquirer, CLW and Hostplus have entered into a Scheme Implementation Deed dated [ ] 2021 (the **Scheme Implementation Deed**) to propose and implement the Schemes.
- E The Constitution must be amended to facilitate the Schemes.
- F Section 601GC(1)(a) of the Corporations Act provides that the Constitution may be amended by special resolution of the Unit Holders.
- G Under clause 25 of the Constitution, the Constitution may be amended, by deed, by the Responsible Entity.
- H The Responsible Entity proposes to execute this Supplemental Deed and lodge it with the Australian Securities and Investments Commission (**ASIC**) to modify the Constitution, as set out in this Supplemental Deed, to give effect to the resolution to modify the Constitution that was passed by Unit Holders at a meeting held on [ ] 2021.

It is declared as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Supplemental Deed including the Recitals, the following definitions apply unless the context otherwise requires. Capitalised terms used in this but not otherwise defined have the meaning given in the Constitution.

**ASIC** has the meaning given to that term in Recital H.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as the ASX operated by it.

**CLW** means Charter Hall WALE Limited (ACN 610 772 202) as responsible entity for LWR Finance Trust (ARSN 614 713 138) and Charter Hall Direct Industrial Fund (ARSN 144 613 641).

**Consortium Acquirer** means Bieson Pty Limited (ACN 110 465 168) as trustee for the CH LEP Investment Trust.



**Constitution** means the trust deed dated 19 August 2003 constituting the Trust, as amended from time to time.

**Corporations Act** has the meaning given to that term in Recital B.

**Hostplus** means Host-Plus Pty Limited (ABN 79 008 634 704) as trustee for the Hostplus Pooled Superannuation Trust (ABN 13 140 019 340).

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

**Schemes** has the meaning given in the Scheme Implementation Deed.

**Scheme Implementation Deed** has the meaning given to that term in Recital D.

**Trust** has the meaning given to that term in Recital A.

**Unit** means one fully paid ordinary unit in the Trust.

## 1.2 Interpretation

Clause 1.2 (Interpretation) of the Constitution applies to this Supplemental Deed as if set out in this Supplemental Deed, except that references to 'constitution' are references to this Supplemental Deed.

## 2 Benefit of this Supplemental Deed

This Supplemental Deed is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed shall enure to the benefit of Unit Holders, jointly and severally.

## 3 Conditions

This Supplemental Deed is conditional upon, and will have no force of effect until, the satisfaction of each of the conditions precedent stipulated in clause 2.1 of the Company Scheme and the completion of the Unstapling (each as defined in the Scheme Implementation Deed).

## 4 Amendments to Constitution

With effect from the Effective Time, the Constitution is amended in the manner set out in Schedule 1.

## 5 No Resettlement

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

- (a) resettle or re-declare the trust declared under the Constitution; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

## 6 Governing Law and Jurisdiction

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

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

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Australian Leisure and Entertainment Property Management Limited** (ACN 105 275 278) as responsible entity of **Australian Leisure and Entertainment Property Trust** (ARSN 106 063 049):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## Schedule 1

### Amendments to the Constitution for Australian Leisure and Entertainment Property Trust

The Constitution is amended as following:

#### 1 Clause 1.1

In clause 1.1 the following definitions are inserted in alphabetical order:

**ALE Scheme Securities** means all ALE Securities on issue as at the Record Date.

**ALE Security** means a stapled security in ALE Property Group consisting of one Responsible Entity Share and one Unit.

**Available Cash Consideration** means \$3.728 *multiplied* by the number of ALE Scheme Securities, as reduced in accordance with clause 4.8 of the Scheme Implementation Deed.

**Available Scrip Consideration** means such number of CLW Securities as is equal to 0.408 *multiplied* by the number of ALE Scheme Securities, as reduced in accordance with clause 4.8 of the Scheme Implementation Deed.

**CHESS** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

**CLW** means Charter Hall WALE Limited (ACN 610 772 202) as responsible entity for the CLW Trusts.

**CLW Registry** means Link Market Services Limited or any replacement provider of share registry services to CLW.

**CLW Security** means a security comprising one unit in each of the CLW Trusts stapled together such that they cannot be dealt with separately.

**CLW Trusts** means each of LWR Finance Trust (ARSN 614 713 138) and Charter Hall Direct Industrial Fund (ARSN 144 613 641).

**CLW Trust Deeds** means the trust deeds of each CLW Trust (as amended from time to time).

**Consortium Acquirer** means Bieson Pty Limited (ACN 110 465 168) as trustee for the CH LEP Investment Trust.

**Deed Poll** means the deed poll executed by Consortium Acquirer and the Guarantors in favour of the Scheme Unit Holders.

**Effective** means the supplemental deed making amendments to this Constitution to facilitate the Scheme taking effect pursuant to section 601GC(2) of the Corporations Act.

**Effective Date** means the date on and time at which the Scheme becomes Effective.

**Election** has the meaning given in clause 41.7 of this Constitution.

**Election Form** means the election form provided with the Scheme Booklet under which each Scheme Unit Holder may elect to receive either Mixed Consideration, Maximum Cash Consideration or Maximum Scrip Consideration in respect of their Scheme Units.

**Election Time** means the date which is 2 Business Days prior to the Record Date (unless ASIC requires an earlier date, in which case such earlier date shall apply) or any other date agreed between the parties.

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

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

**Gross Proceeds** has the meaning given in clause 41.33 of this Constitution.

**Guarantors** means:

- (a) CLW; and
- (b) Hostplus.

**Hostplus** means Host-Plus Pty Limited (ABN 79 008 634 704) as trustee for the Hostplus Pooled Superannuation Trust (ABN 13 140 019 340).

**Implementation Date** means the date that is the fourth Business Day after the Record Date, or such other date as the RE and Consortium Acquirer may agree in writing.

**Ineligible Foreign Unit Holder** means a Scheme Unit Holder whose address, as shown in the Register (as at the Record Date), is in a place outside Australia and Australia's external territories, unless the RE is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of CLW Securities to that Scheme Unit Holder pursuant to the Scheme, either unconditionally or after compliance with conditions that the RE in its sole discretion regards as acceptable and not unduly onerous or impracticable.

**Maximum Cash Consideration** means the consideration determined in accordance with clause 41.18.

**Maximum Scrip Consideration** means the consideration determined in accordance with clause 41.20.

**Mixed Consideration** means the consideration determined in accordance with clause 41.17.

**Permitted Distribution** means a distribution declared or determined to be paid by the board of directors of the RE to ALE Securityholders in the ordinary course on a quarterly basis.

**Permitted Distribution Amount** means the amount of any Permitted Distribution per ALE Security, declared or determined pursuant to clause 4.7 of the Scheme Implementation Deed.

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

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

**Registry** means Link Market Services Limited or any replacement provider of share registry services to the RE.

**Responsible Entity Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between the RE and holders of Responsible Entity Scheme Shares under which a nominee of Consortium Acquirer acquires all of the Responsible Entity Scheme Shares, as contemplated by the Scheme Implementation Deed.

**Responsible Entity Scheme Share** means a Responsible Entity Share on issue as at the Record Date.

**Responsible Entity Share** means a fully paid ordinary share issued in the capital of the RE.

**Sale Agent** means the sale agent appointed by the Consortium Acquirer to sell the Sale Securities pursuant to clauses 41.31 to 41.39.

**Sale Facility** has the meaning given in clauses 41.31 to 41.39.

**Sale Securities** has the meaning given in clause 41.31.

**Scaleback Arrangements** means the arrangements set out in clauses 41.18 to 41.19 and 41.20 to 41.21, which arrangements are for the purposes of ensuring that the aggregate cash component and the aggregate CLW Security component of the Scheme Consideration required to be provided by the Consortium Acquirer under the terms of the Scheme do not exceed the Available Cash Consideration and the Available Scrip Consideration respectively.

**Scheme** means the arrangement under which Consortium Acquirer acquires all of the Scheme Units from the Scheme Unit Holders, facilitated by the amendments to the Constitution set out in this Supplemental Deed.

**Scheme Booklet** means the scheme booklet published by the RE and dated on or about [1].

**Scheme Consideration** means the consideration to be provided to Scheme Unit Holders under the terms of the Scheme for the transfer to the Consortium Acquirer of their Scheme Units, being either:

- (a) the Maximum Cash Consideration;
- (b) the Maximum Scrip Consideration; or
- (c) the Mixed Consideration.

**Scheme Implementation Deed** means the agreement of that name between RE, Consortium Acquirer and the Guarantors in respect of the proposal and implementation of the Scheme and the Responsible Entity Scheme.

**Scheme Meeting** means the meeting of Unit Holders held on [2] 2021 for the purpose of, inter alia, voting on the Scheme Resolutions.

**Scheme Resolutions** means resolutions of Unit Holders to approve the Scheme, being:

- (a) an ordinary resolution approving for all purposes, including item 7 of section 611 of the Corporations Act, the acquisition by Consortium Acquirer of all the Scheme Units; and
- (b) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to the Constitution to facilitate the implementation of the Scheme.

**Scheme Transfers** means, for each Scheme Unit Holder, a proper instrument of transfer of their Scheme Units for the purpose of section 1071B of the Corporations Act (which may be a master transfer of all or part of all of the Scheme Units).

**Scheme Unit** means a Unit on issue as at the Record Date.

**Scheme Unit Holder** means a person registered in the Register as a holder of one or more Scheme Units as at the Record Date.

**Total Cash Election Amount** means the aggregate amount of cash consideration that is the subject of all Elections (or deemed Elections) in respect of Maximum Cash Consideration and Mixed Consideration by Scheme Unit Holders in accordance with clauses 41.7 to 41.16 (and, for the avoidance of doubt, prior to the operation of the Scaleback Arrangements).

**Total Scrip Election Amount** means the aggregate number of CLW Securities that are the subject of all Elections (or deemed Elections) in respect of Maximum Scrip Consideration and Mixed Consideration by Scheme Unit Holders in accordance with clauses 41.7 to 41.16 (and, for the avoidance of doubt, prior to the operation of the Scaleback Arrangements).

**Trust Account** means an Australian dollar denominated trust account operated by the RE (or by the Registry on behalf of the RE) as trustee for the Scheme Unit Holders.

## 2 **Clause 41**

A new clause 41 is inserted immediately after clause 40 of the Constitution as set out below:

### **41 Scheme**

#### **Implementation of the Scheme**

- 41.1 Each Scheme Unit Holder and the RE must do all things and execute all deeds, instruments, transfers or other documents as the RE considers are necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- 41.2 Without limiting the RE's other powers under this clause 41, the RE has power to do all things that it considers necessary or desirable to give effect to the Scheme and the Scheme Implementation Deed.
- 41.3 Subject to the Corporations Act, the RE, Consortium Acquirer, the Guarantors, or any of their respective directors, officers, employees or associates, may do any act, matter or thing described in or contemplated by this clause 41 even if they have an interest (financial or otherwise) in the outcome.
- 41.4 This clause 41:
  - (a) binds the RE and all of the Unit Holders (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolutions); and
  - (b) to the extent of any inconsistency, overrides the other provisions of this Constitution (but, for the avoidance of doubt, remains subject to the Corporations Act and the Listing Rules).

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

- 41.5 The Scheme Consideration in respect of each ALE Scheme Security is either:
  - (a) Mixed Consideration;
  - (b) Maximum Cash Consideration; or
  - (c) Maximum Scrip Consideration.
- 41.6 Each
  - (a) Scheme Unit Holder (other than an Ineligible Foreign Unit Holder) is entitled to receive one of Mixed Consideration, Maximum Cash Consideration or Maximum Scrip Consideration in respect of each ALE Scheme Security held by that Scheme Unit Holder; and
  - (b) each Scheme Unit Holder that is an Ineligible Foreign Unit Holder is entitled to receive the Mixed Consideration in respect of each ALE Scheme Security held by that Scheme Unit Holder (in the manner contemplated in clauses 41.29 to 41.30), subject to the terms of the Scheme.

#### **Election**

- 41.7 Each Scheme Unit Holder (other than an Ineligible Foreign Unit Holder) may elect (by completing the relevant part of the Election Form) to receive either Mixed Consideration, Maximum Cash Consideration or Maximum Scrip Consideration for all of their Scheme

Units (**Election**), such Election being subject to the terms of this clause 41, including without limitation clauses 41.27 to 41.30. Valid Elections will take effect in accordance with this clause 41.

