
Constitution
Convenience Retail REIT No. 1

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Date:

Operative provisions:

This deed poll is declared by APN Funds Management Limited to be the constitution of the Convenience Retail REIT No. 1.

1 Name of Trust

1.1 Initial name

The Trust is called the Convenience Retail REIT No.1 or by such other name as the Manager determines from time to time.

1.2 Change of name

If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business. The name must be changed within 2 months of the retirement or removal.

2 Assets held on trust

2.1 Manager to hold assets

The Manager must hold the Assets on trust for Members.

2.2 Assets vest in Manager

The Assets vest in the Manager, but must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires.

3 Units

3.1 Nature of Units

The beneficial interest in the Trust is divided into Units.

3.2 Classes of Units confer equal, undivided interest

Subject to the rights, obligations or restrictions attaching to any particular Unit or Class, each Unit confers an equal undivided interest.

3.3 Interest conferred

Subject to any rights, obligations or restrictions attaching to any particular Unit or Class, a Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

3.4 Classes

- (a) Subject to clause 4 and section 601FC(1)(d) of the Corporations Act, the Manager may create and issue Classes with such rights, obligations and restrictions
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attaching to the Units of such Classes as it determines and may provide for conversion of Units from one Class to another Class. The rights of a Member under this constitution are subject to the rights, obligations and restrictions attaching to any particular Unit of a Class which they hold.

- (b) Subject to clause 4, the Manager may only vary or cancel the rights attaching to Units in a class of Units by special resolution of the Members together with a Resolution passed at a meeting of the class of Unit Holders whose rights are being varied or cancelled where the Required Majority is 75%.

3.5 Fractions of Units

- (a) Fractions of a Unit may be issued by the Manager.
- (b) While Stapling applies, fractional Units may only be issued if a fraction of an Attached Security Stapled to the fractional Unit is also issued.

3.6 Rounding

Where any calculation performed under this constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Manager determines.

3.7 Fractions = proportional interest

The provisions of the constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.

3.8 Rounding amounts

Any excess application or other money or property which results from rounding becomes an Asset.

3.9 Consolidation and division of Units

- (a) Units may be consolidated or divided as determined by the Manager.
- (b) While Stapling applies, Units may only be consolidated or divided if the Attached Securities Stapled to those Units are also consolidated or divided at the same time and to the same extent.

3.10 Options

- (a) The Manager may create and issue Options on such terms and conditions as the Manager determines. Options may be issued with Units or separately.
- (b) On the exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of the issue of the Option contemplate.
- (c) Subject to this Constitution, the Corporations Act (and the conditions of any applicable ASIC Exemption from it) and, if relevant, the Listing Rules, the Manager may determine that Options will be issued:
 - (i) for consideration or no consideration;

- (ii) on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Manager, provided that the exercise price is not less than 50% of the price that would otherwise apply under this Constitution; and
 - (iii) conferring on the Option Holder such other entitlements under this Constitution as the Manager determines, and otherwise on terms and conditions and with such entitlements as determined by the Manager. The terms of issue of the Option may allow the Manager to buy back the Options.
- (d) Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC Exemption from it), if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia and New Zealand.

3.11 Exercise of Options

- (a) On exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.
- (b) While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.
- (c) A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit or that Class of Unit. An Option Holder holds the Option subject to the terms and conditions attaching to that Option.

3.12 Reorganisation and division of Units and Options

- (a) Subject to the Listing Rules and the Corporations Act, Units and Options may be consolidated, divided or converted in a ratio as determined by the Manager (**Reorganisation**). If any Unit is a Partly Paid Unit at the time of Reorganisation the unpaid amount of the Issue Price and any instalment payable in respect thereof will be amended in the same ratio.
- (b) Each Member, by subscribing for or taking a transfer of, or otherwise acquiring, a Unit or Option will be taken to have consented to Reorganisations.
- (c) To effect any Reorganisation of a Unit or Option of a Member, the Member appoints the Manager as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary, desirable or reasonably incidental to effect the Reorganisation of the Unit or Option.

3.13 Required Information

- (a) Each Member must provide to the Manager any information requested by the Manager (**Required Information**) in a notice sent to the Member (a **Required Information Request**).

- (b) Subject to clause 3.13(c):
 - (i) the Manager may issue Required Information Requests at any time and may issue supplementary Required Information Requests seeking more information; and
 - (ii) each Member authorises the Manager to use Required Information in any way, including providing it to third parties.
- (c) The Manager may only issue a Required Information Request if it believes the Required Information is necessary to:
 - (i) comply with any law of Australia (including AML Legislation) or any other jurisdiction or a request for information by a Government Authority where that request is binding on the Manager;
 - (ii) avoid amounts being withheld from any payments to the Trust or any Member; or
 - (iii) lessen the risk of the Trust or any Member suffering a material detriment (whether or not financial),and the Required Information Request specifies a reasonable period within which the Member must provide the Required Information.
- (d) If any Required Information is not provided by the Member within the time and in the manner specified in a Required Information Request then, despite any other provision of this Constitution, the Member must indemnify the Manager for any loss suffered by the Manager in relation to the Member's failure to provide the Required Information.
- (e) Each Member undertakes that any payment of money by the Manager in accordance with instructions provided by the Member (or any agent of the Member) will not breach any law of Australia or any other jurisdiction.
- (f) The Manager may enter into agreements with any Government Authority in any jurisdiction where the Manager believes it is reasonably necessary to do so to:
 - (i) avoid amounts being withheld from any payments to the Trust or any Member; or
 - (ii) lessen the risk of the Trust or any Member suffering a material detriment (whether or not financial).
- (g) If the Manager is required to provide any information about Members under any agreement made with a Government Authority then, to the extent permitted by Law, each Member consents to the Manager providing that information.

3.14 Joint Holders of Units

Where two or more persons are registered as Holders they are, for the purpose of the administration of the Trust and not otherwise, deemed to hold the Unit as joint tenants, on the following conditions:

- (a) the Manager shall not be bound to register more than three persons as joint Holders;

- (b) the joint Holders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of the Unit;
- (c) on the death of a joint Holder, the survivor or survivors shall be the only person or persons whom the Manager will recognise as having any title to the Unit, subject to the production of any evidence of death that the Manager requires;
- (d) any one of the joint Holders may give an effective receipt that discharges the Manager in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint Holders or a Unit shall be entitled to delivery of any notices, cheques or other communications from the Manager, and any notice, cheque or other communication given to that person is deemed to be given to all the joint Holders;
- (f) unless the Manager determines otherwise.

3.15 Capital Reallocation Issue

- (a) Despite any other provision of this Constitution, the Manager may at any time issue Units (**Capital Reallocation Units**) in either of the following circumstances:
 - (i) a Stapled Entity (or, where the Stapled Entity is a trust, the trustee of that Stapled Entity) makes an application for Capital Reallocation Units as agent for all the holders of Stapled Securities and compulsorily applies a distribution of capital paid out of the Stapled Entity towards the application moneys for those Capital Reallocation Units; or
 - (ii) a Stapled Entity makes an application for Capital Reallocation Units out of distribution of capital paid out of the Stapled Entity and the Manager is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to the holders of Stapled Securities.
- (b) The Manager must immediately consolidate the Capital Reallocation Units issued under clause 3.15(a) with all other Units then on issue in the Trust such that the total number of Units on issue after the consolidation is equal to the total number of Units on issue prior to the issue of the Capital Reallocation Units taking place.
- (c) Capital Reallocation Units issued under this clause will be issued at an Issue Price equal to the amount calculated by dividing the total amount received in relation to the application by the number of Units then on issue in the Trust.

3.16 Reinvestment

Subject to clauses 4.1 and 4.10, the Manager may, at its absolute discretion, allow a Member to reinvest some or all of the Member's Distribution Entitlement by acquiring Units under a distribution reinvestment plan on terms and conditions prescribed by the Manager

3A Application of the AMIT Regime to the Trust

- (a) If the Trust meets the qualification requirements set out in the AMIT Regime, the Manager may make an AMIT Choice.

- (b) If an AMIT Choice is made, then subject to clause 3A(c), the provisions in Schedule 1 will prevail over any other provisions of this Constitution to the extent of any inconsistency, if such an inconsistency is not adverse to Members' rights.
- (c) If the Trust ceases to be an AMIT for any reason, including but not limited to the Trust ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
 - (i) the provisions of Schedule 1, except those in clause 1 of the Schedule 1 which will continue to be applied by the Manager, will cease to apply to the extent that they are not permitted to operate or are not relevant to the Trust when it is not an AMIT; and
 - (ii) any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Trust.
- (d) Nothing in this clause 3A imposes an obligation on the Manager to:
 - (i) enter into or facilitate the entry of the Trust into the AMIT Regime;
 - (ii) make any changes to this Constitution; or
 - (iii) make an AMIT Choice.

4 Issue Price for Units

4.1 Method of calculation while units are not Officially Quoted

Whether Units are Stapled or not and while the Units are not Officially Quoted, a Unit must only be issued at an Issue Price calculated as:

$$\frac{\text{(Net Asset Value + Transaction Costs)}}{\text{the number of Units in issue}}$$

4.2 Timing of determination

Each of the variables in clause 4.1 must be determined:

- (a) as at the first Valuation Time after the later of the day on which the Manager:
 - (i) accepts the completed application for Units; or
 - (ii) receives the application money, or the property against which the Units are to be issued is vested in the Manager; or
- (b) in the case of a Unit issued under a distribution reinvestment plan, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated.

4.3 Issue Price while Units are Officially Quoted

A Unit must only be issued at an Issue Price:

- (a) subject to paragraphs (b), (c), (d) and (e) of this clause 4.3 or any other ASIC Instrument, for a Unit while Units are Officially Quoted will be determined by the Manager and will be the Market Price of the Units or, where Stapling applies, the

Market Price of the Stapled Securities minus the Issue Price of each Attached Security or the amount determined by the Manager in accordance with clause 4.11 or clause 4.6; and

- (b) in the case of a rights issue while Units are Officially Quoted, in accordance with clause 4.7;
- (c) in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 4.8;
- (d) in the case of an interest purchase plan in relation to Units while Units are Officially Quoted, in accordance with clause 4.9;
- (e) in the case of a reinvestment of income while Units are Officially Quoted, in accordance with clause 4.10; and
- (f) in the case of Units issued on the exercise of an Option calculated in accordance with the terms and conditions of that Option.

4.4 Issue of Units to acquire an investment

- (a) Subject to clause 4.4(b):
 - (i) where Units that are not Officially Quoted are consideration (in whole or in part) for the acquisition of an investment (on behalf of the Trust), the Issue Price for those Units must be calculated in accordance with clause 4.1 on the date of the agreement under which there will be an issue of Units; and
 - (ii) where Stapled Securities or Units that are Officially Quoted are consideration (in whole or in part) for the acquisition of an investment on behalf of the Trust, the Issue Price for those Stapled Securities or Units must be the Market Price calculated on the day which is 5 Business Days prior to the day on which the Manager publicly announces the proposed transaction under which there will be an issue of the Stapled Securities or Units (or if there is no such announcement, 5 Business Days prior to the date of the agreement under which there will be an issue of the Stapled Securities or Units).
- (b) The Manager may determine a different Issue Price in relation to some or all Stapled Securities or Units to the extent permitted by and in accordance with the Corporations Act, Listing Rules and any applicable ASIC Exemption.
- (c) For the purposes of clause 4.4, the day and time of receipt of an application for Units is:
 - (i) the time of actual receipt if the application is received before the Prescribed Time on a Business day; or
 - (ii) the time of deemed receipt if the application is deemed to be received before the Prescribed Time on a Business Day; or
 - (iii) the commencement of business on the next following Business Day if the application is received or is deemed to be received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

- (d) While Stapling applies, the Manager must only issue Units to acquire an investment on behalf of the Trust if there is a corresponding issue of an identical number of Attached Securities.

4.5 Rounding

The Issue Price of a Unit may be rounded as the Manager determines.

