

## Supplemental Deed No.2

### Centuria Diversified Property Fund

**Centuria Property Funds Limited ACN 086 553 639**

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## Supplemental Deed No.2

Date 2022

Party **Centuria Property Funds Limited ACN 086 553 639** of Level 41,  
Chifley Tower, 2 Chifley Square, Sydney, New South Wales  
(**Responsible Entity**)

- Recitals
- A. The Responsible Entity is the responsible entity of the Centuria Diversified Property Fund (**Scheme**) which is a managed investment scheme.
  - B. The Scheme was established by a constitution dated as amended from time to time (**Constitution**).
  - C. In accordance with section 601GC(1)(a) of the Corporations Act and clause 27.1(a)(i) of the Constitution, the Constitution may be modified by a special resolution of the Members.
  - D. On [date] 2022, the Members approved by special resolution amendments to the Constitution on the terms set out in this supplementary deed.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed as follows:

### 1. Definitions

- 1.1 Words and expressions defined in the Constitution have the same meaning in this deed unless otherwise defined in this deed.
- 1.2 The interpretation clause in clause 1.2 in the Constitution applies to this deed as if it were set out in full in this deed.
- 1.3 **Effective Date** has the meaning given to that term in clause 4 of this deed.

### 2. Supplemental deed

This deed is supplemental to the Constitution.

### 3. Amendment to Constitution

The Constitution is amended so that :

- (a) the text shown as underlined in the document in the Schedule is inserted into the Constitution; and
- (b) the text shown as struck through is deleted from the Constitution; and
- (c) 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. Effective Date

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This deed will take effect immediately upon lodgement of this deed with the Australian Securities and Investments Commission under section 601GC(2) of the Corporations Act (**Effective Date**).

#### 5. Amendments not to affect validity, rights, obligations

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- (a) The amendments to the Constitution contemplated by this deed do not affect the validity or enforceability of the Constitution.
- (b) Nothing in this deed:
  - (i) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Constitution before the Effective Date; or
  - (ii) discharges, releases or otherwise affects any liability or obligation arising under the Constitution before the Effective Date.

#### 6. No resettlement

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For the avoidance of doubt, the Responsible Entity by this deed does not:

- (a) re-declare the Trust;
- (b) resettle the Trust; or
- (c) otherwise cause the transfer, vesting or accruing of the Trust's property and assets to, or in, any person or persons.

#### 7. Binding conditions

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This deed is binding on the Responsible Entity and each present and future Member and any person claiming through any of them as if each was a party to this deed.

#### 8. General

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##### 8.1 Governing law

This deed is governed by the laws applicable in New South Wales.

##### 8.2 Inconsistency

If there is an inconsistency between the terms of the Constitution and this deed, the terms of this deed prevail to the extent of the inconsistency.

## Signing page

Executed as a deed poll.

**Executed by Centuria Property Funds Limited ACN 086 553 639** as responsible entity of the Centruria Diversified Property Fund in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Signature of Director

---

Signature of Director/Company Secretary

---

Full name (print)

---

Full name (print)

## Schedule - Amended Constitution

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# Constitution

Centuria Diversified Property Fund

Centuria Property Funds Limited

ACN 086 553 639  
Responsible Entity

~~As at 1.2.2021~~





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## Deed Poll dated

**Party**     **Centuria Property Funds Limited ACN 086 553 639** of Level 41, Chifley Tower, 2 Chifley Square, Sydney, NSW 2000 ("**Responsible Entity**")

## Background

- A.        The Responsible Entity intends to establish a managed investment scheme to be called Centuria Diversified Property Fund.
- B.        Centuria Property Funds Limited is to be the Scheme's first responsible entity.
- C.        The Responsible Entity proposes that this Constitution is to be the Scheme's constitution.

## Operative provisions

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### 1.        Definitions and interpretation

#### 1.1       Definitions

In this Constitution:

"2022 Stapling" means the arrangement described in clause 6.2 pursuant to which all of the Stapling Units are Stapled to units in PPIF.

**"Acquisition Expenses"** means at any time, an amount (if any) which the Responsible Entity determines is the total of all Expenses which were incurred by the Responsible Entity including to establish the Scheme and acquire all Scheme Assets. If the Responsible Entity considers it appropriate, it may determine Acquisition Expenses for any one or more purposes in this Constitution to be a lesser sum or zero.

"Acquisition Units" means Units belonging to the Class known as "Acquisition Units", the terms of issue of which are specified in Schedule 4.

**"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.

**"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.

**"Anti-Money Laundering Laws"** means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and related legislation, regulations and rules as in force in Australia and other relevant jurisdictions from time to time.

**"ASIC"** means the Australian Securities and Investments Commission or if it ceases to exist, any regulatory body or authority as then serves substantially the same objects.

**"ASIC Instrument"** means an exemption, modification, declaration, determination or any other instrument granted or issued by ASIC in respect of or applicable to the Scheme (whether or not it may also have application to other registered managed investment schemes).

**"Associate"** of a person means another person who is associated with the first within the meaning of sections 10 to 17 of the Corporations Act.

**"Business Day"** means any day excluding a Saturday, Sunday or a public holiday on which banks are open for business generally in Sydney.

**"Calculation Date"** means 22 April 2022, or such other date as the Responsible Entity determines.

**"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).

**"Capital Reallocation Amount"** has the meaning given in clause 17.27(a).

**"CC Member"** means a member of the Compliance Committee.

**"Class"** means a class of Units.

**"Class Expense"** in relation to a Class, means an Expense or that proportion of an Expense determined by the Responsible Entity to be referable to the Class in accordance with clause ~~13~~15.2.

**"Commencement Date"** means the date of completion of the acquisition by the Scheme of its first real property asset or such other date as determined by the Responsible Entity.

**"Complaint"** means an expression of dissatisfaction made to the Responsible Entity related to the Scheme or the complaints handling process itself where a response or resolution is explicitly or implicitly expected.

**"Compliance Committee"** means the committee (if any) established by the Responsible Entity pursuant to section 601JA(1) of the Corporations Act.

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

**"Derivative"** means an arrangement in relation to which the following conditions are satisfied:

- (a) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and
- (b) the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies, by reference to (wholly or in part) the value or

amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:

- (i) an asset;
- (ii) a rate (including an interest rate or exchange rate);
- (iii) an index;
- (iv) a commodity.

Without limitation and for the removal of doubt, "Derivative" includes any contract commonly known as a derivative, futures contract or synthetic.

**"Designated Time"** means, in respect of an application for Units or a Withdrawal Request (as the case may be), the time during each Business Day designated from time to time by the Responsible Entity pursuant to clause 7.12 or clause ~~8~~10.12 (as the case may be). The Designated Time applicable to applications for Units and to Withdrawal Requests may be the same or different.

**"Disclosure Document"** means a document by which Units are offered for subscription (including an information memorandum or product disclosure statement).

**"Disposal Expenses"** means, at any time, an amount (if any) which the Responsible Entity determines is the total Expenses which may be incurred or are expected to be incurred by the Responsible Entity if all Scheme Assets held at that time were to be disposed of at that time. If the Responsible Entity considers it appropriate, it may determine Disposal Expenses to be a lesser sum or zero.

**"Distributable Income"** means the amount determined by the Responsible Entity in accordance with clause ~~15~~17.

**"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.

**"Expenses"** includes any expenses, costs, charges, fees, commissions, brokerage, Taxes, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.

**"Extraordinary Resolution"** has the same meaning as in the Corporations Act, namely, a resolution:

- (a) of which notice as set out in paragraph 252J(c) of the Corporations Act has been given; and

- (b) that has been passed by at least 50% of the total votes that may be cast by Members entitled to vote on the resolution (including Members who are not present in person or by proxy).

**"Financial Product"** has the same meaning as in the Corporations Act (which for the removal of doubt includes debentures, convertible notes or other instruments of a debt, equity or hybrid nature) but excluding Units.

**"Financial Year"** means the 12 month period beginning on 1 July and ending on 30 June in each year, except that:

- (a) the first Financial Year begins on the date of commencement of the Scheme and ends on the first 30 June to occur thereafter; and
- (b) the last Financial Year begins on the last 1 July before the date of final distribution on winding up of the Scheme and ends on the date of that final distribution.

**"Former Member"** means in respect of a Distribution Period, a person who was registered as the holder of a Unit at any time during the Distribution Period, but who is not registered as the holder of the Unit at the end of the last day of the Distribution Period.

**"Gross Asset Value of the Scheme Assets"** means, at any time, the amount equal to the total value of the Scheme Assets in accordance with clause 9.11 at that time adjusted for such provisions and incremental or decremental adjustments as the Responsible Entity considers appropriate.

**"Implementation Date"** means 19 May 2022, or such other date as the Responsible Entity determines.

**"Income Entitlement"** means a Residual Income Entitlement, Residual Gains Entitlement or a Redemption Gains Entitlement.

**"Indirect Acquisition Cost Adjustment"** where the Scheme invests in any fund, company or other investment vehicle (**Vehicle**) that holds real estate which was acquired within 5 years of that investment, such adjustment (if any) as the Responsible Entity determines in its discretion on account of any capital raising expenses, legal fees, brokerage, stamp duty, Taxes and other costs that have been incurred in connection with such acquisition on the basis that such costs should be amortised over the period from the date of acquisition to the date which is the lesser of 5 years, the remaining term of the relevant Vehicle, the remaining term of the Scheme, or such other period as the Responsible Entity reasonably determines. If the Responsible Entity considers it appropriate, it may determine the Indirect Acquisition Cost Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.

**"Issue Price"** means the issue price at which Units are issued as calculated in accordance with clause ~~7.7~~ 9.7, 9.9, 6.9(a) or 9.15 (as applicable). The Responsible Entity may calculate the Issue Price to the number of decimal places that the Responsible Entity determines.

**"Liabilities"** at any time, means the aggregate of the following at that time as determined by the Responsible Entity:

- (a) all liabilities of every nature of or in respect of the Scheme including contingent liabilities and any anticipated liabilities or provisions for liabilities that the Responsible Entity considers should be included; and
- (b) all amounts payable out of or reimbursable from Scheme Assets or in relation to the Scheme, including (without limitation) any unpaid amounts due and payable to any Members or to the Responsible Entity (as its remuneration), or where determined by the Responsible Entity, provisions with respect to such amounts,

but excluding any amounts included as liabilities for accounting purposes reflecting funds available to pay Members. Where more than one Class is on issue and the Net Asset Value of the Scheme Assets referable to a particular Class is being calculated, reference to "Liabilities" means that proportion of the Liabilities that the Responsible Entity considers are properly referable to each Class.

**"Limited Quarterly Withdrawal Facility"** means the limited quarterly withdrawal facility the Responsible Entity may offer in accordance with clause ~~8~~[10.5\(f\)](#).

**"Liquid"** has the meaning given for the purposes of sections 601KA(4)-(6) inclusive of the Corporations Act.

**"Maximum Redemption Gains Amount"** has the meaning given to it in clause ~~15.6~~[17.7\(b\)](#).

**"Meeting Record Date"** means the record date for voting at the Stapling Meeting as notified by the Responsible Entity.

**"Member"** has the same meaning as set out in section 9 of the Corporations Act.

**"Minimum Application Amount"** means such sum that the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different applicants or for different Classes.

**"Minimum Balance"** means such sum that the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different Classes.

**"Minimum Withdrawal Amount"** means such sum that the Responsible Entity determines from time to time. The Responsible Entity may determine a different sum for different applicants or for different Classes.

**"Net Asset Value of the Scheme Assets"** means, at any time, the amount equal to the total value of the Scheme Assets calculated in accordance with clause [9](#)~~11~~ at that time less the Liabilities of the Scheme at that time and adjusted for such provisions and incremental or decremental adjustments as the Responsible Entity considers appropriate and further adjusted for the amortisation over 5 years (or such other periods as the Responsible Entity considers appropriate) of any Acquisition Expenses or other Expenses as the Responsible Entity determines.

**"NAV per Unit"** means the Net Asset Value of the Scheme Assets ÷ the number of Units on issue.

**"Net Investment"** means, in respect of an application for Units, an amount equal to the cash payment accompanying that application or (as the case may be) the market value of the property (as determined by the Responsible Entity) transferred pursuant to clause ~~7~~[9.2](#), in each case minus the aggregate of the following sums (to the extent any of those sums have not been paid by the applicant before the Responsible Entity accepts the application):

- (a) any Expenses incurred or payable by the Scheme or the Responsible Entity in respect of the payment of any application money or otherwise in respect of the issue and allotment of the Units; and
- (b) such of the Expenses in respect of the valuation of the property or transfer to (or at the direction of) or acceptance by (or on behalf of) the Responsible Entity of the property as the Responsible Entity determines not to be payable or reimbursable out of Scheme Assets.

**"Ordinary Resolution"** means a resolution that has been passed by more than 50% of the votes cast by Members entitled to vote on the resolution.

**"Ordinary Unit"** means an ordinary unit in the Scheme.

**"Other Issuers"** means the issuers of the Other Securities or the Other Stapled Securities or any one of them, as applicable.

**"Other Securities"** means any Securities other than Units.

**"Other Stapled Entities"** means any trusts (other than the Trust), companies or other entities the Securities in which are Stapled to the Units, or any one of them, as applicable.

**"Other Stapled Securities"** means the Other Securities which are Stapled to the Units.

**"Partly Paid Unit"** means a Unit for which some or all of the Issue Price is unpaid.

**"Periodic Liquidity Event"** means the periodic liquidity event the Responsible Entity may offer in accordance with clause ~~8~~10.5(h).

**"PPIF"** means the Primewest Property Income Fund ARSN 645 597 404.

**"PPIF RE"** means Primewest Management Limited ACN 091 415 833 or any replacement responsible entity of PPIF.

**"Proceedings"** means, 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:

- (a) in the person's capacity as a CC Member; or
- (b) in the course of acting in connection with the affairs of the Compliance Committee; or
- (c) otherwise arising out of the person holding office as a CC Member,

including proceedings alleging that the person was guilty of negligence, default, breach of trust or breach of duty in relation to the Scheme.

**"Quarterly Available Funds"** means the amount available to satisfy Withdrawal Requests pursuant to the Quarterly Withdrawal Facility in accordance with clause ~~8~~10.5(f)(i).

**"Readily Liquid Assets"** means assets (including cash) that can be converted to cash within seven days.

**"Recipient Capital Reallocation Amount"** has the meaning given in clause 17.27(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~~17.7(c).

**"Register"** means the register of Members maintained by the Responsible Entity pursuant to Chapter 2C of the Corporations Act.

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

**"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~~17.5.

**"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~~[17.5](#).

**"Responsible Entity"** means, Centuria Property Funds Limited (while the Scheme is not Registered), and (while the Scheme is Registered) the company named in clause 2.1 or otherwise named in ASIC's record of registration for the Scheme as the responsible entity or temporary responsible entity of the Scheme.

**"Scheme"** means the managed investment scheme initially called Centuria Diversified Property Fund established by this Constitution.

**"Scheme Assets"** means all cash, property, rights and income of the Trust from time to time (including without limitation all the cash or property transferred to (or at the direction of) the Responsible Entity by an applicant but only on and from the time when Units are taken to be created and issued to the applicant) and where the context permits, includes any part of it, provided that for all purposes under this Constitution, unless the context otherwise requires, the Scheme's proportionate interest in a Sub Entity Asset will be deemed to be a Scheme Asset as if the Scheme held that proportion of the Sub Entity Asset directly and the definition of Gross Asset Value of the Scheme Assets will be read accordingly. Where more than one Class is on issue and the Net Asset Value of the Scheme Assets or Gross Asset Value of the Scheme Assets referable to a particular Class is being calculated, reference to "Scheme Assets" means that proportion of the Scheme Assets that the Responsible Entity considers are properly referable to each Class.

**"Securities"** [means any shares, stocks, debentures, bonds, convertible notes or other securities in a company or other entity, or any units or other interest in a trust or other entity, and includes any option over any such thing.](#)

**"Significant Redemption"** means a redemption of Units that qualifies as a Significant Redemption under clause ~~15.5~~[17.6](#).

