

CENTURIA PROPERTY FUNDS LIMITED

Centuria Sandgate Road Fund

Supplementary constitution

Date	This Supplementary Constitution is a deed poll made on the date noted on page 2 of this document.
Party	Centuria Property Funds Limited ACN 086 553 639 of Suite 39.01, Level 39, 100 Miller Street, North Sydney, New South Wales (Trustee)
Introduction	<p>A. The Trustee is the responsible entity of Centuria Sandgate Road Fund (Trust) which is a managed investment scheme. The Trust has been registered pursuant to the Act and the ARSN is 618 152 702.</p> <p>B. This Supplementary Constitution has been prepared to amend the constitution dated 16 March 2017 as amended by a supplementary constitution dated 3 April 2017 (Constitution). This Supplementary Constitution will be lodged with ASIC pursuant to section 601GC(2) of the Act. The Supplementary Constitution will take effect from the time of lodgement.</p> <p>C. The changes made by this Supplementary Constitution have been made by the Trustee pursuant to section 601GC(1)(c) of the Act, notionally inserted by <i>ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489</i>.</p> <p>D. The terms of this Supplementary Constitution follow.</p>

TERMS

1. Definitions and interpretation

Schedules 1 and 2 of the Constitution apply to this Supplementary Constitution unless otherwise specified or the context requires another meaning or interpretation to be applied.

2. Amendment of the Constitution

- (a) This Supplementary Constitution amends the Constitution and is binding on—
 - (i) all Unitholders (as they are constituted from time to time), and
 - (ii) the Trustee.
- (b) The amendments made to the Constitution by this Supplementary Constitution do not purport to affect or alter in any way the beneficial interests in the Trust as at the date of this Supplementary Constitution.

3. Operative provisions

In the event the Trustee makes an election pursuant to clause 11.3(a) of the Constitution and the Trust becomes an AMIT, then for any AMIT Income Year, the Constitution is amended so that the text shown as underlined in the document in the Schedule is inserted into the Constitution and the text shown as struck through is deleted from the Constitution. For the avoidance of doubt, the amendments contained in the Schedule apply only in an AMIT Income Year. For the avoidance of doubt, where any new or amended clause numbers (including any references to clause numbers) appear in the document in the Schedule but are not shown as underlined or struck through, then the Constitution is still deemed to be amended so as to incorporate the correct clause numbers and clause number references, as applicable.

4. Governing law

This Supplementary Constitution is governed by and will be construed according to the laws of the State of New South Wales.

Executed as a deed

This Supplementary Constitution is a deed poll made this day of 2017.

Executed by Centuria Property Funds
Limited ACN 086 553 639 in accordance
with section 127 of the Act by

Secretary/Director

Director

Name (please print)

Name (please print)

Schedule 1—Consolidated Constitution

Attached is a consolidated version of the Constitution incorporating prior amendments made by the supplementary constitution dated 3 April 2017 (Consolidated Constitution).

Care has been taken to copy the original documents but this Consolidated Constitution may not be exactly the same as the original documents so reliance should only be made on the original documents.

The Consolidated Constitution is marked-up to show the changes which are effected pursuant to this Supplementary Constitution.

CENTURIA PROPERTY FUNDS LIMITED

Centuria Sandgate Road Fund

Constitution

Date	This Constitution is a deed poll made on the date noted on page 64 of this document.
Party	Centuria Property Funds Limited ACN 086 553 639 of Suite 39.01, Level 39, 100 Miller Street, North Sydney, New South Wales (Trustee)
Introduction	<p>A. This Constitution establishes the Trust for the benefit of all Unitholders. Those Unitholders are bound by this Constitution.</p> <p>B. The Trustee has agreed to manage the Trust formed by this Constitution for the benefit of Unitholders and at the end of the term wind up the Trust.</p> <p>C. If the Trust is a Registered Scheme, then the Trustee will be the responsible entity.</p> <p>D. The terms of this Constitution follow.</p>
Schedules	<p>The following Schedules form part of this Constitution:</p> <p>A. Schedule 1—Dictionary.</p> <p>B. Schedule 2—Rules for interpretation.</p> <p>C. Schedule 3—Performance Fee.</p> <p>D. Schedule 4—Acquisition Units.</p> <p>E. Schedule 5—When the Trust is part of a Stapled Entity.</p>

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TERMS

1. Constitution of the Trust

1.1 *Constitution binding on the parties*

This Constitution operates as a deed and is binding on—

- (a) all Unitholders (as they are constituted from time-to-time), and
- (b) the Trustee.

1.2 *Confirmation of appointment*

The appointment of the Trustee as trustee of the Trust is hereby confirmed and the Trustee agrees to manage the Trust upon and subject to the terms contained in this Constitution.

1.3 *Benefits and obligations*

This Constitution is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided to every Unitholder. Subject to any special rights or obligations conferred upon Units pursuant to their Terms of Issue, the Units will be held upon and subject to the provisions contained in this Constitution.

2. Trust

2.1 *Name of the Trust*

- (a) The Trust will be known as the Centuria Sandgate Road Fund. However, the Trustee may designate another name at any time in its complete discretion.
- (b) If Centuria Property Funds Limited retires or is removed, then its successor as Trustee must, unless otherwise approved by Centuria Property Funds Limited, change the name of the Trust to a name that does not imply an association with Centuria Property Funds Limited or its business.

2.2 *Declaration of trust*

- (a) The Trustee holds the Assets on trust for the Unitholders on the terms contained in this Constitution.
- (b) The Trust commences on the date the first Units are issued in accordance with clause 3.

2.3 Term of the Trust

The Trust will end on the earlier of—

- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Unitholders, and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution, in accordance with the Act or in accordance with the law.

2.4 No merger

For the avoidance of any doubt, if the Trustee (in its capacity as trustee of any other trust or trusts) is, or becomes, a Unitholder, or the sole Unitholder, then the estates or interests held by the Trustee in the Assets will not merge and the trust created under this Constitution will not cease to exist. The Trustee may be the trustee of the Trust and also at the same time a Unitholder, or the sole Unitholder, of the Trust, in a different capacity.

2.5 Relationship of agency or partnership excluded

Any relationship of agency, or of a partnership, between the Trustee in that capacity and any Unitholder is expressly excluded.

3. Creation and issue of Units

3.1 Division of beneficial interest

Unless the Terms of Issue of a Class otherwise provide, every Unit confers an equal and undivided interest in the Assets as a whole, subject to the Liabilities, but no Unit confers an interest in a particular part of the Trust or in any particular Asset.

3.2 Further issues of Units

- (a) Subject to the Act, the Trustee may determine to create and issue further Units of the same Class or of a different Class to those already on issue.
- (b) The Trustee may make the issue of further Units in different Classes subject to the rights, obligations and restrictions specified in their Terms of Issue. For example, the Terms of Issue may—
 - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units, or
 - (ii) provide for conversion of Units from one Class to another Class and, if the Trustee so determines, change the number of Units on such a conversion.
- (c) Notwithstanding any other provision in this Constitution, the rights, obligations and restrictions attaching to a Class (including the rights,

obligations and restrictions attaching to Ordinary Units) are subject always to the rights, obligations and restrictions which attach to Units issued in other Classes. For example, and for the removal of doubt, if a Class is issued by the Trustee which has a right to receive some of the Distributable Amount or Dividend Amount in priority or preference to other Classes, then the rights of holders of other Classes are subject to this right.

- (d) The rights of Unitholders are subject to the rights, obligations and restrictions established by the Terms of Issue of the Class. To the extent that those rights, restrictions and obligations relate to matters other than those matters prescribed by section 601GA of the Act, those rights, restrictions and obligations will prevail to the extent of any inconsistency with the terms of this Constitution and this Constitution will be read subject to them.
- (e) The Trustee may create and issue Options to subscribe for Units, on such terms and conditions as it determines. On the exercise of an Option, the Option Holder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.

3.3 Fractions of Units

- (a) Fractions of a Unit may be issued by the Trustee.
- (b) Subject to the Terms of Issue, if fractions of a Unit are issued, then the provisions in this Constitution which relate to Units and Unitholders apply in the proportion which the fraction bears to the Unit.
- (c) The Trustee may consolidate or divide Units or fractions of Units on terms it determines.

3.4 Application Price of a Unit

- (a) For all Units issued by the Trustee pursuant to clause 2.2(b), the Application Price of single Unit is \$1.00.
- (b) For all Units issued prior or pursuant to the first Disclosure Document, the Application Price of a single Unit is \$1.00. At all other times the Application Price for a Unit will be determined in accordance with clause 3.4(c), subject to the Trustee determining another Unit price in accordance with the remainder of this clause 3.4, or in accordance with clause 3.5.
- (c) Subject to the other provisions of this clause 3.4 and clause 3.5, the Application Price of a single Unit is the price calculated as follows:

$\frac{\text{Net Asset Value} + \text{Total Unpaid Amount} - \text{Accrued Distribution} + \text{Transaction Costs}}{\text{Units in Issue}}$
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However, if and whilst the Trust is taxed on a similar basis to a company, then the Accrued Distribution will not be deducted from the Net Asset Value when applying the formula in this clause and therefore the words “—Accrued Distribution” in this formula will be deemed not to apply.

- (d) Notwithstanding any other provision of this Constitution, the Trustee may set the Application Price for Units at an Application Price different from the fixed price in clause 3.4(a) or from that determined in accordance with clause 3.4(c), in relation to some Units or all Units, to the extent it is permitted to do so under the terms of any ASIC Relief (and subject to the terms of that ASIC Relief). In particular, the Trustee may (subject to the terms of the ASIC Relief) exercise discretion in determining—
- (i) any matter affecting the value of any factor included in the calculation of the Application Price, and
 - (ii) any matter which is an aspect of the method of calculating the Application Price.
- (e) For the purpose of clause 3.4(c), “Net Asset Value”, “Total Unpaid Amount”, “Transaction Costs” and “Units in Issue” are each that proportion of those variables that the Trustee determines is properly referable to the Class to which the Unit being priced belongs.

3.5 Application Price on exercise of Option

Subject to the Act and the conditions of any ASIC Relief, the exercise price for Units to be issued on the exercise of an Option will be the Application Price for Units determined on the Business Day immediately preceding the date the Options are offered.

3.6 Time to calculate Application Price

Subject to clauses 0, 3.5 and 3.7, the time at which the Trustee must calculate the Application Price for Units is the next Relevant Valuation Time after the later of the following to occur:

- (a) The time the Trustee receives the relevant application for Units.
- (b) The time the Trustee receives the relevant Application Money or the property against which Units are to be issued.

3.7 Time to calculate Application Price—fixed capital raisings

The Trustee may calculate the Application Price for Units at any Relevant Valuation Time the Trustee determines in the case of offers made for a predetermined fixed number of Units or for the purpose of raising a predetermined fixed amount of money.

3.8 Units issued against uncleared funds

- (a) For the purposes of this clause 3, the Trustee may (but is not obliged to) treat receipt of a cheque or other promise or direction to pay as a receipt of Application Money.
- (b) Units issued against Application Money provided other than in cleared funds, or in consideration of a transfer of property, are (at the election of the Trustee) void if the funds are not subsequently cleared, the property

does not vest in the Trustee, or the property is not transferred free from encumbrance, within 10 Business Days after the receipt of the relevant application for Units (or such longer period as the Trustee determines).

3.9 Net Asset Value

- (a) The Trustee may determine the Net Asset Value at a Valuation Time in accordance with clause 10. Nothing in this clause 3 requires the Trustee to determine the Net Asset Value more often than at a Valuation Time.
- (b) The Trustee may in its discretion postpone, delay or change any Valuation Time (including any Relevant Valuation Time).

3.10 Satisfaction of Application Money

The payment of Application Money for Units may be satisfied in such a manner as the Trustee determines, including by payment of cash or by transfer to the Trustee of investments acceptable to the Trustee, or by a combination of these methods.

3.11 Perpetuity period and restriction on issue and redemption of Units

The perpetuity period for the Trust expires on the Vesting Day. Despite any other provision of this Constitution, no Units may be issued or redeemed after the day immediately prior to the last day of the perpetuity period, if that issue or redemption would cause a contravention of the rule against perpetuities or remoteness of vesting or any other rule of law or equity. The specification of a perpetuity period in this clause does not require that the Trust terminate on expiration of that period.

4. Application for Units

4.1 Form of application

An application for Units must be in any form the Trustee may for the time being require or approve.

4.2 Application payment

- (a) Each Applicant must, at the time of making an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Investment Amount.
- (b) If the application for Units arises as part of a reinvestment under clause 16, then the Investment Amount is deemed to be paid to and received by the Trustee on the day the distribution is applied in payment for the Units.

4.3 Holding Application Money

All Application Money must be held by the Trustee (or its agent) on trust for the Applicants.

4.4 Interest on Application Money

Unless the Trustee decides otherwise, interest earned on Application Money for Units will form part of the Assets, and for the avoidance of doubt, any interest earned on Application Money is not available to a particular Applicant nor is it attributable to a particular Applicant.

4.5 Trustee may refuse application form

- (a) The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.
- (b) If any application form is refused, then the Trustee must refund to the Applicant any money paid by that Applicant.
- (c) If an application form is refused, then unless the Trustee determines otherwise, no interest shall be paid to the Applicant. Any interest earned on that money forms part of the Assets to which the application related.

4.6 Investment of the Application Money

The Application Money may, pending its application in accordance with the terms of this Constitution, be invested by the Trustee in investments authorised by the law relating to the investment of trust funds.

4.7 Minimum application

The Trustee may set minimum application amounts or minimum Unit holdings for the Trust (including in respect of a Class), and alter those amounts at any time.

4.8 Date Units issued

- (a) Units are taken to be issued on the date the Trustee accepts the relevant application for Units and the Investment Amount required to be paid by the Applicant for the Units has been paid in accordance with clause 4.2.
- (b) However, Units issued on a reinvestment pursuant to clause 16 are taken to be issued under an application which is deemed to have been received on the day the distribution is applied in payment for the Units.

4.9 Number of Units issued

- (a) Except in relation to Partly Paid Units, the number of Units issued to an Applicant is calculated as follows:

$\frac{\text{Application Money received}}{\text{Application Price of a Unit}}$
--

- (b) In relation to Partly Paid Units, the number of Partly Paid Units issued will be determined in accordance with the formula in clause 4.9(a) assuming the Application Price per Unit was due and paid in full on the date of issue.

- (c) At the Trustee's discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.

4.10 Unit certificates

The Trustee is not required to issue or provide certificates for Unit holdings.

4.11 Unitholder identification requirements

- (a) Without affecting clause 4.1, the Trustee may require any Applicant to provide to the Trustee evidence of the identity, residency and nationality of that Applicant (or of any person or entity with an interest in the Applicant), in such form as required by the Trustee in its absolute discretion.
- (b) Without affecting clause 4.8, the Trustee may delay the acceptance or processing of any application for Units or it may refuse any application for Units, in its absolute discretion, if the Applicant fails or refuses to provide the evidence required by the Trustee under clause 4.11(a), or the evidence provided is not satisfactory to the Trustee.
- (c) The Trustee may in its absolute discretion cancel the Units which were issued, in which case the issue of Units will be deemed to be void, if, after Units have been issued to a Unitholder, it comes to the Trustee's attention that the Unitholder (or any person or entity with an interest in the Unitholder)—
- (i) is a different person or entity from the person or entity originally represented to the Trustee, or
 - (ii) there is a defect or omission in the information provided under clause 4.11(a).
- (d) Nothing in this clause 4.11 is intended to, nor should it be taken to, impose any additional or greater obligations on the Trustee than any obligations already imposed on the Trustee pursuant to any law relating to the control or identification of money laundering or terrorism financing. This clause 4.11 is intended to give the Trustee the power to require information from Applicants and the power to cancel Units issued, but (subject to the law) it does not oblige the Trustee to do so.

5. Partly Paid Units

5.1 Payment of Application Price by instalments

The Application Price for Units may be payable by instalments as set out in this clause 5.

