

## CENTURIA PROPERTY FUNDS LIMITED

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Centuria Zenith Fund

*Supplemental deed*

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<b>Date</b>	This Supplemental Deed is a deed poll made on the date noted on page 16 of this document.
<b>Party</b>	Centuria Property Funds Limited ACN 086 553 639 of Suite 39.01, Level 39, 100 Miller Street, North Sydney, New South Wales  (Responsible Entity)
<b>Introduction</b>	<p>A. The Responsible Entity is the responsible entity of Centuria Zenith Fund (Scheme) which is a managed investment scheme. The Scheme has been registered pursuant to the Corporations Act and the ARSN is 612 163 416.</p> <p>B. This Supplemental Deed has been prepared to amend the constitution dated 26 April 2016 as amended by a supplemental deed dated 11 May 2016, a supplemental deed dated 12 May 2016 and a supplemental deed dated 8 August 2017 (Constitution). This Supplemental Deed will be lodged with ASIC pursuant to section 601GC(2) of the Corporations Act. The Supplemental Deed will take effect from the time of lodgement.</p> <p>C. The changes made by this Supplemental Deed have been made by the Responsible Entity pursuant to section 601GC(1)(c) of the Corporations Act, notionally inserted by <i>ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489</i>.</p> <p>D. The terms of this Supplemental Deed follow.</p>

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## TERMS

### 1. Definitions and interpretation

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Clause 1.1 and clause 1.2 of the Constitution apply to this Supplemental Deed unless otherwise specified or the context requires another meaning or interpretation to be applied.

### 2. Amendment of the Constitution

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

### 3. Operative provisions

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In the event the Responsible Entity makes an election pursuant to clause 12.8 of the Constitution and the Scheme becomes an AMIT, then for any year of income for the purposes of the Tax Act that the Scheme is an AMIT, the Constitution is modified as set out in this Supplemental Deed. For the avoidance of doubt, the amendments contained in this Supplemental Deed apply only in a year of income for the purposes of the Tax Act that the Scheme is an AMIT.

#### 3.1 Amendment to “Clause 1.1 Definitions”

Clause 1.1 of the Constitution is amended as follows:

- (a) By deleting the following definitions:

**“AMIT Bill”.**

**“Distribution Account”.**

**“Income Distribution Date”.**

**“Income Distribution Period”.**

**“Interim Distribution”.**

**“Interim Distribution Period”.**

- (b) By replacing the following definitions with the following:

**“AMIT”** means, for an income year, a trust which is an attribution managed investment trust for the purposes of section 276-10 of the Tax Act.

**“Distributable Income”** means the amount determined by the Responsible Entity in accordance with clause 15.

**“Income Entitlement”** means a Residual Income Entitlement, Residual Gains Entitlement or a Redemption Gains Entitlement.

- (c) By inserting the following new definitions in alphabetical order:

**“AMIT Legislation”** means all or any of the:

- (a) the Tax Act;
- (b) Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016 (Cth);
- (c) Income Tax Rates Amendment (Managed Investment Trusts) Act 2016 (Cth);
- (d) Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016 (Cth); and
- (e) Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016 (Cth);

as appropriate and as the context requires.

**“AMIT Regime”** means the regime for the taxation of AMITs, as set out in the AMIT Legislation.

**“Capital Gains”** means so much of the Distributable Income of the Scheme as the Responsible Entity determines represents:

- (a) the amount which the Responsible Entity determines to be the net capital gain of the Scheme under section 102-5 of the Tax Act, disregarding steps 3 and 4 in that section, including any amounts which are of the same character, to which the Responsible Entity is entitled by virtue of holding units in a trust; less
- (b) any deductions which the Responsible Entity determines would arise in the determination of the Distributable Income of the Scheme and should be applied by the Responsible Entity to reduce the amount arising under paragraph (a).

**“Distribution Calculation Date”** means the last day of each Financial Year and any other days as the Responsible Entity may designate from time to time.