- 41.8 Subject to clause 41.13, for an Election to be valid:
- (a) the Scheme Unit Holder must complete and sign the Election Form in accordance with the instructions in the Scheme Booklet and on the Election Form; and
  - (b) the Election Form must be received by the Registry before the Election Time at the address specified by the RE in the Scheme Booklet and on the Election Form.
- 41.9 An Election made by a Scheme Unit Holder, whether valid or not, will be irrevocable unless the RE and Consortium Acquirer in their discretion agree to the revocation of the Election (such discretion to be exercised fairly and equitably having regard to the circumstances at the time).
- 41.10 If:
- (a) a valid Election is not made by a Scheme Unit Holder; or
  - (b) no Election is made by a Scheme Unit Holder,
- then that Scheme Unit Holder will be deemed to have elected to receive Mixed Consideration in respect of all of their Scheme Units.
- 41.11 Subject to clause 41.13, an Election made or deemed to be made by a Scheme Unit Holder will be deemed to apply in respect of the Scheme Unit Holder's entire registered holding of Scheme Units at the Record Date, regardless of whether the Scheme Unit Holder's holding of Scheme Units at the Record Date is greater or less than the Scheme Unit Holder's holding at the time it made its Election.
- 41.12 Subject to clause 41.13, if a valid Election is made by a Scheme Unit Holder in respect of only some of its Scheme Units, and makes no Election or an invalid Election in respect of the remainder of its Scheme Units, the Scheme Unit Holder will be deemed to have elected to receive its elected form of Scheme Consideration in respect of all of its Scheme Units and not only those Scheme Units for which the Scheme Unit Holder made a valid Election.
- 41.13 A Scheme Unit Holder who is noted on the Register as holding one or more parcels of Scheme Units as trustee or nominee for, or otherwise on account of, another person, may in the manner considered appropriate by the RE and Consortium Acquirer (acting reasonably including after consultation with the Registry), make separate Elections in relation to each of those parcels of Scheme Units (subject to it providing to the RE and Consortium Acquirer any substantiating information they reasonably require), and an Election made in respect of any such parcel, or an omission to make an Election in respect of any such parcel, will not be taken to extend to the other parcels.
- 41.14 Subject to clause 41.15 and 41.16, an Election Form will not be valid unless it is completed and received in accordance with the procedures set out in clause 41.8.
- 41.15 The RE will determine, in its sole discretion, all questions as to the correct completion of an Election Form, and time of receipt of an Election Form. The RE is not required to communicate with any Scheme Unit Holder prior to making this determination. The determination of the RE will be final and binding on the Scheme Unit Holder.
- 41.16 Notwithstanding clause 41.8, the RE may, in its sole discretion, after reasonable consultation with the Consortium Acquirer, at any time and without further communication to the Scheme Unit Holder, deem any Election Form it receives from a Scheme Unit



Holder to be a valid Election in respect of the relevant Scheme Units, even if a requirement for a valid Election has not been complied with.

#### Mixed Consideration

41.17 If a Scheme Unit Holder elects or is deemed to have elected to receive Mixed Consideration then, subject to clauses 41.28 to 41.30, the Scheme Unit Holder will be entitled to receive for each ALE Scheme Security held by that Scheme Unit Holder at the Record Date:

- (a) a cash amount equal to \$3.728, less the Permitted Distribution Amount (if any); and
- (b) 0.4080 CLW Securities.

#### Maximum Cash Consideration

41.18 If a Scheme Unit Holder elects to receive Maximum Cash Consideration, subject to clause 41.28, the Scheme Unit Holder will be entitled to receive for each ALE Scheme Security held by that Scheme Unit Holder at the Record Date:

- (a) if the Available Cash Consideration is equal to or greater than the Total Cash Election Amount, \$5.736; and
- (b) if the Available Cash Consideration is less than the Total Cash Election Amount:
  - (i) a cash amount equal to:

$$\$n = \frac{(A - AC)}{(T - AC)} \times 5.736$$

and

- (ii) a number of issued CLW Securities equal to:

$$nCLW = \frac{(5.736 - \$n)}{4.92}$$

where:

**A** = the Available Cash Consideration;

**AC** = the aggregate cash component of Scheme Consideration payable to all Scheme Unit Holders who have elected or are deemed to have elected to receive Mixed Consideration;

**T** = the Total Cash Election Amount;

**\$n** = an amount in Australian dollars to which the relevant Scheme Unit Holder is entitled; and

**nCLW** = the number of CLW Securities to which the relevant Scheme Unit Holder is entitled,

in each case, less the Permitted Distribution Amount (if any).

41.19 A reduction in the Maximum Cash Consideration required in respect of the Permitted Distribution Amount will be effected:

- (a) as a reduction in respect of the cash component of the Maximum Cash Consideration; and
- (b) to the extent that the Permitted Distribution Amount exceeds the cash component of the Maximum Cash Consideration or there is no cash component, as a reduction in the number of CLW Securities to be issued in accordance with the ratio: 1 cent distributed is equal to 0.0020325 CLW Securities.

#### Maximum Scrip Consideration

41.20 If a Scheme Unit Holder elects to receive Maximum Scrip Consideration then, subject to clauses 41.28 to 41.30, the Scheme Unit Holder will be entitled to receive for each ALE Scheme Security held by that Scheme Unit Holder at the Record Date:

- (a) if the Available Scrip Consideration is equal to or greater than the Total Scrip Election Amount, 1.1658 CLW Securities; and
- (b) if the Available Scrip Consideration is less than the Total Scrip Election Amount:
  - (i) a number of CLW Securities equal to:

$$nCLW = \frac{(A - AS)}{(T - AS)} \times 1.1658$$

and

- (ii) a cash amount equal to:

$$\$n = (1.1658 - nCLW) \times 4.92$$

where:

**nCLW** = the number of CLW Securities to which the relevant Scheme Unit Holder is entitled;

**\$n** = an amount in Australian dollars to which the relevant Scheme Unit Holder is entitled;

**A** = the Available Scrip Consideration;

**T** = the Total Scrip Election Amount; and

**AS** = the aggregate number of CLW Securities that are the subject of Elections by all Scheme Unit Holders who have elected or are deemed to have elected to receive Mixed Consideration,

in each case, less the Permitted Distribution Amount (if any).

41.21 A reduction in the Maximum Scrip Consideration required in respect of the Permitted Distribution Amount will be effected:

- (a) as a reduction in respect of the cash component of the Maximum Scrip Consideration (if any); and
- (b) to the extent that the Permitted Distribution Amount exceeds the cash component of the Maximum Scrip Consideration or there is no cash component, as a reduction in the number of CLW Securities to be issued in accordance with the ratio: 1 cent distributed is equal to 0.0020325 CLW Securities.

#### Deposit of Scheme Consideration

41.22 Consortium Acquirer must, by no later than the Business Day before the Implementation Date:

- (a) deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the aggregate amount of the cash component of the Scheme Consideration payable to Scheme Unit Holders provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Consortium Acquirer's account; and
- (b) provide written confirmation to the RE of that deposit.

#### **Payment of cash component of Scheme Unit Holders**

- 41.23 On the Implementation Date, subject to Consortium Acquirer having satisfied its obligations in clause 41.22, the RE must pay or procure the payment, from the Trust Account, to each Scheme Unit Holder such amount of cash from the cash component of the Scheme Consideration as that Scheme Unit Holder is entitled under this clause 41 (if any).
- 41.24 The obligations of the RE under clause 41.23 will be satisfied by the RE (in its absolute discretion and despite any election referred to in (a) below or any authority referred to in (b) below):
- (a) where a Scheme Unit Holder has, before the Record Date, made a valid election in accordance with the requirements of the Registry to receive dividend payments from the RE by electronic funds transfer to a bank account nominated by the Scheme Unit Holder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (b) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Unit Holder by an appropriate authority from the Scheme Unit Holder to the RE; or
  - (c) otherwise, dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Unit Holder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Unit Holder (or in the case of joint holders, in accordance with the procedures set out in clause 41.27).
- 41.25 If, following satisfaction of Consortium Acquirer's obligations under clause 41.22 but prior to the occurrence of all of the events described in clause 2.1 of the Company Scheme (as defined in the Scheme Implementation Deed), the Scheme lapses under clause 41.64:
- (a) the RE must immediately repay (or cause to be repaid) to or at the direction of Consortium Acquirer the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges);
  - (b) the obligation to transfer Scheme Units, together with all rights and entitlements attaching to the Scheme Units as at the Implementation Date, to Consortium Acquirer under clause 41.47 will immediately cease;
  - (c) Consortium Acquirer must return the Scheme Transfers, if provided pursuant to clause 41.47(b); and
  - (d) the RE is no longer obliged to enter, or procure the entry of, the name of Consortium Acquirer in the Register in accordance with clauses 41.49 to 41.54.

#### **Provision of scrip component of Scheme Consideration in the form of CLW Securities**

- 41.26 The Consortium Acquirer must, subject to clauses 41.27 to 41.39:
- (a) procure that on the Implementation Date:

- (i) CLW issues the CLW Securities to each Scheme Unit Holder who is entitled under this clause 41 (if any) to receive the Maximum Scrip Consideration and Mixed Consideration in respect of that Scheme Unit Holder's ALE Scheme Securities; and
- (ii) the name and address of each such Scheme Unit Holder is entered in the CLW Registry as the holder of the CLW Securities issued to that Scheme Unit Holder on the Implementation Date;
- (b) procure that on or before the date that is two Business Days after the Implementation Date, a holding statement (or equivalent document) is sent to the Registered Address of each Scheme Unit Holder to whom CLW Securities are provided in accordance with (a) above representing the number of CLW Securities provided to that Scheme Unit Holder pursuant to this Scheme; and
- (c) ensure that the CLW Securities issued, at the time they are issued:
  - (i) have the rights set out in the CLW Trust Deeds;
  - (ii) rank equally in all respects among themselves and with all other CLW Securities on issue in CLW; and
  - (iii) are fully paid and free from any mortgage, charge, lien, encumbrance or other security interest, or any third party right.

#### **Joint holders**

41.27 In the case of Scheme Units held in joint names:

- (a) subject to clause 41.24, any amount comprising the cash component of the Scheme Consideration payable in respect of those Scheme Units (including any amount payable under clauses 41.31 to 41.39) is payable to the joint holders and any cheque required to be sent under the Scheme will be made payable to the joint holders and sent to either, at the sole discretion of the RE, the holder whose name appears first in the Register as at the Record Date or to the joint holders;
- (b) any CLW Securities to be provided under the Scheme must be provided to and registered in the names of the joint holders; and
- (c) any other document required to be sent under the Scheme, will be forwarded to either, at the sole discretion of the RE, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

#### **Fractions and splitting**

41.28 Where the number of Units held by a Scheme Unit Holder as at the Record Date is such that the aggregate entitlement of the Scheme Unit Holder to the Scheme Consideration (including under clauses 41.31 to 41.39):

- (a) includes a fractional entitlement to a CLW Security; and/or
- (b) includes a fractional entitlement to a cent,

then the entitlement of that Scheme Unit Holder must be rounded up or down to the nearest whole number, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of CLW Securities or cents (as applicable), and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of CLW Securities or cents (as applicable).

#### Ineligible Foreign Unit Holders

- 41.29 Each Ineligible Foreign Unit Holder is deemed to make a valid Election to receive Mixed Consideration.
- 41.30 The Consortium Acquirer will be under no obligation to issue or cause to be issued, and must not issue, any CLW Securities under this Scheme to any Ineligible Foreign Unit Holder. Accordingly, all CLW Securities that, but for clauses 41.29 and 41.30, would have been required to be issued to Ineligible Foreign Unit Holders are to be dealt with on behalf of Ineligible Foreign Unit Holders in accordance with clauses 41.31 to 41.39.

#### Sale Facility

- 41.31 CLW Securities to which an Ineligible Foreign Unit Holder would have been entitled but for clauses 41.29 and 41.30 must not be issued to the relevant Ineligible Foreign Unit Holder and, instead, must be provided to the Sale Agent by the Consortium Acquirer, or caused to be provided to the Sale Agent by the Consortium Acquirer, on the Implementation Date (together, the **Sale Securities**) and subsequently sold in accordance with these clauses 41.31 to 41.39.
- 41.32 The Sale Facility will only be available in respect of CLW Securities provided to the Sale Agent in the circumstances referred to in clause 41.31. Any purported Election by a Scheme Unit Holder to participate in the Sale Facility in any other circumstance will be invalid and not recognised.
- 41.33 The RE and the Consortium Acquirer must procure that as soon as practicable after the Implementation Date and, in any event, not more than 10 Business Days after the Implementation Date, the Sale Agent sells or procures the sale of all of the Sale Securities in the ordinary course of trading on ASX in such manner, at such price or prices and on such other terms as the Sale Agent determines in good faith, and remits to the RE the proceeds of the sale (**Gross Proceeds**).
- 41.34 Promptly after receiving the Gross Proceeds, and in any event, not more than 10 Business Days after receiving them, the RE must pay, or procure the payment, to each Ineligible Foreign Unit Holder (in accordance with these clauses 41.31 to 41.38) an amount equal to the following:

$$A = B \div C \times D$$

Where:

**A** = the amount to be paid to each Ineligible Foreign Unit Holder in accordance with this clause 41.31 to 41.38;

**B** = the Gross Proceeds (less any applicable brokerage, taxes and other costs and charges);

**C** = the total number of CLW Securities provided to the Sale Agent under clause 41.31; and

**D** = the number of CLW Securities provided to the Sale Agent under clause 41.31 in respect of that Ineligible Foreign Unit Holder.

