

PRIMEWEST MANAGEMENT LIMITED

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Primewest Property Income Fund

*Supplementary Constitution*

Primewest Management Limited ACN 091 415 833 (Trustee)

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**Date** This Deed is made on the date noted on page 2 of this document.

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**Parties** Primewest Management Limited ACN 091 415 833 of Level 1, 307 Murray Street, Perth, Western Australia (Trustee)

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**Introduction**

A. The Trustee is the responsible entity of Primewest Property Income Fund (Fund) which is a managed investment scheme. The Fund has been registered pursuant to the Act and the ARSN is 645 597 404.

B. This Supplementary Constitution has been prepared to amend the constitution dated 2 November 2020 as replaced on 17 November 2020 (Constitution). This Supplementary Constitution will be lodged with ASIC pursuant to section 601GC(2) of the Act. The Supplementary Constitution will take effect from the time of lodgement.

C. The changes made by this Supplementary Constitution have been made by Special Resolution of the members of the Fund passed on 18 May 2022 pursuant to section 601GC(1)(a) of the Act.

D. The terms of this Supplementary Constitution follow.

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**Schedules** The following Schedules form part of this Deed:

- A. Schedule 1—Dictionary.
- B. Schedule 2—Modified Constitution.

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## TERMS

### 1. Interpretation

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The definitions contained in Schedule 1 and the rules of interpretation contained in Schedule 2 of the Constitution apply to this Supplementary Constitution.

### 2. Amendment of the Constitution

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This Supplementary Constitution amends the Constitution and is binding on—

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

### 3. No intention to resetttle the Fund

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- (a) The modifications of the Constitution, as provided by this Supplementary Constitution, do not purport to affect or alter in any way—
  - (i) the commencement date of the Fund, or
  - (ii) the beneficial interests in the Fund immediately prior to the execution of this Supplementary Constitution.
- (b) The Trustee declares that it is not, by this deed, redeclaring or resettling the Fund or causing the transfer, vesting or accruing of property in any person.
- (c) For the avoidance of doubt, the Trustee acknowledges and agrees that this Supplementary Constitution is not an agreement for transfer, or a transfer of any asset of the Fund nor does it evidence or effect such a transaction and cannot be construed as such.

### 4. Operative provisions

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The Constitution is amended so that the text shown as underlined in the Modified Constitution is inserted into the Constitution and the text shown as struck through is deleted from the Constitution. For the avoidance of doubt, where any new or amended clause numbers (including any references to clause numbers) appear in the Modified Constitution 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.



**Schedule 1—Dictionary**

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Modified Constitution	The Constitution varied and amended as set out in the marked-up copy in Schedule 2—Modified Constitution.
Supplementary Constitution	This Supplementary Constitution including all of its annexures, schedules and recitals.

**Schedule 2—Modified Constitution**

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3462-9789-7240, v. 8

Primewest Management Ltd

Centuria Diversified Property Fund No. 2 ~~Primewest  
Property Income Fund~~

*Constitution*

[Stapling – Proposed amendments]



**Date** This Constitution is a deed poll made on 2 November 2020.

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**Trustee** Primewest Management Ltd ACN 091 415 833 of Level 1, 307  
Murray Street, Perth, Western Australia  
  
(Trustee)

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## TERMS

### 1. Constitution of the Trust

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#### 1.1 *Constitution binding on the parties*

This Constitution operates as a deed and is binding on—

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

#### 1.2 *Benefits and obligations*

This Constitution is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided to every Holder.

#### 1.3 *Exercise of the Trustee's powers, duties and discretions*

- (a) The Trustee must treat the Unitholders who hold Units of the same Class equally and Unitholders who hold Units of different Classes in the same Class fairly in—
  - (i) exercising the powers conferred on it by this Constitution
  - (ii) exercising any discretions conferred on it by this Constitution, and
  - (iii) performing the duties and complying with the obligations imposed on it by this Constitution.
- (b) Clause 1.3(a) prevails over other provisions of this Constitution in the case of any inconsistency and to the extent provided in this clause 1.3(a), including any expressed to prevail over it.

### 2. Trust

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#### 2.1 *Appointment of Trustee*

The Trustee agrees to act as trustee of the Trust.

#### 2.2 *Declaration of trust*

- (a) The Trustee holds the Assets on trust for the Unitholders on the terms contained in this Constitution.
- (b) The Trust commences on the date the first Units are issued.
- (c) The Trust is a single trust and the creation and issue of Units of different Classes is not intended to create separate trusts or sub-trusts.



### 2.3 *Name of the Trust*

- (a) The Trust will be known as the ~~Primewest-Centuria Diversified Property Fund No. 2~~Property Income Fund. However, the Trustee may designate another name at any time in its complete discretion.
- (b) If Primewest Management Ltd retires or is removed, then its successor as Trustee must, unless otherwise approved by Primewest Management Ltd, change the name of the Trust to a name that does not imply an association with Primewest Management Ltd or its business.

### 2.4 *Term of the Trust*

The Trust will end on the earlier of—

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

### 2.5 *No merger*

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

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

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

## 3. *Stapling*

### 3.1 *Power to staple Units*

- (a) The Trustee 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 3.1(a) takes effect from the Stapling Date.
- (c) While the Trust is part of a Stapled Entity, the Trustee 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.

### 3.2 *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 Trustee must not offer Units for subscription or sale unless:
- (i) it also offers for subscription or sale, or procures that offers for subscription or sale are made of, at the same time and to the same person, the Corresponding Number of Other Stapled Securities to which the Unit will be Stapled; and
  - (ii) the offer is on the condition that the offeree may not accept the offer unless the offeree also accepts the offer for the Corresponding Number Other Stapled Securities;
- (d) **(Unit issues, sales)** the Trustee 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 Corresponding Number- of Other Stapled Securities to which the Unit will be Stapled;
- (e) **(issue of Partly Paid Units)** the Trustee 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 the Corresponding Number of partly paid Other Stapled Securities to which the Partly Paid Unit will be Stapled on similar terms as to time for payment of the balance of the issue price;
- (f) **(calls on Partly Paid Units)** the Trustee must not make a call on a Unitholder 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 Unitholder 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 Trustee 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 Unitholder concerned;
- (h) **(treating as fully paid)** the Trustee 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 Trustee 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 Unitholder must not transfer a Unit to a person (and the Trustee must not register a transfer) unless at the same time the Unitholder transfers to that person the Corresponding Number of Other Stapled Securities;
- (l) (Unit redemption) the Trustee must not redeem or buy back Units of a Unitholder unless at the same time the Other Stapled Securities of the Unitholder are redeemed or bought back;
- (m) (Unit transmission) Units registered in the name of a Unitholder are not capable of being transmitted to any person unless at the same time the Other Stapled Securities registered in the name of the Unitholder are transmitted to that person;
- (n) (allocation of proceeds of issue among Stapled Entities) the Trustee 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 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 Trustee thinks fit;
- (o) (allocation of expenses) without limiting clause 16.8, the Trustee may pay or reimburse expenses that are incurred by Other Issuers or in connection with Other Stapled Entities or are incurred by the Trustee 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 Trustee 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 Unitholders;
- (q) (discretion may be fettered) the Trustee 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 Trustee may provide an indemnity, reimbursement or payment to the responsible entity of that Other Stapled Entity out of the Assets;
- (s) (compromises) the Trustee 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 Trustee considers to be necessary or appropriate in connection with the Stapling or the relationship created by the Stapling;
- (t) (**guarantees**) the Trustee 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 Trustee may, if it thinks fit, give security for any guarantee or indemnity referred to in clause 3.2(t) above or other liability over all or any part of the Assets;
- (v) (**consideration**) the Trustee 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 Trustee 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 Unitholders and of holders of Other Stapled Securities;
- (x) (**Register**) a Unitholder must provide to the Trustee the same personal information for the Register and for the register of each Other Stapled Entity and the Trustee 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 Unitholder must, if the Trustee 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.

### **3.3 Unstapling**

- (a) The Trustee 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 Unitholders 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 Trustee from subsequently determining that Stapling should recommence (either in respect of the same or different Other Securities). Where Stapling ceased to apply under clause 3.3(c), commencement of Stapling requires the approval of a Special Resolution of Unitholders (despite clause 14.1).

### **3.4 Conduct of Stapled Entities**

While the Trust is part of a Stapled Entity, to the extent permitted by law, the Trustee 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 Trustee 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 Unitholders' 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 Unitholders consistently and at the same times.

### **3.5 Stapling provisions paramount**

If there is an inconsistency between any provision of this Constitution relating to Stapling or that is to apply while the Trust is part of a Stapled Entity (including this clause 3) and any other provision, then the provision relating to Stapling prevails to the extent of the inconsistency, except where this would result in a breach of the Corporations Act or any other law. The provision relating to Stapling prevails in this

way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.

#### 4. 2022 Stapling

##### 4.1 Power to implement 2022 Stapling

- (a) The Trustee and each Stapling Unitholder must do all things and execute all deeds, instruments, agreements or other documents as the Trustee considers necessary or desirable to give effect to the 2022 Stapling and the transactions contemplated by it.
- (b) Without in any way limiting the Trustee's other powers under clause 3 or this clause 4, the Trustee 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 Act, the Trustee and CDPF 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 4 even if they have an interest (financial or otherwise) in the outcome.
- (d) This clause 4:
- (i) binds the Trustee and all of the Unitholders 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.

##### 4.2 Implementation of the 2022 Stapling

On the Implementation Date, the Trustee 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 Trustee 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 Trustee will distribute (by way of a capital distribution) to the Stapling Unitholders 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 / (Net Asset Value + net asset value of the assets of CDPF calculated in accordance with the constitution of CDPF)</u>	<u>X</u>	<u>net asset value of the assets of CDPF calculated in accordance with the</u>
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				<u>constitution of CDPF</u>
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with the distribution to occur at the same time as the CDPF RE makes a distribution of promissory notes to members of CDPF in connection with the 2022 Stapling;

- (c) (application) the Trustee will, in its capacity as agent and attorney for the Stapling Unitholders:
- (i) apply for such number of units in CDPF on behalf of the Stapling Unitholders as will result in CDPF 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 Trustee under clause 4.2(b) to the CDPF RE to satisfy the application price for these units;
  - (ii) agree to become a member of CDPF, be bound by the constitution of CDPF and consent to the entry of the name of each Stapling Unitholder in the register of members of CDPF; and
  - (iii) so far as is permitted by law, provide the CDPF RE with such information, notices and elections relating to each Stapling Unitholder as may be necessary or desirable; and
- (d) (issues) the Trustee will, subject to receipt of an application for units by the members of CDPF and the assignment or indorsement in its favour of the promissory notes issued by CDPF RE to the CDPF members having a face value equal to the face value of the promissory notes issued under clause 4.2(b):
- (i) issue the Units applied for by members of CDPF (including any Acquisition Units applied for by holders of 'acquisition units' in CDPF) at the same time as the CDPF RE issues units in CDPF to Stapling Unitholders in connection with the 2022 Stapling-;
  - (ii) update the Register to record that issue of Units applied for by members of CDPF at the same time as the CDPF RE updates the register of members of CDPF to record the issue of units in CDPF to Stapling Unitholders; and
  - (iii) cancel the promissory notes issued by the Trustee to the Unitholders, under clause 4.2(b); and
- (e) (stapling) the stapling deed between the Trustee and CDPF RE comes into effect and the Trustee will Staple each Unit to one unit in CDPF to form a Stapled Security (with each Acquisition Unit (if any) being Stapled to one 'acquisition unit' in CPDF).

### **4.3 Dealings in Units**

- (b)(a) For the purpose of establishing the persons who are Stapling Unitholders and the number of Units held by them, the Trustee will only recognise

dealings in Units if registrable transfers or transmission applications in respect of those dealings are received by the Trustee by such date notified to the Unitholders by the Trustee.

(e)(b) After the registration of registrable transfers or transmission applications of the kind referred to in clause 4.3(a) the Trustee will solely determine the persons who are Stapling Unitholders 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.

#### **4.4 Covenants by Stapling Unitholders**

Each Stapling Unitholder:

(a) acknowledges that this clause binds all of the Unitholders 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 Unitholder;

(b) irrevocably agrees to become a member of CDPF 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 4;

(d) irrevocably consents to the Trustee and the CDPF 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 4 agrees to provide to the Trustee such information as the Trustee may reasonably require to give effect to the 2022 Stapling and the transactions contemplated by this clause 4, including information required to meet obligations under any applicable law.

#### **4.5 Binding instructions or notifications and withdrawal requests**

(a) Other than a withdrawal request, any binding instruction or notification between a Stapling Unitholder and the Trustee relating to Stapling Units as at the Implementation Date (including, without limitation, any instructions relating to payment of distributions or to communications from the Trustee) will, from the Implementation Date, be deemed to be a similarly binding instruction or notification to, and accepted by, CDPF RE in respect of units in CDPF issued to the Stapling Unitholder pursuant to the 2022 Stapling, until that instruction or notification is revoked or amended in writing.

(b) Any withdrawal request which has not been satisfied prior to the Calculation Date will be taken to be withdrawn at that time.



**4.6 Trustee's expenses**

Without limiting clause 16.8, all expenses incurred by the Trustee in relation to the 2022 Stapling are payable or reimbursable out of the Assets to the extent that such payment or reimbursement is not prohibited by the Act.

**4.7 Power of attorney**

(a) Without limiting the Trustee's powers set out elsewhere in this Constitution, and without the need for any further act by the Stapling Unitholders or any of them, each Stapling Unitholder irrevocably (to the extent permitted by law) appoints the Trustee (including any replacement Trustee) and any director, secretary or attorney of the Trustee (including any replacement Trustee) (for the purposes of this clause 4, 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 the following:

(i) Taking the steps set out in clause 4.2(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 Unitholder, sub-delegate their functions, authorities or powers under clause 4.7(a) to all or any attorney of theirs (jointly, severally or jointly and severally).

(c) Each Representative may only exercise their powers under clause 4.7(a) for the purposes of and incidental to implementing the 2022 Stapling.

(d) Each Stapling Unitholder undertakes to ratify all actions lawfully done or caused to be done by a Representative in accordance with this clause 4.7.

**4.8 Liability of Trustee**

None of the Trustee, Representatives, nor any of their directors, officers, employees or associates will have any liability of any nature whatsoever to Unitholders, beyond the extent to which the Trustee is actually indemnified out of the 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 Unitholder) pursuant to or in connection with the implementation of the 2022 Stapling.

**4.9 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 4.2(d) will be issued at an Application Price calculated as follows:

(i) Face value of promissory notes distributed by CDPF RE received under clause 4.2(d) ÷ number of Units issued to members of CDPF under clause 4.2(d)

(b) One Stapled Security, comprising one Unit and one unit in CDPF, will have an initial Net Asset Value on the Implementation Date of \$1.00.

### **3.5. Creation and issue of Units**

#### **3.15.1 Division of beneficial interest**

The beneficial interest in the Assets as a whole will be divided into Units.

#### **3.25.2 Interest in Assets**

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

#### **3.35.3 Rights attaching to Units**

Subject to any special rights or obligations conferred upon Units pursuant to their Terms of Issue, Units will be held upon and subject to the provisions contained in this Constitution. To the extent the Terms of Issue relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out in this Constitution.

#### **3.45.4 Consolidation, division and issue of Units**

- (a) Subject to the remainder of this clause and the Act, the Trustee may, at any time, determine to consolidate, divide or issue Units belonging to an existing or different Class to those already on issue.
- (b) The Trustee may make the issue of Units in different Classes subject to the rights, obligations and restrictions specified in their Terms of Issue. For example, the Terms of Issue may—
  - (i) eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units, or
  - (ii) provide for conversion of Units from one Class to another Class and, if the Trustee so determines, change the number of Units on such a conversion.
- (c) The rights of Unitholders are subject to the rights, obligations and restrictions established by the Terms of Issue of each Class. To the extent the rights, obligations and restrictions relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out on in this Constitution.