**“Distribution Period” means**

- (a) for the first distribution period, the period from the commencement of the Scheme 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 distribution on winding up of the Scheme; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

**“Maximum Redemption Gains Amount”** has the meaning given to it in clause 15.6(b).

**“Redemption Gains Entitlement”** means in respect of a Member who redeems Units under a Significant Redemption, the entitlement of the Member to the Capital Gains of the Scheme in respect of the redemption of those Units, as determined in accordance with clause 15.6(c).

**“Residual Gains Entitlement”** means in respect of a Member and a Distribution Period, the entitlement of the Member to the Capital Gains of the Scheme for the Distribution Period, as determined in accordance with clause 15.4.

**“Residual Income”** means so much of the Distributable Income of the Scheme as the Responsible Entity determines does not represent Capital Gains.

**“Residual Income Entitlement”** means, in respect of a Member and a Distribution Period, the entitlement of the Member to the Residual Income of the Scheme for the Distribution Period, as determined in accordance with clause 15.4.

**“Significant Redemption”** means a redemption of Units that qualifies as a Significant Redemption under clause 15.5.

### **3.2 Amendment throughout**

- (a) Any and all references to “Income Distribution Date” are replaced with “Distribution Calculation Date”.
- (b) Any and all references to “Income Distribution Period” are replaced with “Distribution Period”.

### 3.3 **Amendment to “Clause 15 Distributions”**

Clause 15 of the Constitution is amended by deleting it and replacing it with the following:

#### **“15 Income and distributions to Members**

##### **15.1 Application of income and distribution provisions**

- (a) *The Responsible Entity must receive and collect all income of the Scheme.*
- (b) *If the Responsible Entity makes an election under clause 15.14 for the provisions contained in Schedule 2 to apply that is effective in respect of a particular Financial Year, then the provisions of this clause 15 will operate subject to, and be qualified by, the provisions of Schedule 2 for that Financial Year.*
- (c) *The provisions contained in clause 15.5 and clause 15.6 will not apply in respect of a particular Financial Year unless or until the Responsible Entity makes an election under clause 15.14 that clause 15.5 and clause 15.6 are to apply.*

##### **15.2 Determination of Distributable Income**

- (a) *The Responsible Entity must determine the:*
  - (i) *Distributable Income;*
  - (ii) *Capital Gains; and*
  - (iii) *Residual Income*

*of the Scheme for each Distribution Period and Financial Year.*
- (b) *Unless the Responsible Entity determines otherwise prior to the end of the relevant Distribution Period or Financial Year, the Distributable Income is the aggregate of:*
  - (i) *the amount which the Responsible Entity determines to be the “net income of the trust estate” for the Scheme for the purposes of section 95 of the Tax Act for the relevant period, determined as if the relevant period were a year of income for the purposes of the Tax Act, but disregarding:*
    - A. *any amounts the Responsible Entity determines are included in the “net income of the trust estate” for the Scheme for the relevant period that represent either or both of franking credits or foreign tax offsets; and*

- B. *any reduction in the net capital gain for the Scheme for the relevant period which the Responsible Entity determines arises as a result of the discount capital gains concession; and*
- (ii) *any additional amount that the Responsible Entity considers appropriate for distribution for the relevant period.*

### **15.3 Accounting standards**

*The preparation of the accounts of the Scheme in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 15.2.*

### **15.4 Residual Income Entitlements and Residual Gains Entitlements**

*Subject to clause 15.12, the Residual Income Entitlement and Residual Gains Entitlement of a Member for a Distribution Period is so much of, respectively, the Residual Income and Capital Gains of the Scheme calculated by the Responsible Entity as follows:*

- (a) *in respect of a Distribution Period ending on a Distribution Calculation Date other than 30 June in any year, an amount calculated as follows:*

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

*where:*

- A *is the number of Units held by the Member at the end of the Distribution Period;*
- B *is the number of Units held by all Members at the end of the Distribution Period;*
- C *is either:*
- (i) *for a Residual Income Entitlement, the Residual Income of the Scheme for the Distribution Period; and*
- (ii) *for a Residual Gains Entitlement, the excess, if any, of the Capital Gains of the Scheme for the Distribution Period over the Maximum Redemption Gains Amount for any Units redeemed during the Distribution Period under a Significant Redemption*