**"Special Resolution"** has the same meaning as in the Corporations Act, namely, a resolution:

- (a) of which notice as set out in paragraph 252J(c) of the Corporations Act has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

**"Stapled"** [means the state resulting from Stapling.](#)

**"Stapled Entity"** [means the notional entity formed through the Stapling of each Unit to one or more Other Securities.](#)

**"Stapled Security"** [means a Unit and one or more Other Securities which are Stapled together.](#)

**"Stapling"** [means the linking together of all of the rights and obligations which attach to a Unit with the rights and obligations which attach to one or more Other Securities.](#)

**"Stapling Date"** [means the date determined by the Responsible Entity to be the first day on which all the Units on issue are Stapled to one or more Other Securities.](#)

**"Stapling Meeting"** [means a meeting of the Members to consider and vote on the Stapling Resolutions among other resolutions.](#)

**"Stapling Member"** [means a person registered in the Register as a holder of one or more Units at 7:00pm on the Calculation Date.](#)



"Stapling Resolutions" means the following resolutions of Members:

- (a) an Ordinary Resolution to approve the 2022 Stapling; and
- (b) a Special Resolution for the purposes of section 601GC(1) of the Corporations Act to approve the amendments to this Constitution in respect of the 2022 Stapling.

"Stapling Unit" means a Unit on issue as at 7.00pm on the Calculation Date.

**"Sub Entity"** means a trust, company or other entity in which the Scheme has a direct or indirect interest, including a trust, company or other entity that was established by or is managed by the Responsible Entity or by an Associate or related body corporate of the Responsible Entity.

**"Sub Entity Assets"** 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 Sub Entity and any provisions the Responsible Entity considers should be taken into account in determining the Sub Entity Assets, but excludes—

- (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"** means any kind of tax, levy, charge, impost, rate, fee, deduction, duty, excise, or withholding or instalment amount, whether direct or indirect, by whatever method imposed, collected or recovered, together with any interest, fine, penalty or statutory charge payable, imposed or claimed in respect of any such amount.

**"Tax Act"** means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth), as applicable, and where appropriate, includes the *Taxation Administration Act 1953* (Cth), applicable imposition and/or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

**"Tax Loss"**, means a "tax loss" as defined in section 272-140 of Schedule 2F to the Tax Act and/or a "capital loss" or "net capital loss" as defined in the Tax Act.

**"Trust"** means the trust constituted by this Constitution in respect of the Scheme Assets.

**"Unanimous Resolution"** means a resolution which must be passed by 100% of the votes cast by Members entitled to vote on the resolution.

**"Underwrite Units"** means a Unit which is in a class referred to as an "Underwrite Unit" in the Scheme, with the rights and restrictions set out in their terms of issue.

**"Unit"** means, subject to any rights, obligations and restrictions attaching to any particular Unit or Class, an undivided share in the beneficial interest in the Scheme Assets as provided in this Constitution.

**"Valuation Time"** means a time at which the Responsible Entity calculates the Net Asset Value of the Scheme Assets.

**"Withdrawal Offer"** means a withdrawal offer made by the Responsible Entity from time to time.

**"Withdrawal Price"** means:

- (a) in respect of Underwrite Units, the prevailing Issue Price of Ordinary Units; and
- (b) otherwise, the amount determined by the Responsible Entity from time to time by subtracting the Disposal Expenses at that time from the aggregate of the Net Asset Value of the Scheme Assets and such Indirect Acquisition Cost Adjustment (if any) as the Responsible Entity determines at that time, dividing the resultant amount by the total number of Units on issue at that time. The Responsible Entity may calculate the Withdrawal Price to the number of decimal places that the Responsible Entity determines and may round the Withdrawal Price up or down as the Responsible Entity thinks fit. In determining the Withdrawal Price of a Unit, the Responsible Entity may, to the fullest extent permitted by law (including any ASIC Instrument), exercise its discretion in determining:
  - (i) any matter affecting the value of any factor included in the calculation of the Withdrawal Price; and
  - (ii) any matter which is an aspect of the method of calculating the Withdrawal Price.

**"Withdrawal Request"** means a request to withdraw from the Scheme in response to a Withdrawal Offer.

## 1.2 Interpretation

In this Constitution:

- (a) headings are for convenience only and do not affect interpretation; and
  - (b) the recitals form part of this Constitution; and
- unless the context indicates a contrary intention:
- (c) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns, including any person taking by way of novation;
  - (d) the expression **"person"** includes an individual, a corporation and an unincorporated association, an authority, a partnership and a trust;
  - (e) a reference to any statute or to any statutory provision includes any statutory modification, re-enactment or replacement of it or any statutory provision substituted for it and all ordinances, by-laws, regulations, rules and other statutory instruments (however described) issued under it;
  - (f) words importing the singular include the plural (and vice versa) and words indicating a given gender include all other genders;
  - (g) the word "includes," in any form, is not a word of limitation;
  - (h) where a word or phrase has a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (i) if the day by which any sum is payable hereunder or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next succeeding Business Day, unless the next succeeding Business Day falls in a different Financial Year, in which case, the sum must be paid or that act, matter or thing must be done on or before the day specified;
  - (j) a reference to cash includes cheque and bank cheque;

- (k) a reference to a month or a quarter means a calendar month or calendar quarter respectively;
- (l) a reference to Stapling a Unit to an Other Security or to a Unit being Stapled to an Other Security includes Stapling one Unit to a fixed number of Other Securities or to one Unit being Stapled to a fixed number of Other Securities;
- ~~(+)~~(m) a reference to any document or agreement (including this Constitution) is to that document or agreement as amended, novated (including pursuant to section 601FT of the Corporations Act), varied or replaced from time to time; and
- ~~(+)~~(n) terms defined in the Corporations Act are used in this Constitution with their same defined meaning.

### 1.3 Governing Law

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

### 1.4 Corporations Act

If and for so long as the Scheme is Registered, then notwithstanding any other provision in this Constitution (whether expressed or implied):

- (a) Subject to clause 1.4(b), if and to the extent that any provision in this Constitution is inconsistent with any provision of the Corporations Act, then to that extent that provision does not have any force or effect.
- (b) Clause 1.4(a) is subject to any ASIC Instrument from time to time and, subject to clause 1.4(c), if before any such ASIC Instrument (or part thereof) can apply to this Constitution this Constitution is required to contain certain provisions, then to the extent that those provisions (or provisions to their effect) have not been expressly included in this Constitution, those provisions are deemed to be incorporated into this Constitution at all times that they are required to be included and prevail over the other provisions of this Constitution to the extent of any inconsistency. For the removal of doubt ASIC Class Order 13/655 is an ASIC Instrument for the purposes of this clause 1.4(b), subject to clause 1.4(c).
- (c) If the Responsible Entity determines that a particular ASIC Instrument (or any part of it) does not or should not apply to this Constitution, then clause 1.4(b) does not apply to that particular ASIC Instrument or part of it (as the case may be). The Responsible Entity may make and revoke that determination at any time.

### 1.5 References to Corporations Act

Notwithstanding any other provisions in this Constitution (whether express or implied), a clause of this Constitution which is expressed to apply subject to the Corporations Act, is only so subject while the Scheme is Registered (and the clause is to be read accordingly).

### 1.6 Rounding of Payments

Where any calculations under this Constitution would result in a total amount payable to a person including a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the Responsible Entity. Any excess money which results from rounding becomes part of Scheme Assets.

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## **2. The Scheme**

### **2.1 Scheme's Constitution**

Centuria Property Funds Limited is the Scheme's initial Responsible Entity and this Constitution is the constitution for the Scheme.

### **2.2 Constitution is legally binding**

The Responsible Entity and each Member and Former Member from time to time (and each person claiming through the Member and Former Member) is entitled to the benefit of and is bound by this Constitution in accordance with and to the extent provided for in this Constitution as if each of them is a party to this Constitution.

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## **3. Scheme Assets held on Trust**

### **3.1 Commencement of Trust**

The Trust commences when the Responsible Entity issues the first Units in accordance with clause ~~79~~.

### **3.2 Declaration of Trust**

- (a) The Responsible Entity declares that it holds all of the Scheme Assets on trust for Members subject to the provisions of this Constitution. The Scheme Assets vest in the Responsible Entity.
- (b) If and to the extent the Corporations Act requires, the Responsible Entity must ensure the Scheme Assets are clearly identified as property of the Trust and held separately from all other property of the Responsible Entity and property of any other managed investment scheme.

### **3.3 Exclusion of other obligations**

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

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## **4. Scheme Assets divided into Units**

### **4.1 Nature of a Unit**

- (a) The beneficial interest in the Scheme Assets is divided into a changeable number of Units.
- (b) Subject to any rights, obligations and restrictions attaching to any particular Unit or Class:
  - (i) all Units in a Class rank equally with each other; and
  - (ii) a Unit confers an undivided interest in the Scheme Assets as a whole, subject to the Liabilities; and
  - (iii) a Unit does not confer any interest in any particular part of the Scheme Assets nor in any particular part of the Scheme.

## 4.2 Consolidation of Units

Subject to the law, the Responsible Entity may at any time consolidate or divide the number of Units on issue on any basis it determines.

## 4.3 Fractions of Units and Rounding

Fractions of a Unit may be issued or redeemed or created by consolidation or division, as determined by the Responsible Entity, rounded up or down to any number of decimal places which the Responsible Entity determines. The value of, and all rights and obligations attaching to, a fractional Unit will be in the proportion which the fraction bears to a whole Unit. Any excess money or property which results from rounding becomes part of Scheme Assets.

## 4.4 Issue of Units and Classes

Subject to the law, the Responsible Entity may allot and issue unissued Units (including in different Classes) to any person, on any terms at any time and in any numbers and having attached thereto such preferred, deferred or other rights, restrictions and obligations as the Responsible Entity thinks fit in its absolute discretion and further with power to classify or reclassify or designate the same in any manner which the Responsible Entity thinks fit (including into Classes or into a different Class). To the extent that those rights, restrictions and obligations relate to matters other than those matters prescribed by section 601GA of the Corporations 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.

## 4.5 Issue of Financial Products

Subject to the law and this Constitution, the Responsible Entity may, in addition to Units, allot and issue any Financial Product to any person, on any terms at any time and in any number, in each case as the Responsible Entity thinks fit in its absolute discretion. The issue price for an option to acquire Units is nil.

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## 5. Stapling

### 5.1 Power to staple Units

- (a) The Responsible Entity may staple Units to one or more Other Securities to create a Stapled Entity, with, as far as possible, the Units and the Other Securities being treated as one security, referred to as a Stapled Security.
- (b) Any Stapling referred to in clause 5.1(a) takes effect from the Stapling Date.
- (c) While the Trust is part of a Stapled Entity, the Responsible Entity undertakes to use reasonable endeavours to ensure the Units are dealt with in a manner consistent with the provisions relating to the Other Stapled Securities in the constituent documents of the Other Stapled Entities.
- (d) Nothing in this Constitution prevents the Stapling of the Units with Other Securities by a mechanism not contemplated by this Constitution.

### 5.2 Units and Other Stapled Securities are Stapled

While the Trust is part of a Stapled Entity:

- (a) (Stapling) each Unit must remain Stapled to the Other Stapled Securities for as long as the Units remain on issue;

- (b) (dealings) there must be no dealing or disposition of any kind in relation to a Unit unless there is also an identical dealing or disposition by the same parties with each Other Stapled Security;
- (c) (offers of Units) the Responsible Entity must not offer Units for subscription or sale unless:
- (i) it also offers, or procures that offers are made of, at the same time and to the same person, the applicable number of Other Stapled Securities for subscription or sale; and
- (ii) the offer is on the condition that the offeree may not accept the offer unless the offeree also accepts the offer for Other Stapled Securities;
- (d) (Unit issues, sales) the Responsible Entity must not issue or sell any Units to a person unless it at the same time issues or sells to that person, or procures that there is issued or sold, the applicable number of Other Stapled Securities;
- (e) (issue of Partly Paid Units) the Responsible Entity must not issue a Partly Paid Unit on terms as to the time for payment of the balance of the Issue Price unless it at the same time issues or procures the issue of a partly paid Other Stapled Security on similar terms as to time for payment of the balance of the Issue Price;
- (f) (calls on Partly Paid Units) the Responsible Entity must not make a call on a Member for money unpaid on a Partly Paid Unit unless it at the same time makes a call or procures that a call is made on that Member for the same proportion of money unpaid on a partly paid Other Stapled Security (and the same notice may be used for the calls for the Stapled Entity);
- (g) (payment on Partly Paid Unit) the Responsible Entity must not credit payment of a called amount or of an instalment on a Partly Paid Unit unless the Other Stapled Entity has received any call amount or instalment due upon a partly paid Other Stapled Security of the Member concerned;
- (h) (treating as fully paid) the Responsible Entity must not treat a Partly Paid Unit as being a fully paid Unit unless it at the same time treats a partly paid Other Stapled Security as being a fully paid Other Stapled Security;
- (i) (forfeiture) a Partly Paid Unit cannot be forfeited unless a partly paid Other Stapled Security is also forfeited at the same time;
- (j) (reorganisations) the Responsible Entity must not consolidate, subdivide, cancel or reorganise Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or reorganisation of the Other Stapled Securities;
- (k) (transfers) a Member must not transfer a Unit to a person (and the Responsible Entity must not register a transfer) unless at the same time the Member transfers to that person the applicable number of Other Stapled Securities;
- (l) (Unit redemption) the Responsible Entity must not redeem or buy back Units of a Member unless at the same time the Other Stapled Securities of the Member are redeemed or bought back;
- (m) (Unit transmission) Units registered in the name of a Member are not capable of being transmitted to any person unless at the same time the Other Stapled Securities that are registered in the name of the Member are transmitted to that person;
- (n) (allocation of proceeds of issue among Stapled Entities) the Responsible Entity may apply money received for the issue of Stapled Securities to the Trust or Other

Stapled Entities or pay money for the redemption or buy back of Stapled Securities from the Trust or Other Stapled Entities in proportion to the Net Asset Value of the Scheme Assets and the net asset value of, or the value of the Other Stapled Securities in, the Other Stapled Entities worked out under their constitutions, and may apportion the receipts or payments between the Trust and Other Stapled Entities as the Responsible Entity thinks fit;

- (o) **(allocation of expenses)** without limiting clause 15.1, the Responsible Entity may pay or reimburse expenses that are incurred by Other Issuers or in connection with Other Stapled Entities or are incurred by the Responsible Entity jointly with Other Issuers;
- (p) **(regard to interests of holders in Stapled Entities)** in exercising its powers or discretions or performing its functions under this Constitution or in relation to the Trust, the Responsible Entity may as it sees fit:

  - (i) take into account the interests of holders of Other Stapled Securities; and
  - (ii) exercise its powers and discretions or perform its functions even though to do so would be for the benefit of those persons and not for the direct benefit of Members;
- (q) **(discretion may be fettered)** the Responsible Entity may in connection with the Stapling fetter its discretions under this Constitution or in relation to the Trust, as it thinks fit, including by agreeing to consult with, or obtain the consent of, an Other Issuer or a person administering an Other Stapled Entity;
- (r) **(indemnity and remuneration)** if the responsible entity of an Other Stapled Entity is entitled to an indemnity, to reimbursement or to payment of remuneration under the constitution of that Other Stapled Entity, the Responsible Entity may provide an indemnity, reimbursement or payment to the responsible entity of that Other Stapled Entity out of the Scheme Assets;
- (s) **(compromises)** the Responsible Entity may with any Other Stapled Entity or with the responsible entity of any Other Stapled Entity compromise:

  - (i) any allocation of assets, property, liabilities, expenses or remuneration between the Trust and any Other Stapled Entity;
  - (ii) any allocation of application money for Units and Other Stapled Securities; or
  - (iii) any other matter between the Trust and an Other Stapled Entity that the Responsible Entity considers to be necessary or appropriate in connection with the Stapling or the relationship created by the Stapling;
- (t) **(guarantees)** the Responsible Entity may, in connection with the Stapling or the relationship created by the Stapling, give any guarantee or indemnity or become liable for the payment of money or the performance of any contract or other obligation by any person including any Other Stapled Entity or the responsible entity of any Other Stapled Entity;
- (u) **(security for guarantees)** the Responsible Entity may, if it thinks fit, give security for any guarantee or indemnity referred to in clause 5.2(t) above or other liability over all or any part of the Scheme Assets;
- (v) **(consideration)** the Responsible Entity may, if it thinks fit, in connection with the Stapling or the relationship created by the Stapling exercise all or any of its powers, whether or not there is consideration or benefit for the Trust, and either alone or



jointly with any person including any Other Stapled Entity or the responsible entity of any Other Stapled Entity or as responsible entity of any Other Stapled Entity, and may assume joint and several or several liability in respect of any joint exercise of these powers;

- (w) **(cooperative operation)** the Responsible Entity may cooperate with an Other Stapled Entity or with the responsible entity of any Other Stapled Entity to facilitate the operation of the Stapled Entities as an economic entity for the benefit of Members and of holders of Other Stapled Securities;
- (x) **(Register)** a Member must provide to the Responsible Entity the same personal information for the Register and for the register of each Other Stapled Entity and the Responsible Entity may conduct the Register and issue holding statements jointly with the Other Stapled Entity or the responsible entity of each Other Stapled Entity;
- (y) **(proxy forms)** a Member must, if the Responsible Entity so determines, use a form of proxy to appoint the same proxy to vote on their behalf in respect of both a Unit and an Other Stapled Security;
- (z) **(amendment)** an amendment of this Constitution that directly affects the terms on which a Unit is held is of no effect unless the Other Stapled Securities are affected in the same way, if they can be so affected.