#### **3.55.5 Fractions of Units**

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

**3.65.6 Application Price**

- (a) For all Units issued prior to the direct or indirect acquisition of the first real property Asset, the Application Price of a single Unit is \$1.00. At all other times the Application Price for a Unit issued in that Class will be determined in accordance with clause 5.6(b), subject to the Trustee determining another Unit price in accordance with the remainder of this clause 5.6, or in accordance with clause 5.7.
- (b) The Application Price of a single Unit in a Class is the price calculated as follows:

$\frac{\text{Net Asset Value} + \text{Adjustments} + \text{Total Unpaid Amount} + \text{Transaction Costs}}{\text{Units in Issue}}$
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- (c) Notwithstanding any other provision of this Constitution where the Trust is a Registered Scheme, the Trustee may set the Application Price at an Application Price different from that determined in accordance with clause 5.6(b), in relation to some Units, a Class or all Units, to the extent it is permitted to do so under the terms of any ASIC Relief (and subject to the terms of that ASIC Relief). In particular the Trustee may (subject to the terms of the ASIC Relief) exercise discretion in determining—
- (i) any matter affecting the value of any factor included in the calculation of the Application Price, and
- (ii) any matter which is an aspect of the method of calculating the Application Price.
- (d) For the purpose of clause 5.6(b)—
- (i) “Adjustments” means the sum of any Acquisition Costs Adjustments and Indirect Acquisition Costs Adjustments, and
- (ii) each of the variables used in the calculation is that proportion of those variables that the Trustee determines is properly Referable to the Class to which the Unit being priced belongs.

**3.75.7 Application Price on exercise of Option**

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

**3.85.8 Time to calculate Application Price**

Subject to clauses 5.6 and 5.7, the time at which the Trustee must calculate the Application Price is the next Relevant Valuation Time after the later of the following to occur:

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

**3.95.9 Time to calculate Application Price—fixed capital raisings**

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

**3.105.10 Units issued against uncleared funds or promises to pay**

- (a) For the purposes of this clause 5, the Trustee may (but is not obliged to) treat receipt of a cheque or other promise or direction to pay, including without limitation a promissory note, uncleared cheque or bill of exchange or anything similar or analogous to the foregoing, as a receipt of Application Money.
- (b) Units issued against Application Money provided other than in cleared funds, or in consideration of a transfer of property, are (at the election of the Trustee) void if the funds are not subsequently cleared or paid, or the property does not vest in the Trustee, or the property is not transferred free from encumbrance, within 10 Business Days after the receipt of the relevant application for Units (or such longer period as the Trustee determines).

**3.115.11 Net Asset Value**

- (a) The Trustee may determine the Net Asset Value at a Valuation Time in accordance with clause 12. Nothing in this clause 5 requires the Trustee to determine the Net Asset Value more often than at a Valuation Time.
- (b) The Trustee may in its discretion postpone, delay or change any Valuation Time (including any Relevant Valuation Time).

**3.125.12 Satisfaction of Application Money**

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

**3.135.13 Perpetuity Period and restriction on issue and redemption of Units**

The Perpetuity Period for the Trust expires on the Vesting Day. Despite any other provision of this Constitution, no Units may be issued or redeemed after the day immediately prior to the last day of the Perpetuity Period, if that issue or redemption would cause a contravention of the rule against perpetuities or remoteness of vesting or any other rule of law or equity. The specification of a Perpetuity Period in this clause 5.13 does not require that the Trust terminate on expiration of that period.

**3.145.14 Referability**

- (a) An Asset will be Referable to a particular Class where the Trustee has identified the particular Asset as an appropriate investment opportunity for the Trust and has issued a Disclosure Document outlining that returns on a Class will be calculated with reference to the particular Asset.
- (b) Clause 5.14(a) does not confer on the Unitholder a beneficial interest in a particular Asset. The outcome of clause 5.14(a) is to assist in a calculation

of the Application Price and the Withdrawal Price for each Class and the quantum of Income and capital distributions that can be distributed to Unitholders.

### **3.155.15 Default**

Unless an Asset is made Referable to another Class pursuant to clause 5.14, the Asset will be Referable to the Class known as Ordinary Units.

### **5.16 Application Price of Units as part of a Stapled Security.**

Notwithstanding anything else in this clause 5, 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 Trustee may determine an Application Price for a Unit different from the Application Price which would apply under the other subclauses of this clause 5, provided that the total issue price for the Stapled Security is equal to the total of—

- (a) the Application Price which would apply under subclauses 5.6(b) or subclause 5.6(c), and
- (b) the aggregate of the issue prices for each of the other Stapled Securities which would apply under the constituent documents of the Other Stapled Entities.

## **4.6. Application for Units**

### **4.16.1 Form of application**

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

### **4.26.2 Application payment**

- (a) Each Applicant must, at the time of making an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Investment Amount.
- (b) If the application for Units arises as part of a reinvestment under clause 18, then the Investment Amount is deemed to be paid to and received by the Trustee on the day the distribution is applied in payment for the Units.

### **4.36.3 Holding Application Money**

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

### **4.46.4 Interest on Application Money**

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

**6.5 Trustee may refuse application**

- (a) The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.
- (b) If any application for Units is refused, then—
  - (i) the Trustee must refund to the Applicant any money paid by that Applicant, and
  - (ii) unless the Trustee determines otherwise, no interest shall be paid to the Applicant and any interest earned on the Applicant's Application Money will be retained by the Trustee.

**4.56.6 Investment of the Application Money**

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

**4.66.7 Minimum application**

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

**4.76.8 Date Units issued**

- (a) Units are taken to be issued on the date the Trustee records them in the Register having accepted the relevant application for Units and the Investment Amount required to be paid by the Applicant for the Units in that Class has been paid in accordance with clause 6.2. The date recorded in the Register must be no later than the date the Units were actually issued.
- (a) However, Units issued on a reinvestment pursuant to clause 18 are taken to be issued under an application which is deemed to have been received on the day the distribution is applied in payment for the Units.

**4.86.9 Number of Units issued**

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

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

- (b) In relation to Partly Paid Units, the number of Partly Paid Units issued will be determined in accordance with the formula in clause 6.9(a) assuming the Application Price per Unit was due and paid in full on the date of issue.
- (c) At the Trustee's discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.

**4.96.10 Unit certificates**

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

**4.106.11 Unitholder identification requirements**

- (a) Without affecting clause 6.1, the Trustee may require any Applicant to provide to the Trustee information on or documentation to evidence the identity, residency and nationality of that Applicant (or of any person or entity with an interest in the Applicant), or any other matter the Trustee determines at its discretion, in such form as required by the Trustee in its absolute discretion.
- (b) Without affecting clause 6.8, the Trustee may delay the acceptance or processing of any application for Units or it may refuse any application for Units, in its absolute discretion, if the Applicant fails or refuses to provide the evidence required by the Trustee under clause 6.11(a), or the evidence provided is not satisfactory to the Trustee.
- (c) The Trustee may in its absolute discretion cancel the Units which were issued, in which case the issue of Units will be deemed to be void, if, after Units have been issued to a Unitholder, it comes to the Trustee's attention that the Unitholder (or any person or entity with an interest in the Unitholder)—
  - (i) is a different person or entity from the person or entity originally represented to the Trustee, or
  - (ii) there is a defect or omission in the information provided under clause 6.11(a).
- (d) Nothing in this clause 6.11 is intended to, nor should it be taken to, impose any additional or greater obligations on the Trustee than any obligations already imposed on the Trustee pursuant to any law, including any law in relation to the control or identification of money laundering or terrorism financing or tax compliance. This clause 6.11 is intended to give the Trustee the power to require information from Applicants and the power to cancel Units issued, but (subject to the law) it does not oblige the Trustee to do so.

**6.12 Trustee must reject an application**

While the Trust is part of a Stapled Entity, the Trustee 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 the Corresponding Number of each of the Other Stapled Securities to which the Unit will be Stapled, or
- (e)(b) the Corresponding Number of each of the Other Stapled Securities to which the Unit will be Stapled will not be issued to the Applicant at the same time as the issue of Units to the Applicant.

**5.7. Partly Paid Units****5.17.1 Payment of Application Price by instalments**

The Application Price for Units may be payable by instalments as set out in this clause 7.

### **5.27.2 Determination of amount and timing of instalments**

The Trustee may determine at any time that Units that are to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Trustee determines or, if the Trustee so determines, by a single instalment payable at such time as the Trustee determines.

### **5.37.3 Variation or waiver of terms and conditions**

Subject to any applicable statutory duty requiring the Trustee to treat Unitholders of the same Class equally and those of different Classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 7.2, those terms and conditions may be varied or compliance therewith waived only with the consent of the Trustee. The Trustee may not waive an instalment which is due and payable.

### **5.47.4 Notice of instalments**

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

### **5.57.5 Interest on instalments and costs**

If a Unitholder does not pay an instalment on a Partly Paid Unit by the due time and date—

- (a) then interest is payable by the Unitholder on the amount due, calculated in accordance with clause 32.6(a), and
- (b) the Trustee may charge the Unitholder any costs it or the Trust incurs as a result of the failure to pay an instalment.

### **5.67.6 Failure to pay instalments**

- (a) If a Unitholder does not pay any instalment due on a Partly Paid Unit on or by the day specified for payment, then the Trustee may serve a notice on the Unitholder (the second notice).
- (b) If a notice is served pursuant to clause 7.6(a), then it must contain the following:
  - (i) The total amount due to be paid at the date of the notice, including the unpaid instalment, any interest owing at that date and any costs the Trustee is seeking to recover.
  - (ii) The time and day by which payment must be made. This date must not be less than three Business Days from the date of the notice.
  - (iii) If payment of the amount set out in the notice is not made by the due date specified in the notice, then the Partly Paid Units in respect of which the notice has been issued are liable to be forfeited. The Trustee may also specify that interest will continue to accrue and further costs are likely to be incurred.



- (c) Failure by the Trustee to comply with clause 7.6(b) or non-receipt of the second notice does not affect the obligation of the Unitholder to pay the instalment plus interest and costs.

#### **5.77.7 Consequences of non-compliance**

If the requirements of any notice issued under clause 7.6 are not complied with, then—

- (a) the Unitholder grants the Trustee an irrevocable power of attorney to execute a transfer of the Unitholder's Units and do all things reasonably required to give effect to a transfer (if required)
- (b) the Trustee may determine in its absolute discretion, that any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited, and
- (c) subject to the Act and this Constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Trustee.

#### **5.87.8 Disposal of forfeited Units**

- (a) Subject to the Act, a forfeited Unit may be sold or otherwise disposed of as a Fully Paid Unit, either—
  - (i) at a price that is no less than a price calculated in accordance with clause 5.6, or
  - (ii) in accordance with any applicable ASIC Relief in relation to the sale of forfeited Units, if the Trustee complies with the conditions of the relief.
- (b) The Trustee is not liable to a Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (c) At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Trustee thinks fit.

#### **5.97.9 Holder of forfeited Units**

The holder of Partly Paid Units which have been forfeited ceases to be a Unitholder in respect of the forfeited Units but remains liable to pay to the Trustee all money which at the date of forfeiture was payable by the former Unitholder to the Trustee in respect of the forfeited Units (including interest owing under clause 7.5 and expenses) but the former Unitholder's liability ceases if and when the Trustee receives payment in full of all such money.

#### **5.107.10 Evidence of forfeiture**

A statement signed by an Authorised Representative of the Trustee that a Partly Paid Unit has been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units.

**5.147.11 Consideration for forfeited Units**

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

- (a) The Trustee may receive the consideration, if any, given for a forfeited Unit on the sale or disposal.
- (b) The Trustee must—
  - (i) execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of (pursuant to the irrevocable power of attorney to do so granted to the Trustee under clause 7.7(a)), and
  - (ii) register that person as the holder of that Unit.
- (c) The person who becomes the registered holder is not obliged to ensure that any part of the money which the person has paid for the Unit is paid to the former holder of the Unit. Further, that person's title to that Unit is not affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

**5.127.12 Deductions from consideration for forfeited Units**

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

**5.137.13 Joint holders**

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

**5.147.14 Rights and obligations attaching to a Partly Paid Unit are proportionate**

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

**5.157.15 Termination of a Class or winding up of the Trust**

Despite anything in this Constitution or in any offer of Partly Paid Units, the whole of the Unpaid Amount is payable immediately—

- (a) upon termination of the Class to which the Partly Paid Unit belongs, or
- (b) upon commencement of the winding up of the Trust.

## **6.8. Withdrawal Price**

### **6.18.1 Withdrawal price**

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

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

- (b) For the purposes of the calculation in clause 8.1(a) the following applies:
- (i) The Trustee may, where the Trust is a Registered Scheme (subject to the terms of any ASIC Relief) exercise discretion in determining—
- A. any matter affecting the value of any factor included in the calculation of the Withdrawal Price, and
- B. any matter which is an aspect of the method of calculating the Withdrawal Price.
- (ii) The term “Adjustments” means the sum of any Acquisition Costs Adjustments and any Indirect Acquisition Costs Adjustments.
- (iii) Each of the variables used in the calculation of Withdrawal Price are that proportion of those variables the Trustee determines is properly Referable to the Class to which the Unit being priced belongs.

### **6.28.2 Time to calculate Withdrawal Price**

The Withdrawal Price must be calculated—

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

### **8.3 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 Trustee may determine a Withdrawal Price for a Unit different from the Withdrawal Price which would otherwise apply as a result of applying the formula in clause 8.1, provided that the total withdrawal price for the Stapled Security is equal to the total of—

- (a) the Withdrawal Price which would otherwise apply as a result of applying the formula in clause 8.1, and
- (b) the aggregate of the withdrawal prices for each of the Other Stapled Securities which would apply pursuant to the constituent documents of the Other Stapled Entities.

## **7.9. Withdrawal procedures**

### **7.19.1 Right to withdraw**

- (a) Where the Trust is not a Registered Scheme, a Unitholder has no right to withdraw from the Trust other than as determined by the Trustee in its absolute discretion.
- (b) Where the Trust is a Registered Scheme, then subject to the Terms of Issue which apply to any Units, a Unitholder has no right to withdraw from the Fund other than, in ~~accordance with the remainder of response to a withdrawal offer made in accordance with~~ this clause 9, the terms of which have effect on and from such registration (except as expressly provided).

### **7.29.2 Application of this clause 9**

- (a) Clauses 9.3 to 9.5 apply whether or not the Trust is Liquid.
- (b) Clauses 9.3 to 9.5 apply whether or not the Trust is a Registered Scheme.
- (c) Clauses ~~7.10 and~~ 9.11 only appl~~ies~~iesy while the Trust is Liquid.
- (d) Clause 9.12 only applies while the Trust is not Liquid.

### **7.39.3 Compulsory withdrawal**

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

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

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

#### **7.49.4 Money owed**

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

#### **7.59.5 Transfer of Assets to satisfy withdrawal or distribution**

The Trustee may, at its discretion, transfer Assets to a Unitholder rather than pay cash, in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets together with any cash paid must be of equal value to the total amount due to the Unitholder pursuant to the withdrawal request, withdrawal offer or distribution (based on a valuation prepared in accordance with clause 12). If the Trustee requires, then the costs involved in the transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

#### **7.69.6 Minimum application amount**

The Trustee need not give effect to withdrawal requests (whether or not made in response to a withdrawal offer) in respect of Units having an aggregate Withdrawal Price of less than the minimum amount determined by the Trustee from time-to-time.