*or such lesser amount as the Responsible Entity may determine; and*

- (b) *in respect of a Distribution Period ending on 30 June in any year, an amount calculated as follows:*

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

*where:*

*A is the number of Units held by the Member at the end of the Distribution Period;*

*B is the number of Units held by all Members at the end of the Distribution Period; and*

*C is:*

*(i) for a Residual Income Entitlement, any amount by which the Residual Income of the Scheme for the Financial Year exceeds the aggregate of the amount of Residual Income calculated for the purposes of variable C(i) in paragraph 15.4(a) in respect of the previous Distribution Periods in the Financial Year; and*

*(ii) for a Residual Gains Entitlement, any amount by which the Capital Gains of the Scheme for the Financial Year exceeds the aggregate of:*

*A. the Redemption Gains Entitlements for all Units redeemed under a Significant Redemption during the Financial Year; and*

*B. the amounts of Capital Gains calculated for the purposes of variable C(ii) in paragraph 15.4(a) in respect of the previous Distribution Periods in the Financial Year.*

### **15.5 Significant Redemption**

*The Responsible Entity may determine that a redemption of Units in the Scheme is a Significant Redemption.*

### **15.6 Redemption Gains Entitlement**

- (a) If there is a Significant Redemption of Units in the Scheme, then the Responsible Entity may determine that a Redemption Gains Entitlement arises for the Member whose Units are redeemed under the Significant Redemption. If the Responsible Entity makes a determination that a Redemption Gains Entitlement arises, the Responsible Entity must determine the Maximum Redemption Gains Amount for the Units redeemed under the Significant Redemption.*



- (b) *The Maximum Redemption Gains Amount for a Unit redeemed under a Significant Redemption is:*
- (i) *so much of the Capital Gains which arise for the Scheme that the Responsible Entity reasonably determines are connected to a disposal of the Scheme Assets undertaken by the Responsible Entity to fund a payment, in whole or in part, of the redemption amount for the Units redeemed; divided by*
  - (ii) *the number of Units redeemed under the Significant Redemption.*
- (c) *The Redemption Gains Entitlement for a Unit redeemed under a Significant Redemption is the lesser of:*
- (i) *the Maximum Redemption Gains Amount for the Unit; and*
  - (ii) *the amount determined in accordance with the following formula:*

$$\frac{M}{AM} \times CG$$

where:

*M* is the Maximum Redemption Gains Amount for the Unit;

*AM* is the aggregate of the Maximum Redemption Gains Amount for all Units redeemed under a Significant Redemption during the Financial Year; and

*CG* is the Capital Gains of the Scheme for the Financial Year.

*For the avoidance of doubt, the Redemption Gains Entitlement for a Unit that is redeemed under a redemption that is not a Significant Redemption is nil.*

### **15.7 Present entitlement**

- (a) *Subject to clause 15.9, a person who at any time during the Financial Year is or has been a Member is presently entitled to:*
- (i) *the Capital Gains of the Scheme for the Financial Year in the proportion that the sum of the Residual Gains Entitlements and Redemption Gains Entitlements of the Member or Former Member in respect of the Financial Year bear to the sum of all Residual Gains Entitlements and Redemption Gains Entitlements of all persons who*

are or have been Members at any time during the Financial Year; and

- (ii) *the Residual Income of the Scheme for the Financial Year in the proportion that the Residual Income Entitlements of the Member or Former Member in respect of the Financial Year bear to the sum of all Residual Income Entitlements of all persons who are or have been Members at any time during the Financial Year,*