### **5.3 Unstapling**

- (a) The Responsible Entity may declare that Stapling ceases to apply to all Units immediately or upon a stated day.
- (b) Stapling will automatically cease to apply to all Units if the Trust terminates.
- (c) The Members may, by Special Resolution, determine that Stapling will cease to apply to all Units.
- (d) If Stapling ceases to apply to a Unit, the provisions of this Constitution that relate to the Stapling of Units cease to apply to that Unit.
- (e) If Stapling ceases to apply, then this does not prevent the Responsible Entity from subsequently determining that Stapling should recommence (either in respect of the same or different Other Securities). Where Stapling ceases to apply under clause 5.3(c) commencement of Stapling requires the approval of a Special Resolution of Members.

### **5.4 Conduct of Stapled Entities**

While the Trust is party of a Stapled Entity, to the extent permitted by law, the Responsible Entity must cooperate with each Other Stapled Entity or the responsible entity of each Other Stapled Entity in everything relating to the Stapled Securities. Without limitation, the Responsible Entity must do everything needed on its part to ensure that the Trust and the Other Stapled Entities:

- (a) **(disclosures)** co-ordinate their disclosures to holders of Stapled Securities;
- (b) **(accounting policies)** adopt consistent accounting policies;
- (c) **(valuation policies)** adopt consistent valuation policies;
- (d) **(proposed investments)** take a consistent approach on proposed investments;



- (e) (meetings) hold Members' meetings concurrently or, where necessary, consecutively;
- (f) (new issues, redemptions) agree on the terms and timing of all new issues, bonus and rights issues, placements, redemptions and buy-backs of Stapled Securities;
- (g) (value) consult before taking any action (or omitting to take any action) which may materially affect the value of the Stapled Securities;
- (h) (distribution) co-ordinate the announcement and payment of distributions;
- (i) (reinvestments) co-ordinate any distribution or dividend re-investment plan;
- (j) (partly paid) co-ordinate all actions connected with partly paid Stapled Securities; and
- (k) (reports) report to Members consistently and at the same times.

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## **6. 2022 Stapling**

### **6.1 Power to implement 2022 Stapling**

- (a) The Responsible Entity and each Stapling Member must do all things and execute all deeds, instruments, agreements or other documents as the Responsible Entity considers necessary or desirable to give effect to the 2022 Stapling and the transactions contemplated by it.
- (b) Without in any way limiting the Responsible Entity's other powers under clause 5 or this clause 6, the Responsible Entity has power to do all things that it considers necessary or desirable to give effect to the 2022 Stapling and the transactions contemplated by it.
- (c) Subject to the Corporations Act, the Responsible Entity and PPIF RE and any of their respective directors, officers, employees and associates may do any act, matter or thing described in or contemplated by this clause 6 even if they have an interest (financial or otherwise) in the outcome.
- (d) This clause 6:
  - (i) binds the Responsible Entity and all of the Members from time to time (including those who do not attend the Stapling Meeting, those who do not vote at the Stapling Meeting and those who vote against the Stapling Resolutions); and
  - (ii) to the extent of any inconsistency and to the extent permitted by law, overrides the other provisions of this Constitution.

### **6.2 Implementation of the 2022 Stapling**

On the Implementation Date, the Responsible Entity will implement the following steps in the order set out below, such that each step is only taken after the immediately preceding step is complete:

- (a) (subdivision) the Responsible Entity will divide the Units on issue into such number of Units as results in each Unit, using the NAV per Unit as at the Calculation Date, having a NAV per Unit of \$1.00;
- (b) (capital distributions) the Responsible Entity will distribute (by way of a capital

distribution) to the Stapling Members promissory notes with a total face value equal to the amount calculated as follows:

<u>Total face value of promissory notes</u>	<u>=</u>	<u>Net Asset Value of the Scheme Assets / (Net Asset Value of the Scheme Assets + net asset value of the assets of PPIF calculated in accordance with the constitution of PPIF)</u>	<u>x</u>	<u>net asset value of the assets of PPIF calculated in accordance with the constitution of PPIF</u>
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with the distribution to occur at the same time as Primewest makes a distribution of promissory notes to members of PPIF in connection with the 2022 Stapling;

- (c) (application) the Responsible Entity will, in its capacity as agent and attorney for the Stapling Members:
- (i) apply for such number of units in PPIF on behalf of the Stapling Members as will result in PPIF and the Trust having the same number of units on issue immediately following the Implementation Date and assign or indorse the promissory notes issued by the Responsible Entity under clause 6.2(b) to the PPIF RE to satisfy the application price for these units;
  - (ii) agree to become a member of PPIF, be bound by the constitution of PPIF and consent to the entry of the name of each Stapling Member in the register of members of PPIF; and
  - (iii) so far as is permitted by law, provide the PPIF RE with such information, notices and elections relating to each Stapling Member as may be necessary or desirable;
- (d) (issues) the Responsible Entity will, subject to receipt of an application for units by the members of PPIF and the assignment or indorsement in its favour of the promissory notes issued by PPIF RE to the PPIF members having a face value equal to the face value of the promissory notes issued under clause 6.2(b):
- (i) issue the Units applied for by members of PPIF (including any Acquisition Units applied for by holders of 'acquisition units' in PPIF) at the same time as Primewest issues units in PPIF to Stapling Members in connection with the 2022 Stapling;
  - (ii) update the Register to record that issue of Units applied for by members of PPIF at the same time as Primewest updates the register of members of PPIF to record the issue of units in PPIF to Stapling Members; and
  - (iii) cancel the promissory notes issued by the Responsible Entity to the Members under clause 6.2(b); and
- (e) (stapling) the stapling deed between the Responsible Entity and PPIF RE comes into effect and the Responsible Entity will Staple each Unit to one unit in PPIF to form a Stapled Security (with each Acquisition Unit (if any) being Stapled to one 'acquisition unit' in PPIF).

### **6.3 Dealings in Units**

- (a) For the purpose of establishing the persons who are Stapling Members and the number of Units held by them, the Responsible Entity will only recognise dealings in Units if registrable transfers or transmission applications in respect of those dealings are received by the Responsible Entity by such date notified to the Unitholders by the Responsible Entity.
- (b) After the registration of registrable transfers or transmission applications of the kind referred to in clause 6.3(a) the Responsible Entity will solely determine the persons who are Stapling Members and the number of Stapling Units held by them.
- (c) From the Implementation Date, all certificates and holding statements (as applicable) for Units issued on or before the Implementation Date will cease to have any effect as evidence of title.

### **6.4 Covenants by Stapling Members**

Each Stapling Member:

- (a) acknowledges that this clause binds all of the Members from time to time (including those who do not attend the Stapling Meeting, do not vote at the Stapling Meeting or vote against the Stapling Resolutions) without the need for any further act by that Stapling Member;
- (b) irrevocably agrees to become a member of PPIF in accordance with the terms of the 2022 Stapling;
- (c) agrees to the modification or variation (if any) of the rights attaching to their Stapling Units arising from this clause 6;
- (d) irrevocably consents to the Responsible Entity and the PPIF RE doing all things and executing all deeds, instruments, application forms or other documents as may be necessary or desirable to give full effect to the terms of the 2022 Stapling and the transactions contemplated by it; and
- (e) without limiting any other provision of this clause 6, agrees to provide to the Responsible Entity such information as the Responsible Entity may reasonably require to give effect to the 2022 Stapling and the transactions contemplated by this clause 6, including information required to meet obligations under any applicable law.

### **6.5 Binding instructions or notifications and Withdrawal Requests**

- (a) Other than a Withdrawal Request, any binding instruction or notification between a Stapling Member and the Responsible Entity relating to Stapling Units as at the Implementation Date (including, without limitation, any instructions relating to payment of distributions or to communications from the Responsible Entity) will, from the Implementation Date, be deemed to be a similarly binding instruction or notification to, and accepted by, PPIF RE in respect of units in PPIF issued to the Stapling Member pursuant to the 2022 Stapling, until that instruction or notification is revoked or amended in writing.
- (b) Any Withdrawal Request which has not be satisfied by the Calculation Date will be taken to be withdrawn by the Member at that time.

## **6.6 Responsible Entity's expenses**

Without limiting clause 15.1, all expenses incurred by the Responsible Entity in relation to the 2022 Stapling are payable or reimbursable out of the Scheme Assets to the extent that such payment or reimbursement is not prohibited by the Corporations Act.

## **6.7 Power of attorney**

- (a) Without limiting the Responsible Entity's powers set out elsewhere in this Constitution, and without the need for any further act by the Stapling Members or any of them, each Stapling Member irrevocably (to the extent permitted by law) appoints the Responsible Entity (including any replacement Responsible Entity) and any director, secretary or attorney of the Responsible Entity (including any replacement Responsible Entity) (for the purposes of this clause 6, each of them referred to as 'Representative'), severally, as its agent, representative and attorney, to do all things and execute all agreements, deeds, instruments, application forms and other documents as may be necessary or desirable to give full effect to the terms of the 2022 Stapling and the transaction contemplated by it, including:
  - (i) taking the steps set out in clause 6.2(c); and
  - (ii) entering into any agreement to give effect to the above.
- (b) Each Representative may, severally, as agent, representative and attorney of each Stapling Member, sub-delegate their functions, authorities or powers under clause 6.7(a) to all or any attorney of theirs (jointly, severally or jointly and severally).
- (c) Each Representative may only exercise their powers under clause 6.7(a) for the purposes of and incidental to implementing the 2022 Stapling.
- (d) Each Stapling Member undertakes to ratify all actions lawfully done or caused to be done by a Representative in accordance with this clause 6.7.

## **6.8 Liability of Responsible Entity**

None of the Responsible Entity, Representatives, nor any of their directors, officers, employees or associates will have any liability of any nature whatsoever to Members, beyond the extent to which the Responsible Entity is actually indemnified out of the Scheme Assets, arising, directly or indirectly, from doing or refraining from doing any act (including the execution of a document or acting as the agent of any Member) pursuant to or in connection with the implementation of the 2022 Stapling.

## **6.9 Issue Price of Units and value of Stapled Securities in conjunction with initial Stapling**

- (a) Notwithstanding any other provisions of this Constitution, the Units issued in conjunction with the 2022 Stapling as contemplated in clause 6.2(d) will be issued at an Issue Price calculated as follows:
  - Face value of promissory notes distributed by PPIF RE received under clause 6.2(d) ÷ number of Units issued to members of PPIF under clause 6.2(d)
- (b) One Stapled Security, comprising one Unit and one unit in PPIF, will have an initial Net Asset Value per Stapled Security on the Implementation Date of \$1.00.

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## **5.7. Limitation on Members Rights**

### **5.7.1 Limitation on Members rights**

A Member is not entitled to and waives any right it may otherwise have to:

- (a) require any Scheme Assets to be transferred to the Member (other than in accordance with clause ~~8.16~~10.17);
- (b) interfere with any rights, trusts, powers, authorities or discretions of the Responsible Entity conferred upon it by this Constitution or by law (including in respect of the Scheme Assets (or any part of it) or the Scheme) or the exercise or non-exercise of any such rights, trusts, powers, authorities or discretions by or on behalf of the Responsible Entity; or
- (c) claim or exercise any right, trust, power, authority or discretion in respect of the Scheme Assets (or any part of it). Without limitation a Member must not lodge any caveat or other notice to protect or maintain in litigation or otherwise any proprietary, or other interest or claim in, or in relation to, the Scheme Assets (or any part of it).

### **5.27.2 Joint Holders**

Where more than one person is registered as the holder of any Unit then, for the purposes of the administration of the Scheme:

- (a) they shall be deemed to hold the Unit as joint tenants unless the Responsible Entity determines otherwise;
- (b) they shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit;
- (c) they shall, subject to the Corporations Act, be counted as a single Member for the purposes of calculating the number of Members as referred in clause 16.6 relating to meetings of Members;
- (d) clause 16.6(b) applies to determine which joint holder may exercise the voting rights of jointly held Units;
- (e) any payment to joint Members shall be subject to clause 22.4;
- (f) on the death, legal disability, or bankruptcy of a joint Member, the provisions of clause 24 shall apply; and
- (g) delivery of notices and all other communications by the Responsible Entity will be made pursuant to clause 25.

### **5.37.3 Rights attaching to Units**

A Member holds a Unit subject to the rights, obligations and restrictions attaching to that Unit.

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## **6.8. Liability of Members**

### **6.18.1 Liability of a Member is limited**

Except as expressly provided for in this Constitution (such as clause ~~22~~24.5) and subject to any contrary agreement with a Member:

- (a) the liability of each Member is limited to the liability to pay any unpaid part of the Issue Price of Units held by the Member; and
- (b) no Member in their capacity as a Member is liable to, or is required to, indemnify the Responsible Entity or any creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Scheme in any case whatsoever including if at any time the Liabilities of the Scheme exceed the value of the Scheme Assets,

in each case even in relation to things done by the Responsible Entity at the direction or request of a Member which give rise to liabilities of the Responsible Entity in connection with the Scheme.

## **6.28.2 Relationship of agency or partnership excluded**

Any relationship of agency, or of partnership, between the Responsible Entity in that capacity and any Member is expressly excluded.

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## **7.9. Application for, creation and issue of Units**

### **7.19.1 Applications for Units**

A person intending to apply for Units must give the Responsible Entity a completed application which is in such form and which is delivered, sent or given in such a manner and to such place as the Responsible Entity may require from time to time. Payment in respect of an application in an amount which is not less than the Minimum Application Amount (or where the Units from part of a Stapled Security, not less than the minimum application amount for Stapled Securities as is determined by the Responsible Entity from time-to-time) must be paid in favour of or to the Responsible Entity (or its nominee). The amount must be in such form as the Responsible Entity requires (which may include periodic debits to a bank account and cheques). Such payment must accompany the application or be received by the Responsible Entity within a time specified by the Responsible Entity or as the terms of issue of the Unit contemplate or comprise a reinvestment of a distribution in accordance with clause ~~15.21~~17.22.

### **7.29.2 Payment of Issue Price other than by money**

The Responsible Entity may accept payment in respect of an application for Units in the form of a transfer of property (of a kind acceptable to the Responsible Entity) rather than cash at market value. In that case, the applicant must transfer the title to the property to (or at the direction of) the Responsible Entity.

### **7.39.3 Responsible Entity may accept or reject applications**

The Responsible Entity may, in its absolute discretion, accept or reject all or part of an application for Units (including an application to reinvest a distribution under clause ~~15.21~~17.22) without giving any reason.

### **7.49.4 Application must be for Minimum Application Amount**

The amount of application money or value of any property to be transferred in accordance with clause ~~79.2~~ must be no less than the Minimum Application Amount- (or where the Units from part of a Stapled Security, not less than the minimum application amount for Stapled Securities as is determined by the Responsible Entity from time-to-time).

### **7.59.5 Time when Units are issued**

- (a) Subject to clause 7.5(b), Units in any Class are taken to be created and issued at the Valuation Time as at which the Issue Price is determined under clause ~~79.7~~.

- (b) Units which are to be issued on a reinvestment of distributions under clause ~~15.21~~17.22 are taken to be issued at the time specified in that clause.

## **~~7.6~~9.6 Number of Units issued**

When Units are taken to be created and issued under clause ~~7~~9.5, the number of Units created and issued is that number calculated by the Responsible Entity by dividing the Net Investment by the Issue Price of a Unit.

