

# ASX release

24 January 2024

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## PROPOSED MERGER OF BWP TRUST AND NEWMARK PROPERTY REIT

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### Overview

The Directors of BWP Management Limited ("**BWPM**"), the responsible entity for the BWP Trust (ASX:BWP) ("**BWP**"), today announced that BWP has entered a Bid Implementation Deed ("**BID**") with Newmark REIT Management Limited ("**NRML**") as responsible entity of Newmark Property REIT (ASX:NPR) ("**NPR**") in relation to a proposal to merge BWP with NPR (the "**Merger Proposal**") by way of an off-market takeover, subject to the conditions set out below.

A copy of the BID is attached to this announcement at Annexure A.

The Merger Proposal is for an all-scrip transaction, pursuant to which NPR securityholders will receive 0.4 BWP units for every 1.0 NPR security held (the "**Merger Ratio**"). Based on BWP's closing price of \$3.47 on 23 January 2024, the Merger Ratio represents an implied price of \$1.39 per NPR security (the "**Merger Price**") and for NPR represents a total equity value of \$246.8 million<sup>1</sup> and a total enterprise value of \$517.4 million<sup>2</sup>.

The Merger Price represents a 43.1 per cent premium to NPR's closing price of \$0.97 on 23 January 2024.

The Independent Directors of the NPR Board unanimously recommend the Merger Proposal and intend to accept the Merger Proposal for all NPR securities held or controlled by each of those directors, in each case in the absence of a Superior Proposal (as defined in the BID).

Separately, BWPM has entered into a Sale and Purchase Agreement ("**SPA**") with Newmark Property Group Pty Ltd ("**Newmark Group**") to acquire 100 per cent of the shares in NRML ("**NRML Shares**"), the responsible entity of NPR. The SPA is conditional on the Merger Proposal being declared or becoming unconditional. The SPA also provides for certain services to be provided by Newmark Group to effect the orderly transition of management and associated services ("**Services**"). Under the SPA, BWPM has agreed to pay Newmark Group \$22.5 million in consideration for the acquisition of the NRML Shares (and consequently the management rights) and the Newmark Group agreeing to provide the Services.

### Support from Newmark Group and associated entities

Newmark Group, NRML and other entities controlled by Newmark Group and its directors and shareholders, (together the "**Newmark Group Members**") have entered into a pre-bid acceptance deed ("**Pre-Bid Acceptance Deed**") with BWP, in which the Newmark Group Members, who together control approximately 32.6 million NPR securities, representing approximately 18.3 per cent of NPR, have committed to accept the Merger Proposal, subject to certain conditions, reflecting Newmark Group's and its associated entities' support for the Merger Proposal.

A copy of the Pre-Bid Acceptance Deed will be included in BWP's substantial shareholding notice in respect of NPR released to the ASX today.

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<sup>1</sup> Equity value is calculated by multiplying the Merger Price by the NPR securities on issue of 177.8 million

<sup>2</sup> Enterprise value is calculated by adding the equity value of \$246.8 million with NPR's net debt as at 31 December 2023



## Transaction rationale

BWPM believes that the Merger Proposal is in the best interests of both BWP unitholders and NPR securityholders and provides an opportunity to combine BWP's and NPR's complementary portfolios of quality assets and similar tenant profiles. BWPM's Managing Director Mark Scatena said that the Merger Proposal reflects BWPM's focus on profitably growing the portfolio through assets with strong location attributes and tenant covenants. "The Merger Proposal demonstrates the Trust's ability to leverage its capital structure and disciplined focus on portfolio growth, consistent with our objective of providing unitholders with a secure and growing income stream and long-term capital growth", Mr Scatena said.

The Merger Proposal provides a number of benefits to BWP unitholders including:

- *Larger portfolio with increased scale and relevance* – continuation of BWP's ongoing strategy to create long-term value through the addition of nine quality large format retailing assets, predominantly leased to Bunnings, creating a \$3.5 billion portfolio of 84 geographically diversified properties
- *Highly complementary portfolios with further exposure to quality tenants* – the NPR assets are 73.0 per cent leased to Wesfarmers tenants including Bunnings, Officeworks and Kmart
- *Platform for income and capital growth* – the Merger Proposal will be neutral to BWP's DPU guidance of 9.27 cents for 2H24<sup>3</sup>, it is accretive to BWP's NTA with pro forma NTA of \$3.75<sup>4</sup> and is a platform for expected future income and capital growth
- *Enhanced diversification and improved lease expiry profile* – the NPR properties will further enhance BWP's asset diversification, maintain geographic diversity and improve BWP's weighted average lease expiry profile from 3.6 years to 3.9 years<sup>5</sup>
- *Leveraging and maintaining strong capital structure* – should the Merger Proposal proceed, BWP's strong capital position will be maintained, with pro-forma gearing expected to remain at the lower end of BWP's target range, affording continued financial flexibility

Specifically for NPR securityholders the Merger Proposal is expected to deliver a number of benefits:

- *Lower gearing and below NPR's target range* – pro forma gearing of 22.7 per cent<sup>6</sup> is materially lower than NPR's 31 December 2023 gearing of 47.2 per cent
- *Significantly improved capital management position* – BWP is rated strongly by credit rating agencies and has approximately \$165 million of undrawn debt capacity<sup>7</sup> across diversified debt sources including banks and corporate bonds with a weighted maturity of approximately three years<sup>8</sup>
- *Enhanced scale and investor relevance* – the Merger Proposal will provide NPR securityholders with enhanced scale, investor relevance and trading liquidity with access to relevant ASX indices
- *Continued exposure to quality assets* – the Merger Proposal is an opportunity for NPR securityholders to retain exposure to NPR's assets while having the benefit of also being invested in BWP's portfolio with a complementary, high quality tenant base comprising largely Bunnings tenancies

<sup>3</sup> Subject to there being no major disruption of the Australian economy.

<sup>4</sup> Estimated based on BWP and NPR unaudited 31 December 2023 balance sheets which remain subject to completion of half-year audit reviews and board approvals.

<sup>5</sup> By base income as at 31 December 2023.

<sup>6</sup> Gearing calculated as borrowings / total assets, based on BWP and NPR unaudited 31 December 2023 balance sheets which remain subject to completion of half-year audit reviews and board approvals, pro forma for the Merger Proposal.

<sup>7</sup> As at 31 December 2023, before the distribution payment to be made in February 2024.

<sup>8</sup> As at 31 December 2023.



## Overview of the Bid Implementation Deed (“**BID**”)

The BID (see Annexure A) sets out the manner in which BWP and NPR have agreed to act in relation to the Merger Proposal. The BID provides BWP with exclusivity and includes provisions customary for a transaction of this nature including no shop, no talk, notification and matching rights subject to appropriate exceptions. The BID includes provisions for the payment of a reimbursement fee of \$2.5 million by NPR to BWP in certain circumstances.

### Offer conditions

The Merger Proposal is conditional upon a number of matters set out in the BID, including minimum acceptance of 50.1 per cent of all NPR securities and other customary conditions.<sup>9</sup>

At any time from when the offer opens to when the offer closes (“**Offer Period**”), BWP may choose to waive certain conditions of the Merger Proposal, declare the Merger Proposal unconditional and/or extend the Offer Period.<sup>10</sup>

### Indicative timetable

The expected key dates in relation to the Merger Proposal are outlined below.

Key event	Date
Transaction announced	24 January 2024
BWP and NPR respective 2024 half-year results	7 February 2024
Lodgement of Bidder’s Statement with ASIC	Mid-February 2024
Despatch of Bidder’s Statement to NPR securityholders	Mid-February 2024
Offer opens	Mid-February 2024
Earliest date for Offer to close (unless extended)	Mid-March 2024

*Note: All dates are indicative only and subject to change.*

### BWP Distribution Reinvestment Plan

As a result of today’s announcement, and consistent with the Terms of the Distribution Reinvestment Plan (“**DRP**”), the Directors have determined to suspend the DRP in respect of the interim distribution for the six month period ended 31 December 2023. BWP unitholders who had elected to participate in the DRP for the interim distribution will receive their distribution in the form of a direct credit into their nominated bank account on the expected distribution entitlement payment date of 28 February 2024.

The Board will confirm the details of the interim distribution with the half year results announcement on 7 February 2024.

<sup>9</sup> Customary conditions are set out in the BID and include: a 50.1 per cent minimum acceptance threshold, receipt of certain regulatory approvals, no regulatory restraints, no prescribed occurrence in relation to NPR, no material adverse change in relation to NPR, BWP Units to be issued under the Merger Proposal are approved for quotation by the ASX, and all third party consents are obtained.

<sup>10</sup> BWP may not extend the Offer Period to end after 21 June 2024 without the prior written consent of NPR, however, BWP may waive or vary the minimum acceptance condition to reduce the acceptance level below 50.1 per cent without the prior written consent of NPR.



### **Investor Briefing**

An investor briefing will be held at 11.00am AEDT (8.00am AWST) on 24 January 2024. Details to join the webcast will be available at [www.bwptrust.com.au](http://www.bwptrust.com.au).

### **Advisors**

BWP has engaged Highbury Partnership as financial adviser and Corrs Chambers Westgarth as legal adviser.

For further information, please contact:

#### **Mark Scatena**

Managing Director

BWP Management Limited

Telephone: +61 8 9327 4356

E-mail: [investorrelations@bwptrust.com.au](mailto:investorrelations@bwptrust.com.au)

# ASX release

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ANNEXURE A - BID IMPLEMENTATION DEED ("**BID**")

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HERBERT  
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Deed

**Execution version**

## Takeover bid implementation deed

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Newmark REIT Management Limited ACN 644 715  
382 as responsible entity for Newmark Property  
REIT

BWP Management Limited ACN 082 856 424 as  
responsible entity for BWP Trust



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## Takeover bid implementation deed

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Date ▶ 24 January 2024

Between the parties

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**Newmark RE**                      **Newmark REIT Management Limited ACN 644 715 382** as responsible entity for the **Newmark Property REIT** of Level 17, 644 Chapel Street, South Yarra VIC 3141  
**(Newmark RE)**

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**BWP RE**                              **BWP Management Limited ACN 082 856 424** as responsible entity for the **BWP Trust** of Level 14, Brookfield Place Tower 2, 123 St Georges Terrace, Perth WA 6000  
**(BWP RE)**

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**Recitals**                              1 BWP RE is proposing to make a Takeover Bid for all the NPR Units and the IBC is proposing to recommend the Takeover Bid in the absence of a Superior Proposal.  
2 The parties have agreed to implement the Takeover Bid on the terms and conditions set out in this deed.

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This deed witnesses as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
<b>Accounting Standards</b>	<ol style="list-style-type: none"> <li>1 the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board) and other mandatory professional reporting requirements issued by the joint accounting bodies (including the Australian Accounting Standards issued either jointly by CPA Australia and the Institute of Chartered Accountants in Australia or by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia); and</li> <li>2 if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in Australian Statements of Accounting Concepts.</li> </ol>
<b>Adviser</b>	any person who is engaged to provide professional advice of any type (including legal, accounting, consulting, taxation or financial advice).
<b>Agreed Bid Terms</b>	the terms and conditions set out in Schedule 3.
<b>Announcement Date</b>	the date on which the Takeover Bid is publicly announced.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act as if subsection 12(1) of the Corporations Act included a reference to this deed and NPR was the designated body.
<b>ASX</b>	ASX Limited (ABN 98 008 624 691), or the market operated by it, as the context requires.
<b>ATO</b>	Australian Taxation Office.