5.2 Determination of amount and timing of instalments

The Trustee may determine at any time that Units that are to be offered for sale or subscription are to be offered on terms that the Application Price is payable by

instalments of such amounts and at such times as the Trustee determines or, if the Trustee so determines, by a single instalment payable at such time as the Trustee determines.

5.3 Variation or waiver of terms and conditions

Subject to any applicable statutory duty requiring the Trustee to treat Unitholders 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 5.2, those terms and conditions may be varied or compliance therewith waived only with the consent of the Trustee. The Trustee may not waive an instalment which is due and payable.

5.4 Notice of instalments

The Trustee must give Unitholders at least one Business Days' notice of the time and date each instalment is due to be paid (the first notice). The omission to give the first notice or the non-receipt of the first notice by the Unitholder does not affect the obligation of the Unitholder to pay the instalment.

5.5 Interest on instalments and costs

If a Unitholder does not pay an instalment by the due time and date—

- (a) then interest is payable by the Unitholder on the amount due, calculated in accordance with clause 31.6(a), and
- (b) the Trustee may charge the Unitholder any costs it or the Trust incurs as a result of the failure to pay an instalment.

5.6 Failure to pay instalments

- (a) If a Unitholder does not pay any instalment due on a Partly Paid Unit on or by the day specified for payment, then the Trustee may serve a notice on the Unitholder (the second notice).
- (b) If a notice is served pursuant to clause 5.6(a), then it must contain the following:
 - (i) The total amount due to be paid at the date of the notice, including the unpaid instalment, any interest owing at that date and any costs the Trustee is seeking to recover.
 - (ii) The time and day by which payment must be made. This date must not be less than three business days from the date of the notice.
 - (iii) If payment of the amount set out in the notice is not made by the due date specified in the notice, then the Partly Paid Units in respect of which the notice has been issued are liable to be forfeited. The Trustee may also specify that interest will continue to accrue and further costs are likely to be incurred.

- (c) Failure by the Trustee to comply with clause 5.6(b) or non-receipt of the second notice does not affect the obligation of the Unitholder to pay the instalment plus interest and costs.

5.7 Consequences of non-compliance

If the requirements of any notice issued under clause 5.6 are not complied with, then—

- (a) the Trustee may determine in its absolute discretion, that any Partly Paid Unit in respect of which the notice has been given 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, and
- (b) subject to the Act and this Constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Trustee.

5.8 Disposal of forfeited Units

- (a) Subject to the Act, a forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either—
- (i) at a price that is no less than a price calculated in accordance with clause 3.4, or
- (ii) in accordance with any applicable ASIC Relief in relation to the sale of forfeited Units, if the Trustee complies with the conditions of the relief.
- (b) The Trustee is not liable to a Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (c) At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Trustee thinks fit.

5.9 Holder of forfeited Units

The holder of Partly Paid Units which have been forfeited ceases to be a Unitholder in respect of the forfeited Units but remains liable to pay to the Trustee all money which at the date of forfeiture was payable by the former Unitholder to the Trustee in respect of the forfeited Units (including interest owing under clause 5.5 and expenses) but the former Unitholder's liability ceases if and when the Trustee receives payment in full of all such money.

5.10 Evidence of forfeiture

A statement signed by an Authorised Representative of the Trustee that a Partly Paid Unit has 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.

5.11 Consideration for forfeited Units

Where a Partly Paid Unit is forfeited pursuant to this clause the following applies:

- (a) The Trustee may receive the consideration, if any, given for a forfeited Unit on the sale or disposal.
- (b) The Trustee must—
 - (i) execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of, and
 - (ii) register that person as the holder of that Unit.
- (c) The person who becomes the registered holder is not obliged to ensure that any part of the money which the person has paid for the Unit is paid to the former holder of the Unit. Further, that person's title to that Unit is not affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

5.12 Deductions from consideration for forfeited Units

Where forfeited Units are sold or disposed of for cash, the Trustee must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture (including any interest payable and any expenses incurred on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Unitholder to recover the instalment or part thereof owing). The Trustee may retain in the Assets the amounts so deducted, but the balance remaining must be paid to the Unitholder whose Units were forfeited.

5.13 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.

5.14 Rights and obligations attaching to a Partly Paid Unit are proportionate

Subject to the 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.

5.15 Winding up of the Trust

Despite anything in this Constitution or in any offer of Partly Paid Units, the whole of the Unpaid Amount is payable immediately upon commencement of the winding up of the Trust.

6. Withdrawal Price for Units

6.1 *Withdrawal price*

- (a) Subject to the Terms of Issue, a Unit may only be redeemed at a Withdrawal Price calculated as follows:

$\frac{\text{Net Asset Value} + \text{Total Unpaid Amount} - \text{Accrued Distribution} - \text{Transaction Costs}}{\text{Units in Issue}}$
--

However, if and whilst the Trust is taxed on a similar basis to a company, then the Accrued Distribution will not be deducted from the Net Asset Value when applying this formula and therefore the portion “ – Accrued Distribution” in this formula will be deemed not to apply.

- (b) For the purposes of the calculation in clause 6.1(a):
- (i) The Trustee may (subject to the terms of any ASIC Relief) exercise discretion in determining:
- A. any matter affecting the value of any factor included in the calculation of the Withdrawal Price, and
- B. any matter which is an aspect of the method of calculating the Withdrawal Price.
- (ii) “Net Asset Value”, “Total Unpaid Amount”, “Transaction Costs” and “Units in Issue” are each that proportion of those variables that the Trustee determines is properly referable to the Class to which the Unit being priced belongs.

6.2 *Time to calculate Withdrawal Price*

The Withdrawal Price must be calculated—

- (a) while the Trust is Liquid, at the next Relevant Valuation Time after the withdrawal request is accepted or approved by the Trustee, or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes or at such other time specified by the Trustee in the withdrawal offer.

7. Withdrawal procedures

7.1 *Right to withdraw*

- (a) Where the Trust is not a Registered Scheme, a Unitholder has no right to withdraw from the Trust other than as determined by the Trustee in its absolute discretion.
- (b) Where the Trust is a Registered Scheme, a Unitholder’s right to withdraw is governed by the remainder of this clause 7, the terms of which have effect on and from such registration (except as expressly provided).

7.2 Application of withdrawal provisions

- (a) Clauses 7.3 to 7.6 apply whether or not the Trust is Liquid.
- (b) Clauses 7.4 to 7.9 apply whether or not the Trust is a Registered Scheme.
- (c) Clauses 7.11 and 7.12 apply while the Trust is Liquid.
- (d) Clause 7.13 applies while the Trust is not Liquid.

7.3 Requests for withdrawal

A Unitholder may make a request for the withdrawal of some or all of their Units—

- (a) if the Trust is Liquid, by providing notice to the Trustee in writing and the Trustee may give effect to that request in its sole discretion and at the time and in the manner set out in this clause 7 (subject to clauses 7.7 and 7.12), or
- (b) if the Trust is not Liquid, in response to a withdrawal offer made by the Trustee and in accordance with the Act.

7.4 Compulsory withdrawal

The Trustee may redeem the Units of any Unitholder without the need for a withdrawal request in any of the following circumstances:

- (a) The Trust is not a Registered Scheme.
- (b) The redemption is permitted under the Terms of Issue which apply to those Units.
- (c) The Trust has failed or is likely to fail to meet any criteria which must be met so as to ensure the Trustee or the Unitholders (considered as a whole) are not subject to adverse Tax consequences as determined from time-to-time by the Trustee.
- (d) The redemption is required by operation of—
 - (i) legislation where the mechanism for redemption is contained in that legislation
 - (ii) a provision in this Constitution which has been included in mandatory compliance with Australian legislation
 - (iii) the order of a court of competent jurisdiction, or
 - (iv) a lien, the exercise of which results in a redemption.
- (e) The Unitholder holds less than any minimum Unit holding amount set by the Trustee.

- (f) In the opinion of the Trustee, the continued holding of Units by a Unitholder would be contrary to an applicable law.
- (g) The Trustee determines, in its absolute discretion, the continued holding of Units by a Unitholder would be to the material disadvantage of the Trust or to the interests of Unitholders as a whole.

7.5 Money owed

If a Unitholder owes any money to the Trust or the Trustee (including any Unpaid Amount of any Partly Paid Units held by the Unitholder), then the Trustee may deduct the money owing from the proceeds of a withdrawal which are otherwise due to the Unitholder.

7.6 Transfer of Assets to satisfy withdrawal or distribution

The Trustee may, at its discretion, transfer Assets to a Unitholder, 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 Unitholder pursuant to the redemption request, withdrawal offer or distribution (based on a valuation prepared in accordance with clause 10). If the Trustee requires, then the costs involved in the transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

7.7 Minimum application amount

The Trustee need not give effect to withdrawal requests (whether or not made in response to a withdrawal offer) in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding in the Trust.

7.8 Minimum unitholding

If complying with a withdrawal request (whether or not made in response to a withdrawal offer) would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as relating to the remaining balance of the Unitholder's holding in the Trust.

7.9 Withdrawal request cannot be withdrawn

A withdrawal request (whether or not made in response to a withdrawal offer) cannot be withdrawn by a Unitholder, unless the Trustee otherwise agrees.

7.10 Satisfaction of withdrawal by sale of Units

The Trustee may, at its discretion, purchase or arrange for another person to purchase all or some of the Units the subject of a withdrawal request (whether or not made in response to a withdrawal offer) at a price per Unit no less than the

Withdrawal Price which would otherwise have been paid under clause 6.1. In such case, the withdrawal request is deemed satisfied upon—

- (a) the transfer of the Units the subject of the withdrawal request being recorded in the Register, and
- (b) if the transfer is for less than all of the Units the subject of the withdrawal request, then upon payment of the Withdrawal Price in respect of the remaining Units.

7.11 Suspension of withdrawals

- (a) The Trustee need not give effect to a withdrawal request or it may suspend withdrawals for a period of time—
 - (i) where the withdrawal request is received between the date the Trust is terminated and the date the Trust is wound up
 - (ii) if it is not in the best interests of Unitholders for withdrawals to be made
 - (iii) it would prejudice the Trust's ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Trust's or the Trustee's compliance with any applicable law, or the taxation or stamp duty status of the Trust
 - (iv) it is, for any reason, impracticable for it to calculate the Net Asset Value, the Application Price or the Withdrawal Price, including because of closure of a securities or other exchange or trading restrictions on a securities or other exchange, or because of the existence of an emergency or other similar state affairs or because of an event outside of the reasonable control of the Trustee, or because of the requirements of any law
 - (v) there would be insufficient cash retained in the Assets after complying with a withdrawal request to meet other Liabilities and in the Trustee's opinion it is not in the interests of Unitholders for any Assets to be sold in order to satisfy a withdrawal request
 - (vi) if it is not able to realise the relevant Assets at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside of the control of the Trustee needed to satisfy the withdrawal requests within the time required
 - (vii) the Trustee reasonably estimates that it must sell 5 percent or more (by value) of all Assets to meet current unsatisfied withdrawal requests, or
 - (viii) there have been, or the Trustee anticipates there will be, withdrawal requests which involve realising a significant amount of the Assets and the Trustee considers that if those withdrawal requests are all satisfied immediately, then Unitholders who

continue to hold Units may bear stamp duty or a disproportionate burden of capital gains tax or other expenses, or the meeting of those withdrawal requests would otherwise be to the disadvantage of existing Unitholders, including (but not limited to) a material diminution in the value of the Assets.

- (b) In cases where withdrawals are suspended for a period of time the Trustee may extend the period for so long as the circumstances which caused the suspension continue to apply.

7.12 Provisions which apply when the Trust is Liquid

- (a) The Trustee must determine whether it will give effect to a withdrawal request within 365 days of receipt of the request. If the Trustee gives effect to a withdrawal request, then the Trustee must satisfy the withdrawal request within 21 days from the date on which it determines to give effect to the request—
- (i) by making the requisite payment from the Assets or by transferring Assets in accordance with clause 7.6
 - (ii) subject to the Act, by purchasing the number (or value) of Units referred to in the withdrawal request, or
 - (iii) partially in the manner described in clause 7.12(a)(i) and partially in the manner described in clause 7.12(a)(ii).
- (b) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (c) The Trustee may redeem some or all of the Units which are the subject of the request.
- (d) The Trustee may specify a limit on the level of Assets that will be made available to meet withdrawal requests received during a particular period or prior to a nominated date or time. If the proceeds required to meet withdrawal requests exceed the amount available to meet those requests, then the requests will be processed on a pro rata basis in accordance with the formula set out in section 601KD of the Act (as if the Trust was not Liquid). The Trustee may, but is not obliged to, process any remaining portion of the withdrawal requests during or after the next relevant period or after the next relevant nominated date or time (as may be applicable).

7.13 Provisions which apply when the Trust is not Liquid

- (a) When the Trust is not Liquid, a Unitholder has no ability to withdraw from the Trust unless there is a withdrawal offer, which complies with the Act, currently open for acceptance by Unitholders. The Trustee may make separate withdrawal offers in respect of different Classes or a withdrawal offer only in respect of a particular Class.

- (b) Subject to the Act, the Trustee may determine the terms of a withdrawal offer in its absolute discretion.
- (c) The withdrawal offer may be made by giving a copy to all Unitholders to whom the withdrawal offer is available.
- (d) The Trustee is not at any time obliged to make a withdrawal offer.
- (e) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (f) The Trustee will not accept any withdrawal requests received before it makes a withdrawal offer under this clause 7.13. The Trustee will notify any Unitholders that submit withdrawal requests before the Trustee makes a withdrawal offer that the withdrawal request is not accepted and that the Unitholder will need to respond to a withdrawal offer when one is made.
- (g) Subject to the Act, the Trustee may cancel any withdrawal offer it has made at any time before the withdrawal offer closes by giving notice of the cancellation to all Unitholders to whom the withdrawal offer was made. The withdrawal offer will be automatically cancelled as at the time of the Trustee's decision. Any withdrawal request made in response to a withdrawal offer cancelled by the Trustee which has not been satisfied at the time of the Trustee's decision to cancel the withdrawal offer will be taken to be withdrawn at that time.

8. Register

8.1 *Trustee must maintain the Register*

The Trustee must keep and maintain or cause to be kept and maintained an up-to-date Register. The Register will be in a form and contain particulars as determined by the Trustee, however following registration of the Trust as a managed investment scheme, the Register must be kept as required by the Act or any declaration, exemption or ruling granted under the Act. The Register may include other particulars, as the Trustee may from time-to-time consider appropriate.

8.2 *Removing information from the Register*

Information relating to a Unitholder (or any part of it) may be removed from the Register at any time after the first day of the Financial Year occurring seven years after the Financial Year in which the Unitholder ceased to be the holder of Units.

8.3 *Register is evidence of who are Unitholders*

Except in the case of manifest error, the Trustee may treat a registered Unitholder as the legal owner of Units registered in the Unitholder's name on the Register. The Trustee is not required to recognise any beneficial interest held in any Unit.

8.4 Change of details

A Unitholder must notify the Trustee of any change of name or address as soon as reasonably practicable after the change occurs. The Trustee must update the Register accordingly.

8.5 Limit to number of registered holders

In no case will the Trustee be required to register more than two persons as holders of any one Unit.

8.6 Use of information

If a Unitholder inspects or is given a copy of the Register, then they will be taken to have agreed not to use any information obtained from the Register (or part thereof) for any purpose or disclose any such information to any person, in each case except to the extent that the information consists of particulars of the unitholding of that Unitholder. A Unitholder's obligation under this clause survives the transfer of all or any part of their Units.

9. Interests of Unitholders

9.1 Joint holders

Where more than one person is registered as the holder of any Unit, then these Unitholders hold them as joint tenants. Joint holders of Units shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit.

