
Convenience Retail REIT No. 3

Constitution

APN Funds Management Limited ACN 080 674 479

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Parties

APN Funds Management Limited ACN 080 674 479 of Level 30, 101 Collins Street, Melbourne VIC 3000 (Responsible Entity)

Recitals

This Constitution is declared by the Responsible Entity to be the constitution for a trust to be known as the Convenience Retail REIT No. 3.

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this Constitution the following terms, unless the context otherwise indicates, shall have the following meanings:

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 Responsible Entity or its related entities to provide advice or services in relation to the Fund.

AMIT means a trust which is an Attribution Managed Investment Trust under section 276-10 of the ITAA 1997.

AMIT Choice means a choice made by the Responsible Entity pursuant to section 276-10(1)(e) that the Fund be an AMIT for the purposes of the AMIT Regime.

AMIT Regime means the provisions for the taxation of AMITs contained in Division 276 of the *Income Tax Assessment Act 1997*, together with the other relevant amendments to the *Income Tax Assessment Act 1997*, *Income Tax Assessment Act 1936* and *Tax Administration Act 1953*.

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 means an AMIT Unit Holder annual statement as is or may be required by the provisions of the AMIT Regime.

ASIC means the Australian Securities and Investments Commission.

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 Fund or the Responsible Entity.

Assets means real property, cash, investments, rights, income and other property of the Fund from time to time.

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).

Attached Security means a Security which is from time to time Stapled or to be 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 Responsible Entity 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 Responsible Entity to be the average of the buying rates quoted to the Responsible Entity by three Australian banks selected by the Responsible Entity 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 means the same meaning as in the Listing Rules.

Capital Reallocation means an issue of Units in the circumstances contemplated by clause 5.13.

Class means a class of Units as determined by the Responsible Entity under clause 4.4.

Commencement Date means the date of commencement of the Fund, being the date on which Units are first issued.

Complaint has the same meaning as in Australian Standard ISO 10002-2006 (or such other instrument which replaces it) and includes a dispute.

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

Compliance Committee Member means a member of the Compliance Committee.

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

Compliance Plan Auditor means the last person appointed under clause 21.1(b) to audit the Fund Compliance Plan as required by section 601H of the Corporations Act.

Constituent Documents means the constituent documents of a Stapled Entity.

Constitution means this constitution as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth), as amended from time to time.

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 17.3.

Designated Foreign Investor means a Foreign Investor in respect of whom the Responsible Entity has made a determination in accordance with 31.4.

Determined Unit Holder Component has the meaning given to that term in section 276-205 of the ITAA 1997.

Determined Unit Holder Component Choice means a choice made by a Unit Holder under section 276-205 of the ITAA 1997.

Determined Trust Component has the meaning given to that term in section 276-255 of the ITAA 1997.

Distributable Amount has the meaning given to it by clause 15.6 and 15.19 as the case requires.

Distribution Calculation Date means 30 June and 31 December in each Financial Year or any other dates the Responsible Entity nominates. For the avoidance of doubt, subject to the Corporations Act, the Responsible Entity 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 Responsible Entity nominates.

Distribution Entitlement means the entitlement of a Unit Holder to the Distributable Amount determined in accordance with clause 15.7.

Distribution Period means the period commencing on:

- (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 Fund.

EDR Service means the Financial Ombudsman Service or such other ASIC approved external dispute resolution service which replaces it.

Expenses includes all expenses, costs, charges, fees, commissions, liabilities, losses, damages, Tax and all amounts payable in respect of any of these including examples set out in Schedule 1.

Financial Year means the period beginning on the Commencement Date and ending on the following 30 June, and each subsequent period commencing on 1 July and ending on the following 30 June or on the date of distribution on termination of the Fund.

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

Fully Paid Unit means a Unit on which the Issue Price has been fully paid.

Fund means the trust constituted by this Constitution and known as Convenience Retail REIT No. 3.

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 sum of:

- (a) the value of all Assets; and
- (b) any other amounts which, in the opinion of the Responsible Entity, should be included for the purpose of making a fair and reasonable determination of the value of the Fund having regard to ordinary accounting principles.

GST has the meaning given to that expression in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

GST Law has the meaning given to that expression in the GST Act.

Half Year means a period of six months ending 30 June or 31 December.

Holder means a Unit Holder or Stapled Security Holder as the case requires.

IDPS means an investor directed portfolio service.

Income has the meaning given in clause 15.4.

Initial Public Offering means:

- (a) an initial public offering of the Units or Stapled Securities which involves the raising of capital for subscription under an offer document; or
- (b) a sell down of a substantial portion of the Units or Stapled Securities by the Unit Holders; or
- (c) 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 Responsible Entity.

Issue Price of a Unit on any day means the amount determined under clause 6.

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 Fund or the Responsible Entity (as the case may be).

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

- (a) each liability of the Responsible Entity in respect of the Fund 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 Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holders' 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 Fund.

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

Listed means:

- (a) in the case of the Fund, 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 Fund 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.

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 Responsible Entity 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 Responsible Entity 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 Responsible Entity determines will result in a price fairly reflecting the market price; or
- (d) if the Responsible Entity 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 Responsible Entity does not determine the price of a Unit or Stapled Security under paragraph (c) the price determined by a Valuer as fairly reflecting the market price.

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 Responsible Entity, 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 Responsible Entity 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 Responsible Entity or a related body corporate of the Responsible Entity, 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 Responsible Entity 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 Responsible Entity at the expense of the Fund.

Month means a calendar month.

NAV Price in respect of a Unit, means a price calculated in accordance with clause 6.1(b) 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 Gross Asset Value less the following:

- (a) all amounts required to meet Liabilities (including the amount of any provisions the Responsible Entity determines should be made); and
- (b) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the day which the Net Asset Value is determined.

Net Income means an amount that is calculated in the same manner as net income is calculated under the Tax Act, provided that where, in calculating the net income under the Tax Act, it is necessary to:

- (a) gross up any amount of income (for example tax offsets such as foreign tax credits or franking credits); or
- (b) reduce the amount of any capital gain under Step 3 of section 102-5 of the Tax Act,

then the grossing up or reduction must not be included in calculating the Net Income of the Fund.

Official List has the same meaning as in the Listing Rules.

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

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 Responsible Entity determines.

Quarter means each three month period ending on 31 March, 30 June, 30 September and 31 December or such shorter period of time if the period ends on the date of termination of the Fund or the date of retirement of the Responsible Entity or commences on the date of commencement of the Fund.

Redemption Price means the amount determined under clause 7.

Register means each of the registers established and kept by the Responsible Entity under clause 22.

Registered Scheme means a managed investment scheme that is registered as a managed investment scheme under section 601EB(1) of the Corporations Act.

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

Required Information has the meaning given to it by clause 4.16.

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 Unit Holders:
 - (i) on a show of hands, by the Required Majority of Unit Holders present in person or by proxy and voting on the show of hands;
 - (ii) on a poll, by the Required Majority of votes cast by Unit Holders present, in person or by proxy and voting on the poll; or
- (b) where the Law allows, a resolution in writing signed by all Unit Holders.

Responsible Entity means APN Funds Management Limited ACN 080 674 479 or any other person acting as the trustee or responsible entity of the Fund in accordance with the provisions of this Constitution and, where appropriate, includes any agent or Adviser appointed by the Responsible Entity.

Restricted Securities has the same meaning as in the Listing Rules.

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

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

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 responsible entity 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 Responsible Entity in accordance with clause 24.7.

Stapling Date means the date determined by the Responsible Entity to be the day on which all Units on issue in the Fund 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* or the ITAA 1997 (as the case requires).

Transaction Charge means:

- (a) when calculating the Application Price of a Unit, the Responsible Entity's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Responsible Entity'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 Auditor means the last person appointed under clause 21.1.

Trust Component has the meaning given to that term in section 276-260 of the ITAA 1997.

Trust Index means the accumulation index for the Fund as calculated by the ASX, or other suitable body as determined by the Responsible Entity from time to time and notified to Unit Holders, using closing market price series data (except for the closing price at the end of a Half Year, which shall be replaced by the ten day volume weighted average trading price from and including the date upon which the Units trade ex-distribution entitlement for the relevant Half Year). The index will commence at 100 on the date utilising the closing market price on that day.

Uncalled Amount means in respect of a Unit, the amount of the Issue Price which has not been paid or called under this Constitution.

Unders and Overs Rules means the provisions which are set out at Subdivision 276-F of the ITAA 1997 which prescribe how underestimates and overestimates of amounts at the Fund level are to be carried-forward and dealt with in future income years.

Unit means a unit in the Fund created under this Constitution.

Unit Holder means a person who holds an interest in the Fund.

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

Unit Holding means the total Units held by a Unit Holder.

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

Unstapling Date means the date determined in accordance with 24.3.

Valuation Time means any time the Net Asset Value is determined by the Responsible Entity.

Valuer means an independent expert who has experience and expertise in determining the underlying value of the property as determined by the Responsible Entity. 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 Responsible Entity or any of its subsidiaries.

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

1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

- (a) words importing the singular include the plural and vice versa and words importing any gender include all other genders;
- (b) a reference to a person includes a firm, corporation, trust, partnership or unincorporated body;
- (c) a reference to a clause or schedule is a reference to a clause of and a schedule to this Constitution and a reference to this Constitution includes any schedule;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to an agreement or document (including, without limitation, a reference to this Constitution) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other agreement or document;
- (g) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;
- (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (i) words and expressions defined in the Corporations Act have the meanings given to them in that law; and
- (j) headings contained in this Constitution are for convenience and do not affect the interpretation of this Constitution.

1.3 General compliance provision

- (a) A provision of this Constitution which is inconsistent with a provision of the Corporations Act, or the terms of an ASIC Exemption or any ASX waiver does not operate to the extent of, and for the duration of, the inconsistency.

- (b) This clause 1.3 is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this Constitution.
 - (c) This clause 1.3 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.
 - (d) If the terms of any current ASIC Exemption are applicable on the basis that this Constitution contains certain provisions, then such provisions are deemed to be contained in this Constitution.
-

2 The Trust

2.1 Responsible Entity

As from the Commencement Date, the Responsible Entity has agreed to act as trustee of the Fund.

2.2 Declaration of Trust

- (a) The Assets shall vest in the Responsible Entity on the Commencement Date and the Responsible Entity declares that it shall hold the Assets on trust for the Unit Holders in accordance with the terms of this Constitution.
- (b) The Responsible Entity shall clearly identify the Assets as property of the Fund and hold the Assets separately from the assets of the Responsible Entity and any other managed investment scheme.

2.3 Name of Trust

The name of the Fund is the 'Convenience Retail REIT No. 3' or such other name as the Responsible Entity may from time to time determine.

3 Application of the Constitution if the Fund is an AMIT

- (a) This Constitution contains specific provisions in Schedule 2 which will apply if the Responsible Entity makes an AMIT Choice.
- (b) If the Responsible Entity makes an AMIT Choice:
 - (i) it must provide a notice in writing to the Unit Holders that the provisions in Schedule 2 are to apply on and from the time nominated in the notice; and
 - (ii) subject to clause 3(c)(i), the provisions in Schedule 2 will prevail over any other provision of this document to the extent of any inconsistency, if such an inconsistency is not adverse to Unit Holders' rights.
- (c) If the Fund ceases to be an AMIT for any reason, including but not limited to the Fund ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
 - (i) the provisions of Schedule 2 will cease to apply to the extent that they are not permitted to operate or are not relevant to the Fund 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 Fund.
 - (d) Nothing in this clause 3 imposes an obligation on the Responsible Entity to:
 - (i) enter into or facilitate the entry of the Fund into the AMIT Regime;
 - (ii) make any changes to this Constitution; or
 - (iii) make an AMIT Choice.
-

4 Units and Unit Holders

4.1 Units

- (a) The beneficial interest in the Fund is divided into Units.
- (b) Each Unit confers on the Unit Holder a beneficial, equal and undivided interest in the Fund as an entirety and does not confer an interest in a particular part of the Fund or the Assets.