<b>Term</b>	<b>Meaning</b>
<b>Bid Condition</b>	a condition to the Takeover Bid included in section 3 of the Agreed Bid Terms.
<b>Bidder's Statement</b>	the bidder's statement to be prepared by BWP RE in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.
<b>Break Fee</b>	\$2,500,000.
<b>Business Day</b>	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne or Perth.
<b>BWP</b>	the BWP Trust.
<b>BWP Constitution</b>	the constitution establishing BWP dated 18 June 1998, and as amended from time to time.
<b>BWP Counterproposal</b>	has the meaning given in clause 14.7.
<b>BWP Disclosure Materials</b>	<ol style="list-style-type: none"> <li>1 the documents and information made available by BWP RE to Newmark RE and its Related Persons prior to 7.00pm on the date which is 1 Business Day prior to the date of this deed, the list of which has been initialled by, or on behalf of, the parties for identification; and</li> <li>2 written responses from BWP RE and its Related Persons to requests for further information made by Newmark RE and its Related Persons prior to 7.00pm on the date which is 1 Business Day prior to the date of this deed.</li> </ol>
<b>BWP Group</b>	BWP and each of its Controlled entities, and a reference to a ' <b>BWP Group Member</b> ' or a ' <b>member of the BWP Group</b> ' is to BWP or any of its Controlled entities.
<b>BWP Indemnified Parties</b>	each BWP Group Member and their respective directors, officers and employees.
<b>BWP Information</b>	information regarding the BWP Group, including following implementation of the Takeover Bid (other than any information provided by Newmark RE to BWP RE regarding the NPR Group contained in, or used in the preparation of, the information regarding the BWP Group following implementation of the



Term	Meaning
	<p>Takeover Bid), being:</p> <ol style="list-style-type: none"> <li>1 information about BWP, its Controlled entities, its business and interests and dealings in NPR Units and BWP RE's intentions for NPR and BWP RE's funding for the Transaction; and</li> <li>2 any other information required under the Corporations Act, Corporations Regulations or applicable guidance from a Government Agency or the Takeovers Panel to enable the Disclosure Documents to be prepared that the parties agree is 'BWP Information' and that is identified in the Disclosure Documents as such.</li> </ol>
<p><b>BWP Material Adverse Change</b></p>	<p>an event, matter or thing occurring after the date of this deed (each a <b>Specified Event</b>) which, whether individually or when aggregated with all such Specified Events that have occurred, has had or would be considered reasonably likely to have:</p> <ol style="list-style-type: none"> <li>1 the effect of a diminution in the value of the consolidated net assets of the BWP Group, taken as a whole, by at least \$240,000,000 against what it would reasonably have been expected to have been but for such Specified Event; or</li> <li>2 the effect of a diminution in distributable profit by at least \$11,750,000 in any financial year for the BWP Group against what it would reasonably have been expected to have been but for such Specified Event, calculated on a basis consistent with calculations of distributable profit for the financial year ended 30 June 2023,</li> </ol> <p>determined after taking into account any matters which offset the impact of the Specified Event giving rise to the adverse effect, other than an event, matter or thing:</p> <ol style="list-style-type: none"> <li>3 arising out of the announcement or pendency of the Transaction or the Takeover Bid (including any loss of or adverse change in the relationship of the BWP Group with its customers, partners, creditors or suppliers as at the date of this deed, including the loss of any contract);</li> <li>4 required or expressly permitted by this deed, the Takeover Bid or the transactions contemplated by any of them;</li> <li>5 that was Fairly Disclosed by BWP in an announcement made to ASX or on its website, or a publicly available document lodged by it with ASIC or available on the PPS Register, prior to the date of this deed;</li> <li>6 that is Fairly Disclosed in the BWP Disclosure Materials;</li> <li>7 arising from changes in economic or business conditions that impact on BWP and its competitors in a similar manner (including interest rates, general economic, political or business conditions, including disruptions to, or fluctuations in, domestic or international financial markets);</li> <li>8 agreed to in writing by Newmark RE;</li> </ol>



Term	Meaning
	<p>9 arising as a result of any applicable change in law, regulation, accounting standards or principles or governmental policy, or the interpretation of any of them; or</p> <p>10 arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like.</p>
<b>BWP Material Contract</b>	<p>a contract or commitment:</p> <p>1 requiring total payments in excess of \$35,000,000 or, in the case of a number of related contracts or commitments, \$125,000,000 in aggregate, by the BWP Group; and</p> <p>2 entered into by the BWP Group, other than in the ordinary course of business and under which the BWP Group does not have an unconditional right to terminate within two years of entry into the contract or commitment,</p> <p>but excludes this deed.</p>
<b>BWP Permitted Distribution</b>	<p>a distribution payable to BWP Unitholders pursuant to clause 9.2.</p>
<b>BWP Prescribed Occurrence</b>	<p>other than:</p> <p>1 as required or permitted by this deed, the Takeover Bid or the transactions contemplated by either;</p> <p>2 as Fairly Disclosed in the BWP Disclosure Materials;</p> <p>3 with the consent of Newmark RE (not to be unreasonably withheld or delayed);</p> <p>4 in connection with the BWP Permitted Distributions;</p> <p>5 as required by law or any Government Agency;</p> <p>6 as Fairly Disclosed by BWP in an announcement made to ASX or on its website or a publicly available document lodged by it with ASIC, or available on the PPS Register, prior to the date of this deed;</p> <p>7 an issue of BWP Units as required to facilitate the reinvestment of distributions by unitholders; or</p> <p>the occurrence of any of the following after the date of this deed:</p> <p>8 BWP converting all or any of its units into a larger or smaller number of units;</p> <p>9 BWP resolving to reduce its capital in any way;</p> <p>10 BWP:</p> <ul style="list-style-type: none"> <li>– entering into a buy-back agreement; or</li> </ul>



Term	Meaning
	<ul style="list-style-type: none"> <li>– resolving to approve the terms of a buy-back agreement under the Corporations Act,</li> </ul> <p>in relation to BWP Units;</p>
11	BWP issuing units or granting an option over its units, or agreeing to make such an issue or grant such an option;
12	BWP issuing, or agreeing to issue, securities convertible into units;
13	BWP disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
14	BWP granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property, other than in the ordinary course of business;
15	an Insolvency Event occurring in relation to BWP;
16	BWP making any change or amendment to its constitution;
17	BWP RE effecting or facilitating the resettlement of the trust property of BWP or effects or facilitates the termination of BWP;
18	any of the following occurs: <ul style="list-style-type: none"> <li>– BWP RE ceases to be the responsible entity of BWP;</li> <li>– BWP Unitholders resolve to remove or replace BWP RE as responsible entity of BWP;</li> <li>– an order is made by any court, or any application being made in any court, for the appointment of a temporary responsible entity of BWP in accordance with the Corporations Act or relevant trustee legislation;</li> </ul>
19	BWP ceasing to be admitted to the official list of the ASX, or the BWP RE taking steps to suspend BWP from trading by ASX for a consecutive period of more than 2 weeks;
20	BWP (acting through BWP RE) redeeming or resolving to redeem any BWP Units;
21	BWP: <ul style="list-style-type: none"> <li>– acquiring or disposing of;</li> <li>– agreeing to acquire or dispose of; or</li> <li>– offering, proposing, announcing a bid or tenders for,</li> </ul> <p>other than in the ordinary course of business, any securities, business, property, assets, interests in a joint venture, entity or undertaking, whether in one or a number of related transactions, where the value involved in such transaction or transactions exceeds \$35,000,000 individually or \$125,000,000 in aggregate;</p>
22	BWP incurring any additional borrowings or financial indebtedness or increases existing financial indebtedness (other than in the ordinary course of business) in excess of \$35,000,000 in a single transaction or \$125,000,000 in a series



Term	Meaning
	<p>of transactions, or creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of its business or property;</p> <p>23 BWP providing any financial accommodation other than in the ordinary course of business; or</p> <p>24 BWP:</p> <ul style="list-style-type: none"> <li>– entering into or agreeing to enter into a BWP Material Contract;</li> <li>– changing the terms of any BWP Material Contract;</li> <li>– paying, discharging or satisfying any claims, liabilities or obligations under any BWP Material Contract other than in accordance with its terms and consistently with past practice; or</li> <li>– waiving any material claims or rights under, or waives the benefit of, any provisions of any BWP Material Contract.</li> </ul>
<b>BWP Registry</b>	Computershare Investor Services Pty Limited (ACN 078 279 277).
<b>BWP Representations and Warranties</b>	the representations and warranties of BWP set out in Schedule 2.
<b>BWP Unit</b>	a fully paid ordinary unit in BWP.
<b>BWP Unit Register</b>	the registers of BWP Unitholders maintained by the BWP Registry in accordance with the Corporations Act.
<b>BWP Unitholder</b>	a person who is registered as the holder of a BWP Unit in the BWP Unit Register.
<b>Claim</b>	<p>any claim, demand, legal proceedings or cause of action, including a claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none"> <li>1 based in contract (including breach of warranty);</li> <li>2 based in tort (including misrepresentation or negligence);</li> <li>3 under common law or equity; or</li> <li>4 under statute (including the Australian Consumer Law, being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) or Part VI of that Act, or like provision in any state or territory legislation),</li> </ol> <p>in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceeding or cause of action arising under</p>





Term	Meaning
	an indemnity in this deed.
<b>Competing Proposal</b>	<p>any proposal, agreement, arrangement or transaction which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):</p> <ol style="list-style-type: none"> <li>1 acquiring a Relevant Interest in more than 15% of the NPR Units;</li> <li>2 acquiring an economic interest under a cash settled equity swap or similar derivative in more than 15% of the NPR Units;</li> <li>3 replacing Newmark REIT Management Limited as responsible entity of NPR;</li> <li>4 replacing Newmark Property Funds Management Pty Ltd as 'investment manager' of NPR;</li> <li>5 replacing Newmark Asset Management Pty Ltd as 'property manager' of NPR;</li> <li>6 directly or indirectly acquiring the management rights of NPR currently held by members of the Newmark Property Group;</li> <li>7 directly or indirectly acquiring or obtaining an interest (including an economic interest) of 15% or more in all or the majority of the business conducted by, or assets or property of, NPR or the Newmark Property Group;</li> <li>8 directly or indirectly acquiring Control of             <ul style="list-style-type: none"> <li>– NPR; or</li> <li>– Newmark Property Group;</li> </ul> </li> <li>9 otherwise directly or indirectly acquiring, merging with NPR, or having its securities stapled with the NPR Units; or</li> <li>10 requiring Newmark RE to abandon, or otherwise fail to proceed with, the Transaction,</li> </ol> <p>whether by way of takeover bid, scheme of arrangement, trust scheme, capital reduction, sale of assets, sale of securities, stapling, strategic alliance, dual listed company structure, joint venture or partnership, or other transaction or arrangement (including in each case any variation or modification of an earlier Competing Proposal).</p>
<b>Control</b>	<p>has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).</p> <p>Also, for these purposes:</p> <ol style="list-style-type: none"> <li>1 a trust will Control another entity if its trustee Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as trustee of the trust;</li> <li>1 a partnership will Control another entity if a partner (including a general partner) Controls the entity (disregarding for these</li> </ol>