#### **7.79.7 Minimum Unit holding**

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

#### **7.89.8 Withdrawal request cannot be withdrawn**

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

#### **7.99.9 Satisfaction of withdrawal by sale of Units**

The Trustee may, at its discretion, purchase or arrange for another person to purchase all or some of the Units the subject of a withdrawal request (whether or not made in response to a withdrawal offer) at a price per Unit no less than the Withdrawal Price which would otherwise have been paid under clause 8.1. In such case, the withdrawal request is deemed satisfied upon—

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

### Limited Withdrawal Facility

~~Without limiting any ability of the Trustee to make a withdrawal offer, the Trustee may at its discretion offer Unitholders an opportunity to withdraw pursuant to a Limited Withdrawal Facility offered in accordance with this clause 7.10.~~

~~If the Trustee offers a Limited Withdrawal Facility, then the following provisions apply:~~

~~The amount available to satisfy withdrawal requests for a calendar month will be either —~~

~~a minimum of 0.5 percent of the Net Asset Value as at the last Valuation Time before the end of the month, or~~

~~such other lower or higher amount as is determined by the Trustee from time to time and as disclosed in a Disclosure Document.~~

~~Withdrawal requests received before the Designated Time on the last Business Day of a calendar month will be processed if the total amount of the withdrawal requests received are less than or equal to the Available Funds.~~

~~If the aggregate value of withdrawal requests received during a calendar month exceeds the Available Funds, then each withdrawal request is to be processed on a pro rata basis so that the aggregate amount of withdrawal requests paid during the month does not exceed the Available Funds.~~

~~If the Trustee receives a withdrawal request from a Unitholder in a calendar month, and the withdrawal request is not wholly satisfied, then the Unitholder will be deemed to have made a further withdrawal request in respect to the unmet portion of the withdrawal request in the next calendar month.~~

~~If the Trustee determines to offer Unitholders an opportunity to withdraw pursuant to a Limited Withdrawal Facility, then the Trustee may determine to suspend or withdraw the offer at any time.~~

~~For the purposes of this clause 7.10, "Available Funds" means the amount available to satisfy withdrawal requests pursuant to the Limited Withdrawal Facility, determined in accordance with clause 7.10(b)(i).~~

### Periodic Liquidity Event

~~For the purposes of this clause 7.11, the following words have the following meanings:~~

~~"Notification Period" means the period notified by the Trustee within which holders of Units of a relevant Class or Classes may elect to participate in a Periodic Liquidity Event.~~

~~"Action Period" means the period commencing on the day after the expiration of the Notification Period determined by the Trustee as the period for Liquidity Requests to be met or satisfied, being the period specified in the invitation given to relevant Unitholders to participate in a Periodic Liquidity Event, which is subject to a maximum period of 365 days after the close of the Notification Period.~~

~~"Relevant Units" means the Units held by a Unitholder that are the subject of a Liquidity Request.~~

~~"Participating Holder" means those Unitholders who have submitted a Liquidity Request.~~

~~“Liquidity Request” means a request made by a Unitholder to participate in a Periodic Liquidity Event.~~

~~“Periodic Liquidity Event” means a facility offered by the Trustee to holders of Units in a particular Class or Classes to provide those Unitholders with the ability to withdraw or transfer some or all of their Units.~~

~~The Trustee may offer a Periodic Liquidity Event, with the initial Periodic Liquidity Event to commence at such time as the Trustee determines.~~

~~If the Trustee offers a Periodic Liquidity Event, then the Trustee will invite holders of Units in the relevant Class or Classes to make a Liquidity Request, and after the closure of the Notification Period, the Trustee must use reasonable endeavours to satisfy Liquidity Requests within the Action Period in accordance with the terms of the Periodic Liquidity Event.~~

~~The Trustee may (but is not obliged to) determine to meet Liquidity Requests during the Action Period by acting as the agent of a Participating Holder to facilitate the redemption or transfer to another person of some or all of the Units that are the subject of a Liquidity Request.~~

~~Each Participating Holder irrevocably appoints the Trustee as its agent and attorney to execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the Liquidity Request in accordance with the terms of the Periodic Liquidity Event. The Trustee is authorised to execute these documents and to do these things without needing further authority or approval from a Participating Holder.~~

~~If all Liquidity Requests are not met during the Action Period in full, then any unsatisfied Liquidity Requests will be cancelled.~~

~~Subject to this clause 7.11, the terms of a Periodic Liquidity Event will be determined at the Trustee’s discretion, and if the Periodic Liquidity Event—~~

~~allows Unitholders to make a withdrawal request with respect to some or all of their Units, then the withdrawal price of the Relevant Units will be calculated in accordance with clause 6, and~~

**~~7.109.10 allows Unitholders to make a request for the transfer of some or all of their Units, then the price at which the Relevant Units will be transferred will be the Unit price calculated in accordance with this Constitution on the day immediately prior to the transfer. Suspension of withdrawals~~**

- (a) The Trustee need not give effect to a Withdrawal Request or it may suspend withdrawals for a period of time—
  - (i) where the withdrawal request is received between the date the Trust is terminated and the date the Trust is wound up
  - (ii) if it is not in the best interests of Unitholders for withdrawals to be made
  - (iii) if it would prejudice the Trust’s ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Trust’s or the Trustee’s compliance with any applicable law, or the taxation or stamp duty status of the Trust
  - (iv) it is, for any reason, impracticable for it to calculate the Net Asset Value, the Application Price or the Withdrawal Price, including because of closure of a securities or other exchange or trading

restrictions on a securities or other exchange, or because of the existence of an emergency or other similar state affairs or because of an event outside of the reasonable control of the Trustee, or because of the requirements of any law

- (v) there would be insufficient cash retained in the Assets after complying with a withdrawal request to meet other Liabilities and in the Trustee's opinion it is not in the interests of Unitholders for any Assets to be sold in order to satisfy a withdrawal request
  - (vi) if it is not able to realise the relevant Assets at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside of the control of the Trustee needed to satisfy the withdrawal requests within the time required
  - (vii) the Trustee reasonably estimates that it must sell five percent or more (by value) of all Assets to meet current unsatisfied withdrawal requests, or
  - (viii) there have been, or the Trustee anticipates there will be, withdrawal requests which involve realising a significant amount of the Assets and the Trustee considers that if those withdrawal requests are all satisfied immediately, then Unitholders who continue to hold Units may bear stamp duty or a disproportionate burden of capital gains tax or other expenses, or the meeting of those withdrawal requests would otherwise be to the disadvantage of existing Unitholders, including (but not limited to) a material diminution in the value of the Assets.
- (b) In cases where withdrawals are suspended for a period of time the Trustee may extend the period for so long as the circumstances which caused the suspension continue to apply.

#### **7.119.11 Provisions which apply when the Trust is Liquid**

- (a) The Trustee must determine whether it will give effect to a withdrawal request within 365 days of receipt of the request. If the Trustee gives effect to a withdrawal request, then the Trustee must satisfy the withdrawal request within 21 days from the date on which it determines to give effect to the request—
  - (i) by making the requisite payment from the Assets or by transferring Assets in accordance with clause 9.5
  - (ii) subject to the Act, by purchasing the number (or value) of Units referred to in the withdrawal request, or
  - (iii) partially in the manner described in clause 9.11(a)(i) and partially in the manner described in clause 9.11(a)(ii).
- (b) The Trustee need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time (or, where the Units form part of a Stapled Security, in respect of Stapled Securities having an aggregate withdrawal price of less than the minimum application amount for Stapled Securities or such other amount as



determined by the Trustee from time-to-time). However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding.

- (c) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (d) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as also relating to the remaining balance of the Unitholder's holding.
- (e) The Trustee may redeem some or all of the Units which are the subject of the request.
- (f) The Trustee may at its discretion consider and process withdrawal requests under—
  - (i) the Limited Quarterly Withdrawal Facility, or
  - (ii) a Periodic Liquidity Event.
- (g) Without limiting clause 9.11(a) and 9.11(i), the Trustee may offer the Limited Quarterly Withdrawal Facility from time to time on a quarterly basis.
- (h) If the Trustee 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 at the last Valuation Time before the date of payment of the withdrawal request, or
    - B. such higher amount as is determined by the Trustee from time to time.
  - (ii) Withdrawal requests received before the Relevant Valuation 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 Unitholder 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 9.11, unless—

- a Unitholder provides notice that they wish to withdraw the withdrawal request before the Relevant Valuation Time and the Trustee agrees to such withdrawal, or
  - Withdrawal requests have been suspended under clause 9.10.
- (iv) A withdrawal request received during a quarter but after the Relevant Valuation Time is deemed to be received the following quarter.
- (i) Without limiting clauses 9.11(a) and 9.11(g), the Trustee may offer a Periodic Liquidity Event, with the initial Periodic Liquidity Event to commence at such time as the Trustee determines.
- (j) If the Trustee offers a Periodic Liquidity Event, the Trustee will invite Unitholders to make a withdrawal request and after the closure of the period to make withdrawal requests notified by the Trustee to Unitholders (Notification Period)—
- (i) without limiting clause 9.11(a), the Trustee must use reasonable endeavours to meet withdrawal requests out of the Assets within 365 days after the close of the Notification Period (Sale Period)
  - (ii) the Trustee may (but is not obliged to) determine to meet withdrawal requests during the Sale Period by acting as the agent of those Unitholders 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 Trustee determines to act as the Selling Holder's agent—
    - A. the Trustee—
      - 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)
      - 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
      - may redeem or transfer Sale Units on the terms and conditions set out in this Constitution
      - may pay any costs and duty arising from the redemption or transfer of the Sale Units out of the Assets, and
      - 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—
      - they are the registered holder of the Sale Units

- 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
- if the Trustee, 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 Trustee is an effective discharge of the Selling Holder's withdrawal request

(e)(k) If all withdrawal requests are not met during the Sale Period in full, the Trustee may (but is not obliged to) offer a further Periodic Liquidity Event or Periodic Liquidity Events.

#### **7.129.12 Provisions which apply when the Trust is not Liquid**

- (a) When the Trust is not Liquid, a Unitholder has no ability to withdraw from the Trust unless there is a withdrawal offer, which complies with the Act, currently open for acceptance by Unitholders. The Trustee may make separate withdrawal offers in respect of different Classes or a withdrawal offer only in respect of a particular Class.
- (b) Subject to the Act, the Trustee may determine the terms of a withdrawal offer in its absolute discretion. The withdrawal offer may be made by giving a copy to all Unitholders to whom the withdrawal offer is available.
- (c) Despite any other clause in this Constitution, the Trustee is not at any time obliged to make a withdrawal offer.
- (d) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (e) The Trustee will not accept any withdrawal requests received before it makes a withdrawal offer under this clause 9.12. The Trustee will notify any Unitholders that submit withdrawal requests before the Trustee makes a withdrawal offer that the withdrawal request is not accepted and that the Unitholder will need to respond to a withdrawal offer when one is made.
- (f) Subject to the Act, the Trustee may cancel any withdrawal offer it has made at any time before the withdrawal offer closes by giving notice of the cancellation to all Unitholders to whom the withdrawal offer was made. The withdrawal offer will be automatically cancelled as at the time of the Trustee's decision. Any withdrawal request made in response to a withdrawal offer cancelled by the Trustee which has not been satisfied at the time of the Trustee's decision to cancel the withdrawal offer will be taken to be withdrawn at that time.

## **8.10 Register**

### **8.10.1 Trustee must maintain the Register**

The Trustee must keep and maintain or cause to be kept and maintained an up-to-date Register. The Register will be in a form and contain particulars as determined by the Trustee, however while the Trust is a Registered Scheme, the Register must be kept in accordance with the Act or any declaration, exemption or ruling granted

under the Act. The Register may include other particulars, as the Trustee may from time-to-time consider appropriate.

#### **8.210.2 *Removing information from the Register***

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

#### **8.310.3 *Register is evidence of who are Holders***

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

#### **8.410.4 *Change of details***

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

#### **8.510.5 *Limit to number of registered Holders***

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

#### **8.610.6 *Use of information***

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

### **9.11. *Interests of Unitholders***

#### **9.111.1 *Joint holders***

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

#### **9.211.2 *Restrictions on Unitholders***

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

- (a) interfere with any rights, powers, authorities or discretions of the Trustee under this Constitution
- (b) exercise a right, power or privilege in respect of the Assets or lodge a caveat or other notice affecting or encumbering the Assets or otherwise claim any interest in the Assets

- (c) require any Assets to be transferred to that Unitholder, or
- (d) give any directions to the Trustee if it would require the Trustee to do or omit to do anything which may result in the exercise of any discretion expressly conferred on the Trustee by this Constitution or the determination of any matter which requires the approval of the Trustee under this Constitution.

## **40.12. Valuation of Assets**

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### **40.112.1 Periodic valuations**

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

### **40.212.2 Net Asset Value**

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

### **40.312.3 Valuation methodology**

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

### **40.412.4 Trustee not an expert**

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

## **44.13. Trustee's powers and duties**

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### **44.113.1 General powers**

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

### **44.213.2 Specific powers**

Without limiting clause 13.1, the Trustee's powers include the power to do the following:

- (a) Acquire and invest in any property (whether real or personal) or assets, located in any jurisdiction (which for the avoidance of doubt includes the acquisition of any contractual or other rights and the provision of debt with or without security).
- (b) Dispose of or otherwise deal with the Assets.
- (c) Manage and administer the Assets.
- (d) Open, close and operate bank accounts.
- (e) Borrow or raise money (including but not limited to the issue of unsecured notes and other debt products, which may under their terms of issue be convertible or partially convertible to Units on such terms as the Trustee determines), grant security, enter into ISDA master agreements and derivative transactions (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities. Such other obligations may include but are not limited to—
  - (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or responsible entity of any other trust), and
  - (ii) securing the liability arising from any such guarantee or indemnity by charging or mortgaging the whole or any part of the Assets.
- (f) Authorise any person to act as its agent or delegate to hold title to any Asset, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate. If the Trustee does appoint an agent or delegate, then—
  - (i) it may do so on terms the Trustee thinks fit, and
  - (ii) the agent or delegate may be an Associate of the Trustee.
- (g) Act as underwriter for the offer of any securities or other interests in the Trust.
- (h) Fetter its own powers and discretions.
- (i) Carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time-to-time.
- (j) Hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release, or discharge or otherwise deal with any real or personal property.
- (k) Grant a lease or sublease of any real property of any term, including a term that exceeds 30 years in the case of a building lease and 21 years in the

case of any other lease (including a mining lease), regardless of any limitation imposed by any Trusts Acts.

- (l) Grant any other right of occupancy over the Assets for any period the Trustee determines, regardless of any limitation imposed by any Trusts Acts.
- (m) Delegate (in writing) the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (n) Subject to its obligations at law, waive or excuse on any terms as it thinks fit any breach by any such agent or other person of their obligations to the Trustee in connection with the Trust.
- (o) Enter into any option agreement relating to any lending or financing facility, agreement or transaction.
- (p) Exercise or concur in exercising all the foregoing powers and discretions contained in this Constitution or otherwise by law conferred notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee of the Trust.
- (q) Purchase or otherwise acquire any loan from any person including a loan which is in default or otherwise in arrears.
- (r) Sell or otherwise dispose of any loan to any person, including a loan which is in default or otherwise in arrears.
- (s) Exercise, enforce, dispose or otherwise deal with any property or right.
- (t) Lend all or any money at any time forming part of the Assets to any person with or without the security of any property, including where the amount of any such loan is in excess to the value of the secured property.
- (u) Complete and execute any mortgage document and any other security document, including any document relating to the priority of a security held on behalf of the Trust.
- (v) Do everything which, in the Trustee's opinion, is necessary or expedient to enable the exercise of any right as lender in relation to any loan made from the Assets, including exercising a power of sale pursuant to a mortgage document or the enactment of a State or Territory or the Commonwealth of Australia, to execute any contract for sale of real property offered as security, transfer, lease or easement document required to register any dealings and complete the sale of such real property offered as security to the Trust and the subject of the exercise of any power of sale.
- (w) Do everything which, in the Trustee's opinion, is necessary or expedient, to enable any security held on behalf of the Trust to be exercised, enforced, discharged or otherwise dealt with by the Trustee.

- (x) Enter into contracts for the sale of Securities notwithstanding that the Trust does not, at the time of making the contract, own sufficient quantities of those Securities to satisfy the contract as long as the Trustee is satisfied that, before completion of the contract, the Trust will be able to acquire sufficient quantities of those Securities to satisfy the contract, whether by borrowing or otherwise.
- (y) To borrow Securities to enable a contract referred to in clause 14.2(q) to be completed.
- (z) To enter into Securities lending arrangements similar to or as defined in section 26BC of the Income Tax Assessment Act 1936 (Cth).
- (aa) With respect to any company in which the Trustee holds any Securities, to exercise the following powers in addition to powers conferred by law:
  - (i) To pay calls on Securities or permit Securities to be forfeited and sold.
  - (ii) To purchase Securities and take up Securities of a new issue.
  - (iii) To attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee.
  - (iv) To sell Securities at a price and upon terms as the Trustee may decide.
  - (v) To assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or modifying any rights, privileges or interests in relation to Securities.
  - (vi) To agree to any scheme or arrangement for the increase or reduction of the value or amounts of any Securities or of the capital of any company in which any Securities form part of the Trust or by which any Securities are substituted or given in exchange, either wholly or partly for other Securities, whether in the same company or not, and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the Securities and to pay out of the Assets any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any Securities as if the Trustee owned them beneficially.
  - (vii) To agree in respect of a winding up with the liquidator of the company or any member or creditor of the company, or in a voluntary administration, as the Trustee thinks fit.
- (bb) Apply for the Units or Options to be admitted for quotation on any Exchange, and for this purpose the Trustee is authorised on its own behalf and on behalf of each Holder to do all things necessary to effect the quotation.
- (cc) To make any choice under the Tax Act and to do such things as is reasonable to enable such a choice to be made and applied by the Trust or to operate the Trust in accordance with such a choice, including (but not limited to) a choice under sections 275-115, or 276-20 of the Tax Act.