4.2 Fractional Units

- (a) The Responsible Entity may issue fractions of a Unit calculated to the third decimal place or such other number of decimal places as the Responsible Entity determines, and the value of, and all rights and obligations attaching to a fraction will be in proportion to those of a whole Unit. However, while Units are Stapled fractional Units may only be issued if a fraction of an Attached Security Stapled to the fractional Unit is also issued.
- (b) Where a holding comprises more than one fraction of a Unit, the Responsible Entity may consolidate such fractions.

4.3 Consolidation or division of Units

- (a) The Responsible Entity may consolidate or divide the number of Units on issue.
- (b) Any consolidation or division shall apply equally to all Units on issue.
- (c) The Responsible Entity shall amend the Register to record any consolidation or division of Units.
- (d) 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.

4.4 Classes of Units

- (a) Subject to clause 6 and section 601FC(1)(d) of the Corporations Act, the Responsible Entity may issue Units with such preferred, deferred or other special rights, obligations or restrictions in respect of any matter, as the Responsible Entity may determine.
- (b) Subject to clause 6, the Responsible Entity may only vary or cancel the rights attaching to Units in a class of Units by special resolution of the Unit Holders

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%.

4.5 Equal value

At any time, all the Units of the same Class are of equal value and rank.

4.6 Options

- (a) The Responsible Entity may create and issue Options on such terms and conditions as the Responsible Entity 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 Responsible Entity 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 Responsible Entity, 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 Responsible Entity determines, and otherwise on terms and conditions and with such entitlements as determined by the Responsible Entity. The terms of issue of the Option may allow the Responsible Entity 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 Responsible Entity is making an offer of Options to Unit Holders which is otherwise in proportion to their existing holdings of Units, the Responsible Entity 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.

4.7 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 Unit Holder 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.

4.8 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 Responsible Entity (**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 Unit Holder, 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 Unit Holder, the Unit Holder appoints the Responsible Entity as the Unit Holder's attorney in the Unit Holder's name and on the Unit Holder's behalf to do all acts and things which the Responsible Entity considers necessary, desirable or reasonably incidental to effect the Reorganisation of the Unit or Option.

4.9 Proportional takeover offers

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

- (a) clauses 4.9 to 4.14 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 4.12 or 4.13; and
- (c) the Responsible Entity must ensure that a Resolution to approve the bid is voted on in accordance with clauses 4.10 and 4.11 before the fourteenth day before the last day of the bid period.

4.10 Approval of takeover bids

The Responsible Entity 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 4.12, as if it were a meeting of Unit Holders convened and conducted in accordance with this Constitution and the Corporations Act with such modifications as the Responsible Entity 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 Responsible Entity 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 Responsible Entity 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 Responsible Entity 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 Responsible Entity or unit registry of the Fund 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 Responsible Entity before the close of business on the date for closing of the postal ballot.

4.11 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.

4.12 When approving resolution passed

If the Resolution is voted on in accordance with clauses 4.9 to 4.11 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.

4.13 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 4.10 to 4.12.

4.14 Cessation of clauses 4.9 to 4.13

Clauses 4.9 to 4.13 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.

4.15 Joint Holders of Units

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

- (a) the Responsible Entity shall not be bound to register more than three persons as joint Holders of the Unit;
- (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 Responsible Entity will recognise as having any title to the Unit, subject to the production of any evidence of death that the Responsible Entity requires;
- (d) any one of the joint Holders may give an effective receipt that discharges the Responsible Entity 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 of a Unit shall be entitled to delivery of any notices, cheques or other communications from the Responsible Entity, and any notice, cheque or other communication given to that person is deemed to be given to all the joint Holders;
- (f) unless the Responsible Entity determines otherwise.

4.16 Required Information

- (a) Each Unit Holder must provide to the Responsible Entity any information requested by the Responsible Entity (**Required Information**) in a notice sent to the Unit Holder (a **Required Information Request**).
- (b) Subject to clause 4.16(c):
 - (i) the Responsible Entity may issue Required Information Requests at any time and may issue supplementary Required Information Requests seeking more information; and
 - (ii) each Unit Holder authorises the Responsible Entity to use Required Information in any way, including providing it to third parties.
- (c) The Responsible Entity 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 Responsible Entity;
 - (ii) avoid amounts being withheld from any payments to the Fund or any Unit Holder; or
 - (iii) lessen the risk of the Fund or any Unit Holder suffering a material detriment (whether or not financial),

and the Required Information Request specifies a reasonable period within which the Unit Holder must provide the Required Information.

- (d) If any Required Information is not provided by the Unit Holder within the time and in the manner specified in a Required Information Request then, despite any other provision of this Constitution, the Unit Holder must indemnify the Responsible Entity for any loss suffered by the Responsible Entity in relation to the Unit Holder's failure to provide the Required Information.
- (e) Each Unit Holder undertakes that any payment of money by the Responsible Entity in accordance with instructions provided by the Unit Holder (or any agent of the Unit Holder) will not breach any law of Australia or any other jurisdiction.
- (f) The Responsible Entity may enter into agreements with any Government Authority in any jurisdiction where the Responsible Entity believes it is reasonably necessary to do so to:
 - (i) avoid amounts being withheld from any payments to the Fund or any Unit Holder; or
 - (ii) lessen the risk of the Fund or any Unit Holder suffering a material detriment (whether or not financial).
- (g) If the Responsible Entity is required to provide any information about Unit Holders under any agreement made with a Government Authority then, to the extent permitted by Law, each Unit Holder consents to the Responsible Entity providing that information.

4.17 Benefits and obligations of Unit Holders

Except where expressly provided in this Constitution to the contrary, all benefits and obligations contained in this Constitution apply for the benefit of and bind each Unit Holder to the extent provided in this Constitution.

5 Offer and issue of Units or Options

5.1 Offers

- (a) The Responsible Entity may at any time offer Units or Options for subscription or sale and may invite persons to make offers to subscribe for or buy Units.
- (b) While Stapling applies the Responsible Entity must procure that any offer to subscribe for or buy Units is made at the same time that the Stapled Entities make a corresponding offer for subscription or sale of an identical number of Attached Securities.
- (c) The perpetuity period for the purposes of section 5 of the *Perpetuities and Accumulations Act 1968* (Vic) is the period of 80 years from the day before the Commencement Date. The Responsible Entity cannot issue any Units after the 80th anniversary from the day before the Commencement Date if such issues would cause a contravention of the rule against perpetuities or any other rule of law or equity. This sub-clause prevails over all other provisions of this Constitution. The specification of a perpetuity clause in this clause 5.1(c) does not require that the Fund be terminated (and the assets realised) on the expiration of that period.

5.2 Minimum amounts

The Responsible Entity may specify a minimum initial application amount, minimum further application amount or minimum holding amount in respect of Units or Options for the Fund as a whole and vary those amounts at its discretion.

5.3 Form of application

- (a) Each application for Units or Options will, unless the Responsible Entity approves otherwise:
 - (i) conform with the form and content requirements or any relevant disclosure document;
 - (ii) be accompanied by application monies as required by any relevant disclosure document; and
 - (iii) if there is no relevant disclosure document, be made in such manner as the Responsible Entity approves.
- (b) While Stapling applies, an application for Units must also include an application for an identical number of Attached Securities to be Stapled to those Units.
- (c) The Responsible Entity may authorise an application to be transmitted electronically.

5.4 Reinvestment

Subject to clauses 6.1(b) and 6.9, the Responsible Entity may, at its absolute discretion, allow a Unit Holder to reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units under a distribution reinvestment plan on terms and conditions prescribed by the Responsible Entity.

5.5 Acceptance or rejection

The Responsible Entity may, without being bound to give any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of an application.

While Stapling applies, the Responsible Entity must reject an application if the application for Units is not also for an identical number of Attached Securities to be Stapled to those Units. Subject to the Listing Rules, the Responsible Entity is not required to provide any reason or ground for such refusal.

5.6 Uncleared funds

- (a) Units issued against application money paid other than in cleared funds are void if the funds are not cleared within 5 Business Days of being presented for payment.
- (b) While Stapling applies, where an issue of Units is voided pursuant to clause 5.6(a), any Attached Securities issued with the Units must also be voided at the same time.

5.7 Payment of application money

- (a) All payments or transfers of property received for an application for Units must be made out to the Responsible Entity or its nominated custodial agent.
- (b) If property is to be transferred to the Responsible Entity as payment for the issue of Units, the Responsible Entity must not accept the application for Units unless:
 - (i) an effective transfer of title to the property free of all encumbrances is received; and
 - (ii) a valuation acceptable to the Responsible Entity has been obtained by the applicant stating the current market value of the property.
- (c) The applicant must pay all Expenses and other amounts payable, including the valuation of the property, to transfer the property to the Responsible Entity. If such amounts are not paid, the Responsible Entity may deduct such amounts from the value of the property prior to determining the number of Units to be issued under clause 5.10 or 5.11.
- (d) Payments received and accepted by the Responsible Entity prior to the issue of the Units forms part of the Assets of the Fund.
- (e) Payments not accepted by the Responsible Entity shall be repaid but no interest in respect of the payment shall be payable.

5.8 Receipt of application

The Responsible Entity may determine that an application for Units or application money or property received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

5.9 Issue of Units

Unless otherwise determined by the Responsible Entity, Units or Options are taken to be issued:

- (a) on the Issue Date immediately after the later of the day on which:
 - (i) the Responsible Entity 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 Responsible Entity receives the application money, or the property (which is acceptable to the Responsible Entity) against which the Units or Options are to be issued is vested in the Responsible Entity; and
- (b) in the case of a Unit or Options issued under a distribution reinvestment arrangement referred to in clauses 5.4 and 15.15, the first Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated;
- (c) and 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.

5.10 Number of Units issued

Subject to clause 5.11 and the terms of issue of a Unit, the number of Units issued at any time in respect of an application for Units (including a reinvestment of a Unit Holder's Distribution Entitlement) shall be the number determined in accordance with the following formula:

$$\frac{A}{B}$$

Where:

- A is the application money or the value of the property transferred to the Responsible Entity (including a reinvestment of the Unit Holder's Distribution Entitlement); and
- B is the Issue Price at the time of issue of the Unit.

5.11 Units as consideration

Where an investment is acquired (on behalf of the Fund) for consideration which includes the issue of Units by the Responsible Entity, the number of Units created and issued by the Responsible Entity is determined in accordance with the following formula:

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

Where:

- A is the value of the investment being acquired as determined in accordance with clause 13;
- B is the amount of the cash consideration paid by the applicant in respect of the investment (if any) (or, if cash consideration is paid by the Responsible Entity to the applicant, B is a negative amount equal to the cash consideration paid by the Responsible Entity in respect of the investment); and
- C is the Issue Price of the Units being issued as determined in accordance with clause 6.3.

5.12 Defective applications

- (a) Where, within 10 Business Days of the issue of Units (or such longer period as the Responsible Entity determines), the Responsible Entity determines that:
- (i) the applicant was not entitled to hold the Units;
 - (ii) the application form was incorrectly executed or executed without power or authority;
 - (iii) the application form was defective and was accepted in error; or
 - (iv) the application moneys due were not credited to the Responsible Entity's account or, if credited, were later reversed by the paying party,

the Responsible Entity may, in its sole discretion, cancel those Units and make an appropriate entry in the Register and, if necessary, repay the application moneys to

the applicant out of the Assets. If Units are cancelled under this clause 5.12, the Responsible Entity is not required to adjust the Gross Asset Value, Issue Price or Redemption Price determined before the cancellation of the Units.