Term	Meaning
	<p>purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as partner; and</p> <p>2 a fund or investment vehicle will Control another entity if the responsible entity or manager of the fund or investment vehicle Controls the entity (disregarding for these purposes the operation of section 50AA(4) of the Corporations Act) in its capacity as responsible entity or manager of the fund or investment vehicle.</p>
<b>Confidentiality Deed</b>	the confidentiality deed dated 22 December 2023 between Newmark RE and BWP RE.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>CPT</b>	Newmark Capital (Chadstone) Property Trust (ARSN 648 280 219).
<b>CPT Constitution</b>	the constitution establishing CPT dated 7 December 2011, as amended from time to time.
<b>CPT Unit</b>	a fully paid ordinary unit in CPT.
<b>Disclosure Documents</b>	<p>1 the Bidder's Statement; and</p> <p>2 the Target's Statement.</p>
<b>End Date</b>	21 June 2024 or such other date and time agreed in writing between the parties.
<b>Exclusivity Period</b>	<p>the period from the date of this deed until the earlier of:</p> <p>1 the date of termination of this deed;</p> <p>2 the End Date; and</p> <p>3 the end of the Offer Period.</p>
<b>Fairly Disclosed</b>	disclosed in good faith and in sufficient detail to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Takeover Bid and



Term	Meaning
	experienced in a business similar to the business of the NPR Group or BWP Group (as applicable) to identify the nature, scope and impact of the relevant matter, event or circumstance.
<b>FFO</b>	a measure of cashflow from operations that adjusts the statutory Accounting Standards profit for the year for non-cash changes in investment properties, non-cash impairment of goodwill, non-cash fair value adjustments to financial instruments, amortisation of incentives and leasing costs, rental straight-line adjustments and other unrealised or one-off items.
<b>Government Agency</b>	any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
<b>IBC</b>	the Independent Board Committee of Newmark RE comprising Michael Doble, Melinda Snowden and Andrew Erikson.
<b>Ineligible Foreign Unitholder</b>	a NPR Unitholder whose address shown in the NPR Unit Register is a place outside Australia and its external territories or New Zealand, unless the parties agree in writing that it is lawful and not unduly onerous or impracticable to issue BWP Units to that NPR Unitholder.
<b>Insolvency Event</b>	<p>in relation to an entity:</p> <ol style="list-style-type: none"> <li>1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;</li> <li>2 a Controller (as defined in the Corporations Act), 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;</li> <li>3 an application is made to a court, a meeting is convened or a resolution is passed for the entity to be wound up or dissolved or for the appointment of a Controller (as defined in the Corporations Act), liquidator, provisional liquidator or administrator to the entity of any of its assets;</li> <li>4 the entity seeks or obtains protection from its creditors under any statute or any other law;</li> <li>5 the entity executing a deed of company arrangement;</li> <li>6 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</li> </ol>



Term	Meaning
	<p>7 the entity is or becomes unable to pay its debts when they fall due, is insolvent within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act or any analogous circumstances arises under any other statute or law; or</p> <p>8 the entity being deregistered as a company or otherwise dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise),</p> <p>or any other like event, matter or circumstance occurring in relation to an entity in another jurisdiction.</p>
<b>Marketable Parcel</b>	has the meaning given in the ASX Operating Rules Procedures which, among other things, includes a parcel of BWP Units the value of which is not less than \$500.
<b>Newmark Property Group</b>	Newmark Property Group Pty Ltd and each entity that Newmark Property Group Pty Ltd directly or indirectly, through one or more intermediaries, Controls.
<b>NHT</b>	Newmark Hardware Trust (ARSN 161 274 111).
<b>NHT Constitution</b>	the constitution establishing NHT dated 15 October 2012 as amended from time to time.
<b>NHT Unit</b>	a fully paid ordinary unit in NHT.
<b>NPR or Newmark Property REIT</b>	the stapled group comprising NHT and CPT.
<b>NPR Disclosure Materials</b>	<p>1 the documents and information made available by Newmark RE to BWP RE and its Related Persons prior to 7.00pm on the date which is 1 Business Day prior to the date of this deed, the list of which has been initialled by, or on behalf of, the parties for identification; and</p> <p>2 written responses from Newmark RE and its Related Persons to requests for further information made by BWP RE and its Related Persons prior to 7.00pm on the date which is 1 Business Day prior to the date of this deed.</p>



Term	Meaning
<b>NPR Group</b>	NPR and each of its Controlled entities, and a reference to a ' <b>NPR Group Member</b> ' or a ' <b>member of the NPR Group</b> ' is to NPR or any of its Controlled entities.
<b>NPR Indemnified Parties</b>	each NPR Group Member and their respective directors, officers and employees.
<b>NPR Information</b>	<p>information regarding the NPR Group, being:</p> <ol style="list-style-type: none"> <li>1 information about NPR, its Controlled entities and its business; and</li> <li>2 any other information required under the Corporations Act, Corporations Regulations or applicable guidance from a Government Agency or the Takeovers Panel to enable the Disclosure Documents to be prepared that the parties agree is 'NPR Information' and that is identified in the Disclosure Documents as such.</li> </ol>
<b>NPR Material Adverse Change</b>	<p>an event, matter or thing occurring after the date of this deed (each a <b>Specified Event</b>) which, whether individually or when aggregated with all such Specified Events that have occurred, has had or would be considered reasonably likely to have:</p> <ol style="list-style-type: none"> <li>1 the effect of a diminution in the value of the consolidated net assets of the NPR Group, taken as a whole, by at least \$33,000,000 against what it would reasonably have been expected to have been but for such Specified Event; or</li> <li>2 the effect of a diminution in FFO by at least \$1,400,000 in any financial year for the NPR Group against what it would reasonably have been expected to have been but for such Specified Event, calculated on a basis consistent with calculations of FFO for the financial year ended 30 June 2023, determined after taking into account any matters which offset the impact of the Specified Event giving rise to the adverse effect, other than an event, matter or thing;</li> <li>3 arising out of the announcement or pendency of the Transaction or the Takeover Bid (including any loss of or adverse change in the relationship of the NPR Group with its customers, partners, creditors or suppliers as at the date of this deed, including the loss of any contract);</li> <li>4 required or expressly permitted by this deed, the Takeover Bid or the transactions contemplated by any of them;</li> <li>5 that was Fairly Disclosed by NPR in an announcement made to ASX or on its website, or a publicly available document lodged by it with ASIC or available on the PPS Register, prior to the date of this deed;</li> <li>6 that is Fairly Disclosed in the NPR Disclosure Materials;</li> </ol>



Term	Meaning
	<p>7 arising from changes in economic or business conditions that impact on NPR and its competitors in a similar manner (including interest rates, general economic, political or business conditions, including disruptions to, or fluctuations in, domestic or international financial markets);</p> <p>8 agreed to in writing by BWP RE;</p> <p>9 arising as a result of any applicable change in law, regulation, accounting standards or principles or governmental policy, or the interpretation of any of them; or</p> <p>10 arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like.</p>
<b>NPR Material Contract</b>	<p>a contract or commitment:</p> <p>1 requiring total payments in excess of \$1,000,000 or, in the case of a number of related contracts or commitments, \$10,000,000 in aggregate, by the NPR Group; and</p> <p>2 entered into by the NPR Group, other than in the ordinary course of business and under which the NPR Group does not have an unconditional right to terminate within two years of entry into the contract or commitment,</p> <p>but excludes this deed.</p>
<b>NPR Prescribed Occurrence</b>	<p>other than:</p> <p>1 as required or permitted by this deed, the Takeover Bid or the transactions contemplated by either;</p> <p>2 as Fairly Disclosed in the NPR Disclosure Materials;</p> <p>3 with the consent of BWP RE (not to be unreasonably withheld or delayed);</p> <p>4 as required by law or any Government Agency;</p> <p>5 as Fairly Disclosed by NPR in an announcement made to ASX or on its website or a publicly available document lodged by it with ASIC or available on the PPS Register, prior to the date of this deed; or</p> <p>6 an issue of NPR Units as required to facilitate the reinvestment of distributions by unitholders;</p> <p>the occurrence of any of the following after the date of this deed:</p> <p>7 Newmark RE converting all or any of the NPR Units into a larger or smaller number of units;</p> <p>8 Newmark RE resolving to reduce its capital in any way;</p> <p>9 Newmark RE:</p>



Term	Meaning
	<ul style="list-style-type: none"> <li>– entering into a buy-back agreement; or</li> <li>– resolving to approve the terms of a buy-back agreement under the Corporations Act,</li> </ul> <p>in relation to NPR Units;</p>
10	an NPR Group Member issuing units or granting an option over its units, or agreeing to make such an issue or grant such an option;
11	an NPR Group Member issuing, or agreeing to issue, securities convertible into units;
12	an NPR Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
13	an NPR Group Member granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property;
14	an Insolvency Event occurring in relation to an NPR Group Member;
15	Newmark RE making any change or amendment to the NHT Constitution or the CPT Constitution;
16	any of the following occurs: <ul style="list-style-type: none"> <li>– Newmark RE ceases to be the responsible entity of NPR;</li> <li>– NPR Unitholders resolve to remove or replace Newmark RE as responsible entity of NPR;</li> <li>– an order is made by any court, or any application being made in any court, for the appointment of a temporary responsible entity of NPR in accordance with the Corporations Act or relevant trustee legislation;</li> </ul>
17	Newmark RE effecting or facilitating the resettlement of the trust property of NHT or CPT or effects or facilitates the termination of NHT or CPT;
18	NPR ceasing to be admitted to the official list of the ASX, or the Newmark RE taking steps to suspend NPR from trading by ASX for a consecutive period of more than 2 weeks;
19	NPR (acting through Newmark RE) redeeming or resolving to redeems any NPR Units;
20	Newmark RE: <ul style="list-style-type: none"> <li>– acquiring or disposing of;</li> <li>– agreeing to acquire or dispose of; or</li> <li>– offering, proposing, announcing a bid or tenders for,</li> </ul> <p>other than in the ordinary course of business, any securities, business, property, assets, interests in a joint venture, entity or undertaking, whether in one or a number of related transactions, where the value involved in such transaction or transactions exceeds \$1,000,000 individually or \$10,000,000 in aggregate;</p>



Term	Meaning
	<p>21 Newmark RE incurring any additional borrowings or financial indebtedness or increases existing financial indebtedness (in each case, other than in the ordinary course of business) in excess of \$1,000,000 in a single transaction or \$10,000,000 in a series of transactions;</p> <p>22 Newmark RE providing any financial accommodation other than in the ordinary course of business; or</p> <p>23 Newmark RE:</p> <ul style="list-style-type: none"> <li>– entering into or agreeing to enter into an NPR Material Contract;</li> <li>– changing the terms of any NPR Material Contract;</li> <li>– paying, discharging or satisfying any claims, liabilities or obligations under any NPR Material Contract other than in accordance with its terms and consistently with past practice; or</li> <li>– waiving any material claims or rights under, or waives the benefit of, any provisions of any NPR Material Contract.</li> </ul>
<b>NPR Registry</b>	Boardroom Pty Limited (ACN 003 209 836).
<b>NPR Representations and Warranties</b>	the representations and warranties of Newmark RE set out in Schedule 1.
<b>NPR Unit</b>	a stapled security comprising one NHT Unit stapled to one CPT Unit.
<b>NPR Unit Register</b>	the registers of NPR Unitholders maintained by the NPR Registry in accordance with the Corporations Act.
<b>NPR Unitholder</b>	a person who is registered as the holder of an NPR Unit in the NPR Unit Register.
<b>Offer</b>	each offer to acquire NPR Units made in connection with the Takeover Bid.
<b>Offer Period</b>	the period that the Offer is open for acceptance.
<b>Permitted Transaction</b>	1 a proposal, which includes but is not limited to the Offer, for the acquisition by BWP RE, or an Associate of such entity, of all the securities in NPR which the IBC has recommended that NPR's