**11.313.3 AMIT powers**

## (a) AMIT Election

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

## (b) General provisions

The Trustee has, without limiting its other rights and powers provided for under the Constitution and this clause 13.3, all of the powers and rights which are necessary or desirable to enable—

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

## (c) Specific powers

Subject to clause 17.21, the Trustee may under the AMIT Rules in respect of an AMIT Income Year—

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

- (vii) issue an AMMA Statement to any Unitholder, or
  - (viii) amend an AMMA Statement that has been issued to a Unitholder, and determine the basis upon which the AMMA Statement is to be amended.
- (d) Units and Classes of Units
- (i) Subject to clause 13.3(d)(ii), the Trustee may under the AMIT Rules issue Units of a single Class or different Classes. Each different Class must have distinct rights, obligations and restrictions from the rights, obligations and restrictions of all other Classes issued, but the rights to income and capital of a particular Class must be the same for every membership interest in that Class. All Units in a Class rank equally. A separate Class does not constitute a separate trust.
  - (ii) Clause 13.3(d)(i) does not permit the Trustee to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Act requires those matters to be set out in this Constitution.
- (e) Each Unitholder acknowledges or is taken to acknowledge that the Trustee has, under the AMIT Rules in respect of an AMIT Income Year a choice with respect to how the Trustee is to address any amounts which may give rise to an Under or Over of a particular character for the Trust, including whether such amounts should be addressed by the Trustee by—
- (i) issuing amended AMMA Statements to Unitholders under section 276-455(4) of the Tax Act (as may be amended from time-to-time), for the year of income for the Trust to which the Under or Over relates, or
  - (ii) treating the amount as an Under or Over of a particular character for the Trust, and adjusting the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount under section 276-305 of the Tax Act, (as may be amended from time-to-time).
- (f) Trustee's limitation of liability for AMIT Rules powers

Without limiting any other provision and to the maximum extent permitted by law but subject to the Act, the Trustee does not incur any liability and it is not obliged to account to anyone (including any Unitholder or former Unitholder) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under this clause 13.3, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

#### **11.413.4 Discretion to exercise powers**

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

#### **11.513.5 Interested dealings by Trustee**

- (a) Subject to the Act, the Trustee may—

- (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust
  - (ii) act in the same or similar capacity in relation to any other managed investment scheme
  - (iii) hold Units in, or other securities issued by, the Trust in any capacity
  - (iv) hold or deal in or have any other interest in an Asset, or
  - (v) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause 13.5, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause 13.5(a)—
- (i) it may retain and need not account for any benefit derived by it, and
  - (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.
- (d) Subject to the Act, where the Trustee acquires Units (on its own account or in some other capacity)—
- (i) the Trustee may be registered as a Unitholder in respect of the Units
  - (ii) the Units acquired by the Trustee are not cancelled or redeemed by reason of their acquisition by the Trustee or the registration of the Trustee as a Unitholder in respect of them and the Trustee may dispose of the Units to other Unitholders or to third parties, and
  - (iii) Units held by the Trustee confer on the Trustee all of the benefits and rights of any other Unitholder under this Constitution and the law.

#### **11.613.6 Retirement benefit**

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

**11.713.7 Investment powers**

To the full extent that they may be excluded by this Constitution, the duties imposed by any Trusts Acts do not apply to the exercise by the Trustee of its investment powers.

**11.813.8 Duties of the Trustee**

Notwithstanding anything else in this Constitution, while the Trust is a Registered Scheme, in exercising its powers and carrying out its duties, the Trustee must comply with section 601FC of the Act.

**12.14. Reorganisation Proposals****12.114.1 Power to enter into Reorganisation Proposals**

- (a) Without limiting clause 13, the Trustee may enter into any of the following which is approved by Ordinary Resolution—
- (i) a Realisation Transaction
  - (ii) a Stapling Proposal
  - (iii) a Top Hat Proposal
  - (iv) an Exchange Proposal, or
  - (v) any other Reorganisation Proposal
- (b) It is a term of issue of each Unit that the Unit may be subject to a Reorganisation Proposal as provided in this clause 14.1. Each Unitholder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

**12.214.2 Partly Paid Units**

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

**12.314.3 Power to give effect to Reorganisation Proposals**

If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 14.1, then the Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

**12.414.4 Specific Powers**

Without limiting clause 14.3, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 14.1, the Trustee has power to—

- (a) make distributions and other payments out of the Assets and (subject to the Act) to redeem Units, and to apply the payment or redemption proceeds on behalf of Unitholders

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

#### **12.514.5 Appointment of Trustee as agent and attorney**

Without limiting clause 14.3, to give effect to a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 14.1, the Trustee is irrevocably appointed the agent and attorney of each Unitholder to—

- (a) apply any proceeds referred to in clause 14.4(a) on behalf of the Unitholder
- (b) execute any withdrawal request on behalf of the Unitholder, or any application for, or transfer of, any securities in favour of the Unitholder
- (c) execute a transfer of Assets to a Unitholder, and
- (d) execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the relevant transaction or proposal.

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

#### **12.614.6 Liability of the Trustee**

Provided the Trustee has exercised the degree of care and diligence that a reasonable person would exercise if they were in the Trustee's position, the Trustee has no liability of any nature whatsoever beyond the Assets to Unitholders arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document or acting as the agent of any Unitholder) pursuant to or in connection with the implementation of any Reorganisation Proposal.

### **13.15. Financial reports and tax returns**

#### **13.115.1 Accounts, audit and other reports**

- (a) While the Trust is a Registered Scheme, the Trustee must comply with the requirements of Chapter 2M of the Act, to the extent applicable to the Trust.
- (b) In addition to any of the Trustee's obligations under clause 15.1(a), the Trustee—
  - (i) must keep, or cause to be kept, proper books of account in relation to each Class, and

- (ii) may prepare a separate financial statement for each Class and determine the distinct tax implications relating to each Class.

#### **13.215.2 Tax returns**

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

#### **13.315.3 Electronic annual financial report to Unitholders**

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

#### **15.4 Combined accounts**

While the Trust is part of a Stapled Entity, the Trustee 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.

## 14.16. Fees and expenses

- ~~14.1~~ Defined terms and interpretation
- ~~14.2~~ For the purposes of this clause 14, the term "Property" means any estate or interest in real property, and a reference to a "Property" includes—
- ~~14.3~~ an undivided share of a Property
- ~~14.4~~ all buildings and other improvements, fixtures, fittings, plant and equipment located on or forming part of the Property and any additions to or replacements of those items, and
- ~~14.5~~ any part of the Property.
- ~~14.6~~ In addition to those contained in Schedule 2—Rules for interpretation, the following rules of interpretation apply to this clause 14:
- ~~14.7~~ All references to a Property being acquired, purchased, held, disposed, sold, or otherwise, by or for the Trust, includes a reference to such a thing being done by, for or through a Sub Entity.
- ~~14.8~~ The amount of any fee calculated under this clause 14 by reference to—
- ~~14.9~~ an asset that is or was acquired, purchased, held, disposed, sold, or otherwise, by, for or through a Sub Entity, including a Property, or
- ~~14.10~~ the total value of the assets of a Sub Entity,
- ~~14.11~~ must be adjusted, as appropriate, based on the proportional direct or indirect ownership of the Trust in the Sub Entity.
- 14.1216.1** ~~Except as provided for by this Constitution, all amounts required to be determined in this clause 14 are to be determined by the Trustee in its discretion, but following generally accepted principles and methods.~~ **Acquisition Establishment & Placement fee**

The Trustee is entitled to an establishment and placement fee of up to 2% of the gross value of any asset in which the Trust 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 expensed 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 Trust has the benefit of). The establishment and placement fee is payable to the Trustee in tranches within 10 Business Days of payment of any amount in respect of the relevant asset. For example, if the Trust 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 Trustee will be based on the gross value of the relevant asset of that entity and thereafter on the amounts expensed on the asset for the purposes of improvement and development.

~~14.13 Subject to the remainder of this clause 14.2, the Trustee is entitled to an acquisition fee calculated as follows:~~

~~14.14 In respect of each Asset acquired by the Trust, the Trustee is entitled to an acquisition fee of up to 3 percent of the total value of that Asset as acquired by the Trust.~~

~~14.15 In respect of each asset acquired by a Sub Entity, the Trustee is entitled to an acquisition fee of up to 3 percent of the total value of that asset as acquired by the Sub Entity.~~

~~14.16 For the purposes of clause 14.2(a), if the relevant asset acquired by the Trust or a Sub Entity is a Property, and that Property is acquired pursuant to a contract of sale, then the total value of that asset will be deemed to be the gross purchase price of the Property as it appears on the relevant contract of sale (excluding any GST component and before any deductions or adjustments).~~

~~14.17~~16.2 Any acquisition fee that the Trustee is entitled to pursuant to this clause 14.2 is due and payable to the Trustee out of the Assets on the date the relevant Asset is acquired by the Trust, or the date the relevant asset is acquired by the Sub Entity, as applicable. ~~Disposal~~ **Sale fee**

The Trustee is entitled to a sale fee of up to 1% of the actual gross sale price of any asset in which the Trust 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 Trust has the benefit of). The sale fee is payable within 5 Business Days of completion of the relevant sale.

~~(a) Subject to the remainder of this clause 14.3, the Trustee is entitled to a disposal fee calculated as follows:~~

~~(i) In respect of each Asset disposed of by the Trust, the Trustee is entitled to a disposal fee of up to 1.5 percent of the total consideration received by the Trust in respect of the disposal of that Asset.~~

~~(ii) In respect of each asset disposed of by a Sub Entity, the Trustee is entitled to a disposal fee of up to 1.5 percent of the total consideration received by the Sub Entity in respect of the disposal of that asset.~~

~~(b) For the purposes of clause 14.3(a), if the relevant asset disposed of by the Trust or a Sub Entity is a Property, and that Property is disposed of pursuant to a contract of sale, then the total consideration received by the Trust or the Sub Entity will be deemed to be the gross sale price of the Property as it appears on the contract of sale (excluding any GST component and before any deductions or adjustments).~~

~~(c) Any disposal fee that the Trustee is entitled to pursuant to this clause 14.3 is due and payable to the Trustee out of the Assets on the date the relevant Asset is disposed of by the Trust, or the date the relevant asset is disposed of by the Sub Entity, as applicable.~~

~~14.18~~16.3 **Management fee**

~~(a) The Trustee is entitled to an ongoing management fee of up to 0.81.2 percent per annum of the Gross Asset Value, which accrues daily and is payable to the Trustee monthly in arrears out of the Assets, within 5 Business Days of the end of each month.~~



~~For the purposes of clause 14.4(a), the term "Gross Asset Value" means the total value of the Assets as at the most recent Valuation Time, and in determining the total value of the Assets, if an interest in a Sub Entity is an Asset, then the value of that Asset is to be substituted by the total value of the assets of the Sub Entity.~~ **Financing facility fee**

- ~~(b) Subject to the remainder of this clause 14.5, in respect of each Facility, and on each Financing Date, the Trustee is entitled to a financing facility fee, calculated as the Facility Limit multiplied by 0.30 percent. The financing facility fee is due and payable to the Trustee out of the Assets on each Financing Date.~~
- ~~(c) For the purposes of this clause 14.5, the following terms have the following meanings:~~
- ~~(d) "Borrower" means the Trustee, or the Sub Entity, or the trustee of any Sub Entity, that is able to borrow money or otherwise receive financial accommodation from a Financier.~~
- ~~(e) "Facility" means a facility through which a Borrower is able to borrow money or otherwise receive financial accommodation from a Financier.~~
- ~~(f) "Facility Limit" means the total amount that has been or may be borrowed by the Borrower under the Facility on the relevant Financing Date.~~
- ~~(g) "Financier" means any entity that lends money or otherwise provides financial accommodation to other entities.~~
- ~~(h) "Financing Date" means —~~
- ~~(i) the date a Facility is entered into by a Borrower with a Financier, and~~
- ~~(j) the effective date of any renewal, extension or variation of the terms of a Facility, including any increase to the Facility Limit.~~
- ~~(k) The Trustee is only entitled to a financing facility fee pursuant to this clause 14.5 where —~~
- ~~(l) either it or a related body corporate of Primewest Management Ltd is the Borrower (including in its capacity as trustee), or~~

~~**14.1916.4** \_\_\_\_\_ in all other cases, where Primewest Management Ltd or a related body corporate of Primewest Management Ltd, arranges or facilitates the entering into of the Facility, or any renewal, extension or variation of the terms of a Facility, including any increase to the Facility Limited. **Performance fee**~~

In consideration for the past and successful management of the Trust, the Trustee is entitled to a performance fee, which is to be calculated and paid out of the Assets, in accordance with—

- ~~(a) if and whilst the Trust is not part of a Stapled Entity, Schedule 3—  
Performance fee, and-~~
- ~~(b) if and whilst the Trust is part of a Stapled Entity, Schedule 4—Performance fee – Stapled Entity.~~

**14.2016.5 Waiver and deferral of fees and expenses**

The Trustee may at any time and for any period—

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

**14.2116.6 Fees can be applied to acquire Units**

Subject to the Act, where an amount of money is payable from the Assets to the Trustee by way of any fee or in reimbursement of any cost, charge or expense, then the Trustee may, in its own capacity or in its capacity as trustee of any trust, elect to apply that amount to subscribe for Units, at an Application Price calculated in accordance with the provisions of clause 5.

**14.2216.7 Other fees or different fees**

While the Trust is not a Registered Scheme—

- (a) the Trustee will be paid such other fees as may be disclosed by it in a Disclosure Document, and
- (b) the Trustee may charge fees which differ (in terms of their type, amount, method of payment or frequency of payment, or in any other manner) from the other fees provided for in this clause 16, provided they are disclosed in a Disclosure Document.

**14.2316.8 Expenses**

- (a) All Expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Trustee, in relation to the proper performance of its duties under this Constitution, will be paid out of the Assets. If the Trustee pays such Expenses, then the Trustee will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such Expenses, together with any GST payable in respect of those Expenses.
- (b) Without limiting clause 16.8(a), this includes Expenses connected with the following:
  - (i) The identification, acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
  - (ii) Calculating the Application Price, Withdrawal Price, Distributable Amount, Dividend Amount and Distributable Proportion plus undertaking any financial modelling or fee or other calculations in relation to the Trust.

- (iii) The proposed acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
- (iv) Raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses.
- (v) The appointment of any professional adviser, consultant, contractor, agent, broker, underwriter or delegate by the Trustee, including a custodian or investment manager.
- (vi) The administration or management of the Trust or its Assets and Liabilities.
- (vii) Bank charges on the operation of bank accounts.
- (viii) Borrowing money, raising finance or granting security over the Assets.
- (ix) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust or in any other capacity.
- (x) Fees and charges of any regulatory or statutory authority, including all costs incurred by the Trustee or any consultants engaged by the Trustee in the preparation for any such meeting.
- (xi) Convening and holding meetings of Unitholders.
- (xii) Printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters.
- (xiii) Preparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust.
- (xiv) Keeping and maintaining of the accounting records and registers of the Trust.
- (xv) Retirement and the appointment of a substitute trustee or any custodian.
- (xvi) The initiation, conduct and settlement of any court proceedings (including through alternative dispute resolution)—
  - A. to enforce any provisions of this Constitution, or
  - B. in relation to the Trust or any of its Assets or Liabilities.
- (xvii) Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan (if required).