9.2 Restrictions on Unitholders

A Unitholder has no right or entitlement to, and must not—

- (a) interfere with any rights, powers, authorities or discretions of the Trustee under this Constitution
- (b) exercise a right, power or privilege in respect of the Assets or lodge a caveat or other notice affecting or encumbering the Assets or otherwise claim any interest in the Assets
- (c) require any Assets to be transferred to that Unitholder, or
- (d) give any directions to the Trustee if it would require the Trustee to do or omit to do anything which may result in the exercise of any discretion expressly conferred on the Trustee by this Constitution or the determination of any matter which requires the approval of the Trustee under this Constitution.

10. Valuation of Assets

10.1 *Periodic valuations*

The Trustee may cause an Asset to be valued at any time, however (if applicable) the Trustee must do so as and when required by the Act (as varied by any exemption or relief granted by ASIC).

10.2 *Net Asset Value*

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

10.3 *Valuation methodology*

- (a) Subject to the Act, the valuation methods and policies applied to valuing the Assets must be consistent with ordinary commercial practices for valuing property of the relevant kind. All valuations used must be reasonably current.¹
- (b) Subject to the Act, the Trustee may make and act upon estimates of the value of any Assets or the amount of any Liabilities where actual valuations or authenticated figures are not available and the Trustee considers there will be no significant detriment to any Unitholders. The Trustee's power to make and act upon such estimates is conditional upon the estimates being reasonably current and being consistent with ordinary commercial practices for valuing property of the relevant kind.²

10.4 *Trustee not an expert*

The Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.

11. Trustee's powers and duties

11.1 *General powers*

Subject to this Constitution, the Trustee has all the powers in respect of the Trust that it is possible under the law to confer on a natural person or corporation and as though it were the absolute and beneficial owner of the Assets acting in its personal capacity.

¹ Note: The changes were introduced by the Supplementary Constitution dated 3 April 2017.

² Note: The changes were introduced by the Supplementary Constitution dated 3 April 2017.

11.2 *Specific powers*

Without limiting clause 11.1, the Trustee's powers include the power to do the following:

- (a) Acquire and invest in any property (whether real or personal) or assets, located in any jurisdiction (which for the avoidance of doubt includes the acquisition of any contractual or other rights and the provision of debt with or without security).
- (b) Dispose of or otherwise deal with the Assets.
- (c) Manage and administer the Assets and Liabilities.
- (d) Lend all or any money at any time forming part of the Assets to any person with or without the security of any property, including where the amount of any such loan is in excess to the value of the secured property.
- (e) Complete and execute any mortgage document and any other security document, including any document relating to the priority of a security held on behalf of the Trust.
- (f) Do everything which, in the Trustee's opinion, is necessary or expedient to enable the exercise of any right as lender in relation to any loan made from the Assets, including exercising a power of sale pursuant to a mortgage document or the Conveyancing Act 1919 (NSW) or a corresponding enactment of a State or Territory or the Commonwealth of Australia, to execute any contract for sale of real property offered as security, transfer, lease or easement document required to register any dealings and complete the sale of such real property offered as security to the Trust and the subject of the exercise of any power of sale.
- (g) Do everything which, in the Trustee's opinion, is necessary or expedient, to enable any security held on behalf of the Trust to be exercised, enforced, discharged or otherwise dealt with by the Trustee.
- (h) Borrow or raise money (including but not limited to the issue of unsecured notes and other debt products, which may under their terms of issue be convertible or partially convertible to Units on such terms as the Trustee determines), grant security, enter into ISDA master agreements and derivative transactions (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities. Such other obligations may include but are not limited to—
 - (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or responsible entity of any other trust), and

- (ii) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets.
- (i) Authorise any person to act as its agent or delegate to hold title to any Asset, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate. If the Trustee does appoint an agent or delegate, then—
 - (i) it may do so on terms the Trustee thinks fit, and
 - (ii) the agent or delegate may be an Associate of the Trustee.
- (j) Act as underwriter for the offer of any securities or other interests in the Trust.
- (k) Fetter its own powers and discretions.
- (l) Carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time to time.
- (m) Hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release, or discharge or otherwise deal with any real or personal property.
- (n) Delegate (in writing) the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (o) Subject to its obligations at law, waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Trustee in connection with the Trust.
- (p) Enter into any option agreement relating to any lending or financing facility, agreement or transaction.
- (q) Exercise or concur in exercising all the foregoing powers and discretions contained in this Constitution or otherwise by law conferred notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee of the Trust.
- (r) To make any choice under the Tax Act and to do such things as is reasonable to enable such a choice to be made and applied by the Trust or to operate the Trust in accordance with such a choice, including (but not limited to) a choice under sections 275-115, or 276-20 of the Tax Act.

11.3 **AMIT powers**

(a) **AMIT eElection**

The Trustee may make an election to determine the Trust to be an AMIT with effect from the commencement of any Financial Year of the Trust.

(b) **General provisions**

The Trustee has, without limiting its other rights and powers provided for under the Constitution and this clause 11.3, all of the powers and rights which are necessary or desirable to enable—

- (i) the Trust to be eligible to apply the AMIT Regime
- (ii) the Trustee to comply with the requirements of the AMIT Regime
- (iii) the Trust to be properly administered and operated under the AMIT Regime, and
- (iv) the Trustee to maintain equity among Unitholders in the operation of the AMIT Regime.

(c) **Specific powers**

Subject to clause 15.19, the Trustee may under the AMIT Regime in respect of an AMIT Income Year—

- (i) determine the taxable income of the Trust for each Financial Year, including a determination of the taxable income of a particular, category, source or character for tax purposes
- (ii) make an attribution of the taxable income of the Trust to Unitholders under the AMIT Regime, including an attribution of taxable income of a particular category, source or character for tax purposes, ~~or~~
- (iii) make an alteration to the Trustee's determination of the taxable income of the Trust for a Financial Year, or the Trustee's attribution of the taxable income of the Trust to Unitholders under the AMIT Regime, including a determination or attribution of taxable income of a particular category, source or character for tax purposes. This includes making alterations to the Trust's Determined Trust Components and Trust Components and a Unitholder's Determined Member Components and Member Components under the AMIT Regime for any AMIT Income Year as a result of any Unders or Overs
- (iv) determine whether to issue an AMMA Statement to any Unitholder
- (v) determine what information should be contained in any such AMMA Statement

(vi) issue an AMMA Statement to any Unitholder, or

~~(iii)~~(vii) amend an AMMA Statement that has been issued to a Unitholder, and determine the basis upon which the AMMA Statement is to be amended.

(d) Units and Classes of Units

(i) Subject to clause 11.3(d)(ii), the Trustee may under the AMIT Regime issue Units of a single Class or different Classes. Each different Class must have distinct rights, obligations and restrictions from the rights, obligations and restrictions of all other Classes issued, but the rights to income and capital of a particular Class must be the same for every membership interest in that Class. All Units in a Class rank equally. A separate Class does not constitute a separate trust.

(ii) Clause 11.3(d)(i) does not permit the Trustee to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Act requires those matters to be set out in this Constitution.

(e) Each Unitholder acknowledges or is taken to acknowledge that the Trustee has, under the AMIT Regime in respect of an AMIT Income Year a choice with respect to how the Trustee is to address any amounts which may give rise to an Under or Over of a particular character for the Trust, including whether such amounts should be addressed by the Trustee by—

(i) issuing amended AMMA Statements to Unitholders under section 276-455(4) of the Tax Act (as may be amended from time to time), for the year of income for the Trust to which the Under or Over relates, or

(ii) treating the amount as an Under or Over of a particular character for the Trust, and adjusting the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount under section 276-305 of the Tax Act, (as may be amended from time to time).

~~(e)~~(f) Trustee's limitation of liability for AMIT Regime powers

Without limiting any other provision and to the maximum extent permitted by law but subject to the Act, the Trustee does not incur any liability and it is not obliged to account to anyone (including any Unitholder or former Unitholder) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under this clause 11.3, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

11.4 **Discretion to exercise powers**

Subject to the law, the Trustee may determine whether to exercise and, if so, the manner, mode and time of exercise of its duties, powers and discretions in its absolute discretion.

11.5 **Stapling**

- (a) The Trustee may, in accordance with the provisions of Schedule 5, staple Units with shares in a company and/or units in a trust to create a Stapled Entity. If Stapling applies, then the provisions of Schedule 5 apply. For the avoidance of doubt, the interpretation provisions in Schedule 5 apply at all times.
- (b) If a Stapled Entity is to be created, then the Trustee must issue Units to holders of shares in a Stapled Company and/or holders of units in a Stapled Trust to effect the merger of the Stapled Entity. Unitholders will be issued shares and/or units in any Stapled Company and/or Stapled Trust in the same manner.
- (c) Nothing in this clause 11.5 or Schedule 5 prevents the Stapling of the Units by another mechanism.

11.6 **Interested dealings by Trustee**

- (a) Subject to the Act, the Trustee may—
 - (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust
 - (ii) act in the same or similar capacity in relation to any other managed investment scheme
 - (iii) hold Units in, or other securities issued by, the Trust in any capacity
 - (iv) hold or deal in or have any other interest in an Asset, or
 - (v) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause 11.3, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause 11.6(a)—
 - (i) it may retain and need not account for any benefit derived by it, and
 - (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.

- (d) Subject to the Act, where the Trustee acquires Units (on its own account or in some other capacity)—
- (i) the Trustee may be registered as a Unitholder in respect of the Units
 - (ii) the Units acquired by the Trustee are not cancelled or redeemed by reason of their acquisition by the Trustee or the registration of the Trustee as a Unitholder in respect of them and the Trustee may dispose of the Units to other Unitholders or to third parties, and
 - (iii) Units held by the Trustee confer on the Trustee all of the benefits and rights of any other Unitholder under this Constitution and the law.

11.7 Retirement benefit

- (a) The Trustee is entitled, subject to any approval required by law, to agree with an incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to—
- (i) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating to the Unitholders the incoming trustee as its replacement, or
 - (ii) its retirement as Trustee.
- (b) The Trustee is not required to account to Unitholders for such remuneration or benefit.

11.8 Investment powers

To the full extent that they may be excluded by this Constitution, the duties imposed by subsections 14A(1) and (2) of the Trustee Act 1925 (NSW) or corresponding legislation of any other State or Territory do not apply to the exercise by the Trustee of its investment powers.

11.9 Exercise of discretion

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

12. Reorganisation Proposals

12.1 Power to enter into Reorganisation Proposals

Without limiting clause 11, the Trustee may enter into—

- (a) a Realisation Transaction
- (b) a Stapling Proposal

- (c) a Top Hat Proposal
- (d) an Exchange Proposal, or
- (e) any other Reorganisation Proposal

which is approved by Ordinary Resolution.

It is a term of issue of each Unit that the Unit may be subject to a Reorganisation Proposal as provided in this clause 12.1. Each Unitholder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

12.2 Partly Paid Units

If any Unit is a Partly Paid Unit at the time of a Reorganisation Proposal, then the Unpaid Amount and any instalment payable will be amended in the same ratio.

12.3 Power to give effect to Reorganisation Proposals

If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 12.1, then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

12.4 Specific Powers

Without limiting clause 12.3, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 12.1, the Trustee has power to—

- (a) make distributions and other payments out of the Assets and (subject to the Act) to redeem Units, and to apply the payment or redemption proceeds on behalf of Unitholders
- (b) apply for or purchase fully paid securities on behalf of the Unitholder and to consent on behalf of Unitholders to become a unitholder of a company or other body
- (c) issue Units
- (d) transfer Assets or a Unitholder's Units, and
- (e) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

12.5 Appointment of Trustee as agent and attorney

Without limiting clause 12.2, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 12.1, the Trustee is irrevocably appointed the agent and attorney of each Unitholder to—

- (a) apply any proceeds referred to in clause 12.4(a) on behalf of the Unitholder
- (b) execute any withdrawal request on behalf of the Unitholder, or any application for, or transfer of, any securities in favour of the Unitholder
- (c) execute a transfer of a Unitholder's units
- (d) execute a transfer of Assets to a Unitholder, and
- (e) execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the relevant transaction or proposal.

The Trustee is authorised to execute these documents and to do these things without needing further authority or approval from Unitholders.

12.6 Liability of Trustee

The Trustee has no liability of any nature whatsoever beyond the Assets to Unitholders arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document or acting as the agent of any Unitholder) pursuant to or in connection with the implementation of any Reorganisation Proposal.

13. Financial reports and tax returns**13.1 Accounts, audit and other reports**

- (a) While the Trust is a Registered Scheme, the Trustee must comply with the requirements of Chapter 2M of the Act, to the extent applicable to the Trust.
- (b) In addition to any of the Trustee's obligations under clause 13.1(a), the Trustee must—
 - (i) keep, or cause to be kept, proper books of account in relation to each Class, and
 - (ii) may prepare a separate financial statement for each Class and determine the distinct tax implications relating to each Class.

13.2 Tax returns

- (a) The Trustee will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.

- (b) The Trustee will for each Financial Year forward to each Unitholder a statement of the necessary details to assist the Unitholder in completing the relevant part of the Unitholder's tax return for the Financial Year. The Trustee will do this as soon as practicable after the end of the Financial Year, but by no later than four months after the last day of the Financial Year.

13.3 *Electronic annual financial report to Unitholders*

While the Trust is a Registered Scheme, each Unitholder agrees and nominates pursuant to the Act to receive notification and access by electronic means of and to financial reports prepared for the Trust.

14. Fees and expenses

14.1 *Establishment and placement fee*

- (a) The Trustee is entitled to an establishment and placement fee of two percent of the gross value of any—
- (i) Asset (excluding cash deposits) acquired by the Trust, or
 - (ii) or by any Sub Entity Asset acquired by any Sub Entity (excluding cash deposits),
- adjusted, if relevant, based on the proportional direct or indirect interest of the Trust in the Sub Entity.
- (b) This fee is payable upon the completion within 5 Business Day of the acquisition of that Asset and is payable out of the Assets.

14.2 *Sale agency fee*

- (a) The Trustee is entitled to a sale agency fee of one percent of the consideration received by the Trust (or by any Sub Entity) for the disposal of any—
- (i) Asset (excluding cash deposits where no fee is payable), or,
 - (ii) any Sub Entity Asset,
- adjusted, if relevant, based on the proportional direct or indirect ownership of the Trust in the Sub Entity.
- (b) This fee is payable within 5 Business Day of completion of the disposal of that Asset and is payable out of the Assets.

14.3 *Ongoing management fee*

- (a) The Trustee is entitled to an ongoing management fee of 0.8 percent per annum of the gross value of the Assets (including the gross value of any Sub

Entity Assets, adjusted, if relevant, based on the proportional direct or indirect ownership of the Trust in the Sub Entity).

- (b) This fee is accrued daily and is payable monthly in arrears out of the Assets from the date the first Unit is issued in the Trust pursuant to the Trust's first Disclosure Document to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets or any Sub Entity Assets will be determined as at the most recent Valuation Time.

14.4 Custody fee

- (a) If the Trustee performs the custodial function for the Trust, then it will be entitled to a custodial fee of the greater of the following (calculated at the end of each month)—
 - (i) up to 0.015 percent per annum of the gross value of the Assets held by the Trustee, and
 - (ii) \$15,000 per annum, Indexed on 1 July each subsequent year following commencement of the Trust.
- (b) This fee is payable within seven days of the end of each month out of the Assets from the commencement of the Trust to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets of the Trust will be determined as at the most recent Valuation Time.

14.5 Performance fee

The Trustee is entitled to the performance fee calculated and payable as set out in Schedule 3—Performance Fee.

14.6 Waiver and deferral of fees and expenses

The Trustee may at any time and for any time—

- (a) accept lower fees and expenses than it is entitled to receive under this Constitution
- (b) defer payment of any fees and expenses it is entitled to receive under this Constitution, or
- (c) waive entirely its entitlement to receive any fees and expenses under this Constitution.

14.7 Fees can be applied to acquire Units

Subject to the Act, where an amount of money is payable from Assets to the Trustee by way of any fee or in reimbursement of any cost, charge or expense, then the Trustee may, in its own capacity, elect to apply that amount to subscribe for Units, at an Application Price calculated in accordance with the provisions of clause 3.

