

# SCENTRE GROUP

## ASX ANNOUNCEMENT

4 April 2024

### Scentre Group (ASX: SCG) Adoption of Modified Constitutions

At the Annual General Meeting of Scentre Group Limited and the meetings of Scentre Group Trust 1, Scentre Group Trust 2 and Scentre Group Trust 3 held on 4 April 2024, securityholders voted to adopt the attached constitutions of each entity.

This announcement has been authorised by the Company Secretary.

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# Constitution

of

## **Scentre Group Limited (ACN 001 671 496)**

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# **1 Share capital and variation of rights**

## **1.1 Power of Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who:

- (a) may issue or cancel shares at any time and on any terms and conditions;
- (b) may grant options over unissued shares in the Company; and
- (c) have the right to settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares.

## **1.2 Preference shares**

The Company may issue preference shares and issued shares may be converted into preference shares provided that the rights of the holders of the preference shares with respect to the repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividends in relation to other shares or other classes of preference shares are:

- (a) as set out in schedule 1; or
- (b) as approved by a resolution of the Company in accordance with the Corporations Act.

The rights of holders of preference shares issued by the Company other than pursuant to schedule 1, but in accordance with the Corporations Act, are determined by the terms of issue of those preference shares and the relevant resolution of the Company, and are not determined by or affected by the rights set out in schedule 1.

Subject to the Corporations Act and the Listing Rules, the Company may issue preference shares which are, or are at the option of the Company to be liable, to be redeemed or to be converted into other shares on such conditions and in such a manner as the Directors decide under the terms of issue of the preference shares.

Subject to the Corporations Act and the Listing Rules, the Company may issue any combination of fully paid, partly paid or unpaid preference shares.

Despite this article 1.2 and schedule 1, the Company may not issue a preference share that confers on the holder rights that are inconsistent with those specified in the Listing Rules, except to the extent of any waiver or modification of the Listing Rules by ASX.

## **1.3 Issue of further shares - no variation**

The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with the first-mentioned shares unless:

- (a) expressly provided by the terms of issue of the first-mentioned shares; or
- (b) required by the Corporations Act or, while the Company remains on the official list of ASX, the Listing Rules.



## **1.4 Class meetings**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by at least two persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

## **1.5 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

## **1.6 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than the maximum number of persons capable of being registered by the CS Facility, and permitted under the Operating Rules, as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

The Company is not required to recognise any different addresses for joint holders and may enter a single address on the Register for all joint holders.

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# **2 Stapling**

## **2.1 Definitions**

Capitalised terms used in this article 2 but not defined in article 23.1 have the meaning given to those terms in paragraph 1.1 of schedule 2.

## **2.2 Stapling Proposals**

The Directors may, without reference to or approval from Members, determine to carry out and give effect to a Stapling Proposal, including:

- (a) that the Stapling Provisions will take effect from the Stapling Commencement Time;
- (b) that a Security is a New Attached Security (subject to complying with paragraph 5 of schedule 2);

- (c) to Unstaple one or more Attached Securities (subject to complying with paragraph 6 of schedule 2); and
- (d) determining the Stapling Commencement Time.

## **2.3 Stapling Provisions**

On and from the Stapling Commencement Time:

- (a) the Stapling Provisions apply and this Constitution is to be read subject to the Stapling Provisions; and
- (b) subject to articles 23.6 and 23.8, the Stapling Provisions prevail over all other provisions of this Constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law.

## **2.4 Power to enter into Stapling Proposals**

Unless the Directors agree otherwise, it is a term of issue of each share, option, debenture and other security issued by the Company that the share, option, debenture or other security may be subject to a Stapling Proposal. Each person, by subscribing for or taking a transfer of, or otherwise acquiring a share, option, debenture or other security issued by the Company, is taken to have consented to these Stapling Proposals.

## **2.5 Power to give effect to Stapling Proposals**

If the Directors determine to carry out a Stapling Proposal, then the Directors have power to do all things which the Directors consider necessary, desirable or reasonably incidental to give effect to the Stapling Proposal (including, if applicable, anything the Directors have power to do under the Stapling Provisions).

## **2.6 Appointment of Company as agent and attorney**

To give effect to a Stapling Proposal, the Company and the Directors are each irrevocably appointed the agent and attorney of each Member to do all things which the Directors consider necessary, desirable or reasonably incidental to give effect to the Stapling Proposal.

## **2.7 Liability of Directors**

To the maximum extent permitted by law, the Directors have no liability of any nature whatsoever to the Company or Members arising, directly or indirectly, from the Directors' doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling Proposal.

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# **3 Lien**

## **3.1 Lien on share**

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;

- (b) all money which the Company has been called on by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default on payment.