- (xviii) Acquiring, establishing, maintaining, leasing, licensing and developing computer software systems required for the administration of the Trust.
- (xix) Reasonable travelling and accommodation expenses of the Trustee.
- (xx) Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (xxi) Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
- (xxii) The establishment, management and maintenance of any—
  - A. listing on any exchange or secondary market of the Trust or any Units, and
  - B. any rating of the Trust, a Class or any Units.
- (xxiii) The performance of the functions and duties of the Trustee under the Constitution.
- (xxiv) Costs, charges and expenses related to—
  - A. any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust, including the appropriate portion of the compliance committee's remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums (and excess) for those members
  - B. if there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses of the board of the Trustee associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of the Act, and
  - C. any variation of the Trustee's Australian financial services licence to the extent it reasonably relates to the Trust.
- (xxv) Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust.
- (xxvi) Complying with any laws or rules in relation to the prevention or detection of money laundering activities or terrorism financing activities.
- (xxvii) Complying with any laws (including laws of a foreign jurisdiction) relating to tax administration or tax information collection (including the Foreign Account Tax Compliance Act).
- (xxviii) Foreign exchange transactions.

- (xxix) Foreign exchange hedging transactions.
- (xxx) Amounts payable to the investment manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, underwriters or other persons engaged by the Trustee under this Constitution (including legal costs on a full indemnity basis), which may include a related body corporate or an Associate of the Trustee or investment manager.
- (xxxi) Entering the Trust in a survey.
- (xxxii) Fees payable to a ratings organisation.
- (xxxiii) Dealing with applications and redemptions of Units or other interests, in determining the Application Price and Withdrawal Price.
- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the Trustee or the directors of the Trustee.
- (d) The Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

#### **14.2416.9** *Performance of duties*

- (a) Despite anything else in this Constitution, while the Trust is a Registered Scheme (and in accordance with subsection 601GA(2) of the Act), the rights of the Trustee to be paid fees out of the Assets or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties under this Constitution or the Act are available only in relation to the proper performance of those duties.
- (b) The lack of entitlement to any payment pursuant to clause 16.9(a) only applies to that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 16.9 means the Trustee is not entitled to be paid fees and costs for work performed properly and in accordance with its duties.

#### **14.2516.10** *Goods and Services Tax*

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

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the party to whom the supply has been made an additional amount on account of GST. This additional amount must be equal to the amount of the Trustee's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.
- (b) The Trustee and the Unitholders acknowledge and agree each supply made by the Trustee under this Constitution is made—
  - (i) on a progressive or periodic basis

- (ii) such that the consideration is to be provided on a progressive or periodic basis, and
  - (iii) such that each progressive or periodic component of the supply is to be treated as a separate supply.
- (c) If the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST Referable directly or indirectly to any supply made under or in connection with this Constitution, then the Trustee is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax credit.

#### **14.2616.11 Fees or amounts payable by Trust or Sub Entities**

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

### **15.17. Distributions from the Trust**

#### **15.117.1 Trustee will collect in all money**

- (a) The Trustee must collect or cause to be collected all amounts generated from the Assets and all other money, rights and property which are paid, due or receivable in respect of the Trust.
- (b) Where there is more than one Class on issue, subject to the Act, the Trustee must allocate any Expense and Liabilities to Classes as follows:
  - (i) Where a cost is attributable to a Class, to that Class.
  - (ii) Where a cost is attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the relevant Class Assets.
  - (iii) Where a cost is not attributable to any Class, between all Classes on a pro rata basis, provided the Trustee considers such allocation to be fair having regard to the interests of all Unitholders and the Assets Referable to the relevant Class Assets.

#### **15.217.2 Situation if Trust taxed as a company**

If the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause 17.2 applies in respect of that Financial Year and the following applies:

- (a) As soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine—

- (i) if there is to be any Dividend Amount for each Class for the Distribution Period, and
  - (ii) if so, then the amount of the Dividend Amount for each Class and the amount of any franking credits (if any) to be attached to the Dividend Amount for each Class.
- (b) The Trustee may determine the extent to which the Dividend Amount for a Class (if any) comprises profits, retained profits, capital, returned capital or income of a particular character.
- (c) Subject to any Terms of Issue, at the end of the Distribution Period, a Unitholder is entitled to a Dividend Entitlement, calculated as follows:
- $$\frac{A \times C}{B}$$
- Where:
- A = The aggregate of the Paid-up Amount of each relevant Unit holding of the Unitholder as at the end of the Distribution Period.
- B = The Total Paid-up Amount at the end of the Distribution Period.
- C = The Dividend Amount (if any) for the Distribution Period.
- (d) Dividend Entitlements (if any) must be paid to Unitholders within three months after the Distribution Calculation Date.

#### **15.317.3 Situation if Trust not taxed similar to a company**

Clauses 17.4 to 17.14 apply if clause 17.2 does not apply.

#### **15.417.4 Calculation of Distributable Amount**

The Distributable Amount for a Distribution Period will be the amount determined, by the Trustee, pursuant to the definition in Schedule 1. If for a period ending on the last day of a Financial Year the Trustee has not made a determination for the purpose of this clause 17.4 before the end of that Financial Year, then the Distributable Amount will be the amount mentioned in sub-paragraph (a) of that definition.

#### **15.517.5 Persons who will receive Distributable Amount**

- (a) A Unitholder's Distributable Proportion for each Class of Units they hold for a Distribution Period is the amount worked out by the Trustee calculated in accordance with the following formula (subject to any payments or adjustments required as a result of clause 17.17):

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

Where:

- A = The number of Units in the Class held by the Unitholder at the close of business on the last day of the Distribution Period.
- B = The Distributable Amount allocated to that Class (as determined by the Trustee pursuant to clause 17.9 for the Distribution Period).

C = The number of Units in the Class held by all Unitholders in that Class at the close of business on the last day of the Distribution Period.

- (b) The Trustee must pay the Distributable Proportions (less Tax and any fees owed to the Trustee by Unitholders) to Unitholders who are Unitholders on the last day of the Distribution Period in question.

#### **15.617.6 Present entitlement**

On the last day of the Distribution Period, any person who is a Unitholder—

- (a) is presently entitled to its Distributable Proportion for the Financial Year in which the end of the Distribution Period falls, and
- (b) has a vested and indefeasible interest in its Distributable Proportion for that Financial Year.

#### **15.717.7 Special distribution amounts**

- (a) The Trustee may, at any time, determine to advance, pay or apply an amount of Income or capital of the Trust in circumstances where the amount is not to be treated as a Distributable Amount (in this clause “Special Distribution Amount”).
- (b) Where the Trustee determines under clause 17.7(a) that there is a Special Distribution Amount at a particular time, then this Constitution is to be applied in a manner as though the Special Distribution Amount at that particular time were a Distributable Amount for a Distribution Period.

#### **15.817.8 Reserves**

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

#### **15.917.9 Classes**

- (a) The quantum of the Distributable Amount allocated to a Class is to be based on the Assets Referable to the Class and any other provisions and requirements of this clause 17.
- (b) If there is more than one Class—
  - (i) the Trustee may determine that any part of the capital, Distributable Amount or Dividend Amount is properly Referable to a Class (Class Capital or Income)
  - (ii) subject to the Trustee’s obligations under the Act, the decision of the Trustee with respect to the allocation of capital, Distribution Amount or Dividend Amount among the relevant Class shall be final and binding on all Unitholders, and



- (iii) the provisions of this clause 17.9 will apply with any necessary modifications to each Class and the Class Capital or Income allocated to a Class.
- (c) In calculating the Class Capital or Income the Trustee must take into account any fees charged by the Trustee in respect of the Class.
- (d) The Trustee must identify and allocate to all Unitholders within a Class, a proportionate share of the specific categories identified in clause 17.15 which forms part of the Distributable Amount that is properly Referable to the relevant Class.
- (e) Without limiting clause 17.20(a)(i), the Trustee will take into account any fees charged by the Trustee with respect to a Class in determining the Distributable Amount Referable to a Class pursuant to clause 17.20(a)(i).

#### **15.1017.10 Cost allocation**

- (a) The Trustee must, when allocating costs, expenses or other similar amounts (or parts of them) to categories or classes of Income or capital allocate—
  - (i) directly attributable costs, expenses or other similar amounts (or parts of them) against the specific category or class of Income or capital to which they relate (as determined by the Trustee on a reasonable basis), and
  - (ii) other costs, expenses or other similar amounts (or parts of them) on a fair and reasonable basis to the relevant category or class (as determine by the Trustee).
- (b) To the extent that a category or class of Income or capital is less than nil after applying costs, expenses or other similar amounts, the excess amount may be re-allocated by the Trustee to other categories or classes using the principles outlined in clause 17.10(a) above (as determined by the Trustee).

#### **15.1117.11 Time for distribution of Distributable Amount**

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

#### **15.1217.12 Nature of receipts and nature of distributions to Unitholders**

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

#### **15.1317.13 Other distributions**

The Trustee may at any time determine that capital or Income be distributed to the Unitholders. The distribution may be by way of cash or additional Units.

**15.1417.14 Preparation of accounts**

Notwithstanding that the Distributable Amount of the Trust may be calculated in accordance with clause 17.4, the accounts of the Trust may be prepared in accordance with applicable Accounting Standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Amount pursuant to clause 17.4. Without limiting clauses 17.12, the Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

**15.1517.15 Establishment of separate accounts—specific categories**

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

**15.1617.16 Establishment of separate accounts—deductions, credits, rebates, etc**

The Trustee may allocate any outgoings, expenses, credits, rebates or other adjustments that are allowable or available in relation to the specific categories contemplated by clause 17.15 in accordance with relevant taxation legislation at the time of any determination or allocation including credits and rebates in respect of franked dividends and the flow on franking credits.

**15.1717.17 Rights in respect of Partly Paid Units**

- (a) The rights of a Unitholder to receive distributions in respect of Partly Paid Units they hold are as determined by the Trustee and provided in the Terms of Issue of the relevant Units. The Trustee may determine any one of the following applies:
- (i) A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the Distributable Amount for that Distribution Period, subject to the Terms of Issue of the Unit according to—
    - A. the proportion or different proportions of the Application Price paid upon the Unit, and
    - B. the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.
  - (b) For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Assets, then that Unit may be eligible for increased participation in the Distributable Amount at a date determined by the Trustee, but at the latest from the first day of the month immediately following the date set for payment of the instalment.
    - (i) A Unit which is a Partly Paid Unit participates in the Distributable Amount as if it were fully paid.
    - (ii) A Unit which is a Partly Paid Unit participates in the Distributable Amount as the terms of its issue provide.

- (c) However, if the Trustee does not make such a determination, then clause 17.17(a)(i) will apply.

#### **15.1817.18 Initial distribution entitlements**

For the removal of doubt and despite anything in this clause 17, the Trustee may in its discretion issue Units on terms that such Units—

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

#### **15.1917.19 Unitholder's rights**

For the removal of doubt and despite anything in this clause 17, the rights of a Unitholder under this clause 17 are subject to the rights, obligations and restrictions attaching to the Units which they hold.

#### **15.2017.20 Unders and overs**

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

**15.2117.21** *Trustee must make “fair and reasonable” allocation*

- (a) Following the end of a Financial Year which is an AMIT Income Year, the Trustee must attribute the taxable income of the Trust for the Financial Year to Unitholders under the AMIT Rules, including the attribution of taxable income of each particular category or source (or both) for tax purposes to Unitholders.
- (b) The Trustee must perform the attribution under clause 17.21(a), including the attribution of taxable income of each particular category or source (or both), in accordance with the following principles:
  - (i) the amount of each Unitholder’s Member Components and Determined Member Components of a particular character is so much of the Trust’s Determined Trust Component of that particular character as is attributable to the Units held by the Unitholder
  - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this constitution and any other documents that constitute Constituent Documents for the Trust, and
  - (iii) the Trustee must not attribute any part of a Determined Trust Component of the Trust to a Unitholder’s Units because of the tax characteristics of the Unitholder.

**15.2217.22** *Streaming of amounts on redemption*

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

**15.2317.23** *Unitholder’s objections*

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

**17.24** *Capital Reallocation between Stapled Entities*

- (a) Notwithstanding any other provision of this Constitution, if at any time the Trustee 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 Unitholder 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 Unitholder is deemed to have directed the Trustee to pay the Capital Reallocation Amount to that Other Stapled Entity;

- (ii) the Trustee 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 Unitholder appoints the Trustee as its attorney and agent to do all things the Trustee 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 Trustee 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 Trustee 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 Trustee as its attorney and agent to do all things the Trustee considers necessary or desirable to give effect to the receipt of the Recipient Capital Reallocation Amount by the Trustee,
  - (iii) and the Trustee 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.

## **16.18. Distribution reinvestment**

### **16.118.1 Reinvestment**

The Trustee may permit Unitholders to reinvest some or all of the Distributable Amount payable to them by acquiring Units in the same Class as the Units to which the Distributable Amount relates and the amount of the Distributable Amount payable to them must be applied on behalf of the Unitholder to acquire those additional Units at the Application Price determined in accordance with clause 5.6.

### **16.218.2 Compulsory reinvestment**

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

### **16.318.3 Notice to Unitholders**

If the Trustee permits reinvestment of distributions for a Class, then it must notify Unitholders in that Class of that fact, together with the terms on which the reinvestment may be made. This notification may be made by giving a notice to Unitholders or by publication of the fact and terms. Subject to clause 18.1, the Trustee may amend the terms of reinvestment or suspend reinvestments at its

discretion. For the avoidance of doubt, any amendment or suspension may also be communicated by giving a notice to Unitholders or by publishing it.

#### **18.4 Restriction**

##### **While the Trust is part of a Stapled Entity—**

- (a) no reinvestment under this clause 18 may occur unless, contemporaneously with the reinvestment in additional Units, the Unitholder 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 this clause 18 may occur unless at the same time the Unitholders are issued with additional Units, they are also issued with the Corresponding Number of each of the Other Stapled Securities to which the additional Units will be Stapled; and**
- (c) the Trustee may provide for and pay on behalf of Unitholders the application money for such Other Stapled Securities out of the amount otherwise available for reinvestment.**

### **17.19. Deductions from Distributions**

#### **17.19.1 Deduction of Taxes and other amounts**

The Trustee may deduct from any amount dealt with under this clause 19 any Tax that is required by law to be deducted from such amount.

- (a) The Trustee may recover from a Unitholder as a debt an amount that the Trustee has paid as Tax (including a withholding tax) on behalf of, attributable to or in respect of a Unitholder (including in respect of a distribution or an amount attributed to a Unitholder under the Tax Act).
- (b) The Trustee may set off all amounts that the Trustee may recover from a Unitholder pursuant to this clause 19 against any debts due by the Trustee to that Unitholder including any distribution payable to the Unitholder or amounts payable to the Unitholder on redemption.

#### **17.19.2 Payment of Taxes**

- (a) The Trustee may pay on behalf of a person (including amounts paid or attributed in respect of a person that result from the operation of the AMIT Rules) who is or has been a Unitholder any of the following which the Trustee is required or authorised to pay by law or by this Constitution or which the Trustee considers should be paid—
  - (i) any amount of Tax (or an estimate of it), or
  - (ii) any other amount owed by the Unitholder to the Trustee or any other person.
- (b) Any amount paid by the Trustee on behalf of a Unitholder pursuant to this clause 19.2 shall be a debt due and owing to the Trustee by the Unitholder on whose behalf the amount was paid.

**17.319.3 Indemnity**

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

**18.20 Transfer of Unitholder's Units****18.120.1 Right to transfer Units**

A Unitholder may transfer its Units only in accordance with this clause 20.

**18.220.2 Form of transfer**

Any transfer must be—

- (a) made by way of a form approved by the Trustee
- (b) delivered to the Trustee or as it directs, and
- (c) executed by the transferor and transferee.

**18.320.3 Trustee's discretion to enter transfer**

The Trustee may refuse to enter a transfer in the Register if, in the Trustee's opinion, it is not in the interests of the Trust to do so, or if the Unitholder or transferee has not complied with any applicable laws.

**18.420.4 No power to refuse to register transfers in certain circumstances**

Despite anything to the contrary in this Constitution, the Trustee must not refuse to enter a transfer of Units in the Register where such transfer is:

- (a) in favour of a bank, financial institution or other lender or any nominee thereof and the transfer is as contemplated by, or pursuant to, any pledge, mortgage or charge of, or other security interest over, any Units granted in favour of the relevant bank, financial institution or lender, or
- (b) by or on behalf of a bank, financial institution or other lender or any nominee thereof (whether by a receiver, any delegate or sub-delegate of the party to whom security has been granted or otherwise) in favour of any third party upon disposal or realisation of the Units following the bank, financial institution, lender or any nominee thereof having become entitled to exercise or enforce its rights over the relevant Units under any such pledge, mortgage, charge or other security interest.