14.8 **Other fees or different fees**

While the Trust is not a Registered Scheme—

- (a) the Trustee will be paid such other fees as may be disclosed by it in a Disclosure Document, and
- (b) the Trustee may charge fees which differ (in terms of their type, amount, method of payment or frequency of payment, or in any other manner) from the other fees provided for in this clause 14, provided they are disclosed in a Disclosure Document.

14.9 **Expenses**

- (a) All Expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Trustee, or the performance of its duties under this Constitution, will be paid out of the Assets. If the Trustee pays such Expenses, then the Trustee will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such Expenses, together with any GST payable in respect of those Expenses.
- (b) Without limiting clause 14.9(a), this includes Expenses connected with the following:
 - (i) The acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
 - (ii) The proposed acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
 - (iii) Costs of raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses.
 - (iv) The appointment of any professional adviser, consultant, agent, broker, underwriter or delegate by the Trustee, including a custodian or investment manager.
 - (v) The administration or management of the Trust or its Assets and Liabilities.
 - (vi) Bank charges on the operation of bank accounts.
 - (vii) Borrowing money, raising finance or granting security over the Assets.
 - (viii) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust or in any other capacity.
 - (ix) Fees and charges of any regulatory or statutory authority.

- (x) Convening and holding meetings of Unitholders.
- (xi) Printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters.
- (xii) Preparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust.
- (xiii) Keeping and maintaining of the accounting records and registers of the Trust.
- (xiv) Retirement and the appointment of a substitute trustee.
- (xv) The initiation, conduct and settlement of any court proceedings (including through alternative dispute resolution)—
 - A. to enforce any provisions of this Constitution, or
 - B. in relation to the Trust or any of its Assets or Liabilities.
- (xvi) Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan (if required).
- (xvii) Acquiring, establishing, maintaining, leasing, licensing and developing computer software systems required for the administration of the Trust.
- (xviii) Reasonable travelling and accommodation expenses of the Trustee.
- (xix) Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (xx) Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
- (xxi) The establishment, management and maintenance of any—
 - A. listing on any exchange or secondary market of the Trust or any Units, and
 - B. any rating of the Trust.
- (xxii) The performance of the functions and duties of the Trustee under the Constitution.
- (xxiii) Costs, charges and expenses related to—
 - A. any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust, including the appropriate portion of the compliance

- committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums (and excess) for those members
- B. if there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses of the board of the Trustee associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of the Act, and
- C. any variation of the Trustee's Australian financial services licence to the extent it reasonably relates to the Trust.
- (xxiv) Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust.
- (xxv) Complying with any laws or rules in relation to the prevention or detection of money laundering activities or terrorism financing activities.
- (xxvi) Complying with any laws (including laws of a foreign jurisdiction) relating to tax administration or tax information collection (including the Foreign Account Tax Compliance Act).
- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the Trustee or the directors of the Trustee.
- (d) The Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

14.10 Performance of duties

- (a) Despite anything else in this Constitution, while the Trust is a Registered Scheme (and in accordance with subsection 601GA(2) of the Act), the rights of the Trustee to be paid fees out of the Assets or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties under this Constitution or the Act are available only in relation to the proper performance of those duties.
- (b) The lack of entitlement to any payment pursuant to clause 14.10(a) only applies to that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 14.10 means the Trustee is not entitled to be paid fees and costs for work performed properly and in accordance with its duties.

14.11 Goods and Services Tax

If any supply made by the Trustee under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act, then the following will apply:

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the party to whom the supply has been made an additional amount on account of GST. This additional amount must be equal to the amount of the Trustee's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.
- (b) The Trustee and the Unitholders acknowledge and agree each supply made by the Trustee under this Constitution is made—
 - (i) on a progressive or periodic basis
 - (ii) such that the consideration is to be provided on a progressive or periodic basis, and
 - (iii) such that each progressive or periodic component of the supply is to be treated as a separate supply.
- (c) If the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, then the Trustee is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax credit.

14.12 Fees or amounts payable by Trust or Sub Entities

Notwithstanding any other provision of this Constitution, fees payable under this Constitution, and costs, charges and expenses payable or to be reimbursed under this Constitution, may be charged to or reimbursed from the Trust or to or from any Sub Entity, as determined by the Trustee. In addition, services to be provided may be provided by an Associate of the Trustee who may charge the fees set out directly to the Trust or to any Sub Entity as determined by the Trustee.

15. Distributions from the Trust**15.1 Trustee will collect in all money**

- (a) The Trustee must collect or cause to be collected all amounts generated from the Assets and all other money, rights and property which are paid, due or receivable in respect of the Trust.

- (b) Where there is more than one Class on issue, subject to the Act, the Trustee must allocate any Expense and Liabilities (Cost) to Classes as follows:
- (i) Where a Cost is attributable to a Class, to that Class.
 - (ii) Where a Cost is attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the relevant Assets.
 - (iii) Where a Cost is not attributable to any Class, between all Classes on a pro rata basis, provided the Trustee considers such allocation to be fair having regard to the interests of all Unitholders and the relevant Assets.

15.2 *Situation if Trust taxed as a company*

If the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause ~~45.1(b)~~15.2 applies in respect of that Financial Year and the following applies:

- (a) As soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine—
 - (i) if there is to be any Dividend Amount for the Distribution Period, and
 - (ii) if so, then the amount of the Dividend Amount and the amount of any franking credits (if any) to be attached to the Dividend Amount.
- (b) The Trustee may determine the extent to which the Dividend Amount (if any) comprises profits, retained profits, capital, returned capital or income of a particular character.
- (c) Subject to any Terms of Issue, at the end of the Distribution Period, a Unitholder is entitled to a Dividend Entitlement, calculated as follows:

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

Where:

 - A = The aggregate of the Paid-up Amount of each relevant Unit holding of the Unitholder as at the end of the Distribution Period.
 - B = The Total Paid-up Amount held by all Unitholders at the end of the Distribution Period.
 - C = The Dividend Amount (if any) for the Distribution Period.
- (d) Dividend Entitlements (if any) must be paid to Unitholders at a time determined by the Trustee after any Dividend Amount is determined.

15.3 Situation if Trust not taxed similar to a company

Clauses 15.4 to 15.11 apply if clause 15.2 does not apply.

15.4 Calculation of Distributable Amount

The Distributable Amount for a Distribution Period will be the amount determined, by the Trustee, pursuant to the definition in Schedule 1. If for a period ending on the last day of a Financial Year the Trustee has not made a determination for the purpose of this clause 15.4 before the end of that Financial Year, then the Distributable Amount will be the amount mentioned in sub-paragraph (a) of that definition.

15.5 Persons who will receive Distributable Amount

- (a) A Unitholder's Distributable Proportion for a Distribution Period in respect of each Unit is the amount worked out by the Trustee calculated in accordance with the following formula (subject to any payments or adjustments required as a result of clause 15.14):

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

Where:

A = The number of days during the Distribution Period that the relevant person was recorded on the Register as the holder of that Unit (including the date of disposal, but excluding the date of acquisition).

B = The Distributable Amount (as determined by the Trustee pursuant to clause 15.17) for the Distribution Period.

C = Is determined by calculating the total number of Units on issue on each day of the Distribution Period and adding these amounts together.

The Trustee must pay the Distributable Proportions (less Tax and any fees owed to the Trustee by Unitholders) to all persons who were recorded on the Register as the holder of a Unit at any time during the Distribution Period to which the distribution relates.

15.6 Special distribution amounts

- (a) The Trustee may, at any time, determine to advance, pay or apply an amount of Income or capital of the Trust in circumstances where the amount is not to be treated as a Distributable Amount (in this clause "Special Distribution Amount").
- (b) Where the Trustee determines under clause 15.6(a) that there is a Special Distribution Amount at a particular time, then this Constitution is to be applied in a manner as though the Special Distribution Amount at that particular time were a Distributable Amount for a Distribution Period.

15.7 Reserves

The Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of Income received or receivable in a Distribution Period may be treated as having been received in a different Distribution Period and an Expense paid or payable in a Distribution Period may be treated as having been paid in a different Distribution Period

15.8 Present entitlement

(a) On the last day of a Distribution Period, any person who is a Unitholder and any person who was a Unitholder at any time during the Distribution Period to which the distribution relates—

~~(a)~~(i) is presently entitled to its Distributable Proportions for the Financial Year in which the end of the Distribution Period falls, and

(ii) has a vested and indefeasible interest in its Distributable Proportion of the Trust for that Financial Year.

(b) For the avoidance of doubt, where the Trust is an AMIT for any income year, the Trust and the Unitholders (as relevant) will be taxed in accordance with the AMIT Regime for that income year.

15.9 Time for distribution of Distributable Proportion

The Distributable Proportions for a Distribution Period must be paid by the Trustee to those entitled to receive them within three months after the Distribution Calculation Date. The present entitlement of a Unitholder to all of the Distributable Proportions payable to them from the Trust is satisfied by the payment of distributions to a Unitholder in respect of the Financial Year.

15.10 Nature of receipts and nature of distributions to Unitholders

The Trustee may classify or determine whether, and the extent to which, any receipt or amount (or any part thereof) is capital or Income. If any question arises as to whether (or as to the extent to which) distributions to those entitled to receive them are of capital or Income or whether a particular expense is chargeable against capital or Income or whether reserves or provisions need to be made, then the question will be resolved by the Trustee.

15.11 Preparation of accounts

Notwithstanding that the Distributable Amount may be calculated in accordance with clause 15.4, the accounts of the Trust may be prepared in accordance with applicable Accounting Standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Amount. Without limiting clauses 15.10, the Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

15.12 Establishment of separate accounts—specific categories

The Trustee may keep separate accounts for any category or source of Income or capital and distribute the Income or capital for any category or source to any Unitholder.

15.13 Establishment of separate accounts—deductions, credits, rebates, etc

The Trustee may allocate any outgoings, expenses, credits, rebates or other adjustments that are allowable or available in relation to the specific categories contemplated by clause 15.12 in accordance with relevant taxation legislation at the time of any determination or allocation including credits and rebates in respect of franked dividends and the flow on franking credits.

15.14 Rights in respect of Partly Paid Units

- (a) The rights of a Unitholder to receive distributions in respect of Partly Paid Units they hold are as determined by the Trustee and provided in the Terms of Issue of the relevant Units. The Trustee may determine any one of the following applies:
- (i) A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the Distributable Amount for that Distribution Period, subject to the Terms of Issue of the Unit according to—
 - A. the proportion or different proportions of the Application Price paid upon the Unit, and
 - B. the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Assets, then that Unit may be eligible for increased participation in the Distributable Amount at a date determined by the Trustee, but at the latest from the first day of the month immediately following the date set for payment of the instalment.
 - (ii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as if it were fully paid.
 - (iii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as the Terms of Issue provide.
- (b) However, if the Trustee does not make such a determination, then clause 15.14(a)(i) will apply.

15.15 Initial distribution entitlements

For the removal of doubt and despite anything in this clause 15, the Trustee may in its discretion issue Units on terms that such Units—

- (a) participate fully for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued
- (b) do not entitle the Unitholder to participate in the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued
- (c) participate for the Distributable Amount or Dividend Amount in respect of the Distribution Period in which they are issued on a pro rata basis in accordance with the number of days the Units were held, or
- (d) receive a fixed distribution rate entitlement, out of the Distributable Amount, either for the full Distribution Period in which they are issued or on a pro rata basis in accordance with the number of days the Units were held.

15.16 Unitholder's rights

For the removal of doubt and despite anything in this clause ~~15.16~~15, the rights of a Unitholder under this clause ~~15.16~~15 are subject to the rights, obligations and restrictions attaching to the Units which they hold.

15.17 Classes

- (a) If there is more than one Class in issue—
 - (i) the Trustee may determine that any part of the capital, Distributable Amount or Dividend Amount is properly referable to a Class (Class Capital or Income)
 - (ii) subject to the Trustee's obligations under the Act, the decision of the Trustee with respect to the allocation of capital, Distribution Amount or Dividend Amount among the relevant Class shall be final and binding on all Unitholders, and
 - (iii) the provisions of this clause 15.17 will apply with any necessary modifications to each Class and the Class Capital or Income allocated to a Class.
- (b) In calculating the Class Capital or Income the Trustee must take into account any fees charged by the Trustee in respect of the Class.
- (c) The Trustee must identify and allocate to all Unitholders within a Class, a proportionate share of the specific categories identified in clause 15.12 which forms part of the Distributable Amount that is properly Referable to the relevant Class.

- (d) Without limiting clause 15.17(a)(i), the Trustee will take into account any fees charged by the Trustee with respect to a Class in determining the Distributable Amount referable to a Class pursuant to clause 15.17(a)(i).

15.18 Unders and Overs

- (a) If the Trustee identifies an Adjustment Amount that relates to a prior Financial Year, then the Trustee may—
- (i) amend the relevant Distributable Proportion of each person who was a Unitholder on the last day of the relevant Financial Year
 - (ii) adjust the Income in the current Distribution Period, or
 - (iii) do nothing.
- (b) An Adjustment Amount may include (but is not limited to) an adjustment made in respect of the following amounts of the Trust:
- (i) A Trust Component as defined in the Tax Act.
 - (ii) An amount that would be assessable income of the Trust.
 - (iii) An amount that would be a deduction of the Trust.
 - (iv) An amount that is recognised by the Trust under the Tax Act.
 - (v) An amount that is of a similar nature to the items above.

15.19 Trustee must make “fair and reasonable” allocation

- (a) Following the end of a Financial Year which is an AMIT Income Year, the Trustee must attribute the taxable income of the Trust for the Financial Year to Unitholders under the AMIT Regime, including the attribution of taxable income of each particular category or source (or both) for tax purposes to Unitholders.
- (b) The Trustee must perform the attribution under clause 15.19(a), including the attribution of taxable income of each particular category or source (or both), in accordance with the following principles:
- (i) the amount of each Unitholder’s Member Components and Determined Member Components of a particular character is so much of the Trust’s Determined Trust Component of that particular character as is attributable to the Units held by the Unitholder;
 - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this constitution and any other documents that constitute Constituent Documents for the Trust; and
 - (iii) the Trustee must not attribute any part of a Determined Trust Component of the Trust to a Unitholder’s Units because of the tax characteristics of the Unitholder.

15.20 Streaming of amounts on redemption

- (a) The Trustee may fund the redemption of Units from an amount or proceeds arising from the sale of an Asset and may allocate the redemption proceeds as being a distribution of Income or capital to the Unitholder.
- (b) To the extent that Income is allocated to a redemption, the amount is to be treated as a distribution of Income for a Distribution Period prior to a final distribution being made.

15.21 Unitholder's objections

If a Unitholder objects to the basis of the attribution of the taxable income of the Trust for the purposes of the AMIT Regime, including by making a Member Objection Choice, the Unitholder agrees to indemnify the Trustee against all costs and liabilities incurred by the Trustee as a result of the objection or proposed objection.

16. Distribution reinvestment

16.1 Reinvestment

The Trustee may permit Unitholders to reinvest some or all of the Distributable Amount payable to them by acquiring Units in the same Class as the Units to which the Distributable Amount relates and the amount of the Distributable Amount payable to them must be applied on behalf of the Unitholder to acquire those additional Units.

16.2 Compulsory reinvestment

The Trustee may require Unitholders, or Unitholders of a particular Class or Classes, to reinvest some or all of the Distributable Amount payable to them and, if so, those Unitholders are deemed, for the purposes of any relevant ASIC relief or exemption, to have elected to reinvest some or all of the Distributable Amount payable to them.

16.3 Notice to Unitholders

If the Trustee permits reinvestment of distributions for a Class, then it must notify Unitholders in that Class of that fact, together with the terms on which the reinvestment may be made. This notification may be made by giving a notice to Unitholders or by publication of the fact and terms. The Trustee may amend the terms of reinvestment or suspend reinvestments at its discretion. For the avoidance of doubt, any amendment or suspension may also be communicated by giving a notice to Unitholders or by publishing it.