## **~~7.7~~9.7 Issue Price**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, a Unit or Class must only be issued at its Issue Price determined in accordance with the following provisions of this clause 7.7:

- (a) the Issue Price for each of the Units to be issued by the Responsible Entity under clause 3.1 is \$1.00;
- (b) after the issue of Units referred to in clause ~~7~~9.7(a), where Units are issued on a reinvestment of distribution in accordance with clause ~~15.21~~17.22, the Issue Price for a Unit is calculated as follows:

$$\frac{\text{Net Asset Value of the Scheme Assets} + \text{Acquisition Expenses} + \text{Indirect Acquisition Cost Adjustment}}{\text{Total number of Units on issue}}$$

with all such variables calculated as at the time and in accordance with clause ~~15.21~~17.22; and

- (c) in any other case, the Issue Price for a Unit is equal to:

$$\frac{\text{Net Asset Value of the Scheme Assets} + \text{Acquisition Expenses} + \text{Indirect Acquisition Cost Adjustment}}{\text{Total number of Units on issue}}$$

with all such variables calculated as at the first Valuation Time after the later of the following events:

- (i) the time the Responsible Entity receives the application for Units or Units in a Class; and
- (ii) the time when the application money against which the Units are to be created and issued is received by the Responsible Entity, or the time when the title to the property against which the Units are to be created and issued is transferred free of encumbrances to (or at the direction of) the Responsible Entity.

For the purposes of the formulae in paragraphs (b) and (c), "Net Asset Value of Scheme Assets", "Acquisition Expenses", "Indirect Acquisition Cost Adjustment" and "total number of Units on issue" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Unit (for which the application price is being calculated) belongs.

In determining the Issue Price of a Unit, the Responsible Entity may, to the fullest extent permitted by law (including any ASIC Instrument), exercise its discretion in determining:

- (a) any matter affecting the value of any factor included in the calculation of the Issue Price; and



- (d) any matter which is an aspect of the method of calculating the Issue Price.

### **~~7.89.8~~ Rounding of Issue Price**

The Issue Price may be rounded up or down as the Responsible Entity thinks fit.

### **~~7.99.9~~ Responsible Entity's discretion over Issue Price**

Subject to the Corporations Act as modified by any applicable ASIC Instrument, the Responsible Entity may issue Units at a price determined by the Responsible Entity (being a price other than the Issue Price calculated under clause ~~79.7~~). Clause ~~79.7~~ does not limit the operation of this clause. For the purposes of this clause:

- (a) the Responsible Entity may amend this Constitution by supplemental deed to provide for a specific Issue Price for those Units; and
- (b) it may issue those Units at the specified price.

### **~~7.109.10~~ Cancellation of issue of Units**

If following receipt of an application for Units, any payment for the Units is not cleared, or the direct debit order is not accepted by a bank, or the transfer of property is not effective, or the property is not transferred free of encumbrances within such period from receipt of such application as the Responsible Entity determines, then any Units which have been created and issued in consideration therefore are void ab initio and are deemed for all purposes not to have been created or issued. The Responsible Entity may cause the Register to be rectified.

### **~~7.119.11~~ No Unit certificates**

No certificates for Units will be issued unless and until the Responsible Entity otherwise determines.

### **~~7.129.12~~ Designated Time**

The Responsible Entity may designate or vary a Designated Time for the purposes of determining when an application for Units is received by the Responsible Entity for the purposes of clause ~~79.7~~. The Designated Time may be different for given methods of communication or payment. Accordingly, for the purposes of clause ~~79.7~~, if an application for Units is received:

- (a) on a Business Day but prior to the applicable Designated Time on the Business Day, it will be taken to have been received at the Designated Time on that Business Day; and
- (b) on a Business Day but on or after the applicable Designated Time on the Business Day or on a day which is not a Business Day, it will be taken to have been received at the commencement of business on the following Business Day.

### **~~7.139.13~~ Application money part of Scheme Assets**

All income in respect of the payment received on an application for Units (which has been accepted by the Responsible Entity) prior to the issue of those Units forms part of the Scheme Assets. If an application is not accepted by the Responsible Entity, then the payment received on an application for Units shall be repayable to the applicant, and no income in respect of that payment received shall be payable to the applicant. Any income in respect of the payment received on an unsuccessful application for Units forms part of the Scheme Assets.



## **~~7.14~~9.14 Partly paid Units**

The Responsible Entity may issue ~~partly paid~~Partly Paid Units on such terms, including terms as to entitlement to participate in distributions of income or capital, as the Responsible Entity may determine.

## **9.15 Issue Price of Units as part of a Stapled Security**

Notwithstanding anything else in this clause 9, while the Trust is part of a Stapled Entity, and as a consequence, a Unit is to be issued as part of a Stapled Security, then the Responsible Entity may determine an Issue Price for a Unit different from the Issue Price which would apply under the other subclauses of this clause 9, provided that the total issue price for the Stapled Security is equal to the sum of:

- (a) the Issue Price which would apply under clause 9.7 or clause 9.9 (as applicable), and
- (b) the aggregate of the issue prices for each Other Stapled Security which would apply under the constituent documents of the Other Stapled Entities.

## **9.16 Responsible Entity must reject an application**

While the Trust is part of a Stapled Entity, the Responsible Entity must reject an application for Units (including an application flowing from the exercise of an option) if:

- (a) the applicant does not apply at the same time for an applicable number of each of the Other Stapled Securities, or
- (b) if the applicable number of each of the other Stapled Securities will not be issued to the applicant at the same time as the issue of Units to the applicant.

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## **~~8.10.~~ Withdrawal from Scheme**

### **~~8.1~~10.1 No right to withdraw**

- (a) In circumstances where the Scheme is not Registered or is Registered and Liquid, except as provided in this clause ~~8.10~~ and subject to any rights, obligations and restrictions attaching to any particular Unit or Class, a Member has no right to withdraw from the Scheme.
- (b) In circumstances where the Scheme is Registered and not Liquid, a Member has no right to withdraw from the Scheme other than pursuant to a Withdrawal Offer which is made and administered in accordance with sections 601KB to 601KE (inclusive) of the Corporations Act.

### **~~8.2~~10.2 Withdrawal Offer**

In circumstances where the Scheme is Registered and Not Liquid, subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the Member's only right to redeem any of its Units or otherwise withdraw (wholly or partly) from the Scheme is to do so in accordance with the terms of any current Withdrawal Offer.

### **~~8.3~~10.3 No obligation to make Withdrawal Offer**

Nothing in this Constitution imposes any obligation on the Responsible Entity to make a Withdrawal Offer at any time to all Members or to all Members who hold Units in a Class.

However, if it decides to make a Withdrawal Offer it may do so by any means including by publishing it in a newspaper or on the internet.

#### **8.410.4 Cancellation of Withdrawal Offer**

Subject to the Corporations Act, the Responsible Entity may at any time before a Withdrawal Offer closes, decide to cancel the offer, whereupon the Withdrawal Offer will be automatically cancelled. After making that decision, the Responsible Entity will give notice of the cancellation to the Members to whom the Withdrawal Offer was made by any means including by publishing it in a newspaper or on the internet. Any Withdrawal Request made in response to that Withdrawal Offer which has not been satisfied at the time of the Responsible Entity's decision to cancel the Withdrawal Offer will be taken to be withdrawn at that time.

#### **8.510.5 Obligation to satisfy Withdrawals when the Trust is Liquid**

- (a) In circumstances where the Scheme is Registered and Liquid, subject to this clause [810.5](#), [810.6](#), [810.7](#), [810.8](#), [810.9](#), [81510.16](#) and [81710.18](#), to the Corporations Act and to any rights, obligations and restrictions attaching to any particular Unit or Class, the Responsible Entity must determine whether it will give effect to a Withdrawal Request within 365 days of receipt of the request. If the Responsible Entity gives effect to the Withdrawal Request, then the Responsible Entity must satisfy the Withdrawal Request within 21 days from the date on which it determines to give effect to the Withdrawal Request by—
  - (i) redeeming the number or value of Units specified in the Withdrawal Request by payment from the Scheme Assets of the Withdrawal Price determined in accordance with clause [810.11](#)
  - (ii) subject to the Corporations Act, purchasing the number or value of Units specified in the Withdrawal Request, or
  - (iii) partially in the manner described in clause [810.5\(a\)\(i\)](#) and partially in the manner described in clause [810.5\(a\)\(ii\)](#).
- (b) For the purposes of clause [810.5\(a\)\(ii\)](#), the Responsible Entity may purchase or arrange for another person to purchase all or some of the Units the subject of the Withdrawal Request at the price per Unit no less than the Withdrawal Price which would otherwise have been paid under clause [810.5\(a\)](#) in respect of that Withdrawal Request. In that scenario, the Withdrawal Request is deemed satisfied upon—
  - (i) the transfer of Units the subject of the Withdrawal Request being recorded in the Register, and
  - (ii) 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.
- (c) For the avoidance of doubt, the Responsible Entity may, but is under no obligation to, redeem Units the subject of a Withdrawal Request at the Withdrawal Price from the Scheme Assets in accordance with this clause [810.5](#).
- (d) The Responsible Entity may at its discretion consider and process Withdrawal Requests under—
  - (i) the Limited Quarterly Withdrawal Facility, or
  - (ii) a Periodic Liquidity Event.

- (e) Without limiting clause 810.5(c) and 810.5(g), the Responsible Entity may offer the Limited Quarterly Withdrawal Facility from time to time on a quarterly basis.
- (f) If the Responsible Entity offers the Limited Quarterly Withdrawal Facility, then the following provisions apply:
  - (i) The amount available to satisfy Withdrawal Requests for the quarter will be either—
    - A. Up to 2.5 percent of the Net Asset Value of the Scheme Assets at the last Valuation Time before the date of payment of the Withdrawal Request, or
    - B. such higher amount as is determined by the Responsible Entity from time to time.
  - (ii) Withdrawal Requests received before the Designated Time on the last Business Day of a quarter will be processed if the total amount of the Withdrawal Requests received are less than or equal to the Quarterly Available Funds.
  - (iii) If the aggregate value of Withdrawal Requests received during the quarter exceeds the Quarterly Available Funds—
    - A. each Withdrawal Request is to be processed on a pro rata basis so that the aggregate amount of Withdrawal Requests paid during a quarter does not exceed the Quarterly Available Funds, and
    - B. the unmet portion of each Withdrawal Request is cancelled and the relevant Member is deemed to make a new Withdrawal Request in respect of the unmet portion, in the following quarter and is subject to the procedure for Withdrawal Requests in this clause 810.5, unless—
      - (I) a Member provides notice that they wish to withdraw the Withdrawal Request before the Designated Time and the Responsible Entity agrees under clause 810.10, or
      - (II) Withdrawal Requests have been suspended under clause 810.7.
  - (iv) A Withdrawal Request received during a quarter but after the Designated Time is deemed to be received the following quarter.
- (g) Without limiting clauses 810.5(c) and 810.5(e), the Responsible Entity may offer a Periodic Liquidity Event, with the initial Periodic Liquidity Event to commence at such time as the Responsible Entity determines.
- (h) If the Responsible Entity offers a Periodic Liquidity Event, the Responsible Entity will invite Members to make a Withdrawal Request and after the closure of the period to make Withdrawal Requests notified by the Responsible Entity to Members (**Notification Period**)—
  - (i) without limiting clause 810.5(a), the Responsible Entity must use reasonable endeavours to meet Withdrawal Requests out of Scheme Assets within 365 days after the close of the Notification Period (**Sale Period**)

- (ii) the Responsible Entity may (but is not obliged to) determine to meet Withdrawal Requests during the Sale Period by acting as the agent of those Members who have submitted a Withdrawal Request (**Selling Holder**) to facilitate the redemption or transfer of some or all of the Units that are the subject of a Withdrawal Request to another person at the Withdrawal Price
- (iii) if the Responsible Entity determines to act as the Selling Holder's agent—
  - A. the Responsible Entity—
    - (I) is irrevocably appointed by each Selling Holder during the Sale Period to do all things necessary to redeem or transfer some or all of the Units nominated by each Selling Holder under a Withdrawal Request (**Sale Units**)
    - (II) may deal with any proposed purchase in its absolute discretion, including to redeem Units by the Selling Holder or to arrange a transfer of Sale Units from a Selling Holder and to another person
    - (III) may redeem or transfer Sale Units on the terms and conditions set out in this Constitution
    - (IV) may pay any costs and duty arising from the redemption or transfer of the Sale Units out of Scheme Assets, and
    - (V) has the power to transfer the Sale Units back to the Selling Holder and do all things necessary to unwind the transaction if the sale or transfer of the Sale Units does not complete or is set aside for any reason
  - B. the Selling Holder acknowledges and warrants that—
    - (I) they are the registered holder of the Sale Units
    - (II) there is no restriction of the sale or transfer of the Sale Units to a purchaser and that the Units are free from encumbrances, and
    - (III) if the Responsible Entity, acting as the Selling Holder's agent, redeems or transfers the Sale Units during the Sale Period, the payment of proceeds from the redemption or transfer of Units by the Responsible Entity under clause ~~22~~<sup>24</sup> is an effective discharge of the Selling Holder's Withdrawal Request

if all Withdrawal Requests are not met during the Sale Period in full, the Responsible Entity may (but is not obliged to) offer a further Periodic Liquidity Event or Periodic Liquidity Events.

## **~~8.6~~<sup>10.6</sup> No obligation to satisfy out of own funds**

Nothing in this Constitution imposes any obligation whatsoever on the Responsible Entity to satisfy a Withdrawal Request in whole or in part out of its own funds.

## **8.710.7 Suspension of obligation to satisfy Withdrawal Request**

If in the opinion of the Responsible Entity:

- (a) it would prejudice the Scheme's ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Scheme's or the Responsible Entity's compliance with any applicable law, the interests of any Member or the taxation or stamp duty status of the Scheme;
- (b) it would prejudice the Scheme's or the Responsible Entity's compliance with Anti-Money Laundering Laws;
- (c) it is, for any reason, impracticable for it to calculate the Net Asset Value of the Scheme Assets, the Issue Price or the Withdrawal Price including because of the 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 of affairs or because of an event outside the reasonable control of the Responsible Entity, or because of the requirements of any law;
- (d) there would be insufficient cash retained in the Scheme Assets after complying with a Withdrawal Request to meet other Liabilities and in the Responsible Entity's opinion it is not in the interests of Members for any Scheme Assets to be sold in order to satisfy a Withdrawal Request;
- (e) sufficient Scheme Assets cannot be realised at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside the control of the Responsible Entity;
- (f) the Responsible Entity reasonably estimates that it must sell 5% or more (by value) of all Scheme Assets to meet current unsatisfied Withdrawal Requests;
- (g) there have been, or the Responsible Entity anticipates that there will be, Withdrawal Requests which will involve realising a significant amount of the Scheme Assets and the Responsible Entity considers that if those Withdrawal Requests are all satisfied immediately, Members 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 existing Members' disadvantage including (but not limited to) a material diminution in the value of the Scheme Assets;
- (h) it is in the interests of the Members to invoke this clause 8.710.7 and extend the period referred to in clause 8.710.5;
- (i) it is not in the best interests of Members for withdrawals to be made; or
- (j) the law otherwise permits,

then, in each case, at the Responsible Entity's discretion, either—

- (i) the period referred to in clause 8.710.5 by which a Withdrawal Request must be satisfied may (in respect of all or any part of the Units the subject of the Withdrawal Request), be extended by the Responsible Entity by the number of days during which it considers these circumstances still prevail, or
- (ii) the Responsible Entity need not give effect to a Withdrawal Request, or
- (iii) the Responsible Entity may suspend withdrawals for a period of time (in which case an ~~an~~ unsatisfied Withdrawal Request received by the

Responsible Entity before or during any period of suspension is taken to be received by the Responsible Entity on the first Business Day after the end of that period of suspension).

## **8.810.8 Minimum Withdrawal Amount**

Without limiting the circumstances in which the Responsible Entity may refuse to satisfy a Withdrawal Request (in whole or in part):

- (a) If the application money for the Units to be redeemed has been paid by cheque or direct debit order or by transfer of property, the Responsible Entity may refuse to act on a Withdrawal Request relating to those Units until that cheque or direct debit order is honoured by the bank on which it is drawn and the proceeds received, or until unencumbered title to that property has been transferred to or at the direction of the Responsible Entity; and
- (b) The Responsible Entity may refuse a Withdrawal Request if it relates to Units which would have an aggregate Withdrawal Price which is less than the Minimum Withdrawal Amount (or where the Units from part of a Stapled Security, in respect of Stapled Securities having an aggregate withdrawal price of less than the minimum withdrawal amount for Stapled Securities as determined by the Responsible Entity from time-to-time) unless the Withdrawal Request relates to all Units held by that Member.