Term	Meaning
	<p>securityholders accept or which has been made with its prior consent;</p> <p>2 any acquisition of any securities in (or direct or indirect rights, warrants or options to acquire any securities) NPR from Newmark Property Group Pty Ltd (ACN 152 310 390) and its Associates provided that the price and terms of that acquisition are no less favourable to Newmark Property Group Pty Ltd than the price and terms outlined in the Offer; or</p> <p>3 participating in any capital raise that NPR undertakes, including (but not limited to) underwriting any such capital raise; and</p> <p>4 any other transaction that the parties agree to in writing.</p>
<b>PPS Register</b>	the register established under the PPSA.
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>Process Deed</b>	the process deed dated 22 December 2023 between Newmark RE and BWP RE.
<b>Related Bodies Corporate</b>	has the meaning set out in section 50 of the Corporations Act.
<b>Related Person</b>	<p>in respect of a person:</p> <p>1 a director, officer or employee of that person;</p> <p>2 an Adviser of that person (and each director, officer, employee or contractor of that Adviser);</p> <p>3 an agent or representative of that person; and</p> <p>4 a Related Body Corporate of that person.</p>
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.
<b>Security Interest</b>	any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.
<b>Superior Proposal</b>	a written bona fide Competing Proposal received after the date of this document that does not result from a breach by Newmark RE



Term	Meaning
	<p>of any of its obligations under clause 14 which the IBC, acting in good faith, and after receiving advice from its legal and financial advisers, determines:</p> <ol style="list-style-type: none"> <li>1 is reasonably capable of being valued and implemented within a reasonable timeframe in accordance with its terms; and</li> <li>2 would, if completed substantially in accordance with its terms, be more favourable to NPR Unitholders than the Transaction or the BWP Counterproposal in accordance with clause 14.7 (as the case may be),</li> </ol> <p>taking into account all aspects of the Competing Proposal and the Transaction, including conditions, the identity, reputation and financial condition of the person making the proposal and all relevant legal, regulatory and financial matters (including the value and type of consideration, funding, any timing considerations, any conditions precedent or other matters affecting the probability of the proposal being completed).</p>
<b>Takeover Bid</b>	a takeover bid by BWP RE for NPR Units that satisfies the requirements in clause 2.
<b>Takeovers Panel</b>	the Australian Takeovers Panel.
<b>Target's Statement</b>	the target's statement to be prepared by NPR in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.
<b>Tax</b>	any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, stamp, transaction or registration duty or similar charge that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Third Party</b>	a person other than Newmark RE, BWP RE or their respective Controlled entities.
<b>Timetable</b>	the indicative timetable for the implementation of the Transaction agreed between the parties.



<b>Term</b>	<b>Meaning</b>
<b>Transaction</b>	the proposed acquisition of NPR Units by BWP RE through the Takeover Bid in accordance with the terms of this deed.
<b>Unmarketable Parcel Unitholder</b>	a NPR Unitholder to whom, if they accepted the Offer, BWP Units would be issued which would not constitute a Marketable Parcel.

## 1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure;
- (l) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (m) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
  - (1) which ceases to exist; or



- (2) whose powers or functions are transferred to another body,  
is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (o) a reference to any time, unless otherwise indicated, is to the time in Melbourne, Australia;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (s) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed.

### 1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### 1.4 Awareness

- (a) If a representation or warranty is given so far as Newmark RE is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of Newmark RE is limited to and deemed only to comprise the facts, matters and circumstances of which Ed Cruickshank (Fund Manager); Angus MacHutchison (General Manager, Property); Peter Hulbert (Company Secretary and General Manager, Legal); Kelly Barker (CFO) and Richard Drake (Head of Capital Transactions) are actually aware as at the date of this deed.
- (b) If a representation or warranty is given so far as BWP RE is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of BWP RE is limited to and deemed only to comprise the facts, matters and circumstances of which Mark Scatena (Managing Director); David Hawkins (Head of Finance); Karen Lange (Company Secretary) and Andrew Ross (Head of Property) is actually aware as at the date of this deed.
- (c) Without limiting clause 11, none of the persons referred to in clause 1.4(a) or 1.4(b) will bear any personal liability in respect of the representation or warranty, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

### 1.5 Reasonable endeavours

Except as otherwise expressly provided in this deed, any provision of this deed that requires a party to use reasonable endeavours, best endeavours or all reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs, does not impose any obligation to:

- (a) commence any legal action or proceeding against any person;
- (b) procure absolutely that that thing is done or happens;



- (c) incur a material expense, except where that provision expressly specifies otherwise; or
- (d) accept any undertakings or conditions required by any Third Party if those undertakings or conditions, in the reasonable opinion of the party required to give such undertakings or satisfy such conditions, are materially adverse to its commercial interests or fundamentally or materially alter the basis on which it originally agreed to the transactions the subject of this deed.

## 1.6 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## 1.7 Deed components

This deed includes any schedule.

# 2 The Takeover Bid

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## 2.1 Making the Takeover Bid

BWP RE agrees to make offers pursuant to an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all the NPR Units on terms and conditions no less favourable to NPR Unitholders than the Agreed Bid Terms.

## 2.2 Waiver of Bid Conditions and extension

BWP RE may declare the Takeover Bid to be free from any Bid Condition or extend the Offer Period at any time, subject to BWP RE not extending the Offer Period to end after the End Date, without the prior consent of Newmark RE.

# 3 Directors' recommendation

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## 3.1 Recommendation

Newmark RE represents and warrants to BWP RE that, as at the date of this deed, each member of the IBC has confirmed that:

- (a) his or her recommendation is that NPR Unitholders accept the Takeover Bid;  
and
- (b) he or she intends to accept the Takeover Bid in respect of all NPR Units which he or she holds or controls,

in each case, in the absence of a Superior Proposal.



### 3.2 Change of recommendation

- (a) Newmark RE must use reasonable endeavours to procure that no member of the IBC changes, withdraws, qualifies or modifies his or her recommendation as set out in clause 3.1 unless:
- (1) Newmark RE has received a Superior Proposal and complied with the provisions of clause 14;
  - (2) a court or Government Agency requires or requests that he or she changes, withdraws, qualifies or modifies, or abstains from making a recommendation; or
  - (3) the IBC or a member of the IBC has determined after receiving written advice from Newmark RE's external Australian legal advisers that, by virtue of the fiduciary or statutory duties of the IBC or relevant member of the IBC, he or she is required to change, withdraw, qualify or modify the IBC's or their recommendation.
- (b) For the purposes of this clause 3.2, customary qualifications and explanations contained in the Target's Statement in relation to a recommendation to accept the Takeover Bid, including to the effect that the recommendation is made in the absence of a Superior Proposal, will not be regarded as a failure to make or a withdrawal of a recommendation in favour of the Takeover Bid.

### 3.3 Holding statements

A statement made by Newmark RE, the IBC or any member of the IBC, to the effect that no action should be taken by NPR Unitholders pending the assessment of a Competing Proposal by the IBC shall not contravene clause 3.2.

## 4 Public announcements

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### 4.1 Agreed announcement

Immediately after execution of this deed, Newmark RE and BWP RE must issue public announcements in the form agreed between the parties.

### 4.2 Required disclosure

Where a party is required by any applicable law to make any announcement or make any disclosure in connection with the Transaction, the party must use all reasonable endeavours, to the extent possible and lawful, to consult with the other party prior to making the relevant disclosure.

### 4.3 Other announcements

- (a) Subject to clauses 4.2 and 4.3(b), no party may make any public announcement or disclosure in connection with the Transaction (including disclosure to a Government Agency) other than in a form approved by the other party (acting reasonably).
- (b) Each party will use all reasonable endeavours to provide such approval as soon as practicable. Nothing in this clause 4 requires the giving of prior notice or the



taking of any action if doing so would lead to a party breaching an applicable law.

## 5 Disclosure Documents

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### 5.1 Responsibility

The parties agree that:

- (a) Newmark RE will be responsible for preparing and dispatching the Target's Statement; and
- (b) BWP RE will be responsible for preparing and dispatching the Bidder's Statement,

in accordance with all applicable laws (including the Corporations Act and any applicable regulatory guidance from a Government Agency or the Takeover Panel).

### 5.2 Consultation on Bidder's Statement and Target's Statement

- (a) Newmark RE must:
  - (1) provide BWP RE with drafts of the Target's Statement within a reasonable time before the Target's Statement is provided to ASIC for approval pursuant to item 13 of section 633(1) of the Corporations Act to give BWP RE a reasonable opportunity to review and make comments;
  - (2) take all timely and reasonable comments made by BWP RE into account in good faith when producing revised drafts of the Target's Statement;
  - (3) seek written approval from BWP RE on the form and context in which BWP Information appears in the Target's Statement (if any), with such approval not to be unreasonably withheld or delayed;
  - (4) provide BWP RE with NPR Information as reasonably requested by BWP RE for preparation of the Bidder's Statement. For the avoidance of doubt, NPR takes responsibility for the NPR Information provided;
  - (5) keep BWP RE informed of any material matter raised by ASIC or ASX in relation to the Target's Statement or the Takeover Bid; and
  - (6) until the end of the Offer Period, promptly update the Target's Statement (through one or more supplementary Target's Statements) with any information that arises after the Target's Statement has been dispatched that is necessary to ensure that the Target's Statement does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement.
- (b) BWP RE must:
  - (1) provide Newmark RE with drafts of the Bidder's Statement within a reasonable time before the Bidder's Statement is provided to ASIC for approval pursuant to item 2 of section 633(1) of the Corporations Act to give Newmark RE a reasonable opportunity to review and make comments;



- (2) take all timely and reasonable comments made by Newmark RE into account in good faith when producing revised drafts of the Bidder's Statement;
- (3) seek written approval from Newmark RE on the form and context in which NPR Information appears in the Bidder's Statement (such approval not to be unreasonably withheld or delayed);
- (4) provide Newmark RE with BWP Information as reasonably requested by Newmark RE for preparation of the Target's Statement. For the avoidance of doubt, BWP RE takes responsibility for the BWP Information provided;
- (5) keep Newmark RE informed of any material matter raised by ASIC or ASX in relation to the Bidder's Statement or the Takeover Bid; and
- (6) until the end of the Offer Period, promptly update the Bidder's Statement (through one or more supplementary Bidder's Statements) with any information that arises after the relevant document has been dispatched that is necessary to ensure that the document does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement.

## 6 Facilitating the Offer

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- (a) Each party agrees to use reasonable endeavours to implement the Takeover Bid in accordance with the Timetable.
- (b) Each party must keep the other informed about their progress against the Timetable and notify the other if it believes that any of the dates in the Timetable have become unachievable.
- (c) If any date in the Timetable is not able to be achieved due to events outside the control of either of the parties, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Takeover Bid to be implemented before the end of the Offer Period.
- (d) The parties must use reasonable endeavours to procure that:
  - (1) the Offers and accompanying documents to be sent by BWP RE under item 6 of section 633(1) of the Corporations Act are sent on a date nominated by BWP RE that is earlier than the date prescribed by item 6 of section 633(1) of the Corporations Act; and
  - (2) the Bidder's Statement and Target's Statement are sent to NPR Unitholders together.

## 7 Bid conditions

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### 7.1 Reasonable endeavours and cooperation

- (a) Each party:





- (1) must, to the extent it is within their power to do so, use all reasonable endeavours to satisfy the Bid Conditions; and
  - (2) agrees not to do, or omit to do, anything which will, or is likely to, result in any of the Bid Conditions being breached,  
except as contemplated by this deed.
- (b) A reference in this clause 7.1 to a Bid Condition being breached includes a reference to the Bid Condition not being, or not being capable of being, satisfied.

## 7.2 Certain notices relating to Bid Conditions

BWP RE and Newmark RE (as the case may be) must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Bid Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Bid Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Bid Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 7.1).