**18.520.5 Transfer effective when registered**

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

**18.620.6 Suspension prior to end of year**

The Trustee may decline to register any transfer of a Unitholder's Units during the 14 days immediately preceding 1 July in any Financial Year.

**18.720.7 Listing on a secondary market or exchange**

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

**19.21 Transmission of Unitholder's Units****19.121.1 Death or legal disability—sole Unitholder**

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

**19.221.2 Death or legal disability—joint Unitholder**

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

**20.22 Winding up of the Trust****20.122.1 Events which cause a winding up**

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

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

**20.222.2 Termination of a Class**

- (a) The Trustee may terminate and wind up a Class if the Trustee issues a notice to Unitholders in the Class notifying Unitholders in that Class of the date of termination.



- (b) The provisions of clauses 22.3 to 22.5 apply to the winding up of a Class with such modification as necessary, as determined by the Trustee, to reflect their application to a Class rather than the Trust.

### **20.322.3 Process of winding up**

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust.
- (b) The Trustee must identify the Assets immediately prior to commencing winding up and all Liabilities (whether actual, contingent or prospective) immediately prior to commencing winding up, of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust.
- (c) Subject to clause 22.3(f), the Trustee must convert the Assets to money, deduct all proper costs and Liabilities of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust and then divide the balance amongst the Unitholders in each Class in proportion to the number of Units held by them at the date of the distribution in accordance with the following formula:

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

Where—

- A = the amount remaining in the Trust after deduction of the costs referred to in this clause 22.3(b)
- B = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any)
- C = the aggregate of the number of Units held by the Unitholder as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units
- D = the aggregate of the total number of Units in issue as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units, and
- E = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Unitholder (if any) as at the commencement of winding up.
- (d) If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder in accordance with the formula in clause 22.3(b) results in a negative dollar amount, then that Unitholder must pay to the Trustee within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.
- (e) The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit, including making distributions to the holders of certain Classes in preference to the holders of other Classes, as required by the Terms of Issue of each Class. If any such Terms of Issue do

not provide any preference, then any interim distributions will be paid to all Unitholders in proportion to the number of Units held.

- (f) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (g) Despite clause 22.3(b), the Trustee may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in satisfaction of a whole or part of the beneficial interest of each Unitholder in the Trust. The Trustee must ensure the Assets are valued in accordance with clause 12.3 before distributing any Assets in specie in accordance with this clause 22.3(g).
- (h) The cost of winding up the Trust will be paid out of the Assets.

#### **20.422.4 Trustee may withhold proceeds of realisation**

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

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

#### **20.522.5 Auditor's certificate**

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

#### **20.622.6 Cancellation of Units**

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

#### **20.722.7 Provisions continue to apply**

- (a) Subject to the Act and this Constitution, the provisions of this Constitution continue to apply from the date of commencement of wind up of the Trust until—
  - (i) the date of final distribution under clause 22.3, or
  - (ii) such later date as the Trustee may determine.
- (b) During the period referred to in clause 22.7(a), the Trustee must not accept any applications for Units from a person who is not an existing Unitholder and the Trustee is under no obligation to consider or process withdrawal requests received after the date of commencement of wind up of the Trust.

## **21.23. Unvested interests**

- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.
- (b) Nothing in this clause 23 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust have vested or may vest prior to the end of the Perpetuity Period.

## **22.24. Indemnity and liability**

### **22.124.1 Liability of the Trustee**

Except to the extent the Act imposes liability—

- (a) the Trustee is not liable for any loss suffered by Unitholders in respect of the Trust, whether in contract, tort or otherwise, and
- (b) the Trustee is not liable to any person who is not a Unitholder (including in relation to any contracts or other arrangements entered into in respect of the Trust) to any extent beyond the Assets.

### **22.224.2 Indemnity from the Trust**

- (a) In addition to any indemnity allowed by law, the Trustee has a right of indemnity out of the Assets in respect of—
  - (i) any liability incurred by the Trustee in the proper performance of its duties in respect of the Trust
  - (ii) all fees payable to and costs recoverable by the Trustee under this Constitution, and
  - (iii) any Taxes, or liabilities for the payment of any Taxes, imposed upon the Trustee in relation to the Trust.
- (b) For the avoidance of doubt, and without limiting clause 24.2(a), the Trustee is indemnified out of the Assets for any liability that—
  - (i) is incurred by the Trustee in relation to the proper performance of its duties, and
  - (ii) either—
    - A. is an Attribution Income Tax Liability of the Trustee, or
    - B. results from a Unitholder or former Unitholder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unitholder or former Unitholder that results from an attribution by the Trustee under section 276-210 of the Tax Act to the interests held by the Unitholder or former Unitholder.

- (c) However, this indemnity does not apply with respect to a liability to the extent that, in respect of that liability, the Trustee has acted negligently, fraudulently or with wilful default.

#### **22.324.3 Payment of taxes**

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

#### **22.424.4 Reliance on others**

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

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

#### **22.524.5 Trustee not liable for good faith error**

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

#### **22.624.6 Limitation of liability of Unitholders**

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

#### **22.724.7 Indemnity unaffected by unrelated breach of trust**

The Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Trustee (as trustee of the

Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Trustee or by any delegate or agent appointed by the Trustee.

## **23.25. Meetings of Unitholders**

### **23.425.1 Trustee calling or postponing a Unitholders' meeting**

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

### **23.225.2 Unitholders calling a Unitholders' meeting**

- (a) While the Trust is not a Registered Scheme—
  - (i) the Trustee must call and arrange to hold a meeting of Unitholders to consider and vote on a proposed resolution on the request of Unitholders with at least 15 percent of the votes that may be cast on the resolution, and
  - (ii) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Act apply to the calling of a meeting referred to in clause 25.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Act apply to determine the circumstances, if any, in which a meeting must be convened on the request of Unitholders.

### **23.325.3 Notice**

- (a) While the Trust is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Unitholders, or such shorter notice as they agree.
- (b) While the Trust is a Registered Scheme, the requirements for notices of meetings are governed by the Act.

### **23.425.4 Trustee may determine**

Subject to this clause 25 and the Act (if the Act applies), the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

### **23.525.5 Quorum**

- (a) The quorum for a meeting is two Unitholders present in person or by proxy. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder constitutes a quorum. If one or more Unitholders is excluded from voting on any resolution proposed at the meeting then they may still be counted towards the quorum.
- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or

representative, then these proxies or representatives only count as one person.

- (c) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the start of the meeting, then—
  - (i) if the meeting was convened on the requisition of Unitholders, it is dissolved, or
  - (ii) if the meeting was convened by the Trustee, it is adjourned to the date, time and place the Trustee specifies.
- (d) If the Trustee does not specify one or more of the things referred to in clause 25.5(c)(ii), then the meeting is adjourned to—
  - (i) if the date is not specified—the same day in the next week
  - (ii) if the time is not specified—the same time, and
  - (iii) if the place is not specified—the same place.
- (e) If the meeting is adjourned pursuant to clause 25.5(c)(ii), then the Unitholders present in person or by proxy constitute a quorum.

#### **23.625.6 Chairing meetings of Unitholders**

- (a) The Trustee may appoint a person to chair a meeting unless the Act otherwise requires.
- (b) The decision of the chairperson on any matter relating to the conduct of the meeting is final.

#### **23.725.7 Proxies**

- (a) The Trustee may determine whether an appointment of a proxy remains valid even if the content of the appointment does not meet the requirements of the Act.
- (b) For an appointment of a proxy for a meeting of Unitholders to be effective, the appointment must be received by the Trustee at least 48 hours before the meeting, unless a shorter time is agreed to by the Trustee.

#### **23.825.8 Adjournment**

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

#### **23.925.9 Demand for a poll**

A poll may be demanded by the chairperson, or by Unitholders present in person or by proxy holding five percent of Units.

#### **23.1025.10 Voting**

- (a) On a show of hands at a meeting of Unitholders of a Class, each Unitholder has one vote.

- (b) On a poll at a meeting of Unitholders of a Class, each Unitholder has one vote for each dollar of their Paid-Up Amount of that Class.
- (c) The Trustee may determine that at any meeting of Unitholders, a Unitholder who is entitled to attend that meeting is entitled to a direct vote. A “direct vote” includes a vote delivered to the Trustee by post or email or by any other means approved by the Trustee. The Trustee may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

#### **23.11 25.11 Resolutions binding**

A resolution binds all Unitholders, whether or not they were present at the meeting.

#### **23.12 25.12 Objection at meeting**

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

#### **23.13 25.13 Non-receipt**

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

#### **23.14 25.14 Optionholders and Classes**

The provisions of this clause 25 relating to meetings of Unitholders also apply to meetings of Optionholders or of holders of a Class with any necessary modifications.

#### **23.15 25.15 Voting when not a Registered Scheme**

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

#### **23.16 25.16 Other decisions**

Subject to the Act (but without affecting clause 25.15), if there is a decision to be made by Unitholders which is not under the Act required to be made by the passing of a resolution at a meeting of Unitholders, then that decision may be made by means of the required number of Unitholders signing a document recording the making of the decision.

#### **25.17 Joint meetings**

##### **While the Trust is part of a Stapled Entity—**

- (a) meetings of the Unitholders may be held in conjunction with meetings of the holders of the Other Stapled Securities and the Trustee may, in conjunction with the Other Issuers, make such rules for the conduct of such meetings as the Trustee considers necessary

- (b) the Trustee may, in conjunction with the Other Issuers, determine that a vote cast on a resolution by or on behalf of a Unitholder is to be treated also as a vote cast for an equivalent number of that Unitholder's Other Stapled Securities.

## **24.26. Retirement or removal of Trustee**

### **~~24.1—~~ *Situation if Trust is a Registered Scheme***

~~24.226.1~~ If the Trust is a Registered Scheme, then clauses 24.2 and 24.3 do not apply and instead the provisions of the Act regulating the retirement or removal of the Trustee will apply. ***Retirement of the Trustee***

If the Trustee wishes to retire as trustee of the Trust, then it may do so and appoint a replacement trustee.

### **24.326.2 Removal of the Trustee by Unitholders**

Notwithstanding section 601FM of the Act—

(a) the Trustee may be removed by a resolution that has been passed at a meeting on a poll by—

(i) at least 35% of the total votes which may be cast by Unitholders entitled to vote on the resolution, and

(ii) at least 50% of the votes cast by Unitholders entitled to vote on the resolution, and

(b) a new Trustee may be appointed by a resolution that has been passed at a meeting on a poll by an Extraordinary Resolution.

~~If the Unitholders want to remove the Trustee, then they must call a Unitholders' meeting in accordance with clause 23.2 to consider and vote on—~~

~~(a)—an Extraordinary Resolution that the current Trustee should be removed, and~~

## **25.27. an Extraordinary Resolution choosing a replacement trustee. Complaints handling**

### **25.127.1 Complaints handling**

- (a) In relation to Unitholders that are “retail clients”, within the meaning of section 761G of the Act, the Trustee must comply with the dispute resolution requirements imposed on it under section 912A(2) of the Act in its capacity as the holder of an Australian financial services licence.
- (b) The remainder of this clause 27 only applies in relation to Unitholders that are “wholesale clients”, within the meaning of section 761G of the Act while the Trust is a Registered Scheme.

### **25.227.2 Complaints handling officer**

- (a) The Trustee must appoint a person to fulfil the role of complaints handling officer.



- (b) If there is a vacancy in the role of complaints handling officer at any time then the secretary of the Trustee is deemed to be the complaints handling officer until a further appointment is made.
- (c) The complaints handling officer does not need to be a director or secretary of the Trustee.

#### **25.327.3 A Unitholder may make a complaint**

- (a) Any Unitholder may make a complaint about any aspect of the Trust, or the complaints handling process itself, by contacting the Trustee. For the purposes of this clause 27, a complaint is any expression of dissatisfaction made to the Trustee, related to the Trust, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) The complaint must specify—
  - (i) the name and contact details of the Complainant making the complaint, and
  - (ii) the details of the complaint in as much detail as is reasonably required to allow the Trustee to deal with the complaint in accordance with this clause 27.
- (c) If the complaint does not meet the requirement in clause 27.3(b)(ii), then the Trustee must make reasonable inquiries to try and ascertain the required detail.
- (d) The Trustee must provide reasonable assistance to any Unitholder—
  - (i) who has either attempted to make a complaint but has not done so in a manner which allows the Trustee to handle the complaint, or
  - (ii) who the Trustee reasonably believes wants to make a complaint, but for some reason is unable to do so (e.g. because of a physical disability).

#### **25.427.4 Acknowledgment of a complaint**

- (a) If any Unitholder makes a complaint, then the Trustee must acknowledge the complaint immediately, or if this is not possible, then as soon as practicable, after receiving the complaint.
- (b) If possible, the Trustee will attempt to respond fully to or resolve the complaint as part of the first response.
- (c) The following information must be provided when acknowledging a complaint:
  - (i) The procedure used by the Trustee upon receiving a complaint.
  - (ii) The name, title and contact details of the present complaints handling officer.

- (iii) If the complaint is not fully dealt with, then an estimate of the time the Trustee believes it will take for the Trustee to respond to the complaint.

#### **25.527.5 Consideration of complaints**

- (a) The Trustee must treat all complaints seriously and deal with them in a timely manner, having regard to the nature and urgency of the complaint.
- (b) If the complaint is not able to be resolved as part of the first response, then the Trustee (through the complaints handling officer or their appointee) must keep the Complainant informed of the progress of their complaint.

#### **25.627.6 Resolving a complaint**

- (a) The Trustee must act reasonably in attempting to resolve a complaint; however, nothing in this clause 27 compels the Trustee to resolve a complaint in favour of the Complainant.
- (b) The Trustee must provide a "final response" to a complaint within 45 days from the date of receipt of the complaint. However, the Trustee will endeavour to provide a final response to complaints in less than 45 days wherever possible. A "final response" to a Complainant must be in writing (unless the complaint is resolved by the end of the next Business Day after receipt of the complaint), and include the following:
  - (i) A statement of acceptance of the complaint.
  - (ii) The outcome of the complaint, including setting out clear and concise reasons for any decision made and references to any applicable provisions in legislation, codes, standards or procedures.
  - (iii) An offer of redress (if appropriate).
  - (iv) The avenues open to the Complainant if the Complainant is not satisfied with the response of the Trustee.
- (c) If a "final response" cannot be provided to the Complainant within 45 days, then the Trustee must—
  - (i) inform the Complainant of the status of the complaint and the reasons for delay, and
  - (ii) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Trustee.

#### **25.727.7 Further avenues open to Unitholders**

If a complaint cannot be resolved to the satisfaction of a Complainant, then the Complainant may take whatever other action is open to the Complainant under the general law, including—

- (a) requesting an apology from the Trustee, or
- (b) seeking compensation for loss incurred by the Complainant as a direct result of the breach (if any).

**25.827.8 Recording complaints**

- (a) The Trustee must make a record of complaints.
- (b) However, if a complaint is resolved by the end of the next Business Day from when the complaint was received, then the Trustee is not required to apply the full dispute resolution process in terms of capturing and recording details of the complaint.

**25.927.9 Disclosure of existence of complaints handling procedure**

The Trustee must disclose the existence of the complaints handling procedure in all Disclosure Documents prepared by the Trustee.

**26.28 Changing this Constitution****26.128.1 Power to amend**

The Constitution may be modified, or repealed and replaced with a new constitution—

- (a) by Special Resolution of the Unitholders, or
- (b) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders' rights.

**26.228.2 AMIT**

Without limiting the Trustee's powers in clause 28.1, but subject to the Act, the Trustee may make any change to this Constitution or take any other action which the Trustee reasonably believes is necessary or desirable to—

- (a) facilitate compliance with the preconditions for the operation of the Trust as an AMIT
- (b) facilitate compliance with the terms of the AMIT requirements in relation to the Trust, including any provisions of the AMIT Rules that, if not complied with, would result in any additional liability or penalty for the Trustee or Unitholders
- (c) facilitate the proper administration and operation of the Trust under the AMIT Rules and ensure that there is an appropriate and equitable application of the powers and rights of the Trustee and Unitholders that arise under the AMIT Rules, or
- (d) comply with the conditions of any ASIC Relief issued in relation to the AMIT requirements, or facilitate operation of the Trust in reliance on such ASIC Relief as if the Trustee were the Trustee of a Registered Scheme and the Trust were a Registered Scheme.