- 41.35 The RE, CLW and the Sale Agent do not give any assurance as to the price that will be achieved in respect of the sale of CLW Securities in accordance with these clauses 41.31 to 41.39, and that the sale of CLW Securities under clauses 41.31 to 41.39 will be at the risk of the Ineligible Foreign Unit Holder.
- 41.36 The payment obligation of the RE under clause 41.34 will be satisfied by the RE (in its absolute discretion and despite any election referred to in (a) below or any authority referred to in (b) below):
- (a) where an Ineligible Foreign Unit Holder has, before the Record Date, made a valid election in accordance with the requirements of the ALE Registry to receive dividend payments from the RE by electronic funds transfer to a bank account nominated by the Ineligible Foreign Unit Holder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (b) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Ineligible Foreign Unit Holder by an appropriate authority from the Ineligible Foreign Unit Holder to the RE; or
  - (c) otherwise, dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Ineligible Foreign Unit Holder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Ineligible Foreign Unit Holder (or in the case of joint holders, in accordance with the procedures set out in clause 41.27).
- 41.37 If the RE receives professional advice that any withholding or other tax is required by law or by a Government Agency to be withheld from a payment to an Ineligible Foreign Unit Holder, the RE is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Unit Holder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of the Scheme). The RE must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Unit Holder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Unit Holder.
- 41.38 Payment of an amount to an Ineligible Foreign Unit Holder in accordance with these clauses 41.31 to 41.39 will be in full satisfaction of the obligations of the RE to the Ineligible Foreign Unit Holder under the Scheme in respect of the scrip component of that Ineligible Foreign Unit Holder's Scheme Consideration.
- 41.39 Each Ineligible Foreign Unit Holder appoints the RE as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Unit Holders under the Corporations Act or any other applicable law.

#### **Cancellation and re-issue of cheques**

- 41.40 The RE may cancel a cheque issued under this clause 41 if the cheque:
- (a) is returned to the RE or the Registry; or
  - (b) has not been presented for payment within 6 months after the date on which the cheque was sent.
- 41.41 During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Unit Holder to the RE or the Registry) (which request may not be



made until the date which is 20 Business Days after the Implementation Date), the RE must reissue a cheque that was previously cancelled under clause 41.40.

#### **Unclaimed monies**

- 41.42 The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- 41.43 Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Consortium Acquirer.

#### **Remaining monies (if any) in Trust Account**

- 41.44 To the extent that, following satisfaction of the RE's obligations under this clause 41 and provided Consortium Acquirer has by that time acquired the Scheme Units in accordance with the Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of the Scheme, the Deed Poll and the Scheme Implementation Deed, that surplus (less any bank fees and related charges) shall be paid by the RE (or the Registry on the RE's behalf) to Consortium Acquirer.

#### **Orders of a court or Government Agency**

- 41.45 If written notice is given to the RE (or the Registry), the Consortium Acquirer or CLW (or the CLW Registry) of an order or direction made by a court or another Government Agency that:
- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Units held by a particular Scheme Unit Holder, which would otherwise be payable or required to be issued to that Scheme Unit Holder by the RE in accordance with this clause 41, then the RE shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (b) prevents the RE from providing consideration to any particular Scheme Unit Holder in accordance with this clause 41, or the payment or issuance of such consideration is otherwise prohibited by applicable law, the RE shall be entitled to (as applicable):
    - (i) retain an amount equal to the number of Scheme Units held by that Scheme Unit Holder multiplied by the Scheme Consideration; or
    - (ii) direct CLW not to issue, or to issue to a trustee or nominee, such number of CLW Securities as that Scheme Unit Holder would otherwise be entitled to under clause 41,

until such time as payment in accordance with this clause 41 is permitted by that (or another) court or direction or otherwise by law.
- 41.46 To the extent that amounts are so deducted or withheld in accordance with clause 41.45, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

#### **Transfer of Scheme Units to Consortium Acquirer**

- 41.47 On the Implementation Date, subject to Consortium Acquirer having provided the Scheme Consideration in the manner contemplated by the Scheme Implementation Deed



and this clause 41, together with all rights and entitlements attaching to the Scheme Units as at the Implementation Date, will be transferred to Consortium Acquirer, without the need for any further act by any Scheme Unit Holder (other than acts performed by the RE (or any of its directors and officers appointed as sub-attorneys and/or agents of the RE) as attorney and/or agent for Scheme Unit Holders under the Scheme), by:

- (a) the RE delivering to Consortium Acquirer for execution duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Scheme Units to Consortium Acquirer, duly executed by the RE (or any of its directors and officers appointed as sub-attorneys and/or agents of the RE) as the attorney and/or agent of each Scheme Unit Holder as transferor under clause 41.56;
- (b) Consortium Acquirer immediately executing the Scheme Transfers as transferee and deliver them to the RE for registration; and
- (c) the RE, immediately after receipt of the Scheme Transfers under paragraph (b), entering, or procuring the entry of, the name and address of Consortium Acquirer in the Register as the holder of all of the Scheme Units.

41.48 The transfer of all of the Scheme Units to Consortium Acquirer in accordance with clause 41.47 must occur simultaneously with the transfer to Consortium Acquirer of all of the Responsible Entity Scheme Shares under the Responsible Entity Scheme and the RE must simultaneously with the actions contemplated under clause 41.47, enter, or procure the entry of, the name and address of CHH in the ALE Register as the holder of all of the Responsible Entity Scheme Shares.

#### Dealings in Units

41.49 For the purpose of establishing the persons who are Scheme Unit Holders and determining entitlements to the Scheme Consideration, dealings in Units will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Units by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Registry by 5:00pm on the day which is the Record Date at the place where the Register is located (in which case the RE must register such transfer or transmission application before 7:00pm on that day),

and the RE will not accept for registration, nor recognise for any purpose (including the purpose of establishing the persons who are Scheme Unit Holders) other than to transfer to Consortium Acquirer pursuant to this clause 41 and any subsequent transfers by Consortium Acquirer or its successors in title, any transfer or transmission application in respect of Units received after the Record Date, or received prior the Record Date but not in actionable or registrable form (as appropriate).

41.50 The RE will, until the Scheme Consideration has been provided and the name and address of Consortium Acquirer have been entered in the Register as the holder of all of the Scheme Units, maintain, or procure the maintenance of, the Register in accordance with clauses 41.49 to 41.54. The Register immediately after registration of registrable transfers or transmission applications of the kind referred to in clause 41.49(b) will solely determine the persons who are Scheme Unit Holders and their entitlements to the Scheme Consideration. As from the Record Date (and other than for Consortium Acquirer following the Implementation Date), each entry in the Register as at the Record Date

relating to Scheme Units will cease to have any effect other than as evidence of the entitlements of Scheme Unit Holders to the Scheme Consideration in respect of the Scheme Units.

- 41.51 As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, the RE will ensure that details of the names, Registered Addresses and holdings of Scheme Units for each Scheme Unit Holder as shown in the Register are available to Consortium Acquirer in the form Consortium Acquirer reasonably requires.
- 41.52 Other than Consortium Acquirer and its successors in title (after registration of Consortium Acquirer in respect of all Scheme Units under clause 41.47(c)), no Scheme Unit Holder (or any person purporting to claim through them) may deal with Scheme Units in any way after 5.00 pm on the Record Date except as set out in clauses 41.49 to 41.54, and any attempt to do so will have no effect.
- 41.53 Other than in respect of Consortium Acquirer (after registration of Consortium Acquirer in respect of all Scheme Units under clause 41.47(c)), from the Record Date, all certificates and holding statements (as applicable) for Scheme Units as at the Record Date will cease to have any effect as evidence of title, and each entry on the Register as at the Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Unit Holders to the Scheme Consideration.
- 41.54 If the Scheme becomes Effective, each Scheme Unit Holder, and any person claiming through that Scheme Unit Holder, must not dispose of or purport or agree to dispose of any Scheme Units or any interest in them, after 5.00pm on the Record Date other than to Consortium Acquirer in accordance with the Scheme and any subsequent transfers by Consortium Acquirer and its successors in title.

#### **Covenants by Unit Holders**

- 41.55 Each Scheme Unit Holder:
- (a) acknowledges that this clause 41 binds the RE and all of the Unit Holders from time to time (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme Resolutions);
  - (b) irrevocably agrees to the transfer of their Scheme Units, together with all rights and entitlements attaching to those Scheme Units, to Consortium Acquirer in accordance with the terms of the Scheme, without the need for any further act by that Scheme Unit Holder;
  - (c) agrees to the modification or variation (if any) of the rights attaching to their Scheme Units arising from this clause 41, without the need for any further act by that Scheme Unit Holder;
  - (d) who receives CLW Securities as part of the Scheme Consideration, agrees:
    - (i) to become a securityholder of CLW and be bound by the terms of the CLW Trust Deeds; and
    - (ii) to have their name registered in the register on which CLW Securities are recorded as a holder of CLW Securities (in respect of the CLW Securities which they are issued pursuant to the Scheme);
  - (e) irrevocably consents to the RE and Consortium Acquirer doing all things and executing all deeds, instruments, transfers or other documents (including the Scheme Transfers) as may be necessary or desirable to give full effect to the

terms of the Scheme and the transactions contemplated by it, without the need for any further act by that Scheme Unit Holder; and

- (f) agrees to provide to the RE such information as the RE may reasonably require to comply with any law in respect of the Scheme and the transactions contemplated in this clause 41, including information required to meet obligations under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

#### **Appointment of the RE as attorney and as agent for implementation of Scheme**

41.56 Each Scheme Unit Holder, without the need for any further act by that Unit Holder, irrevocably appoints the RE as that Unit Holder's attorney and as that Unit Holder's agent for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including effecting a valid transfer or transfers of the Scheme Units to Consortium Acquirer under clause 41.47, including executing and delivering any Scheme Transfers; and

- (b) enforcing the Deed Poll against Consortium Acquirer,

and the RE accepts such appointment. The RE, as attorney and as agent of each Unit Holder, may sub-delegate its functions, authorities or powers under this clause 41.56 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Unit Holder indemnifies the RE and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 41.56.

#### **Appointment of Consortium Acquirer as attorney and as agent for Scheme Units**

41.57 From the time that Consortium Acquirer has satisfied its obligations in clauses 41.22 and 41.26(a) until Consortium Acquirer is registered in the Register as the holder of all Scheme Units, each Scheme Unit Holder:

- (a) without the need for any further act by that Scheme Unit Holder, irrevocably appoints the RE as its attorney and as its agent (and directs the RE in such capacity) to irrevocably appoint Consortium Acquirer as its sole proxy and, where applicable, corporate representative, for the purpose of:

- (i) attending Unit Holder meetings;
- (ii) exercising the votes attaching to the Units registered in the name of the Unit Holder in the Register; and
- (iii) signing any Unit Holders' resolution;

- (b) must take all other action in the capacity of a Unit Holder for the purposes of facilitating the Scheme as Consortium Acquirer reasonably directs; and

- (c) acknowledges and agrees that in exercising the powers referred to in article 41.57(a), Consortium Acquirer and any person nominated by Consortium Acquirer under clause 41.57(a) may act in the best interests of Consortium Acquirer as the intended registered holder of the Scheme Units.

41.58 From the time that Consortium Acquirer has satisfied its obligations in clauses 41.22 and 41.26(a) until Consortium Acquirer is registered in the Register as the holder of all Scheme Units, no Unit Holder may attend or vote at any meetings of Unit Holders or sign

any Unit Holders' resolution (whether in person, by proxy or by corporate representative) other than under clause 41.57.

#### **Status of Scheme Units**

- 41.59 To the extent permitted by law, the Scheme Units transferred to Consortium Acquirer under clause 41.47 will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- 41.60 Each Scheme Unit Holder is deemed to have warranted to Consortium Acquirer, and, to the extent enforceable, to have appointed and authorised the RE as that Scheme Unit Holder's agent and attorney to warrant to Consortium Acquirer, that all of their Scheme Units (including any rights and entitlements attaching to those Scheme Units) will, at the time of the transfer of them to Consortium Acquirer pursuant to the Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Units (together with any rights and entitlements attaching to those Scheme Units) to Consortium Acquirer pursuant to the Scheme, and as at the Record Date, they have no existing right to be issued any other Units or any other form of securities in the Trust. The RE undertakes in favour of each Scheme Unit Holder that it will provide such warranty, to the extent enforceable, to Consortium Acquirer on behalf of that Scheme Unit Holder.
- 41.61 Consortium Acquirer will be beneficially entitled to the Scheme Units transferred to it under clause 41.47 pending registration by the RE of the name and Registered Address of Consortium Acquirer in the Register as the holder of the Scheme Units.

#### **Suspension and termination of quotation of Units**

- 41.62 The RE must apply to ASX for suspension of trading of the ALE Securities on ASX with effect from the close of business on the Effective Date.
- 41.63 The RE must apply to ASX for termination of official quotation of the ALE Securities on ASX and the removal of the Trust from the official list of the ASX with effect from the Business Day immediately following the Implementation Date, or from such later date as may be determined by Consortium Acquirer.