## 8 Access and assistance

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### 8.1 Access to information

- (a) Newmark RE must provide to BWP RE and any nominated representatives reasonable access to information, premises and such senior executives of Newmark RE as reasonably requested by BWP RE and agreed by Newmark RE at mutually convenient times, and afford the BWP RE reasonable co-operation, for the sole purpose of:
  - (1) satisfying any of the Bid Conditions;
  - (2) preparation of financial statements (including for the Merged Group) for inclusion in the Disclosure Documents;
  - (3) development and implementation of BWP RE's plans for the NPR Group's business following the close of the Takeover Bid; and
  - (4) any other purpose agreed between the parties.
- (b) In carrying out these obligations:
  - (1) nothing in this clause will require Newmark RE to provide information concerning its directors' and management's consideration of the Takeover Bid or a Competing Proposal;
  - (2) information need not be provided if that would result in unreasonable disruptions to the NPR Group's business, is (in the reasonable opinion of Newmark RE) commercially sensitive, would breach a confidentiality obligation owed to a Third Party or any applicable law or require Newmark RE to make any disclosure that would compromise legal privilege; and



- (c) BWP RE acknowledges that its investigations and obligations under this clause 8.1 are subject to the Confidentiality Deed and all applicable laws and requirements of a Government Agency.

## 8.2 Change of control provisions

As soon as practicable after the date of this deed, Newmark RE and BWP RE must seek to identify any change of control provisions in material contracts to which any NPR Group Member is party which will be triggered by the implementation of the Transaction. In respect of those contracts, the parties agree that:

- (a) Newmark RE and BWP RE will agree a proposed course of action and then jointly initiate contact with the relevant counterparties and request that they provide any consents or waivers required, including confirmation that the counterparties will not terminate those contracts or seek to enforce rights such as rights of first refusal because of a change in control of NPR or as a result of the implementation of the Transaction. Following the agreement of a proposed course of action, BWP RE must provide Newmark RE with prior notice of any proposed contact with counterparties and a reasonable opportunity to be present during any discussions with counterparties;
- (b) Newmark RE must cooperate with, and provide reasonable assistance to, BWP RE to obtain such consents or waivers as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires Newmark RE to incur material expense). Newmark RE must use reasonable endeavours to resist any requirements of landlords or contract counterparties that new or increased bank guarantees or security deposits be provided and ensure that no directors or other personal guarantees are offered or agreed to;
- (c) BWP RE must take all action necessary to comply with any requirements of the counterparties that are necessary to obtain the relevant consent or waiver, including:
- (1) providing any information required and entering into such form of reasonable guarantee or security arrangements as counterparties may require; and
  - (2) making officers and employees available where necessary to meet with counterparties to deal with any issues arising in relation to the relevant consent or waiver; and
- (d) a failure by a NPR Group Member to obtain any third party consent or waiver will not constitute a breach of this deed by Newmark RE and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

## 9 Conduct of business and permitted distributions

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### 9.1 Conduct of business

- (a) Subject to clause 9.1(c), from the date of this deed up to and including the end of the Offer Period Newmark RE must, and must ensure its Controlled entities:
- (1) conduct the business of the NPR Group in the ordinary and usual course generally consistent with past practice;



- (2) do not announce, pay or make any distribution (including by way of return of capital);
  - (3) ensure that neither it, nor any other NPR Group Member, nor the trustee and/or responsible entity of any NPR Group Member, waives any of its material rights, or otherwise grants any material concessions, under its leasing arrangements in respect of the properties material to the NPR Group;
  - (4) take all steps reasonably within its power to ensure that no NPR Prescribed Occurrence occurs; and
  - (5) use reasonable endeavours, and procure that its Controlled Entities use reasonable endeavours to:
    - (A) preserve and maintain the value of the business and assets of the NPR Group; and
    - (B) maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any NPR Group Member.
- (b) Subject to clause 9.1(c), from the date of this deed up to and including the end of the Offer Period BWP RE must, and must ensure its Controlled entities:
- (1) conduct the business of the BWP Group in the ordinary and usual course generally consistent with past practice;
  - (2) not announce, pay or make any distribution (including by way of return of capital) other than the BWP Permitted Distributions;
  - (3) ensure that neither it, nor any other BWP Group Member, nor the trustee and/or responsible entity of any BWP Group Member, waives any of its material rights, or otherwise grants any material concessions, under its leasing arrangements in respect of the properties material to the BWP Group;
  - (4) take all steps reasonably within its power to ensure that no BWP Prescribed Occurrence occurs; and
  - (5) use reasonable endeavours, and procure that its Controlled Entities use reasonable endeavours to:
    - (A) preserve and maintain the value of the business and assets of the BWP Group; and
    - (B) maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any BWP Group Member.
- (c) Nothing in clause 9 restricts the ability of a party to take any action:
- (1) required to be done or procured by a party pursuant to, or which is otherwise permitted by, this deed or the Takeover Bid;
  - (2) which has been Fairly Disclosed; or
  - (3) with the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).



## 9.2 BWP Permitted Distributions

Despite any other provision of this deed, unless otherwise agreed in writing between BWP RE and Newmark RE, BWP may make semi-annual distributions from available profit to BWP Unitholders in accordance with the BWP Constitution and its existing distribution policy.

# 10 Representations and warranties

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## 10.1 NPR representations and warranties

Newmark RE represents and warrants to BWP RE (in its own right and separately as trustee or nominee for each of the other BWP Indemnified Parties) each of the NPR Representations and Warranties.

## 10.2 NPR indemnity

Newmark RE agrees with BWP RE (in its own right and separately as trustee or nominee for each BWP Indemnified Party) to indemnify BWP RE and each of the BWP Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that BWP RE or any of the other BWP Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the NPR Representations and Warranties.

## 10.3 BWP representations and warranties

BWP RE represents and warrants to Newmark RE (in its own right and separately as trustee or nominee for each of the other NPR Indemnified Parties) each of the BWP Representations and Warranties.

## 10.4 BWP indemnity

BWP RE agrees with Newmark RE (in its own right and separately as trustee or nominee for each of the other NPR Indemnified Parties) to indemnify Newmark RE and each of the NPR Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Newmark RE or any of the other NPR Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the BWP Representations and Warranties.

## 10.5 Qualifications on representations, warranties and indemnities

- (a) The NPR Representations and Warranties in clause 10.1 and the indemnity in clause 10.2, are each subject to matters that:
- (1) are known to the BWP Group or its Advisers in relation to the Transaction or the Takeover Bid; or
  - (2) have been Fairly Disclosed in the NPR Disclosure Materials or an announcement on the NPR website, or a publicly available document lodged by NPR with ASX, ASIC or available on the PPS Register, prior to the date of this deed, (excluding any risk factor disclosure and



- disclosure of risks in “forward looking statement” disclaimers that are predictive, forward-looking or primarily cautionary in nature); or
- (3) are required or expressly permitted by this document.
- (b) The BWP Representations and Warranties in clause 10.3 and the indemnity in clause 10.4, are each subject to matters that:
- (1) are known to the NPR Group or its Advisers in relation to the Transaction or the Takeover Bid; or
  - (2) have been disclosed in the BWP Disclosure Materials or an announcement on the BWP website, or a publicly available document lodged by BWP with ASX, ASIC or available on the PPS Register, prior to the date of this deed, (excluding any risk factor disclosure and disclosure of risks in “forward looking statement” disclaimers that are predictive, forward-looking or primarily cautionary in nature); or
  - (3) are required or expressly permitted by this document.

## 10.6 Survival of representations and warranties

Each representation and warranty in clauses 10.1 and 10.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

## 10.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 10.2 and 10.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

## 10.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 10.1 or 10.3 is given at the date of this deed and repeated continuously thereafter until the end of the Offer Period, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

## 10.9 Completion of Takeover Bid

After the date that completion of the Takeover Bid occurs, any breach of the representations and warranties made or given under this deed may only give rise to a claim for damages under the indemnities in this clause 10 and does not entitle a party to terminate this document.



## 10.10 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it, are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

## 11 Releases

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### 11.1 Newmark RE and Newmark RE directors and officers

- (a) BWP RE releases its rights, and agrees with Newmark RE that it will not make any claim (including any Claim) against any NPR Indemnified Party (other than Newmark RE and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
  - (1) any breach of any representations and warranties of Newmark RE or any other member of the NPR Group in this deed; or
  - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the NPR Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud.
- (b) This clause 11.1 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Newmark RE receives and holds the benefit of this clause 11.1 to the extent it relates to each NPR Indemnified Party as trustee for each of them.

### 11.2 BWP RE and BWP RE directors and officers

- (a) Newmark RE releases its rights, and agrees with BWP RE that it will not make a claim (including any Claim), against any BWP Indemnified Party (other than BWP RE and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
  - (1) any breach of any representations and warranties of BWP RE or any other member of the BWP Group in this deed; or
  - (2) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the BWP Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud.



- (b) This clause 11.2 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) BWP RE receives and holds the benefit of this clause 11.2 to the extent it relates to each BWP Indemnified Party as trustee for each of them.

## 12 Confidentiality

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Newmark RE and BWP RE acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this deed, except that clauses 11.1, 11.2 and 11.3 of the Confidentiality Deed will cease to have any force and effect between the parties and is replaced by clauses 15.1, 15.2 and 15.3 of this deed which will apply to the parties.

## 13 Process Deed

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Newmark RE and BWP RE acknowledge and agree that the Process Deed and the parties' obligations under the Process Deed terminate on entry by the parties into this deed and that each party will be released from its obligations under the Process Deed except that:

- (a) Clauses 1 (Definitions), 4 (Confidentiality), 10 (GST), 11 (Notices) and 12 (General) (except clause 12.8) of the Process Deed will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of the Process Deed; and

in all other respects, all future obligations of the parties under the Process Deed will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Transaction.

## 14 Exclusivity

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### 14.1 No current discussions regarding a Competing Proposal

Newmark RE represents and warrants to BWP RE that, as at the date of this deed it and each NPR Group Member:

- (a) is not a party to any agreement, arrangement or understanding with a Third Party entered into for the purpose of facilitating a Competing Proposal;
- (b) is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communications, in relation to a Competing Proposal, or which could reasonably be expected to lead to a Competing Proposal; and
- (c) has ceased to provide or make available any non-public information in relation to the NPR Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal.



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## 14.2 No shop

During the Exclusivity Period, Newmark RE must not, and must ensure that each of its Related Persons does not, solicit, encourage, invite or initiate (including by the provision of non-public information to any Third Party) any negotiation, inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to lead to the making of, a Competing Proposal or announce or communicate to any person an intention to do anything referred to in this clause 14.2.

## 14.3 No talk

During the Exclusivity Period, and subject to clause 14.5, Newmark RE must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) enter into, participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person in relation to a Competing Proposal, or which would reasonably be expected to encourage or lead to the making of, a Competing Proposal;
- (b) negotiate, accept or enter into any agreement, arrangement or understanding regarding a Competing Proposal; or
- (c) disclose or otherwise provide any non-public information about the business or affairs of the NPR Group to a Third Party with a view to obtaining, or which would reasonably be expected to lead to receipt of, a Competing Proposal whether by that Third Party or another person, even if:
  - (1) the discussions or negotiations referred to in clauses 14.3(a) to 14.3(c) in relation to any actual, proposed or potential Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Newmark RE or any of its Related Persons; or
  - (2) the Competing Proposal has been publicly announced,

but nothing in this clause 14.3 prevents Newmark RE from making normal presentations or providing information to brokers, portfolio investors, analysts and other third parties in the ordinary course of business or promoting the merits of the Transaction.