4.6 Initial Public Offering

The Manager may at any time issue Units to any person under an Initial Public Offering or to effect Stapling at a price and on terms determined by it provided that:

- (a) the Manager complies with any Listing Rules applicable to the issue and any applicable ASIC Exemption;
- (b) while Stapling applies an offer of Units under this clause 4.6 may only be accepted if the offeree at the same time accepts that offer of Units and the offer of Attached Securities referred to above;
- (c) the Units are issued at an Issue Price:
 - (i) of \$3; or
 - (ii) the price at which institutional bids, conducted in accordance with clause 4.6(d), for Units or Stapled Securities are accepted in respect of the Initial Public Offering;

less, in the case of Stapled Securities, the issue price of the Attached Securities offered under the offer document for an Initial Public Offering, reflecting the relevant stapling ratio disclosed in that offer document; and

- (d) if the Units are issued pursuant to an institutional bookbuild, the following procedure applies:
 - (i) the bookbuild is conducted by a bookrunner who holds appropriate qualifications and experience and is independent (and not an Associate of the Manager);
 - (ii) the Manager provides written notice to the bookrunner of the amount to be raised and why the Manager considers it is in the best interests of Members;
 - (iii) once the bookbuild is complete, the bookrunner certifies to the Manager that the price is fair for Members; and
 - (iv) the bookrunner certifies to the Manager that they have the requisite qualifications and expertise to conduct the bookbuild, that the bookbuild has been conducted in accordance with normal market practice, that the price is a fair issue price for the Units and the following matters were in fact taken into account in determining the price:
 - (A) the nature and size of the proposed offer of Units for which purpose the Issue Price of a Unit is being calculated;
 - (B) the circumstances in which the proposed offer of Units will be made; and

- (c) the interests of Members generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

4.7 Rights issues

The following provisions apply to rights issues:

- (a) while Units are Officially Quoted, the Manager may (subject to the terms of any applicable ASIC Exemption) offer further Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, provided that:
 - (i) all Members of a Class are offered Units at the same Issue Price on a pari passu basis (whether or not the right of entitlement is renounceable);
 - (ii) all the Units so offered are in the same Class; and
 - (iii) where it is proposed to issue Units at an Issue Price less than the price which would otherwise apply under clause 4.3(a), the relevant Issue Price is not less than 50% of that price which would otherwise apply to the Units, or where Stapling applies, the Market Price of Stapled Securities minus the Issue Price of each Attached Security (as determined under clause 4.11),but, subject to the Listing Rules, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia and New Zealand.
- (b) The Manager may adjust any entitlement to accord with the Listing Rules and in the case of fractions, in accordance with clause 3.6. Any Member may, unless the terms of issue provide otherwise, renounce its entitlement in favour of some other person.
- (c) Any Units offered under this clause 4.7 which are not subscribed for within the period during which the offer is capable of acceptance may be offered for subscription by the Manager to any person, provided that the Issue Price is not less than that at which Units were originally offered to Members. If an underwriter has underwritten any offer for subscription under this clause, the underwriter may take up any Units not subscribed for by the Member at the Issue Price referred to in this clause 4.7(c).
- (d) The Manager may make a priority offer in respect of any rights issue in accordance with the terms of any ASIC Exemption.

4.8 Placements

While Units are Officially Quoted, the Manager may at any time issue Units to any person, whether by way of a placement, at a price and on terms determined by it, provided that:

- (a) the Manager complies with the Listing Rules applicable to the issue and any applicable ASIC Exemption; and
- (b) in the case of Units issued subsequent to the exercise of an Option, the price will be calculated in accordance with the terms and conditions of the Option.

While Stapling applies, an offer of Units under this clause 4.8 may only be accepted if the offeree contemporaneously accepts that offer of Units and the offer of Attached Securities referred to in this clause 4.8.

4.9 Interest purchase plan

While Units are Officially Quoted, the Manager may at any time issue Units to Members by way of an interest purchase plan at a price and on terms determined by it, provided that the Manager complies with the Listing Rules applicable to the issue and any applicable ASIC Exemption.

4.10 Reinvestment

- (a) If reinvestment applies while the Units are Officially Quoted, the Issue Price for each additional Unit (or the aggregate of the Issue Price of each additional Unit and the Issue Price for the Attached Securities if Stapling applies) is the weighted average of all sales of Units (or, while Stapling applies Stapled Securities) recorded on the ASX during the first 5 Business Days following the end of the period to which the distribution relates (unless the Manager believes that this calculation does not provide a fair reflection of the Market Price of the Units or the Stapled Securities during this period in which event there shall be substituted for the amount so calculated the Market Price of the Units or the Stapled Securities as determined by an expert independent of the Manager whose identity and instructions will be determined by the Manager) less such discount, if any, not exceeding 10% as the Manager may determine.
- (b) While Stapling applies the allocation of the Issue Price for a Stapled Security between the Issue Price for each Unit and the Issue Price for the Attached Securities is to be determined in accordance with clause 4.11.
- (c) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Unit or Stapled Security the money representing the fraction will be held for future reinvestment in the Trust and, if applicable, the Stapled Entities at the next time that reinvestment is to occur (where Stapling applies in such proportions as the Manager and the Stapled Entities may determine on behalf of the relevant Stapled Security Holder).

4.11 Determination of Issue Price where Stapled Securities are issued

- (a) Where:
 - (i) Stapling applies;
 - (ii) as a consequence, a Unit is to be issued as part of a Stapled Security; and
 - (iii) this Constitution contains a provision for the calculation or determination of the Issue Price for the Stapled Security but not for the Unit,

the Manager must determine what part of the Issue Price of a Stapled Security is to represent the Issue Price of a Unit for the purposes of this Constitution.

- (b) Unless otherwise agreed between the Manager and:
 - (i) in relation to any Stapled Entity that is a company, the Stapled Entity; and
 - (ii) in relation to any Stapled Entity that is a managed investment scheme, the Manager of the Stapled Entity,

the Issue Price of a Stapled Security will be allocated between the Issue Price of the Unit and the Issue Price of the Attached Securities in the ratio that the net assets (adjusted for the net market value of their investments) of each of the Trust and each of the Stapled Entities at the end of the relevant period immediately prior to the issue bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of the Trust and the Stapled Entities at that time.

- (c) This clause 4.11 does not apply where Units are issued pursuant to clause 4.6(c)(i).

5 Application procedure

5.1 Application form

An applicant for Units or Options must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

5.2 Payment

Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application;
- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time; or
- (c) comprise a reinvestment of distribution in accordance with clauses 14.15.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets, or, if required by the Manager, by the Member.

5.3 Manager may reject

The Manager may reject an application in whole or in part without giving any reason for the rejection.

5.4 Minimum amounts

The Manager may set a Minimum Application Amount and a minimum holding for the Trust or in respect of particular Classes of Units and Options and alter those amounts at any time.

5.5 Issue date

Except in the case of a reinvestment of distribution in accordance with clause 14.15, Units or Options are taken to be issued:

- (a) on the Issue Date immediately after the later of the day on which:
 - (i) the Manager accepts the application for Units or Options and the applicant is registered as the Holder of the Unit or Option on the Register; or
 - (ii) the Manager receives the application money, or the property (which is acceptable to the Manager) against which the Units or Options are to be issued is vested in the Manager; and
- (b) in the case of a Unit or Options issued under a distribution reinvestment arrangement referred to in clauses 4.10 and 14.15, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated;
- (c) for the avoidance of doubt, the relevant Distribution Entitlement, application money or property against which the Units are issued (as applicable) become Assets at the time of issue.

5.6 Uncleared funds

Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

5.7 Number of Units issued

The number of Units issued to the applicant is the amount of the payment divided by the Issue Price of a whole Unit. If the Manager considers that an input tax credit for the benefit of the Trust is likely to arise and is properly attributable to an application, the Manager may determine that, for the purpose of this clause, the amount of the payment is increased by an amount equal to the input tax credit. In other words, for the purposes of this clause, the amount of the payment is taken to be the sum of:

- (a) the application monies; and
- (b) the amount of the input tax credit.

6 Transfers

6.1 Transfer of Units and Options if not Officially Quoted

- (a) Members may request the Manager to register transfers of all or any of the Units or Options held by them.
- (b) A transfer of Units or Options is not effective until it has been recorded in the Register.
- (c) All transfers of Units or Options shall be effected by an instrument of transfer in a form and in a manner approved by the Manager.
- (d) The Manager may refuse to register a transfer (whether voluntarily or by operation of Law) of Units or Options without being bound to provide any reason for such refusal.
- (e) The Manager may charge Members a fee to cover administrative costs involved in registering a transfer of Units or Options.

6.2 Transfer of Units and Options if Officially Quoted

If the Units and/or Options are Officially Quoted, Units and/or Options may be transferred in any manner permitted by the Operating Rules of a CS Facility. The Manager may require before registration of any such transfer that there be provided to the Manager any documents which the rules of the uncertificated system require or permit the Manager to require be provided to it to authorise registration. This clause 6.2 prevails over any other provision of this Constitution that may be inconsistent with it but it does not permit the Manager to refuse to register a proper transfer made in accordance with the Operating Rules of a CS Facility.

6.3 Manager may request holding lock or refuse to register transfer

If Units or Options are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:

- (a) request any applicable CS Facility Operator or Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units or Options registered on the CS Facility's sub-register or registered on an issuer-sponsored sub-register, as the case may be; or
- (b) refuse to register a transfer of other Units in the Trust.

6.4 Notice of holding locks and refusal to register transfer

- (a) If in the exercise of its rights under clause 6.3 the Manager requests the application of a holding lock to prevent a transfer of Units or Options or refuse to register a transfer of a security they must give written notice of the request to the holder of the Units or Options, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Manager.
- (b) If the Manager declines to register any transfer of Units or Options, the Manager must within five Business Days after the transfer was lodged with the Manager (or registrar), give to the person who lodged the transfer written notice of, and the reasons for, the decision to decline registration. Failure to give such reasons does not invalidate the decision of the Manager.

6.5 Manager must retain instruments of transfer

The Manager must retain every instrument of transfer which is registered for such period as the Manager determines.

6.6 Return of refused transfers

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

6.7 Suspension of transfers

The registration of transfers of Units or Options may be suspended at any time and for any period as the Manager may decide. However, the aggregate of those periods must not exceed 30 days in any calendar year.

6.8 Restricted Securities

If Units or Options are Officially Quoted, the Manager must refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any Restricted Securities on issue which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Manager under the Listing Rules in relation to the Restricted Securities. During a breach of the Listing Rules relating to Restricted Securities or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.

6.9 Recognition of Member

Except where this Constitution or the Law requires otherwise, the Member whose name appears in the Register shall be treated as the absolute owner of the Units and in respect of that Member the Manager shall not be bound to take notice of any trust or equity affecting ownership of the Units or the rights attaching to the Units.

6.10 Death or legal disability of Member

- (a) If a Member dies or becomes subject to a legal disability such as bankruptcy, liquidation or insanity, only the survivor (in the case of joint holders), legal personal representative or the person entitled to Units as a result of the bankruptcy, liquidation, insanity or other legal disability shall be recognised as having a claim to the Units registered in the Member's name.
- (b) Subject to the Listing Rules, the Manager may refuse to register any transfer or transmission pursuant to this clause or to recognise any claim without providing any reason.

7 Small holdings

7.1 Sale or redemption

- (a) Subject to the provisions of this clause 7 and while the Units are Officially Quoted, the Manager may in its discretion from time to time sell or redeem any Units held by a Member (together with any Attached Securities) which comprise less than a marketable parcel (as provided in the Listing Rules) from time to time without request by the Member.
- (b) The Manager may only sell or redeem Units (together with any Attached Securities) pursuant to this clause 7 on one occasion in any 12 month period.
- (c) The Manager must notify the Member of its intention to sell or redeem Units (together with any Attached Securities) under this clause 7.
- (d) The Manager must not sell or redeem the relevant Units (together with any Attached Securities):
 - (i) before the expiry of six weeks from the date of the notice given under clause 7.1(c); or
 - (ii) if, within the six weeks allowed under clause 7.1(d)(i), the Member advises the Manager that the Member wishes to retain the Units (together with any Attached Securities).

7.2 Takeover

The Manager's power to sell or redeem the Units (together with any Attached Securities) under clause 7.1 lapses following the announcement of a takeover of the Trust but the procedure may be started again after the close of the offers made under the takeover.

7.3 Expenses and proceeds

- (a) The Manager or the purchaser of the Units (together with any Attached Securities) must pay the costs of the sale as the Manager decides.
- (b) The proceeds of a sale or redemption under this clause 7 will not be sent to the Member until the Manager has received the certificate (if any) relating to the Units (together with any Attached Securities), or is satisfied that it has been lost or destroyed.

8 Restrictions on Members

Except as provided in this Constitution, a Member may not:

- (a) interfere with or question the rights, powers, authority, discretion or obligations of the Manager under this Constitution;
- (b) exercise any right, power or privilege in respect of an Asset;
- (c) lodge a caveat or other notice in respect of any Asset or otherwise claim an interest in an Asset; or
- (d) require that any Asset be transferred to the Member.

For the avoidance of doubt, nothing in this clause 8 applies to or restricts a Member or a related body corporate of a Member exercising any rights under a separate agreement with the Manager, including under a lease of any Asset to the Member or a related body corporate of a Member.

9 Takeover Offers

9.1 Proportional takeover offers

If offers are made under a proportional takeover bid for Units of the Trust in accordance with the Corporations Act:

- (a) clauses 9.1 to 9.6 apply;
- (b) the registration of a transfer giving effect to a takeover contract resulting from acceptance of an offer made under the takeover bid is prohibited unless and until a Resolution to approve the bid is passed or taken to be passed in accordance with clause 9.4 or 9.5; and
- (c) the Manager must ensure that a Resolution to approve the bid is voted on in accordance with clauses 9.2 and 9.3 before the fourteenth day before the last day of the bid period.