17. Deductions from Distributions

17.1 *Deduction of Taxes*

The Trustee may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any of the following which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted—

- (a) any amount of Tax (or an estimate of it), and
- (b) any other amount owed by the Unitholder to the Trustee or any other person.

17.2 *Payment of Taxes*

(a) The Trustee may pay on behalf of a person (including amounts paid in respect of a person that result from the operation of the AMIT Rules) who is or has been a Unitholder any of the following which the Trustee is required or authorised to pay by law or by this Constitution or which the Trustee considers should be paid—

- (i) any amount of Tax (or an estimate of it),
 - (ii) any other amount owed by the Unitholder to the Trustee or any other person.
- (b) Any amount paid by the Trustee on behalf of a Unitholder pursuant to this clause 17.2 shall be a debt due and owing to the Trustee by the Unitholder on whose behalf the amount was paid.

17.3 *Indemnity*

The Trustee is indemnified from the Assets in respect of any Tax paid by the Trustee from its own funds in order to pay Tax incurred in respect of the Trust on behalf of any Unitholders. This indemnity applies even though the Tax may not have been paid in respect of each Unitholder in the Class, but only one or more Unitholders in the Class.

18. Transfer of Unitholder's Units

18.1 *Right to transfer Units*

A Unitholder may transfer its Units in the Trust only in accordance with this clause 18.

18.2 *Form of transfer*

Any transfer must be—

- (a) made by way of a form approved by the Trustee

- (b) delivered to the Trustee or as it directs
- (c) executed by the transferor and transferee, and
- (d) be stamped (if applicable).

18.3 *Trustee's discretion to enter transfer*

The Trustee may, in its absolute discretion, refuse to register any transfer of Units. The Trustee may give the Unitholder who lodged the transfer notice of the decision to decline the registration but shall not be obliged to provide reasons for the decision.

18.4 *Transfer effective when registered*

The transferor Unitholder remains the owner of the Unitholder's Units until the name of the transferee is entered in the Register.

18.5 *Suspension prior to end of year*

Without limiting clause 18.3, the Trustee may decline to register any transfer of a Unitholder's Units during the 14 days immediately preceding 1 July in any Financial Year.

18.6 *Listing on a secondary market or exchange*

The Trustee may list the Units on a secondary market or an exchange designed to facilitate the trading of Units. If the Trustee does this, then any costs associated with the listing may be paid out of the Assets.

19. Transmission of Unitholder's Units

19.1 *Death or legal disability—sole Unitholder*

Upon the death, bankruptcy, mental incapacity or other legal disability of a sole Unitholder, the Legal Personal Representative will be the only person recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.

19.2 *Death or legal disability—joint Unitholder*

Upon the death, bankruptcy, mental incapacity or other legal disability of any one of the joint holders of Units, the survivor or survivors will be the only persons recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.

20. Winding up of the Trust

20.1 *Events which cause a winding up*

The Trustee must wind up the Trust or cause the Trust to be wound up in any one of the following circumstances:

- (a) The Trust comes to the end of its term as set out in this Constitution.
- (b) If the Trust is a Registered Scheme, then where—
 - (i) a court orders the Trust be wound up pursuant to section 601ND of the Act
 - (ii) the Trust's purpose has been accomplished or cannot be accomplished and the Trustee uses the mechanism provided for in section 601NC of the Act, or
 - (iii) any of the circumstances set out in section 601NE of the Act apply such that the Trustee is required to wind up the Trust.

20.2 *Termination of a Class*

- (a) The Trustee may terminate and wind up a Class if the Trustee issues a notice to Unitholders in the Class notifying Unitholders in that Class of the date of termination.
- (b) The provisions of clauses 20.3 to 20.6 apply to the winding up of a Class with such modification as necessary, as determined by the Trustee, to reflect their application to a Class rather than the Trust.

20.3 *Process of winding up*

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust.
- (b) Subject to clause 20.3(e), the Trustee must convert all Assets to money, deduct all proper costs and then divide the balance amongst the Unitholders in each Class in accordance with the following formula:

$$\frac{(A + B) \times C}{D} - E$$

Where—

A = the amount remaining in the Assets after deduction of the costs referred to in this clause 20.3(b)

B = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue in that Class (if any)

- C = the aggregate of the number of Units in the Class held by the Unitholder as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units
- D = the aggregate of the total number of Units in Issue as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units, and
- E = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Unitholder in the Class (if any) as at the commencement of winding up.
- (c) If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder in accordance with the formula in this clause 20.3(b) results in a negative dollar amount, then that Unitholder must pay to the Trustee within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become a Class Asset available for distribution as part of the winding up of that particular Class.
- (d) The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit, including making distributions to the holders of Classes in preference to the holders of other Classes, as required by the Terms of Issue.
- (e) The Trustee 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 Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (f) Despite clause 20.3(b), the Trustee may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in satisfaction of a whole or part of the beneficial interest of each Unitholder in the Class.

20.4 Trustee may withhold proceeds of realisation

The Trustee may retain money from the proceeds of realisation of the Assets—

- (a) to meet future payment obligations which the Trustee reasonably believes will fall due after a distribution is made to Unitholders pursuant to this Constitution, and
- (b) to pay its own remuneration and expenses for work to be done following the realisation of the Assets.

20.5 Auditor's certificate

Where the Trust is a Registered Scheme, once the Trustee believes the winding up is complete, the Trustee must engage an Auditor to conduct an independent audit of the final accounts of the Trust. The Trustee must send a copy of any report made by the Auditor to the Unitholders within 30 days after the Trustee receives the report from the Auditor.

20.6 Cancellation of Units

Unless the Trustee determines otherwise, Units in respect of which a final distribution is made are cancelled from the date of that distribution.

20.7 Provisions continue to apply

- (a) Subject to the Act and this Constitution, the provisions of this Constitution continue to apply from the date of commencement of wind up of the Trust until—
 - (i) the date of final distribution under clause 20.2, or
 - (ii) such later date as the Trustee may determine.
- (b) During the period referred to in clause 20.7(a), the Trustee must not accept any applications for Units from a person who is not an existing Unitholder and the Trustee is under no obligation to consider or process withdrawal requests received after the date of commencement of wind up of the Trust.

21. Unvested interests

- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.
- (b) Nothing in this clause 21 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust have vested or may vest prior to the end of the Perpetuity Period.

22. Indemnity and liability

22.1 No limitation on other statutory protection for the Trustee

Nothing in this Constitution limits, prejudices or otherwise affects the operation of the provisions of any statute under which the Trustee may obtain relief from a breach of trust or other duty in respect of the Trust.

22.2 *Liability of the Trustee*

- (a) Subject to the Act or other relevant law provides otherwise, the Trustee is not liable in contract, tort, under statute or otherwise to any Unitholder for any loss or damage, including loss or damage to the Assets (or any part of it), regardless of when or how that loss or damage has arisen, including (without limitation) whether or not the loss or damage has arisen because of any of the following acts or omissions:
- (i) The Trustee obtaining or relying on (in accordance with clause 22.6) any of the opinions, advice, statements, documents or information referred to in clause 22.6.
 - (ii) The Trustee performing or not performing its duties or exercising or not exercising any of its powers.
 - (iii) The Trustee doing or omitting to do any act as a consequence of the impracticability or impossibility of performing any duty or exercising any power where such impracticability or impossibility arises for any reason or reasons beyond the control of the Trustee.
 - (iv) Any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Trustee). This includes fraudulent or unauthorised acts or omissions.
 - (v) The Trustee making any payment to any fiscal authority on any basis even if the payment need not have been made.
 - (vi) The Trustee doing or omitting to do any act at the request of a Unitholder, including making a payment to a person other than the Unitholder.
 - (vii) The Trustee doing or omitting to do any act which the Trustee is hindered, prevented or forbidden from doing or required to do by reason of—
 - A. any present or future law, or
 - B. any decree, order or judgment of any Court.
- (b) The Trustee is not liable to any person who is not a Unitholder (including in relation to any contracts or other arrangements entered into in respect of the Trust) to any extent beyond the Assets.

22.3 *Exclusion of other liabilities and obligations*

To the maximum extent permitted by law, all liabilities, duties, obligations or restrictions on powers which might otherwise be implied or imposed by law or equity upon the Trustee in any capacity are hereby excluded.

22.4 *Indemnity from the Trust*

- (a) In addition to any indemnity allowed by law, the Trustee has a right of indemnity out of the Assets in respect of—
 - (i) any liability incurred by the Trustee in the proper performance of its duties in respect of the Trust
 - (ii) all fees payable to and costs recoverable by the Trustee under this Constitution, and
 - (iii) any Taxes, or liabilities for the payment of any Taxes, imposed upon the Trustee in relation to the Trust.
- (b) For the avoidance of doubt, and without limiting clause 22.4(a), the Trustee is indemnified out of the Assets for any liability that—
 - (i) is incurred by the Trustee in relation to the proper performance of its duties, and
 - (ii) either—
 - A. is an Attribution Income Tax Liability of the Trustee, or
 - B. results from a Unitholder or former Unitholder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unitholder or former Unitholder that results from an attribution by the Trustee under section 276-210 of the Tax Act to the interests held by the Unitholder or former Unitholder.
- (c) Where there is more than one Class in issue, subject to the Act, the Trustee must allocate any cost, expense, Liability, fees and Taxes (Cost) to which the Trustee is or is entitled to be indemnified or reimbursed for in accordance with clause 22.4(a), or any other provision of this Constitution, to Classes so that the Costs are taken to be paid out of the Assets, as follows:
 - (i) Where a Cost is attributable to a Class, to that Class.
 - (ii) Where a Cost is attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the relevant Assets.
 - (iii) Where a Cost is not attributable to any Class, between all Classes on a pro rata basis, provided the Trustee considers such allocation to be fair having regard to the interests of all Unitholders and the relevant Assets.
- (d) The Trustee is not required to do anything (including enter into any contract or commitment) which involves it in incurring a liability (actual or contingent) for which it does not, or for which it considers it does not, have full rights of indemnity and reimbursement out of the Assets, or which it cannot fully pay from the Assets and unless its own liability is limited in a manner satisfactory to it in its absolute discretion.

- (e) The rights of indemnity and reimbursement provided by this clause ~~22.3~~22.4 shall continue in favour of the Trustee after it has ceased to be Trustee of the Trust.
- (f) The Trustee is not under any obligation to commence, prosecute, defend or compromise any court, arbitration or other dispute resolution action, claim or proceeding unless it is satisfied the Trust has and will at all times have sufficient net assets to adequately indemnify the Trustee against all expenses, liabilities or losses it may incur in connection with that action, claim or proceeding.
- (g) The Trustee's rights to indemnity and reimbursement under this Constitution and at law apply even if at any time the liabilities of the Trust exceed the value of the Assets.
- (h) To the extent permitted by the Act, if for any reason (including because of the operation of section 601FB(2) of the Act), the Trustee is liable for the direct or indirect acts or omissions of any person (whether or not the person is appointed or otherwise engaged by the Trustee), then the indemnity in this clause 22.4 extends to also include that liability.
- (i) However, this indemnity does not apply with respect to a liability to the extent that, in respect of that liability, the Trustee has acted negligently, fraudulently or in breach of trust.

22.5 Payment of taxes

- (a) Subject to the Act, the Trustee is not liable to account to any Unitholder for any payments made by the Trustee (or at its direction) in good faith to any duly authorised fiscal authority of the Commonwealth or any State or Territory, or any foreign government or authority, for Tax or other charges.
- (b) The Trustee is not obliged (or liable) to account to, or pay to, or allocate to, any Unitholder any amount in relation to any Tax-related benefit or credit attributable to (or alleged to be attributable to) the Unitholder, or earned or accrued or made available because of the Unitholder.

22.6 Reliance on others

The Trustee may take and may act upon the following, and if the Trustee does so, then it will not be liable for anything done, suffered or admitted by and in good faith and reliance upon anything listed below:

- (a) The Register.
- (b) Opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document or generally in conjunction with the Trust.
- (c) Advice, opinions, statements or information from any bankers, accountants, auditors, valuers or other persons consulted by the Trustee

who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted.

- (d) Any document which the Trustee believes in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for any purpose connected with the Trust.
- (e) Any document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely.

22.7 *Trustee not liable for good faith error*

If for any reason beyond the control of the Trustee it becomes impossible or impractical to carry out the provisions of this Constitution, then subject to the Act, the Trustee is not under any liability for anything done by it in good faith.

22.8 *Limitation of liability of Unitholders*

The liability of Unitholders is limited to their Units and the Assets. Neither the Trustee, nor any creditor or agent of the Trustee, has any claim of any nature against any Unitholder for any liabilities incurred with those parties in the management of the Trust, except as provided for in this Constitution or where there is a separate agreement with a Unitholder.

22.9 *Indemnity unaffected by unrelated breach of trust*

The Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Trustee (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Trustee or by any delegate or agent appointed by the Trustee.

23. Meetings of Unitholders

23.1 *Trustee calling or postponing a Unitholders' Meeting*

The Trustee may call a meeting of the Unitholders of the Trust or any Class or Classes at any time, and must do so if required by the Act. The Trustee may also, in its discretion and at any time, postpone any meeting of Unitholders of the Trust or any Class or Classes, at any time prior to the commencement of the meeting.

23.2 *Unitholders calling a Unitholders' meeting*

- (a) While the Trust is not a Registered Scheme—
 - (i) in respect of a meeting of a Class; the Trustee must call and arrange to hold a meeting of a particular Class to consider and vote on a proposed resolution on the request of Unitholders with at least 50 percent of the votes that may be cast on the resolution

- (ii) in respect of a meeting of all Unitholders; the Trustee must call and arrange to hold a meeting of all Unitholders to consider and vote on a proposed resolution on the request of Unitholders with at least 15 percent of the votes that may be cast on the resolution, and
 - (iii) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Act apply to the calling of a meeting referred to in clause 23.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme—
- (i) subject to clause 23.2(b)(ii), the provisions of the Act apply to determine the circumstances, if any, in which a meeting must be convened on the request of Unitholders, and
 - (ii) if the Unitholders of a Class wish to call a meeting of the Unitholders of the Class, then Part 2G.4 of the Act (and/or any other provision of the Act that applies or may apply to meetings of members of registered managed investment schemes) applies as if each Class were a Registered Scheme.

23.3 Notice

- (a) While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Unitholders, or such shorter notice as they agree.
- (b) While the Trust is a Registered Scheme, the requirements for notices of meetings are governed by the Act.
- (c) Notwithstanding section 252G(4) of the Act, a notice of meeting sent by post or by email or other electronic means is taken to be received by the Unitholder or Unitholder of a Class at the time specified in clause 30.4.

23.4 Trustee may determine

Subject to this clause 23 and the Act (if the Act applies), the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

23.5 Quorum

- (a) The quorum for a meeting of a Class is two Unitholders of the Class present in person or by proxy together holding at least five percent of all Units in Issue in that Class. However, if there is only one Unitholder in the Class who may vote, then that one Unitholder constitutes a quorum.
- (b) The quorum for a meeting of the Trust is two Unitholders present in person or by proxy together holding at least five percent of all Units. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum.

- (c) If one or more Unitholders is excluded from voting on any resolution proposed at the meeting then they may still be counted towards the quorum.
- (d) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. If an individual is attending a meeting both as a Unitholder or a Unitholder of a Class and as a proxy or body corporate representative, then the Trustee may, for the purposes of determining whether a quorum is present, count the individual in respect of each such capacity.
- (e) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the start of the meeting, then—
 - (i) if the meeting was convened on the requisition of Unitholders, it is dissolved, or
 - (ii) if the meeting was convened by the Trustee, it is adjourned to the date, time and place the Trustee specifies. If the Trustee does not specify one or more of those things, then the meeting is adjourned to—
 - A. if the date is not specified—the same day in the next week
 - B. if the time is not specified—the same time, and
 - C. if the place is not specified—the same place.
- (f) If the meeting is adjourned pursuant to clause 23.5(e)(ii), then the Unitholders present in person or by proxy constitute a quorum.
- (g) Joint holders of Units shall, subject to the Act, be counted as a single member for the purposes of determining a quorum
- (h) The quorum must be present at all times during the meeting.