- (b) Where Stapling applies, the Responsible Entity may take any action contemplated by clause 5.12(a) where a Stapled Entity takes any similar action in relation to an application for an Attached Security.

5.13 Capital Reallocation Issue

- (a) Despite any other provision of this Constitution, the Responsible Entity 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 Responsible Entity 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 Responsible Entity must immediately consolidate the Capital Reallocation Units issued under clause 5.13(a) with all other Units then on issue in the Fund 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 Fund.

5.14 No certificates

- (a) No certificates will be issued for Units, unless determined otherwise by the Responsible Entity.
- (b) While Stapling applies, the Responsible Entity may:
 - (i) issue certificates in respect of the Stapled Securities; and
 - (ii) release joint holding statements in relation to Stapled Securities that are uncertificated,if it so determines.

6 Issue Price

6.1 Issue Price while Units are not Officially Quoted

- (a) The Issue Price for the first issue of Units is \$1.00.

- (b) At any other time (whether Units are Stapled or not) and while the Units are not Officially Quoted, the Issue Price for a Unit shall be determined in accordance with the following formula:

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

Where:

A is the Net Asset Value as at the Issue Date;

B is any relevant Transaction Charge; and

C is the number of Units on issue.

- (c) Each of the variables in clause 6.1(b) must be determined:
- (i) as at the first Valuation Time after the later of the day on which the Responsible Entity:
- (A) accepts the completed application for Units; or
- (B) receives the application money, or the property against which the Units are to be issued is vested in the Responsible Entity; or
- (ii) 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.

6.2 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 6.2, for a Unit while Units are Officially Quoted will be determined by the Responsible Entity and will be the Market Price of the Units or, where Stapling applies, the Market Price of the Stapled Securities minus the application price of each Attached Security or the amount determined by the Responsible Entity in accordance with clause 6.11 or clause 6.5; and
- (b) in the case of a rights issue while Units are Officially Quoted, in accordance with clause 6.6;
- (c) in the case of a placement of Units while Units are Officially Quoted, in accordance with clause 6.7;
- (d) in the case of an interest purchase plan in relation to Units while Units are Officially Quoted, in accordance with clause 6.8;
- (e) in the case of a reinvestment of income while Units are Officially Quoted, in accordance with clause 6.9; 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.

6.3 Issue of Units to acquire an investment

- (a) Subject to clause 6.3(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 Fund), the Issue Price for those Units must be calculated in accordance with clause 6.1(b) 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 Fund, 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 Responsible Entity 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 Responsible Entity 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 6.1(c), 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 Responsible Entity must only issue Units to acquire an investment on behalf of the Fund if there is a corresponding issue of an identical number of Attached Securities.

6.4 Rounding

The Issue Price may be rounded as the Responsible Entity determines.

6.5 Initial Public Offering

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

- (a) the Responsible Entity 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 6.5 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 6.5(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 Responsible Entity);
 - (ii) the Responsible Entity provides written notice to the bookrunner of the amount to be raised and why the Responsible Entity considers it is in the best interests of Unit Holders;
 - (iii) once the bookbuild is complete, the bookrunner certifies to the Responsible Entity that the price is fair for Unit Holders; and
 - (iv) the bookrunner certifies to the Responsible Entity 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 Unit Holders generally including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

6.6 Rights issues

The following provisions apply to rights issues:

- (a) while Units are Officially Quoted, the Responsible Entity may (subject to the terms of any applicable ASIC Exemption) offer further Units for subscription at a price determined by the Responsible Entity to those persons who were Unit Holders on a date determined by the Responsible Entity not being more than 30 days immediately prior to the date of the offer, provided that:
 - (i) all Unit Holders 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 6.2(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 6.11),

but, subject to the Listing Rules, the Responsible Entity 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 Responsible Entity may adjust any entitlement to accord with the Listing Rules and in the case of fractions in accordance with clause 6.4. Any Unit Holder may, unless the terms of issue provide otherwise, renounce its entitlement in favour of some other person.
- (c) Any Units offered under this clause 6.6 which are not subscribed for within the period during which the offer is capable of acceptance may be offered for subscription by the Responsible Entity to any person, provided that the Issue Price is not less than that at which Units were originally offered to Unit Holders. If an underwriter has underwritten any offer for subscription under this clause, the underwriter may take up any Units not subscribed for by the Unit Holder at the Issue Price referred to in this clause 6.6(c).
- (d) The Responsible Entity may make a priority offer in respect of any rights issue in accordance with the terms of any ASIC Exemption.

6.7 Placements

While Units are Officially Quoted, the Responsible Entity 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 Responsible Entity 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 6.7 may only be accepted if the offeree contemporaneously accepts that offer of Units and the offer of Attached Securities referred to in this clause 6.7.

6.8 Interest purchase plan

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

6.9 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 Responsible Entity 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 Responsible Entity whose identity and instructions will be determined by the Responsible Entity) less such discount, if any, not exceeding 10% as the Responsible Entity 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 6.11.
- (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 Fund and, if applicable, the Stapled Entities at the next time that reinvestment is to occur (where Stapling applies in such proportions as the Responsible Entity and the Stapled Entities may determine on behalf of the relevant Stapled Security Holder).

6.10 Satisfaction of Issue Price

The Issue Price may be satisfied by payment in cash or by transfer to the Responsible Entity of property acceptable to the Responsible Entity (or by a combination of both). If the Responsible Entity accepts payment in the form of property, it may determine that some or all of the costs associated with the valuation or transfer of such property are payable or reimbursable out of the Assets or by the applicant.

6.11 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 application price for the Stapled Security but not for the Unit,

the Responsible Entity must determine what part of the application 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 Responsible Entity 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 responsible entity of the Stapled Entity,

the application price of a Stapled Security will be allocated between the Issue Price of the Unit and the application 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 Fund 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 Fund and the Stapled Entities at that time.

- (c) This clause 6.11 does not apply where Units are issued pursuant to clause 6.5(c)(i).

7 Redemption Price of Units

7.1 Redemption Price

A Unit must only be redeemed at a Redemption Price calculated in accordance with the following formula:

$$\frac{A}{B}$$

Where:

A is Net Asset Value less any relevant Transaction Charge; and

B is the number of Fully Paid Units on issue.

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

7.2 Determination of Redemption Price

- (a) For so long as Units are partly paid the Uncalled Amount must be deducted from the Redemption Price calculated under clause 7.1.
- (b) Each of the variables in clause 7.1 must be determined:
- (i) while the Fund is Liquid - as at the next Valuation Time after the Responsible Entity receives the withdrawal request; or
 - (ii) while the Fund is not Liquid - at the time the Withdrawal Offer closes.
- (c) The Redemption Price may be rounded as the Responsible Entity determines.
- (d) For the purposes of clauses 7.2(b) and 8.3(b), the day and time of receipt of a withdrawal request is:
- (i) the time of actual receipt if the request is received before the Prescribed Time on a Business Day; or
 - (ii) the time of deemed receipt if the request 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 request 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.
- (e) Where the Responsible Entity is required to determine the Redemption Price in accordance with clause 7.1, the Net Asset Value must be determined based on ordinary commercial practice for valuing such assets, which valuation is reasonably current.

8 Withdrawal Procedures

8.1 While Units Officially Quoted

While Units are Officially Quoted clauses 8.2 to 8.4 do not apply.

8.2 Request for withdrawal

- (a) A Unit Holder may make a withdrawal request for the withdrawal of some or all of their Units on such conditions and in any written form approved by the Responsible Entity, and the Responsible Entity may (but is not required to) give effect to that request. If the Responsible Entity gives effect to the request it must do so in the manner set out in this clause 8.
- (b) A Unit Holder may not withdraw a withdrawal request unless the Responsible Entity agrees.

8.3 When Fund is Liquid

- (a) Clause 8.3 applies only while the Fund is Liquid.
- (b) The Responsible Entity 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 withdrawal request.
- (c) If the Responsible Entity does not consider that it is in the best interests of Unit Holders taken as a whole to realise sufficient Assets to satisfy a withdrawal request, the period allowed for considering the withdrawal request may be extended by the number of days during which such circumstances apply.
- (d) If the Responsible Entity decides to satisfy a withdrawal request in respect of a Unit it must do so by payment from the Assets of the Redemption Price calculated in accordance with clause 7. The payment must be made within 21 days of redemption.

8.4 When Fund is not Liquid

- (a) Clause 8.4 applies only while the Fund is not Liquid.
- (b) A Unit Holder may withdraw from the Fund in accordance with the terms of any current Withdrawal Offer made by the Responsible Entity regulating offers of that kind. A Unit Holder may agree to withdraw from the Fund by way of a standing power of attorney or another authority given in favour of the Responsible Entity or any other person to accept an offer on its behalf.
- (c) If there is no Withdrawal Offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Fund.
- (d) The Responsible Entity may make a Withdrawal Offer by:
 - (i) publishing it by any means (for example including, without limitation, in a newspaper or on the internet); or
 - (ii) giving a copy to the Unit Holders or Unit Holders of a Class.

However, the Responsible Entity is not at any time obliged to make a Withdrawal Offer.

- (e) The Responsible Entity may cancel a Withdrawal Offer by:
 - (i) publishing a notice of cancellation by any means (for example including, without limitation, in a newspaper or on the internet); or
 - (ii) notice in writing to the Unit Holders to whom the Withdrawal Offer was made.
- (f) If the Responsible Entity receives a withdrawal 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.

8.5 Clauses applicable to all withdrawals

- (a) The Responsible Entity is not obliged to pay any part of the Redemption Price out of its own funds.
- (b) Subject to the Corporations Act (if relevant), the Responsible Entity need not give effect to a withdrawal request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amounts as determined by the Responsible Entity from time to time unless the withdrawal request relates to the balance of the Unit Holder's holding.
- (c) Subject to the Corporations Act (if relevant), if compliance with a withdrawal request would result in the Unit Holder holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Responsible Entity may treat the withdrawal request as relating to the balance of the Unit Holder's holding.
- (d) If a Unit Holder holds Units with an aggregate Redemption Price less than the then current minimum holding amount, the Responsible Entity may redeem that Unit Holder's holding without a withdrawal request.
- (e) If the Responsible Entity increases the minimum holding amount, the Responsible Entity may after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Unit Holder's holding without the need for a withdrawal request.

8.6 Discretionary withdrawal

If the Responsible Entity is not obliged to give effect to a withdrawal request, it may in any event, redeem some or all of the Units which are the subject of the request.

8.7 Sums owed to Responsible Entity

The Responsible Entity may deduct from the proceeds of withdrawal or money paid pursuant to a Withdrawal Offer any money due to it by the Unit Holder.

8.8 Transfer of Assets

The Responsible Entity may, with the prior written consent of the relevant Unit Holder, transfer part of the Assets to a Unit Holder rather than pay cash in satisfaction of all or part of a withdrawal request, pursuant to a Withdrawal Offer or in payment of a distribution. These Assets, together with any cash paid, must be of equal value to the total amount due to the Unit Holder pursuant to the withdrawal 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 Responsible Entity requires, some or all of the costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.

8.9 Withdrawal instead of transfer

- (a) The Responsible Entity may facilitate the purchase of Units by another person.
- (b) If a person wishes to purchase any Units then subject to ASIC Exemption, the Responsible Entity may determine (at the request of a Unit Holder or otherwise) that the purchase is to be effected by the withdrawal of those Units and the issue of the same number of Units to the purchaser (in each case at the agreed price for the issue of Units and the agreed price for the withdrawal of Units), rather than by a transfer of the Units. If the Responsible Entity makes a determination, the purchase may only be affected in that manner and the foregoing provisions of this clause 8 do not apply.