9.2 Approval of takeover bids

The Manager may determine whether the approving Resolution is voted on:

- (a) at a meeting of persons entitled to vote on the Resolution convened and conducted, subject to the provisions of clause 9.4, as if it were a meeting of Members convened and conducted in accordance with this Constitution and the Corporations Act with such modifications as the Manager determines the circumstances require; or
- (b) by means of a postal ballot conducted in accordance with the following procedures:
 - (i) a notice of a postal ballot and ballot paper must be sent to all persons entitled to vote on the Resolution not less than 14 days before the date specified in the notice for closing of the postal ballot, or such less period as the Manager determines the circumstances require;
 - (ii) the non-receipt of a notice of postal ballot or ballot paper by, or the accidental omission to give a notice of postal ballot or ballot paper to, a person entitled to receive them does not invalidate the postal ballot or any Resolution passed under the postal ballot;
 - (iii) the notice of postal ballot must contain the text of the Resolution and the date for closing of the ballot and may contain any other information the Manager considers appropriate;
 - (iv) each ballot paper must specify the name of the person entitled to vote;
 - (v) a postal ballot is only valid if the ballot paper is duly completed and:
 - (A) if the person entitled to vote is an individual, signed by the individual or a duly authorised attorney; or
 - (B) if the person entitled to vote is a corporation, executed under seal or as permitted in the Corporations Act or under the hand of a duly authorised officer or duly authorised attorney;
 - (vi) a postal ballot is only valid if the ballot paper and the power of attorney or other authority, if any, under which the ballot paper is signed or a copy of that power of attorney certified as a true copy by statutory declaration is or are received by the Manager before close of business on the date specified in the notice of postal ballot for closing of all postal ballot at the office of the Manager or unit registry of the Trust or at such other place as specified for that purpose in the notice of postal ballot; and
 - (vii) a person may revoke a postal ballot vote by notice in writing to be received by the Manager before the close of business on the date for closing of the postal ballot.

9.3 Entitlement to vote on approving Resolution

- (a) The only persons entitled to vote on the approving Resolution are those persons who, as at the end of the day on which the first offer under the bid was made, held bid class securities. Each person who is entitled to vote is entitled to one vote for each bid class security held by that person at that time.

- (b) Neither the bidder nor any associate of the bidder is entitled to vote on the Resolution.

9.4 When approving resolution passed

If the Resolution is voted on in accordance with clauses 9.1 to 9.3 then it is to be taken to have been passed if the proportion that the number of votes in favour of the Resolution bears to the total number of votes on the Resolution is greater than one-half, and otherwise is taken to have been rejected.

9.5 If approving Resolution has not been voted on

If a Resolution to approve the bid has not been voted on as at the end of the day before the fourteenth day before the last day of the offer period, then a Resolution to approve the bid is taken to have been passed in accordance with clauses 9.2 to 9.4.

9.6 Cessation of clauses 9.1 to 9.5

Clauses 9.1 to 9.5 only have effect if Units or Options are Officially Quoted and cease to have effect on the day three years after the later of their adoption or last renewal.

10 Redemption Price of Units

10.1 Redemption Price

A Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{\text{(Net Asset Value - Transaction Costs)}}{\text{the number of Units in issue}}$$

If Units in a Class are redeemed, the above formula will be adjusted by the proportion properly attributable to that Class.

10.2 Timing of calculation

In clause 10.1 the Net Asset Value and the number of Units in issue must be determined:

- (a) while the Trust is Liquid, as at the next Valuation Time after the Manager receives the redemption request; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

10.3 Rounding

The Redemption Price may be rounded as the Manager determines.

11 Redemption procedures

11.1 Request for redemption of Units

A Member may make a request for the redemption of some or all of their Units on such conditions and in any written form approved by the Manager and:

- (a) while the Trust is a Registered Scheme and while the Trust is Liquid, the Manager must give effect to that request; or

- (b) while the Trust is not a Registered Scheme, the Manager may give effect to that request in its sole discretion

at the time and in the manner set out in this clause 11.

11.2 Withdrawing requests

A Member may not withdraw a redemption request unless the Manager agrees.

11.3 When Trust is Liquid

Clauses 11.4 to 11.8 apply only where clause 11.1(a) applies or where clause 11.1(b) applies and the Manager exercises its discretion to give effect to a redemption request.

11.4 Satisfying requests

- (a) The Manager will use its best endeavours to consider a withdrawal request as soon as reasonably practicable and, in any event, within 30 days of receipt of the redemption request.
- (b) If the Manager does not consider that it is in the best interests of Members taken as a whole to realise sufficient Assets to satisfy a redemption request, the period allowed for considering the redemption request may be extended by the number of days during which such circumstances apply.
- (c) Where the Manager gives effect to a redemption request, the redemption request must be satisfied in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 10. The payment must be made within 21 days of the Manager giving effect to the redemption request.

11.5 Minimum redemption amount

The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the Minimum Application Amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.

11.6 Source of funds

The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

11.7 Clearing small balances

If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.

11.8 Discretionary redemption

If the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request.

11.9 When Trust is not Liquid

If the Trust is a Registered Scheme, while the Trust is not Liquid, a Member may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer

made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind. If there is no Withdrawal Offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

11.10 No obligation to make offers

The Manager is not at any time obliged to make a Withdrawal Offer.

11.11 Treatment of prior requests

If the Manager receives a redemption request before it makes a Withdrawal Offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

11.12 Clauses applicable whether or not the Trust is Liquid

Clauses 11.13 to 1.1 apply whether or not the Trust is Liquid.

11.13 Redemption Fee

The Redemption Fee (if any) is payable to the Manager out of the proceeds of redemption upon completion of redemption of the Units.

11.14 Sums owed to Manager

The Manager may deduct from the proceeds of redemption or money paid pursuant to a redemption request any money due to it by the Member.

11.15 Transfer of Assets

- (a) The Manager may, with the prior written consent of the relevant Member, transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a Withdrawal Offer or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, Withdrawal Offer or distribution (based on a valuation done within one month before the date of the proposed transfer and which is consistent with ordinary commercial practice for valuing that type of asset). If the Manager requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.
- (b) The Manager may direct an amount arising from the sale of an Asset to a particular Member, who shall be taken to have a present entitlement in that amount, if the Member redeems one or more of their Units and the direction is made to fund the redemption.

11.16 Suspension of redemptions after termination

The Manager need not give effect to a redemption request received between the date the Trust is terminated and the date of winding up.

11.17 Buy-back of Units

While the Trust is Listed the Manager may, subject to and in accordance with the Corporations Act (including any modifications thereof) and any requirements under the Listing Rules purchase Units and cause the Units to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities

are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust on the same basis as set out in clause 4.11 for the Issue Price of Units.

12 Partly Paid Units

12.1 Partly Paid Units

The Manager may determine that the Issue Price of any Unit or Class of Units may be payable by instalments of such amounts and at such times as the Manager determines or if the Manager so determines by a single instalment payable at such time as the Manager determines. If it does so, the following provisions of this clause 12 apply.

12.2 Must also issue partly paid Attached Securities

While Stapling applies, Units may not be issued on the basis that they are Partly Paid Units unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid. While Stapling applies any issue of Partly Paid Units shall be on the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

12.3 Variation or waiver of terms and conditions

Subject to any applicable statutory duty requiring the Manager to treat Members of the same Class equally and those of different Classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 12.1, those terms and conditions may be varied or compliance therewith waived only with the consent of the Manager. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units were offered for sale or subscription.

12.4 Subscription amount

For the purposes of clause 3A:

- (a) payment in respect of a Unit must be an amount equal to the Subscription Amount; and
- (b) transfer of property in respect of a Unit must have a value equal to the Subscription Amount plus any costs associated with the transfer of the property incurred by the Manager.

12.5 Notice of instalments

- (a) The Manager must give Members:
 - (i) if the Trust is not Listed at least 3 Business Days' notice; or
 - (ii) if the Trust is Listed, at least 30 Business Days' notice (but not more than 40 Business Days' notice),

of the time and date each instalment is due to be paid (**First Notice**).

- (b) If the Trust is Listed:
 - (i) the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules); and
 - (ii) at least 4 Business Days before the date each instalment is due to be paid, the Manager must send a second notice to all new Members and those Members whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

12.6 Unpaid instalment

If a Member fails to pay in full any instalment due on any Partly Paid Unit on or by the date specified for payment, the Manager may give the Member a notice requiring payment by a nominated date (not earlier than 10 days from the date of notice) of any part of the Uncalled Amount together with all reasonable expenses incurred by the Manager as a result of non-payment and interest determined in accordance with clause 12.7 from the date the call was due. The notice must also state that in the event of non-payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited and, while Stapling applies, an equal number of Attached Securities will also be liable to be forfeited. If Units are Officially Quoted, the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

12.7 Instalments generally

- (a) If a Member does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the Manager determines not exceeding BBSW plus 2% per annum. Interest is calculated daily and payable Monthly in arrears. The Manager may waive payment of that interest in whole or part.
- (b) The Manager may revoke or postpone the payment of an instalment.
- (c) Subject to the Listing Rules and, if the Trust is Listed, the Listing Rules:
 - (i) an instalment shall be deemed to be due on the date determined by the Manager;
 - (ii) the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to a Member shall not invalidate the instalment being due;
 - (iii) the Manager may extinguish in full or in part any liability of Members in respect of any moneys unpaid on Members' Units; and
 - (iv) any instalment which by the terms of issue of the Unit becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment which the Manager has given Members notice of in accordance with clause 12.5. In the case of non-payment all the provisions of this Constitution as to payment of interest forfeiture or otherwise shall apply as if such notice had been given.

12.8 Forfeiture

If the requirements of any notice issued under clause 12.5 are not complied with:

- (a) any Partly Paid Unit in respect of which the notice has been given (together with any Attached Securities) may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited on the Manager so determining; and
- (b) subject to the Listing Rules if Units are Officially Quoted, the Corporation Act, and this Constitution, all voting rights entitlements to the distribution of income and other rights in connection with any Partly Paid Unit and any Attached Securities in respect of which the notice has been given are suspended until reinstated by the Manager.

12.9 Joint holders

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

12.10 Rights and obligations attaching to a Partly Paid Unit are in proportion

Subject to the Corporations Act and the provisions of this Constitution the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

12.11 Forfeited Units may be disposed of

- (a) Subject to this Constitution, a forfeited Unit (together with any Attached Securities) may be sold or otherwise disposed of as a Fully Paid Unit (together with any Attached Securities) either:
 - (i) while the Units are Officially Quoted:
 - (A) subject to any necessary relief from ASIC at a price equal to that received from the sale of the securities in the normal course of business on the ASX less if applicable the fair value as determined by the Manager for the Attached Securities; or
 - (B) in accordance with section 254Q of the Corporations Act other than sub-sections (1), (9), (10) and (13), as if the Units were shares, the Trust was the company, and the Manager was each director of the company, less if applicable, the fair value as determined by the Manager for the Attached Securities;
 - (ii) while the Trust is a Registered Scheme, but the Units are not Officially Quoted:
 - (A) at a price which is no less than a price calculated in accordance with clause 4.1 less the Uncalled Amount (if any) in respect of that Unit; or
 - (B) in accordance with any applicable ASIC Exemption in relation to the sale of forfeited Units;
 - (iii) while the Trust is not a Registered Scheme at the best price the Manager can reasonably obtain in the circumstances;

and in any case such Unit will:

- (iv) be credited as paid up to the sum of the amount paid up on the Unit on the day of the forfeiture and the amount of the call and the amount of any other calls becoming payable on or before the date of the sale; and
 - (v) continue to be subject to a liability to pay an amount equal to the Uncalled Amount (if any) in accordance with this Constitution.
- (b) A statement signed by a duly authorised officer of the Manager that a Partly Paid Unit and the Attached Securities have been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units and the Attached Securities.
- (c) The Manager will receive the proceeds of sale and may, as attorney of the relevant Member, execute a transfer of the forfeited Unit in favour of the purchaser of the Unit and the Member authorises the Manager and appoints the Manager as its attorney to do so. As soon as practicable after the transfer is executed, such person must be registered as the Member and holder of the relevant Attached Securities and will not be bound to see to the application of the proceeds of sale nor will their title to the Unit be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture or sale of the Units.
- (d) The purchaser remains liable to pay the amount equal to the Uncalled Amount (if any) on the Unit in accordance with the terms of this Constitution.
- (e) The proceeds of sale of any forfeited Unit must be applied in the following order:
- (i) to the payment of all costs and expenses incidental to the forfeiture and sale;
 - (ii) to the payment of any interest;
 - (iii) on account of the amount of which the notice referred to in clause 12.5 was given; and
 - (iv) to payment of the balance (if any) remaining to the Member whose Units have been forfeited and sold.
- (f) Where:
- (i) the Manager has appointed an underwriter to underwrite the payment of a call or instalment in respect of Partly Paid Units; and
 - (ii) in discharging its obligations the underwriter has purchased Units at public auction held under clause 12.11(a) at a price which is more than the Market Price of a Fully Paid Unit,
- the Manager is liable to pay the underwriter in respect of each Unit so purchased an amount equal to the difference between the Market Price of a Fully Paid Unit and the price paid by the underwriter for the Unit at public auction.
- (g) For the purposes of clause 12.11(f), the Market Price of a Fully Paid Unit is the last sale price of a Fully Paid Unit on the ASX on the Business Day immediately preceding the public auction, or, if there is no such price then the last sale price of such a Unit on the ASX prior to that date.