## **8.910.9 Minimum Balance**

- (a) If to comply with a Withdrawal Request would leave the Member holding Units worth, at the Withdrawal Price, less than the Minimum Balance, then the Responsible Entity may treat the request as relating to all Units held by that Member.
- (b) If at any time a Member ceases for any reason to hold Units with an aggregate worth, at the Withdrawal Price at that time, at least equal to an amount equal to the Minimum Balance, then the Responsible Entity may after giving 30 days' notice to the Member of its intention to do so, redeem that Member's holding without the need for a Withdrawal Request at the Withdrawal Price prevailing on the day the redemption takes place.

## **8.1010.10 Withdrawal Request cannot be withdrawn**

A Member may only withdraw a Withdrawal Request if the Responsible Entity agrees.

## **8.1110.11 Withdrawal Price**

Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, a Unit must only be redeemed at the Withdrawal Price determined as at the next applicable Valuation Time after the Withdrawal Request is received or such other time specified by the Responsible Entity in a Withdrawal Offer.

## **8.1210.12 Designated Time**

The Responsible Entity may designate or vary a Designated Time for the purposes of determining when a Withdrawal Request is received by the Responsible Entity for the purposes of clause 810.5. The Designated Time may be different for different methods of communication or payment. Accordingly, for the purposes of clause 810.5, if a Withdrawal Request is received:

- (a) on a Business Day but prior to the applicable Designated Time on the Business Day, it shall be taken to have been received at the Designated Time on that Business Day; and
- (b) on a Business Day but on or after the Designated Time on the Business Day or on a day which is not a Business Day, it will be taken to have been received at the commencement of business on the following Business Day.

### **8.13** 10.13 **Withdrawal Price may represent Distributable Income**

The extent to which the whole or any part of an amount paid as Withdrawal Price represents a distribution of Distributable Income for a Distribution Period to which a Member is presently entitled will be calculated by the Responsible Entity. That amount will be that Member's Income Entitlement as a Former Member in relation to the Distribution Period in which the redemption occurs.

### **8.14** 10.14 **Calculation**

In calculating the extent to which an amount paid as Withdrawal Price represents a distribution of Distributable Income for a Distribution Period for the purposes of clause 8.10.13, the Responsible Entity may have regard to:

- (a) the amount and category of any Distributable Income attributable to that part of the Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 8.10.11;
- (b) the amount and category of any Distributable Income attributable to the realisation of Scheme Assets to satisfy the redemption request or the source of funds used to satisfy the redemption request; and
- (c) the amount of any Tax Loss or category of Distributable Income that is attributable to that part of the Distribution Period ending on the time as at which the Withdrawal Price is determined in accordance with clause 8.10.11.

### **10.15** Withdrawal Price of Units as part of a Stapled Security

While the Trust is part of a Stapled Entity, and as a consequence, a Unit is to be redeemed as part of a Stapled Security, the Responsible Entity may determine a Withdrawal Price for a Unit different from the Withdrawal Price that would otherwise apply under clause 10.11, provided that the total withdrawal price for the Stapled Security is equal to the sum of:

- (a) the Withdrawal Price that would apply under clause 10.11, and
- (b) the aggregate of the withdrawal prices for each Other Stapled Security which would apply under the constituent documents of the Other Stapled Entities.

### **8.15** 10.16 **Costs**

On any redemption of Units, the Responsible Entity will deduct from any amount to be paid to the Member any unpaid amounts due by the Member to the Responsible Entity.

### **8.16** 10.17 **Transfer of Scheme Assets**

If agreed to by a Member and the Responsible Entity, the Responsible Entity may transfer Scheme Assets to the Member in satisfaction in whole or in part of a Withdrawal Request. The value of the Scheme Assets must be equal to the amount which would have been the Withdrawal Price (or part thereof) if paid in cash to that Member, less such part (if any) of the Expenses associated with that transfer as the Responsible Entity considers should be payable by the Member.



## **~~8.17~~10.18 Time of Redemption and Cancellation of Units upon redemption**

- (a) Units redeemed under clauses ~~8.10.5~~ and ~~8.18~~10.19 are taken to be redeemed at the time the Member's name is removed from the Register, and from that time until payment of the Withdrawal Price the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.
- (b) Units are automatically cancelled upon their redemption.

## **~~8.18~~10.19 Compliance with other laws**

Subject to the law, the Responsible Entity may in its discretion at any time redeem some or all of the Units of any Member, regardless of whether or not the Responsible Entity has received a Withdrawal Request in respect of those Units, to the extent it considers necessary for the Scheme and the Responsible Entity to comply with Anti-Money Laundering Laws.

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## **~~9.11.~~ Valuation of Scheme Assets**

### **~~9.1~~11.1 Valuation and calculation of Net Asset Value of Scheme property**

The Responsible Entity may cause any of the Scheme Assets to be valued at any time (not limited to once a day) and the Responsible Entity may calculate the Net Asset Value of the Scheme Assets as at any time (not limited to once a day), in each case, in its absolute discretion.

### **~~9.2~~11.2 Responsible Entity is not an expert**

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

### **~~9.3~~11.3 Method of Valuation**

The valuation method or policy for any type of Scheme Asset is to be determined by the Responsible Entity and must be consistent with the range of ordinary commercial practice for valuing that type of Scheme Asset. Where the Responsible Entity values any Scheme Asset at other than its market value then a description of the valuation method or policy applied by the Responsible Entity must be given to the auditor for the time being of the Scheme prior to its implementation.

### **~~9.4~~11.4 Currency conversion**

If the Responsible Entity considers it should convert one currency to another it may do so at any time and at any conversion rate as is quoted to the Responsible Entity by any financial institution the Responsible Entity determines.

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## **~~10.12.~~ Register of Members**

### **~~10.1~~12.1 Member is absolute owner**

The Responsible Entity may treat a person who is named on the Register as the absolute owner of the Unit or Units which are registered in their name.

### **~~10.2~~12.2 Inspection of Register**

If a Member inspects or is given a copy of the Register (or part of the Register) pursuant to section 173(3) of the Corporations Act then they will be taken to have agreed not to use any information obtained from the Register (or part) 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 Member. A Member's obligation under this clause survives the transfer of all or any part of their Units.

### **~~10.3~~12.3 Notify change of name or address of Member**

A Member must promptly notify the Responsible Entity of a change of name or address.

### **~~10.4~~12.4 Closure of Register**

The Responsible Entity may close the Register at any time.

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## **~~11.~~13. Transfers of Units**

- (a) A Member may transfer all or any of their Units by whatever transfer form the Responsible Entity may require from time to time.
- (b) The transfer must be delivered to the Responsible Entity (or as it directs), duly stamped and executed by the transferor and transferee and be accompanied by any evidence of title required by the Responsible Entity.
- (c) The Responsible Entity may, in its absolute discretion, refuse to register any transfer of Units. The Responsible Entity may give the Member who lodged the transfer notice of the decision to decline the registration but shall not be obliged to provide reasons for the decision.
- (d) Any transfer is not effective until it has been entered in the Register.
- (e) The Responsible Entity may assume, as against a Member, that a power of attorney granted by that Member that is lodged with or produced or exhibited to the Responsible Entity remains in force, and may rely on it, until the Responsible Entity receives express notice in writing at its registered office of:
  - (i) the revocation of the power of attorney; or
  - (ii) the death, dissolution or insolvency of the Member.
- (f) The Responsible Entity need not concern itself with the consideration for a transfer of a Unit.

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## **~~12.~~14. Powers of Responsible Entity as Trustee of Scheme Assets**

### **~~12.1~~14.1 General Powers of Responsible Entity**

In addition to its powers arising under other provisions of this Constitution and by law, the Responsible Entity has all the powers in respect of the Scheme and the Scheme Assets that it is possible to confer on a natural person or corporation by law and as though it were the absolute and beneficial owner of the entirety of the Scheme Assets acting in its personal capacity. Without limitation, the Responsible Entity in its capacity as responsible entity of the Trust has full and complete power to:

- (a) operate the Scheme including the management of Scheme Assets and Liabilities;
- (b) issue, acquire, underwrite any issue of, dispose of, redeem, and/or cancel Units;
- (c) borrow or raise money or procure or grant any financial accommodation including the giving of guarantees for the purposes of the Scheme in any manner whatsoever

including whether or not on a secured basis and including the giving of security over Scheme Assets;

- (d) issue debentures (including a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);
- (e) grant a floating charge over the Scheme Assets;
- (f) incur obligations and liabilities of any kind, including to guarantee the obligations and liabilities of any person or provide indemnities in respect of such obligations and liabilities;
- (g) apply and invest all money at any time forming part of the Scheme Assets in property and rights of any kind;
- (h) exercise, enforce, dispose or otherwise deal with any property or right;
- (i) enter into any agreement with any person (including an Associate of the Responsible Entity) to underwrite the subscription or purchase of Units;
- (j) enter into Derivatives for any purpose; and
- (k) fetter its own powers or discretions,

in each case on any terms and conditions as the Responsible Entity thinks fit in its absolute discretion.

## **~~12.2~~14.2 Discretion to exercise powers**

Subject to the law, the Responsible Entity 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.

## **~~12.3~~14.3 Power to change name of Scheme**

The Responsible Entity may change the name of the Scheme at any time.

## **~~12.4~~14.4 Power to seek information**

At any time, the Responsible Entity may request from Members, and Members must promptly provide to the Responsible Entity, any information (including personal information and details) reasonably required by the Responsible Entity for the purposes of administering the Scheme or complying with any relevant laws.

## **~~12.5~~14.5 Power to take measures to comply with Anti-Money Laundering Laws**

Subject to the law, the Responsible Entity may in its discretion take such measures and exercise such powers as it considers necessary to enable the Scheme and the Responsible Entity to comply with Anti-Money Laundering Laws, including but not limited to those measures and powers set out in clauses ~~7~~[9.3](#), ~~8~~[10.7\(b\)](#) and ~~8-18~~[10.19](#).

## **~~12.6~~14.6 Power to appoint agents and delegates**

Subject to the Corporations Act, the Responsible Entity may appoint, engage or replace any person (including an Associate of the Responsible Entity) as its agent, sub-agent, delegate, attorney, sub-attorney, custodian or nominee or otherwise engage any person (alone, jointly or jointly and severally with other persons), to hold title to any Scheme Asset, or to exercise or perform any of its duties, powers, discretions and obligations in connection with the Scheme

(and may include the power to appoint their own agent, sub-agent, delegate, attorney, sub-attorney, custodian or nominee or otherwise engage another person for that purpose). Any such appointment or engagement may be on any terms that the Responsible Entity determines in its absolute discretion. An agent, delegate or other person appointed by the Responsible Entity pursuant to this clause ~~12.7~~14.6 may be an Associate or related body corporate of the Responsible Entity.

## ~~12.7~~14.7 Waiver of breach

Subject to its obligations at law, the Responsible Entity may waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Responsible Entity in connection with the Scheme.

## ~~12.8~~14.8 Power to make AMIT election

The Responsible Entity has the power to make a choice that the Scheme be an AMIT under the Tax Act and may exercise its discretion in such manner as it determines reasonably necessary or desirable in order for the Scheme to operate as or qualify as an AMIT under the Tax Act.

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# ~~13.15.~~ Remuneration of Responsible Entity and Scheme Expenses

## ~~13.1~~15.1 Expenses

In addition to any other rights to indemnity or reimbursement which it may have under this Constitution or at law, the Responsible Entity is indemnified and is entitled to be reimbursed out of the Scheme Assets for, or pay from the Scheme Assets, all Expenses incurred in relation to the proper performance of its duties. Without limitation this includes all Expenses of or in connection with:

- (a) the establishment, registration, operation, administration and management of the Scheme, the Scheme Assets and Scheme Liabilities including without limitation complying with any law and any of the requirements of the ASIC;
- (b) preparation, approval, execution and enforcement of this Constitution (and any amendment of this Constitution);
- (c) the admission of the Scheme to the official list of a recognised stock exchange and compliance with the applicable listing rules;
- (d) the retirement or removal of the Responsible Entity and the appointment of a successor in its place;
- (e) the initiation, prosecution, defence and compromise of any court, arbitration or other dispute resolution action, claim or proceedings relating to the Scheme (including any action, claim or proceeding brought by or against the Responsible Entity). However, if the Responsible Entity is found by a Court to be personally liable for any loss or damage to the Scheme Assets then the Responsible Entity must repay any Expenses which have been reimbursed out of or paid from Scheme Assets under this clause ~~13.15.~~15.1(e);
- (f) convening and holding meetings of Members and giving effect to resolutions of any meeting and sending other communications to Members;
- (g) the Register and all other registers in respect of any aspect of the Scheme;
- (h) the identification, acquisition, realisation, insurance, valuation, custody, management, supervision, repair, maintenance, receipt, collection, or distribution of or other dealing with any Scheme Assets (or any proposal to do any of those

things). Without limitation, this includes the due diligence costs associated with an acquisition of assets which may or may not become Scheme Assets (including time spent by executives);

- (i) obtaining and servicing of financial accommodation (including bank fees, interest, expenses, charges and borrowing costs);
- (j) appointing or otherwise engaging any agent, delegate, advisor, developer, development manager, development advisor, real estate agent, marketing agent, administrator or other person (including an Associate) for any purpose in connection with the Scheme, Without limitation, this includes persons who supply services to or on behalf of or at the request of the Responsible Entity and persons whose professional advice has been sought in respect of any matter concerning the operation, administration or management of the Scheme (including any brokerage or commission payable to those persons);
- (k) underwriting of any subscriptions for or purchase of Units including fees and indemnity amounts and amounts which may become payable because of a breach (except for negligence, fraud or breach of trust) of the underwriting contract by the Responsible Entity;
- (l) the preparation, review, printing and distribution of any product disclosure statement, supplementary product disclosure statement, information memorandum or other disclosure document in respect of the Scheme or other promotion of the Scheme;
- (m) keeping the financial records relating to the Scheme, and keeping, preparing, distributing and/or lodging the accounts relating to the Scheme and complying with any obligations with respect to the accounts relating to the Scheme and any audit of those accounts;
- (n) the termination of the Trust and winding up of the Scheme;
- (o) the establishment and operation of the Compliance Committee (including any costs incurred in the selection and appointment of CC Members). Without limitation this includes indemnities, fees, costs and insurance premiums given, paid or otherwise made available in respect of CC Members and any fees of professional advisors in respect of advice or assistance obtained by the Compliance Committee;
- (p) (while there is no compliance committee in respect of the Scheme) the board of directors of the Responsible Entity carrying out the functions which a compliance committee in respect of the Scheme would be required by law to perform. Without limitation, this includes the fees and insurance premiums paid or otherwise made available to directors of the board who are external directors for the purposes of Chapter 5C of the Corporations Act;
- (q) the preparation, operation, amendment and audit of the compliance plan;
- (r) compliance with all obligations and requirements under Taxation laws, including the keeping of taxation records, the preparation of taxation returns, taxation statements, invoices and documents relating to the Scheme, any taxation audit, and the management of the Tax affairs of the Scheme;
- (s) the establishment and administration of the complaints handling procedures referred to in clause 4719 and obtaining and maintaining membership of an external dispute resolution scheme;
- (t) Taxes and bank fees and charges incurred by the Responsible Entity in connection with the Scheme;

- (u) complying with any law and any request or requirement of ASIC or other regulatory authority;
- (v) travel expenses incurred in connection with the Scheme;
- (w) entering the Scheme in any survey;
- (x) any fees payable to any ratings organisation;
- (y) computer hardware, software and other equipment (including development and maintenance of internet facilities); and
- (z) the implementation of any stapling proposal or any restructuring or listing of the Scheme.

## **13.215.2 Class Expenses**

The Responsibility Entity may determine that an Expense, or a proportion of an Expense, is to be a Class Expense in relation to a particular Class. Unless and until the Responsible Entity makes that determination, any Expense under clause 13.1 is to be referable to all Units on an equal basis.