8.10 Liquid or not Liquid

- (a) While the Fund is not a Registered Scheme, the Responsible Entity will determine if the Fund is Liquid or not Liquid in its reasonable discretion (with, for the avoidance of doubt, section 601KA(4) of the Corporations Act being applied as if the Fund were a Registered Scheme).
- (b) While the Fund is a Registered Scheme, the Liquidity of the Fund will be determined by the Responsible Entity in accordance with section 601KA(4) of the Corporations Act.

8.11 Buy-back of Units

While the Fund is Listed the Responsible Entity 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 Responsible Entity 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 Responsible Entity must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Fund on the same basis as set out in clause 6.11 for the Issue Price of Units.

9 Partly Paid Units

9.1 Partly Paid Units

The Responsible Entity 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 Responsible Entity determines or if the Responsible Entity so determines by a single instalment payable at such time as the Responsible Entity determines. If it does so, the following provisions of this clause 9 apply.

9.2 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.

9.3 Variation or waiver of terms and conditions

Subject to any applicable statutory duty requiring the Responsible Entity to treat Unit Holders 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 9.1, those terms and conditions may be varied or compliance therewith waived only with the consent of the Responsible Entity. 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.

9.4 Subscription amount

For the purposes of clause 6:

- (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 Responsible Entity.

9.5 Notice of instalments

- (a) The Responsible Entity must give Unit Holders:
 - (i) if the Fund is not Listed at least 3 Business Days' notice; or
 - (ii) if the Fund 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 Fund 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 Responsible Entity must send a second notice to all new Unit Holders and those Unit Holders 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.

9.6 Unpaid instalment

If a Unit Holder fails to pay in full any instalment due on any Partly Paid Unit on or by the date specified for payment, the Responsible Entity may give the Unit Holder 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 Responsible Entity as a result of non-payment and interest determined in accordance with clause 9.7 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).

9.7 Instalments generally

- (a) If a Unit Holder 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 Responsible Entity determines not exceeding BBSW plus 2% per annum. Interest is calculated daily and payable Monthly in arrears. The Responsible Entity may waive payment of that interest in whole or part.
- (b) The Responsible Entity may revoke or postpone the payment of an instalment.
- (c) Subject to the Corporations Act and, if the Fund is Listed, the Listing Rules:
 - (i) an instalment shall be deemed to be due on the date determined by the Responsible Entity;
 - (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 Unit Holder shall not invalidate the instalment being due;
 - (iii) the Responsible Entity may extinguish in full or in part any liability of Unit Holders in respect of any moneys unpaid on Unit Holders' 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 Responsible Entity has given Unit Holders notice of in accordance with clause 9.5. 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.

9.8 Forfeiture

If the requirements of any notice issued under clause 9.5 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 Responsible Entity so determining; and
- (b) subject to the Listing Rules if Units are Officially Quoted, the Corporations 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 Responsible Entity.

9.9 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.

9.10 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.

9.11 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 Responsible Entity 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 Fund was the company, and the Responsible Entity was each director of the company, less if applicable, the fair value as determined by the Responsible Entity for the Attached Securities;
 - (ii) while the Fund 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 6.1(b) 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 Fund is not a Registered Scheme at the best price the Responsible Entity 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 Responsible Entity 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 Responsible Entity will receive the proceeds of sale and may, as attorney of the relevant Unit Holder, execute a transfer of the forfeited Unit in favour of the purchaser of the Unit and the Unit Holder authorises the Responsible Entity and appoints the Responsible Entity as its attorney to do so. As soon as practicable after the transfer is executed, such person must be registered as the Unit Holder 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 9.5 was given; and
 - (iv) to payment of the balance (if any) remaining to the Unit Holder whose Units have been forfeited and sold.
- (f) Where:
 - (i) the Responsible Entity 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 9.11(a) at a price which is more than the market price of a Fully Paid Unit,

the Responsible Entity 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 9.11(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 Unit Holder whose Partly Paid Unit was forfeited is liable to the Responsible Entity in respect of those forfeited Units, and may be sued for:
 - (i) all monies payable by the Responsible Entity to the underwriter as contemplated by clause 9.11(f);
 - (ii) interest (as provided for in clause 9.7); and
 - (iii) all costs incurred by the Responsible Entity in procuring payment from the former Unit Holder.
- (i) Where the Responsible Entity is liable to the underwriter as contemplated by clause 9.11(f) the Responsible Entity may assign to the underwriter the Responsible Entity's right of action under clause 9.11 against the former Unit

Holder in full satisfaction of such liability of the Responsible Entity to the underwriter.

9.12 Remaining liability

The Unit Holder whose Unit was forfeited ceases to be a Unit Holder from the nominated date referred to in clause 9.8 but remains liable to pay to the Responsible Entity:

- (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 9.7 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 Responsible Entity receives payment in full of all amounts owing in respect of the Units.

9.13 Cancelling forfeiture

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

9.14 Income distribution in relation to Partly Paid Units

For the purposes of a distribution under clause 15, 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 for the relevant Distribution Period and of which the denominator is the total Issue Price for that Unit, rounded on such basis as the Responsible Entity determines.

10 Transfers

10.1 Transfer of Units and Options if not Officially Quoted

- (a) Unit Holders may request the Responsible Entity 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 Responsible Entity.
- (d) The Responsible Entity 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 Responsible Entity may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units or Options.

10.2 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 Responsible Entity

may require before registration of any such transfer that there be provided to the Responsible Entity any documents which the rules of the uncertificated system require or permit the Responsible Entity to require be provided to it to authorise registration. This clause 10.2 prevails over any other provision of this Constitution that may be inconsistent with it but it does not permit the Responsible Entity to refuse to register a proper transfer made in accordance with the Operating Rules of a CS Facility.

10.3 Responsible Entity 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 Responsible Entity 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 Fund.

10.4 Notice of holding locks and refusal to register transfer

- (a) If in the exercise of its rights under clause 10.3 the Responsible Entity requests 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 Responsible Entity.
- (b) If the Responsible Entity declines to register any transfer of Units or Options, the Responsible Entity must within five Business Days after the transfer was lodged with the Responsible Entity (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 Responsible Entity.

10.5 Responsible Entity must retain instruments of transfer

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

10.6 Return of refused transfers

If the Responsible Entity 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.

10.7 Suspension of transfers

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

10.8 Restricted Securities

If Units or Options are Officially Quoted, the Responsible Entity 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 Responsible Entity 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.

10.9 Recognition of Unit Holder

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

10.10 Death or legal disability of Unit Holder

- (a) If a Unit Holder 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 Unit Holder's name.
- (b) Subject to the Listing Rules, the Responsible Entity may refuse to register any transfer or transmission pursuant to this clause or to recognise any claim without providing any reason.

11 Small holdings

11.1 Sale or redemption

- (a) Subject to the provisions of this clause 11 and while the Units are Officially Quoted, the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Unit Holder (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 Unit Holder.
- (b) The Responsible Entity may only sell or redeem Units (together with any Attached Securities) pursuant to this clause 11 on one occasion in any 12 month period.
- (c) The Responsible Entity must notify the Unit Holder of its intention to sell or redeem Units (together with any Attached Securities) under this clause 11.
- (d) The Responsible Entity 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 11.1(c); or
 - (ii) if, within the six weeks allowed under clause 11.1(d)(i), the Unit Holder advises the Responsible Entity that the Unit Holder wishes to retain the Units (together with any Attached Securities).

11.2 Takeover

The Responsible Entity's power to sell or redeem the Units (together with any Attached Securities) under clause 11.1 lapses following the announcement of a takeover of the

Fund but the procedure may be started again after the close of the offers made under the takeover.

11.3 Expenses and proceeds

- (a) The Responsible Entity or the purchaser of the Units (together with any Attached Securities) must pay the costs of the sale as the Responsible Entity decides.
- (b) The proceeds of a sale or redemption under this clause 11 will not be sent to the Unit Holder until the Responsible Entity 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.

12 Restrictions on Unit Holders

Except as provided in this Constitution, a Unit Holder may not:

- (a) interfere with or question the rights, powers, authority, discretion or obligations of the Responsible Entity 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 Unit Holder.

For the avoidance of doubt, nothing in this clause 12 applies to or restricts a Unit Holder or a related body corporate of a Unit Holder exercising any rights under a separate agreement with the Responsible Entity, including under a lease of any Asset to the Unit Holder or a related body corporate of a Unit Holder.

13 Valuation of Assets

- (a) The Responsible Entity must cause an Asset to be valued if and when required by ASIC or the Corporations Act and the valuation must be carried out in accordance with those requirements.
- (b) The Responsible Entity may determine the Net Asset Value at any time including more than once each day.
- (c) The Responsible Entity 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 Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

14 Holding of Assets

- (a) Subject to clauses 14(b) and 14(c), all Assets of the Fund will be held in the name of the Responsible Entity.

- (b) If the Responsible Entity considers it necessary or desirable, the Assets (or any Asset) will be held by a custodian or nominee appointed by the Responsible Entity and acting as agent for the Responsible Entity.
- (c) The custodian of the Asset must hold that Asset either:
 - (i) directly in its name; or
 - (ii) indirectly by means of any asset title transfer or holding system approved by the Responsible Entity (while the Fund is a Registered Scheme, to the extent permitted by the Corporations Act or an ASIC Exemption).

15 Income and distributions

15.1 Collection of income

The Responsible Entity shall receive and collect all dividends, interest, rents and all other income of the Fund.

15.2 Payment of expenses

The Responsible Entity shall pay out of the gross income of the Fund 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 Fund.

15.3 Nature of receipts

The Responsible Entity 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 Unit Holder pays the tax and not the Responsible Entity.

15.4 Determination of income and reserves

- (a) In each Financial Year the Responsible Entity must determine the income of the Fund (**Income**) in accordance with this clause.
- (b) The Income of the Fund may be:
 - (i) an amount calculated by the Responsible Entity on any basis and determined by the Responsible Entity to be the Income of the Fund; or
 - (ii) if a determination is not made by the Responsible Entity under clause 15.4(a), the Net Income of the Fund, which may be reduced or increased by the amount of any reserves or provisions that, in the determination of the Responsible Entity, need to be made.

15.5 Distribution of income

For each Distribution Period, the Responsible Entity shall calculate the Distributable Amount and distribute each Unit Holder's Distribution Entitlement.

15.6 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 Fund for that Distribution Period (as determined by the Responsible Entity pursuant to clause 15.4); and

C is any additional amount (including capital) that the Responsible Entity 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 Fund for the Financial Year (as determined by the Responsible Entity pursuant to clause 15.4); 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 Responsible Entity has determined is to be distributed.

15.7 Distribution Entitlement

Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Unit Holder'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 Unit Holder 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 Unit Holder at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 15.16 (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 15.16 (if any), multiplied by the relevant proportion.

15.8 Satisfaction of Distribution Entitlement

- (a) The Responsible Entity shall pay to each Unit Holder its Distribution Entitlement for a Distribution Period on or before the Distribution Date for that Distribution Period.
- (b) The Responsible Entity shall retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Responsible Entity 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 Responsible Entity may retain from the amount to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Responsible Entity under this Constitution or that is required to be deducted by Law.

15.9 Present entitlement

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

15.10 Discharge of Responsible Entity's obligation

It is acknowledged by Unit Holders that payments of Distributable Amounts in accordance with clause 15.6 shall be a good and complete discharge of any liability owed by the Responsible Entity to any person in respect of an entitlement to the Distributable Amount.

15.11 Capital distributions

The Responsible Entity may at any time distribute the capital of the Fund to the Unit Holders in addition to any distributions made under clause 15.6. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Responsible Entity 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.