- (h) The former Member whose Partly Paid Unit was forfeited is liable to the Manager in respect of those forfeited Units, and may be sued for:
 - (i) all monies payable by the Manager to the underwriter as contemplated by clause 12.11(f);
 - (ii) interest (as provided for in clause 12.7); and
 - (iii) all costs incurred by the Manager in procuring payment from the former Member.
- (i) Where the Manager is liable to the underwriter as contemplated by clause 12.11(f) the Manager may assign to the underwriter the Manager's right of action under clause 12.11 against the former Member in full satisfaction of such liability of the Manager to the underwriter.

12.12 Remaining liability

The Member whose Unit was forfeited ceases to be a Member from the nominated date referred to in clause 12.8 but remains liable to pay to the Manager:

- (a) all unpaid amounts in respect of the forfeited Units;
- (b) the costs and expenses of the forfeiture and disposal; and
- (c) interest on the unpaid calls at the rate determined under clause 12.7 from the date of forfeiture,

but their liability in respect of the matters listed at (a), (b) and (c) above (but not otherwise) ceases if and when the Manager receives payment in full of all amounts owing in respect of the Units.

12.13 Cancelling forfeiture

The Manager may cancel forfeiture before the Units are disposed of on such terms as it determines, and must do so if the Member pays the amounts owing in respect of the Units.

12.14 Income distribution in relation to Partly Paid Units

For the purposes of a distribution under clause 14, a Party Paid Unit must be treated as a fraction of a Unit of which the numerator is the amount paid-up in respect of the Unit for the relevant Distribution Period and of which the denominator is the total Issue Price for that Unit, rounded on such basis as the Manager determines.

13 Valuation of assets

13.1 Periodic valuations

The Manager may cause an Asset to be valued at any time and, if the Trust is a Registered Scheme, must do so as and when required by ASIC or the Corporations Act and the valuation must be carried out in accordance with these requirements.

13.2 Net Asset Value

The Manager may determine Net Asset Value at any time, including more than once on each day.

13.3 Valuation methodology

The Manager may determine valuation methods and policies for each category of Asset and change them from time to time provided that it is in accordance with ordinary commercial practices and produces a value which is reasonably current. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

14 Income and distributions to Members

14.1 Collection of income

The Manager shall receive and collect all dividends, interest, rents and all other income of the Trust.

14.2 Payment of expenses

The Manager shall pay out of the gross income of the Trust all costs and disbursements, commissions, fees, tax (including any goods and services tax, land tax or income tax), management charges and other proper outgoings in respect of the Assets and administration of the Trust.

14.3 Nature of receipts

The Manager may determine whether any receipt, profit, gain (whether realised or unrealised) payment, loss, outgoing, provision or reserve or any sum of money or investment in a Financial Year is or is not to be treated as being on income or capital account and whether and the extent to which any provisions or reserves need to be made for the Financial Year on a fair and reasonable basis to ensure that the Member pays the tax and not the Manager.

14.4 Determination of income and reserves

- (a) In each Financial Year the Manager must determine the income of the Trust (**Income**) in accordance with this clause.
- (b) The Income of the Trust may be:
 - (i) an amount calculated by the Manager on any basis and determined by the Manager to be the Income of the Trust; or
 - (ii) if a determination is not made by the Manager under clause 14.4(a), the Net Income of the Trust, which may be reduced or increased by the amount of any reserves or provisions that, in the determination of the Trust, need to be made.

14.5 Distribution of income

For each Distribution Period, the Manager shall calculate the Distributable Amount and distribute each Member's Distribution Entitlement.

14.6 Distributable Amount

- (a) The Distributable Amount for a Distribution Period (other than a Distribution Period that is the last Distribution Period in a Financial Year) shall be determined in accordance with the following formula:

$$DA = I + C$$

Where:

DA is the Distributable Amount;

I is the Income of the Trust for that Distribution Period (as determined by the Manager pursuant to clause 14.4); and

C is any additional amount (including capital) that the Manager has determined is to be distributed.

- (b) the Distributable Amount for the last Distribution Period in a Financial Year shall be the difference between:

(i) the Income of the Trust for the Financial Year (as determined by the Manager pursuant to clause 14.4); and

(ii) the total of the Distribution Amounts for all the prior Distribution Periods in that Financial Year,

plus any additional amount (including capital) that the Manager has determined is to be distributed.

14.7 Distribution Entitlement

Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Member's Distribution Entitlement for a Distribution Period shall be determined in accordance with the following formula:

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

Where:

A is the Distributable Amount;

B is the aggregate of the number of Units held by the Member at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of Units held by that Member at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 14.16 (if any), multiplied by the relevant proportion; and

C is the aggregate of the total number of Units on issue at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of total Units on issue at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 14.16 (if any), multiplied by the relevant proportion.

14.8 Satisfaction of Distribution Entitlement

- (a) The Manager shall pay to each Member its Distribution Entitlement for a Distribution Period on or before the Distribution Date for that Distribution Period.
- (b) The Manager shall retain from each Member's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Manager determines it is not practical to distribute on a Distribution Date, with any sum so retained for all purposes treated as income for the following Distribution Period.
- (c) The Manager may retain from the amount to be distributed to a Member an amount in or towards satisfaction of any amount payable by the Member to the Manager under this Constitution or that is required to be deducted by Law.

14.9 Present entitlement

Subject to the rights, restrictions and obligations attaching to any particular Unit or Class, the persons who are Members at 5:00pm on the last day of a Distribution Period shall have, at that time, an absolute vested and indefeasible interest in the Member's Distribution Entitlement calculated for that Distribution Period.

14.10 Discharge of Manager's obligation

It is acknowledged by Members that payments of Distributable Amounts shall be a good and complete discharge of any liability owed by the Manager to any person in respect of an entitlement to the Distributable Amount.

14.11 Capital distributions

The Manager may at any time distribute the capital of the Trust to the Members in addition to any distributions made under clause 14.6. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Member is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Member on a date determined by the Manager divided by the number of Units on the Register on that date. A distribution under this clause may be in cash or by way of Assets or by way of bonus Units.

14.12 Grossed up Tax amounts

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Members in proportion to the Distributable Amount for a Distribution Period which is referable to a dividend or other income to which they are presently entitled.

14.13 Excess distribution

If at the end of a Financial Year the amount distributed as the Distributable Amount under this clause 14 exceeds the aggregate of the Net Income for the Financial Year, the excess will be taken to be a distribution of capital.

14.14 Categories and sources of income

The Manager may keep separate accounts of different categories or sources of income, capital, or deductions or credits for tax purposes, and may allocate income, capital, deductions or credits from a particular category or source to particular Members.

14.15 Reinvestment

- (a) A Member may, if the Manager approves, elect to reinvest some or all of their Distribution Entitlement by acquiring Units and the amount of the distribution must be applied on behalf of the Member to acquire additional Units. In those cases, the Manager is treated as having received an application to reinvest the Member's Distribution Entitlement on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 4.
- (b) Subject to clauses 4.1 and 4.10, the procedure for reinvestment of a distribution is to be determined by the Manager and notified to Members from time to time.
- (c) Subject to the Member's expressed or implied consent, the Manager may, at its discretion, reinvest some or all of the Member's Distribution Entitlement by acquiring Units and that amount of the distribution must be applied on behalf of the Member to acquire additional Units. In those cases, the Manager is treated as having received an application to reinvest the Member's Distribution Entitlement on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 4.
- (d) While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units, the Member subscribes for an identical number of Attached Securities which are subsequently Stapled to the Units as a result of the reinvestment.

14.16 Other rights or restrictions

For the removal of doubt and despite anything else contained in this clause 14, the rights of a Member under this clause 14 are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the Manager is entitled to do so under the Corporations Act and the Listing Rules, the Manager may issue:

- (a) Units on terms which entitle the Member to a distribution in respect of a Distribution Period in which such Units are issued in an amount which is not greater than the proportion of Distribution Entitlement for that period to which a Member holding a Unit during the whole of that period is entitled, multiplied by the number of days from the date of issue of those Units to the end of that period divided by the total number of days in that period; or
- (b) Units on terms which do not entitle the Member to receive a distribution of the distributable income in respect of a Distribution Period in which such Units are issued.

14.17 Withholding Tax

The Manager may deduct from any amount dealt with under this clause 14 any Tax that it is required by Law to deduct from such amount.

14.18 Classes

For the avoidance of doubt, the rights of a Member under this clause 14 are subject to the rights, restrictions and obligations attaching to any particular Unit or the Class.

14.19 Public trading Trust

If, and so long as, the Trust is a public trading trust for the purposes of Division 6C of Part III of the Tax Act and any provisions which amend or replace it, the following provisions of this clause 14.19 will apply instead of clauses 14.1 to 14.16 to the extent they are inconsistent. If it does so:

- (a) as soon as practicable after the end of the Distribution Period, the Manager must determine the taxable income of the Trust in respect of the Distribution Period calculated in accordance with the Tax Act;
- (b) the Manager must provide for, and pay from the Assets of the Trust when appropriate, all taxation attributable to the taxable income of the Trust;
- (c) the Manager may, in its discretion from time to time, determine to pay an amount as a distribution to Members holding Units in a Class in respect of the Distribution Period (each a **Distributable Amount**) to the Members on the register holding Units in that Class on any date determined by the Manager (**Books Closing Date**);
- (d) in respect of a Distributable Amount being paid to Members pursuant to this clause 14.19:
 - (i) the Manager may take all necessary or desirable steps in relation to distributions, including the franking of the distributions;
 - (ii) the Manager must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to public trading trusts; and
 - (iii) a Member who holds Units is entitled to a portion of the Distributable Amount, calculated as follows:

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

Where

- A the aggregate of the number of Units held by the Member at the Books Closing Date for the Distributable Amount for that Class;
- B is the aggregate of the total number of Units on issue in that Class at the Books Closing Date for that Distributable Amount; and
- C is the Distributable Amount for the Class determined in accordance with clause 14.6.

15 Accounts, audit and reports

15.1 Appointment of auditors

- (a) While the Trust:
 - (i) is a Registered Scheme, the Manager must; and

(ii) is not a Registered Scheme, the Manager may,

appoint a registered company auditor to audit the Trust's financial report for a Financial Year and perform the other duties required of the auditor under this Constitution and the Corporations Act.

(b) While the Trust is a Registered Scheme, the Manager must appoint a Compliance Plan Auditor.

15.2 Retirement of auditors

While the Trust is a Registered Scheme, the Trust Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Corporations Act. Otherwise, the Trust Auditor may retire or be removed in accordance with its terms of engagement or as agreed with the Manager.

15.3 Remuneration of auditors

The remuneration of the Trust Auditor and any Compliance Plan Auditor will each be fixed by the Manager.

15.4 Accounts and reports

- (a) The financial statements of the Trust must be kept and prepared by the Manager in accordance with applicable Australian Accounting Standards.
- (b) The Manager must report to Members concerning the affairs of the Trust and their holdings as required by the Corporations Act. Subject to the Corporations Act, the person preparing a report may determine the form, content and timing of it.

15.5 Audit

The Manager will cause:

- (a) the Trust Auditor to audit and report on the financial statements; and
- (b) while the Trust is a Registered Scheme, the Compliance Plan Auditor to audit and report on the Compliance Plan,

each in the manner required by the Corporations Act to the extent it applies.

16 Payments

16.1 Method of payment

- (a) Subject to clause 16.1(b), the Manager will pay any money payable by the Manager to a Holder under this Constitution by electronic transfer to an account with an ADI nominated by that holder in accordance with clause 16.1(c).
- (b) The Manager may pay any money payable to a Holder under this Constitution by a crossed 'not negotiable' cheque sent to that holder's address as set out in the Register or as notified to the Manager under clause 20, if:
 - (i) the Holder is a Foreign Investor; and

- (ii) the Holder has failed to nominate an account with an ADI in accordance with clause 16.1(c).
- (c) A Holder must nominate in writing to the Manager that money owing to it under this Constitution be paid by electronic transfer to a designated account with an ADI, and include in such nomination, the details of that account.
- (d) The Manager may determine that any cheque not presented within six months or any electronic fund transfer which is unsuccessful at least three times is cancelled. If the Manager so determines the amount of the cheque or electronic fund transfer may be:
 - (i) reinvested in Units or Stapled Securities under a distribution reinvestment arrangement referred to in clause 14.15. The reinvestment is deemed to be made on the day the cheque or electronic fund transfer is cancelled;
 - (ii) held by the Manager for the benefit of the Holder; or
 - (iii) paid by the Manager in accordance with the applicable unclaimed money legislation.

16.2 Whole amounts

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset of the Trust.

16.3 Discharge

- (a) A cheque issued to a Holder which is presented and paid, or where the payment is to an account with an ADI, payment to that ADI discharges the Manager in respect of the payment.
- (b) A payment to any one of joint Members will discharge the Manager in respect of the payment.

16.4 Withholding Tax

- (a) The Manager may recover from the Member an amount that the Manager has paid in Tax on behalf of or in respect of a Member (including in respect of a distribution or an amount attributed to a Member) as a debt.
- (b) The Manager is entitled to set off an amount that the Manager can recover from the Member under clause 16.4(a) against debts due, or owed, by the Manager to the Member.

17 Powers of the Manager

17.1 General powers

- (a) Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.
- (b) In exercising its power and carrying out its duties, the Manager must treat the Members who hold interests in the same Class equally and Members who hold interests of different Classes fairly, except to the extent that the Manager directs an

amount arising from the sale of an Asset to a particular Member in the circumstances described in clause 11.15(b).