23.6 Joint holders

If more than one person is registered as the holder of a Unit, then—

- (a) All registered holders shall be as a single registered holder for the purpose of calculating the number of Unitholders who have—
 - (i) requested a meeting
 - (ii) given the Trustee a notice of any Special Resolution or Extraordinary Resolution they propose to move at a meeting of Unitholders
 - (iii) requested that a statement be distributed to Unitholders pursuant to section 252N of the Act, and
 - (iv) demanded a poll pursuant to section 253L of the Act, and

- (b) the person named first on the Register (or if that person does not vote, then the next named person and so forth) may exercise the voting rights of any jointly held Unit.

23.7 Chairing meetings of Unitholders

- (a) The Trustee may appoint a person to chair a meeting unless the Act otherwise requires.
- (b) The decision of the chairperson on any matter relating to the conduct of the meeting is final.
- (c) Subject to the Act, the chair of a meeting of Unitholders or a Class of Unitholders need not be a member or a member of a Class and, if there is an equality of votes either on a show of hands—
 - (i) if the chair of the meeting is not (or if the chair were a Unitholder would not be) entitled to vote, the matter is decided in the negative, and
 - (ii) otherwise, the chair will have a casting vote in addition to the votes to which they may be entitled as a Unitholder or a Unitholder of a Class.

23.8 Proxies

- (a) The Trustee may prescribe the form of proxy from time to time, subject to the Act.
- (b) The Trustee may determine whether an appointment of a proxy remains valid even if the content of the appointment does not meet the requirements of the Act.
- (c) Subject to clause 23.8(d), for an appointment of a proxy for a meeting of Unitholders to be effective, the appointment must be received by the Trustee at least 48 hours before the meeting, unless a shorter time is agreed to by the Trustee.
- (d) For the purposes of section 252Z of the Act, the Trustee may determine, in relation to a particular meeting or generally, to reduce the period of 48 hours referred to in sections 252Z(2) and (3) for receipt of proxy documents before the time appointed for the meeting.
- (e) Notwithstanding section 252W(2) of the Act, a proxy is entitled to vote on a show of hands.

23.9 Adjournment

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

23.10 Demand for a poll

A poll may be demanded by the chairman, or by Unitholders present in person or by proxy holding five percent of Units. The result of the poll is the resolution of the meeting at which the poll was demanded. The demand for a poll does not affect the continuation of the meeting for the transaction of other business.

23.11 Resolutions binding

A resolution passed at a meeting for a Class binds all Unitholders in that Class, whether or not they were present at the meeting, and a resolution passed at a meeting for the Trust binds all Unitholders, whether or not they were present at the meeting.

23.12 Objection at meeting

No objection may be made to any vote cast unless the objection is made at the meeting.

23.13 Non-receipt

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

23.14 Option Holders

The provisions of this clause 23 relating to meetings of Unitholders also apply to meetings of Option Holders with any necessary modifications.

23.15 Voting when unregistered

Notwithstanding any other provision in this Constitution, while the Trust is not a Registered Scheme, any decision or matter which may otherwise be required to be decided at a meeting of Unitholders or any resolution which would otherwise be required to be passed at a meeting of Unitholders, may be decided or passed by means of the required number of Unitholders signing a document recording the making of the decision or passing of the resolution.

23.16 Other decisions

Subject to the Act (but without affecting clause 23.15), if there is a decision to be made by Unitholders which is not under the Act required to be made by the passing of a resolution at a meeting of Unitholders, then that decision may be made by means of the required number of Unitholders signing a document recording the making of the decision.

24. Retirement or removal of Trustee

24.1 Situation if Trust is a Registered Scheme

- (a) If the Trust is a Registered Scheme, then clauses 24.2 and 24.3 do not apply and instead, subject to clause 24.1(b), the provisions of the Act regulating the retirement or removal of the Trustee will apply.

- (b) If the Trust is a Registered Scheme, then—
- (i) the Trustee may retire at such time as it thinks fit, and
 - (ii) notwithstanding section 601FM of the Act the Trustee may be removed by a resolution that has been passed at a meeting on a poll by—
 - A. at least 35 percent of the total votes which may be cast by Unitholders entitled to vote on the resolution, and
 - B. at least 50 percent of the votes cast by Unitholders entitled to vote on the resolution, and
 - (iii) a new trustee may be appointed by a resolution that has been passed at a meeting on a poll by an Extraordinary Resolution.

24.2 Retirement of the Trustee

While the Trust is not a Registered Scheme, if the Trustee wishes to retire as trustee of the Trust, then it may do so on not less than three months' notice to the Unitholders (or by such shorter period as they agree) and appoint a replacement trustee.

24.3 Removal of the Trustee by Unitholders

While the Trust is not a Registered Scheme, the Trustee must retire—

- (a) when required by law
- (b) when required to do so by a resolution of Unitholders which has been passed by the majority specified in clause 24.1(b)(ii), and
- (c) otherwise may retire on not less than three months' notice to the Unitholders (or by such shorter period as they agree). The Trustee may appoint in writing the replacement responsible entity from retirement.

24.4 Consequences of change of Trustee

If and when the Trustee retires or is removed as the trustee then, with effect from and including the time of that retirement or removal—

- (a) the former trustee is released from all obligations and liabilities in relation to the Trust arising after that time, and
- (b) the new trustee will be taken to have agreed—
 - (i) to indemnify the former trustee for all its costs and expenses incurred (after that time) in connection with discharging its obligations under section 601FR of the Act, and
 - (ii) if it is not an Associate of the former trustee or it has not obtained the written consent of the former trustee, to promptly take whatever action is necessary to change the name of the Trust and remove

any words, letters or expressions from this Constitution and any other documents which might express or imply an association with the former trustee or any of its Associates and agrees not to use any such words, letters or expressions in any connection with the Trust and this Constitution.

25. Payments and recoveries

25.1 *Payments to a Unitholder*

Any money payable by the Trustee to a Unitholder may be paid or applied in any manner (including by cheque or directly into a designated account with a financial institution) that the Trustee determines from time-to-time. Only whole cents are to be paid (after rounding up or down as determined by the Trustee) and any remaining fraction of a cent becomes Assets.

25.2 *Unitholder direction for payment to third parties*

If any Unitholder (including any person registered jointly as a Unitholder) directs the Trustee to pay to any person any money which would otherwise be payable under this Constitution to the Unitholder, then the Trustee may accept or reject that direction in its absolute discretion.

25.3 *Payments by cheque or electronic transfer*

- (a) If the Trustee decides to pay money by cheque and the cheque is issued to the Unitholder and is presented and paid or the payment is made to a person at the direction of the Unitholder or to an account with a financial institution nominated by the Unitholder then, in each such case, that payment is in full satisfaction of the Trustee's obligation to pay and a good discharge to the Trustee.
- (b) The Trustee may determine that any cheque issued which is made payable to the Unitholder or to a person at the Unitholder's direction and which is not presented within three months may be cancelled and the money reinvested in Units in the name of the Unitholder at the Application Price which applies as at the Valuation Time occurring after the cancellation of the cheque or dealt with by the Trustee in accordance with the requirements of any applicable unclaimed moneys laws.
- (c) Any payment unsuccessfully attempted to be made to a Unitholder by electronic transfer of funds may at the discretion of the Trustee, be cancelled and the money reinvested in Units in the name of the Unitholder at the Application Price which applies as at the Valuation Time occurring after the second unsuccessful attempt at payment by electronic transfer.

25.4 *Payments to joint Unitholders*

For persons registered jointly as Unitholders, payment to any one of those joint holders will be a good discharge to the Trustee in respect of that payment. Any one joint holder may give an effective discharge to the Trustee in respect of any payment.

25.5 *Unitholder indemnification of Trustee*

Notwithstanding any other provision in this Constitution (whether express or implied) each Unitholder and former Unitholder indemnifies the Trustee (both on its own account and on account of the Trust) for, and the Trustee may deduct from any money (including distribution entitlements) payable to a Unitholder or former Unitholder or received from a Unitholder or former Unitholder or otherwise recover from a Unitholder or former Unitholder (including by redeeming any Units of a Unitholder) the following:

- (a) Any unpaid amounts due by the Unitholder or former Unitholder on any basis (under this Constitution, pursuant to the Disclosure Document, or pursuant to the Act) to the Trustee (either on its own account or on account of the Trust). If those amounts represent fees payable to the Trustee, it may retain the amounts deducted or recovered for its own purposes.
- (b) Any amount of Tax (or the Trustee's estimate of Tax) owed by the Unitholder which the Trustee reasonably believes it must or should deduct from the payment or receipt and any expenses in respect of the entitlement of the Unitholder or former Unitholder to, or payment of income or capital or the issue and allotment of Units, and the Trustee may apply all these amounts so deducted or recovered in payment or reimbursement of the relevant Taxes or Expenses.
- (c) Any Tax or expense in relation to a Unitholder or former Unitholder (or the Trustee's estimate of it) that is incurred by the Trustee as a consequence of an action or omission of, or which is requested by, the Unitholder or former Unitholder.
- (d) Any Tax which is paid or anticipated to be payable by the Trustee on account of or in respect of the Unitholder or former Unitholder on an amount distributed to that Unitholder or former Unitholder.

25.6 *Trustee's lien*

The Trustee has a first and paramount lien over all of a Unitholder's Units in respect of any monies payable to the Trustee on any basis under this Constitution or the Act in respect of any of those Units. This lien extends to distributions from time to time declared in respect of any such Units. The registration by the Trustee of any transfer of any Units in respect of which it has a lien automatically terminates the lien in respect of those Units.

26. **Complaints handling**

While the Trust is a Registered Scheme, if a Unitholder makes or submits a Complaint to the Trustee in relation to the Trust, then the Trustee must deal with the Complaint in accordance with all applicable laws and ASIC Relief, including by—

- (a) acknowledging the Complaint in writing immediately and, in circumstances where this is not possible, as soon as reasonably practicable

- (b) using reasonable endeavours to deal with the Complaint appropriately and within a reasonable timeframe having regard to the nature of the Complaint and the degree of urgency of the Complaint
- (c) as soon as practicable and in any event not more than 45 days after receipt by the Trustee of the Complaint, communicating to the Unitholder in writing—
 - (i) the remedies which the Trustee may make available to the Unitholder which may include compensation, an apology or information
 - (ii) the decision of the Trustee, and
 - (iii) the Unitholder's right to take their Complaint to an external dispute resolution scheme of which the Trustee is a member, together with the name and contact details of the relevant external dispute resolution scheme, and
- (d) providing a Unitholder with all reasonable assistance and information that the Unitholder may require for the purpose of making a Complaint and understanding the complaints handling procedures adopted by the Trustee.

27. Changing this Constitution

27.1 Power to amend

- (a) While the Trust is not a Registered Scheme, the Trustee may amend this Constitution at its absolute discretion on such terms as it sees fit.
- (b) While the Trust is a Registered Scheme, then the Constitution may be modified, or repealed and replaced with a new constitution—
 - (i) by Special Resolution of the Unitholders, or
 - (ii) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders' rights.

27.2 AMIT

Without limiting the Trustee's powers in clause 27.1, but subject to the Act, the Trustee may make any change to this Constitution or take any other action which the Trustee reasonably believes is necessary or desirable to—

- (a) facilitate compliance with the preconditions for the operation of the Trust as an AMIT
- (b) enable the Trustee to administer the Trust and issue Units in accordance with the AMIT Rules
- (c) facilitate compliance with the terms of the AMIT requirements in relation to the Trust, including any provisions of the AMIT Rules that, if not complied

with, would result in any additional liability or penalty for the Trustee or Unitholders

- (d) facilitate the proper administration and operation of the Trust under the AMIT Rules and ensure that there is an appropriate and equitable application of the powers and rights of the Trustee and Unitholders that arise under the AMIT Rules, or
- (e) comply with the conditions of any ASIC Relief issued in relation to the AMIT requirements, or facilitate operation of the Trust in reliance on such ASIC Relief.

27.3 Lodgement of amendment

If the Trust is a Registered Scheme, then the Trustee must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

28. Statutory requirements

28.1 Corporations Act and ASIC Relief

- (a) If—
 - (i) the Act requires that this Constitution contain certain provisions, or if any ASIC Relief or exemption on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust requires or allows provisions to a certain effect to be contained in this Constitution in order for the ASIC Relief or exemption to apply (“Required Provisions”), or
 - (ii) any part of this Constitution (a “Required Part”) is included to comply with the requirements of the Act or ASIC (“Regulatory Requirement”) and that Regulatory Requirement ceases or changes,

then, to the extent the Act allows, this Constitution is automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement and the Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.

- (b) The Unitholders—
 - (i) authorise the Trustee to make the amendments referred to in this clause 28.1 in a deed made for that purpose and, if required, to lodge it with ASIC, and
 - (ii) agree that, subject to the Act, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 28.1.

- (c) Where this clause 28.1 operates to automatically amend this Constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

28.2 Application of Act

In this Constitution, except as otherwise provided in a particular clause or by law, a requirement of the Act only applies while the Trust is a Registered Scheme.

28.3 ASIC Class Orders

- (a) In accordance with any relevant ASIC Relief from subsections 601GC(1) and 601GC(2) of the Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 28.1 that is covered by such ASIC Relief is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Act.
- (b) Changes in the text of the Constitution to which this clause 28.3 are made pursuant to the power in clause 27 but in respect of such changes, the requirements of clause 27 are to be read subject to this clause 28.3.

28.4 Paramountcy of provisions

- (a) Subject to the Act, the following provisions prevail over other provisions of this Constitution in the following order to the extent of any inconsistency—
 - (i) first, clause 22, 28.1 and provisions taken to be included and amended under them
 - (ii) then, this clause 28.4, and
 - (iii) then, the Reorganisation Proposals in clauses 12.1 to 12.6.
- (b) This clause 28.4 applies to the extent this would not result in a breach of the Act or any other law.

29. Compliance plan and compliance committee

29.1 Compliance plan

- (a) While the Trust is a Registered Scheme, the Trustee must have a compliance plan for the Trust which is lodged with ASIC.
- (b) The compliance plan will deal with the measures the Trustee will adopt to comply with the Act and this Constitution.
- (c) Subject to the Act and the approval of ASIC (if required), the compliance plan may be amended by the Trustee from time-to-time as it sees fit.

29.2 **Compliance committee**

- (a) This clause 29.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) To the extent permitted by law, the Trustee may by deed, indemnify, or agree to indemnify, from the Trustee, a person who is, or has been, a CC Member against a liability incurred by that person, in his or her capacity as a CC Member, to another person (other than the Trustee or a related body corporate of the Trustee) provided that the liability does not arise out of conduct involving a lack of good faith.
- (c) To the extent permitted by law, the Trustee may by deed, indemnify, or agree to indemnify, from the Trustee, a person who is, or has been, a CC Member against a liability for costs and expenses incurred by that person—
 - (i) in defending any proceedings in which judgment is given in that person's favour, or in which that person is acquitted, or
 - (ii) in connection with an application in relation to such Proceedings in which the court grants relief to that person under the Act.
- (d) To the extent permitted by law, and provided that the liability does not arise out of conduct involving a wilful breach of a duty referred to in section 601JD of the Act, the Trustee may pay, or agree to pay, from the Assets a premium in respect of a contract insuring a person who is, or has been, a CC Member against a liability—
 - (i) incurred by that person—
 - A. in his or her capacity as a CC Member
 - B. in the course of acting in connection with the Compliance Committee, or
 - C. otherwise arising out of the person holding office as a CC Member, or
 - (ii) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

30. Notices

30.1 **Form of notice**

Any notice, document or other communication required to be given to the Trustee or Unitholders is deemed to have been duly given if given in writing by letter, fax, electronic mail or other method as the Trustee determines.