#### **Lapsing**

- 41.64 Clause 41 will lapse and have no further force or effect if:
- (a) the Effective Date does not occur on or before the End Date; or
  - (b) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms,
- unless the RE and Consortium Acquirer otherwise agree in writing

#### **Notices**

- 41.65 Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the RE, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Trust's registered office or by the Registry, as the case may be. The accidental omission to give notice of the Scheme Meeting or the non-receipt of such

notice by a Unit Holder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

**Costs and stamp duty**

- 41.66 Subject to clause 41.67, each of Consortium Acquirer and the RE will pay their share of the costs of the Scheme in accordance with the Scheme Implementation Deed. The RE may pay or be reimbursed for such costs out of the Assets.
- 41.67 Consortium Acquirer will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Unit Holders of the Scheme Units to Consortium Acquirer pursuant to the Scheme.

**Limitation of liability**

- 41.68 Without limiting clause 21 but subject to the Corporations Act, the RE will not have any liability of any nature whatsoever to Unit Holders, beyond the extent to which the RE is actually indemnified out of the Assets, arising, directly or indirectly, from the RE doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the Scheme.

**Schedule 6**

**Deed Poll**

For personal use only

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## Deed Poll

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Bieson Pty Limited as trustee for CH LEP Investment Trust  
Charter Hall WALE Limited as responsible entity for the Charter  
Hall Direct Industrial Fund and LWR Finance Trust  
Host-Plus Pty Limited as trustee for the Hostplus Pooled  
Superannuation Trust



**Arnold Bloch Leibler**

Level 21, 333 Collins Street  
Melbourne Victoria 3000 Australia

Level 24, Chifley Tower, 2 Chifley Square  
Sydney NSW 2000 Australia



# Deed Poll

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# Deed Poll

## Details

Date

By **Bieson Pty Limited** (ACN 110 465 168) as trustee of **CH LEP Investment Trust** of Level 20, 1 Martin Place, Sydney NSW 2000 (**Consortium Acquirer**)

**Charter Hall WALE Limited** (ACN 610 772 202) as responsible entity for Charter Hall Direct Industrial Fund and LWR Finance Trust of Level 20, 1 Martin Place, Sydney NSW 2000 (**CLW**)

**Host-Plus Pty Limited** (ABN 79 008 634 704) as trustee for the Hostplus Pooled Superannuation Trust (ABN 13 140 019 340) of Level 9, 114 William Street, Melbourne VIC 3000 (**Hostplus**)

In favour of each **ALE Scheme Securityholder**

Background A The Consortium Acquirer, CLW, Hostplus and Australian Leisure and Entertainment Property Management Limited (ACN 105 275 278) (**ALE Property RE**) in its own capacity and as responsible entity for the Australian Leisure and Entertainment Property Trust (ARSN 106 063 049) (**ALE Property RE**) have entered into a scheme implementation deed dated 1 July 2021 (**Scheme Implementation Deed**).

B In accordance with the Scheme Implementation Deed, the Consortium Acquirer, CLW and Hostplus enter into this document to covenant in favour of each ALE Scheme Securityholder that they will observe and perform their obligations under the Scheme Implementation Deed and the Schemes.

## 1 Definitions and interpretation

### 1.1 Definitions

Terms used in this document have the same meaning as in the Scheme Implementation Deed unless otherwise defined in this document or the context requires otherwise.

### 1.2 Rules for interpreting this document

The rules in clause 1.2 ('Interpretation') of the Scheme Implementation Deed apply in interpreting this document, unless the context makes it clear that a rule is not intended to apply.

### 1.3 Nature of deed poll

The Consortium Acquirer, CLW and Hostplus acknowledge and agree that:

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- (a) this document may be relied on and enforced by any ALE Scheme Securityholder in accordance with its terms even though the ALE Scheme Securityholders are not party to it; and
  - (b) under the Schemes, each ALE Scheme Securityholder irrevocably appoints ALE Property RE and each of its directors and officers, jointly and severally, as its agent and attorney to enforce this document against the Consortium Acquirer, CLW and Hostplus.

## **2 Condition and termination**

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### **2.1 Condition**

This document and the obligations of the Consortium Acquirer, CLW and Hostplus under this document are subject to the Schemes becoming Effective.

### **2.2 Termination**

The obligations of the Consortium Acquirer, CLW and Hostplus under this document will automatically terminate and the terms of this document will be of no further force or effect if:

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

unless the Consortium Acquirer, CLW, Hostplus and ALE Property RE otherwise agree in writing.

### **2.3 Consequences of termination**

If this document is terminated under clause 2.2 then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) each of the Consortium Acquirer, CLW and Hostplus is released from its obligations under this document except those obligations under clause 7.1; and
- (b) each ALE Scheme Securityholder retains any rights, powers or remedies they have against the Consortium Acquirer, CLW and Hostplus in respect of any breach of this document that occurred before it was terminated.

## **3 Scheme obligations**

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### **3.1 Scheme obligations**

Subject to clause 2, the Consortium Acquirer, CLW and Hostplus covenant in favour of each ALE Scheme Securityholder that they will each duly and punctually observe and perform all obligations contemplated of them under and in accordance with the Schemes, including the relevant obligations relating to the provision of the Scheme Consideration.

### 3.2 Scheme implementation

The Consortium Acquirer, CLW and Hostplus will do all things that they are each required to do under the Scheme Implementation Deed to implement the Schemes.

## 4 Warranties

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Each of the Consortium Acquirer, CLW and Hostplus represent and warrant in favour of each ALE Scheme Securityholder that:

- (a) **(status)** it is a corporation validly existing under the laws of its place of incorporation;
- (b) **(power)** it has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;
- (c) **(corporate authority)** it has taken all necessary corporate action to authorise the execution of this document and has taken or will take all necessary corporate action to authorise the performance of this document;
- (d) **(documents effective)** this documents is its valid and binding obligation enforceable in accordance with its terms;
- (e) **(no contravention of law)** the execution and performance by it of this document and each transaction contemplated by it did not and will not violate in any respect a provision of:
  - (i) a law, treaty, judgment, ruling, order or decree binding on it;
  - (ii) its constitution; or
  - (iii) any other document or agreement that is binding on it;
- (f) **(insolvency)** it is not subject to an Insolvency Event;
- (g) **(trustee status, capacity and solvency)** if it is executing this document in its capacity as trustee of a trust or trusts (each a **Trust**):
  - (i) the Trust has been duly established and has not been terminated;
  - (ii) it was validly appointed trustee of the Trust in accordance with the terms of the Trust, it is the sole trustee of the Trust, and no action has been taken to remove or replace it as the trustee of the Trust;
  - (iii) it is not in default under the terms of the trust deed of the Trust (**Trust Deed**) and has no notice of any circumstances which will or are reasonably likely to lead to the removal of it as trustee of the Trust;
  - (iv) it has not been removed from the office of trustee nor ceased to act and no additional trustee has been appointed;
  - (v) no action has been taken or proposed to, either:
    - (A) terminate the Trust; or

- (B) wind-up the Trust whether under Chapter 5C of the Corporations Act or otherwise;
- (vi) it has the authorisations necessary for it to enter into this document and the Schemes, perform obligations under them and allow them to be enforced (including any authorisation required under the Trust Deed);
- (vii) it has not exercised its powers under the Trust Deed to release, abandon or restrict any power conferred on it by the Trust Deed; and
- (viii) it has the right to be fully indemnified out of the assets of the Trust in respect of all its obligations and liabilities under this document other than in the case of its behaviour being beyond power or improper.

## 5 Continuing obligations

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This document is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the Consortium Acquirer, CLW and Hostplus have each fully performed their obligations under this document; or
- (b) the earlier termination of this document under clause 2.

## 6 Limitation of liability

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### 6.1 Consortium Acquirer and CLW limitation of liability

- (a) The Consortium Acquirer and CLW execute and perform this document as trustee of a trust or trusts (**Trustee Parties**) and do so in that, and in no other, capacity.
- (b) Subject to clause 6.1(d), any liability of a Trustee Party arising under or in connection with this document is limited to the extent to which the Trustee Party is, having sought indemnification, actually indemnified for that liability out of the assets of the relevant trust.
- (c) Subject to clause 6.1(d), no person will be entitled to:
- (i) claim from or commence proceedings against a Trustee Party in respect of any liability under this document in any capacity other than as the trustee of the relevant trust;
- (ii) seek the appointment of an administrator, a controller or a liquidator (all as defined in section 9 of the Corporations Act), or any similar officer under the laws of any relevant jurisdiction, to any assets of the relevant trust, or prove in any liquidation, administration or arrangement of or affecting the Trustee Party, except in relation to the assets of the relevant trust; or
- (iii) enforce or seek to enforce any judgment in respect of a liability under this document against a Trustee Party in any capacity other than as trustee of the relevant trust.

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- (d) The provisions of this clause 6 do not apply to any obligation or liability of a Trustee Party to the extent that it is not satisfied because there is (whether under the trust deed of the Trustee Party or by operation of law) a reduction in the extent, or an extinguishment, of the Trustee Party's indemnification out of the assets of the relevant trust as a result of:
    - (i) the Trustee Party's fraud, negligence or breach of trust;
    - (ii) the Trustee Party having acted beyond power or improperly in relation to the relevant trust; or
    - (iii) any act intended to reduce or extinguish the Trustee Party's indemnification out of the assets of the relevant trust.
  - (e) This clause 6:
    - (i) applies despite any other provision of this document and extends to all liabilities and obligations of a Trustee Party in its capacity as trustee of the relevant trust in any way connected with any representation, warranty, conduct, omission or transaction related to this document;
    - (ii) applies to each Trustee Party severally and the obligations, undertakings, warranties and representations and liabilities under this clause 6 are several and not joint nor joint and several; and
    - (iii) survives termination of this document.

## 6.2 Hostplus limitation of liability

- (a) Hostplus enters into and performs this document and the transactions it contemplates (including any past and future conduct in respect thereof) only as trustee of the Hostplus Pooled Superannuation Trust (ABN 13 140 019 340) (**Hostplus Trust**).
- (b) Under and in connection with this document and any transactions contemplated in this document, Hostplus' liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Hostplus Trust. Hostplus need not pay any such liability out of other assets. No person will be entitled to:
  - (i) bring proceedings against Hostplus except as trustee of the Hostplus Trust;
  - (ii) take any steps to have Hostplus placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of the assets of the Hostplus Trust); or
  - (iii) seek by any means (including set-off) to have a liability of Hostplus to that party (including for negligence) satisfied out of any assets of Hostplus other than the assets of the Hostplus Trust.
- (c) The limitation in clause 6.2(b) applies despite any other provision in this document but does not apply with respect to any liability of Hostplus to the extent that Hostplus has no right or power to have assets of the Hostplus Trust applied towards satisfaction of that liability, or its right or power to do so is subject to a

deduction, reduction, limit or requirement to make good, in either case because Hostplus' behaviour was beyond power or improper.

## **7 General**

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### **7.1 Stamp duty**

The Consortium Acquirer must, and CLW and Hostplus unconditionally and irrevocably guarantee the obligations of the Consortium Acquirer to:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the ALE Scheme Securityholders of the ALE Scheme Shares to the Consortium Acquirer Nominee and the ALE Scheme Units to the Consortium Acquirer pursuant to the Schemes and this document; and
- (b) indemnify each ALE Scheme Securityholder against any liability arising from a failure to comply with clause 7.1(a).

### **7.2 Amendment**

A provision of this document may not be amended or varied:

- (a) before the Second Court Date, unless the amendment is agreed to in writing by the Consortium Acquirer, CLW, Hostplus and ALE Property RE; or
- (b) on or after the Second Court Date, unless the amendment is agreed to in writing by the Consortium Acquirer, CLW, Hostplus and ALE Property RE, and is approved by the Court,

and the Consortium Acquirer, CLW and Hostplus enter into a further deed poll in favour of each ALE Scheme Securityholder giving effect to that amendment or variation.

### **7.3 Assignment**

The rights and obligations of the Consortium Acquirer, CLW, Hostplus and each ALE Scheme Securityholder under this document are personal. They cannot be assigned, encumbered, charged or otherwise dealt with, and no person shall attempt or purport to do so, without the prior written consent of the Consortium Acquirer, CLW, Hostplus and ALE Property RE.

### **7.4 Governing law**

- (a) This document is governed by the law in force in New South Wales, Australia.
- (b) Each of the Consortium Acquirer, CLW and Hostplus submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and the Consortium Acquirer, CLW and Hostplus waive any rights they might have to claim that those courts are an inconvenient forum.



## **7.5 Liability for expenses**

Subject to clause 7.1, each party must pay its own expenses incurred in negotiating, executing, and registering this document.