17.2 Contracting powers

Without limiting clause 17.1 and subject to the Manager's fiduciary duties, the Manager in its capacity as trustee of the Trust has power to borrow or raise money, to grant security and to incur all types of obligations and liabilities.

17.3 Investment powers

Without limiting clause 17.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

17.4 Power of delegation

Subject to the Corporations Act, the Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate. The agent or delegate may be an associate of the Manager.

17.5 Terms of delegation

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

17.6 Exercise of discretion

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

17.7 Effect of Stapling

While Stapling applies, the Manager may in exercising any power or discretion have regard to the interests of the Members in their capacity as Members and the interests of Members in their capacity as Stapled Security Holders which includes having regard to their interests as Members of the Stapled Entity. This is the case notwithstanding any other provision of this Constitution, or any rule of Law or equity to the contrary, other than any applicable provision of the Corporations Act.

18 Retirement of Manager

18.1 Voluntary retirement

While the Trust is a Registered Scheme, the Manager may retire as the Manager of the Trust as permitted under the Corporations Act.

18.2 Retirement when not registered scheme

While the Trust is not a Registered Scheme, the Manager may retire upon giving notice 60 Business Days' notice to Members. On retirement, the Manager may appoint in writing another person to be the Manager.

18.3 Compulsory retirement

While the Trust is a Registered Scheme, the Manager must retire as the Manager of the Trust under the Corporations Act.

18.4 New Manager

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

18.5 Release

Subject to any limitations contained in the Corporations Act, when the Manager retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.

18.6 Retirement benefit

The Manager is entitled, subject to any approval required by law, to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement; or
- (b) its retirement as Manager,

provided that any such remuneration is not paid out of the assets of the Trust. The Manager is not required to account to Members for such remuneration or benefit.

19 Notices to Members

19.1 Form of notices

Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.

19.2 Cheques

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.

19.3 Notices to joint Members

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

19.4 Deemed date of receipt

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of

actual receipt is not required. Subject to the Corporations Act (if the Trust is a Registered Scheme), the Manager may determine the time at which other forms of communication will be taken to be received.

20 Notices to the Manager

20.1 Form of notices

A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.

20.2 Effective date

The notice is effective only at the time of receipt.

20.3 Authentication

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Manager dispenses with this requirement.

21 Meetings of Members

21.1 Convening of Meetings

The Manager may at any time convene a meeting of Members or a Class of Members, and must do so if required by the Corporations Act (the relevant provisions of which shall apply where the Trust is not a Registered Scheme as if it were a Registered Scheme).

21.2 Manager may determine time and place

Subject to this clause 21 and the Corporations Act, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

21.3 Notice

- (a) A meeting of Members or a Class of Members must be convened in accordance with Part 2G.4 of the Corporations Act.
- (b) When the Trust is not a Registered Scheme, a meeting of Members or a Class of Members must be convened by notice in writing sent to every Member entitled to attend and vote, at least 21 days prior to the nominated date of the meeting. The notice of meeting need not set out the terms of any Resolution.
- (c) In computing the period of notice under this Constitution both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

21.4 Proxies

The Manager may determine that an appointment of a proxy is valid even if it contains only some of the information required under the Corporations Act.

21.5 Non-receipt

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

21.6 Quorum

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

21.7 No quorum

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

- (a) if convened on the requisition of Members- dissolved; or
- (b) otherwise adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

21.8 Chairman

- (a) Subject to the Corporations Act the Manager may appoint a person to chair a meeting of Members.
- (b) The chairman of a meeting of Members:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting and a decision by the chairman under this clause 21.8(b) is final.

21.9 Adjournment

- (a) The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) In exercising this discretion, the chairman may but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

21.10 Other attendees

The Manager may invite any person to attend and speak at a meeting.

21.11 Resolutions binding

A Resolution by:

- (a) Members binds all Members; or
- (b) Members of a Class, binds all Members of that Class,
whether or not they voted or were present at the meeting.

21.12 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
 - (i) may not be raised except at that meeting or adjourned meeting; and
 - (ii) must be referred to the chairman of the meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.
- (c) No objection may be made to any vote cast unless the objection is made at the meeting.

21.13 Minutes

The minutes of a meeting of Members or Members of a Class signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

21.14 Postponement or cancellation

The chairman has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chairman thinks fit.

21.15 Notice of cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

21.16 Contents of notice or postponement of meeting

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and

- (c) if the meeting is to be held in two or more places the technology that will be used to facilitate the holding of the meeting in that manner.

21.17 Number of clear days for postponement of meeting

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

21.18 Business at postponed meeting

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

21.19 Proxy, attorney or representative at postponed meeting

Where:

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

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

21.20 Proxies and voting

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust when it is both a Registered Scheme and non-Registered Scheme.

21.21 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one Month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

21.22 Demand for a poll

A poll may be demanded by at least five Members entitled to vote on the resolution. Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

21.23 Declaration of poll

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the Trust is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

21.24 Questions decided by majority

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

21.25 Poll

- (a) If a poll is properly demanded it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the Resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.

21.26 Equality of votes- no casting vote for chairman

If there is an equality of votes either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or representative.

21.27 Entitlement to vote

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

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

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

21.28 Voting on a poll for Partly Paid Units

If a Member holds Partly Paid Units the number of votes the Member has in respect of those Units on a poll is one vote for each dollar of the value of the Partly Paid Units.

21.29 Joint Unitholders' vote

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

21.30 Vote of Member of unsound mind

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the Law relating to mental health then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

21.31 Validity of vote in certain circumstances

A vote cast by a person as a proxy, attorney or representative is valid even if:

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise; or
- (b) the execution of a transfer of those Units by that Member,

unless a notice in writing of the revocation or transfer has been received by the Manager or by the chairman of the meeting before the vote is cast.

21.32 Proxy form while Stapling applies

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

21.33 Meetings by technology

A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

21.34 Joint meetings

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

21.35 Meetings of Option holders

If any separate meeting of Option holders is required to be held the foregoing provisions of this clause 21 will apply with any necessary amendments.

22 Rights and liabilities of Manager

22.1 Holding Units

The Manager and its Associates may hold Units in the Trust in any capacity.

22.2 Other capacities

Subject to the Corporations Act, nothing in this constitution restricts the Manager (or its associates) from:

- (a) dealing with itself (as trustee of the Trust or in another capacity), an Associate or with any Member;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an Associate or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme; or
- (d) any dealings with any entity in which the Assets are invested,

and in each case the Manager (or any Associate) may retain for its own benefit all profits or benefits derived from that activity.

22.3 Manager may rely

The Manager may take and may act upon:

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

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

23 Limitation of liability

23.1 Limitation on Manager's liability when the Trust is a Registered Scheme

- (a) Subject to the Corporations Act, while the Trust is a Registered Scheme, the Manager and each director and officer of the Manager and Compliance Committee Members are not liable for any loss or damage to any person (including Holders) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Constitution; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Constitution.
- (b) Subject to the Corporations Act, the liability of the Manager and Compliance Committee Members in relation to the Trust is limited to the Assets, from which the Manager and Compliance Committee Members are entitled to be, and are in fact, indemnified under clause 25.1.

- (c) In particular, subject to the Corporations Act, the Manager and Compliance Committee Members are not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
 - (i) to the extent permitted by Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Manager or Compliance Committee;
 - (ii) it acted as required by Law; or
 - (iii) it relied in good faith upon any signature, marking or documents.

23.2 Limitation of Manager's liability while the Trust is not a Registered Scheme

- (a) While the Trust is not a Registered Scheme, to the extent permitted by Law, if the Manager acts in good faith and without fraud, dishonesty, negligence, wilful default, breach of trust or breach of this Constitution, the Manager is not liable for any loss to any person (including any Member, Option Holder or Financial Instrument Holder) arising out of any matter relating to, or connected with, the Trust.
- (b) Subject to clause 23.2(c), the liability of the Manager in relation to the Trust, while the Trust is not a Registered Scheme is limited to the Assets, from which the Manager is entitled to be, and is in fact, indemnified under clause 25.1.
- (c) Clause 23.2(b), does not apply to any liability arising as a result of the Manager's fraud, dishonesty, negligence wilful default, breach of trust or breach of this Constitution.

23.3 Directors and officers

Except as the Corporations Act expressly provides otherwise, no director or officer of the Manager is personally liable to a Member or any other person in connection with acting as a director or officer of the Manager.

24 Limitation of Members' liability

- (a) Subject to clauses 24(c) and 24(e), the liability of each Member shall be limited to the amount, if any, which remains unpaid in relation to the Member's subscription for Units in the Trust.
- (b) A Member shall not be required to indemnify the Manager if there is a deficiency in the Assets or to meet the claim of any creditor of the Manager in respect of the Trust.
- (c) The Manager, on its own account and on account of the Trust, shall be entitled to be indemnified by each Relevant Person for any Tax of the Manager paid out of the Trust, except to the extent to which the Manager is reimbursed out of the Trust.
- (d) Joint Holders shall be jointly and severally liable in respect of all payments, including payments of Tax to which clause 24(c) applies.
- (e) Subject to this clause 24, in the absence of separate agreement with a Member, the recourse of the Manager and any creditor shall be limited to the Assets.

25 Indemnity

25.1 Manager's indemnity

- (a) Subject to the Corporations Act, the Manager has a right to be fully indemnified out of the Assets, in respect of all expenses, liabilities, costs and any other matters in connection with the Trust and against all actions, proceedings, costs, claims and demands brought against the Manager in its capacity as Manager of the Trust in respect of any matter or thing done or omitted (**Indemnified Matter**) except:
 - (i) in the case of the Manager's fraud, dishonesty, negligence, wilful default, breach of trust or breach of this Constitution; and
 - (ii) in respect of the overhead expenses of the Manager.
- (b) Without limiting clause 25.1, while the Trust is an AMIT the Manager is indemnified and is to be kept indemnified on a full indemnity basis and is entitled to pay or to be paid or reimbursed out of the Assets in respect of, or in connection with, any Tax which it may pay or incur pursuant to any section of Subdivisions 276-G and 275-L of the ITAA 1997 in properly performing or exercising any of its powers, duties or rights in relation to the Trust.

25.2 Manager's indemnity continuing

- (a) The right of indemnity of the Manager in respect of a particular Indemnified Matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular Indemnified Matter) in breach of trust or in breach of this Constitution.
- (b) The indemnity provided under clause 25.1 will continue in favour of the Manager after it has ceased to be the Manager and will apply even if at any time the Liabilities exceed the Net Asset Value.
- (c) For the avoidance of doubt, the Manager may be entitled to an indemnity under clause 25.1 in respect of any act or omission of a delegate or agent appointed by the Manager for which the delegate or agent is not obliged to fully indemnify the Trust.
- (d) Each clause of this Constitution that provides, or relates to, a right of the Manager to pay or be reimbursed out of the Assets or indemnified or a limitation of the Manager's liability:
 - (i) is separate and independent of any other right, indemnity or limitation of liability;
 - (ii) does not limit any other provision of this Constitution; and
 - (iii) applies to the maximum extent permitted by Law.
- (e) The Manager's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

25.3 Payment

The Manager may pay out of the Assets any amount for which it would be entitled to be indemnified under clause 25.1 or 25.2.

25.4 Manager not to incur liability

The Manager is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

25.5 Compliance Committee

If the Trust is a Registered Scheme and a Compliance Committee Member incurs a liability in connection with the Trust in that capacity in good faith, the Manager may indemnify the Compliance Committee Member out of the Assets, to the extent permitted by the Corporations Act.

26 Expenses of Manager

26.1 Management Fee

- (a) The Manager is entitled to a Management Fee of up to 1% per annum of the Gross Asset Value.
- (b) The Management Fee is accrued and payable monthly in arrears within 21 days of the end of each month until the date of final distribution in accordance with clause 28.3.

26.2 Custody fee

- (a) If the Manager performs the custodial function for the Trust, then it will be entitled to a Custody Fee of up to 0.05% per annum of the Gross Asset Value.
- (b) The Custody Fee is accrued and payable monthly in arrears within 21 days of the end of each month.

26.3 Waiver of fees and expenses

The Manager may accept lower fees and expenses than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

26.4 Expenses

- (a) All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act, including, without limitation, expenses arising in connection with the matters listed in Schedule 2.
- (b) While Stapling applies the Manager may in its absolute discretion agree with the Stapled Entities the apportionment of expenses incurred in connection with both the Trust and the Stapled Entities. Any such apportionment could result in the Trust bearing the entirety of the expenses or it being shared with the Stapled Entity or borne totally by the Stapled Entities.

26.5 GST

If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution then, in addition to any fee or other amount or

consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. This clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this Constitution.

26.6 Effect of changed rate of GST

In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1+n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).

26.7 Input tax credits

In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Manager is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax.

26.8 Sums owed to the Manager

The Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

27 Duration of the Trust

27.1 Initial settlement

The Trust commences when the Manager's nominee subscribes \$100 for Units in the Trust. The Manager's nominee must be issued with 100 Units in return for that payment.