## 14.4 No due diligence

Subject to clause 14.5, Newmark RE must not make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to NPR or the NPR Group or their respective businesses or operations that may reasonably be expected to assist such Third Party in formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

## 14.5 Fiduciary exception

Clause 14.3, 14.4 and clause 14.6 do not prohibit any action or inaction by Newmark RE or any of its Related Persons in relation to a Competing Proposal, which the IBC acting in good faith determines that:

- (a) after consultation with its external legal and financial advisers, such proposal is a Superior Proposal or could reasonably be expected to become a Superior Proposal; and





- (b) having regard to written advice from its external legal advisers that the failure to take or not take such action would constitute, or would be likely to constitute, a breach of the fiduciary or statutory duties of the members of the IBC,

provided that the actual, proposed or potential Competing Proposal was not brought about by a breach of clauses 14.2 or 14.3, and provided that if Newmark RE makes available to any Third Party any non-public information relating to NPR or any member of the NPR Group or their businesses or operations:

- (c) the Third Party has first entered into a written agreement in favour of NPR restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party on terms no less favourable in aggregate to NPR than those contained in the Confidentiality Deed; and
- (d) to the extent that any information made available to the Third Party has not previously been provided to BWP RE, Newmark RE provides that information to BWP RE at the same time as it is provided to the Third Party. However, for the avoidance of doubt, Newmark RE is not required to provide or make available to BWP any information which Newmark RE reasonably considers is likely to disclose information relating to that Third Party which is commercially sensitive information of that person.

## 14.6 Notification of approaches

- (a) During the Exclusivity Period, Newmark RE must as soon as reasonably practicable (and in any event within 48 hours) notify BWP RE in writing if it, or any of its Related Persons, becomes aware of any:
- (1) negotiations, discussions or other communications, or approach, in relation to a Competing Proposal;
  - (2) proposal made to Newmark RE or any of its Related Persons, in connection with, or in respect of any exploration or completion of, a Competing Proposal; or
  - (3) provision by Newmark RE or any of its Related Persons of any material non-public information concerning the business or operations of NPR or the NPR Group to any Third Party in connection with a Competing Proposal,
- whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in clauses 14.6(a)(1) to 14.6(a)(3) may only be taken if permitted by clause 14.4.
- (b) A notification given under clause 14.6(a) must include all material terms and conditions of the Competing Proposal to the extent known by Newmark RE or its Related Persons.

## 14.7 Matching right

- (a) During the Exclusivity Period, without limiting clause 14.1, before:
- (1) Newmark RE enters into a legally binding agreement to give effect to any Competing Proposal; or
  - (2) any member of the IBC changes their recommendation in favour of the Takeover Bid to publicly recommend a Competing Proposal or a proposed or potential Competing Proposal,



each of the following conditions must be satisfied:

- (3) the IBC acting in good faith and in order to satisfy what the members of the IBC consider to be their statutory or fiduciary duties must determine that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
  - (4) Newmark RE has provided BWP RE with the material terms and conditions of the Competing Proposal, including price, conditions precedent, timetable, break fee or reimbursement fee and the identity of the Third Party making the actual, proposed or potential Competing Proposal (in each case, to the extent known);
  - (5) Newmark RE has given BWP RE at least 5 Business Days after the date of the provision of the information referred to in clause 14.7(a)(4) to provide an equivalent or superior proposal to the terms of the Competing Proposal; and
  - (6) BWP RE has not announced or otherwise formally proposed to Newmark RE a proposal by the expiry of the 5 Business Day period in clause 14.7(a)(5) (**BWP Counterproposal**) that the IBC acting in good faith determines would be more favourable for NPR Unitholders (as a whole) than the terms of the Competing Proposal, taking into account all terms and conditions and other aspects of:
    - (A) the BWP Counterproposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent or other matters affecting the probability of the BWP Counterproposal being completed compared to the Competing Proposal or other relevant matters); and
    - (B) the Competing Proposal.
- (b) If, in accordance with clause 14.7(a)(6), BWP RE provides to Newmark RE a BWP Counterproposal, Newmark RE must procure that the IBC considers the BWP Counterproposal and determines whether, acting reasonably and in good faith, the BWP Counterproposal would be equivalent to or more favourable to NPR Unitholders (as a whole) compared with the Competing Proposal. Following that determination, Newmark RE must:
- (1) procure that the IBC promptly, and in any event within 2 Business Days, notifies BWP RE of the determination in writing, stating reasons for that determination; and
  - (2) if the determination is that the BWP Counterproposal would be more favourable to NPR Unitholders (as a whole) compared with the Competing Proposal, then for a period of 2 Business Days after Newmark RE delivers to BWP RE the notice referred to above, Newmark RE and BWP RE must use their reasonable endeavours to agree the transaction documentation required to implement the BWP Counterproposal as soon as reasonably practicable, and Newmark RE must use its reasonable endeavours to procure that the IBC unanimously recommend that NPR Unitholders vote in favour of the BWP Counterproposal subject to there being no further Superior Proposal.
- (c) Despite any other provision in this deed, a statement by Newmark RE, IBC or any member of the IBC to the effect that:



- (1) the IBC has determined that a Competing Proposal is or may be a Superior Proposal and has commenced the matching right process set out in this clause 14.7; or
- (2) NPR Unitholders should take no action pending the completion of the matching right process set out in this clause 14.7,  
does not of itself:
- (3) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the recommendation by the members of the IBC or an endorsement of a Competing Proposal;
- (4) contravene this deed;
- (5) give rise to an obligation to pay the Break Fee under clause 16.2; or
- (6) give rise to a termination right under clause 17.

#### 14.8 Compliance with law

- (a) If it is determined by a court or the Takeovers Panel that the agreement by the parties under this clause 14 or any part of it:
  - (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the IBC; or
  - (2) was, or is, or would be, unlawful for any other reason,
 then, to that extent (and only to that extent) Newmark RE will not be obliged to comply with that provision of clause 14.
- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 14.8.

#### 14.9 Acknowledgement

Newmark RE and BWP RE acknowledges that BWP RE has requested the inclusion of this clause 14 in this document and would not have entered into this document without it.

#### 14.10 Warranty

Each party warrants to the other that it has received legal advice in relation to the operation of this clause 14.

## 15 Securities dealing

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### 15.1 Purpose

Each party acknowledges that clauses 15.2 and 15.3 are intended to ensure that:

- (a) any acquisition of securities in, or change of control of, NPR (or a substantial part of the business of the NPR) takes place in an efficient, competitive and informed market; and



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- (b) securityholders of NPR have a reasonable and equal opportunity to participate in any benefits accruing to the securityholders through any proposal under which a person would acquire a substantial interest in NPR (or a substantial part of the business of NPR).

## 15.2 No relevant interest

BWP RE represents and warrants that, as at the date of this deed, neither it, nor any of its Associates:

- (a) has a relevant interest in, or a right to acquire, any securities in NPR (whether issued or not or held by the counterparty or not); or
- (b) has entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities in NPR (including cash-settled derivative contracts, contracts for difference or other derivative contracts).

## 15.3 Standstill

- (a) Subject to clause 15.3(b), from the date of this deed until the End Date except in undertaking a Permitted Transaction, BWP RE must not, and must ensure that its Associates do not (alone or with others):
- (1) acquire, purchase or sell, or agree to acquire, purchase or sell, any securities in (or direct or indirect rights, warrants or options to acquire any securities) NPR;
  - (2) enter into any agreement or arrangement that confers rights with the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities in NPR (including cash-settled derivative contracts, contracts for difference or other derivative contracts);
  - (3) solicit proxies from securityholders in NPR, solicit support from securityholders in NPR for any proposal by BWP RE or any of its Associates, or otherwise seek to influence or control the management or policies of NPR (including seeking to call, or seeking support for the calling of, a general meeting of the securityholders of NPR);
  - (4) enter into any arrangements in relation to NPR or any business of it with any person who has a relevant interest in, or who holds, directly or indirectly, securities of NPR; or
  - (5) aid, abet, counsel or induce any other person to do any of the things mentioned in clauses 15.3(a)(1).
- (b) If a Competing Proposal for NPR becomes public, nothing in clause 15.3(a) prevents BWP RE or an Associate from acquiring a relevant interest in the securities in NPR, provided the price and terms of that acquisition are no less favourable to NPR securityholders than the price and terms outlined in the Offer.



## 16 Break Fee

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### 16.1 Background to Break Fee

- (a) Each party acknowledges that, if they enter into this deed and the Takeover Bid is subsequently not implemented, BWP RE will incur significant costs, including those set out in clause 16.4.
- (b) In these circumstances, the parties have agreed that provision be made for the payment outlined in clauses 16.2, without which BWP RE would not have entered into this deed or otherwise agreed to implement the Takeover Bid.
- (c) Newmark RE and the IBC believe, having taken advice from its external legal adviser, that the implementation of the Takeover Bid will provide benefits to NPR Unitholders, and that it is reasonable that Newmark RE agree to the payments referred to in clause 16.2 in order to secure BWP RE's participation in the Transaction.

### 16.2 Break Fee triggers

Subject to this clause 16, Newmark RE must pay the Break Fee to BWP RE, if, before the end of the Exclusivity Period:

- (a) BWP RE has terminated this deed in accordance with clause 17.1(b)(1), unless:
  - (1) Newmark RE is entitled to terminate this deed pursuant to clauses 17.1(a), 17.1(c)(3), 17.1(c)(4), 17.1(c)(5) or 17.2(b), and has given the appropriate termination notice to BWP RE; or
  - (2) the withdrawal or adverse change or modification to the relevant recommendation by members of the IBC is permitted under clause 3.2(a)(2);
- (b) a Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party completes a Competing Proposal; or
- (c) BWP RE has terminated this deed pursuant to clauses 17.1(a) or 17.2(a) and the Transaction does not complete, other than where Newmark RE has the right to terminate pursuant to clauses 17.1(a), 17.1(c)(3), 17.1(c)(4), 17.1(c)(5) or 17.2(b).

### 16.3 Timing of payment of Break Fee

- (a) A demand by BWP RE for payment of the Break Fee under clause 16.2 must:
  - (1) be in writing;
  - (2) be made after the occurrence of the event in that clause giving rise to the right to payment and termination of this deed;
  - (3) state the circumstances which give rise to the demand; and
  - (4) nominate an account into which Newmark RE is to pay the Break Fee.
- (b) Newmark RE must pay the Break Fee into the account nominated by BWP RE, without set-off or withholding, within 30 Business Days after receiving a demand for payment where BWP RE is entitled under clause 16.2 to the Break Fee.



## 16.4 Basis of Break Fee

The Break Fee has been calculated to reimburse BWP RE for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction;
- (d) out of pocket expenses incurred by BWP RE and BWP RE's employees, Advisers and agents in planning and implementing the Transaction;
- (e) any damage to BWP RE's reputation associated with a failed transaction and the implications of that damage to the BWP business,

and the parties agree that:

- (f) the costs actually incurred by BWP RE will be of such a nature that they cannot all be accurately ascertained; and
- (g) the Break Fee is a genuine and reasonable pre-estimate of those costs.

## 16.5 Compliance with law

- (a) This clause 16 does not impose an obligation on Newmark RE to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee is determined to be unenforceable or unlawful by a court, and BWP RE will refund to Newmark RE within 5 Business Days any amount in excess of its obligation under this clause that Newmark RE has already paid to BWP RE when that determination is made (unless otherwise required by a court).
- (b) For the avoidance of doubt, any part of the Break Fee that is not unenforceable or unlawful (as applicable) must be paid by Newmark RE.
- (c) The parties must not make or cause to be made, any application to a court for or in relation to a determination referred to in clause 16.5(a).

## 16.6 Break Fee payable only once

Where the Break Fee becomes payable to BWP RE under clause 16.2 and is actually paid to BWP RE, BWP RE cannot make any claim against Newmark RE for payment of any subsequent Break Fee.