30.2 Address for service

- (a) The address for the Trustee will be the address set out below or the address most recently given to the Unitholders:

Trustee : Centuria Property Funds Limited

Address : Suite 39.01, Level 39, 100 Miller Street, North Sydney NSW 2060

Facsimile : 02 9460 2960

- (b) The addresses for Unitholders will be either the physical address or electronic address as they appear in the Register.

30.3 Notice to joint Unitholders

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

30.4 Timing of notice

- (a) Subject to the Act, any notice or other communication by the Trustee to a Unitholder is taken to be received by the Unitholder—
- (i) (in the case of delivery by hand), on delivery at the physical address of the Unitholder or on delivery personally to them
 - (ii) (in the case of pre-paid post) on the Business Day after the date of posting
 - (iii) (in the case of fax transmission) on receipt of a transmission report confirming successful transmission, or
 - (iv) (if sent by any other manner) at the time the Trustee determines.
- (b) For any notice or communications sent to Unitholders, proof of receipt is not required.

31. General provisions

31.1 Payments

Any money payable by the Trustee to an Applicant or Unitholder under the provisions of this Constitution may be paid by—

- (a) cheque and sent by post to the address shown in the Register, or
- (b) electronic funds transfer facility provided by a financial institution nominated by the Applicant or Unitholder in writing to the Trustee.

31.2 Discharge of Trustee

The Trustee will receive a good discharge on—

- (a) payment of every cheque if duly presented and paid, or
- (b) in the case of money credited to any account with a financial institution, the receipt by the financial institution of the amount paid.

31.3 Retention of documents

Application forms and instruments of transfer and transmission must be retained by the Trustee either in their original form, electronically or like process and be available for inspection by or on behalf of the Auditor or the auditor of the compliance plan (if one has been appointed) at any time during normal business hours. However, on the expiration of seven years from the date of each document in question, or the date upon which the Unitholder's Unit holding terminates, whichever is the later, the document may, in the absolute discretion of the Trustee, be destroyed.

31.4 Relationship between Trustee and Unitholders

Each and every Unitholder and the Trustee agree—

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and this Constitution are in every case several and not joint or joint and several
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other
- (c) no Unitholder has authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder, and
- (d) except as otherwise specifically provided in this Constitution, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

31.5 Rounding

- (a) If any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, then that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (b) If there is any excess application or other money or property which results from rounding, then it becomes an Asset.
- (c) The Application Price or Withdrawal Price of a Unit may be rounded as the Trustee determines.

31.6 Interest payable

- (a) The Trustee may charge interest on any amount of money owed to the Trust or to the Trustee on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Trustee, and interest is payable monthly. The rate of interest will be the BBSW plus 500 basis points. The Trustee may waive payment of that interest in whole or in part.
- (b) Any interest received forms part of the Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

31.7 Non-payment of money

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then the Trustee is entitled to be indemnified out of the Assets. In addition, the Trustee may do either of the following (subject to the application of clause 5 in relation to any failure to pay an instalment or instalments with respect to Partly Paid Units):

- (a) The Trustee may deduct money from distributions which would otherwise be paid to the Unitholder who owes the Trustee money until such time as interest and the amount which the Trustee is entitled to be paid has been paid to the Trustee.
- (b) Send a notice to the relevant Unitholder demanding the amount for which the Trustee is entitled to be indemnified (plus interest if applicable) to be paid on or before a specified date (not earlier than seven days after the date of service of the notice). The notice must specify that in the event of the payment not being made, the Unitholder's Units will be liable to be sold or redeemed to recover the unpaid amount.

31.8 Sale or redemption of Unitholder's Units to pay debt owing by Unitholder

- (a) For notices sent under clause 31.7(b), if the money is not paid within the specified time, then subject to the Act the Trustee may do either of the following:
 - (i) Sell (as agent for the Unitholder) the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale.
 - (ii) Redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied (as agent for the Unitholder) first on account of the amounts in respect of which

the notice was sent under clause 31.7(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

31.9 Trustee may require information from Unitholders

- (a) Any Unitholder who is asked by the Trustee to supply any information reasonably required by the Trustee for the purposes of managing the Trust or complying with any relevant laws must do so within 14 days of service of a notice from the Trustee.
- (b) If any particular information given to the Trustee under clause 31.9(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unitholder fails to provide information required by clauses 31.9(a) or 31.9(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.
- (d) Any Unitholder who supplies incorrect information under clauses 31.9(a) or 31.9(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

31.10 Duties or like imposts payable by Unitholder

- (a) Without limiting the other provisions of this Constitution, where any duty or stamp duty is payable on or in relation to any issue, redemption or transfer of Units, then the Unitholder acquiring the Units, or the Unitholder whose Units are redeemed (as the case may be), must pay the duty and indemnifies the Trustee in relation to the amount of the duty and in relation to any associated statutory penalties or interest.
- (b) Clauses 31.6, 31.7 and 31.8 apply in relation to any amounts payable by a Unitholder under clause 31.10(a).

31.11 Severability

Where any provision of this Constitution is void, illegal, or unenforceable so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this Constitution which remain in full force and effect.

31.12 Applicable law

This Constitution is governed by and to be interpreted in accordance with the laws of New South Wales. The parties to this Constitution agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

Schedule 1—Dictionary

Accounting Standards	Has the meaning given to that term in section 9 of the Act.
Accrued Distribution	For a Distribution Period, the amount the Trustee calculates as the Distributable Amount for the Trust from the beginning of the current Distribution Period to the day on which the calculation is made.
Act	The Corporations Act 2001 (Cth) for the time being in force, together with the regulations.
Adjustment Amount	An amount determined pursuant to clause 15.18.
AMIT	Has the meaning given by section 995-1 of the Tax Act.
AMIT Election	Means a choice made by the Trustee in accordance with the requirements of the AMIT Rules for the Trust to be an AMIT.
AMIT Income Year	Means a year of income for the purposes of the Tax Act that the Trust is an AMIT.
AMIT Regime	Means the regime for the taxation of AMITs.
AMIT Rules	Means Divisions 275 and 276 of the Tax Act.
<u>AMMA Statement</u>	<u>Has the meaning given to that phrase in section 276-460 of the Tax Act.</u>
Applicant	A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Money	Any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Trustee and the Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.
Application Price	The price at which Units are issued, as determined in accordance with this Constitution.
ASIC	The Australian Securities and Investments Commission.
ASIC Relief	An exemption or declaration granted by ASIC which gives relief from certain requirements of the Act.
Assets	Includes all property, rights and income of the Trust and any accretions to the property, rights and income of the Trust and any provisions the Trustee considers should be taken into account in determining Assets, but excludes— <ul style="list-style-type: none"> (a) Application Money or property paid in respect of which Units have not been issued (b) proceeds from withdrawals which have not yet been paid,

and

(c) any Distributable Amount awaiting payment to Unitholders.

Where there is more than one Class on issue, and the Net Asset Value referable to a particular Class is being calculated, a reference to “Assets” means that portion of the Assets the Trustee considers are properly referable to each Class.

Associate	An associate as defined in any of the sections in Division 2 of Part 1.2 of the Act.
Attribution Income Tax Liability	An income tax liability of a person under the Tax Act that results from the Trust being operated as an AMIT.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or Registered Scheme.
Authorised Representative	In respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative, and in respect of a party which is a corporation— <ul style="list-style-type: none"> (a) a company secretary or director, or any officer of the corporation whose title or office includes the words “manager” or “director”, or (b) a person acting with the title or in the office of manager or director.
BBSW	For a Distribution Period, means the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Distribution Period. The BBSW is expressed in basis points.
Business Day	Any day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.
CC Member	A member of the Compliance Committee.
Centuria Property Funds Limited	Centuria Property Funds Limited ACN 086 553 639 or any other company which replaces Centuria Property Funds Limited as trustee of the Trust and which is a related body corporate of Centuria Property Funds Limited.
Class	A class of Unit in the Trust.
Complaint	An expression of dissatisfaction made to the Trustee related to the Trust or the complaints handling process itself where a response or resolution is explicitly or implicitly expected.

Compliance Committee	The committee (if any) established by the Trustee pursuant to section 601JA(1) of the Act.
<u>Constituent Documents</u>	<u>Mean the “constituent documents” referred to in section 276-210(3) of the Tax Act.</u>
Constitution	This document (including its schedules) as it may from time to time be amended and in force.
<u>Determined Member Component</u>	<u>Has the meaning given to that phrase in section 276-205 of the Tax Act.</u>
<u>Determined Trust Component</u>	<u>Has the meaning given to that phrase in section 276-255 of the Tax Act.</u>
Disclosure Document	A document by which Units are offered for subscription, and it includes any supplementary or replacement document issued in respect of the disclosure document.
<u>Discovery Year</u>	<u>Has the meaning given to that phrase in section 276-345 of the Tax Act.</u>
Distributable Amount	Means— <ul style="list-style-type: none"> (a) the Income of the Trust, and (b) any amount of capital of the Trust, determined by the Trustee from time to time to be distributed to Unitholders.
Distributable Proportion	In respect of a Unit, the amount determined in accordance with clause 15.5
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee.
Distribution Period	<ul style="list-style-type: none"> (a) For the first distribution period, the period from the commencement of the Trust to the next Distribution Calculation Date. (b) For the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of final distribution on winding up of the Trust. (c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.
Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 15.2 15.1(b) .
Dividend Entitlement	Amounts determined under clause 15.2(c).

Exchange Proposal	<p>A proposal whereby a written offer to transfer or redeem some or all of their Units is made to Unitholders or to specific Unitholders in consideration of any or all of—</p> <ul style="list-style-type: none"> (a) the issue or transfer of units in another, or interests of whatever nature in or in relation to another entity (b) a cash payment, and (c) a transfer of Assets.
Expenses	<p>Includes any expenses, costs, charges, fees, commissions, brokerage, any Tax, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.</p>
Extraordinary Resolution	<p>A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 50 percent of the total votes that may be cast by Unitholders entitled to vote on the resolution (including Unitholders who are not present in person or by proxy).</p>
Financial Year	<p>The period of 12 months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.</p>
GST	<p>A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.</p>
GST Act	<p>A New Tax System (Goods & Services Tax) Act 1999.</p>
Income	<p>The Net Income unless otherwise determined by the Trustee.</p>
Indexed	<p>Means adjusted on 1 July, by the aggregate percentage change in the Index Number for the previous four quarters most recently published prior to 1 July in the relevant year. However, if the Index Number is negative, then the aggregate percentage change in the Index Number will be zero.</p> <p>Means—</p> <ul style="list-style-type: none"> (a) the Consumer Price Index (All Groups) for the city of Sydney, published from time to time in the Australian Statistician's Summary of Australian Statistics. If the Australian Statistician updates the reference base of the Consumer Price Index (All Groups) for the city of Sydney, a conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian

Statistician, or

- (b) if the Consumer Price Index (All Groups) is discontinued or suspended, then a replacement index determined by the Trustee which reflects fluctuations in the cost of living in the city of Sydney.

Investment Amount	The total amount paid or provided by or on behalf of an Applicant to the Trustee as part of the Applicant's application to become a Unitholder in the Trust (prior to the deduction of any amount the Trustee and Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Unit).
Legal Personal Representative	An executor or administrator of the estate of a deceased Applicant or Unitholder, or the trustee of the estate of an Applicant or Unitholder who is bankrupt or under a legal disability or who is mentally incapacitated, or a person who holds a suitable power of attorney granted by an Applicant or Unitholder.
Liabilities	<p>All liabilities of the Trust, including any contingent liabilities, anticipated liabilities or provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for the Trust, the Unitholders' funds are not to be treated as a liability.</p> <p>Where there is more than one Class on issue, and the Net Asset Value referable to a particular Class is being calculated, a reference to "Liabilities" means that portion of the Liabilities the Trustee considers are properly referable to each Class.</p>
Liquid	Has the same meaning as in section 601KA of the Act.
<u>Member Component</u>	<u>Has the meaning given to that phrase in section 276-210 of the Tax Act.</u>
<u>Member Objection Choice</u>	<u>Means a choice made by a Unitholder under the AMIT Regime for the Unitholder's Determined Member Component to be the Unitholder's Member Component, including a choice made by a Unitholder under section 276-205(5) of the Tax Act.</u>
Net Asset Value	The total value of the Assets calculated in accordance with clause 10, less the Liabilities. However, for the purpose of calculating the Application Price or Withdrawal Price in relation to Units in a Class other than Ordinary Units, the Trustee may (where permitted under the Terms of Issue) adopt as the Net Asset Value figure an amount which is either lower than the current Net Asset Value (a discount to Net Asset Value) or higher than the current Net Asset Value (a premium to Net Asset Value), provided that in doing so and in deciding the discount to Net Asset Value or premium to Net Asset Value, the Trustee (where the Trust is a Registered

	Scheme) complies with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion.
Net Income	The total assessable income of the Trust less all deductions of the Trust (as calculated in accordance with the Tax Act) which may be reduced or increased by the amount of any reserves, provisions or amounts that, in determination of the Trustee, need to be made. If the total amount is less than zero, then the total amount is taken to be zero.
Option	An option to subscribe for a Unit.
Option Holder	A person registered as the holder of an Option (including persons jointly registered).
Ordinary Resolution	Means a resolution that has been passed by more than 50 percent of the votes cast by Unitholders entitled to vote on the resolution.
Ordinary Units	Units issued by the Trustee in the Class known as Ordinary Units, which have and are subject to all of the rights, obligations and restrictions set out in this Constitution, but subject always to the rights, obligations and restrictions attaching to any other Class, as set out in the Terms of Issue of that other Class.
<u>Over</u>	<u>Has the meaning given to that phrase in section 276-345 of the Tax Act.</u>
Paid-up Amount	In relation to a Unit means the number obtained by applying the following formula: $\text{Paid-up Amount} = \frac{\text{PA}}{\text{AP}}$ <p>Where—</p> <p>(a) PA means the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) as at the date of calculation, and</p> <p>(b) AP means the Application Price of the Unit.</p>
Partly Paid Unit	A Unit on which the Application Price has not been paid in full.
Perpetuity Period	The period specified in clause 3.11.
Proceedings	In relation to a person, any proceedings (whether civil or criminal) in which it is alleged that the person has done or omitted to do some act, matter or thing— <p>(a) in the person's capacity as a CC Member</p> <p>(b) in the course of acting in connection with the affairs of the</p>

	Compliance Committee, or
	(c) otherwise arising out of the person holding office as a CC Member.
Realisation Transaction	A transaction which enables all Unitholders to realise all or more than 50 percent of their investment in the Trust, including— <ul style="list-style-type: none"> (a) an initial public offer (b) a sell down of more than 50 percent of the units where all Unitholders have the opportunity to participate in the sell down (c) a sale of substantial Assets where all Unitholders have an opportunity to have their Units redeemed or transferred, or (d) any other arrangement which has substantially the same economic effect as a transaction referred to paragraph (a), (b) or (c).
Register	The register of Unitholders required to be kept according to clause 8.
Registered Scheme	A managed investment scheme registered under the Act.
Relevant Valuation Time	The Valuation Time, determined by the Trustee, which is applicable to the calculation of the Application Price for an offer or issue of Units (even if the offer or issue occurs during a period when the Application Price is fixed), or the Withdrawal Price for a redemption of Units.
Reorganisation Proposal	Means— <ul style="list-style-type: none"> (a) any Realisation Transaction (b) a Stapling Proposal (d) a Top Hat Proposal (e) an Exchange Proposal, or (f) any other proposal to reorganise or restructure the capital of the Trust in any way.
Special Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.
Stapled	The state resulting from Stapling.
Stapled Company	The company or companies Stapled to the Trust (if applicable).
Stapled Entity	The Trust and any other trust or company Stapled to the Trust.