15.12 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 Unit Holders 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.

15.13 Excess distribution

If at the end of a Financial Year the amount distributed as the Distributable Amount under this clause 15 exceeds the aggregate of the Net Income for the Financial Year, the excess will be taken to be a distribution of capital.

15.14 Categories and source of income

The Responsible Entity may keep separate accounts of different categories or sources of income or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to any Unit Holder.

15.15 Reinvestment

- (a) A Unit Holder may, if the Responsible Entity 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 Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 6.
- (b) Subject to clauses 6.1(b) and 6.9, the procedure for reinvestment of a distribution is to be determined by the Responsible Entity and notified to Unit Holders from time to time.
- (c) Subject to the Unit Holder's expressed or implied consent, the Responsible Entity may, at its discretion, reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units and that amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Responsible Entity is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Issue Price determined in accordance with clause 6.
- (d) While Stapling applies, no reinvestment can occur unless contemporaneously with the reinvestment in additional Units, the Unit Holder subscribes for an identical number of Attached Securities which are subsequently Stapled to the Units as a result of the reinvestment.

15.16 Other rights or restrictions

For the removal of doubt and despite anything else contained in this clause 15, the rights of a Unit Holder under this clause 15 are subject to the rights, obligations and restrictions attaching to the Units which they hold. Without limitation, but provided the Responsible Entity is entitled to do so under the Corporations Act and the Listing Rules, the Responsible Entity may issue:

- (a) Units on terms which entitle the Unit Holder to a distribution of the Distributable Entitlement in respect of a Distribution Period in which such Units are issued in an amount which is not greater than the proportion of the Distributable Entitlement to which a Unit Holder 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 Unit Holder to receive a distribution of the Distributable Entitlement in respect of a Distribution Period in which such Units are issued.

15.17 Withholding Tax

The Responsible Entity may deduct from any amount dealt with under this clause 15 any Tax that it is required by Law to deduct from such amount.

15.18 Classes

For the avoidance of doubt, the rights of a Unit Holder under this clause 15 are subject to the rights, restrictions and obligations attaching to any particular Unit or the Class.

15.19 Public trading Trust

If, and so long as, the Fund 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 15.19 will apply instead of clauses 15.1 to 15.18 to the extent they are inconsistent. If it does so:

- (a) as soon as practicable after the end of the Distribution Period, the Responsible Entity must determine the taxable income of the Fund in respect of the Distribution Period calculated in accordance with the Tax Act;
- (b) the Responsible Entity must provide for, and pay from the Assets of the Fund when appropriate, all taxation attributable to the taxable income of the Fund;
- (c) the Responsible Entity may, in its discretion from time to time, determine to pay an amount as a distribution to Unit Holders holding Units in a Class in respect of the Distribution Period (each a **Distributable Amount**) to the Unit Holders on the register holding Units in that Class on any date determined by the Responsible Entity (**Books Closing Date**);
- (d) in respect of a Distributable Amount being paid to Unit Holders pursuant to this clause 15.19:
 - (i) the Responsible Entity may take all necessary or desirable steps in relation to distributions, including the franking of the distributions;
 - (ii) the Responsible Entity 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 Unit Holder 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 Unit Holder 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 15.6.

16 Powers of the Responsible Entity

16.1 General powers of Responsible Entity

- (a) Subject to this Constitution, the Responsible Entity has all the powers in respect of the Fund that are possible under Law to confer on a responsible entity as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity and necessary for fulfilling its obligations under this Constitution and Law.
- (b) In exercising its powers and carrying out its duties, the Responsible Entity must treat the Unit Holders who hold interests of the same Class equally and Unit Holders who hold interests of different classes fairly.
- (c) The generality of this clause 16.1 is not limited by anything in the remainder of this clause 16.
- (d) To the maximum extent permitted by Law:
 - (i) any rules and principles of Law or equity that impose a duty on a trustee exercising a power of investment are excluded; and
 - (ii) without limiting the generality of clause 16.1(d)(i), section 6 of the *Trustee Act 1958* (Vic) is expressly excluded from operation in relation to this Constitution and the Fund.

16.2 Specific powers of the Responsible Entity

Without limiting the generality of clause 16.1, the Responsible Entity in its capacity as responsible entity of the Fund may:

- (a) in accordance with this Constitution, determine that Units should be Stapled or Unstapled and effect that Stapling or Unstapling;
- (b) borrow or raise money (whether or not on security) and incur any and all types of obligations and liabilities;
- (c) create Security Interests over all or any part the Assets;
- (d) apply for listing of the Fund and quotation of the Units (or any other financial product), either individually or as part of a Stapled Security, on any stock exchange (including but not limited to the ASX) and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Holder as the Holder's agent or attorney to do all things necessary to effect a listing or quotation;
- (e) invest in any form of investment in any region or market and may vary an investment at any time in its absolute discretion, including without limitation:
 - (i) purchasing or disposing of Assets for cash or other consideration; and
 - (ii) entering into any swap, forward rate agreement, currency exchange agreement or any other form of hedge, derivative or other transaction (for speculative purposes or otherwise);
- (f) subject to clause 2.2(b), mix Assets with assets of any other person or trust;
- (g) share risk and returns with any other person or trust;

- (h) vary, replace or deal with the Assets in any way;
 - (i) buy-back Units;
 - (j) fetter future discretions, such as by the granting of options;
 - (k) enter into any arrangement or agreement with underwriters in relation to the Fund;
 - (l) exercise all voting rights conferred by the Assets as it thinks fit; and
 - (m) give guarantees and/or indemnities to any person,
- as if it were dealing with its own assets.

16.3 Registration as a Registered Scheme

Without limiting clause 16.1, the Responsible Entity may at any time decide to register the Fund as a Registered Scheme and is authorised to take all steps necessary or desirable to effect registration without the approval of a Resolution.

16.4 Delegation

- (a) Without limiting clause 16.1, the Responsible Entity may appoint any person as its delegate, attorney or agent to:
 - (i) perform any act;
 - (ii) carry out any obligation; or
 - (iii) exercise any power,that the Responsible Entity has under this Constitution.
- (b) The Responsible Entity may appoint an agent, manager, custodian or other person (each of whom may, with the approval of the Responsible Entity, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with Assets on behalf of the Responsible Entity and perform any action incidental or ancillary thereto or otherwise approved by the Responsible Entity.
- (c) Any person appointed under clauses 16.4(a) or 16.4(b) may be an Associate or employee of the Responsible Entity.
- (d) An appointment under clauses 16.4(a) or 16.4(b) may be joint.
- (e) Subject to section 601FB of the Corporations Act (which section shall apply even if the Fund is not a Registered Scheme as if the Fund were a Registered Scheme), the Responsible Entity will not be liable for the acts or omissions of any delegate.
- (f) If the Responsible Entity delegates any of its responsibilities under this Constitution to a third party, including administration of the Fund, the Responsible Entity may pay to the person to whom it has delegated that role:
 - (i) all or part of the fees that the Responsible Entity would otherwise have been entitled to receive under this Constitution for undertaking that role; or
 - (ii) the amount of that person's fees from Assets.

16.5 Advisers

Without limiting this clause, the Responsible Entity may engage an Adviser to assist with its duties and functions under this Constitution. An Adviser may be an associate or employee of the Responsible Entity.

16.6 Exercise of discretion

The Responsible Entity shall in its absolute discretion decide how and when to exercise its powers.

16.7 Effect of Stapling

While Stapling applies, the Responsible Entity may in exercising any power or discretion have regard to the interests of the Holders in their capacity as Unit Holders and the interests of Holders in their capacity as Stapled Security Holders which includes having regard to their interests as Unit Holders 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.

17 Remuneration and Expenses of Responsible Entity

17.1 Responsible Entity's remuneration

The Responsible Entity is entitled to receive out of the Assets a Management Fee and a Custody Fee.

17.2 Management Fee

- (a) The Responsible Entity is entitled to a Management Fee equal to 0.65% 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 from the Commencement Date to the date of final distribution in accordance with clause 27.3.

17.3 Custody fee

- (a) If the Responsible Entity performs the custodial function for the Fund, 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.

17.4 Waiver of Remuneration

The Responsible Entity may accept lower fees and expenses than it is entitled to receive under this Constitution, or may defer payment for a period on such terms as the Responsible Entity determines at its sole discretion. Where payment is deferred, the fee accrues daily until paid.

17.5 Priority of Responsible Entity's Remuneration

The remuneration of the Responsible Entity shall have priority over the payment of all other amounts payable from the Assets of the Fund.

17.6 Underwriting

The Responsible Entity may engage any person to underwrite the subscription or purchase of Units on such terms as the Responsible Entity determines. Unless the agreement between the Responsible Entity and the underwriter expressly states the contrary intention, the underwriter will not be an agent or delegate of the Responsible Entity.

17.7 Reimbursement of Expenses

- (a) All Expenses incurred by the Responsible Entity in relation to the proper performance of its duties in respect of the Fund shall be 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 1.
- (b) While Stapling applies the Responsible Entity may in its absolute discretion agree with the Stapled Entity the apportionment of expenses incurred in connection with both the Fund and the Stapled Entity. Any such apportionment could result in the Fund bearing the entirety of the expenses or it being shared with the Stapled Entity Company or borne totally by the Stapled Entity.

17.8 Proper performance of duties

The rights of the Responsible Entity to be paid fees out of the Assets, or to be reimbursed or indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties as Responsible Entity, are only available in relation to the proper performance of those duties.

17.9 GST

- (a) Expressions that have defined meanings under the GST Law bear the same meaning for the purpose of this clause 17.9 as those expressions in the GST Law.
- (b) Any amount paid or payable or any consideration provided or to be provided under or in connection with this Constitution represents the value of the taxable supply and does not include GST.
- (c) If the Responsible Entity makes a taxable supply in connection with or arising under this Constitution (including the performance of any of its obligations) for consideration which, under clause 17.9(b), represents its value:
 - (i) the Responsible Entity shall be entitled to be paid or reimbursed from the Assets for an amount equal to the amount of the GST payable on that taxable supply in addition to any other amount to which the Responsible Entity is entitled; or
 - (ii) the recipient of the supply must pay to the Responsible Entity, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the GST payable on that taxable supply,at the Responsible Entity's discretion.
- (d) The supplier of a taxable supply shall issue a valid Tax Invoice to the recipient of the supply on request.

- (e) If this Constitution entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of GST for which the party is entitled to an input tax credit.
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18 Change in Responsible Entity

18.1 Voluntary Retirement while a Registered Scheme

While the Fund is a Registered Scheme, the Responsible Entity may retire as permitted by the Corporations Act.

18.2 Voluntary Retirement while not a Registered Scheme

While the Fund is not a Registered Scheme, the Responsible Entity may retire on not less than 60 Business Days' notice to Unit Holders (or such shorter period as they agree). On retirement, the Responsible Entity may appoint in writing another person to be the responsible entity.

18.3 Compulsory retirement

- (a) If the Fund is a Registered Scheme, the Responsible Entity must retire when required by Law.
- (b) If the Fund is not a Registered Scheme, the Responsible Entity must retire when directed to do so by a special resolution of Unit Holders.

18.4 New Responsible Entity

Any replacement responsible entity must execute a deed by which it covenants to be bound by this Deed as if it had originally been a party to it. While the Fund is not a Registered Scheme, the Responsible Entity must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of responsible entity.

18.5 Release

When it retires or is removed subject to the Corporations Act (while the Fund is a Registered Scheme), the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.

18.6 Retirement benefit

If permitted by Law, the Responsible Entity is entitled 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 Unit Holders, and nominating to the Unit Holders the incoming manager as its replacement; or
- (b) its retirement as Responsible Entity,

provided that any such remuneration or benefit is not paid out of the Assets of the Fund. The Responsible Entity is not required to account to Unit Holders for such remuneration or benefit.