**26.328.3 Lodgement of amendment**

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

## **27.29. Statutory requirements**

### **27.129.1 The Act and ASIC Relief**

- (a) If the Act requires that this Constitution contain certain provisions, or if any ASIC Relief on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust requires or allows provisions to a certain effect to be contained in this Constitution in order for the ASIC Relief to apply (“Required Provisions”), then to the extent the Act allows, this Constitution is automatically amended so that the Required Provisions are included and the Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.
- (b) If any part of this Constitution (a “Required Part”) is included to comply with the requirements of the Act, ASIC or ASX (“Regulatory Requirement”) and that Regulatory Requirement ceases or changes, then, to the extent the Act allows, this Constitution is automatically amended so that the Required Part is deleted or amended to reflect the altered Regulatory Requirement.
- (c) The Unitholders—
  - (i) authorise the Trustee to make the amendments referred to in this clause 29.1 in a deed made for that purpose and, if required, to lodge it with ASIC, and
  - (ii) agree that, subject to the Act, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 29.1.
- (d) Where this clause 29.1 operates to automatically amend this Constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

### **27.229.2 Application of Act**

- (a) In this Constitution, except as otherwise provided in a particular clause or by law, a requirement of the Act only applies while the Trust is a Registered Scheme.
- (b) If there is an inconsistency between the Act and this Constitution, then the Act prevails.

### **27.329.3 ASIC Class Orders**

- (a) In accordance with any relevant ASIC Relief from subsections 601GC(1) and 601GC(2) of the Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 29.1 that is covered by such ASIC Relief is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Act.
- (b) Changes in the text of the Constitution to which this clause 29.3 applies are made pursuant to the power in clause 28 but in respect of such changes, the requirements of clause 28 are to be read subject to this clause 29.3.

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**28.30. Compliance plan and compliance committee**

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**28.130.1 Compliance plan**

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

**28.230.2 Compliance committee**

- (a) This clause 30.2 applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

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**29.31. Notices**

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**29.131.1 Form of notice**

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

**29.231.2 Address for service**

- (a) The address for the Trustee will be the address set out below or the address most recently given to the Unitholders:  
Trustee : Primewest Management Ltd  
Address : Level 1, 307 Murray Street, Perth WA 6000
- (b) The addresses for Unitholders will be either the physical address or electronic address as they appear in the Register.

**29.331.3 Deemed date of receipt**

- (a) A notice given to the Trustee is effective when it is received by the Trustee.
- (b) A notice, cheque or other communication sent by post is taken to be received by Unitholders on the Business Day after it is posted. Subject to the Act, the Trustee may determine the time in which other forms of communication may be taken to be received. For any communications sent to Unitholders, proof of receipt is not required.

#### **29.431.4 Notice to joint Unitholders**

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

### **30.32 General provisions**

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#### **30.132.1 Payments**

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

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

#### **30.232.2 Discharge of Trustee**

The Trustee will receive a good discharge on—

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

#### **30.332.3 Retention of documents**

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

#### **30.432.4 Relationship between Trustee and Unitholders**

Each and every Unitholder and the Trustee agree—

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

**30.532.5 Rounding**

- (a) If any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, then that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (b) If there is any excess application or other money or property which results from rounding, then it becomes an Asset.
- (c) The Application Price or Withdrawal Price of a Unit may be rounded as the Trustee determines. The amount of rounding must not be more than one percent of the Application Price or Withdrawal Price.

**30.632.6 Interest payable**

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

**30.732.7 Non-payment of money**

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then the Trustee is entitled to be indemnified out of the Assets. In addition, the Trustee may do either of the following (subject to the application of clause 7 in relation to any failure to pay an instalment or instalments with respect to Partly Paid Units):

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

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

- (a) For notices sent under clause 32.7(b), if the money is not paid within the specified time, then subject to the Act the Trustee may do either of the following:
  - (i) Sell (as agent for the Unitholder) the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign

documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale.

- (ii) Redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied (as agent for the Unitholder) first on account of the amounts in respect of which the notice was sent under clause 32.7(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

### **30.932.9 *Trustee may require information from Unitholders***

- (a) Any Unitholder who is asked by the Trustee to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Trustee.
- (b) If any particular information given to the Trustee under clause 32.9(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unitholder fails to provide information required by clauses 32.9(a) or 32.9(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.
- (d) Any Unitholder who supplies incorrect information under clauses 32.9(a) or 32.9(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

### **30.1032.10 *Duties or like imposts payable by Unitholder***

- (a) Without limiting the other provisions of this Constitution, where any duty or stamp duty is payable on or in relation to any issue, redemption or transfer of Units, then the Unitholder acquiring the Units, or the Unitholder whose Units are redeemed (as the case may be), must pay the duty and indemnifies the Trustee in relation to the amount of the duty and in relation to any associated statutory penalties or interest.
- (b) Clauses 32.6, 32.7 and 32.8 apply in relation to any amounts payable by a Unitholder under clause 32.10(a).

### **30.1132.11 *Severability***

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

### **30.1232.12 *Schedules***

The following schedules to this Constitution are operative parts of this Constitution:



- (a) Schedule 1—Dictionary.
- (b) Schedule 2—Rules for interpretation.
- ~~(c)~~ Schedule 3—Performance fee.
- ~~(d)~~ Schedule 4—Performance fee – Stapled Entity.
- ~~(e)~~(e) Schedule 5—Terms of Issue: Acquisition Units

**30.1332.13** Applicable law

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

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**Schedule 1—Dictionary**


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<u>2022 Stapling</u>	<u>Means the arrangement described in clause 4 pursuant to which all of the Stapling Units are Stapled to units in CDPF.</u>
Accounting Standards	Has the meaning given to this term in section 9 of the Act.
Acquisition Costs Adjustment	Such adjustment (if any) as determined by the Trustee in its discretion, on account of the amortisation of any Trust Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.
Act	The Corporations Act 2001 (Cth) for the time being in force, together with the regulations.
Adjustment Amount	An amount determined pursuant to clause 17.20.
AMIT	Has the meaning given to this term by section 995-1 of the Tax Act.
AMIT Election	A choice made by the Trustee in accordance with the requirements of the AMIT Rules for the Trust to be an AMIT.
AMIT Income Year	A year of income for the purposes of the Tax Act that the Trust is an AMIT.
AMIT Rules	Divisions 275 and 276 of the Tax Act, as the context requires.
AMMA Statement	Has the meaning given to this term in section 276-460 of the Tax Act.
Applicant	A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Money	Any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Trustee and the Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.
Application Price	The price at which Units are issued, as determined in accordance with this Constitution.
ASIC	The Australian Securities and Investments Commission.
ASIC Relief	An exemption or declaration granted by ASIC which gives relief from certain requirements of the Act.
Acquisition Units	Units belonging to the Class known as “Acquisition Units”, being Units which may be issued by the Trustee in order to establish the Trust or to facilitate the acquisition of an Asset (or an asset of a Sub Entity).

Assets	<p>This includes all property, rights and income or capital of the Trust and any accretions to the property, rights and income or capital of the Trust and any provisions the Trustee considers should be taken into account in determining Assets, but excludes—</p> <p>(a) Application Money or property paid in respect of which Units have not been issued</p> <p>(b) proceeds from withdrawals which have not yet been paid, and</p> <p>(c) any Distributable Amount awaiting payment to Unitholders.</p> <p>Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to “Assets” means that portion of the Assets the Trustee considers are properly Referable to each Class.</p>
Associate	An associate as defined in any of the sections in Division 2 of Part 1.2 of the Act.
Attribution Income Tax Liability	An income tax liability of a person under the Tax Act that results from the Trust being operated as a MIT.
ASX	ASX Limited ACN 008 624 691 or the exchange operated by it, as the context requires.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or Registered Scheme.
Authorised Representative	<p>In respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative, and in respect of a party which is a corporation—</p> <p>(a) a company secretary or director, or any officer of the corporation whose title or office includes the words “manager” or “director”, or</p> <p>(b) a person acting with the title or in the office of manager or director.</p>
BBSW	For a Distribution Period, means the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Distribution Period. The BBSW is expressed in basis points.
Business Day	Any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.
<u>Calculation Date</u>	<u>[22 April 2022], or such other date as the Trustee determines.</u>
<u>Capital Reallocation Amount</u>	<u>Has the meaning given in clause 17.24.</u>
<u>CDPF</u>	<u>Centuria Diversified Property Fund ARSN 611 510 699.</u>

<u>CDPF RE</u>	<u>Centuria Property Funds Limited ACN 086 553 639 or any replacement responsible entity of CDPF.</u>
Class	A class of Unit in the Trust.
Complainant	A Unitholder who has complained to the Trustee pursuant to clause 27.
Constituent Documents	The “constituent documents” referred to in section 276-210(3) of the Tax Act.
Constitution	This document (including its schedules) as it may from time-to-time be amended and in force.
<u>Corresponding Number</u>	<u>In relation to an Other Stapled Security means at any time the number of those Other Stapled Securities that are stapled to an issued Unit at that time.</u>
Designated Time	In respect of a withdrawal request (as the case may be), the time during each Business Day designated from time to time by the Trustee.
Determined Member Component	Has the meaning given to this term in section 276-205 of the Tax Act.
Determined Trust Component	Has the meaning given to this term in section 276-255 of the Tax Act.
Disclosure Document	A document by which Units are offered for subscription (including an information memorandum, product disclosure statement or terms of issue), and it includes any supplementary or replacement document issued in respect of the disclosure document.
Discovery Year	Has the meaning given to this term in section 276-345 of the Tax Act.
Distributable Amount	Means— <ul style="list-style-type: none"> <li>(a) the Income of the Trust, and</li> <li>(b) any amount of capital of the Trust, determined by the Trustee from time-to-time to be distributed to Unitholders.</li> </ul>
Distributable Proportion	In respect of a Unit, the amount determined in accordance with clause 17.5.
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee.

Distribution Period	<p>(a) For the first distribution period of a Class, the period from the commencement of the Class to the next Distribution Calculation Date.</p> <p>(b) For the last distribution period of a Class, the period from the day after the preceding Distribution Calculation Date to the date of final distribution on winding up of the Trust or of a Class.</p> <p>(c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.</p>
Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 17.2.
Dividend Entitlement	Amounts determined under clause 17.2(c).
Escrow Period	The escrow period in the relevant Restriction Agreement.
Exchange	The licensed market, the official list of which the Trust is admitted from time-to-time.
Exchange Proposal	<p>A proposal whereby a written offer to transfer or redeem some or all of their Units is made to Unitholders or to specific Unitholders in consideration of any or all of—</p> <p>(a) the issue or transfer of units in another, or interests of whatever nature in or in relation to another entity</p> <p>(b) a cash payment, and</p> <p>(c) a transfer of Assets.</p>
Expenses	Includes any expenses, costs, charges, fees, commissions, brokerage, any Tax, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them. Examples of Expenses include those listed in clause 16.8.
Extraordinary Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 50 percent of the total votes that may be cast by Unitholders entitled to vote on the resolution (including Unitholders who are not present in person or by proxy).
Financial Year	The period of 12 months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.
Fully Paid Unit	A Unit on which the Application Price has been paid (or deemed to have been paid if the context requires) in full.

GST	A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
GST Act	A New Tax System (Goods & Services Tax) Act 1999.
Holder	A Unitholder or an Optionholder, as the context requires.
<u>Implementation Date</u>	<u>[19 May] 2022], or such other date as the Trustee determines.</u>
Income	The Net Income unless otherwise determined by the Trustee.
Indirect Acquisition Costs Adjustment	Such adjustment (if any) as determined by the Trustee in its discretion, on account of the amortisation of any Sub Entity Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Indirect Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.
Investment Amount	The total amount paid or provided by or on behalf of an Applicant to the Trustee as part of the Applicant's application to become a Unitholder in the Trust (prior to the deduction of any amount the Trustee and Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Unit).
Investment Management Agreement	The investment management agreement between the Trustee and the Investment Manager.
Investment Manager	The investment manager of the Trust appointed under the Investment Management Agreement.
Legal Personal Representative	An executor or administrator of the estate of a deceased Applicant or Holder, or the trustee of the estate of an Applicant or Holder who is bankrupt or under a legal disability or who is mentally incapacitated, or a person who holds a suitable power of attorney granted by an Applicant or Holder.
Liabilities	<p>All liabilities of the Trust, including any contingent liabilities, anticipated liabilities or provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for the Trust, the Unitholders' funds are not to be treated as a liability.</p> <p>Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to "Liabilities" means that portion of the Liabilities the Trustee considers are properly Referable to each Class.</p>
Limited <u>Quarterly</u> Withdrawal Facility	The limited withdrawal facility the Trustee may offer in accordance with clause 9.11 <del>7-10</del> .

Liquid	Has the same meaning as in section 601KA of the Act.
Managed Investment Trust	Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).
<u>Meeting Record Date</u>	<u>The record date for voting at the Stapling Meeting as notified by Trustee.</u>
Member Component	Has the meaning given to this term in section 276-210 of the Tax Act.
Member Objection Choice	A choice made by a Unitholder under the AMIT Rules for the Unitholder's Determined Member Component to be the Unitholder's Member Component, including a choice made by a Unitholder under section 276-205(5) of the Tax Act.
MIT	Includes a Trust that is (at any time during a Financial Year) any one or more of the following: an AMIT, a Managed Investment Trust, or a Withholding MIT.
<u>NAV per Unit</u>	<u>Net Asset Value ÷ the number of Units on issue.</u>
Net Asset Value	The total value of the Assets calculated in accordance with clause 12, less the Liabilities, adjusted for such provisions and incremental or decremental adjustments as the Trustee determines are appropriate. However, for the purpose of calculating the Application Price or Withdrawal Price in relation to Units in a Class other than Ordinary Units, the Trustee may (where permitted under the Terms of Issue) exercise discretions and decide on matters that may affect the determination of the Net Asset Value figure which may result in an amount which is either lower than the current Net Asset Value (a discount to Net Asset Value) or higher than the current Net Asset Value (a premium to Net Asset Value), provided that in doing so, the Trustee (where the Trust is a Registered Scheme) complies with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion.
Net Income	The total assessable income of the Trust less all deductions of the Trust (as calculated in accordance with the Tax Act) which may be reduced or increased by the amount of any reserves, provisions or amounts that, in determination of the Trustee, need to be made. If the total amount is less than zero, then the total amount is taken to be zero.
Option	An option to subscribe for a Unit.
Optionholder	A person registered as the holder of an Option (including persons jointly registered).
Ordinary Resolution	Means a resolution that has been passed by more than 50 percent of the votes cast by Unitholders entitled to vote on the resolution.