*and these amounts are to be set aside for distribution.*

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

### **15.8 Satisfaction of present entitlement and distribution of income**

- (a) *The present entitlement of a person who at any time during the Financial Year is a Member to:*
  - (i) *the Distributable Income of the Scheme for a Financial Year is satisfied by the distribution to the Member of the Income Entitlements of the person in respect of the Financial Year;*
  - (ii) *the Capital Gains of the Scheme for a Financial Year is satisfied by the distribution to the Member of:*
    - A. *so much of the redemption amount for the relevant Units redeemed by the Member as represents a Redemption Gains Entitlement; and*
    - B. *the Member's Residual Gains Entitlements; and*
  - (iii) *the Residual Income of the Scheme for a Financial Year is satisfied by the distribution to the Member of the Residual Income Entitlements of the Member.*
- (b) *Subject to any deductions made under clause 15.11, the Responsible Entity must pay to each person the person's Residual Income Entitlements and Residual Gains Entitlements for a Distribution Period. That payment must occur within 3 months after the Distribution Calculation Date for the Distribution Period.*

### 15.9 **Separate accounts**

- (a) *Subject to paragraph 15.9(b), the Responsible Entity may:*
- (i) *keep separate accounts of different categories or sources (or both) of Distributable Income or gains, or deductions, losses or credits for tax purposes, including Capital Gains and franked dividends. If such accounts are kept, they must be kept in accordance with the requirements of the Tax Act; and*
  - (ii) *allocate Distributable Income or gains, or deductions, losses or credits from a particular category or source (or both) for tax purposes to particular Members, including as part of the Income Entitlements of Members.*

*Where the Responsible Entity allocates items of Distributable Income or gains, or deductions, losses or credits from a particular category or source (or both) for tax purposes to a Member other than pro rata with all other Members, the Responsible Entity must:*

- (iii) *notify the Member; and*
  - (iv) *record, in the accounts and records of the Scheme, the allocation of items of Distributable Income or gains, or deductions, losses or credits from the particular category or source (or both) to the Member.*
- (b) *The Responsible Entity must:*
- (i) *keep separate accounts of the Capital Gains and Residual Income of the Scheme; and*
  - (ii) *allocate the Capital Gains and Residual Income of the Scheme kept in those separate accounts in accordance with the terms of this Constitution, including through:*
    - A. *in the case of Capital Gains, Residual Gains Entitlements and Redemption Gains Entitlements; and*
    - B. *in the case of Residual Income, Residual Income Entitlements.*

### 15.10 **Position on transfer of Units**

*A person who is or was a Member as at a Distribution Calculation Date remains entitled to their Residual Income Entitlements and Residual Gains Entitlements under clauses 15.4 and 15.7 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.*

### **15.11 Deductions from Distributable Income**

*The Responsible Entity may deduct from any entitlement of a person to a share of Distributable Income any amount which the Responsible Entity is required or authorised to deduct under this Constitution, including with respect to any amount payable by a Member or Former Member by way of indemnity or an amount on account of any Taxes, which the Responsible Entity believes it must or should deduct or withhold under law. All amounts deducted must be applied in reimbursing the Scheme for any corresponding amount paid, distributed or reimbursed out of the Scheme or reimbursing the Responsible Entity for the payment of the Tax to the person or authority entitled to it.*

### **15.12 Fractions**

*If the share of Distributable Income for a Member determined under clause 15.4 includes a fraction of a cent, the share is to be adjusted:*

- (a) if the fraction of a cent is greater than or equal to half a cent, to the nearest cent above the amount calculated; and*
- (b) otherwise, to the nearest cent below the amount calculated.*

### **15.13 Classification of items**

*Without limiting clause 15.2, the Responsible Entity has the power to determine:*

- (a) the classification of any item as being on Distributable Income or otherwise;*
- (b) the extent to which reserves or provisions need to be made; and*
- (c) whether any item should be recognised as it is received or as it accrues (but not yet received).*

### **15.14 Responsible Entity elections**

- (a) The Responsible Entity may elect in writing for:*
  - (i) the provisions contained in Schedule 2 to apply on and from the date specified in the election. Any such election will continue to have effect subject to the provisions contained in Schedule 2; or*
  - (ii) the provisions in clause 15.5 and clause 15.6 to apply on or from the date specified in the election. Any election will continue to have effect subject to the provisions contained in Schedule 2 should the*