27.2 Termination

The Trust terminates on the earliest of:

- (a) the date the Manager determines to wind up the Trust;
- (b) the date specified by the Manager as the date of termination of the Trust in a prospectus, disclosure statement or other offer document;
- (c) the 80th anniversary of the day before the Trust commenced; and
- (d) the date on which the Trust terminates in accordance with another provision of this constitution or the Corporations Act.

27.3 Notification to Members

Where:

- (a) the Manager determines to wind up the Trust under clause 27.2(a);

- (b) a date in clause 27.2(b) or 27.2(d) occurs; or
- (c) the Trust terminates in accordance with clause 27.2(d);
- (d) the Manager must give notice to Members within 30 days.

28 Procedure on termination

28.1 Realisation of Assets

Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

28.2 Audit of winding up

The Manager must arrange for independent audit of the final accounts of the Trust by a registered company auditor.

28.3 Distribution following termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination and satisfying Distribution Entitlements, must be distributed, subject to the rights, obligations and restrictions attaching to any particular Units or Classes set out in this Constitution pro rata to Members according to the number of Units they hold. The Manager may distribute proceeds of realisation in instalments.
- (b) For the purposes of this clause 28.3, a Partly Paid Unit must be treated as a fraction of a Unit of which the numerator is the amount paid-up in respect of the Unit and of which the denominator is the total Issue Price for that Unit, rounded on such basis as the Manager determines.
- (c) If the net proceeds of realisation are not sufficient to meet the expenses of terminating the Trust, these costs may be paid by the Manager.

28.4 Constitution continues to apply

Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 28.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

29 Register

29.1 Keeping Registers

- (a) The Manager shall establish and keep, or cause to be kept, a:
 - (i) Register of Members; and
 - (ii) Register of Stapled Security Holders,

at its registered office in a form which, to the extent applicable, complies with the requirements of section 169 of the Corporations Act.

- (b) Subject to the Corporations Act, and while Stapling applies, the Manager may keep a single Register in which details of Members and Stapled Security Holders are recorded.

29.2 Manager's powers

If the Corporations Act applies, the Manager has the powers conferred under the Corporations Act in relation to the Register.

29.3 Inspection

The Manager will make the Register available for inspection without charge to Holders at all times when the Manager's registered office is open for business to the public.

29.4 Changes

Every Holder shall promptly notify the Manager of any change of name or address and the Manager must alter the Register accordingly.

29.5 Register conclusive

Except where this Constitution or the Law requires otherwise, the Manager is entitled to treat the registered Holder as absolute owner of the relevant Unit or Stapled Security for all purposes. The entry in the Register shall be conclusive except where the Manager is satisfied of manifest error and the Manager is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest attaching to any Unit or Stapled Security (as the case may be).

30 Amendments to this constitution

30.1 Manager may amend

While the Trust is a Registered Scheme, this constitution may be amended, if the Corporations Act allows:

- (a) by a special resolution; or
- (b) by deed executed by the Manager if the Manager reasonably considers the change will not adversely affect Members' rights.

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

30.2 Compliance with the AMIT Regime

Without in any way limiting the Manager's powers in clause 30.1 the Manager may make any change to this Constitution or take any other action which the Manager reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the operation of the AMIT Regime in relation to the Trust; or
- (b) ensure that there is an appropriate and equitable application of the powers and rights of the Manager and Members that arise under the AMIT Regime.

30.3 Amendment when not Registered Scheme

While the Trust is not a Registered Scheme, the Manager may by deed amend this constitution.

30.4 Statutory requirements

While the Trust is a Registered Scheme, if the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 30.1 does not apply to provisions deemed by this clause 30.4 to be incorporated in the constitution.

31 Compliance committee

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

32 Complaints

32.1 Complaints when the Trust is a Registered Scheme

While the Trust is a Registered Scheme, the Manager must comply with the dispute resolution requirements in section 912A(2) of the Corporations Act and this clause 32 when dealing with Member complaints (or complaints by any person who has an interest in the Trust for the purposes of the Corporations Act) including where a Member disagrees with the Manager's calculation of the Member's allocation of amounts in accordance with the legislation relating to AMITs, subject to complying with the terms of that legislation.

32.2 Handling of Complaints

If a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager must:

- (a) if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) where there is no compliance committee, consider the complaint; and
- (d) communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (i) the determination of the compliance committee (or if clause 32.2(c) applies, the Manager);
 - (ii) the remedies (if any) available to the member; and

- (iii) information regarding any further avenue for complaint.

32.3 Effect of Stapling

While Stapling applies the Manager may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 32 to ensure an efficient and equitable resolution of the complaint.

33 Restructure proposals

33.1 Power to enter into proposal

- (a) The Manager may enter into any scheme of arrangement, merger arrangement or similar proposal in relation to the Trust whether involving Units or the property of the Trust (**Proposal**). If in the Manager's opinion the Proposal might adversely affect the rights of Members, the Proposal may only be implemented with the approval of a Resolution.
- (b) If the Proposal involves Stapling:
 - (i) the Members will be taken to have consented, and accordingly no Resolution will be required, in relation to Stapling, provided that each Stapled Security issued to a Member has a Market Price equal to or greater than the NAV Price immediately prior to the Stapling; and
 - (ii) the Members will be taken to have consented to each provision in the Constituent Documents.
- (c) If the Manager determines that it is in the best interests of the Members for the Trust to be admitted to the Official List, the Manager can take any necessary steps for the preparation, approval, execution or implementation of the Listing without the approval of a Resolution.

33.2 General

If a Proposal is entered into, and if necessary, approved by Members in accordance with clause 33.1, then from the date of such approval:

- (a) the Proposal binds the Manager and all present and future Members notwithstanding that particular Members may not have approved the Proposal;
- (b) the Manager and so far as is relevant the Members must give effect to the Proposal in accordance with its terms;
- (c) the Manager will have power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Proposal and those powers apply notwithstanding any other provisions of this Constitution other than clause 35.3;
- (d) the terms of the Proposal prevail to the extent necessary in the event of any inconsistency with the other terms of this Constitution other than clauses 35.3 and this clause 33.2 or while the Trust is a Registered Scheme, in respect of matters set out in section 601GA of the Corporations Act;
- (e) the Manager may amend the terms of the Proposal if such amendment is not inconsistent with the approval given by Members or such amendment does not

adversely affect the rights of the Members and this clause 33.2 shall apply to the Proposal as amended.

33.3 Terms of Proposal

A Proposal may provide for anything not contrary to Law and it may without limitation:

- (a) be subject to conditions;
- (b) involve the withdrawal, cancellation or transfer of Units;
- (c) provide for the Manager to execute any documents including any application for securities as agent on behalf of all or any Members;
- (d) authorise the Manager as agent on behalf of all or any Members to pay the subscription money for new securities from the Assets of the Trust;
- (e) allow the Manager to arrange the issue of further Units;
- (f) amend the time and procedures for
 - (i) cancellation, transfer or issue of Units other than the Issue Price determined in accordance with clause 4; and
 - (ii) withdrawal of Units while the Trust is not a Registered Scheme.
- (g) allow the Manager to suspend the registration of transfers of Units;
- (h) provide for borrowings, the raising of money or the incurring of liabilities by the Manager; or
- (i) provide for suspension of reinvestment of income entitlements.

33.4 Designated Foreign Investors

Without limiting the foregoing provisions of this clause 33, to enable the Manager to give effect to the Stapling of Attached Securities to the Units, the provisions of this clause 33.4 apply.

- (a) Subject to the Corporations Act as modified by any applicable ASIC Exemption, the Manager may determine that a Foreign Investor is a Designated Foreign Investor where the Manager reasonably considers that it would be unreasonable to issue or transfer an Attached Security to a Foreign Investor, having regard to each of the following:
 - (i) the number of Foreign Investors in the foreign place;
 - (ii) the number and the value of Attached Securities that may be issued or transferred to Foreign Investors in the foreign place; and
 - (iii) the cost of determining, and complying with, the legal requirements and the requirements of any relevant regulatory authority applicable to the issue or transfer of the Attached Securities in the foreign place.
- (b) Each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:

- (i) the Manager to pay any distributions, withdrawal proceeds or other payments in respect of its Unit or Stapled Security, which are to be used to obtain an Attached Security (**Amounts**), to a sale nominee (**Sale Nominee**);
 - (ii) the Sale Nominee to apply the Amount to obtain an Attached Security;
 - (iii) subject to clause 33.4(c) below, the Sale Nominee to then sell any Stapled Security to which the Attached Security is Stapled;
 - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (c) If an Attached Security is to be Stapled to a Unit or Stapled Security, the Designated Foreign Investor agrees to transfer each existing Unit or Stapled Security they hold free of any encumbrance to the Sale Nominee on or prior to the record date for that stapling (**Sale Record Date**) so that the Sale Nominee:
- (i) is entered in the Register in respect of that Unit or Stapled Security as at the Sale Record Date; and
 - (ii) will receive the Attached Security pursuant to the Stapling of the Attached Security; and
 - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (d) The Manager:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
 - (ii) may take all steps to ensure that the Unit or Stapled Security held by the Designated Foreign Investor and to which an Attached Security is to be Stapled is transferred to the Sale Nominee prior to the Sale Record Date;
 - (iii) need not receive a transfer, instrument or certificate (if any) for existing Units or Stapled Securities in order for the Manager to register the transfer of the existing Units or Stapled Securities to the Sale Nominee.
- Such transfer shall be evidenced by, and shall have full effect from, its registration by the Manager in the Register.
- (e) The amount received for a Unit upon sale of a Stapled Security under clause 33.4(c)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Attached Securities as determined by the Manager.

33.5 Modification or variation of Proposal

Where modifications or variations to the terms of this Constitution are not expressly provided for in the terms of the Proposal but are necessary for or consequential to the implementation of the Proposal, those modifications or variations are deemed to have been made to this Constitution. The Members:

- (a) authorise the Manager to make these amendments in a deed made for that purpose and, if required, to lodge it with ASIC; and

- (b) agree that, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 33.5.

33.6 Manager's authorisation

- (a) Each Member irrevocably authorises and empowers the Manager or any officer of the Manager to, and the Manager is irrevocably appointed as the agent and attorney of each Member to, execute all transfer forms or withdrawal applications and other documents, and to do all things as the Manager may consider necessary or desirable for, or reasonably incidental to, the implementation of the provisions of any proposal approved (if required) under this clause 33 and to receive on the Member's behalf any moneys payable to that Member. Each Member undertakes to ratify anything lawfully done by the Manager in accordance with this clause 33.6(a).
- (b) Without limiting clause 33.6(a) or any provision of a relevant Constituent Document, to effect the Stapling of an Attached Security, each Member irrevocably appoints the Manager as the Member's agent and attorney in the Member's name and on the Member's behalf to:
 - (i) agree to obtain any Attached Security;
 - (ii) apply any distributions, withdrawal proceeds or other payments to obtain an Attached Security;
 - (iii) where an Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
 - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Manager, in consultation with each other issuer of Stapled Securities, considers necessary, desirable or reasonably incidental to effect the acquisition of the Attached Security by the Member.
- (c) Without limiting clause 33.6(a) or any provision of a relevant Constituent Document, to effect the disposal of Units or Stapled Securities held by or on behalf of a Designated Foreign Member, each Designated Foreign Member irrevocably appoints the Manager as that Member's agent and attorney in the Member's name and on the Member's behalf to:
 - (i) receive and apply the Amounts referred to in clause 33.4(b)(i) in the manner contemplated in clause 33.4;
 - (ii) execute applications or transfers in relation to the transfer of any Units or Stapled Securities;
 - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
 - (iv) do all acts and things and execute any other documents which the Manager, in consultation with each other issuer of Attached Securities, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Member.

34 Stapling

34.1 Power to Staple Securities

The Manager may, subject to the Corporations Act and the Listing Rules, cause the Stapling of any Security to a Unit and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, there is an equal number of Attached Securities of every kind Stapled to each Unit.

34.2 Effect of Stapling

- (a) The provisions of this Constitution relating to Stapling including but not limited to this clause 34, (**Stapling Provisions**) take effect on and from the Stapling Date and apply subject to all other provisions of this Constitution which may suspend, abrogate or terminate Stapling.
- (b) While Stapling does not apply, a provision of this Constitution that relates to or is connected with Stapling will continue to apply to the extent that the provision does not relate to Stapling.
- (c) Subject to the other clauses of this Constitution, the Stapling Provisions prevail over all the other provisions of this Constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other Law.
- (d) The Manager must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Officially Quoted as one security, the Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions relating to Stapling of the Attached Securities in the constitutions of the Stapled Entities.
- (e) The Units are intended to be Stapled to the Attached Securities in the ratio of one Unit to one Attached Security as from the Stapling Date, so that, to the extent the Law permits, a Unit and an Attached Security which are Stapled will be treated as one security.
- (f) The Manager must ensure that any future issue of Units that are to be Stapled will be Stapled in such a way that all of the relevant securities become Attached Securities and are dealt with as one security.