## **7.6 Waiver of rights**

A right may only be waived in writing, signed by the person giving the waiver, and:

- (a) no other conduct of the Consortium Acquirer, CLW, Hostplus and each ALE Scheme Securityholder (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## **7.7 Operation of this document**

- (a) Any right that the Consortium Acquirer, CLW, Hostplus and each ALE Scheme Securityholder may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

## **7.8 Remedies cumulative**

The rights, powers and remedies of the Consortium Acquirer, CLW, Hostplus and each ALE Scheme Securityholder in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

## **7.9 Further assurances**

The Consortium Acquirer, CLW and Hostplus will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

## Signing Page

**EXECUTED** as a deed poll.

**EXECUTED** by **Bieson Pty Limited ACN 110 465 168** as trustee for **CH LEP Investment Trust** by: )  
)  
)

Signature of director

Signature of director/company secretary  
(delete as applicable)

Full name of director (print)

Full name of director/company secretary  
(print) (delete as applicable)

**EXECUTED** by **Charter Hall WALE Limited ACN 610 772 202** as responsible entity for **Charter Hall Direct Industrial Fund** and **LWR Finance Trust** by: )  
)  
)

Signature of director

Signature of director/company secretary  
(delete as applicable)

Full name of director (print)

Full name of director/company secretary  
(print) (delete as applicable)

**EXECUTED** for and on behalf of **Host-Plus Pty Limited ABN 79 008 634 704** as trustee for the **Hostplus Pooled Superannuation Trust** by its duly appointed attorneys, who declare that they have no notice of revocation of the power of attorney dated 10 December 2020 pursuant to which they were appointed: )  
)  
)

Signature of attorney

Signature of attorney

Full name of attorney

Full name of attorney



**Schedule 7**

**Agreed Public Announcements**

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**Schedule 8****ALE Prescribed Occurrence**

- (a) **(conversion)** ALE Property RE or ALE Trust (acting through ALE Property RE) converts all or any of its securities into a larger or smaller number of securities or a resolution is passed to do so;
- (b) **(reduction of capital)** ALE Property RE or ALE Trust (acting through ALE Property RE) reduces or resolves to reduce its capital in any way;
- (c) **(redemption)** ALE Trust (acting through ALE Property RE) redeems any of its securities or resolves to redeem any of its securities;
- (d) **(buy back)** ALE Property RE or ALE Trust (acting through ALE Property RE) buys back or agrees to buy back any of its securities including:
- (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement the Corporations Act;
- (e) **(issuing units or options)** an ALE Group Member issues securities or grants an option over its securities, or agrees to make such an issue or grant such an option, other than:
- (i) by an ALE Group Member (other than ALE Property RE or ALE Trust) to another ALE Group Member; or
  - (ii) the issue of ALE Securities upon the exercise or vesting of ESSS Rights which are on issue as at the date of this Deed;
- (f) **(convertible securities)** an ALE Group Member issues or agrees to issue convertible notes or other security or instrument convertible into its securities;
- (g) **(Encumbrances)** an ALE Group Member creates, or agrees to create, any Encumbrance over all or a substantial part of the business or assets of the ALE Group;
- (h) **(assets)** an ALE Group Member disposes, or agrees to dispose, of the whole or a substantial part of the business or property of the ALE Group;
- (i) **(wound up)** any ALE Group Member resolves to be wound up;
- (j) **(liquidator)** a liquidator or provisional liquidator of any ALE Group Member is appointed;
- (k) **(court order)** a court makes an order for the winding up of any ALE Group Member;
- (l) **(administrator)** an administrator of any ALE Group Member is appointed under the Corporations Act;
- (m) **(company arrangement)** any ALE Group Member executes a deed of company arrangement;
- (n) **(receiver)** a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any ALE Group Member;
- (o) **(Trusts)** any of the following occur:
- (i) ALE Property RE ceases to be the responsible entity of ALE Trust or of the ALE Direct Property Trust No.3 (ARSN 121 295 092);
  - (ii) The Trust Company (Australia) Limited ceases to be the trustee of the ALE Direct Property Trust;
  - (iii) the ALE Securityholders or an ALE Group Member (as applicable) resolves to remove or replace ALE Property RE as responsible entity of ALE Trust or the responsible entity or trustee of any ALE Group Member (as applicable);

- (iv) a meeting being convened to consider a resolution for the removal, retirement or replacement of ALE Property RE as responsible entity of ALE Trust or the responsible entity or trustee of any ALE Group Member; or
- (v) any application being made in any court for the appointment of a temporary responsible entity of ALE Trust or any ALE Group Member in accordance with the Corporations Act;
- (p) **(resettlement)** ALE Property RE (or its Representatives) effects or facilitates the resettlement of ALE Trust Property;
- (q) **(delisting and extended suspension)** ALE Property RE or ALE Trust cease to be admitted to the official list of ASX or ALE Securities cease to be quoted by ASX or ALE Property RE or ALE Trust is suspended from trading by ASX for a consecutive period of more than 2 weeks;
- (r) **(deregistration)** ALE Trust (acting through ALE Property RE) or any ALE Group Member becomes or takes steps to become deregistered as a registered managed investment scheme or is otherwise dissolved;
- (s) **(distributions)** other than a Permitted Distribution, ALE Property RE or ALE Trust (acting through ALE Property RE) declares, resolves to pay or pays any dividend, distribution or share of its profits or assets or returning or agreeing to return any capital to its shareholders or unitholders (whether in cash or in specie);
- (t) **(constituent documents)** any ALE Group Member makes any change to its constitution or other constituent documents;
- (u) **(indebtedness)** any ALE Group Member incurs any financial indebtedness or issues any indebtedness or debt securities other than:
- (i) in the ordinary course and usual course of business, including by way of drawdown of available funding under facility arrangements Fairly Disclosed in the ALE Due Diligence Material; or
  - (ii) to or from any other ALE Group Member.

**Schedule 9****CLW Prescribed Occurrence**

- (a) **(conversion)** either or both of the CLW Trusts (acting through CLW) converts all or any of its securities into a larger or smaller number of securities or a resolution is passed to do so;
- (b) **(reduction of capital)** either or both of the CLW Trusts (acting through CLW) reduces or resolves to reduce its capital in any way;
- (c) **(redemption)** either or both of the CLW Trusts (acting through CLW) redeems any of their securities or resolves to redeem any of their securities;
- (d) **(buy back)** either or both of the CLW Trusts (acting through CLW) buys back or agrees to buy back any of their securities, including:
- (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement the Corporations Act;
- (e) **(issuing units or options)** either or both of the CLW Trusts (acting through CLW) issues securities or grants an option over its securities, or agrees to make such an issue or grant such an option, other than:
- (i) by a member of the CLW Group (other than CLW or either or both of CLW Trusts) to another member of the CLW Group;
  - (ii) the issue of CLW Securities upon the exercise or vesting of CLW Incentive Rights which are on issue as at the date of this Deed;
  - (iii) the issue of ALE Securities in accordance with the CLW Group's distribution reinvestment plan established as at the date of this Deed; or
  - (iv) as consideration for an acquisition of any entity, business or assets which has been disclosed to ALE Property RE in writing prior to the date of this Deed;
- (f) **(convertible securities)** either or both of the CLW Trusts (acting through CLW) issues or agrees to issue convertible notes or other security or instrument convertible into its securities;
- (g) **(Encumbrances)** either or both of the CLW Trusts (acting through CLW) creates, or agrees to create, any Encumbrance over all or a substantial part of the business or assets of the CLW Group;
- (h) **(assets)** either or both of the CLW Trusts (acting through CLW) disposes, or agrees to dispose, of the whole or a substantial part of the business or property of the CLW Group;
- (i) **(wound up)** any member of the CLW Group resolves to be wound up;
- (j) **(liquidator)** a liquidator or provisional liquidator of any member of the CLW Group is appointed;
- (k) **(court order)** a court makes an order for the winding up of any member of the CLW Group;
- (l) **(administrator)** an administrator of any member of the CLW Group is appointed under the Corporations Act;
- (m) **(company arrangement)** any member of the CLW Group executes a deed of company arrangement;
- (n) **(receiver)** a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the CLW Group;
- (o) **(Trusts)** any of the following occur:
- (i) CLW ceases to be the responsible entity of either or both of the CLW Trusts;

- (ii) the securityholders of the CLW Trusts resolve to remove or replace CLW as responsible entity of either or both of the CLW Trusts or the trustee of any CLW Group Member that CLW Controls;
- (iii) a meeting being convened to consider a resolution for the removal, retirement or replacement of CLW as responsible entity of either or both of the CLW Trusts; or
- (iv) any application being made in any court for the appointment of a temporary responsible entity of either or both of the CLW Trusts or any member of the CLW Group in accordance with the Corporations Act;
- (p) **(resettlement)** CLW (or its Representatives) effects or facilitates the resettlement of CLW Trust Property;
- (q) **(delisting and extended suspension)** either or both of the CLW Trusts ceases to be admitted to the official list of ASX or CLW Securities cease to be quoted by ASX or CLW is suspended from trading by ASX for a consecutive period of more than 2 weeks; and
- (r) **(deregistration)** either or both of the CLW Trusts (acting through CLW) or any member of the CLW Group becomes or takes steps to become deregistered as a registered managed investment scheme or is otherwise dissolved.



**Schedule 10**

**Scheme of Arrangement**

For personal use only

**Scheme of Arrangement pursuant to section 411 of the *Corporations Act 2001* (Cth)****Between**

**Australian Leisure and Entertainment Property Management Limited** (ACN 105 275 278) of Suite 28.02, Level 28, 264-278 George Street, Sydney, NSW 2000 (**Target**).

**And**

**Each holder of ALE Securities recorded in the ALE Register as at the Record Date** (each an **ALE Scheme Securityholder** and together the **ALE Scheme Securityholders**).

**Recitals**

- A Target is a public company limited by shares incorporated in Australia, and is part of a stapled group known as 'ALE Property Group' that is listed on ASX.
- B Australian Leisure and Entertainment Property Trust (ARSN 106 063 049) (**ALE Trust**) is a registered managed investment scheme, of which Target is the responsible entity (ALE Trust together with the Target, being **ALE Property Group**). Each ALE Security comprises one Target Share stapled to one Trust Unit.
- C The Consortium Acquirer (a company incorporated in Australia) is the sole trustee of the Consortium Trust (a trust established in Australia).
- D Target, Consortium Acquirer, CLW and Hostplus have entered into a Scheme Implementation Deed dated 1 July 2021 (the **Scheme Implementation Deed**) pursuant to which:
- (a) Target has agreed to propose the Company Scheme and the Trust Scheme to the ALE Securityholders;
  - (b) each of Target and Consortium Acquirer has agreed to take certain steps to implement the Schemes; and
  - (c) CLW and Hostplus have agreed to guarantee the obligations of Consortium Acquirer.
- E The Scheme Implementation Deed contemplates that:
- (a) the Trust Scheme and the Company Scheme are inter-conditional and to be implemented at the same time; and
  - (b) the Trust Units and the Target Shares will be unstapled immediately prior to the Schemes being implemented.
- F If the Schemes become Effective, then:
- (a) all of the ALE Scheme Shares and all of the rights and entitlements attaching to them on the Implementation Date will be transferred to CHH, as the Consortium Acquirer's nominee, simultaneously with the transfer to the Consortium Acquirer of all of the ALE Scheme Units under the Trust Scheme;
  - (b) the Scheme Consideration will be provided to the ALE Securityholders in accordance with the terms of the Schemes and the Deed Poll; and
  - (c) Target will enter the name and address of the Consortium Acquirer and CHH in the ALE Register as the holders of all of the ALE Scheme Units and ALE Scheme Shares, respectively.
- G The Consortium Acquirer, CLW and Hostplus have entered into the Deed Poll for the purpose of:

- (a) the Consortium Acquirer covenanting in favour of the ALE Securityholders that it will observe and perform the obligations contemplated of it under the Schemes; and
- (b) CLW and Hostplus acting severally, covenanting that they will guarantee the Consortium Acquirer's performance of its obligations contemplated under the Schemes (subject to clause 19.1(b) of the Scheme Implementation Deed).

It is agreed as follows.

## 1 Definitions and interpretation

### 1.1 Definitions

In this document, unless the context requires otherwise:

**ALE Register** means the register of holders of ALE Securities maintained in accordance with the Corporations Act, and includes, for the avoidance of doubt, the register on which the Target Shares and Trust Units are recorded on or after the Unstapling.

**ALE Registry** means Link Market Services Limited or any replacement provider of share registry services to the Target.

**ALE Scheme Shares** means the Target Shares on issue as at the Record Date.

**ALE Scheme Securities** means all ALE Securities on issue as at the Record Date.

**ALE Scheme Units** means the Trust Units on issue as at the Record Date.

**ALE Security** means a stapled security in ALE Property Group consisting of one Target Share and one Trust Unit.

**ALE Securityholder** means a person who is registered on the ALE Register as a holder of ALE Securities from time to time, and, for the avoidance of doubt, includes a person who is registered on the ALE Register as the holder of Trust Units and/or Target Shares on or after the Unstapling.

**ALE Trust Constitution** means the constitution of ALE Trust as amended from time to time.

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

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as the ASX operated by it.

**ASX Listing Rules** means the official listing rules of ASX.

**Available Cash Consideration** means \$3.728 multiplied by the number of ALE Scheme Securities, as reduced in accordance with clause 4.8 of the Scheme Implementation Deed.