19 Limitation of liability

19.1 Limitation of Responsible Entity's liability while the Fund is a Registered Scheme

- (a) Subject to the Corporations Act, while the Fund is a Registered Scheme, the Responsible Entity and each director and officer of the Responsible Entity 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 Responsible Entity and Compliance Committee Members in relation to the Fund is limited to the Assets, from which the Responsible Entity and Compliance Committee Members are entitled to be, and are in fact, indemnified under clause 20.1.
- (c) In particular, subject to the Corporations Act, the Responsible Entity 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 Responsible Entity or Compliance Committee;
 - (ii) it acted as required by Law; or
 - (iii) it relied in good faith upon any signature, marking or documents.

19.2 Limitation of Responsible Entity's liability while the Fund is not a Registered Scheme

- (a) While the Fund is not a Registered Scheme, to the extent permitted by Law, if the Responsible Entity acts in good faith and without fraud, dishonesty, negligence, wilful default, breach of trust or breach of this Constitution, the Responsible Entity is not liable for any loss to any person (including any Unit Holder, Option Holder or Financial Instrument Holder) arising out of any matter relating to, or connected with, the Fund.
- (b) Subject to clause 19.2(c), the liability of the Responsible Entity in relation to the Fund, while the Fund is not a Registered Scheme is limited to the Assets, from which the Responsible Entity is entitled to be, and is in fact, indemnified under clause 20.1.
- (c) Clause 19.2(b), does not apply to any liability arising as a result of the Responsible Entity's fraud, dishonesty, negligence wilful default, breach of trust or breach of this Constitution.

19.3 Limitation of Unit Holders' liability

- (a) Subject to clauses 19.3(c) and 19.3(e), the liability of each Unit Holder shall be limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for Units in the Fund.

- (b) A Unit Holder shall not be required to indemnify the Responsible Entity if there is a deficiency in the Assets or to meet the claim of any creditor of the Responsible Entity in respect of the Fund.
- (c) The Responsible Entity, on its own account and on account of the Fund, shall be entitled to be indemnified by each Relevant Person for any Tax of the Relevant Person paid out of the Fund, except to the extent to which the Responsible Entity is reimbursed out of the Fund.
- (d) Joint Holders shall be jointly and severally liable in respect of all payments, including payments of Tax to which clause 19.3(c) applies.
- (e) Subject to this clause 19.3, in the absence of separate agreement with a Unit Holder, the recourse of the Responsible Entity and any creditor shall be limited to the Assets.

19.4 Directors and officers

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

20 Indemnity

20.1 Responsible Entity's indemnity

- (a) Subject to the Corporations Act, the Responsible Entity 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 Fund and against all actions, proceedings, costs, claims and demands brought against the Responsible Entity in its capacity as responsible entity of the Fund in respect of any matter or thing done or omitted (**Indemnified Matter**) except:
 - (i) in the case of the Responsible Entity's fraud, dishonesty, negligence, wilful default, breach of trust or breach of this Constitution; and
 - (ii) in respect of the overhead expenses of the Responsible Entity.
- (b) Without limiting clause 20.1, while the Fund is an AMIT the Responsible Entity 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 Fund.

20.2 Responsible Entity's indemnity continuing

- (a) The right of indemnity of the Responsible Entity 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 20.1 will continue in favour of the Responsible Entity after it has ceased to be the Responsible Entity and will apply even if at any time the Liabilities exceed the Net Asset Value.

- (c) For the avoidance of doubt, the Responsible Entity may be entitled to an indemnity under clause 20.1 in respect of any act or omission of a delegate or agent appointed by the Responsible Entity for which the delegate or agent is not obliged to fully indemnify the Fund.
- (d) Each clause of this Constitution that provides, or relates to, a right of the Responsible Entity to pay or be reimbursed out of the Assets or indemnified or a limitation of the Responsible Entity'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 Responsible Entity's remuneration is in addition to all other amounts to which it is entitled by way of reimbursement or indemnity.

20.3 Payment

The Responsible Entity may pay out of the Assets any amount for which it would be entitled to be indemnified under clause 20.1 or 20.2.

20.4 Responsible Entity not to incur liability

The Responsible Entity 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.

20.5 Compliance Committee

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

21 Statements, Accounts and Audit

21.1 Appointment of auditors

- (a) While the Fund:
 - (i) is a Registered Scheme, the Responsible Entity must; and
 - (ii) is not a Registered Scheme, the Responsible Entity may,appoint a registered company auditor to audit the Fund'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 Fund is a Registered Scheme, the Responsible Entity must appoint a Compliance Plan Auditor.

21.2 Retirement of auditors

While the Fund 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 Responsible Entity.

21.3 Remuneration of auditors

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

21.4 Accounts and reports

- (a) The financial statements of the Fund must be kept and prepared by the Responsible Entity in accordance with applicable Australian Accounting Standards.
- (b) The Responsible Entity must report to Unit Holders concerning the affairs of the Fund 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.

21.5 Audit

The Responsible Entity will cause:

- (a) the Trust Auditor to audit and report on the financial statements; and
- (b) while the Fund 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.

22 Register

22.1 Keeping Registers

- (a) The Responsible Entity shall establish and keep, or cause to be kept, a:
 - (i) Register of Unit Holders; 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 Responsible Entity may keep a single Register in which details of Unit Holders and Stapled Security Holders are recorded.

22.2 Responsible Entity's powers

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

22.3 Inspection

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

22.4 Changes

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

22.5 Register conclusive

Except where this Constitution or the Law requires otherwise, the Responsible Entity 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 Responsible Entity is satisfied of manifest error and the Responsible Entity 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).

23 Amendments to this Constitution

23.1 Overriding provision

This clause 23 shall be read subject to clause 25.

23.2 Responsible Entity may amend

Subject to the Corporations Act, clause 23.4 and any other approval that may be required by Law, the Responsible Entity may by deed replace or amend this Constitution (including this clause) or as otherwise permitted by the Corporations Act.

23.3 Statutory requirements

Clause 23.2 does not apply to provisions deemed by clause 25 to be incorporated into this Constitution.

23.4 Limits on amendments

While the Fund is not a Registered Scheme:

- (a) the rights or obligations attaching to Units cannot be altered in any way, and the rights of a Unit Holder to the income or capital of the Fund cannot be affected in any way, without a special resolution of Unit Holders; and
- (b) the rights or obligations attaching to Units of a Class cannot be altered in any way, and the rights of a Unit Holder to the income or capital of the Fund cannot be affected in any way, without a special resolution of Unit Holders and a special resolution of Unit Holders of the Class affected.

23.5 Compliance with the AMIT Regime

Without in any way limiting the Responsible Entity's powers in clause 23.2, the Responsible Entity may make any change to this Constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the operation of the AMIT Regime in relation to the Constitution; or
 - (b) ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Unit Holders that arise under the AMIT Regime.
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24 Stapling

24.1 Power to Staple Securities

The Responsible Entity 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.

24.2 Effect of Stapling

- (a) The provisions of this Constitution relating to Stapling including but not limited to this clause 24, (**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 Responsible Entity must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Officially Quoted as one security, that 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 Responsible Entity 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.

24.3 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 Responsible Entity 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 24.3(b) from such time:
- (i) as set out in the special resolution passed in the case of clause 24.3(b)(i); and
 - (ii) as the Responsible Entity or administrator, manager, receiver, liquidator or similar officer determines in its absolute discretion in the case of clause 24.3(b)(ii).
- (d) On and from the Unstapling Date, each Unit ceases to be Stapled to an Attached Security and the Responsible Entity must do all things reasonably necessary to procure that each Unit is Unstapled.
- (e) If the Responsible Entity determines to Unstaple the Stapled Securities pursuant to this clause 24.3, this does not prevent the Responsible Entity from:
- (i) subsequently determining that the Stapling provisions should recommence; and
 - (ii) stapling an Unstapled Unit to an Attached Security which is not Stapled.

24.4 Distributions in specie

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

24.5 Units to be Stapled

- (a) The Responsible Entity 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 Responsible Entity and the Unit Holders 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 Responsible Entity 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.

24.6 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 9, 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 Responsible Entity 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 Responsible Entity as trustee of the Fund) which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity 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 Unit Holder irrevocably appoints the Responsible Entity 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 Responsible Entity the transfer to the Responsible Entity (as trustee of the Fund) or to a person nominated by the Responsible Entity of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

24.7 Stapled Security Register

The Responsible Entity 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 Responsible Entity; and
- (c) must be maintained in accordance with clause 22.

24.8 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.

25 Listing Rules, Corporations Act and ASIC Exemptions

25.1 Listing Rules

Notwithstanding any other provision of this Constitution including, without limitation, any change to this Constitution effected under clause 23, if and for so long as the Fund 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 Responsible Entity 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.

25.2 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 Fund 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 Fund is a Registered Scheme (and the provision is to be read accordingly).

25.3 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 Unit Holders:

- (a) agree that unless the Responsible Entity 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 Responsible Entity 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.

25.4 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 23, 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 Fund) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the Responsible Entity declares in writing that this is the case. This declaration may be made at any time.

26 Termination of Fund

26.1 Termination Date

The Fund terminates on the earlier of:

- (a) the date determined by the Responsible Entity as the date on which the Fund is to be wound up;
- (b) the date specified by the Responsible Entity as the date of termination of the Fund in a prospectus, product disclosure statement or other offer document;
- (c) the date eighty years less one day from the Commencement Date;
- (d) where the Fund is not a Registered Scheme, the date on which a special resolution of Unit Holders is passed resolving to wind-up the Fund; or
- (e) the date on which the Fund is otherwise terminated in accordance with another provision of this Constitution or by Law.

26.2 Notice to Unit Holders

Where:

- (a) the Responsible Entity determines to wind up the Fund under clause 26.1(a);
- (b) the date in clauses 26.1(b) or 26.1(c) occurs; or
- (c) the Fund terminates in accordance with clause 26.1(e),

the Responsible Entity must give notice to Unit Holders within 30 days of that date.

27 Termination and winding up of Fund

27.1 Realisation of Assets

Following termination, the Responsible Entity must realise the Assets. Subject to clause 27.4, this must be completed in 180 days if practical and in any event as soon as possible after that.

27.2 Audit of winding up

The Responsible Entity must arrange for independent audit of the final accounts of the Fund by a registered company auditor.

27.3 Distribution following termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Fund (actual and anticipated), 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 Unit Holders according to the number of Units they hold.
- (b) For the purposes of this clause 27.3, 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 Responsible Entity determines.
- (c) The Responsible Entity may distribute proceeds of realisation in instalments.
- (d) Subject to the Corporations Act (if relevant), the provisions of this constitution continue to apply from the date of termination until the date of final distribution under this clause 27.3, but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Unit Holder.
- (e) If the net proceeds of realisation are not sufficient to meet the expenses of terminating the Trust, these costs may be paid by the Responsible Entity.

27.4 Postponement of winding up

The Responsible Entity must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Responsible Entity may postpone any part of the winding up for such time as it thinks desirable and the Responsible Entity is not liable for any loss or damage attributable to the postponement.

28 Meetings of Holders

28.1 Convening of Meetings

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

28.2 Responsible Entity may determine time and place

Subject to this clause 28, the Responsible Entity may determine the time and place at which a meeting of Unit Holders will be convened and the manner in which the meeting will be conducted.

28.3 Notice

- (a) A meeting of Unit Holders or a Class of Unit Holders must be convened in accordance with Part 2G.4 of the Corporations Act.

- (b) When the Fund is not a Registered Scheme, a meeting of Unit Holders or a Class of Unit Holders must be convened by notice in writing sent to every Unit Holder 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.