34.3 Cessation of Stapling

- (a) Each issued Unit will remain Stapled for so long as the Stapling Provisions apply.
- (b) The Stapling Provisions will cease to apply or be suspended, regardless of any other provision of this Constitution, if:
 - (i) Stapled Security Holders pass a special resolution providing that the Stapling Provisions will cease to apply or be suspended; or
 - (ii) an administrator, manager, receiver, liquidator or similar officer is appointed to a Stapled Entity or its property (as the case may be) and the Manager resolves that the Stapling Provisions will cease to apply or be suspended (as the case may be).

- (c) The Stapling Provisions will cease to apply or be suspended under clause 34.3(b) from such time:
 - (i) as set out in the special resolution passed in the case of clause 34.3(b)(i); and
 - (ii) as the Manager or administrator, manager, receiver, liquidator or similar officer determines in its absolute discretion in the case of clause 34.3(b)(ii).
- (d) On and from the Unstapling Date, each Unit ceases to be Stapled to an Attached Security and the Manager must do all things reasonably necessary to procure that each Unit is Unstapled.
- (e) If the Manager determines to Unstaple the Stapled Securities pursuant to this clause 34.3, this does not prevent the Manager from:
 - (i) subsequently determining that the Stapling provisions should recommence; and
 - (ii) stapling an Unstapled Unit to an Attached Security which is not Stapled.

34.4 Distributions in specie

- (a) For the purposes of Stapling, the Manager may make an in specie distribution of Securities to all Members.
- (b) The Manager must effect the distribution to all Members in the same way and the Securities transferred to each Member must be of the same type, having the same rights and be fully paid.
- (c) Where Securities are to be transferred to Members, each Member authorises the Manager to act as the Member's agent:
 - (i) to agree to obtain the Securities; and
 - (ii) to become a holder of the Securities of the relevant Stapled Entity.

34.5 Units to be Stapled

- (a) The Manager may at any time Staple an Unstapled Unit to an Attached Security which is not Stapled.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the Manager and the Members must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being Stapled as a Stapled Security.
- (c) While Stapling applies, the Manager must use every endeavour to procure that the Stapled Securities are Listed as one joint security and that Units are dealt with under this Constitution in a manner consistent with the provisions of the Stapled Entity's constitution as regards Attached Securities Stapled with those Units.

34.6 Transfer of Stapled Securities

- (a) Until the Unstapling Date:
 - (i) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 6, the transfer is accompanied by a transfer of the Attached Security to which the Unit is Stapled in favour of the same transferee;
 - (ii) a transfer of a Unit which is not accompanied by a transfer of the Attached Security will be taken to authorise the Manager as agent for the transferor to effect a transfer of the Attached Security to which the Unit is Stapled to the same transferee; and
 - (iii) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Manager as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Manager as agent for the transferor to effect a transfer of the Unit to which the Attached Security is Stapled to the same transferee.
- (b) Each Member irrevocably appoints the Manager as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Manager the transfer to the Manager (as trustee of the Trust) or to a person nominated by the Manager of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

34.7 Stapled Security Register

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

- (a) may incorporate or form part of the Register;
- (b) records the names of the Holders, the number of Units held, the number of Stapled Attached Securities held by the Holders to which each Holder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules or determined from time to time by the Manager; and
- (c) must be maintained in accordance with clause 29.

34.8 Variation of Stapling provisions

Prior to the Unstapling Date, the consent of the Stapled Entity must be obtained to any amendment to this Constitution which:

- (a) directly affects the terms on which Units are Stapled; or
- (b) removes any restriction on the transfer of a Stapled Security unless that restriction also exists for Unstapled Units and is simultaneously removed for Unstapled Units.

35 Listing Rules, Corporations Act and ASIC Exemptions

35.1 Listing Rules

Notwithstanding any other provision of this Constitution including, without limitation, any change to this Constitution effected under clause 30, if and for so long as the Trust is admitted to the Official List the following applies:

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

35.2 Corporations Act and Listing Rules

Except to the extent provided otherwise in this Constitution, a provision of this Constitution which is expressed to apply subject to:

- (a) the Listing Rules, is only so subject while the Trust is admitted to the Official List (and the provision is to be read accordingly); and
- (b) the Corporations Act, is only so subject while the Trust is a Registered Scheme (and the provision is to be read accordingly).

35.3 Agreed amendments

If any part of this Constitution (**Required Part**) is included to comply with the requirements of the Corporations Act, the Listing Rules, ASIC or ASX (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Members:

- (a) agree that unless the Manager determines otherwise, this Constitution will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement) and authorise the Manager to make that amendment in a deed made for that purpose (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

35.4 ASIC Exemptions

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Constitution contain certain provisions, then, notwithstanding any amendment to this Constitution effected under clause 30, those provisions are taken to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the Manager declares in writing that this is the case. This declaration may be made at any time.

36 Interpretation

36.1 Definitions

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

ADI has the meaning given to the term 'authorised deposit-taking institution' in the *Banking Act 1959 (Cth)*.

Adviser includes any adviser, consultant or expert including any investment or asset manager, architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, surveyor, broker, administrator, custodian or property manager and any other person appointed by the Manager or its related entities to provide advice or services in relation to the Trust.

AMIT means a trust which is an Attribution Managed Investment Trust under section 276-10 of the Tax Act.

AMIT Choice means a choice made by the Manager pursuant to section 276-10(1)(e) of the Tax Act that the Trust be an AMIT for the purposes of the AMIT Regime.

AMIT Regime means the regime for the taxation of AMITs and Members contained in the:

- (a) Tax Act;
- (b) Income Tax Rates Amendment (Managed Investment Trusts) Act 2016;
- (c) Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016; and
- (d) Income Tax (Attribution Managed Investment Trusts – Offsets) Act 2016.

AML Legislation means the *Anti-Money Laundering and Counter-Terrorism Act 2006 (Cth)*, the *Financial Transaction Reports Act 1988 (Cth)* and any similar legislation in any jurisdiction.

AMMA Statement has the meaning given to that phrase in section 276-460 of the Tax Act.

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Exemption includes:

- (a) an exemption or modification granted by ASIC in accordance with the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Trust or the Manager.

ASIC Instrument means an exemption or declaration granted by ASIC under Part 5C.11 of the Corporations Act;

- (e) any other instrument issued by ASIC under a power conferred on ASIC which applies or relates to the Manager or the Trust; or
- (f) any declaration made or exemption granted by ASIC that is applicable to the Trust and that the Manager elects to rely upon (if relevant).

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

Associate has the meaning given in the Corporations Act.

ASX means the ASX Limited or the financial market operated by that company (whichever the context requires).

ASX Settlement means ASX Settlement Pty Limited (ABN 49 008 504 532) or any body that replaces it or performs its functions.

Attached Security means a Security which is from time to time Stapled or to be a Stapled to a Unit.

Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraphs (a) or (b).

BBSW for a period:

- (a) the rate determined by the Manager to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30 am Sydney time on the first day of that period on the Reuters screen BBSW page for a term of one Month after eliminating one of the highest and one of the lowest of those rates; or
- (b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the Manager to be the average of the buying rates quoted to the Manager by three Australian banks selected by the Manager at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to one Month.

Business Day: a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney and Melbourne.

Class means a class of Units as determined by the Manager under clause 3.

Clearly Defined Rights means where the rights to income and capital arising from each of the Units in the Trust are “clearly defined” at all times when the Trust is in existence during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.

Compliance Committee means a compliance committee for the Trust, if any, established in accordance with section 601JA of the Corporations Act.

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

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

Compliance Plan Auditor means the last person appointed to audit the Trust Compliance Plan as required by section 601H of the Corporations Act.

Constitution means this constitution as amended from time to time.

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

CS Facility has the meaning given to the term 'clearing and settlement facility' in the Corporations Act.

CS Facility Operator means the operator of the prescribed CS Facility.

Custody Fee has the meaning given to it in clause 26.2.

Designated Foreign Investor means a Foreign Investor in respect of whom the Manager has made a determination in accordance with 33.4.

Determined Member Component has the meaning given to that term in section 276-205 of the Tax Act.

Determined Member Component Choice means a choice made by a Member under section 276-205 of the Tax Act.

Determined Trust Component has the meaning given to that term in section 276-255 of the Tax Act.

Distributable Amounts means an amount determined in accordance with clause 1.1 or as defined in clause 14.11, as the case requires.

Distribution Calculation Date means 30 June and 31 December in each Financial Year or any other dates the Manager nominates. For the avoidance of doubt, subject to the Corporations Act, the Manager may nominate different Distribution Calculation Dates for different Classes.

Distribution Date means the day three months after the Distribution Calculation Date for the relevant Distribution Period or any other dates the Manager nominates.

Distribution Entitlement means the entitlement of a Member to the Distributable Amount determined in accordance with clause 1.1.

Distribution Period:

- (a) the Commencement Date and ending on the following Distribution Calculation Date; and
- (b) each subsequent period commencing on the day after a Distribution Calculation Date and ending on the next Distribution Calculation Date or on termination of the Trust.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

Foreign Investor means a Member whose address on the Register is in a place other than Australia, and such other jurisdictions (if any) as the Manager may determine.

Government Authority means a government or a governmental, semi-governmental or judicial entity or authority, it also includes self-regulatory organisation established under statute or a securities exchange.

Gross Asset Value means the value of the Assets calculated in accordance with clause 13.

GST means a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

IDPS means an investor directed portfolio service.

Income has the meaning given in clause 14.

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 1.1.

Initial Public Offering means:

- (d) an initial public offering of the Units or Stapled Securities which involves the raising of capital for subscription under an offer document; or
- (e) a sell down of a substantial portion of the Units or Stapled Securities by the Members; or
- (f) any other arrangement which has substantially the same economic effect,

in each case for the purpose of seeking Listing and quotation of the Units or Stapled Securities or other economically equivalent securities.

Issue Date means the date determined by the Manager.

Issue Price of a Unit on any day means the amount determined under clause 3A.

ITAA 1997 means the *Income Tax Assessment Act 1997* (Cth).

Law includes:

- (a) the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and any other statute;
- (b) any agreement made with a Government Authority; and

- (c) any rule of common law, rule of equity or judgement which applies to the Trust or the Manager (as the case may be).

Liabilities means the aggregate of the following at that time, as calculated by the Manager:

- (a) each liability of the Manager in respect of the Trust or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
- (b) each other amount payable out of the Assets or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability; and
- (c) other appropriate provisions in accordance with Australian Accounting Standards, but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Liquid has the same meaning given in section 601KA(4) of the Corporations Act.

Listed means:

- (a) in the case of the Trust, the trust being listed on the ASX; and
- (b) in the case of securities, the Units or the Stapled Securities being Officially Quoted,

and '**Listing**' has a corresponding meaning.

Listing Date means the date when the Trust is first listed on the ASX and the Units are Officially Quoted.

Listing Rules means the listing rules of the ASX, as amended or replaced from time to time, except to the extent of any express written waiver by the ASX..

Manager means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the trustee of the Trust, with the first trustee being APN Funds Management Limited.

Market Price for a Unit of a Class or for Stapled Securities in respect of any Business Day means:

- (a) where a sale on ASX is recorded on that Business Day, the average of the intra-day prices of the Units on ASX, weighted by volume during the 10 ASX Business Days immediately prior to the date upon which the Issue Price is to be calculated;
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of the Unit or Stapled Security on that Business Day, or there is no sale on ASX recorded on that Business Day or it is impracticable to calculate the price under paragraph (a), the midpoint of the bid and offer prices per

Unit or Stapled Security on ASX at the close of trading on that Business Day (whether or not a sale on ASX is recorded on that Business Day);

- (c) if the Manager believes that the calculation in paragraphs (a) or (b) does not provide a fair reflection of the market price of the Unit or Stapled Security on that Business Day, the mid-point of the bid and offer prices on ASX at such:
 - (i) time; or
 - (ii) times, with such weightings,as the Manager determines will result in a price fairly reflecting the market price; or
- (d) if the Manager believes that the calculation in paragraphs (a) or (b) does not provide a fair reflection of the market price of the Unit or Stapled Security on that Business Day, or the Manager does not determine the price of a Unit or Stapled Security under paragraph (c) the price determined by a Valuer.

Market Value of an Asset means:

- (a) in the case of an Asset that is cash or a deposit with an Australian Authorised Deposit-taking Institution (**ADI**), at face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Manager, unless:
 - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
 - (ii) the Manager reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case paragraph (d) will apply;
- (c) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the withdrawal price of the interest as quoted by the manager, trustee or responsible entity of the scheme on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the withdrawal price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the scheme is operated by the Manager or a related body corporate of the Manager, the withdrawal price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the scheme; and
- (d) in the case of any other Asset, the value of the Asset determined in accordance with accounting standards or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an Valuer approved by the Manager at the expense of the Trust.

Member means a person who holds an interest in the Trust.

Member Component has the meaning given to that term in section 276-210 of the ITAA 1997.

Minimum Application Amount means the amount set by the Manager in accordance with clause 5.4.

Month means a calendar month.

NAV Price in respect of a Unit, means a price calculated in accordance with clause 4.1 and in respect of an Attached Security a price calculated in accordance with the equivalent provision in the constitution of the Stapled Entity.

Net Asset Value means the value of the Gross Asset Value less the Liabilities.

Official List means the official list of the ASX.

Officially Quoted means quotation on the Official List, including when quotation is suspended for a continuous period of not more than 60 days.