*Responsible Entity make an election under clause 15.14(a)(i).*

- (b) *The Responsible Entity may notify the Members of the making of an election under this clause 15.14.*
- (c) *Nothing in this clause 15.14 imposes an obligation on the Responsible Entity to:*
  - (i) *elect to apply the AMIT Regime to the Scheme;*
  - (ii) *facilitate the Scheme being able to elect to apply the AMIT Regime to the Scheme;*
  - (iii) *make any amendments to the Constitution; or*
  - (iv) *make any of the elections provided for under this clause 15.14.*

#### **15.15 Impact of Schedule 2 if the Scheme is not an AMIT**

- (a) *If the Scheme is not an AMIT for a Financial Year but the Responsible Entity purports to exercise a power under Schedule 2 on the basis that the Responsible Entity believes that the Scheme is or will be an AMIT for the Financial Year, then the following provisions apply in respect of the exercise of the relevant power.*
- (b) *The exercise of the powers by the Responsible Entity will, to the maximum extent possible but subject to the following provisions, be treated as a proper exercise of the Responsible Entity's powers under this Constitution or at law.*
- (c) *To the extent that the operation of any of these powers depends, for its operation, on the Scheme being an AMIT for the Financial Year, the Scheme will be treated as if it were an AMIT for the purposes of that power.*
- (d) *Nothing in Schedule 2 or the terms of this clause will be taken to invalidate any action that is undertaken by the Responsible Entity pursuant to its powers under clause 15 and those powers may be exercised by the Responsible Entity despite any contrary powers provided under Schedule 2.*

#### **15.16 Tax**

*The Responsible Entity may take any action that it considers is necessary (including without limitation by distributing or applying capital to or for the benefit of Members) to ensure to the extent possible that any Tax liability under the Tax Act in respect of the net income of the Scheme is borne by the Members in proportions that correspond with the shares of Distributable Income to which they are*

*presently entitled, and that the Responsible Entity incurs no liability to pay Tax under section 99 or section 99A of the Tax Act as trustee of the Scheme.*

#### **15.18 Reserves**

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

#### **15.19 Payment of distributions**

*The Responsible Entity shall pay or apply to or for the Members who are on the Register at the close of business on the last day of an Distribution Period the amount of their respective Income Entitlements pursuant to clause 15.4 (excluding any amounts previously distributed in respect of the Distribution Period) within 2 months after the Distribution Calculation Date for the Distribution Period.*

#### **15.20 Other distributions**

*Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the Responsible Entity may at any time distribute from the Scheme Assets any amount of capital to Members pro rata according to the numbers of Units held as at a time decided by the Responsible Entity or distribute income to Members in accordance with the proportions in clause 15.4 or clause 15.7. Distributions by the Responsible Entity to Members may be made by means of cash, cheque, direct deposit or property, including without limitation, the application of the distribution towards the issue of additional Units (with the issue of the units being in accordance with clause 15.21, as though under a distribution reinvestment scheme). The provisions of this clause 15 apply to such distributions so far as they are capable of doing so.*

#### **15.21 Excess distribution**

*If the Responsible Entity determines that the total amount of the distributions actually made to Members (in one of the forms mentioned in clause 15.18) during or with respect to a Financial Year exceeds the Distributable Income for the Financial Year, the Responsible Entity may treat the excess as a distribution of capital.*

### **15.22 Distribution reinvestment arrangements**

*Subject to the approval of the Responsible Entity, a Member may elect to reinvest some or all of any distribution payable to a Member by acquiring additional Units in accordance with this Constitution. In this event, the Responsible Entity will be treated as having received and accepted an application to reinvest distributions immediately before the first Valuation Time after the end of the relevant Distribution Period. Units issued in respect of such application are to be issued at an Issue Price determined as at the first Valuation Time after the end of the relevant Distribution Period but calculated as if the Acquisition Expenses are nil. The procedure for reinvestment of distributions (and any changes in the procedure) shall be determined by the Responsible Entity and notified to Members from time to time.*

### **15.23 Classes**

*The rights of a Member under this clause 15 are subject to the rights, restrictions and obligations attaching to any particular Unit or Class on issue from time to time.*

### **15.24 If the Scheme becomes taxable**

*If for any Financial Year the Scheme is to be assessed for income Tax as a company:*