28.4 Proxies

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

28.5 Non-receipt

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

28.6 Quorum

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

28.7 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 Unit Holders- dissolved; or
- (b) otherwise adjourned to such place and time as the Responsible Entity decides.

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

28.8 Chairman

- (a) Subject to the Corporations Act the Responsible Entity may appoint a person to chair a meeting of Unit Holders.
- (b) The chairman of a meeting of Unit Holders:
 - (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 28.8(b) is final.

28.9 Adjournment

- (a) The chairman of a meeting of Unit Holders 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 Unit Holders present. Unless required by the chairman, no vote may be taken or demanded by the Unit Holders present in respect of any adjournment.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

28.10 Other attendees

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

28.11 Resolutions binding

A Resolution by:

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

28.12 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.

28.13 Minutes

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

28.14 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.

28.15 Notice of cancellation or postponement of meeting

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

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

28.16 Contents of notice or postponement of meeting

A notice of postponement of a meeting of Unit Holders 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.

28.17 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 Unit Holders 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.

28.18 Business at postponed meeting

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

28.19 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 Unit Holders to be held on a specified date or at a meeting of Unit Holders 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 Unit Holder appointing the proxy, attorney or representative gives to the Responsible Entity notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

28.20 Proxies and voting

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

28.21 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.

28.22 Demand for a poll

A poll may be demanded by at least five Unit Holders entitled to vote on the resolution. Unit Holders 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.

28.23 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 Fund 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.

28.24 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.

28.25 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.

28.26 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 Unit Holder or proxy or attorney or representative.

28.27 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 Unit Holder present in person and each other person present as a proxy, attorney or representative of a Unit Holder has one vote; and
- (b) on a poll each Unit Holder present in person has one vote for each one dollar of the value of the Units held by the Unit Holder and each person present as proxy,

attorney or representative of a Unit Holder has one vote for each one dollar of the value of the Units held by the Unit Holder that the person represents.

A Unit Holder 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.

28.28 Voting on a poll for Partly Paid Units

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

28.29 Joint Unitholders' vote

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

28.30 Vote of Unit Holder of unsound mind

If a Unit Holder 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 Unit Holder's committee or trustee or any other person who properly has the management of the Unit Holder's estate may exercise any rights of the Unit Holder in relation to a meeting of Unit Holders as if the committee, trustee or other person were the Unit Holder.

28.31 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 Unit Holder,

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

28.32 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 Unit Holder uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

28.33 Meetings by technology

A meeting of Unit Holders or any class of Unit Holders 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.

28.34 Joint meetings

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

28.35 Meetings of Option holders

If any separate meeting of Option holders is required to be held the foregoing provisions of this clause 28 will apply with any necessary amendments.

29 Notices

29.1 Notices to Holders

- (a) Subject to the Corporations Act, a notice or other communication from the Responsible Entity to a Holder must be given in writing and may be sent to the Holder's physical or electronic address (which includes fax numbers and e-mail addresses) as recorded on the Register.
- (b) Subject to the Corporations Act, a notice or other communication from the Responsible Entity to a Holder sent by:
 - (i) post, is taken to be received on the Business Day after it is posted;
 - (ii) fax, is taken to be received 1 hour after the transmitter receives confirmation of transmission from the receiving fax machine; and
 - (iii) other means, is taken to be received at the time the Responsible Entity determines.

29.2 Notices to joint Holders

The Responsible Entity may give a notice or other communication to joint Holders by giving it to the Holder first named in the Register for that holding.

29.3 Notice to successor

The Responsible Entity may give a notice or other communication to the persons entitled to a Unit in consequences of the death or legal disability of a Holder by sending it to the legal personal representatives of the Holder or trustee of the deceased Holder's estate at the address supplied for the purpose by the representative or trustee (as the case may be). Until such an address has been supplied, notice may be given by sending the notice or other communication to the Holder's address as recorded in the Register.

29.4 Signature on notice

The signature on any notice or other communication by the Responsible Entity may be written, printed, stamped or produced electronically and the signature may be that of Responsible Entity or of any director, secretary or other authorised officer of the Responsible Entity.

29.5 Notices to the Responsible Entity

Notices to the Responsible Entity by Holders must be given in writing or in any other manner the Responsible Entity determines. A notice is effective when it is received by the Responsible Entity. A notice must be signed by the Holder or a duly authorised representative (unless the Responsible Entity waives this requirement).

30 Complaints

30.1 Complaints when the Fund is a Registered Scheme

While the Fund is a Registered Scheme, the Responsible Entity must comply with the dispute resolution requirements in section 912A(2) of the Corporations Act and this clause 30 when dealing with Unit Holder complaints (or complaints by any person who has an interest in the Fund for the purposes of the Corporations Act) including where a Unit Holder disagrees with the Responsible Entity's calculation of the Unit Holder's allocation of amounts in accordance with the legislation relating to AMITs, subject to complying with the terms of that legislation.

30.2 Handling of Complaints

If a Unit Holder submits to the Responsible Entity a Complaint, the Responsible Entity:

- (a) shall acknowledge receipt of the complaint immediately or, where immediate acknowledgement is not possible, as soon as practicable;
- (b) shall ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
- (c) shall act in good faith to deal with the Complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of a third party;
- (d) may, in its discretion, give any of the following remedies to the Unit Holder:
 - (i) information and explanation regarding the circumstances giving rise to the Complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and
- (e) shall communicate to the Unit Holder as soon as practicable and, in any event, not more than 45 days after receipt by the Responsible Entity of the Complaint (or 21 days for disputes involving default notices):
 - (i) the determination in relation to the Complaint;
 - (ii) the remedies (if any) available to the Unit Holder; and
 - (iii) information regarding any further avenue for Complaint including the name and contact details of the EDR Service,

except that the requirement to provide such a communication to the Unit Holder does not apply where the Complaint (except for a Complaint relating to hardship) is resolved to the Unit Holder's complete satisfaction by the end of the fifth Business Day after the Complaint is received and the Unit Holder has not requested a response in writing.

30.3 Time for final response not met

If the Responsible Entity cannot provide a final response to the Unit Holder within 45 days (or 21 days for disputes involving default notices) as required by clause 30.2(e), the Responsible Entity must:

- (a) inform the Unit Holder of:
 - (i) the status of the Complaint;
 - (ii) the reasons for the delay;
 - (iii) the right to complain to the EDR Service; and
- (b) provide the name and contact details of the EDR Service to the Unit Holder.

30.4 Effect of Stapling

While Stapling applies the Responsible Entity may deal with a complaint that concerns a Stapled Security in the same manner as provided for in this clause 30 to ensure an efficient and equitable resolution of the complaint.

31 Restructure proposals

31.1 Power to enter into proposal

- (a) The Responsible Entity may enter into any scheme of arrangement, merger arrangement or similar proposal in relation to the Fund whether involving Units or the property of the Fund (**Proposal**). If in the Responsible Entity's opinion the Proposal might adversely affect the rights of Unit Holders, the Proposal may only be implemented with the approval of a Resolution.
- (b) If the Proposal involves Stapling:
 - (i) the Unit Holders 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 Unit Holder has a Market Price equal to or greater than the NAV Price immediately prior to the Stapling; and
 - (ii) the Unit Holders will be taken to have consented to each provision in the Constituent Documents.
- (c) If the Responsible Entity determines that it is in the best interests of the Unit Holders for the Fund to be admitted to the Official List, the Responsible Entity can take any necessary steps for the preparation, approval, execution or implementation of the Listing without the approval of a Resolution.

31.2 General

If a Proposal is entered into, and if necessary, approved by Unit Holders in accordance with clause 31.1, then from the date of such approval:

- (a) the Proposal binds the Responsible Entity and all present and future Unit Holders notwithstanding that particular Unit Holders may not have approved the Proposal;

- (b) the Responsible Entity and so far as is relevant the Unit Holders must give effect to the Proposal in accordance with its terms;
- (c) the Responsible Entity 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 25.3;
- (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 25.3 and this clause 31.2 or while the Fund is a Registered Scheme, in respect of the matters set out in section 601GA of the Corporations Act;
- (e) the Responsible Entity may amend the terms of the Proposal if such amendment is not inconsistent with the approval given by Unit Holders or such amendment does not adversely affect the rights of the Unit Holders and this clause 31.2 shall apply to the Proposal as amended.

31.3 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 Responsible Entity to execute any documents including any application for securities as agent on behalf of all or any Unit Holders;
- (d) authorise the Responsible Entity as agent on behalf of all or any Unit Holders to pay the subscription money for new securities from the Assets of the Fund;
- (e) allow the Responsible Entity to arrange the issue of further Units;
- (f) amend the time and procedures for the:
 - (i) cancellation, transfer or issue of Units other than the Issue Price determined in accordance with clause 6; and
 - (ii) withdrawal of Units while the Fund is not a Registered Scheme;
- (g) allow the Responsible Entity to suspend the registration of transfers of Units;
- (h) provide for borrowings, the raising of money or the incurring of liabilities by the Responsible Entity; or
- (i) provide for suspension of reinvestment of income entitlements.

31.4 Designated Foreign Investors

Without limiting the foregoing provisions of this clause 31, to enable the Responsible Entity to give effect to the Stapling of Attached Securities to the Units, the provisions of this clause 31.4 apply.

- (a) Subject to the Corporations Act as modified by any applicable ASIC Exemption, the Responsible Entity may determine that a Foreign Investor is a Designated Foreign Investor where the Responsible Entity 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 Responsible Entity 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 31.4(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 Responsible Entity:
- (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 Responsible Entity 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 Responsible Entity in the Register.

- (e) The amount received for a Unit upon sale of a Stapled Security under clause 31.4(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 Responsible Entity.

31.5 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 Unit Holders:

- (a) authorise the Responsible Entity 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 31.5.

31.6 Responsible Entity's authorisation

- (a) Each Unit Holder irrevocably authorises and empowers the Responsible Entity or any officer of the Responsible Entity to, and the Responsible Entity is irrevocably appointed as the agent and attorney of each Unit Holder to, execute all transfer forms or withdrawal applications and other documents, and to do all things as the Responsible Entity may consider necessary or desirable for, or reasonably incidental to, the implementation of the provisions of any proposal approved (if required) under this clause 31 and to receive on the Unit Holder's behalf any moneys payable to that Unit Holder. Each Unit Holder undertakes to ratify anything lawfully done by the Responsible Entity in accordance with this clause 31.6(a).
- (b) Without limiting clause 31.6(a) or any provision of a relevant Constituent Document, to effect the Stapling of an Attached Security, each Unit Holder irrevocably appoints the Responsible Entity as the Unit Holder's agent and attorney in the Unit Holder's name and on the Unit Holder'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 Responsible Entity, 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 Unit Holder.
- (c) Without limiting clause 31.6(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 Unit Holder, each Designated Foreign Unit Holder irrevocably appoints the Responsible Entity as that Unit Holder's agent and attorney in the Unit Holder's name and on the Unit Holder's behalf to:

- (i) receive and apply the Amounts referred to in clause 31.4(b)(i) in the manner contemplated in clause 31.4;
- (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 Responsible Entity, 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 Unit Holder.

32 Rights of the Responsible Entity

32.1 Right to hold Units

Subject to the Corporations Act, the Responsible Entity and/or any of its Associates may hold Units or Stapled Securities in any capacity.