Stapled Security	A Unit, a Stapled Share (if applicable) and any Stapled Units (if applicable) which are Stapled together in the name of the Unitholder.
Stapled Share	A share in the capital of the Stapled Company.
Stapled Trust	The trust or trusts Stapled to the Trust.
Stapled Unit	A unit in a Stapled Trust.
Stapling	The linking together of all of the rights and obligations which attach to a Stapled Security.
Stapling Proposal	A proposal to cause the Stapling of any other securities or financial products to the Units.
Sub Entity	A trust, company or other entity in which the Trust has a direct or indirect interest, including a trust, company or other entity that was established by or is managed by the Trustee or by an Associate or related body corporate of the Trustee.
Sub Entity Assets	<p>Means in relation to any Sub Entity, all property, rights and income of the Sub Entity and any accretions to the property, rights and income of the Entity and any provisions the Trustee considers should be taken into account in determining the Sub Entity Assets, but excludes—</p> <ul style="list-style-type: none"> (a) application money or property paid in respect of which unit or shares (as applicable) have not been issued in the Sub Entity (b) proceeds from withdrawals which have not yet been paid out of the Sub Entity, and (c) any distribution or dividend that has been declared but is awaiting payment to unitholders or shareholders of the Sub Entity (as applicable).
Tax	This term includes income tax (including any tax on the disposal of Assets), capital gains tax, withholding tax, transaction tax, stamp duty and any other duties, levies, imposts, interest, penalties, deductions and charges whatsoever imposed by any government or governmental entity of Australia or a State or Territory of Australia, including any interest and penalties imposed in respect of any of the above.
Tax Act	The Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax (Transitional Provisions) Assessment Act 1997 (Cth), or all as appropriate.
Terms of Issue	The terms on which a Class is issued under this Constitution, as determined by the Trustee from time-to-time.

Top Hat Proposal	A proposal that each Unitholder should exchange their Units for an equivalent value of units in the Top Trust.
Top Trust	A trust of which the Trustee is also the trustee, and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.
Total Paid-up Amount	The aggregate Paid-up Amount of all Units in Issue.
Total Unpaid Amount	The Total Unpaid Amount of all Units in Issue (if any).
Transaction Costs	<p>(a) When calculating the Application Price of a Unit, an estimate by the Trustee of—</p> <ul style="list-style-type: none"> (i) the total transaction costs the Trust would incur to acquire afresh the Assets (ii) if appropriate, the total transaction costs the Trust will incur to acquire proposed Assets, or (iii) if appropriate, having regard to the actual transaction costs which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total transaction costs, which may be zero. <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>(b) When calculating the Withdrawal Price of a Unit, an estimate by the Trustee of—</p> <ul style="list-style-type: none"> (i) the total transaction costs the Trust would incur to sell the Assets, or (ii) if appropriate, having regard to the actual transaction costs which would be incurred because of the withdrawal, a portion of the total transaction costs, which may be zero. <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p>
Trust	The trust constituted by this Constitution.
<u>Trust Component</u>	<u>Has the meaning given to that phrase in section 276-260 of the Tax Act.</u>
Trustee	Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.

<u>Under</u>	<u>Has the meaning given to that phrase in section 276-345 of the Tax Act.</u>
Unit	An undivided interest in the Trust as provided in this document.
Unitholder	A person who holds one or more Units or who otherwise holds an “interest” (within the meaning of the Act) in the Trust.
Units in Issue	The number of Units that have been issued less the number that have been redeemed.
Unpaid Amount	<p>The amount unpaid on a Partly Paid Unit, calculated in accordance with the following formula:</p> <p>Unpaid Amount = AP – PA</p> <p>Where—</p> <p>(a) AP means the Application Price of the Partly Paid Unit, and</p> <p>(b) PA means the amount the Unitholder has paid in relation to the Partly Paid Unit.</p>
Valuation Time	The time at which the Trustee calculates the Net Asset Value.
Vesting Day	<p>The day which is the later of—</p> <p>(a) the day immediately prior to the 80th anniversary of the date of commencement of the Trust, or</p> <p>(b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.</p>
Withdrawal Price	The price at which a Unit is redeemed and calculated in accordance with clause <u>6.16-1</u> .

Schedule 2—Rules for interpretation

In this Constitution unless the context indicates a contrary intention—

- (a) words denoting any gender include both genders
- (b) the singular number includes the plural and vice versa
- (c) references to any legislation includes any legislation which amends or replaces that legislation and any subordinate legislation
- (d) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns
- (e) a person includes companies and corporations and vice versa
- (f) except in the dictionary, headings do not affect the interpretation of this Constitution
- (g) general words must not be given a restrictive meaning, by reason of the fact they are followed by particular examples intended to be embraced by the general words (in this regard, the word “including” is not a word of limitation)
- (h) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause
- (i) amounts of money are expressed in Australian dollars unless otherwise expressly stated
- (j) a reference to a document includes any variation or replacement of it
- (k) a reference to any thing includes the whole or each part of it
- (l) words defined in the Act have the same meaning when used in this Constitution except where the context otherwise requires
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, then the obligation must be performed or the event must occur on or by the next Business Day
- (n) where time is to be calculated by reference to a day or event, then that day or event is excluded, and
- (o) the defined terms in Schedule 1 have the meaning given to them in that schedule except where the context otherwise requires.

Schedule 3—Performance Fee

(a) The Performance Fee payable to the Trustee in respect to a Performance Fee Calculation Period shall be calculated as 20 percent x Outperformance and must be paid within five Business Days of the relevant Performance Fee Calculation Date.

(b) In this Schedule 3 the following definitions apply:

Commencement Date The date of completion of the acquisition by the Trust of its first real property asset, or such other date as determined by the Trustee.

Internal Rate of Return or IRR In respect of a Performance Fee Calculation Period, the Trust's internal rate of return calculated for the period from the Commencement Date to the relevant Performance Fee Calculation Date, before tax and after the payment of the fees. The following items are included in the calculation of the IRR:

- (i) As a positive cashflow, the equity value of the Trust at the Performance Fee Calculation Date: To determine this amount, the Trustee must use the prevailing Application Price, adding back any per-Unit accrual of any Performance Fee already accounted for in the Application Price as at the Performance Fee Calculation Date, multiplied by the number of Units in Issue at the Performance Fee Calculation Date.
- (ii) In the case of a Realisation Transaction, as a positive cashflow, the value of any consideration offered under a Realisation Transaction.
- (iii) Net Trust equity inflows and outflows during the Performance Fee Calculation Period.
- (iv) The distributions (of income or capital) to Unitholders over the Performance Fee Calculation Period, grossed up for any associated franking credits or tax benefits received by Unitholders.

The IRR will be calculated as a percentage in accordance with the following formula:

$$\sum_{t=0}^n \frac{C_t}{(1 + \text{IRR})^t} = 0$$

Where—

n = number of periods

t = period

\sum = sum, and

C = net flow of monies in or out of the Trust.

Performance Fee
Calculation Date

- (i) The date of completion of the sale of any Asset or the sale of any Sub Entity Asset.
- (ii) The date of completion of a Realisation Transaction.
- (iii) The date of termination of the Trust.
- (iv) The date of completion of the winding up of the Trust.

Performance Fee
Calculation Period

The period beginning on the Commencement Date and ending on the relevant Performance Fee Calculation Date.

Outperformance

Means either—

- (i) if the IRR is greater than 10 percent in respect of a Performance Fee Calculation Period, then the amount that, if included in the cash flows used to calculate the IRR on the relevant Performance Fee Calculation Date as an outflow, reduces the IRR to 10 percent, or
- (ii) if the IRR is less than 10 percent in respect of a Performance Fee Calculation Period, then nil.

Schedule 4—Acquisition Units³

1. Interpretation

- (a) Schedules 1 and 2 of this Constitution apply to these Acquisition Terms of Issue unless otherwise specified or the context requires another meaning or interpretation to be applied.
- (b) The following words have the following meaning when used in these Acquisition Terms of Issue:

Acquisition Terms of Issue	This Schedule 4 of the Constitution as it may from time to time be amended and in force.
Acquisition Unitholder Meeting	A meeting of holders of Acquisition Units where the only people entitled to vote on resolutions are holders of Acquisition Units (or their proxies).
Acquisition Units	The Units issued by the Trustee in the class known as Acquisition Units and which are subject to these Acquisition Terms of Issue.
Ordinary Units	Means a Unit issued in accordance with the terms of this Constitution that is subject to all of the provisions of this Constitution and the rights, obligations, terms and conditions attaching to which are not governed, regulated or in any way modified by any separate Terms of Issue, including these Acquisition Terms of Issue.

2. Rights, obligations, terms and conditions

Acquisition Units have the following rights, obligations, terms and conditions:

- (a) Acquisition Units have an Application Price of \$1.00 each.
- (b) Acquisition Units have a preferential right of withdrawal from the proceeds of the issue of Ordinary Units at a Withdrawal Price equal to the greater of \$1.00 and the prevailing Application Price of Ordinary Units as provided in this Constitution.
- (c) In all other respects, Acquisition Units rank equally with Ordinary Units and any other rights, obligations, terms and conditions attaching to the Acquisition Units are as set out in this Constitution, except to the extent of any inconsistent provision in these Acquisition Terms of Issue.

³ Note: The changes were introduced by the Supplementary Constitution dated 3 April 2017.

3. Amendments to these Acquisition Terms of Issue

Unless all holders of Acquisition Units agree otherwise in writing, these Acquisition Terms of Issue may only be modified, or repealed and replaced by a Special Resolution of the holders of Acquisition Units at an Acquisition Unitholder Meeting.

Schedule 5—When the Trust is part of a Stapled Entity

The following provisions operate when the Trust is part of a Stapled Entity:

Units, Classes and Options

New clauses 3.12, 3.13, 3.14, 3.15, 3.16 and 3.17 apply as follows:

3.12—Application Price of Units as part of a Stapled Security	<p>Where—</p> <ul style="list-style-type: none"> (i) Stapling applies, and (ii) as a consequence, a Unit is to be issued as part of a Stapled Security <p>then the Trustee may determine an Application Price for a Unit different from the Application Price which would apply under the other subclauses of this clause 3, provided that the total issue price for the Stapled Security is equal to—</p> <ul style="list-style-type: none"> (iii) the total of— <ul style="list-style-type: none"> A. the Application Price which would apply under the other subclauses of this clauses 3, and B. the total issue prices for any Stapled Share and Stapled Unit forming part of the Stapled Security, which would otherwise apply as a result of applying the relevant formula or formulae for the calculation of those issue prices, pursuant to the constitutions for the Stapled Company and Stapled Trust (as is applicable).
3.13—Consolidation and division	Units may only be consolidated or divided if the related Stapled Shares and Stapled Units are also consolidated or divided at the same time and to the same extent.
3.14—Number of Units	The number of issued Units at any one time must equal the number of issued Stapled Shares and Stapled Units at that time.
3.15—Stapling	Units remain stapled to the Stapled Shares and Stapled Units for as long as the Units remain on issue.
3.16—Joint register	The Trustee may establish and maintain the Register jointly with the register of holders of Stapled Shares and Stapled Units provided for in the constitutions of the Stapled Company and Stapled Trust.
3.17—Stapled Security certificate	The Trustee may issue a single Stapled Security certificate representing the Units, Stapled Shares and the Stapled Units. Where the Trustee issues a Stapled Security certificate it need not issue a separate unit certificate in relation to the relevant Units.

Application for Units or Options**New clauses 4.5A, 4.12 and 18.1A apply as follows:**

4.5A—Trustee must reject	The Trustee must reject an application for Units (including an application flowing from the exercise of an Option) if the Applicant does not apply at the same time for an identical number of Stapled Shares and Stapled Units, or if the identical number of Stapled Shares and Stapled Units will not be issued to the Applicant at the same time as the issue of Units to the Applicant.
4.12—Restriction on bonus issue	A distribution by way of bonus Units may not be made unless, at the same time the Units are issued, Unitholders are issued with identical numbers of Stapled Shares and Stapled Units.
18.1A—Transfers	The Trustee must not register a transfer of a Unit which is Stapled unless it is accompanied by a transfer of the related Stapled Shares and Stapled Units or, if a single transfer is permitted for a Stapled Security, then it is a transfer of the Stapled Security.

Withdrawal Price**New clause 6.1(c) applies as follows:**

6.1(c)—Withdrawal Price of Units as part of a Stapled Security	<p>Notwithstanding clause 6.1(b), where—</p> <ul style="list-style-type: none"> (i) Stapling applies, and (ii) as a consequence, a Unit is to be redeemed as part of a Stapled Security <p>then the Trustee may determine a Withdrawal Price for a Unit different from the Withdrawal Price which would otherwise apply as a result of applying the formula in clause 6.1(b), provided that the total withdrawal price for the Stapled Security is equal to the total of—</p> <ul style="list-style-type: none"> (iii) the Withdrawal Price which would otherwise apply as a result of applying the formula in clause 6.1(b), and (iv) the total withdrawal prices for any Stapled Share and Stapled Unit forming part of the Stapled Security which would otherwise apply as a result of applying the relevant formula or formulae for the calculation of those withdrawal prices, pursuant to the constitutions for the Stapled Company and Stapled Trust (as is applicable).
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Income and distributions to Unitholders**New clauses 13.4 and 16.1A apply as follows:**

13.4—Accounts	The Trustee may prepare combined accounts for the Trust, the Stapled Trust and the Stapled Company, in addition to any other accounts required to be prepared under this Constitution.
16.1A—Restriction on reinvestment	No reinvestment under clause 16.1 may occur unless at the same time the Unitholders are issued with additional Units, they are also issued with an identical number of Stapled Shares and Stapled Units. The Trustee may provide for and pay on behalf of Unitholders the application money for such Stapled Shares and Stapled Units out of the amount otherwise available for reinvestment.

Meeting of Unitholders**A new clause 23.17 applies as follows:**

23.17—Joint meetings	Meetings of the Unitholders may be held in conjunction with meetings of the holders of Stapled Shares and Stapled Units and the Trustee may make such rules for the conduct of such meetings as the Trustee considers necessary.
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Rights and liabilities of Unitholders**New clauses 11.6(a)(iii), 31.4A and 31.4B apply as follows:**

11.6(a)(iii)—A replacement clause 11.6(a)(iii) applies as follows:	hold Units, Stapled Units, Stapled Shares or other securities issued by a Stapled Entity in any capacity.
31.4A—Trustee's duties in relation to Stapling	Notwithstanding the Units are part of Stapled Securities— <ul style="list-style-type: none"> (a) the Trustee's duties and obligations to Unitholders will be owed to Unitholders solely in their capacity as unitholders and not as holders of Stapled Shares and Stapled Units (b) in the performance of its duties and the exercise of its powers, the Trustee will have no obligation to consider the effect of the acts or omissions of the Trustee on the Stapled Company, the Stapled Trust or the Stapled Securities, and (c) the Trustee will have no obligation to consider or monitor the performance of the Stapled Company or the Stapled Trust, or any obligations the Stapled Company, or the Stapled Trust, might have to the holders of the Stapled Securities.

Rights and liabilities of Unitholders

New clauses 11.6(a)(iii), 31.4A and 31.4B apply as follows:

31.4B—Consistency with constitutions of Stapled Company and Stapled Trust	The Trustee undertakes to use reasonable endeavours to ensure the Stapled Securities are dealt with in a manner consistent with the provisions relating to Stapled Securities in the constitutions of the Stapled Company and Stapled Trust.
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Stapling

New clauses 32.1 and 32.2 apply as follows:

32.1—General Intention	The Units are intended to be Stapled to the Stapled Shares and Stapled Units in the ratio of one Unit to one Stapled Share to one Stapled Unit. The intention is that the Unitholders will be identical to the holders of Stapled Shares and Stapled Units and that as far as possible, the Units, Stapled Shares and Stapled Units will be treated as one security.
32.2—Amendments to Trust Constitution	While the Trust is a Registered Scheme, no provision of this Constitution relating to Stapling may be amended without the approval of the members of the other Stapled Entities, unless the Trustee reasonably considers the change will not adversely affect those members' rights.

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