## **13.315.3 Fees**

To the extent permitted by the Corporations Act, the Responsible Entity is entitled to be paid (but for any client or clients within a particular Class may elect to receive less than or waive part or all of) the following fees:

- (a) until the Scheme is finally wound up, a management fee of 0.8% per annum of the Gross Asset Value of the Scheme Assets. The management fee:
  - (i) is calculated and accrues on a daily basis; and
  - (ii) is payable within 5 Business Days of the end of each month out of Scheme Assets (to the extent of income) and if that is not sufficient, out of capital which forms part of Scheme Assets;
- (b) an establishment and placement fee of up to 2% of the gross value of any asset in which the Scheme acquires a direct or indirect interest, including where that interest is acquired through the acquisition of shares, units or any other financial product, and any amounts expended on the asset for the purposes of improvement and development (multiplied by the greater of the legal, beneficial or commercial percentage of the asset the Scheme has the benefit of). The establishment and placement fee is payable to the Responsible Entity in tranches within 10 Business Days of payment of any amount in respect of the relevant asset. For example, if the Scheme acquires an indirect interest in any asset (including, but not limited to, through the acquisition of shares, units or any other financial product), the establishment and placement fee payable to the Responsible Entity will be based on the gross value of the relevant asset of that entity and thereafter on the amounts expended on the asset for the purposes of improvement and development;
- (c) a sale agency fee of up to 1% of the actual gross sale price of any asset in which the Scheme holds a direct or indirect interest including where that interest is held through investing in shares, units or any other financial product (multiplied by the greater of the legal, beneficial or commercial percentage of the asset the Scheme has the benefit of). The sale agency fee is payable within 5 Business Days of completion of the relevant sale; and
- (d) the performance fee set out in ~~Schedule 1 to this Constitution.~~

(i) if and whilst the Scheme is not part of a Stapled Entity, Schedule 1 to this Constitution, and

(ii) if and whilst the Scheme is part of a Stapled Entity, Schedule 2 to this Constitution.

### **~~13.4~~15.4 Waiver of fees and expenses and differential fees**

Subject to the law, the Responsible Entity has an absolute discretion to (in respect of a particular Class or generally):

- (a) accept lower fees than it is entitled to under this Constitution;
- (b) otherwise waive or defer (in the case of a deferral the fee accrues on a daily basis until paid) for any period it considers appropriate:
  - (i) the amount of any fees (or any part of a fee) payable to it under this Constitution in respect of all or any Units; and
  - (ii) reimbursement of any or all Expenses under clause 13.1; or
- (c) agree with any Member, or Class of Member, fee arrangements in respect of that Member or Class which are different to those that would otherwise apply under this Constitution.

### **~~13.5~~15.5 Issue of Units to Responsible Entity**

Subject to the Corporations Act, the Responsible Entity may elect that for any period it considers appropriate it is to be issued Units in such Class determined by the Responsible Entity instead of cash in payment of any of its fees or payment or reimbursement of its Expenses under this Constitution.

### **~~13.6~~15.6 GST**

- (a) The fees and any other amounts which are payable to the Responsible Entity under this Constitution are exclusive of GST.
- (b) Any payment or reimbursement required to be made under this Constitution for an Expense or other amount paid or incurred by the Responsible Entity will be limited to the total Expense or amount less the amount of any input tax credit to which the Responsible Entity is entitled for the acquisition or transaction to which the Expense or amount relates.
- (c) If the Responsible Entity becomes liable to remit GST in respect of any supplies made under or in connection with this Constitution then:
  - (i) in addition to any fees or other amount to which the Responsible Entity is entitled, the Responsible Entity is entitled to recover or be paid from the Scheme Assets (by way of increased fee or otherwise), at the same time as the fees or other amount, an amount equal to the amount of the GST liability; and
  - (ii) the Responsible Entity will issue a tax invoice for such supplies no later than the time at which the Responsible Entity recovers or is paid the additional amount referred to in clause 13.6(c)(i) from the Scheme Assets.
- (d) If the GST payable in relation to a supply made under or in connection with this Constitution varies from the additional amount recovered or paid from the Scheme

Assets under clause 13.6(c)(i) in respect of that supply, then the Responsible Entity will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from the Scheme Assets (as appropriate).

- (e) Except where the context suggests otherwise, terms used in this clause 13.6 have the meanings given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999*. A reference to Responsible Entity in this clause includes the representative member of any GST group to which the Responsible Entity belongs.

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## **14.16. Responsible Entity's Indemnity out of Scheme Assets**

### **14.16.1 Responsible Entity's indemnity**

In addition to any other rights of indemnity or reimbursement which it may have under this Constitution or at law, the Responsible Entity is indemnified and is entitled to be reimbursed out of the Scheme Assets for, or pay from the Scheme Assets, all liabilities and losses incurred by it in relation to the proper performance of its duties in relation to the operation, administration and management of the Scheme or otherwise in connection with the Scheme. The Responsible Entity 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 Scheme Assets, or which it cannot fully pay from the Scheme Assets and unless its own liability is limited in a manner satisfactory to it in its absolute discretion. The rights of indemnity and reimbursement provided by this clause 14.16.1 shall continue in favour of the Responsible Entity after it has ceased to be Responsible Entity to the Scheme.

### **14.16.2 Indemnity extends to cover acts of agents or delegates**

To the extent permitted by the Corporations Act, if for any reason (including because of the operation of section 601FB(2) of the Corporations Act), the Responsible Entity 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 Responsible Entity), then the indemnity in clause 14.16.1 extends to also include that liability.

### **14.16.3 No obligation to commence litigation**

The Responsible Entity 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 Scheme Assets has and will at all times have sufficient net assets to adequately indemnify it against all Expenses, liabilities or losses it may incur in connection with that action, claim or proceeding.

### **14.16.4 Right of indemnity applies even if liabilities exceed Scheme Assets**

The Responsible Entity's rights to indemnity and reimbursement under this Constitution and at law apply even if at any time the liabilities of the Scheme exceed the value of the Scheme Assets.

### **14.16.5 Right of indemnity applies even if unrelated breach of trust**

The Responsible Entity's right of indemnity and reimbursement in respect of a matter (an "**Indemnified Matter**") will not be lost or impaired by reason of a separate matter (whether it arises before or after the Indemnified Matter) in respect of which those rights of indemnity do not apply.



## **~~14.6~~16.6 Indemnity for CC Member**

If any CC Member incurs a liability as such in good faith, the Responsible Entity may indemnify the CC Member out of Scheme Assets in respect of that liability to the extent permitted by the Corporations Act.

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## **~~15.17.~~ Income and distributions to Members**

### **~~15.1~~17.1 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 ~~17.15.14~~ for the provisions contained in Schedule ~~23~~ to apply that is effective in respect of a particular Financial Year, then the provisions of this clause ~~15.17~~ will operate subject to, and be qualified by, the provisions of Schedule ~~23~~ for that Financial Year.
- (c) The provisions contained in clause ~~15.5~~17.6 and clause ~~15.6~~17.7 will not apply in respect of a particular Financial Year unless or until the Responsible Entity makes an election under clause ~~17.15.14~~ that clause ~~15.5~~17.6 and clause ~~15.6~~17.7 are to apply.

### **~~15.2~~17.2 Determination of Distributable Income**

- (a) The Responsible Entity must determine the:
  - (i) Distributable Income;
  - (ii) Capital Gains; and
  - (iii) Residual Incomeof 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~~17.3 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~~17.2.

### 17.4 Combined accounts

While the Trust is part of a Stapled Entity, the Responsible Entity may prepare combined accounts for the Stapled Entity in conjunction with the Other Issuers, in addition to any other accounts required to be prepared under this Constitution.

### ~~15.4~~17.5 Residual Income Entitlements and Residual Gains Entitlements

Subject to clause ~~15.12~~17.13, 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~~17.5(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~~17.5(a) in respect of the previous Distribution Periods in the Financial Year.

## ~~15.5~~17.6 Significant Redemption

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

## ~~15.6~~17.7 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.

### **15.717.8 Present entitlement**

- (a) Subject to clause ~~15.9~~17.10, 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.

### **15.817.9 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~~17.12, 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~~17.10 **Separate accounts**

- (a) Subject to paragraph ~~15.9~~17.10(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~~17.11 **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~~17.5 and ~~15.7~~17.8 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~~17.12 **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~~17.13 **Fractions**

If the share of Distributable Income for a Member determined under clause ~~15.4~~17.5 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~~17.14 **Classification of items**

Without limiting clause ~~15~~17.2, 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~~17.15 **Responsible Entity elections**

- (a) The Responsible Entity may elect in writing for:
  - (i) the provisions contained in Schedule ~~2~~3 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~~3; or
  - (ii) the provisions in clause ~~15.5~~17.6 and clause ~~15.6~~17.7 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 ~~17.15-14~~(a)(i).
- (b) The Responsible Entity may notify the Members of the making of an election under this clause ~~17.15-14~~.
- (c) Nothing in this clause ~~17.15-14~~ 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 ~~17.15-14~~.

## ~~15.15~~17.16 **Impact of Schedule ~~23~~ 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 ~~23~~ 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 ~~23~~ 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 ~~15.17~~ and those powers may be exercised by the Responsible Entity despite any contrary powers provided under Schedule ~~23~~.

## ~~15.16~~17.17 **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.

## ~~15.17~~17.18 **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.

## ~~15.18~~17.19 **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~~17.5 or clause ~~15.7~~17.8 (excluding any amounts previously distributed in respect of the Distribution Period) within 2 months after the Distribution Calculation Date for the Distribution Period.

## ~~15.19~~17.20 **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~~17.5 or clause ~~15.7~~17.8. 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~~17.22, as though under a distribution reinvestment scheme). The provisions of this clause ~~15.17~~ apply to such distributions so far as they are capable of doing so.

## ~~15.20~~17.21 **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~~17.19) 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.

## ~~15.21~~17.22 **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 relevant 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 relevant 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.

## 17.23 **Restriction**

While the Trust is part of a Stapled Entity:

- (a) no reinvestment may occur unless, contemporaneously with the reinvestment in additional Units, the Member subscribes for or purchases an additional number of Other Stapled Securities which, when issued or acquired, are Stapled to the additional Units;
- (b) no reinvestment under clause 17.22 may occur unless at the same time the Members are issued with additional Units, they are also issued with an applicable number of each of the Other Stapled Securities; and
- (c) the Responsible Entity may provide for and pay on behalf of Members the application money for such Other Stapled Securities out of the amount otherwise available for reinvestment.

## ~~15.22~~17.24 **Classes**

The rights of a Member under this clause ~~15.17~~ are subject to the rights, restrictions and obligations attaching to any particular Unit or Class on issue from time to time.

## ~~15.23~~17.25 **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 ~~15.17~~ 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.

## ~~15.24~~17.26 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 ~~15.17~~, 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.

## 17.27 Capital Reallocation between Stapled Entities

- (a) Notwithstanding any other provision of this Constitution, if at any time the Responsible Entity makes a distribution or other payment (whether in the nature of capital, income or otherwise) (or both) on terms that the whole or any part of the amount to be paid in respect of each Unit ("Capital Reallocation Amount") is to be paid at the direction of the Member to or for the benefit of an Other Stapled Entity (as an additional capital payment in respect of the security to which the Unit is Stapled), then:
- (i) the Member is deemed to have directed the Responsible Entity to pay the Capital Reallocation Amount to that Other Stapled Entity;
  - (ii) the Responsible Entity must pay the Capital Reallocation Amount (and is empowered to do so for all purposes) to or for the benefit of the Other Stapled Entity; and
  - (iii) each Member appoints the Responsible Entity as its attorney and agent to do all things the Responsible Entity considers necessary or desirable to give effect to the payment of the Capital Reallocation Amount to the Other Stapled Entity.
- (b) Notwithstanding any other provision of this Constitution, if at any time an Other Stapled Entity makes a return of capital or pays a distribution (or both) to the holder of a security that forms part of a Stapled Security on terms that the whole or any part of the amount to be returned or paid in respect of the security ("Recipient Capital Reallocation Amount") is to be paid at the direction of the holder of the Stapled Security to the Responsible Entity as an additional capital payment in respect of the Unit to which the security is Stapled, then the holder of that Unit, as a holder of the Stapled Security, is:
- (i) deemed to have directed the Responsible Entity to accept the Recipient Capital Reallocation Amount as an additional capital payment in respect of the Unit to which the security is Stapled; and
  - (ii) deemed to have appointed the Responsible Entity as its attorney and agent to do all things the Responsible Entity considers necessary or desirable to give effect to the receipt of the Recipient Capital Reallocation Amount by the Responsible Entity.



and the Responsible Entity will be deemed to receive the Recipient Capital Reallocation Amount as an additional payment in respect of the Unit to which the security is Stapled.

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## **~~16.~~18. Meetings of Members**

### **~~16.1~~18.1 Corporations Act to apply**

- (a) While the Scheme is not Registered, meetings of Members or of Members of a Class will be called and conducted as if Part 2G.4 applied (as modified by clauses ~~16~~18.2 to ~~16~~18.17 inclusive) with any necessary modifications except that at least 7 days' notice of a meeting must be given to Members or Members of a Class, or such shorter notice as they agree.
- (b) While the Scheme is Registered, except as provided for in clauses ~~16~~18.2 to ~~16~~18.17 inclusive, the provisions of Part 2G.4 of the Corporations Act apply to meetings of Members or Members of a Class.

### **~~16.2~~18.2 Convening of Meetings**

- (a) The Responsible Entity may convene a Meeting of Members or Members of a Class at any time and may determine (as is applicable) the time, place (or places), venue (or venues) and the manner in which (and any technologies through which), the meeting will be held and conducted and Members may participate.
- (b) When the Scheme is Registered:
  - (i) in accordance with section 252D of the Corporations Act, Members who hold interests carrying at least 5% of the votes that may be cast at a meeting of the Scheme's Members may call and arrange to hold a meeting of the Scheme's Members to consider and vote on a proposed Special Resolution or a proposed Extraordinary Resolution; and
  - (ii) in accordance with section 252B of the Corporations Act, the Responsible Entity must call and arrange to hold a meeting of the Scheme's Members to consider and vote on a proposed Special Resolution or a proposed Extraordinary Resolution on the request of:
    - A. Members with at least 5% of the votes that may be cast on the resolution; or
    - B. at least 100 Members who are entitled to vote on the resolution.

### **~~16.3~~18.3 Omission to give notice**

Accidental omission to give notice to, or the non-receipt of notice of meeting by, a Member will not invalidate the meeting.

### **~~16.4~~18.4 Chair**

Subject to the Corporations Act:

- (a) the Responsible Entity may appoint a person to chair a Meeting of Members or a Class of Members;

- (b) the chair of a meeting of Members or a Class of Members 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 Member 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 Member or a Member of a Class; and
- (c) the decision of the Chair on any matter relating to the conduct of a meeting is final.

### **~~16.5~~18.5 Form of proxy**

The Responsible Entity may prescribe the form of proxy from time to time, subject to the Corporations Act.

### **~~16.6~~18.6 Acceptance of proxy appointment**

The Responsible Entity may in its absolute discretion accept an appointment of a proxy as valid even if it contains only some of the information required by section 252Y(1) of the Corporations Act. An appointment of proxy may be a standing one.

### **~~16.7~~18.7 Joint Holders**

Where more than one person is registered as the holder of any Unit, then:

- (a) all such registered holders shall be counted as a single registered holder for the purposes of calculating the number of Members who have:
  - (i) requested a meeting under section 252B(1) of the Corporations Act;
  - (ii) given the Responsible Entity notice of a Special Resolution or Extraordinary Resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
  - (iii) requested that a statement be distributed to Members under section 252N of the Corporations Act; or
  - (iv) demanded a poll under section 253L of the Corporations Act;
- (b) the joint holder first named in the Register (or if that person does not vote, the next named joint holder, and so forth) may exercise the voting rights of jointly held Units.

### **~~16.8~~18.8 Quorum requirements**

The quorum for a meeting of Members or Members of a Class is 2 Members present in person, or represented by proxy or represented by body corporate representative. If, however, there are less than 2 Members who are entitled to vote at the meeting, the quorum for that meeting is the number of Members or Members of a Class who are entitled to vote at the meeting.

### **~~16.9~~18.9 Proxies and Representations**

- (a) If an individual is attending a meeting both as a Member or a Member of a Class and as a proxy or body corporate representative, then the Responsible Entity may, for the purposes of determining whether a quorum is present, count the individual in respect of each such capacity.
- (b) Notwithstanding section 252W(2), a proxy is entitled to vote on a show of hands.

- (c) For the purposes of section 252Z of the Corporations Act, the Responsible Entity 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.
- (d) Section 253A(1) applies to determine the validity of proxy votes. That section also applies to determine the validity of a vote of a body corporate representative as if the reference to 'proxy' in that section was a reference to body corporate representative.