## 16.7 Other Claims

Other than in respect of a material breach of this deed which Newmark RE has failed to remedy within 10 Business Days (or any shorter period ending at the end of the Offer Period) after notice is given of such breach, the maximum aggregate liability of Newmark RE for any claims under this deed is the Break Fee and in no event will the aggregate liability of Newmark RE for Claims under this deed and in connection with the Transaction or the Takeover Bid exceed the Break Fee.



## 16.8 No Break Fee if Takeover Bid Effective

Despite anything to the contrary in this deed, the Break Fee will not be payable to BWP RE if the Takeover Bid becomes unconditional and, if any amount or part of the Break Fee has already been paid it must be refunded by BWP RE within 5 Business Days after the Takeover Bid becomes unconditional.

## 17 Termination

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### 17.1 Termination for material breach

- (a) Either party may terminate this deed by written notice to the other party if at any time before the end of the Offer Period:
- (1) other than in respect of a breach of either a BWP Representation and Warranty or a NPR Representation and Warranty (which are dealt with in clause 17.2), the other party has materially breached this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 10 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given (in which case termination under this clause 17.1(a)(1) will take effect at the expiry of that period); or
  - (2) a court or Government Agency has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits the Takeover Bid, and the action is final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of a successful appeal or review.
- (b) BWP RE may terminate this deed by written notice to Newmark RE at any time before the end of the Offer Period if:
- (1) any IBC member:
    - (A) adversely changes, withdraws or adversely modifies their recommendation that NPR Unitholders accept the Offer to be made to them under the Takeover Bid; or
    - (B) makes a public statement that he or she no longer recommends the Takeover Bid or recommends a Competing Proposal (but excluding a statement that NPR Unitholders should take no action pending the assessment of the Competing Proposal by the IBC);
  - (2) a NPR Prescribed Occurrence occurs; or
  - (3) a NPR Material Adverse Change occurs.
- (c) Newmark RE may terminate this deed by written notice to BWP RE at any time before the end of the Offer Period if:
- (1) Newmark RE enters into a legally binding agreement with a Third Party to undertake or give effect to an actual Superior Proposal where permitted by, and in accordance with, this deed;
  - (2) a majority of IBC:



- (A) adversely change, withdraw or adversely modify their recommendation that NPR Unitholders accept the Offer to be made to them under the Takeover Bid; or
- (B) recommend a Competing Proposal (but excluding a statement that NPR Unitholders should take no action pending the assessment of the Competing Proposal by the IBC),

where permitted by, and in accordance with, this deed;

- (3) a BWP Material Adverse Change occurs;
- (4) a BWP Prescribed Occurrence occurs; or
- (5) BWP applies to ASIC for consent to withdraw unaccepted Offers under the Corporations Act.

## 17.2 Termination for breach of representations and warranties

- (a) BWP RE may, at any time before the end of the Offer Period, terminate this deed for material breach of a NPR Representation and Warranty only if:
  - (1) BWP RE has given written notice to Newmark RE setting out the relevant circumstances and stating an intention to terminate this deed;
  - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given under clause 17.2(a)(1); and
  - (3) the relevant breach is material in the context of the Takeover Bid taken as a whole.
- (b) Newmark RE may, at any time before the end of the Offer Period, terminate this deed for material breach of a BWP Representation and Warranty only if:
  - (1) Newmark RE has given written notice to BWP RE setting out the relevant circumstances and stating an intention to terminate this deed;
  - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given under clause 17.2(b)(1); and
  - (3) the relevant breach is material in the context of the Takeover Bid taken as a whole.

## 17.3 Automatic termination

This deed automatically terminates upon expiry of the Offer Period.

## 17.4 Effect of termination

If this deed is terminated by a party under clauses 17.1, 17.2 or 17.3:

- (a) each party will be released from its obligations under this deed, except that this clause 17.4, and clauses 1 (Definitions and interpretation), 10 (Representations and warranties), 11 (Releases), 12 (Confidentiality), 16 (Break Fee), 18 (Limitation of liability), 19 (Duty, costs and expenses) and 22 (General) (except 22.7) will survive termination and remain in force;





- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed;
- (c) unless this deed is terminated under clause 17.1(c)(5) and ASIC grants the consent, termination of this deed does not permit BWP to withdraw the Takeover Bid; and
- (d) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

## 17.5 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating this deed and otherwise complies with the requirements of the relevant clause of this deed.

## 17.6 No other termination

Neither party may terminate or rescind this deed, except as permitted under clauses 17.1, 17.2 or 17.3.

# 18 Limitation of liability

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## 18.1 NPR limitation of liability

- (a) Newmark RE enters into this deed solely in its capacity as responsible entity of NPR.
- (b) In this deed:
  - (1) a reference to Newmark RE is a reference to Newmark RE in its capacity as responsible entity of NPR only and in no other capacity; and
  - (2) a reference to the undertaking, assets, business, money or any other thing of or in relation to Newmark RE is a reference to such undertaking, assets, business, money or other thing of or in relation to Newmark RE in its capacity as responsible entity of NPR only and in no other capacity.
- (c) A liability arising under or in connection with this deed is limited to and can be enforced against Newmark RE only to the extent to which it can be and is in fact satisfied out of property of NPR out of which Newmark RE is actually indemnified for the liability. This limitation of Newmark RE's liability applies despite any other provision of this deed and extends to all liabilities and obligations of Newmark RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party may sue Newmark RE in any capacity other than as responsible entity of NPR, including seeking the appointment of a receiver (except in relation to property of NPR) a liquidator, an administrator or any similar person to NPR or proving in any liquidation, administration or arrangement of or affecting NPR (except in relation to property of NPR).



- (e) These provisions do not apply to any obligation or liability of Newmark RE to the extent that it is not satisfied because under the constitution establishing NPR, or by operation of law, there is a reduction in the extent of Newmark RE's indemnification out of the assets of NPR, as a result of Newmark RE's failure to perform its duties as responsible entity of NPR.
- (f) Nothing in clause 18.1 will make Newmark RE liable to any Claim for an amount greater than the amount which Newmark RE would have been able to Claim and recover from the assets of NPR in relation to the relevant liability if Newmark RE's right of indemnification out of the assets of NPR had not been prejudiced by failure to properly perform its duties.
- (g) Newmark RE is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in this clause 18.1.

## 18.2 BWP limitation of liability

- (a) BWP RE enters into this deed solely in its capacity as responsible entity of BWP.
- (b) In this deed:
  - (1) a reference to BWP RE is a reference to BWP RE in its capacity as responsible entity of BWP only and in no other capacity; and
  - (2) a reference to the undertaking, assets, business, money or any other thing of or in relation to BWP RE is a reference to such undertaking, assets, business, money or other thing of or in relation to BWP RE in its capacity as responsible entity of BWP only and in no other capacity.
- (c) A liability arising under or in connection with this deed is limited to and can be enforced against BWP RE only to the extent to which it can be and is in fact satisfied out of property of BWP out of which BWP RE is actually indemnified for the liability. This limitation of BWP RE's liability applies despite any other provision of this deed and extends to all liabilities and obligations of BWP RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party may sue BWP RE in any capacity other than as responsible entity of BWP, including seeking the appointment of a receiver (except in relation to property of BWP) a liquidator, an administrator or any similar person to BWP or proving in any liquidation, administration or arrangement of or affecting BWP (except in relation to property of BWP).
- (e) These provisions do not apply to any obligation or liability of BWP RE to the extent that it is not satisfied because under the constitution establishing BWP, or by operation of law, there is a reduction in the extent of BWP RE's indemnification out of the assets of BWP, as a result of BWP RE's failure to perform its duties as responsible entity of BWP.
- (f) Nothing in clause 18.2 will make BWP RE liable to any Claim for an amount greater than the amount which BWP RE would have been able to Claim and recover from the assets of BWP in relation to the relevant liability if BWP RE's right of indemnification out of the assets of BWP had not been prejudiced by failure to properly perform its duties.



- (g) BWP RE is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in this clause 18.2.

## 19 Duty, costs and expenses

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### 19.1 Stamp duty

BWP RE:

- (a) must pay all stamp duty and duty imposed in any jurisdiction and any interest, fines and penalties with respect to stamp duty or duty in respect of this deed, or the Takeover Bid or the transaction contemplated by this deed or the Takeover Bid; and
- (b) indemnifies Newmark RE against any liability arising from its failure to comply with clause 19.1(a).

### 19.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

## 20 GST

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- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 20(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 20(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 20(b):
- (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and



- (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

## 21 Notices

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### 21.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party as nominated below (or any alternative details nominated to the sending party by Notice):

#### **Newmark RE**

Attention: [REDACTED]

Email: [REDACTED]

Delivery address: [REDACTED]

With a copy to [REDACTED]

Copy to: [REDACTED]

Attention: [REDACTED]

Email: [REDACTED]

#### **BWP RE**



Delivery address: [REDACTED]

Email: [REDACTED]

Attention: [REDACTED]

Copy to: [REDACTED]

Copy to: [REDACTED]

Attention: [REDACTED]

Email: [REDACTED]

## 21.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By email to the nominated email address	When the party sending the email receives notification that the email was successfully transmitted and read by the receiving party, or if no such notification is received, four hours after the email was sent, unless the party sending the email receives notification that the email was not successfully transmitted.

## 22 General

### 22.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives 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.



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## 22.2 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

## 22.3 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 22.3(a) does not apply where enforcement of the provision of this deed in accordance with clause 22.3(a) would materially affect the nature or effect of the parties' obligations under this deed.

## 22.4 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 22.4 are set out below.

Term	Meaning
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## 22.5 Variation

A variation of any term of this deed must be in writing and signed by the parties.

## 22.6 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 22.6(a) by a party shall be deemed to be a material breach for the purposes of clause 17.1.
- (c) Clause 22.6(b) does not affect the construction of any other part of this deed.



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## **22.7 Further action to be taken at each party's own expense**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

## **22.8 Entire agreement**

This deed, together with the Confidentiality Deed and all other documents referred to in this deed or initialled by or on behalf of the parties on or about the date of this deed, states all the express terms agreed by the parties in respect of its subject matter. These supersede all prior discussions, negotiations, understandings and agreements in respect of its subject matter (other than the Confidentiality Deed (excluding any inconsistent provisions)).

## **22.9 Counterparts**

This deed may be executed in any number of counterparts.

## **22.10 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

## **22.11 Remedies cumulative**

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

## **22.12 Exercise of rights**

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.
- (c) An obligation to act reasonably (or not unreasonably) under this deed is taken to refer to an obligation to act reasonably (or not unreasonably) in the context of the parties' intentions to implement the Transaction on the terms of this deed.