Ordinary Units	Units issued by the Trustee in the Class known as Ordinary Units, which have and are subject to all of the rights, obligations and restrictions set out in this Constitution, but subject always to the rights, obligations and restrictions attaching to any other Class, as set out in the Terms of Issue of that other Class.
<u>Other Issuers</u>	<u>The issuers of the Other Securities or the Other Stapled Securities or any one of them, as applicable.</u>
<u>Other Securities</u>	<u>Any Securities other than Units.</u>
<u>Other Stapled Entities</u>	<u>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.</u>
<u>Other Stapled Securities</u>	<u>The Other Securities which are Stapled to the Units.</u>
Over	Has the meaning given to this term in section 276-345 of the Tax Act.
Paid-up Amount	In relation to a Unit means the number obtained by applying the following formula:  $\text{Paid-up Amount} = \frac{\text{PA}}{\text{AP}}$ <p>Where—</p> <p>(a) PA means the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) as at the date of calculation, and</p> <p>(b) AP means the Application Price of the Unit.</p>
Partly Paid Unit	A Unit on which the Application Price has not been paid in full.
<u>Periodic Liquidity Event</u>	<u>The periodic liquidity event the Trustee may offer in accordance with clause 9.11.</u>
Perpetuity Period	The period specified in clause 5.13.
Primewest Management Ltd	Primewest Management Ltd ACN 091 415 833 or any related body corporate of it which replaces it as trustee of the Trust.
<u>Quarterly Available Funds</u>	<u>The amount available to satisfy withdrawal requests pursuant to the Limited Quarterly Withdrawal Facility in accordance with clause 9.11.</u>



Realisation Transaction	A transaction which enables all Unitholders to realise all or more than 50 percent of their investment in the Trust, including— <ul style="list-style-type: none"> <li>(a) an initial public offer</li> <li>(b) a sell down of more than 50 percent of the units where all Unitholders have the opportunity to participate in the sell down</li> <li>(c) a sale of substantial Assets where all Unitholders have an opportunity to have their Units redeemed or transferred, or</li> <li>(d) any other arrangement which has substantially the same economic effect as a transaction referred to paragraph (a), (b) or (c).</li> </ul>
<u>Recipient Capital Reallocation Amount</u>	<u>Has the meaning given in clause 17.24.</u>
Referable	Has the meaning given to it in clause 5.14.
Register	The register of Holders required to be kept according to clause 10.
Registered Scheme	A managed investment scheme registered under the Act.
Relevant Valuation Time	The Valuation Time, determined by the Trustee, which is applicable to the calculation of the Application Price for an offer or issue of Units (even if the offer or issue occurs during a period when the Application Price is fixed), or the Withdrawal Price for a redemption of Units.
Reorganisation Proposal	Means— <ul style="list-style-type: none"> <li>(a) any Realisation Transaction</li> <li>(b) a Stapling Proposal</li> <li>(c) a Top Hat Proposal</li> <li>(d) an Exchange Proposal, or</li> <li>(e) any other proposal to reorganise or restructure the capital of the Trust in any way.</li> </ul>
Securities	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.
Special Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.
<u>Stapled</u>	<u>The state resulting from Stapling.</u>
<u>Stapled Entity</u>	<u>The notional entity formed through the Stapling of each Unit to one or more Other Securities.</u>

<u>Stapled Security</u>	<u>A Unit and one or more Other Securities which are Stapled together in the name of the Unitholder.</u>
Stapling	The linking together of all of the rights and obligations which attach to a Stapled Security.
<u>Stapling Date</u>	<u>The date determined by the Trustee to be the first day on which all the Units on issue are Stapled to one or more Other Securities.</u>
<u>Stapling Meeting</u>	<u>A meeting of the Unitholders to consider and vote on the Stapling Resolutions among other resolutions.</u>
<u>Stapling Resolutions</u>	<p><u>The following resolutions of Unitholders:</u></p> <p>(a) <u>an Ordinary Resolution to approve the 2022 Stapling; and</u></p> <p>(b) <u>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.</u></p>
<u>Stapling Unit</u>	<u>A Unit on issue as at 7.00pm on the Calculation Date.</u>
<u>Stapling Unitholder</u>	<u>A person registered in the Register as a holder of one or more Units at 7.00pm on the Calculation Date.</u>
Stapling Proposal	A proposal to cause the Stapling of any other securities or financial products to the Units.
Sub Entity	A trust, company or other entity which was established by or is managed by or controlled by, the Trustee or by an Associate or related body corporate of the Trustee and in which the Trust has a direct or indirect interest, or a trust, company or other entity of which the Trustee (in its capacity as trustee of the Trust) is a unitholder, shareholder or beneficiary.
Sub Entity Establishment and Acquisition Expenses	<p>At any time, an amount (if any) determined by the Trustee, as the total of—</p> <p>(a) the Expenses associated with the establishment of any Sub Entity and the raising of capital for any Sub Entity, and</p> <p>(b) the Expenses associated with the acquisition of any asset or assets by any Sub Entity,</p> <p>or, if the Trustee considers appropriate, any portion of such amount, which may be zero.</p>
Tax	This term includes income tax (including any tax on the disposal of Assets), capital gains tax, withholding tax, transaction tax, stamp duty and any other duties, levies, imposts, interest, penalties, deductions and charges whatsoever imposed by any government or governmental entity of Australia or a State or Territory of Australia, including any interest and penalties imposed in respect of any of the above.

Tax Act	The Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax (Transitional Provisions) Assessment Act 1997 (Cth), Tax Administration Act 1953 (Cth) or all as appropriate.
Terms of Issue	The terms on which a Class is issued under this Constitution, as determined by the Trustee from time-to-time. In relation to Acquisition Units, means the Terms of Issue contained in Schedule 5—Terms of Issue: Acquisition Units.
Top Hat Proposal	A proposal that each Unitholder should exchange their Units for an equivalent value of units in the Top Trust.
Top Trust	A trust of which the Trustee is also the trustee, and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.
Total Paid-up Amount	The aggregate Paid-up Amount of all Units in Issue.
Total Unpaid Amount	The total Unpaid Amount of all Units in Issue (if any).
Transaction Costs	<p>(a) When calculating the Application Price, an amount equal to estimate by the Trustee of—</p> <ul style="list-style-type: none"> <li>(i) the total Expenses the Trust would incur to acquire afresh the Assets</li> <li>(ii) if appropriate, the total Expenses the Trust will incur to acquire any proposed Assets, or</li> <li>(iii) if appropriate, having regard to the actual Expenses which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total Expenses, which may be zero.</li> </ul> <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>(b) When calculating the Withdrawal Price, an amount equal to an estimate by the Trustee of—</p> <ul style="list-style-type: none"> <li>(i) the total Expenses the Trustee would incur wind to up the Trust and sell the Assets (including provision for any performance fees (if any) not yet paid to the Trustee), or</li> <li>(ii) if appropriate, having regard to the actual Expenses which would be incurred because of any withdrawals, a portion of the total Expenses, which may be zero.</li> </ul> <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p>

	For the avoidance of doubt, the Trustee may take account of any policy it has established regarding the amortisation of Trust establishment, Trust winding up and Asset acquisition and disposal costs in estimating the total Expenses, relevant to Transaction Costs. However, the Trust must not include any amounts already taken into account in calculating the Net Asset Value.
Trust	The trust constituted by this Constitution.
Trust Establishment and Acquisition Expenses	At any time, an amount (if any) determined by the Trustee, as the total of— <ul style="list-style-type: none"> <li>(a) the Expenses associated with the establishment of the Trust and the raising of capital for the Trust, and</li> <li>(b) the Expenses associated with the acquisition of any Asset or Assets,</li> </ul> or, if the Trustee considers appropriate, any portion of such amount, which may be zero.
Trust Component	Has the meaning given to this term in section 276-260 of the Tax Act.
Trustee	Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.
Trust Act	The following legislation or any other similar legislation relating to trusts or trustees: <ul style="list-style-type: none"> <li>(a) Trustees Act 1962 (WA).</li> <li>(b) Trusts Act 1973 (Qld).</li> <li>(c) Trustee Act 1921 (NSW).</li> <li>(d) Trustee Act 1958 (Vic).</li> <li>(e) Trustee Act 1936 (SA).</li> <li>(f) Trustee Act 1898 (Tas)</li> <li>(g) Trustee Act 1925 (ACT)</li> <li>(h) Trustee Act 1893 (NT).</li> </ul>
Under	Has the meaning given to this term in section 276-345 of the Tax Act.
Unit	An undivided interest in the Trust as provided in this document.
Unitholder	A person who holds one or more Units or who otherwise holds an “interest” (within the meaning of the Act) in the Trust.
Units in Issue	The number of Units that have been issued less the number that have been redeemed.

Unpaid Amount	<p>The amount unpaid on a Partly Paid Unit, calculated in accordance with the following formula:</p> $\text{Unpaid Amount} = \text{AP} - \text{PA}$ <p>Where—</p> <p>(a) AP means the Application Price of the Partly Paid Unit, and</p> <p>(b) PA means the amount the Unitholder has paid in relation to the Partly Paid Unit.</p>
Valuation Time	The time at which the Trustee calculates the Net Asset Value.
Vesting Day	<p>The day which is the later of—</p> <p>(a) the day immediately prior to the 80<sup>th</sup> anniversary of the date of commencement of the Trust, or</p> <p>(b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.</p>
Withdrawal Price	The price at which a Unit is redeemed and calculated in accordance with clause 8.1 <u>or clause 8.3 (as applicable)</u> .
Withholding MIT	Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).

## Schedule 2—Rules for interpretation

In this Constitution unless the context indicates a contrary intention—

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

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**Schedule 3—Performance fee**


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**1. Definitions**

The following terms have the following meanings when used in this Schedule 3:

Benchmark Performance	An aggregate return during the relevant Calculation Period of no less than 6 percent per annum (or pro-rated for a part-year) (Benchmark). For the avoidance of doubt the Trustee may increase (but not reduce) the Benchmark from time to time by providing notice to Unitholders.
Calculation Date	The last day of the Calculation Period.
Calculation Period	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 (and, in respect of calculation of the Performance Fee, during which Outperformance is positive) except that the— <ol style="list-style-type: none"> <li>first Calculation Period is the period commencing on the day on which Units are first issued pursuant to the first disclosure document of the Trust and ending on the last day of next Quarter during which Outperformance is positive; and</li> <li>last Calculation Period is the period which begins on the first day following the end of the previous Calculation Period and the period ending on the final Performance Fee Payment Date.</li> </ol>
Closing Unit Price	In respect of a Calculation Period, the ex-distribution Unit Price calculated as at the Calculation Date excluding any accrued performance fee.
Distribution	In respect of a Calculation Period, any Distributable Amount per Unit calculated by the Trustee and payable in respect of the Calculation Period.
Fund Performance	In respect of a Calculation Period, an amount calculated in accordance with the following formula expressed as a percentage: $\frac{\text{Closing Unit Price} - \text{Opening Unit Price} + \text{Distributions}}{\text{Opening Unit Price}} \times 100$
Opening Unit Price	In respect of the first Calculation period means the Unit Price on the day on which Units are first issued pursuant to the first disclosure document of the Trust, and at all other times means the ex-distribution Unit Price calculated as at the end of the previous Calculation Period.
Outperformance	The difference between the Fund Performance and the Benchmark Performance over the Calculation Period.
Outperformance Share	Means a percentage of up to 20 percent.
Performance Fee	In respect of a Calculation Period, the amount calculated in accordance with the following formula:

$$\text{Outperformance} \times \text{Outperformance Share} \times \text{Closing Unit Price} \times \text{Units in Issue at the end of the Calculation Period}$$

Performance Fee Payment Date	(a) The last day of each Calculation Period during the term of the Trust.
	(b) The winding up of the Trust.
	(c) The Responsible Entity being removed, or being forced to retire, from office involuntarily.
	(d) The sale, redemption or cancellation of greater than 50% of Units (or Units in any class) of the Trust.
Quarter	Each period of three calendar months commencing 1 January, 1 April, 1 July and 1 October each year.
Unit Price	The Application Price.

## 2. Performance Fee

- (a) The Responsible Entity is entitled to a Performance Fee as set out in this paragraph 2.
- (b) In respect of each Calculation Period, the Responsible Entity will calculate the following on the Calculation Date:
  - (i) The Closing Unit Price.
  - (ii) The Opening Unit Price.
  - (iii) The Distributable Income paid during the Calculation Period.
  - (iv) The Outperformance.
  - (v) The Performance Fee.
- (c) In respect of each Calculation Period, the Performance Fee will be payable as follows:
  - (i) 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.
  - (ii) If such amount is negative, no payment will be made to the Responsible Entity in respect of the Calculation Period.
- (d) All sums payable to the Responsible Entity are exclusive of GST (if applicable).



## Schedule 4—Performance fee – Stapled Entity

### 1. Definitions

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

<u>Benchmark</u>	<u>An aggregate return during the relevant Calculation Period equal to 2 percent per Quarter (being 8 percent per annum).</u>
<u>Calculation Date</u>	<u>The last day of the Calculation Period.</u>
<u>Calculation Period</u>	<p><u>A period:</u></p> <p><u>(a) which begins on the first day following the end of the previous Calculation Period, and</u></p> <p><u>(b) ends on the last day of the next Quarter, or a subsequent Quarter, and</u></p> <p><u>(c) during which Outperformance is positive,</u></p> <p><u>except that the—</u></p> <p><u>(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</u></p> <p><u>(b) 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.</u></p>
<u>Closing Stapled Security Price</u>	<u>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.</u>
<u>Distributions</u>	<u>In respect of a Calculation Period, any Stapled Entity Distributable Amount per Stapled Security calculated by the Trustee and the Other Issuers and payable in respect of the Calculation Period.</u>
<u>Financial Report</u>	<u>The combined audited financial report for the Other Stapled Entity and PPIF, for a Financial Reporting Period.</u>
<u>Financial Reporting Period</u>	<u>Each Financial Year and each six month period ending 31 December.</u>
<u>Fund Performance</u>	<p><u>In respect of a Calculation Period, an amount calculated in accordance with the following formula expressed as a percentage:</u></p> $\frac{\text{Closing Stapled Security Price} - \text{Opening Stapled Security Price} + \text{Distributions}}{\text{Opening Stapled Security Price}} \times 100$
<u>Opening Stapled Security Price</u>	<u>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.</u>

<u>Other Stapled Entity NAV</u>	<u>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.</u>
<u>Other Stapled Entity Weighting</u>	<u>Other Stapled Entity NAV</u> <hr/> <u>PPIF NAV + Other Stapled Entity NAV</u>
<u>Outperformance</u>	<u>The difference between the Fund Performance and the Benchmark over the Calculation Period.</u>
<u>Performance Fee</u>	<u>In respect of a Calculation Period, the amount calculated in accordance with the following formula (subject to clause 2(e) of this Schedule):</u>  <u>PPIF Weighting x (Outperformance x 20% x Closing Stapled Security Price x Stapled Securities in issue at the end of the Calculation Period)</u>
<u>Performance Fee Payment Date</u>	<u>(a) The last day of each Calculation Period during the term of the Trust.</u> <u>(b) The winding up of the Trust or of any other Stapled Entity.</u> <u>(c) The Trustee being removed, or being forced to retire, from office involuntarily.</u> <u>(d) The sale, redemption or cancellation of greater than 50% of Stapled Securities (or Stapled Securities in any class).</u>
<u>PPIF NAV</u>	<u>The Net Asset Value of the Trust, as at the end of the most recent Financial Reporting Period, based upon the Financial Report for that Financial Reporting Period.</u>
<u>PPIF Weighting</u>	<u>PPIF NAV</u> <hr/> <u>PPIF NAV + Other Stapled Entity NAV</u>
<u>Quarter</u>	<u>Each period of three calendar months commencing 1 January, 1 April, 1 July and 1 October each year.</u>
<u>Stapled Entity Distributable Amount</u>	<u>Distributable income payable by either the Trust or the Other Stapled Entity.</u>
<u>Stapled Security Price</u>	<u>The total issue price of a Stapled Security.</u>

## 2. Performance Fee

- (a) The Trustee is entitled to a Performance Fee as set out in this paragraph 2.
- (b) In respect of each Quarter, the Trustee will calculate the following as at the last day of the Quarter:
- (i) The Closing Stapled Security Price.
  - (ii) The Opening Stapled Security Price.
  - (iii) The Distributions paid during the Calculation Period.
  - (iv) The Outperformance.
  - (v) The Performance Fee.
- (c) In respect of each Calculation Period, the Performance Fee will be payable as follows:
- (i) If such amount is positive, payment of the Performance Fee will be made to the Trustee within 10 days of the relevant Performance Fee Payment Date or such later time at the Trustee's discretion.
  - (ii) If such amount is negative, no payment will be made to the Trustee in respect of the Calculation Period.
- (d) All sums payable to the Trustee are exclusive of GST (if applicable).
- (e) The Trustee 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 Trust in respect of any Calculation Period (including a previous Calculation Period), provided that the total combined performance fee paid or payable by the Trust 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 PPIF Weighting and the Other Stapled Entity Weighting in the respective performance fee formulae).

## Schedule 54—Terms of Issue: Acquisition Units

### 1. Definitions

The following terms have the following meanings when used in this Schedule 45:

Acquisition Terms of Issue	The terms on which Acquisition Units are issued, as contained in this Schedule 54.
Acquisition Unitholder Meeting	A meeting of holders of Acquisition Units where the only people entitled to vote on resolutions are holders of Acquisition Units (or their proxies).

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

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

- (a) Acquisition Units each have an Application Price equal to the prevailing Application Price of Ordinary Units (subject, whilst the Trust is part of a Stapled Entity, to clause 5.16).
- (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 Application Price of Ordinary Units as provided in this Constitution (subject, whilst the Trust is part of a Stapled Entity, to clause 5.16).
- (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 Terms of Issue.

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

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