- (a) the Responsible Entity may:
 
  - (i) determine that the preceding provisions in clause 15 do not apply for that Financial Year;*
  - (ii) make any distribution or interim distribution it sees fit;*
  - (iii) fix a record date for any distribution or interim distribution; and*
  - (iv) determine in its absolute discretion how Income for that Financial Year is to be worked out;**
- (b) unless the Responsible Entity determines otherwise, the Responsible Entity must determine the Income of the Scheme in accordance with generally accepted accounting principles; and*

*subject to any rights attaching to a particular Unit or class of Units each Member is entitled to a portion of a distribution or interim distribution equal to the proportion that the number of Units held by that Member on the record date for the distribution or interim distribution bears to the total number of Units held by all Members on that record date.*

### **15.25 Liability**

*To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 15, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of any discretion or power despite any error or miscalculation in any provision made for Tax.”*

### **3.4 Amendment to clause 27 Amendment**

Clause 27 of the Constitution is amended by deleting it and replacing it with the following:

#### **“27 Amendment**

##### **27.1 Responsible Entity may amend**

- (a) *While the Scheme is Registered, this Constitution may be modified, repealed or replaced in accordance with the Corporations Act. For the avoidance of doubt, this means that this Constitution may be modified, repealed or replaced:*
  - (i) *by a Special Resolution of Members; or*
  - (ii) *by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect Members’ rights.*
- (b) *While the Scheme is not Registered, the Responsible Entity may amend this Constitution by supplemental deed.*

##### **27.2 Attribution Managed Investment Trust**

*Without limiting the Responsible Entity’s powers in clause 27.1, but subject to the Corporations Act, the Responsible Entity may make any change to this Constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:*

- (a) *facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Scheme;*
- (b) *facilitate compliance with the terms of the AMIT Regime in relation to the Scheme, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the Responsible Entity or Members;*
- (c) *facilitate the proper administration and operation of the Scheme under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Members that arise under the AMIT Regime; or*



- (d) *comply with the conditions of any ASIC Instrument issued in relation to the AMIT Regime, or facilitate operation of the Scheme in reliance on such ASIC Instrument.*

### **3.5 Insertion of new Schedule 2**

The Constitution is amended by inserting the new “**Schedule 2—AMIT Provisions**” contained in the Schedule of this Supplemental Deed.

## **4. Governing law**

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

**Executed as a deed**

This Supplemental Deed 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 Corporations Act by

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

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

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**Schedule**

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**Schedule 2—AMIT Provisions**

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**1. Definitions**

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in the Constitution, and:

- (a) **AMIT Cost Base Increase Amount** has the meaning given to that phrase in section 104-107E of the Tax Act.
- (b) **AMIT Income Year** means a year of income for the purposes of the Tax Act that the Scheme is an AMIT.
- (c) **AMMA Statement** has the meaning given to that phrase in section 276-460 of the Tax Act.
- (d) **Constituent Documents** mean the “constituent documents” referred to in section 276-210(3) of the Tax Act.
- (e) **Determined Member Component** has the meaning given to that phrase in section 276-205 of the Tax Act.
- (f) **Determined Trust Component** has the meaning given to that phrase in section 276-255 of the Tax Act.
- (g) **Discovery Year** has the meaning given to that phrase in section 276-345 of the Tax Act.
- (h) **Member Component** has the meaning given to that phrase in section 276-210 of the Tax Act.
- (i) **Member Objection Choice** means a choice made by a Member under the AMIT Regime for the Member’s Determined Member Component to be the Member’s Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.
- (j) **Over** has the meaning given to that phrase in section 276-345 of the Tax Act.
- (k) **Trust Component** has the meaning given to that phrase in section 276-260 of the Tax Act.
- (l) **Under** has the meaning given to that phrase in section 276-345 of the Tax Act.

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**2. Responsible Entity's powers****2.1 AMIT election**

The Responsible Entity may make an election under the AMIT Regime to determine the Scheme to be an AMIT with effect from the commencement of any Financial Year of the Scheme.