Operating Rules means the settlement operating rules (however described) prepared or published by or on behalf of ASX Settlement which are applicable while the Trust is admitted to the Official List, as amended or replaced from time to time except to the extent of any express written waiver by ASX Settlement.

Option means an option to subscribe for a Unit.

Option Holder means a person registered as the holder of an Option (including persons registered jointly).

Partly Paid Unit means a Unit in respect of which the full Issue Price has not been paid.

Prescribed Time means 2.00 pm Sydney time, or such other time or times as the Manager determines.

Redemption Price means the price at which a Unit is redeemed calculated in accordance with clause 10.

Register means the register of Members kept by the Manager.

Registered means recorded in the Register.

Registered Scheme means a scheme registered by ASIC as a managed investment scheme under Chapter 5C of the Corporations Act.

Registration means recording in the Register.

Relevant Person means a person who at any time was, is, or shall become a Member and that person's executors, administrators, successors and assigns.

Required Majority means a simple majority except where this Constitution or any applicable Law provides otherwise, in which case it will be the majority otherwise so required.

Resolution means:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or

- (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority.

Security has the meaning given to that term in section 92 of the Corporations Act.

Staple, Stapled or Stapling means, in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others.

Stapled Entity means any trust (and where the context permits means the trustee of the trust), corporation, managed investment scheme (and where the context permits means the Manager of the managed investment scheme) or other entity the Securities in which are Stapled to Units.

Stapled Security means a Unit and each Attached Security which are Stapled together.

Stapled Security Holder means the holder of a Stapled Security.

Stapled Security Register means the register of Stapled Securities to be established and maintained by or on behalf of the Manager in accordance with clause 34.7.

Stapling Date means the date determined by the Manager to be the day on which all Units on issue in the Trust will be Stapled to an Attached Security or Attached Securities.

Subscription Amount means in respect of an application for a Unit, the Issue Price less the Uncalled Amount.

Tax means any income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, value added tax, withholding tax, municipal rates, stamp duty, financial institutions duty (including financial institutions duty paid or reimbursed), bank accounts debits tax or any other tax, duty, levy, impost, deductions or charges assessable or chargeable by or payable in any jurisdiction to any federal, state or municipal taxation or excise authority, including any interest, fine, penalty, charge, fee or other amount imposed on or in respect of the failure to file a return in respect of or to pay any of them in any jurisdiction.

Tax Act means the *Income Tax Assessment Act 1936 (1936 Act)*, the *Income Tax Assessment Act 1997 (1997 Act)*, both the 1936 Act and the 1997 or the Income Tax (Transitional Provisions) Act 1997, as appropriate.

Transaction Costs means::

- (a) when calculating the Issue Price of a Unit, the Manager's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager's estimate of the total cost of selling the Assets;

provided that, subject to the Corporations Act, the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trust means the trust constituted under or governed by this constitution.

Trust Auditor means the last person appointed under clause 15.1.

Trust Component has the meaning given to that term in section 276-260 of the AMIT Bill.

Unit means an undivided share in the beneficial interest in the Trust as provided in this constitution.

Unders and Overs Rules means the provisions which are set out in the Tax Act which prescribe how underestimates and overestimates of characters at the Trust level are to be carried-forward and dealt with in future income years.

Unstapled means, in relation to a Unit, not being Stapled to a Security.

Unstapling Date means the date determined in accordance with 34.3.

Valuation Time means a time at which the Manager calculates Net Asset Value.

Valuer means an independent expert who has experience and expertise in determining the underlying value of the property as determined by the Manager. The valuer so appointed shall act as expert and not as arbitrator and his or her decision shall be final and binding. Such valuer shall be instructed to consider any written representations made reasonably promptly on behalf of the Manager or any of its subsidiaries.

Withdrawal Offer means an offer made by the Manager in respect of the Trust in accordance with section 601KB of the Corporations Act (which section shall, where the Trust is not a Registered Scheme, apply to the Trust as if it were a Registered Scheme).

36.2 Interpretation

Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words "includes" or "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution; and

- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

36.3 Other documents

A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

36.4 Constitution legally binding

This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

36.5 Severance

If all or part of any provision contained in this constitution is void or invalid or would, otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

36.6 Governing law

This constitution is governed by the law of Victoria.

36.7 Other obligations excluded

Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

Schedule 1 AMIT Provisions

1 Members' clearly defined interests

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Constitution provide that the rights to income and capital of each Unit held by a Member in the Trust constitute Clearly Defined Rights.
- (b) To the extent required by the AMIT Regime in order for the Members to have Clearly Defined Rights,
 - (i) the Manager may not exercise any right or power, whether it is one provided to the Manager under this Constitution or under any statutory or general law rights or powers of a trustee, which would result in the rights to the income and capital of the Trust arising from each Unit in each relevant AMIT for the Trust to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
 - (ii) the Manager must treat Members who hold Units of the same class equally and Members who hold Units of a different class fairly except to the extent that the Trustee directs an amount arising from the sale of an Asset to a particular Member in the circumstances described in clause 11.15(b); and
 - (iii) in addition to the requirements of clause 30, no amendment can be made to this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3 of this Constitution) which would or may cause the requirements of this clause to not be met.

2 Manager powers in relation to AMIT Regime

- (a) The Manager has all of the powers and rights which are necessary and expedient to enable the Trust to comply with and effectively operate as an AMIT for the purposes of the AMIT Regime.
- (b) Without limiting the Manager's other powers or seeking to be exhaustive, for the purposes of the AMIT Regime, the Manager has the power to:
 - (i) work out the Trust Component of each applicable character of the Trust, or each Class, for a Financial Year;
 - (ii) attribute all of the Trust Components and Determined Trust Components of the Trust or each Class to Members under the AMIT Regime, including making an attribution of income of a particular category, source or character for tax purposes;
 - (iii) make an alteration to the Manager's attribution of the Trust Components and Determined Trust Components of the Trust, or each Class, for a Financial Year, under the AMIT Regime including, without limitation, making alterations as a result of the Manager applying the Unders and Overs Rules;
 - (iv) issue or reissue as the case may be) an AMMA Statement;

- (v) where the Trust has more than one Class of Units on issue, to make a choice that each Class be treated as a separate AMIT. If the Manager has made a choice that each Class is to be treated as a separate AMIT for the purposes of the AMIT Regime, only include the relevant income and expenses that relate to that Class in calculating the Trust Components and Determined Trust Components of each Class;
 - (vi) make a determination in relation to and maintain accounts for each of the separate categories of income and/or capital depending on the character of that income and/or capital for the purpose of working out a Trust Component and a Member Component as required under the AMIT Regime;
 - (vii) allocate costs, expenses, deductions and other similar amounts directly against the categories of income or capital to which they relate or, in any other case, perform the allocation on a reasonable basis
 - (viii) issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime; and
 - (ix) levy withholding tax on attributed amounts.
- (c) Subject to the Corporations Act, the Manager is not liable to any Member or former Member with respect to adjustments it makes to any Trust Component in applying the Unders and Overs Rules provided that the Manager makes those adjustments in accordance with the AMIT Regime and irrespective of whether any choice made by the Manager results in a different attribution outcome for the Member than if the Manager had not made the choice, or had made the choice in a different way.

3 Attribution of trust components

- (a) The Manager must attribute all of the Trust Components and Determined Trust Components of:
- (i) the Trust; or
 - (ii) if the Manager has made a choice that each Class will be treated as a separate AMIT, each Class in the Trust,
- in respect of a Financial Year, to the Members or former Members under the AMIT Regime.
- (b) The Manager undertakes to perform attribution under clause 3(a) in accordance with the following principles:
- (i) the amount of each Member's or former Member's Member Components and Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units in the Trust held by the Member or former Member, having regard to the provisions of this Constitution;
 - (ii) subject to clause 3(b)(iv), the attribution must be worked out on a fair and reasonable basis, in accordance with this Constitution and any other documents that constitute constituent documents for the Trust;

- (iii) subject to clause 3(b)(iv), the Manager must not attribute any part of a Determined Trust Component to a Member or former Member because of the tax characteristics of the Member or former Member;
 - (iv) the Manager may direct an amount arising from the sale of an Asset to a particular Member in the circumstances described in clause 11.15(b);
 - (v) if there is more than one Class on issue in the Trust and the Manager has made a choice that each Class will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 3(a) and the Manager must only attribute Determined Trust Components of a particular Class to Members of that Class (and not any other Class); and
 - (vi) the Manager must attribute to each Member or former Member, so much of the Determined Trust Components of the Trust or the relevant Class (if relevant) as are reflected in any Distribution Entitlements that the Member or former Member has become entitled to during the Financial Year;
- (c) Where the Manager exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:
- (i) it is not intended the Manager make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing Distribution Entitlement allocation provisions or amount payable to a Member under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3 of this Constitution);
 - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements to income and capital contemplated in the existing Distribution Entitlement allocation provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3 of this Constitution) and should not be materially different from those rights and entitlements.

4 Ceasing to be an AMIT

If the Trust ceases to be an AMIT in respect of any Financial Year, then in determining the Income of the Trust for any subsequent Financial Year and to the extent required by the AMIT Regime, an appropriate adjustment must be made in the discovery year to take into account any over or under distributions of any tax component from any prior period in which the Trust was an AMIT.

5 Determined Member Component Choice

- (a) If a Member makes or intends to make a Determined Member Component Choice (in this clause, a **Choice**) for the purposes of the AMIT Regime, the Member must:
 - (i) before providing notice of such Choice to the Commissioner of Taxation, provide the Manager not less than seven days' notice of its intention to do so and a summary of the reasons why the Member considers the attribution to be inappropriate;

- (ii) provide to the Manager all information the Manager reasonably requests in relation to any act, matter or thing relating to the Choice;
 - (iii) consent to the Manager becoming a party to any proceedings with the Commissioner of Taxation relating to the objection.
 - (b) The Member acknowledges that if a Member makes a Choice it may be necessary or desirable for the Manager to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Members for the purposes of the AMIT Regime.
 - (c) The Manager shall have no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to a Choice.
 - (d) The Manager has the right to issue or reissue any AMMA Statement to the Member or other Members if a Member makes a Choice.
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6 Debt-like AMIT instruments

The Members and holders of the debt-like AMIT instruments acknowledge that the attribution rules in the AMIT Regime that apply in relation to the attribution of a particular AMIT character do not apply in relation to the holding of a debt-like AMIT instrument.

Schedule 2 Expenses

The following are examples of Expenses for which the Manager may be reimbursed out of the Assets and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation of the Trust and any supplemental deed or proposed supplemental deed to amend this Constitution, including Advisers' fees;
- (b) the preparation, approval, implementation, audit and interpretation of a Compliance Plan for the Trust;
- (c) the preparation, review, approval, distribution and production of any disclosure document or offering memorandum in respect of Units or any other interest in the Trust, marketing material or other documents whether required by Law or otherwise to be prepared in respect of the Trust;
- (d) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (e) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets;
- (f) the investigation, negotiation or acquisition of any proposed investment;
- (g) the administration, management, valuation or promotion of the Trust or its Assets and Liabilities, including:
 - (i) fees and expenses payable to an investment manager appointed by the Manager;
 - (ii) the establishment and maintenance of accounts and Registers;
 - (iii) issuing Units by the Manager or any sales of Units by one or more Members, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units;
 - (iv) computer operation and development and data processing;
 - (v) office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Member under this Constitution;
 - (vi) dealing with Member enquiries;
 - (vii) communications with Members (written or otherwise);
 - (viii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Trust or on an ongoing basis;
 - (ix) leasing premises outside of Australia for the Manager in connection with the Trust; and

- (x) any travel expenses incurred in connection with the Trust;
- (h) convening and holding meetings of Members and carrying out the direction of the meetings;
- (i) Taxes (provided they are not on the personal account of the Manager and including any GST charged to the Manager), stamp duty and financial institution fees;
- (j) the inclusion of the Trust on any IDPS list;
- (k) the engagement of delegates, agents, Advisers and Valuers;
- (l) without limiting paragraph (k), the payment of management fees, performance fees or other fees associated with the engagement of any investment manager or other delegate or appointee;
- (m) preparation and audit of the taxation returns and accounts of the Trust;
- (n) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (o) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been negligent in which case any expenses paid or reimbursed under this paragraph (o) shall be repaid;
- (p) the establishment and operation of a compliance committee in connection with the Trust, including costs and expenses reasonably incurred by and any fees paid to or insurance premiums in respect of such compliance committee;
- (q) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including (if the Trust is a Registered Scheme) any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C (*Managed investment schemes*) of the Corporations Act;
- (r) admission of the Trust to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Trust from the official list of the ASX or any other exchange or the suspension of any Units from trading by the ASX or any other exchange;
- (s) complying with any Law or any request or requirement of ASIC or any other regulatory authority in relation to the Trust;
- (t) fees payable to ASIC or any other regulatory authority in relation to the Trust or Units;
- (u) the assigning or maintaining of a credit rating to the Trust; and
- (v) raising money or otherwise obtaining financial accommodation for the Trust, including a capital raising by the Trust, including fees payable to any underwriter or broker.

Execution page

Executed as a deed.

Signed, sealed and delivered by **APN Funds Management Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)