**Available Scrip Consideration** means such number of CLW Securities as is equal to 0.408 multiplied by the number of ALE Scheme Securities, as reduced in accordance with clause 4.8 of the Scheme Implementation Deed.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Sydney, Australia.

**CHES** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

**CHH** means Charter Hall Holdings Pty Limited (ACN 051 363 547).

**CLW** means Charter Hall WALE Limited (ACN 610 772 202) as responsible entity for the CLW Trusts.

**CLW Registry** means Link Market Services Limited or any replacement provider of share registry services to CLW.

**CLW Security** means a security comprising one unit in each of the CLW Trusts stapled together such that they cannot be dealt with separately.

**CLW Trusts** means each of LWR Finance Trust (ARSN 614 713 138) and Charter Hall Direct Industrial Fund (ARSN 144 613 641).

**CLW Trust Deeds** means the trust deeds of each CLW Trust (as amended from time to time).

**Company Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between Target and the ALE Scheme Securityholders subject to any alterations of conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by the Consortium Acquirer and Target.

**Company Scheme Meeting** means the meeting of ALE Securityholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Company Scheme, and includes any adjournment or postponement of that meeting.

**Company Scheme Orders** means the orders of the Court made under section 411(4)(b) of the Corporations Act (and if applicable, section 411(6) of the Corporations Act) in relation to the Company Scheme.

**Consortium Acquirer** means Bieson Pty Limited (ACN 110 465 168) as trustee for the CH LEP Investment Trust.

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

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

**Deed Poll** means the deed poll executed on or about the date of this agreement by Consortium Acquirer and each Guarantor in favour of the ALE Scheme Securityholders.

**Effective** means:

- (a) in relation to the Trust Scheme, the Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act; and
- (b) in relation to the Company Scheme, the coming into effect under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act.

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

**Election** has the meaning given in clause 5.2 of this Scheme.

**Election Form** means the election form provided with the Scheme Booklet under which each ALE Scheme Securityholder may elect to receive either Mixed Consideration, Maximum Cash Consideration or Maximum Scrip Consideration in respect of their ALE Scheme Securities.

**Election Time** means the date which is 2 Business Days prior to the Record Date (unless ASIC requires an earlier date, in which case such earlier date shall apply) or any other date agreed between the parties.

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

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

**Gross Proceeds** has the meaning given in clause 5.8(c).

**Guarantors** means CLW and Hostplus.

**Hostplus** means Host-Plus Pty Limited (ABN 79 008 634 704) as trustee for Hostplus Pooled Superannuation Trust (ABN 13 140 019 340).

**Implementation Date** means the date that is the fourth Business Day after the Record Date, or such other date as Target and Consortium Acquirer may agree in writing.

**Ineligible Foreign Securityholder** means an ALE Scheme Securityholder whose address, as shown in the ALE Register (as at the Record Date), is in a place outside Australia and Australia's external territories, unless Target is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of CLW Securities to that ALE Scheme Securityholder pursuant to the Schemes, either unconditionally or after compliance with conditions that Target in its sole discretion regards as acceptable and not unduly onerous or impracticable.

**Maximum Cash Consideration** means the consideration determined in accordance with clause 5.4.

**Maximum Scrip Consideration** means the consideration determined in accordance with clause 5.5.

**Mixed Consideration** means the consideration determined in accordance with clause 5.3.

**Permitted Distribution** means a distribution declared or determined to be paid by the board of directors of the RE to ALE Securityholders in the ordinary course on a quarterly basis.

**Permitted Distribution Amount** means the amount of any Permitted Distribution per ALE Security, declared or determined pursuant to clause 4.7 of the Scheme Implementation Deed.

**Record Date** means 7.00pm on the date that is the third Business Day after the Effective Date, or such other date as may be agreed in writing between Consortium Acquirer and Target or as may be required by ASX.

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

**Sale Agent** means the sale agent appointed by the Consortium Acquirer to sell the Sale Securities pursuant to clause 5.8 of this Scheme.

**Sale Facility** has the meaning given in clause 5.8.

**Sale Securities** has the meaning given in clause 5.8.

**Scaleback Arrangements** means the arrangements set out in clauses 5.4 and 5.5, which arrangements are for the purposes of ensuring that the aggregate cash component and the aggregate CLW Security component of the Scheme Consideration required to be provided by the Consortium Acquirer under the terms of the Schemes do not exceed the Available Cash Consideration and the Available Scrip Consideration respectively.

**Schemes** means the Company Scheme and Trust Scheme.

**Scheme Booklet** means the scheme booklet published by Target and dated on or about [ \* ].

**Scheme Consideration** means the consideration to be provided to ALE Scheme Securityholders under the terms of the Schemes for the transfer to the Consortium Acquirer and CHH (as the case may be) of their ALE Scheme Securities, being either:

- (a) the Maximum Cash Consideration;
- (b) the Maximum Scrip Consideration; or
- (c) the Mixed Consideration.

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

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Company Scheme is heard or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Supplemental Deed** means the deed poll pursuant to which Target will amend the ALE Trust Constitution, to be executed by Target in the form of Schedule 5 of the Scheme Implementation Deed (or in such other form as the Consortium Acquirer and Target agree in writing).

**Target Constitution** means the constitution of Target as amended from time to time.

**Target Share** means a fully paid ordinary share in Target.

**Total Cash Election Amount** means the aggregate amount of cash consideration that is the subject of all Elections (or deemed Elections) in respect of Maximum Cash Consideration and Mixed Consideration by ALE Scheme Securityholders in accordance with clause 5.2 (and, for the avoidance of doubt, prior to the operation of the Scaleback Arrangements).

**Total Scrip Election Amount** means the aggregate number of CLW Securities that are the subject of all Elections (or deemed Elections) in respect of Maximum Scrip Consideration and Mixed Consideration by ALE Scheme Securityholders in accordance with clause 5.2 (and, for the avoidance of doubt, prior to the operation of the Scaleback Arrangements).

**Trust Account** means an Australian dollar denominated trust account operated by Target (or by the ALE Registry on behalf of Target) as trustee for the ALE Scheme Securityholders.

**Trust Scheme** means the arrangement in accordance with Guidance Note 15 under which the Consortium Acquirer acquires all of the ALE Scheme Units, facilitated by amendments to the ALE Trust Constitution as set out in the Supplemental Deed.

**Trust Unit** means one fully paid ordinary unit in ALE Trust.

**Unstapling** means the unstapling of Trust Units and Target Shares in accordance with clause 38.5 of the ALE Trust Constitution and clause 77(h) of the Target Constitution.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (v) A reference to a clause is a reference to a clause of this document.
  - (vi) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated

or replaced, except to the extent prohibited by this document or that other agreement or document.

- (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).
- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to *dollars* or \$ is to Australian currency.
- (xi) Words and phrases not specifically defined in this document have the same meanings (if any) given to them in the Corporations Act.
- (xii) A reference to time is to Sydney, Australia time.
- (xiii) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.

## 2 Conditions

### 2.1 Conditions Precedent

- (a) The Schemes are conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent: as at 8.00am on the Second Court Date, each of the conditions precedent set out in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent relating to the approval of the Court set out in clause 3.1(i) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the Scheme Implementation Deed;
- (b) as at 8.00am on the Second Court Date, neither the Scheme Implementation Deed nor the Deed Poll has been terminated in accordance with its terms;
- (c) the Court makes orders approving the Company Scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Consortium Acquirer and Target (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Company Scheme as are acceptable to Consortium Acquirer and Target (each acting reasonably) have been satisfied or waived; and
- (e) both:
  - (i) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Company Scheme to come into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date; and
  - (ii) the Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act.



## 2.2 Certificate

- (a) Target and Consortium Acquirer will each provide to the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within their knowledge) whether or not all the conditions precedent in clauses 2.1(a) and 2.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 2.2(a) constitutes conclusive evidence that the conditions precedent in clauses 2.1(a) and 2.1(b) above were satisfied, waived or taken to be waived.

## 2.3 Lapsing

This Scheme will lapse and be of no further force or effect if:

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

unless Target and Consortium Acquirer otherwise agree in writing.

## 3 Schemes becoming Effective

Subject to clause 2.2, the Schemes will take effect on and from the Effective Date.

## 4 Implementation of Schemes

- (a) If the conditions precedent in clause 2.1 are satisfied or waived, Target must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Company Scheme Orders as soon as practicable after, and in any event by no later than 5.00pm on the first Business Day after, the day on which the Company Scheme Orders are entered, or such other date as agreed by Target and Consortium Acquirer.
- (b) On the Implementation Date, subject to Consortium Acquirer having satisfied its obligations in clause 5.9, all of the ALE Scheme Shares, together with all rights and entitlements attaching to the ALE Scheme Shares as at the Implementation Date, will be transferred to CHH, without the need for any further act by any ALE Scheme Securityholders (other than acts performed by Target or any of its directors and officers as attorney and agent for ALE Scheme Securityholders under this Scheme), by:
  - (i) Target delivering to Consortium Acquirer for execution duly completed (and, if necessary, stamped) Scheme Transfers to transfer all of the ALE Scheme Shares to CHH, duly executed by Target (or any of its directors and officers) as the attorney and agent of each ALE Scheme Securityholders as transferor under clause 8.3;
  - (ii) CHH executing the Scheme Transfers as transferee and delivering them to Target for registration; and
  - (iii) Target, immediately after receipt of the Scheme Transfers under clause 4(b)(ii), or the transfer being effected under section 1074D of the Corporations Act (as the case may be) entering, or procuring the entry of, the name and address of CHH in the ALE Register as the holder of all of the ALE Scheme Shares.
- (c) The transfer of all of the ALE Scheme Shares to CHH in accordance with clause 4(b) must occur simultaneously with the transfer to Consortium Acquirer of all of the ALE Scheme Units under the Trust Scheme and the Target must simultaneously with the actions contemplated under clause 4(b)(iii), enter, or procure the entry of, the name and

address of Consortium Acquirer in the ALE Register as the holder of all of the ALE Scheme Units.

## 5 Scheme Consideration

### 5.1 Scheme Consideration

- (a) The Scheme Consideration in respect of each ALE Scheme Security is either:
  - (i) Mixed Consideration;
  - (ii) Maximum Cash Consideration; or
  - (iii) Maximum Scrip Consideration.
- (b) Each:
  - (i) ALE Scheme Securityholder (other than an Ineligible Foreign Securityholder) is entitled to receive one of Mixed Consideration, Maximum Cash Consideration or Maximum Scrip Consideration in respect of each ALE Scheme Security held by that ALE Scheme Securityholder; and
  - (ii) each ALE Scheme Securityholder that is an Ineligible Foreign Securityholder is entitled to receive the Mixed Consideration in respect of each ALE Scheme Security held by that ALE Scheme Securityholder (in the manner contemplated in clause 5.7),

subject to the terms of the Schemes.

### 5.2 Election

- (a) An ALE Scheme Securityholder (other than an Ineligible Foreign Securityholder) may elect (by completing the relevant part of the Election Form) to receive either Mixed Consideration, Maximum Cash Consideration or Maximum Scrip Consideration for all of their ALE Scheme Securities (**Election**), such Election being subject to the terms of this Scheme, including without limitation clauses 5.6, 5.7 and 5.11. Valid Elections will take effect in accordance with this Scheme.
- (b) Subject to clause 5.2(g), for an Election to be valid:
  - (i) the ALE Scheme Securityholder must complete and sign the Election Form in accordance with the instructions in the Scheme Booklet and on the Election Form; and
  - (ii) the Election Form must be received by ALE Registry before the Election Time at the address specified by Target in the Scheme Booklet and on the Election Form.
- (c) An Election made by an ALE Scheme Securityholder, whether valid or not, will be irrevocable unless Target and Consortium Acquirer in their discretion agree to the revocation of the Election (such discretion to be exercised fairly and equitably having regard to the circumstances at the time).
- (d) If:
  - (i) a valid Election is not made by an ALE Scheme Securityholder; or
  - (ii) no Election is made by an ALE Scheme Securityholder,

then that an ALE Scheme Securityholder will be deemed to have elected to receive Mixed Consideration in respect of all of their ALE Scheme Securities.
- (e) Subject to clause 5.2(g), an Election made or deemed to be made by an ALE Scheme Securityholder under this clause 5.2 will be deemed to apply in respect of the ALE

Scheme Securityholder's entire registered holding of ALE Scheme Securities at the Record Date, regardless of whether the ALE Scheme Securityholder's holding of ALE Scheme Securities at the Record Date is greater or less than the ALE Scheme Securityholder's holding at the time it made its Election.