32.2 Other capacities

Subject to the Corporations Act, nothing in this Constitution restricts the Responsible Entity (in its personal capacity or in any other capacity other than as responsible entity of the Fund) and/or any of its Associates:

- (a) dealing with the Responsible Entity (as responsible entity of the Fund or in another capacity), an Associate of the Responsible Entity or with any Unit Holder;
- (b) being interested in any contract or transaction or matter with the Responsible Entity (as responsible entity of the Fund or in another capacity), an Associate of the Responsible Entity or with any Unit Holder or retaining for its or their own benefit any profits or benefits derived from any such contract or transaction;
- (c) acting in the same or a similar capacity in relation to any other trust or managed investment scheme; or
- (d) any dealings with any entity in which the Assets are invested,

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

32.3 Responsible Entity may rely

The Responsible Entity may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Responsible Entity, in relation to the interpretation of this Constitution or any other document (whether statutory or otherwise) or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and any other persons consulted by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted;

- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by the Responsible Entity of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Responsible Entity in connection with the Fund upon which it is reasonable for the Responsible Entity to rely,

and the Responsible Entity shall not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or documents.

33 Constitution legally binding

This Constitution binds the Responsible Entity and each present and future Unit Holder 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.

34 Payment

- (a) Subject to clause 34(b), the Responsible Entity will pay any money payable by the Responsible Entity to a Holder under this Constitution by electronic transfer to an account with an ADI nominated by that holder in accordance with clause 34(c).
- (b) The Responsible Entity 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 Responsible Entity under clause 29.5, 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 34(c).
- (c) A Holder must nominate in writing to the Responsible Entity 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. Any money payable by the Responsible Entity to a Holder under this Constitution may be paid by a crossed not negotiable cheque made payable to the Holder and posted to the Holder's address as supplied in the Register.
- (d) A Holder, with the consent of the Responsible Entity, may nominate in writing (or in such other manner approved by the Responsible Entity) that money owing to it under this Constitution be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (e) The Responsible Entity 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 Responsible Entity so determines the amount of the cheque or electronic fund transfer may be:
 - (i) reinvested in Units under a distribution reinvestment arrangement referred to in clause 15.15. The reinvestment is deemed to be made on the day the cheque or electronic fund transfer is cancelled;
 - (ii) held by the Responsible Entity for the benefit of the Holder; or

- (iii) paid by the Responsible Entity in accordance with the applicable unclaimed money legislation.
 - (f) A cheque issued to a Holder which is presented and paid, or where the payment is to a financial institution or nominated person payment to the institution or person, discharges the Responsible Entity in respect of the payment.
-

35 Severability

If any provision of this Constitution is held or found to be void, invalid or otherwise unenforceable, so much hereof as is necessary to render it valid and enforceable shall be deemed to be severed but the remainder of this Constitution will remain in full force and effect.

36 Governing law

This Constitution is governed by the laws of the State of Victoria and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

Schedule 1 Expenses

The following are examples of Expenses for which the Responsible Entity 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 Fund 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 Fund;
- (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 Fund, marketing material or other documents whether required by Law or otherwise to be prepared in respect of the Fund;
- (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 Fund or its Assets and Liabilities, including:
 - (i) fees and expenses payable to an investment manager appointed by the Responsible Entity;
 - (ii) the establishment and maintenance of accounts and Registers;
 - (iii) issuing Units by the Responsible Entity or any sales of Units by one or more Unit Holders, 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 Unit Holder under this Constitution;
 - (vi) dealing with Unit Holder enquiries;
 - (vii) communications with Unit Holders (written or otherwise);
 - (viii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Fund or on an ongoing basis;
 - (ix) leasing premises outside of Australia for the Responsible Entity in connection with the Fund; and

- (x) any travel expenses incurred in connection with the Fund;
- (h) convening and holding meetings of Unit Holders and carrying out the direction of the meetings;
- (i) Taxes (provided they are not on the personal account of the Responsible Entity and including any GST charged to the Responsible Entity), stamp duty and financial institution fees;
- (j) the inclusion of the Fund 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 Fund;
- (n) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (o) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Responsible Entity, except to the extent that the Responsible Entity 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 Fund, 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 Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including (if the Fund 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 Fund 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 Fund 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 Fund;
- (t) fees payable to ASIC or any other regulatory authority in relation to the Fund or Units;
- (u) the assigning or maintaining of a credit rating to the Fund; and
- (v) raising money or otherwise obtaining financial accommodation for the Fund, including a capital raising by the Fund, including fees payable to any underwriter or broker.

Schedule 2 AMIT Provisions

1 Unit Holders' 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 a Unit Holder has in the Fund held are 'clearly defined' at all times within a Financial Year for the purposes of the AMIT Regime, as required by the terms of those rules (including, without limitation, under sections 276-10 and 276-15 set out in the ITAA 1997).
- (b) While the Fund is not a Registered Scheme, to the extent required by the AMIT Regime:
 - (i) the Responsible Entity may only attribute to a Unit Holder a Unit Holder Component which has been determined objectively and on a fair and reasonable basis with reference to the terms of this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution);
 - (ii) the Responsible Entity may not exercise any right, whether it is one provided to the Responsible Entity under this Constitution or under any statutory or general Law rights or powers of a trustee, which would materially diminish or expand the entitlement of a Unit Holder to the income and/or capital of the Fund;
 - (iii) the Responsible Entity must treat Unit Holders who hold Units of the same class equally and Unit Holders who hold Units of a different class fairly; and
 - (iv) in addition to the requirements of clause 23, 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 4.4 of this Constitution) which would or may cause the requirements of this clause to not be met.

2 Responsible Entity powers in relation to AMIT Regime

- (a) The Responsible Entity may, if it meets the qualification requirements set out in the ITAA 1997, make an AMIT Choice.
- (b) The Responsible Entity has all of the powers and rights which are necessary and expedient to enable the Fund to comply with and effectively operate as an AMIT for the purposes of the AMIT Regime.
- (c) Without limiting the Responsible Entity's other powers or seeking to be exhaustive, for the purposes of the AMIT Regime, the Responsible Entity has the power to:
 - (i) work out a Unit Holder Component;
 - (ii) work out and attribute to a Unit Holder a Determined Unit Holder Component;
 - (iii) work out a Trust Component;
 - (iv) work out a Determined Trust Component;

- (v) issue (or reissue as the case may be) an AMMA Statement;
 - (vi) where the Fund has Units of a different Class carrying different rights on issue, treat each Class of Units as a separate AMIT and to the extent necessary or appropriate reflect this treatment in the Fund's accounting and trust records as required under the AMIT Regime (see also clause 4 of this schedule);
 - (vii) 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 Unit Holder Component as required under the AMIT Regime;
 - (viii) work out and make any necessary adjustments to any Trust Component required for the Responsible Entity to apply the Unders and Overs Rules under the AMIT Regime;
 - (ix) issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime;
 - (x) require a Unit Holder to provide the Responsible Entity with an indemnity in respect of any cost or expenses incurred by the Responsible Entity as a result of the Unit Holder making a Determined Unit Holder Component Choice; and
 - (xi) levy withholding tax on attributed amounts.
- (d) Where the Responsible Entity exercises its power to make a reasonable attribution of a Determined Trust Component for the purposes of the AMIT Regime:
- (i) it is not intended the Responsible Entity make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing income allocation provisions or amount payable to a Unit Holder under this Constitution (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution);
 - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements contemplated in the existing income allocation provisions under this Constitution (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Constitution) and should not be materially different from those rights and entitlements; and
 - (iii) the Responsible Entity must not attribute a Determined Trust Component which is prohibited by the AMIT Regime or which would prevent the Responsible Entity from making a reasonable attribution of a Determined Trust Component for the purposes of the AMIT Regime.

3 Separate AMIT Status

- (a) The terms of any Class of Units referred to in clause 4.4 of this Constitution may include any terms which are necessary or desirable to ensure that the Class of Units will be treated as a separate AMIT and that the transition of a Class into a separate AMIT is appropriate and equitable between Unit Holders and Classes of Unit Holders.

- (b) If the Responsible Entity determines that a particular Class is to be treated as a separate AMIT for the purposes of the AMIT Regime, then the Responsible Entity may determine that a particular Asset (and the income related to such Asset) or Liability (and the expense related to such Liability) is referable to the particular Class of Units.
- (c) For any Asset (and the income related to such Asset) or Liability (and the expense related to such Liability) which has not been designated as referable to a particular Class of Units, the Responsible Entity may designate the relevant Asset or Liability as being referable to and allocable between the various Classes of Units on such basis as it is determined to be equitable and appropriate having regard to the rights associated to the relevant Unit Holders.
- (d) The Responsible Entity may create such rules as is appropriate to individually identify particular Assets or Liabilities as being referable to a particular Class of Units.
- (e) If the Responsible Entity determines that a particular Class of Units is to be treated as a separate AMIT then the Responsible Entity must determine the extent to which any current Assets and Liabilities of the Fund are properly referable to the particular Class.

4 Ceasing to be an AMIT

If the Fund ceases to be an AMIT in respect of any Financial Year, then in determining the Income of the Fund for any subsequent period an appropriate adjustment must be made to take into account any over or under distributions of any tax component from any prior period.

5 Determined Unit Holder Component Choice

- (a) If a Unit Holder makes or intends to make a Determined Unit Holder Component Choice for the purposes of the AMIT Regime, the Unit Holder must:
 - (i) before providing notice of such choice to the Commissioner of Taxation, provide the Responsible Entity not less than seven days' notice of its intention to do so and a summary of the reasons why the Unit Holder considers the attribution to be inappropriate;
 - (ii) provide to the Responsible Entity all information the Responsible Entity reasonably requests in relation to any act, matter or thing relating to any Determined Unit Holder Component Choice; and
 - (iii) be responsible for all costs and liabilities incurred by the Responsible Entity as a result of that choice under section 276-205 of the ITAA 1997 in relation to the basis of the attribution.
- (b) The Unit Holder acknowledges that if a Unit Holder makes a Determined Unit Holder Component Choice it may be necessary or desirable for the Responsible Entity to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Unit Holders for the purposes of the AMIT Regime.

- (c) The Responsible Entity shall have no liability in respect of any act, matter or thing done or omitted to be done by a Unit Holder in relation to a Determined Unit Holder Component Choice.
- (d) The Responsible Entity has the right to issue or reissue any AMMA Statement to the Unit Holder or other Unit Holders if a Unit Holder makes a Determined Unit Holder Component Choice.
- (e) The Responsible Entity may make it a condition of any Unit Holder making a Determined Unit Holder Component Choice to be provided with the right to assume the conduct of making such a choice and any proceedings arising out of that choice on terms the Responsible Entity nominates.

6 Debt-like AMIT instruments

The Unit Holders 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.

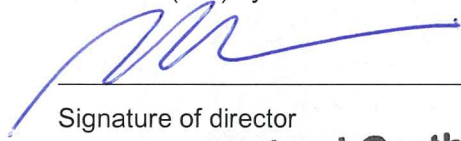
7 Custodian notices

- (a) The Responsible Entity may prescribe particular terms and conditions which apply in the event that a custodian provides the Responsible Entity a custodian notice, which results in the AMIT having an obligation to pay or remit any monies to the Commissioner of Taxation.
- (b) The Responsible Entity may deduct an amount in respect of any monies which the Responsible Entity is required to remit to the Commissioner of Taxation as a result of a custodian providing the Responsible Entity with a custodian notice which results in the AMIT having an obligation to pay or remit any monies to the Commissioner of Taxation from any amount which is payable directly or indirectly to a person whom the Responsible Entity reasonably determines is responsible for the obligation to remit the additional amount to the Commissioner of Taxation.

Execution page

Executed as a deed.

Signed, sealed and delivered by **APN FUNDS
MANAGEMENT LIMITED ACN 080 674 479** in
accordance with section 127 of the *Corporations
Act 2001* (Cth) by:



Signature of director

Michael Groth
Director

Name of director (print)



Signature of director/secretary

Chantal Churchill
Company Secretary

Name of director/secretary (print)