## ~~16.10~~ **18.10 Quorum presence**

The quorum must be present at all times during the meeting.

## ~~16.11~~ **18.11 Absence of quorum - Dissolution or adjournment of meeting**

If the quorum is not present within 30 minutes after the scheduled time for the start of the meeting set out in the notice of meeting, the meeting is:

- (a) if called under sections 252B, 252C, 252D or 252E - dissolved. This is not so if the meeting is called under section 252E and the court has directed otherwise; or
- (b) if called under section 252A - adjourned to a place and time that the Responsible Entity decides.

The quorum for any adjourned meeting is the number of Members or Members of a Class who are present in person or by proxy or by body corporate representative. If the quorum is not present within 30 minutes after the scheduled time for the start of the adjourned meeting, the meeting is dissolved.

## ~~16.12~~ **18.12 Power of chair to cancel or postpone meetings**

The chair may cancel or postpone a meeting for any reason to any place and time as it thinks fit unless the meeting has been called under section 252E and the court has directed otherwise.

## ~~16.13~~ **18.13 Resolution binding**

A resolution duly passed at a meeting of Members or Members of a Class duly convened and held in accordance with the Corporations Act and this Constitution or by postal ballot or electronic means under clause ~~16.18~~ 18.16 binds all Members or all Members of the Class (in that capacity) and the Responsible Entity and each Member is bound to give effect to the resolution. This is so whether or not a Member was present at the meeting.

## ~~16.14~~ **18.14 Poll**

A poll may be demanded and if demanded will be conducted as directed by the chair. 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.

## ~~16.15~~ **18.15 Notice of meeting**

- (a) Notwithstanding section 252G(4) of the Corporations Act, a notice of meeting sent by post or by email or other electronic means is taken to be received by the Member or Member of a Class at the time specified in clause 25.2(c)(ii).
- (b) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members or Members of a Class is not invalid if either or both a person does not receive notice of the meeting or the Responsible Entity accidentally does not give notice of the meeting to the person.

## ~~16.16~~18.16 Resolution by Postal Ballot or electronic means

- (a) Subject to the Corporations Act, a resolution of Members may be passed by the relevant majority of Members—
  - (i) completing, signing and returning to the Responsible Entity, within such period as specified by the Responsible Entity, copies of a written resolution, or
  - (ii) voting on, or approving, the resolution through or using electronic means approved by the Responsible Entity.
- (b) The resolution may (but is not required to) consist of several documents in the same form, each signed by one or more Members and is effective at the time specified by the Responsible Entity.
- (c) A Member has, in relation to the resolution, the number of votes determined in accordance with section 253C(2) of the Corporations Act and the value of the Member's total interests must be determined at such time as the Responsible Entity specifies.

## ~~16.17~~18.17 Meeting of Class Members

This clause ~~16.18~~ applies to meetings of Members of a Class with any necessary modifications.

## 18.18 Joint meetings

While the Trust is part of a Stapled Entity:

- (a) meetings of the Members may be held concurrently and in conjunction with meetings of the holders of the Other Stapled Securities and the Responsible Entity may, in conjunction with the Other Issuers, make such rules for the conduct of such meetings as the Responsible Entity considers necessary;
- (b) the Responsible Entity may, in conjunction with the Other Issuers, determine that a vote cast on a resolution by or on behalf of a Member is to be treated also as a vote cast for an equivalent number of that Member's Other Stapled Securities.

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## ~~17.19~~19. Complaints

While the Scheme is Registered, if a Member makes or submits a Complaint to the Responsible Entity in relation to the Scheme, then the Responsible Entity must deal with the Complaint in accordance with all applicable laws and ASIC Instruments, 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 Responsible Entity of the Complaint, communicating to the Member in writing:
  - (i) the remedies which the Responsible Entity may make available to the Member which may include compensation, an apology or information;

- (ii) the decision of the Responsible Entity; and
- (iii) the Member's right to take their Complaint to an external dispute resolution scheme of which the Responsible Entity is a member, together with the name and contact details of the relevant external dispute resolution scheme; and
- (d) providing a Member with all reasonable assistance and information that the Member may require for the purpose of making a Complaint and understanding the complaints handling procedures adopted by the Responsible Entity.

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## **18.20. Dealings with Scheme and Scheme Members**

### **18.20.1 Dealings by Responsible Entity and Associates**

Subject to the law, the Responsible Entity and any one or more of its Associates may at any time:

- (a) in any capacity subscribe for, purchase, hold or otherwise deal with Units;
- (b) be a responsible entity, trustee or manager in relation to any other managed investment schemes or trusts;
- (c) act in any representative, fiduciary or professional capacity on its own behalf or on behalf of itself or with any other of them in any capacity or with any Member;
- (d) invest in and maintain as Scheme Assets interests in other managed investment schemes managed or promoted by the Responsible Entity or any of its Associates; and
- (e) be interested in or enter into any contract or transaction with itself in any capacity or with any other of them in any capacity or with any Member or with any company or other entity any part of whose units, or shares or other issued capital forms part of the Scheme Assets.

### **18.20.2 Responsible Entity and Associates not liable to account**

The Responsible Entity and its Associates may retain for their own benefit and are not liable to account to the Scheme, the Members or any other person for any profits or benefits arising from or in connection with any action, contract or transaction referred to in clause 18.20.1.

### **18.20.3 Responsible Entity as a Member**

Subject to the Corporations Act, where the Responsible Entity acquires Units (on its own account or in some other capacity):

- (a) the Responsible Entity may be registered as a Member in respect of the Units;
- (b) the Units acquired by the Responsible Entity are not cancelled or redeemed by reason of their acquisition by the Responsible Entity or the registration of the Responsible Entity as a Member in respect of them and the Responsible Entity may dispose of the Units to other Members or to third parties; and
- (c) Units held by the Responsible Entity confer on the Responsible Entity all of the benefits and rights of any other Member under this Constitution and the law.

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## **~~19.21.~~ Protection and limitation of liability of Responsible Entity**

### **~~19.1~~21.1 No limitation on other statutory protection for the Responsible Entity**

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

### **~~19.2~~21.2 Responsible Entity may obtain and rely on advice etc.**

In respect of the operation and administration of the Scheme or otherwise in connection with the Scheme, the Responsible Entity may obtain and rely on:

- (a) the Register;
- (b) the opinion, advice, statements or information obtained from solicitors or barristers (whether or not they are instructed by the Responsible Entity), bankers, accountants, auditors, valuers, brokers, underwriters, advisers or consultants and any other person who is an expert appointed or otherwise engaged by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to have the relevant expertise in relation to the matters upon which they are consulted;
- (c) any document believed by the Responsible Entity in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for the purposes of or in connection with the Scheme; and
- (d) any other document or information from any Member or other person (whether or not the person is appointed or otherwise engaged by the Responsible Entity) believed by the Responsible Entity in good faith to be the original or a copy thereof.

### **~~19.3~~21.3 No liability for Responsible Entity**

Subject to clause ~~19.21.~~21.4 and except to the extent the Corporations Act or other relevant law provides otherwise, the Responsible Entity is not liable in contract, tort, under statute or otherwise to any Member for any loss or damage, including loss or damage to the Scheme 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:

- (a) the Responsible Entity obtaining or relying on (in accordance with clause ~~19.21.~~21.2) any of the opinions, advice, statements, documents or information referred to in clause ~~19.21.~~21.2;
- (b) the Responsible Entity performing or not performing its duties or exercising or not exercising any of its powers;
- (c) the Responsible Entity 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 Responsible Entity;
- (d) any act or omission of any person (whether or not the person is appointed or otherwise engaged by the Responsible Entity). This includes fraudulent or unauthorised acts or omissions;
- (e) the Responsible Entity making any payment to any fiscal authority on any basis even if the payment need not have been made;

- (f) the Responsible Entity doing or omitting to do any act which by reason of:
  - (i) any present or future law; or
  - (ii) any decree, order or judgment of any Court,the Responsible Entity is hindered, prevented or forbidden from doing or required to do; or
- (g) the Responsible Entity doing or omitting to do any act at the request of a Member, including making a payment to a person other than the Member.

#### **~~19.4~~21.4 Fraud, gross negligence or wilful default of the Responsible Entity**

Clause ~~19.4~~21.3 does not apply in respect of any loss or damage if and to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of the Responsible Entity.

#### **~~19.5~~21.5 Liability limited to third parties**

The Responsible Entity is not liable to any person who is not a Member and nor will that person be entitled to enforce any rights against the Responsible Entity to any greater extent than the Responsible Entity is entitled to recover through its right of indemnity from, and is in fact indemnified from, the Scheme Assets.

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### **~~20.22.~~ Winding up of the Scheme**

#### **~~20.1~~22.1 Date of winding up of the Scheme**

The Trust terminates on the earliest of:

- (a) the date specified by the Responsible Entity as the date that the Scheme is to terminate in a notice given to Members;
- (b) when the Scheme is Registered, the date fixed by Members as the date that the Scheme is to terminate by a resolution that has been passed at a meeting on a poll by an Extraordinary Resolution; and
- (c) the occurrence of an event requiring the winding up of the Scheme under a provision of the Corporations Act or of any other applicable law.

#### **~~20.22.2~~ Procedure on termination**

If under clause ~~20.22.~~22.1 the Trust has terminated then, subject to any court orders or directions to the Responsible Entity, the following provisions will apply:

- (a) the Responsible Entity must give to each Member notice of the termination and of its intention to wind up the Scheme;
- (b) no Units may be issued or redeemed;
- (c) subject to clause ~~20.22.~~22.2(e), the Responsible Entity will as soon as reasonably practicable after giving the notice under clause 20.2(a) realise all of the Scheme Assets in such manner as the Responsible Entity considers appropriate and pay, discharge or provide for (which provision may be made for such period of time as the Responsible Entity thinks fit) all liabilities (whether actual, contingent or prospective) and all Expenses of or in connection with the Scheme including those anticipated in connection with the winding up of the Scheme;



- (d) the net proceeds of realisation and all other cash forming part of the Scheme Assets will be distributed to the Members in proportion to the number of Units held by them at the date of the distribution;
- (e) the Responsible Entity is entitled to postpone the realisation of any of the Scheme Assets for the time that it thinks is desirable so to do in the interests of the Members, and will not be responsible for any loss or damage attributable to that postponement except if and to the extent expressly provided for in clause ~~19~~21.4; and
- (f) the Responsible Entity may make partial distributions in accordance with this clause.

### ~~20.3~~22.3 Retention of proceeds of realisation

If the Responsible Entity decides to make a provision under clause ~~20~~22.2(c), then it may retain such part of the proceeds of realisation as it thinks fit for as long as it thinks fit to meet all the liabilities and Expenses referred to in clause ~~20~~22.2(c). Any proceeds so retained which are ultimately found not to be required will be distributed in accordance with clause ~~20~~22.2.

### ~~20.4~~22.4 Distribution to Members

The Responsible Entity must make a distribution under this clause 20 only if the Member delivers to it any form of receipt and discharge required by the Responsible Entity.

### ~~20.5~~22.5 In specie distributions

The Responsible Entity may distribute any Scheme Asset to a Member in specie. The value of the asset is to be determined by the Responsible Entity and clause ~~9~~11 will apply for this purpose. Such valuation must be reasonably current. Expenses payable in respect of an in specie distribution are to be paid for by the Member unless the Responsible Entity determines any such Expenses are payable or reimbursable out of Scheme Assets.

### ~~20.6~~22.6 Audit of Accounts

If required by law or ASIC policy, following the winding up of the Scheme, the Responsible Entity must cause the accounts of the Scheme to be audited by an independent registered company auditor in the manner required by that policy.

### ~~20.7~~22.7 Amounts to which Member is Presently Entitled

Prior to the winding up of the Scheme, the Responsible Entity must pay to Members any undistributed amounts to which they are presently entitled to respectively by virtue of clause ~~20~~22.

### ~~20.8~~22.8 Continuation of Constitution

This Constitution (including all rights of indemnity), continues to apply until the Scheme is finally wound up but only to the extent the Constitution is not inconsistent with this clause 20.

### ~~20.9~~22.9 Cancellation of Units

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



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## **~~21.23.~~ Removal and retirement of Responsible Entity**

### **~~21.1~~23.1 Retirement of Responsible Entity**

- (a) Subject to the Corporations Act, while the Scheme is Registered the Responsible Entity may retire at such time as it thinks fit.
- (b) While the Scheme is Registered, notwithstanding section 601FM of the Corporations Act:
  - (i) the Responsible Entity may be removed by a resolution that has been passed at a meeting on a poll by:
    - A. at least 35% of the total votes which may be cast by Members entitled to vote on the resolution; and
    - B. at least 50% of the votes cast by Members entitled to vote on the resolution; and
  - (ii) a new Responsible Entity may be appointed by a resolution that has been passed at a meeting on a poll by an Extraordinary Resolution.
- (c) While the Scheme is not Registered, the Responsible Entity must retire:
  - (i) when required by law; and
  - (ii) when required to do so by a resolution of Members which has been passed by the majority specified in paragraph ~~21.23.1~~(b)(i),and otherwise may retire on not less than 3 months' notice to the Members (or by such shorter period as they agree). The Responsible Entity may appoint in writing the replacement responsible entity from retirement.

### **~~21.2~~23.2 Consequences of change of Responsible Entity**

If and when the Responsible Entity retires or is removed as the Responsible Entity then, with effect from and including the time of that retirement or removal:

- (a) the former responsible entity is released from all obligations and liabilities in relation to the Scheme arising after that time; and
- (b) the new responsible entity will be taken to have agreed:
  - (i) to indemnify the former responsible entity for all its costs and expenses incurred (after that time) in connection with discharging its obligations under section 601FR of the Corporations Act; and
  - (ii) if it is not an Associate of the former responsible entity or it has not obtained the written consent of the former responsible entity, to promptly take whatever action is necessary to change the name of the Scheme and remove any words, letters or expressions from this Constitution and any other documents which might express or imply an association with the former responsible entity or any of its Associates and agrees not to use any such words, letters or expressions in any connection with the Scheme and this Constitution.

## **~~21.3~~23.3 Covenant of proposed new Responsible Entity**

Whether or not the Scheme is Registered, any proposed new responsible entity of the Scheme must agree to be bound by this Constitution as if it had been an original party to it by executing a deed to that effect. While the Scheme is not Registered, the Responsible Entity must also be a party to that deed and agree to do all things reasonably necessary to facilitate the change of Responsible Entity.

## **~~21.4~~23.4 Retirement Benefit**

The Responsible Entity may at any time agree with any person (including the proposed replacement responsible entity) that the Responsible Entity will be paid by or provided with such remuneration (including any form of benefit) from that person for:

- (a) agreeing to submit a proposal to Members for the retirement of the Responsible Entity and the nomination to the Members of the replacement responsible entity as its replacement; or
- (b) retiring as Responsible Entity,

and the Responsible Entity is not liable to account to Members or any other person for any such payment or benefit.

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## **~~22.~~24. Payments and recoveries**

### **~~22.1~~24.1 Payments to a Member**

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

### **~~22.2~~24.2 Member direction for payment to third parties**

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

### **~~22.3~~24.3 Payments by cheque**

If the Responsible Entity decides to pay money by cheque then:

- (a) if such cheque is issued to the Member and is presented and paid or the payment is made to a person at the direction of the Member or to an account with a financial institution nominated by the Member then, in each such case, that payment is in full satisfaction of the Responsible Entity's obligation to pay and a good discharge to the Responsible Entity; and
- (b) the Responsible Entity may determine that:
  - (i) any cheque issued which is made payable to the Member or to a person at the Member's direction and which is not presented within 3 months; or
  - (ii) any payment unsuccessfully attempted to be made 3 times to a Member by electronic transfer of funds at the discretion of the Responsible Entity,

may be cancelled and the money reinvested in Units in the name of the Member at the Issue Price which applies as at the Valuation Time occurring after the cancellation of the cheque or after the third unsuccessful attempt at payment by electronic transfer, or dealt with by the Responsible Entity in accordance with the requirements of any applicable unclaimed moneys laws.