- (f) Subject to clause 5.2(g), if a valid Election is made by an ALE Scheme Securityholder under this clause 5.2 in respect of only some of its ALE Scheme Securities, and makes no Election or an invalid Election in respect of the remainder of its ALE Scheme Securities, the ALE Scheme Securityholder will be deemed to have elected to receive its elected form of Scheme Consideration in respect of all of its ALE Scheme Securities and not only those ALE Scheme Securities for which the ALE Scheme Securityholder made a valid Election.
- (g) An ALE Scheme Securityholder who is noted on the ALE Register as holding one or more parcels of ALE Securities as trustee or nominee for, or otherwise on account of, another person, may in the manner considered appropriate by Target and Consortium Acquirer (acting reasonably including after consultation with the ALE Registry), make separate Elections under this clause 5.2 in relation to each of those parcels of ALE Securities (subject to it providing to Target and Consortium Acquirer any substantiating information they reasonably require), and an Election made in respect of any such parcel, or an omission to make an Election in respect of any such parcel, will not be taken to extend to the other parcels.
- (h) Subject to clause 5.2(i) and 5.2(j), an Election Form will not be valid unless it is completed and received in accordance with the procedures set out in clause 5.2(b).
- (i) The Target will determine, in its sole discretion, all questions as to the correct completion of an Election Form, and time of receipt of an Election Form. The Target is not required to communicate with any ALE Scheme Securityholder prior to making this determination. The determination of the Target will be final and binding on the ALE Scheme Securityholder.
- (j) Notwithstanding clause 5.2(b), the Target may, in its sole discretion, after reasonable consultation with the Consortium Acquirer, at any time and without further communication to the ALE Scheme Securityholder, deem any Election Form it receives from an ALE Scheme Securityholder to be a valid Election in respect of the relevant ALE Scheme Securities, even if a requirement for a valid Election has not been complied with.

### 5.3 Mixed Consideration

If an ALE Scheme Securityholder elects or is deemed to have elected to receive Mixed Consideration then, subject to clauses 5.6 and 5.7, the ALE Scheme Securityholder will be entitled to receive for each ALE Scheme Security held by that ALE Scheme Securityholder at the Record Date:

- (a) a cash amount equal to \$3.728, less the Permitted Distribution Amount (if any); and
- (b) 0.4080 CLW Securities.

### 5.4 Maximum Cash Consideration

- (a) If an ALE Scheme Securityholder elects to receive Maximum Cash Consideration, subject to clause 5.6, the ALE Scheme Securityholder will be entitled to receive for each ALE Scheme Security held by that ALE Scheme Securityholder at the Record Date:

- (i) if the Available Cash Consideration is equal to or greater than the Total Cash Election Amount, \$5.736; and

- (ii) if the Available Cash Consideration is less than the Total Cash Election Amount:

- (A) a cash amount equal to:

$$\$n = \frac{(A - AC)}{(T - AC)} \times 5.736$$

and

- (B) a number of issued CLW Securities equal to:

$$nCLW = \frac{(5.736 - \$n)}{4.92}$$

where:

**A** = the Available Cash Consideration;

**AC** = the aggregate cash component of Scheme Consideration payable to all ALE Scheme Securityholders who have elected or are deemed to have elected to receive Mixed Consideration;

**T** = the Total Cash Election Amount;

**\$n** = an amount in Australian dollars to which the relevant ALE Scheme Securityholder is entitled; and

**nCLW** = the number of CLW Securities to which the relevant ALE Scheme Securityholder is entitled,

in each case, less the Permitted Distribution Amount (if any).

- (b) A reduction in the Maximum Cash Consideration required in respect of the Permitted Distribution Amount will be effected:
- (i) as a reduction in respect of the cash component of the Maximum Cash Consideration; and
  - (ii) to the extent that the Permitted Distribution Amount exceeds the cash component of the Maximum Cash Consideration or there is no cash component, as a reduction in the number of CLW Securities to be issued in accordance with the ratio: 1 cent distributed is equal to 0.0020325 CLW Securities.

## 5.5 Maximum Scrip Consideration

- (a) If an ALE Scheme Securityholder elects to receive Maximum Scrip Consideration then, subject to clauses 5.6 and 5.7, the ALE Scheme Securityholder will be entitled to receive for each ALE Scheme Security held by that ALE Scheme Securityholder at the Record Date:
- (i) if the Available Scrip Consideration is equal to or greater than the Total Scrip Election Amount, 1.1658 CLW Securities; and
  - (ii) if the Available Scrip Consideration is less than the Total Scrip Election Amount:

- (A) a number of CLW Securities equal to:

$$nCLW = \frac{(A - AS)}{(T - AS)} \times 1.1658$$

and

- (B) a cash amount equal to:

$$\$n = (1.1658 - nCLW) \times 4.92$$

where:

**nCLW** = the number of CLW Securities to which the relevant ALE Scheme Securityholder is entitled;

**\$n** = an amount in Australian dollars to which the relevant ALE Scheme Securityholder is entitled;

**A** = the Available Scrip Consideration;

**T** = the Total Scrip Election Amount; and

**AS** = the aggregate number of CLW Securities that are the subject of Elections by all ALE Scheme Securityholders who have elected or are deemed to have elected to receive Mixed Consideration,

in each case, less the Permitted Distribution Amount (if any).

- (b) A reduction in the Maximum Scrip Consideration required in respect of the Permitted Distribution Amount will be effected:
- (i) as a reduction in respect of the cash component of the Maximum Scrip Consideration (if any); and
  - (ii) to the extent that the Permitted Distribution Amount exceeds the cash component of the Maximum Scrip Consideration or there is no cash component, as a reduction in the number of CLW Securities to be issued in accordance with the ratio: 1 cent distributed is equal to 0.0020325 CLW Securities.

## 5.6 Fractions and splitting

Where the number of ALE Securities held by an ALE Scheme Securityholder as at the Record Date is such that the aggregate entitlement of the ALE Scheme Securityholder to the Scheme Consideration (including under clause 5.8):

- (a) includes a fractional entitlement to a CLW Security; and/or
- (b) includes a fractional entitlement to a cent,

then the entitlement of that ALE Scheme Securityholder must be rounded up or down to the nearest whole number, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of CLW Securities or cents (as applicable), and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of CLW Securities or cents (as applicable).

## 5.7 Ineligible Foreign Securityholders

- (a) Each Ineligible Foreign Securityholder is deemed to make a valid Election to receive Mixed Consideration.
- (b) The Consortium Acquirer will be under no obligation to issue or cause to be issued, and must not issue, any CLW Securities under this Scheme to any Ineligible Foreign

Securityholder. Accordingly, all CLW Securities that, but for this clause 5.7, would have been required to be issued to Ineligible Foreign Securityholders are to be dealt with on behalf of Ineligible Foreign Securityholders in accordance with clause 5.8.

## 5.8 Sale Facility

- (a) CLW Securities to which an Ineligible Foreign Securityholder would have been entitled but for clause 5.7 must not be issued to the relevant Ineligible Foreign Securityholder and, instead, must be provided to the Sale Agent by the Consortium Acquirer, or caused to be provided to the Sale Agent by the Consortium Acquirer, on the Implementation Date (together, the **Sale Securities**) and subsequently sold in accordance with this clause 5.8.
- (b) The Sale Facility will only be available in respect of CLW Securities provided to the Sale Agent in the circumstances referred to in clause 5.8(a). Any purported Election by an ALE Scheme Securityholder to participate in the Sale Facility in any other circumstance will be invalid and not recognised.
- (c) Target and the Consortium Acquirer must procure that as soon as practicable after the Implementation Date and, in any event, not more than 10 Business Days after the Implementation Date, the Sale Agent sells or procures the sale of all of the Sale Securities in the ordinary course of trading on ASX in such manner, at such price or prices and on such other terms as the Sale Agent determines in good faith, and remits to Target the proceeds of the sale (**Gross Proceeds**).
- (d) Promptly after receiving the Gross Proceeds, and in any event, not more than 10 Business Days after receiving them, Target must pay, or procure the payment, to each Ineligible Foreign Securityholder (in accordance with this clause 5.8) an amount equal to the following:

$$A = B \div C \times D$$

Where:

**A** = the amount to be paid to each Ineligible Foreign Securityholder in accordance with this clause 5.8;

**B** = the Gross Proceeds (less any applicable brokerage, taxes and other costs and charges);

**C** = the total number of CLW Securities provided to the Sale Agent under clause 5.8(a); and

**D** = the number of CLW Securities provided to the Sale Agent under clause 5.8(a) in respect of that Ineligible Foreign Securityholder.

- (e) Target, CLW and the Sale Agent do not give any assurance as to the price that will be achieved in respect of the sale of CLW Securities in accordance with this clause 5.8, and that the sale of CLW Securities under this clause 5.8 will be at the risk of the Ineligible Foreign Securityholder.
- (f) The payment obligation of Target under clause 5.8(d) will be satisfied by Target (in its absolute discretion and despite any election referred to in clause 5.8(f)(i) or any authority referred to in clause 5.8(f)(ii)):
  - (i) where an Ineligible Foreign Securityholder has, before the Record Date, made a valid election in accordance with the requirements of the ALE Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Ineligible Foreign Securityholder, paying, or procuring the



- payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
- (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Ineligible Foreign Securityholder by an appropriate authority from the Ineligible Foreign Securityholder to the Target; or
  - (iii) otherwise, dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Ineligible Foreign Securityholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Ineligible Foreign Securityholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.11).
- (g) If the Target receives professional advice that any withholding or other tax is required by law or by a Government Agency to be withheld from a payment to an Ineligible Foreign Securityholder, the Target is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Securityholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of the Schemes). The Target must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Securityholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Securityholder.
  - (h) Payment of an amount to an Ineligible Foreign Securityholder in accordance with this clause 5.8 will be in full satisfaction of the obligations of Target to the Ineligible Foreign Securityholder under the Scheme in respect of the scrip component of that Ineligible Foreign Securityholder's Scheme Consideration.
  - (i) Each Ineligible Foreign Shareholder appoints Target as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Shareholders under the Corporations Act or any other applicable law.

## 5.9 Provision of cash component of Scheme Consideration

- (a) The Consortium Acquirer must, by no later than the Business Day before the Implementation Date:
  - (i) deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the aggregate amount of the cash component of the Scheme Consideration payable to ALE Scheme Securityholders provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to the Consortium Acquirer's account; and
  - (ii) provide written confirmation to Target of that deposit.
- (b) On the Implementation Date, subject to the Consortium Acquirer having satisfied its obligations in clause 5.8(a), Target must pay or procure the payment, from the Trust Account, to each ALE Scheme Securityholder such amount of cash from the cash component of the Scheme Consideration as that ALE Scheme Securityholder is entitled under this clause 5 (if any).
- (c) The obligations of Target under clause 5.9(b) will be satisfied by Target (in its absolute discretion and despite any election referred to in clause 5.9(c)(i) or any authority referred to in clause 5.9(c)(ii)):



- (i) where a ALE Scheme Securityholder has, before the Record Date, made a valid election in accordance with the requirements of the ALE Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the ALE Scheme Securityholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the ALE Scheme Securityholder by an appropriate authority from the ALE Scheme Securityholder to the Target; or
  - (iii) otherwise, dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the ALE Scheme Securityholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the ALE Scheme Securityholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.11).
- (d) If, following satisfaction of Consortium Acquirer's obligations under clause 5.8(a) but prior to the occurrence of all of the events described in clause 4, the Scheme lapses under clause 2.3(b):
- (i) Target must immediately repay (or cause to be repaid) to or at the direction of Consortium Acquirer the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges);
  - (ii) the obligation to transfer ALE Scheme Securities, together with all rights and entitlements attaching to the ALE Scheme Securities as at the Implementation Date, to Consortium Acquirer and CHH (as applicable) under clause 4 will immediately cease;
  - (iii) Consortium Acquirer must return the Scheme Transfers, if provided pursuant to clause 4; and
  - (iv) Target is no longer obliged to enter, or procure the entry of, the name of Consortium Acquirer and CHH (as applicable) in the ALE Register in accordance with clause 4.

#### **5.10 Provision of scrip component of Scheme Consideration in the form of CLW Securities**

The Consortium Acquirer must, subject to clauses 5.6, 5.7, 5.8 and 5.11:

- (a) procure that on the Implementation Date:
  - (i) CLW issues the CLW Securities to each ALE Scheme Securityholder who is entitled under this clause 5 to receive the Maximum Scrip Consideration and Mixed Consideration in respect of that ALE Scheme Securityholder's ALE Scheme Securities; and
  - (ii) the name and address of each such ALE Scheme Securityholder is entered in the CLW Registry as the holder of the CLW Securities issued to that ALE Scheme Securityholder on the Implementation Date;
- (b) procure that on or before the date that is two Business Days after the Implementation Date, a holding statement (or equivalent document) is sent to the Registered Address of each ALE Scheme Securityholder to whom CLW Securities are provided in accordance with clause 5.10(a) representing the number of CLW Securities provided to that ALE Scheme Securityholder pursuant to this Scheme; and

- (c) ensure that the CLW Securities issued, at the time they are issued:
  - (i) have the rights set out in the CLW Trust Deeds;
  - (ii) rank equally in all respects among themselves and with all other CLW Securities on issue in CLW; and
  - (iii) are fully paid and free from any mortgage, charge, lien, encumbrance or other security interest, or any third party right.