## 2.2 General provisions

The Responsible Entity has, without limiting its other rights and powers provided for under the Constitution and this Schedule 2, all of the powers and rights which are necessary or desirable to enable:

- (a) the Scheme to be eligible to apply the AMIT Regime;
- (b) the Responsible Entity to comply with the requirements of the AMIT Regime;
- (c) the Scheme to be properly administered and operated under the AMIT Regime; and
- (d) the Responsible Entity to maintain equity among Members in the operation of the AMIT Regime.

## 2.3 Specific powers

The Responsible Entity may under the AMIT Regime in respect of an AMIT Income Year:

- (a) determine the taxable income of the Scheme for each Financial Year, including a determination of the taxable income of a particular category, source or character for tax purposes. This includes determining all of the Scheme's Determined Trust Components and Trust Components under the AMIT Regime for any AMIT Income Year;
- (b) make an attribution of the taxable income of the Scheme to Members under the AMIT Regime, including an attribution of taxable income of a particular category, source or character for tax purposes. This includes determining all of each Member's Determined Member Components and Member Components under the AMIT Regime for any AMIT Income Year;
- (c) make an alteration to the Responsible Entity's determination of the taxable income of the Scheme for a Financial Year, or the Responsible Entity's attribution of the taxable income of the Scheme to Members 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 Scheme's Determined Trust Components and Trust Components and a Member's Determined Member Components and Member Components under the AMIT Regime for any AMIT Income Year as a result of any Unders or Overs;
- (d) determine whether to issue an AMMA Statement to any Member;
- (e) determine what information should be contained in any such AMMA Statement;
- (f) issue an AMMA Statement to any Member; and
- (g) amend an AMMA Statement that has been issued to a Member, and determine the basis upon which the AMMA Statement is to be amended;

## 2.4 Units and Classes of Units

- (a) Subject to paragraph 2.4(b) of this Schedule 2, the Responsible Entity may under the AMIT Regime issue Units of a single Class or different Classes. Each different Class of Units must have distinct rights, obligations and restrictions from the rights, obligations and restrictions of all other Classes of Units 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.
- (b) Paragraph 2.4(a) of this Schedule 2 does not permit the Responsible Entity to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Corporations Act requires those matters to be set out in this Constitution.

## 2.5 Members' acknowledgement regarding choice for Unders/Overs

Each Member acknowledges or is taken to acknowledge:

- (a) that the Responsible Entity has, under the AMIT Regime in respect of an AMIT Income Year a choice with respect to how the Responsible Entity is to address any amounts which may give rise to an Unders or Overs of a particular character for the Scheme, including whether such amounts should be addressed by the Responsible Entity by:
  - (i) issuing amended AMMA Statements to Members under section 276-455(4) of the Tax Act (as may be amended from time to time), for the year of income for the Scheme to which the Under or Over relates; or
  - (ii) treating the amount as an Under or Over of a particular character for the Scheme, and adjusting the Scheme'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) ; and
- (b) choices made by the Responsible Entity pursuant to paragraph 2.2 of this Schedule 2 may result in:
  - (i) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in the Discovery Year; or
  - (ii) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in an earlier income year,

than if the Responsible Entity did not make that choice or made the choice in a different way.

## 2.6 Responsible Entity's limitation of liability for AMIT Regime powers

Without limiting clause 19 and to the maximum extent permitted by law but subject to the Corporations Act, while the Scheme is a Registered Scheme, the Responsible Entity does not incur any liability and it is not obliged to account to anyone (including any Member or Former Member) nor is it liable for any loss or damage as a result of

the exercise of any power, discretion or choice under this paragraph 2 of this Schedule 2, 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.

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### **3. Attribution of taxable income to member**

#### **3.1 Responsible Entity must make “fair and reasonable” allocation**

- (a) Following the end of a Financial Year which is an AMIT Income Year, the Responsible Entity must attribute the taxable income of the Scheme for the Financial Year to Members under the AMIT Regime, including the attribution of taxable income of each particular category or source (or both) for tax purposes to Members.
- (b) The Responsible Entity must perform the attribution under paragraph 3.1(a) of this Schedule 2, 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 Member's Member Components and Determined Member Components of a particular character is so much of the Scheme's Determined Trust Component of that particular character as is attributable to the Units held by the Member;
  - (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 Scheme; and
  - (iii) the Responsible Entity must not attribute any part of a Determined Trust Component of the Scheme to a Member's Units because of the tax characteristics of the Member.