#### **~~22.4~~24.4 Payments to joint Members**

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

#### **~~22.5~~24.5 Member indemnification of Responsible Entity**

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

- (a) any unpaid amounts due by the Member or Former Member on any basis (under this Constitution, pursuant to the Scheme disclosure document, or pursuant to the Corporations Act) to the Responsible Entity (either on its own account or on account of the Scheme). If those amounts represent fees payable to the Responsible Entity, it may retain the amounts deducted or recovered for its own purposes;
- (b) any amount of Tax (or the Responsible Entity's estimate of Tax) owed by the Member which the Responsible Entity reasonably believes it must or should deduct from the payment or receipt and any Expenses in respect of the entitlement of the Member or Former Member to, or payment of income or capital or the issue and allotment of Units, and the Responsible Entity 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 Member or Former Member (or the Responsible Entity's estimate of it) that is incurred by the Responsible Entity as a consequence of an action or omission of, or which is requested by, the Member or Former Member; and
- (d) any Tax which is paid or anticipated to be payable by the Responsible Entity on account of or in respect of the Member or Former Member on an amount distributed to that Member or Former Member.

#### **~~22.6~~24.6 Responsible Entity's lien**

The Responsible Entity has a first and paramount lien over all of a Member's Units in respect of any monies payable to the Responsible Entity on any basis under this Constitution or the Corporations 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 Responsible Entity of any transfer of any Units in respect of which it has a lien automatically terminates the lien in respect of those Units.

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#### **~~23.25.~~ Indemnification and insurance of Compliance Committee Members**

- (a) To the extent permitted by law, the Responsible Entity may by deed, indemnify, or agree to indemnify, from the Scheme Assets, 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 Responsible Entity or a related body corporate of the Responsible Entity) provided that the liability does not arise out of conduct involving a lack of good faith.

- (b) To the extent permitted by law, the Responsible Entity may by deed, indemnify, or agree to indemnify, from the Scheme Assets, 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 Corporations Act.
- (c) To the extent permitted by law, the Responsible Entity may pay, or agree to pay, from the Scheme 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,provided that the liability does not arise out of conduct involving a wilful breach of a duty referred to in section 601JD of the Corporations Act; or
  - (ii) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

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## **~~24.26.~~ 26. Death and insolvency of a Member**

### **~~24.1~~26.1 Death of a Member**

If a Member dies, then only the legal personal representative or, if the Member is registered jointly as a holder of Units only the survivor or survivors, will be recognised as having any claim to Units registered in the name of that Member. The Responsible Entity may require such information as it thinks fit to establish a person's entitlement to claim a Member's Units.

### **~~24.2~~26.2 Legal disability, bankruptcy etc. of a Member**

If a Member becomes subject to a legal disability, becomes bankrupt or is placed in liquidation, then the survivor (or survivors in the case of a joint holding of Units) or any person who gives the Responsible Entity all the information the Responsible Entity requires to establish their entitlement to be registered as the holder of the Units registered in the Member's name as a result of the legal disability, bankruptcy or liquidation, will be recognised as having any claim to the Units registered in the name of that Member.

### **~~24.3~~26.3 Discharge to Responsible Entity**

A person who is entitled to Units upon the death, legal disability, bankruptcy or insolvency of a Member may give a good discharge for any money payable or property transferable in respect of Units. Such person is not entitled to receive notices of or attend or vote at any

meetings of Members until they are entered in the Register as the holder in respect of the Units.

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## **~~25.~~27. Notices**

### **~~25.1~~27.1 Form of notice by Member**

Subject to the Corporations Act, any notice, consent or other communication by a Member to the Responsible Entity:

- (a) must be in writing (or in any other manner determined by the Responsible Entity) and in English unless the Responsible Entity determines otherwise;
- (b) must be signed personally or bear the facsimile or electronic signature or other electronic identification of the Member or, of a duly authorised officer or representative of the Member unless the Responsible Entity determines otherwise;
- (c) must be addressed to the registered office of the Responsible Entity or to the fax number or any other address (including electronic address) that the Responsible Entity notifies from time to time; and
- (d) is taken to be duly given by the sender and received by the Responsible Entity only at the time of actual receipt by the Responsible Entity.

### **~~25.2~~27.2 Form of Notice by the Responsible Entity**

Subject to the Corporations Act, any notice or other communication by the Responsible Entity to a Member:

- (a) must be given in writing (or in such other manner as the Responsible Entity determines);
- (b) sent to the Member at their physical or electronic address specified in the Register;
- (c) is taken to be received by the Member;
  - (i) (in the case of delivery by hand), on delivery at the physical address of the Member or on delivery personally to them;
  - (ii) (in the case of pre-paid post) on the next Business Day after the date of posting;
  - (iii) (in the case of fax transmission) on receipt of a transmission report confirming successful transmission;
  - (iv) (if sent by any other manner) at the time the Responsible Entity determines.

### **~~25.3~~27.3 Joint Holders of Units**

For persons registered jointly as the holders of a Unit, notices or other communications given to or by the holder named first in the Register as provided in clauses ~~25.2~~27.1 and ~~25.2~~27.2 respectively will be taken to be validly given to or by all the joint Members.

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## **~~26-28.~~ 29. 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 Deed which remain in full force and effect.

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## **~~27-29.~~ 30. Amendment**

### **~~27-1~~ 29.1 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~~ 29.2 Attribution Managed Investment Trust**

Without limiting the Responsible Entity's powers in clause ~~27-2~~ 29.1, 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.

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## **~~28-30.~~ 31. Perpetuity period**

### **~~28-1~~ 30.1 Actions by Responsible Entity after 80 years**

If to exercise a power under this Constitution after the expiry of the perpetuity period, or to exercise a power in a particular way after the expiry of the perpetuity period, would offend against any rule of law or equity such as the rule against perpetuities, then the Responsible Entity ceases to have power to exercise that power (or to exercise that power in that way) at the expiry of the perpetuity period.

### **~~28-2~~ 30.2 Perpetuity period**

The perpetuity period applicable to any disposition made by this Constitution is the period of 80 years from the date the Scheme is established.



## Schedule 1 - Performance Fee

### 1. Definitions

~~1.2~~<sup>1.1</sup> In addition to the definitions in clause 1.1 of this Constitution, the following additional definitions apply to this Schedule 1:

**Benchmark** means 2 percent per Quarter (being 8 percent per annum).

**Calculation Date** means the last day of the Calculation Period.

**Calculation Period** means the period which begins on the first day following the end of the previous Calculation Period and ends on the last day of the next Quarter during which Outperformance is positive, except that the:

- (a) first Calculation Period is the period commencing on 1 July 2020 and ending on 30 September 2020; and
- (b) last Performance Fee Calculation Period is the period ending on the final Performance Fee Payment Date and commencing on the first day of the Quarter immediately following the last Quarter prior to the final Performance Fee Payment Date during which Outperformance is positive.

**Closing Unit Price** means, in respect of a Calculation Period, the Unit Price calculated as at the Calculation Date less accrued management fees (excluding the performance fee) and administration costs.

**Distributions** means, in respect of a Calculation Period, any Distributable Income payable in respect of the Calculation Period.

**Fund Performance** means, in respect of a Calculation Period, an amount calculated in accordance with the following formula:

$$\frac{\text{Closing Unit Price} - \text{Opening Unit Price} + \text{Distributions per Unit}}{\text{Opening Unit Price}} \times 100$$

**Performance Fee** means, in respect of a Calculation Period, the amount calculated in accordance with the following formula:

Outperformance x 20% x Closing Unit Price x the number of Units on issue at the end of the Calculation Period

**Performance Fee Payment Date** means:

- (a) the last day of each Calculation Period during the term of the Scheme;
- (b) the winding up of the Scheme;
- (c) the Responsible Entity being removed, or being forced to retire, from office involuntarily; and
- (d) the sale, redemption or cancellation of greater than 50% of Units (or Units in any class) of the Scheme.

**Opening Unit Price** means, in respect of a Calculation Period, the Unit Price determined as the ex-distribution Unit Price as at the commencement of the first day of the relevant Calculation Period.



**Outperformance** means the difference between the Fund Performance and the Benchmark over the Calculation Period.

**Quarter** means each period of three calendar months commencing 1 January, 1 April, 1 July and 1 October each year.

**Unit Price** means an amount calculated in accordance with the following formula:

$\frac{\text{Net Asset Value of the Scheme Assets} + \text{Acquisition Expenses} + \text{Indirect Acquisition Cost Adjustment}}{\text{Total number of Units on issue}}$
---

## 2. Performance Fee

2.1 The Responsible Entity is entitled to a Performance Fee as set out in this paragraph 2.

2.2 In respect of each Calculation Period, the Responsible Entity will calculate the following on the Calculation Date:

- (a) the Closing Unit Price;
- (b) the Opening Unit Price;
- (c) the Distributable Income payable during the Calculation Period;
- (d) Outperformance; and
- (e) the Performance Fee.

2.3 In respect of each Calculation Period, the Performance Fee will be payable as follows:

- (a) if such amount is positive, payment of the Performance Fee will be made to the Responsible Entity within 10 days of the relevant Performance Fee Payment Date or such later time at the Responsible Entity's discretion; and
- (b) if such amount is negative, no payment will be made to the Responsible Entity in respect of the Calculation Period.

2.4 All sums payable to the Responsible Entity are exclusive of GST (if applicable).

2.5 However, for the avoidance of any doubt, a Performance Fee is only payable if the Responsible Entity has recovered any prior underperformance of the Scheme below the Benchmark from any prior Calculation Period.

Schedule 2 - Performance Fee – Stapled Entity

1. Definitions

1.1 In addition to the definitions in clause 1.1 of this Constitution, the following additional definitions apply to this Schedule 2:

**Benchmark** means an aggregate return during the relevant Calculation Period equal to 2 percent per Quarter 2 (being 8 percent per annum).

**Calculation Date** means the last day of the Calculation Period.

**Calculation Period** means a period:

- (a) which begins on the first day following the end of the previous Calculation Period, and
- (b) ends on the last day of the next Quarter, or a subsequent Quarter, and
- (c) during which Outperformance is positive,

except that the—

- (d) first Calculation Period is the period commencing on the day after the Implementation Date and ending on the last day of the Quarter in which the Implementation Date occurs; and
- (e) last Calculation Period is the period ending on the final Performance Fee Payment Date and commencing on the first day of the Quarter immediately following the last Calculation Period prior to the final Performance Fee Payment Date during which Outperformance is positive.

**Closing Stapled Security Price** means, in respect of a Calculation Period, the Stapled Security Price calculated as at the Calculation Date less accrued management fees (excluding the performance fee) and administration costs.

**Distributions** means, in respect of a Calculation Period, any Stapled Security Distributable Income per Stapled Security in respect of the Calculation Period.

**Financial Report** means the combined audited financial report for the Other Stapled Entity and the Scheme, for a Financial Reporting Period.

**Financial Reporting Period** means each Financial Year and each six month period ending 31 December.

**Fund Performance** means, in respect of a Calculation Period, an amount calculated in accordance with the following formula:

Closing Stapled Security Price – Opening Stapled Security Price +  
Distributions

Opening Stapled Security Price

x 100

**Opening Stapled Security Price** means in respect of a Calculation Period, the Stapled Security Price determined as the ex-distribution Stapled Security Price as at the commencement of the first day of the relevant Calculation Period.

**Other Stapled Entity NAV** means the net asset value of the Other Stapled Entity calculated in accordance with the constitution for the Other Stapled Entity, as at the end of the most recent Financial Reporting Period, based upon the Financial Report for that Financial Reporting Period.

**Other Stapled Entity Weighting** means:

Other Stapled Entity NAV

Scheme NAV + Other Stapled Entity NAV

**Outperformance** means the difference between the Fund Performance and the Benchmark over the Calculation Period.

**Performance Fee** means, in respect of a Calculation Period, the amount calculated in accordance with the following formula:

Scheme Weighting x (Outperformance x 20% x Closing Stapled Security Price x Stapled Securities in issue at the end of the Calculation Period)

**Performance Fee Payment Date** means:

- (a) the last day of each Calculation Period during the term of the Scheme;
- (b) the winding up of the Scheme or of any Other Stapled Entity;
- (c) the Responsible Entity being removed, or being forced to retire, from office involuntarily; and
- (d) the sale, redemption or cancellation of greater than 50% of Stapled Securities (or Stapled Securities in any class).

**Quarter** means each period of three calendar months commencing 1 January, 1 April, 1 July and 1 October each year.

**Scheme NAV** means the Net Asset Value of the Scheme Assets, as at the end of the most recent Financial Reporting Period, based upon the Financial Report for that Financial Reporting Period.

**Scheme Weighting** means:

Scheme NAV

Scheme NAV + Other Stapled Entity NAV

**Stapled Entity Distributable Amount** means distributable income payable by either the Scheme or the Other Stapled Entity.

Stapled Security Price means the total issue price of a Stapled Security.

**2. Performance Fee**

2.1 The Responsible Entity is entitled to a Performance Fee as set out in this paragraph 2.

2.2 In respect of each Quarter, the Responsible Entity will calculate the following as at the last day of the Quarter:

- (a) the Closing Stapled Security Price;
- (b) the Opening Stapled Security Price;
- (c) the Distributions payable during the Calculation Period;
- (d) Outperformance; and
- (e) the Performance Fee.

2.3 In respect of each Calculation Period, the Performance Fee will be payable as follows:

- (a) if such amount is positive, payment of the Performance Fee will be made to the Responsible Entity within 10 days of the relevant Performance Fee Payment Date or such later time at the Responsible Entity's discretion; and
- (b) if such amount is negative, no payment will be made to the Responsible Entity in respect of the Calculation Period.

2.4 All sums payable to the Responsible Entity are exclusive of GST (if applicable).

2.5 The Responsible Entity may (and has the power to), at any time, make a financial adjustment to the amount of Performance Fee attributable to or borne by (or which has been borne by) the Scheme in respect of any Calculation Period (including a previous Calculation Period), provided that the total combined performance fee paid or payable by the Scheme and by the Other Stapled Entity in respect of the Calculation Period is no greater than aggregate of the performance fee amounts calculated in accordance with this Constitution and the constitution for the Other Stapled Entity (disregarding the Scheme Weighting and the Other Stapled Entity Weighting in the respective performance fee formulae).

## **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 Income Year** means a year of income for the purposes of the Tax Act that the Scheme is an AMIT.
- (b) **AMMA Statement** has the meaning given to that phrase in section 276-460 of the Tax Act.
- (c) **Constituent Documents** mean the “constituent documents” referred to in section 276-210(3) of the Tax Act.
- (d) **Determined Member Component** has the meaning given to that phrase in section 276-205 of the Tax Act.
- (e) **Determined Trust Component** has the meaning given to that phrase in section 276-255 of the Tax Act.
- (f) **Discovery Year** has the meaning given to that phrase in section 276-345 of the Tax Act.
- (g) **Member Component** has the meaning given to that phrase in section 276-210 of the Tax Act.
- (h) **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.
- (i) **Over** has the meaning given to that phrase in section 276-345 of the Tax Act.
- (j) **Trust Component** has the meaning given to that phrase in section 276-260 of the Tax Act.
- (k) **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 23, 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 23, 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 23 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 23 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 23, 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 23, 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 23, 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 23 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 23, 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 23, 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 23, 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 ~~23~~, or under the AMIT Regime.

## **Schedule 4—Terms of Issue: Acquisition Units**

### **1. Definitions**

The following terms have the following meanings when used in this Schedule 4:

<u>Acquisition Units Terms of Issue</u>	<u>The terms on which Acquisition Units are issued, as contained in this Schedule 4.</u>
<u>Acquisition Unitholder Meeting</u>	<u>A meeting of holders of Acquisition Units where the only people entitled to vote on resolutions are holders of Acquisition Units (or their proxies).</u>

### **2. Rights, obligations, terms and conditions**

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

- (a) Acquisition Units each have an Issue Price equal to the prevailing Issue Price of Ordinary Units (subject, whilst the Scheme is part of a Stapled Entity, to clause 9.15).
- (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 prevailing Issue Price of Ordinary Units as provided in this Constitution (subject, whilst the Scheme is part of a Stapled Entity, to clause 9.15).
- (c) In all other respects, Acquisition Units rank equally with Ordinary Units and have the rights, obligations, terms and conditions attaching to Ordinary Units as set out in this Constitution, except to the extent of any inconsistency with these Acquisition Units Terms of Issue.

### **3. Amendments to these Acquisition Units Terms of Issue**

Unless all holders of Acquisition Units agree otherwise in writing, these Acquisition Units 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.

(b)

**Executed** as a deed.

**Executed by Centuria Property Funds  
Limited ACN 086 553 639** by or in the presence  
of:

DO NOT SIGN  
\_\_\_\_\_  
Signature of Director

DO NOT SIGN  
\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

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