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## Schedules

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## Schedule 1

### NPR Representations and Warranties

---

Newmark RE represents and warrants to BWP RE (in its own right and separately as trustee or nominee for each of the other BWP Indemnified Parties) that:

- (a) **NPR Information:** the NPR Information contained in the Disclosure Documents will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of NPR Information:** the NPR Information:
  - (1) will be prepared and included in the Disclosure Documents in good faith and on the understanding that BWP RE and each other BWP Indemnified Party will rely on that information for the purpose of determining to proceed with the Transaction; and
  - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations and applicable guidance from a Government Agency and the Takeovers Panel;
- (c) **capital structure:** as at the date of this deed, NPR has 177,819,763 NPR Units on issue and there are no other securities in NPR issued and outstanding as at the date of this deed;
- (d) **validly existing:** it is:
  - (1) a validly existing corporation registered under the laws of its place of incorporation;
  - (2) validly appointed as trustee of each of the NHT and CPT, it is the sole trustee of each of NHT and CPT, and no action has been taken to remove or replace it as the trustee of either NHT or CPT;
  - (3) not in default under the terms of the NHT Constitution or CPT Constitution and has no notice of any circumstances which will or are reasonably likely to lead to the removal of Newmark RE as trustee of either NHT or CPT; and
  - (4) no action has been taken or proposed to either terminate NHT or CPT or wind up NHT or CPT, whether by Chapter 5C of the Corporations Act or otherwise;
- (e) **registered scheme:** each of CPT and NHT is validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act;
- (f) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Newmark RE and Newmark RE has taken or will take all necessary corporate action to authorise the performance by Newmark RE of this deed and the transactions contemplated by this deed;
- (g) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;



- (h) **regulatory action:** as at the date of this deed, no regulatory action of any nature of which Newmark 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;
- (i) **financial statements:** as far as it is aware, there has not been any event, change, effect or development that would require it to restate the NPR's financial statements as disclosed to ASX, and NPR's financial statements for the financial year ended 30 June 2023:
- (1) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, the Accounting Standards and all other applicable laws and regulations; and
  - (2) give a true and fair view of the financial position and the assets and liabilities of the NPR Group;
- (j) **litigation:** there are no current material actions, suits, arbitrations or legal or administrative proceedings against any member of the NPR Group (including custodians or trustees of entities in the NPR Group in their capacity as such) and, as far as it is aware:
- (1) there are no:
    - (A) current, pending or threatened material claims, disputes or demands; or
    - (B) pending or threatened material actions, suits, arbitrations or legal or administrative proceedings,
 in each case against any member of the NPR Group; and
  - (2) no member of the NPR Group is the specific focus of any material formal investigation by a Government Agency (not being an industrywide investigation);
- (k) **NPR Material Contracts:** as far as it is aware, no member of the NPR Group is in material default under a NPR Material Contract to which it is a party, and nothing has occurred which is (or would be following the giving of notice or the lapse of time) an event of default or would give another party a termination right or right to accelerate any material right or obligation under any NPR Material Contract;
- (l) **deed binding:** this deed is a valid and binding obligation of Newmark RE, enforceable in accordance with its terms, and does not result in a breach of or default under the constituent documents of Newmark RE or NPR;
- (m) **continuous disclosure:** Newmark RE has complied in all material respects with its continuous disclosure obligations under the Corporations Act;
- (n) **no unitholder approval:** it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from the NPR Unitholders in order to execute and perform this deed; and
- (o) **Disclosure Materials:** it has collated and made available all of the NPR Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as Newmark RE is aware, the NPR Disclosure Materials have been collated in accordance with BWP RE's information request with all reasonable care and skill and are accurate in all material respects and not materially misleading (including by omission). For the purpose of this clause (o), the NPR Disclosure Materials are deemed not to include any information, document, representation, statement, view or opinion to the extent that it



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contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed.



## Schedule 2

### BWP Representations and Warranties

---

BWP RE represents and warrants to Newmark RE (in its own right and separately as trustee or nominee for each of the other NPR Indemnified Parties) that:

- (a) **BWP Information:** the BWP Information provided for inclusion in the Disclosure Documents will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of BWP Information:** the BWP Information:
  - (1) will be provided to Newmark RE in good faith and on the understanding that Newmark RE and each other NPR Indemnified Party will rely on that information for the purposes of preparing the Disclosure Documents; and
  - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations and applicable guidance from a Government Agency;
- (c) **capital structure:** as at the date of this deed, BWP has 642,383,803 BWP Units on issue and there are no other securities in BWP issued and outstanding as at the date of this deed;
- (d) **validly existing:** it is:
  - (1) a validly existing corporation registered under the laws of its place of incorporation;
  - (2) validly appointed trustee of BWP, it is the sole trustee BWP, and no action has been taken to remove or replace it as the trustee of BWP;
  - (3) not in default under the terms of the BWP Constitution and has no notice of any circumstances which will or are reasonably likely to lead to the removal of BWP RE as trustee of BWP; and
  - (4) no action has been taken or proposed to either terminate BWP or wind up BWP, whether by Chapter 5C of the Corporations Act or otherwise;
- (e) **registered scheme:** BWP is a validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act;
- (f) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of BWP RE, and BWP RE has taken or will take all necessary corporate action to authorise the performance of this deed and the transactions contemplated by this deed;
- (g) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (h) **regulatory action:** as at the date of this deed, no regulatory action of any nature of which BWP 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;



- (i) **financial statements:** as far as it is aware, there has not been any event, change, effect or development that would require it to restate BWP's financial statements as disclosed to ASX, and BWP's financial statements for the financial year ended 30 June 2023:
- (1) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, the Accounting Standards and all other applicable laws and regulations; and
  - (2) give a true and fair view of the financial position and the assets and liabilities of the BWP Group;
- (j) **litigation:** there are no current material actions, suits, arbitrations or legal or administrative proceedings against any member of the BWP Group (including custodians or trustees of entities in the BWP Group in their capacity as such) and, as far as it is aware:
- (1) there are no:
    - (A) current, pending or threatened material claims, disputes or demands; or
    - (B) pending or threatened material actions, suits, arbitrations or legal or administrative proceedings,
 in each case against any member of the BWP Group; and
  - (2) no member of the BWP Group is the specific focus of any material formal investigation by a Government Agency (not being an industrywide investigation);
- (k) **BWP Material Contracts:** as far as it is aware, no member of the BWP Group is in material default under a BWP Material Contract to which it is a party, and nothing has occurred which is (or would be following the giving of notice or the lapse of time) an event of default or would give another party a termination right or right to accelerate any material right or obligation under any BWP Material Contract;
- (l) **deed binding:** this deed is a valid and binding obligation of BWP RE, enforceable in accordance with its terms, and does not result in a breach of or default under the constituent documents of BWP RE or BWP;
- (m) **continuous disclosure:** BWP RE has complied in all material respects with its continuous disclosure obligations under the Corporations Act;
- (n) **no unitholder approval:** it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from the BWP Unitholders in order to execute and perform this deed; and
- (o) **Disclosure Materials:** it has collated and made available all of the BWP Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as BWP RE is aware, the BWP Disclosure Materials have been collated in accordance with Newmark RE's information request with all reasonable care and skill and are accurate in all material respects and not materially misleading (including by omission). For the purpose of this clause (o), the BWP Disclosure Materials are deemed not to include any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed.



## Schedule 3

### Agreed Bid Terms

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#### 1 Consideration

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- (a) The consideration under the Offer is 0.40 BWP Units for each NPR Unit.
- (b) If the number of NPR Units held by a NPR Unitholder means that their aggregate entitlement to BWP Units is not a whole number, any fractional entitlement will be rounded down or up (as applicable) to the nearest whole number.
- (c) Each BWP Unit issued as consideration under the Offers:
  - (1) will rank equally in all respects with all other BWP Units on issue;
  - (2) carry the right to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of BWP Units on and from the date of issue; and
  - (3) will be fully paid and free from any Security Interest or encumbrance.
- (d) BWP RE must:
  - (1) ensure that the BWP Units to which an Ineligible Foreign Unitholder would otherwise have been entitled will be issued to a nominee appointed by BWP RE;
  - (2) procure that, as soon as reasonably practicable and in any event not more than 20 Business Days after the issue date, such nominee:
    - (A) sells all of the BWP Units issued to the nominee in the ordinary course of trading on ASX and in such manner, at such price and on such other terms as the nominee reasonably determines; and
    - (B) remits to BWP RE the proceeds of sale (after deducting any reasonable brokerage or other selling costs, taxes and charges); and
  - (3) promptly pay to each Ineligible Foreign Unitholder the proportion of the net proceeds of sale received by BWP RE to which that Ineligible Foreign Unitholder is entitled.
- (e) BWP RE must:
  - (1) ensure that the BWP Units to which an Unmarketable Parcel Unitholder would otherwise have been entitled will be issued to a nominee appointed by BWP RE;
  - (2) procure that, as soon as reasonably practicable and in any event not more than 20 Business Days after the issue date, such nominee:
    - (A) sells all of the BWP Units issued to the nominee in the ordinary course of trading on ASX and in such manner, at



- such price and on such other terms as the nominee reasonably determines; and
- (B) remits to BWP RE the proceeds of sale (after deducting any reasonable brokerage or other selling costs, taxes and charges); and
- (3) promptly pay to each Unmarketable Parcel Unitholder the proportion of the net proceeds of sale received by BWP RE to which that Unmarketable Parcel Unitholder is entitled.
- (f) If the Takeover Bid becomes unconditional, BWP RE will provide the consideration under the Offer to accepting NPR Unitholders within 5 Business Days of the later of acceptance and the Takeover Bid becoming unconditional.

## 2 Offer Period

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The initial Offer Period must end no later than the End Date.

## 3 Bid Conditions

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### 3.1 Minimum acceptance

At the end of the Offer Period, BWP RE has a Relevant Interest in at least 50.1% of NPR Units on issue (including a Relevant Interest in any NPR Units the subject of any agreement between BWP RE and any NPR Unitholder).

### 3.2 Regulatory Approvals

Before the end of the Offer Period, all approvals or consents that are required by law, or by any public authority, as are necessary to permit:

- (a) the Offer to be lawfully made to and accepted by NPR Unitholders; and
- (b) the Takeover Bid to be completed,

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same.

### 3.3 No restraints

Between the Announcement Date and the end of the Offer Period, no temporary restraining order, preliminary or permanent injunction or other order, in each case issued by a court of competent jurisdiction in Australia in a proceeding brought by a Government Agency is in effect preventing or delaying the Transaction, unless such order or injunction has been disposed of to the satisfaction of Newmark RE and BWP RE acting reasonably and in good faith.



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### **3.4 NPR Prescribed Occurrence**

Between the Announcement Date and the end of the Offer Period (each inclusive), no NPR Prescribed Occurrence occurs.

### **3.5 NPR Material Adverse Change**

Between the Announcement Date and the end of the Offer Period (each inclusive), no NPR Material Adverse Change occurs.

### **3.6 ASX listing**

Between the Announcement Date and the end of the Offer Period (each inclusive) the BWP Units to be issued under the Takeover Bid are approved for official quotation by ASX (provided that any such approval may be subject to the customary conditions) and that approval remains in full force and effect in all respects (subject to those customary conditions), and has not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing).

### **3.7 Third Party consents**

Between the Announcement Date and the end of the Offer Period (each inclusive), Newmark RE has obtained the consent of Westpac Banking Corporation and Commonwealth Bank of Australia under its existing debt facilities to the acquisition by BWP RE of more than 20% of NPR Units on issue pursuant to the Takeover Bid and to any change of responsible entity of NPR, or change of trustee of any NPR Group Member, by BWP or a member of the BWP Group.





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# Signing page

Executed as a deed


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## Newmark RE

Signed sealed and delivered by  
**Newmark REIT Management  
Limited as responsible entity of  
each of Newmark Capital  
(Chadstone) Property Trust and  
Newmark Hardware Trust**

*sign here* ► 

*print name* 

*sign here* ►   
Director

*print name* 

## BWP RE

Signed sealed and delivered by  
**BWP Management Limited as  
responsible entity for BWP  
Trust**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_



HERBERT  
SMITH  
FREEHILLS

# Signing page

Executed as a deed

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Limited as responsible entity of  
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Newmark Hardware Trust**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

*print name* \_\_\_\_\_

## BWP RE

Signed sealed and delivered by  
**BWP Management Limited as  
responsible entity for BWP  
Trust**  
by

*sign here* ► DocuSigned by:  
[Redacted Signature] \_\_\_\_\_  
Company Secretary/Director

*sign here* ► [Redacted Signature] \_\_\_\_\_  
Director

*print name* [Redacted Name] \_\_\_\_\_

*print name* [Redacted Name] \_\_\_\_\_