#### **3.2 Attribution must be in accordance with existing distribution provisions**

Without limiting paragraph 3.1(b) of this Schedule 2, the Responsible Entity must attribute in respect of an AMIT Income Year to each Member:

- (a) so much of any Determined Trust Components of the Scheme for the Financial Year as the Responsible Entity reasonably determines are reflected in the Member's present entitlement to the income of the Scheme of the Financial Year, and
- (b) so much of the Determined Trust Components for the Financial year as the Responsible Entity reasonably determines are reflected in Redemption Gains Entitlements to which the Member has become entitled prior to the end of the Financial Year.

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## **4. Member's objections**

### **4.1 Member must notify, provide information and indemnify Responsible Entity in relation to objections**

If a Member objects to the basis of the attribution of the taxable income of the Scheme for the purposes of the AMIT Regime, including by making a Member Objection Choice, the Member agrees to:

- (a) provide the Responsible Entity with written notice of the Member's intention to make an objection at least five Business Days prior to notifying the Commissioner of Taxation of its objection;
- (b) include, in the notice provided to the Responsible Entity, a summary of the reasons why the Member considers the attribution to be inappropriate;
- (c) provide to the Responsible Entity any information the Responsible Entity reasonably requests in order to assess the Member's objection or proposed objection; and
- (d) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection or proposed objection.

### **4.2 Members acknowledge consequences if objection made**

Each Member is taken to agree that if any Member makes an objection to the basis of attributing the taxable income of the Scheme under the AMIT Regime, including by making a Member Objection Choice:

- (a) it may be necessary or desirable for the Responsible Entity to amend its attribution of the relevant taxable income to the Members and issue amended AMMA Statements to Members;
- (b) the Responsible Entity may issue or reissue any AMMA Statement to a Member;
- (c) the Determined Member Components of the Member and any other Members in the Scheme may, under the AMIT Regime, be equal to the Member Components of the Member and any other Members in the Scheme; and
- (d) the Determined Trust Components of the Scheme may, under the AMIT Regime, be equal to the Trust Components of the Scheme.

### **4.3 Limitation of liability**

The Responsible Entity has no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to an objection to the basis of attribution of the taxable income of the Scheme under the AMIT Regime, including by the Member making a Member Objection Choice.

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## **5. Responsible Entity indemnity**

### **5.1 Responsible Entity has a right to be indemnified for Tax payable**

Each Member is required to indemnify the Responsible Entity for:

- (a) any Tax payable by the Responsible Entity as a result of the application of the AMIT Regime which the Responsible Entity reasonably determines relates to the Member, Units held by the Member, or an attribution of taxable income made to the Member; and
- (b) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under paragraph 5.1 of this Schedule 2 or under the AMIT Regime.

### **5.2 Responsible Entity may prescribe terms and conditions**

The Responsible Entity may prescribe particular terms and conditions which apply in the event that the Responsible Entity is entitled to be indemnified by a Member under paragraph 5.1 of this Schedule 2, or under the AMIT Regime.

### **5.3 Methods through which indemnity may be satisfied**

The Members agree that the Responsible Entity may, if it is entitled to be indemnified by a Member under paragraph 5.1 of this Schedule 2, or under the AMIT Regime undertake the following actions in order to satisfy that indemnity:

- (a) deduct from any amounts owing to the particular Member the aggregate of any amounts which the Responsible Entity is entitled to be indemnified under paragraph 5.1 of this Schedule 2, or under the AMIT Regime; and
- (b) compulsorily redeem such number of units held by the Member which the Responsible Entity reasonably determines is sufficient to cover the amounts for which the Responsible Entity is entitled to be indemnified under paragraph 5.1 of this Schedule 2, or under the AMIT Regime.