#### 5.11 Joint holders

In the case of ALE Scheme Securities held in joint names:

- (a) subject to clause 5.9(c), any amount comprising the cash component of the Scheme Consideration payable in respect of those ALE Scheme Securities (including any amount payable under clause 5.8) is payable to the joint holders and any cheque required to be sent under the Schemes will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the ALE Register as at the Record Date or to the joint holders;
- (b) any CLW Securities to be provided under the Schemes must be provided to and registered in the names of the joint holders; and
- (c) any other document required to be sent under the Schemes, will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the ALE Register as at the Record Date or to the joint holders.

#### 5.12 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Consortium Acquirer.
- (c) Target may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to Target; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (d) During the period of 12 months commencing on the Implementation Date, on request in writing from a ALE Scheme Securityholder to Target (or the ALE Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Target must reissue a cheque that was previously cancelled under this clause 5.12.

#### 5.13 Remaining monies (if any) in Trust Account

To the extent that, following satisfaction of Target's obligations under the other provisions of this clause 5, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of the Schemes, the Deed Poll and the Scheme Implementation Deed, that surplus (less any bank fees and related charges) shall be paid by Target (or the ALE Registry on Target's behalf) to Consortium Acquirer.

**5.14 Orders of a court**

- (a) If written notice is given to Target (or the ALE Registry), the Consortium Acquirer or CLW (or the CLW Registry) of an order or direction made by a court or another Government Agency that:
- (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of ALE Scheme Securities held by a particular ALE Scheme Securityholder, which would otherwise be payable or required to be issued to that ALE Scheme Securityholder by Target in accordance with this clause 5, then Target shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents Target from providing consideration to any particular ALE Scheme Securityholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Target shall be entitled to (as applicable):
    - (A) retain an amount equal to the number of ALE Scheme Securities held by that ALE Scheme Securityholder multiplied by the Scheme Consideration; or
    - (B) direct CLW not to issue, or to issue to a trustee or nominee, such number of CLW Securities as that ALE Scheme Securityholder would otherwise be entitled to under this clause 5,

until such time as payment in accordance with this clause 5 is permitted by that (or another) court or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 5.14(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

**6 Dealings in ALE Securities****6.1 Dealings in ALE Securities by ALE Scheme Securityholders**

For the purpose of establishing the persons who are ALE Scheme Securityholders, dealings in ALE Securities will only be recognised by Target provided that:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the ALE Register as the holder of the relevant ALE Securities by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the ALE Registry by 5.00pm on the day which is the Record Date at the place where the ALE Register is located (in which case Target must register such transfers or transmission applications before 7.00pm on that day),

and Target will not accept for registration, nor recognise for the purpose of establishing the persons who are ALE Scheme Securityholders nor for any other purpose (other than to transfer to Consortium Acquirer and CHH (as applicable) pursuant to the Schemes and any subsequent transfers by Consortium Acquirer and CHH (as applicable) and its successors in title), any transfer or transmission application in respect of ALE Scheme Securities received after such times, or received prior to such times but not in actionable or registrable form (as appropriate).

## 6.2 Target Register

- (a) Target will, until the Scheme Consideration has been provided and the name and address of Consortium Acquirer and CHH (as applicable) have been entered in the ALE Register as the holder of all of the ALE Scheme Securities, maintain, or procure the maintenance of, the ALE Register in accordance with this clause 6, and the ALE Register in this form and the terms of the Schemes will solely determine entitlements to the Scheme Consideration. As from the Record Date (and other than for Consortium Acquirer and CHH (as applicable) following the Implementation Date), each entry in the ALE Register as at the Record Date relating to ALE Scheme Securities will cease to have any effect other than as evidence of the entitlements of ALE Scheme Securityholders to the Scheme Consideration in respect of those ALE Scheme Securities.
- (b) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of ALE Scheme Securities for each ALE Scheme Securityholder as shown in the ALE Register are available to Consortium Acquirer in the form Consortium Acquirer reasonably requires.

## 6.3 Effect of share certificates and holding statements

As from the Record Date (and other than for Consortium Acquirer and CHH (as applicable) following the Implementation Date), all share or unit certificates and holding statements for ALE Scheme Securities (other than statements of holding in favour of Consortium Acquirer and CHH (as applicable)) will cease to have effect as documents of title in respect of those ALE Scheme Securities.

## 6.4 No disposals after Record Date

If the Schemes become Effective, each ALE Scheme Securityholder, and any person claiming through that ALE Scheme Securityholder, must not dispose of or purport or agree to dispose of any ALE Scheme Securities or any interest in them after 5.00pm on the Record Date other than to Consortium Acquirer and CHH (as applicable) in accordance with the Schemes and any subsequent transfers by Consortium Acquirer and CHH (as applicable) and its successors in title.

## 7 Suspension and termination of quotation of ALE Securities

- (a) Target must apply to ASX for suspension of trading of the ALE Securities on ASX with effect from the close of business on the Effective Date.
- (b) Target must apply to ASX for termination of official quotation of the ALE Securities on ASX and the removal of Target from the official list of ASX with effect from the Business Day immediately following the Implementation Date, or from such later date as may be determined by Consortium Acquirer.

## 8 General provisions

### 8.1 Further assurances

- (a) Each ALE Scheme Securityholder and Target will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Schemes and the transactions contemplated by it.
- (b) Without limiting Target's other powers under the Schemes, Target has power to do all things that it considers necessary or desirable to give effect to the Schemes and the Scheme Implementation Deed.

## 8.2 ALE Scheme Securityholders' agreements and consents

Each ALE Scheme Securityholder:

- (a) irrevocably agrees to the transfer of their ALE Scheme Securities, together with all rights and entitlements attaching to those ALE Scheme Securities, to Consortium Acquirer and CHH (as applicable) in accordance with the terms of the Schemes;
- (b) agrees to the modification or variation (if any) of the rights attaching to their ALE Scheme Securities constituted by or resulting from the Schemes;
- (c) who receives CLW Securities as part of the Scheme Consideration, agrees:
  - (i) to become a securityholder of CLW and be bound by the terms of the CLW Trust Deeds; and
  - (ii) to have their name registered in the register on which CLW Securities are recorded as a holder of CLW Securities (in respect of the CLW Securities which they are issued pursuant to the Schemes);
- (d) acknowledges and agrees that the Schemes bind Target and all ALE Scheme Securityholder (including those that did not attend the Company Scheme Meeting or did not vote at that meeting or voted against the Company Scheme at that Company Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target; and
- (e) irrevocably consents to Target and Consortium Acquirer doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Schemes and the transactions contemplated by it,

without the need for any further act by that ALE Scheme Securityholder.

## 8.3 Appointment of Target as attorney for implementation of Schemes

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

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Schemes and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4(b)(i); and
- (b) enforcing the Deed Poll against Consortium Acquirer and each Guarantor who has executed the Deed Poll,

and Target accepts such appointment. Target, as agent and attorney of each ALE Scheme Securityholder, may sub delegate its functions, authorities or powers under this clause 8.3 to all or any of its directors and officers (jointly, severally, or jointly and severally).

## 8.4 Warranty by ALE Scheme Securityholders

Each ALE Scheme Securityholder is deemed to have warranted to Consortium Acquirer and, to the extent enforceable, to have appointed and authorised Target as that ALE Scheme Securityholder's agent and attorney to warrant to Consortium Acquirer, that all of their ALE Scheme Securities (including any rights and entitlements attaching to those ALE Scheme Securities) will, at the time of the transfer of them to Consortium Acquirer or CHH (as applicable) pursuant to the Schemes, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they

have full power and capacity to sell and to transfer their ALE Scheme Securities (together with any rights and entitlements attaching to those ALE Scheme Securities) to Consortium Acquirer or CHH (as applicable) pursuant to the Schemes, and as at the Record Date, they have no existing right to be issued any other ALE Scheme Securities or any other form of securities in Target or ALE Trust. Target undertakes in favour of each ALE Scheme Securityholder that it will provide such warranty, to the extent enforceable, to Consortium Acquirer on behalf of that ALE Scheme Securityholder.

## **8.5 Title to ALE Scheme Securities**

- (a) To the extent permitted by law, the ALE Scheme Securities transferred to Consortium Acquirer or CHH (as applicable) under the Schemes will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) CHH will be beneficially entitled to the ALE Scheme Shares transferred to it under the Company Scheme pending registration by Target of the name and address of CHH in the ALE Register as the holder of the ALE Scheme Shares.
- (c) Consortium Acquirer will be beneficially entitled to the ALE Scheme Units transferred to it under the Trust Scheme pending registration by Target of the name and address of Consortium Acquirer in the ALE Register as the holder of the ALE Scheme Units.

## **8.6 Appointment of Consortium Acquirer as attorney for ALE Scheme Securities**

- (a) From the time that Consortium Acquirer has satisfied its obligations in clauses 5.9(a) and 5.10(a) until Consortium Acquirer and CHH (as applicable) are registered in the ALE Register as the holder of all ALE Scheme Securities, each ALE Securityholder:
  - (i) without the need for any further act by that ALE Securityholder, irrevocably appoints Consortium Acquirer as its proxy to (and irrevocably appoints Consortium Acquirer as its agent and attorney for the purpose of appointing any director or officer of Consortium Acquirer as that ALE Securityholder's proxy and, where appropriate, its corporate representative to):
    - (A) attend shareholders' meetings of Target;
    - (B) exercise the votes attaching to the Target Shares registered in the name of the ALE Securityholder; and
    - (C) sign any ALE Securityholders' resolution;
  - (ii) must take all other action in the capacity of an ALE Securityholder as Consortium Acquirer reasonably directs; and
  - (iii) acknowledges and agrees that in exercising the powers referred to in clause 8.6(a), Consortium Acquirer and any person nominated by Consortium Acquirer under clause 8.6(a) may act in the best interests of Consortium Acquirer as the intended registered holder of the ALE Scheme Securities.
- (b) From the time that Consortium Acquirer has satisfied its obligations in clauses 5.9(a) and 5.10(a) until Consortium Acquirer and CHH (as applicable) are registered in the ALE Register as the holder of all ALE Scheme Securities, no ALE Securityholder may attend or vote at any meetings of ALE Securityholders or sign any ALE Securityholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 8.6.



## **8.7 Alterations and conditions to Scheme**

If the Court proposes to approve this Scheme subject to any alterations or conditions, Target may, by its counsel or solicitors, and with the prior written consent of Consortium Acquirer, consent on behalf of all persons concerned, including each ALE Securityholder, to those alterations or conditions, and each ALE Securityholder agrees to any such alterations or conditions which Target has consented to.

## **8.8 Enforcement of Deed Poll**

Target undertakes in favour of each ALE Scheme Securityholder that it will enforce the Deed Poll against:

- (a) Consortium Acquirer; and
- (b) each Guarantor,

on behalf of and as agent and attorney for the ALE Scheme Securityholders.

## **8.9 Binding effect of Schemes**

The Company Scheme binds Target and all of the ALE Scheme Securityholders (including those who did not attend the Company Scheme Meeting to vote on the Company Scheme, did not vote at the Company Scheme Meeting, or voted against the Company Scheme at the Company Scheme Meeting) and, to the extent of any inconsistency, overrides the Target Constitution.

## **8.10 Consent**

Each of the ALE Scheme Securityholders consents to Target doing all things necessary or incidental to the implementation of the Schemes, whether on behalf of the ALE Scheme Securityholders, Target or otherwise.

## **8.11 Notices**

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

## **8.12 Duty**

Consortium Acquirer will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by ALE Scheme Securityholders of the ALE Scheme Securities to Consortium Acquirer and CHH (as applicable) pursuant to the Schemes.

## **8.13 Governing law and jurisdiction**

This document is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there and courts of appeal from them in connection with matters concerning this document. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.



**Execution Pages**

**Executed and delivered as a deed**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Australian Leisure and Entertainment Property Management Limited** (ACN 105 275 278) in its own capacity and in its capacity as responsible entity for the **Australian Leisure and Entertainment Property Trust**:



Director Signature

**ROBERT MACTIER**

Print Name



Director/Secretary Signature

**GUY FARRANDS**

Print Name

For personal use only

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Bieson Pty Limited** (ACN 110 465 168) as trustee for the **CH LEP Investment Trust**:



\_\_\_\_\_  
Director Signature

David Harrison

\_\_\_\_\_  
Print Name



\_\_\_\_\_  
Secretary Signature

Mark Bryant

\_\_\_\_\_  
Print Name

For personal use only

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Charter Hall WALE Limited** (ACN 610 772 202) as responsible entity for **Charter Hall Direct Industrial Fund** and **LWR Finance Trust**:



Director Signature

David Harrison

Print Name



Secretary Signature

Mark Bryant

Print Name

For personal use only

**Executed** as a deed for and on behalf of **Host-Plus Pty Limited** as trustee of the **Hostplus Pooled Superannuation Trust** by its duly appointed attorneys, who declare that they have no notice of revocation of the power of attorney dated 10 December 2020 pursuant to which they were appointed:



Signature of Attorney

**DAVID ELIA**

Print Name



Signature of Attorney

**TRACEY KILE**

Print Name

For personal use only