### **3.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

### **3.3 Lien on distributions**

A lien on a share under article 3.1 or 3.2 extends to all distributions in respect of that share, including dividends.

### **3.4 Exemption from article 3.1 or 3.2**

The Directors may at any time exempt a share wholly or in part from the provisions of article 3.1 or 3.2.

### **3.5 Extinguishment of lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **3.6 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

### **3.7 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

### **3.8 Sale under lien**

Subject to article 3.9, the Company may sell or cause to be sold, in any manner the Directors think fit, any share on which the Company has a lien.

### **3.9 Limitations on sale under lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

### **3.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 3.8, the Company or its nominee may receive the consideration, if any, given for the share so sold and may execute or cause to be executed a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

### **3.11 Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale or disposal of the share under article 3.8.

### **3.12 Proceeds of sale**

The proceeds of a sale under article 3.8 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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## **4 Calls on shares**

### **4.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **4.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **4.3 Members' liability**

Each Member must upon receiving not less than the period of notice required by the Listing Rules specifying the time or times and place of payment, pay to the Company by the time or times and at the place so specified the amount called on that Member's shares.

#### **4.4 Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

#### **4.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

#### **4.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

#### **4.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, any sum that, by the terms of issue of a share, becomes payable on issue of the share or at a fixed date, is to be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **4.8 Differentiation between holders as to calls**

The Directors may, on the issue of shares, differentiate between the holders of the shares as to the amount of calls to be paid and the times of payment.

#### **4.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed on between the Directors and the Member paying the sum.

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## **5 Transfer of shares**

### **5.1 Forms of instrument of transfer**

Subject to the Listing Rules and to this Constitution, shares in the Company are transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

### **5.2 Execution and delivery of transfer**

- (a) If a duly completed instrument of transfer is:

- (i) used to transfer a share in accordance with article 5.1(b); and
- (ii) left for registration at the share registry of the Company, accompanied by any information the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

- (b) To the maximum extent permitted by law, the Company may (or may direct or procure the Company's share registry to) put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.

### **5.3 Effect of registration**

Except as provided by any applicable Operating Rules of a CS Facility, a transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

### **5.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where a charge is permitted by the Listing Rules.

### **5.5 Uncertificated Holdings**

If and for so long as dealings in any shares take place under an Uncertificated Transfer System:

- (a) the Company need not issue any certificate in respect of Securities held as an Uncertificated Securities Holding; and
- (b) the share register may distinguish between Securities held in certificated form and Securities held as an Uncertificated Securities Holding.

### **5.6 Power to refuse to register**

If permitted to do so by the Listing Rules the Directors may:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's sub-register; or
- (b) refuse to register a transfer of shares in the Company to which paragraph (a) does not apply.

### **5.7 Obligation to refuse to register**

The Directors must :

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's sub-register; or

- (b) refuse to register any transfer of shares in the Company to which paragraph (a) does not apply,

if:

- (c) the Listing Rules require the Company to do so; or
- (d) the transfer is in breach of the Listing Rules or a Restriction Agreement.

### **5.8 Written notice to Member of holding lock or refusal**

If in the exercise of their rights under articles 5.5 and 5.7 the Directors request application of a holding lock to prevent a transfer of shares in the Company or refuse to register a transfer of a share they must give written notice of the request or refusal to the holder of the share, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Directors.

### **5.9 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for such period as the Directors determine, subject to the requirements of applicable law.

### **5.10 Refusal to register**

If the Directors refuse registration of a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

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## **6 Transmission of shares**

### **6.1 Transmission of shares on death of holder**

If a Member who does not hold shares jointly dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

### **6.2 Information given by personal representative**

If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

### **6.3 Death of joint owner**

If a Member who holds shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **6.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article has effect subject to the Bankruptcy Act 1966 (Cwlth).

### **6.5 Transmission of shares on mental incapacity**

If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; and
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

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## **7 Forfeiture of shares**

### **7.1 Notice requiring payment of call**

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a



notice on the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

## **7.2 Contents of notice**

The notice must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares will be liable to be forfeited.

## **7.3 Forfeiture for failure to comply with notice**

A share in respect of which the notice under article 7.1 has not been complied with may at any time, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

## **7.4 Dividends and distributions included in forfeiture**

A forfeiture under article 7.3 includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

## **7.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act and Listing Rules:

- (a) a share (other than an Ordinary Share) forfeited under article 7.3 may be sold, re-issued or otherwise disposed of to whom and on such terms as the Directors think fit; and
- (b) an Ordinary Share forfeited under article 7.3 may be sold or otherwise disposed of as a fully paid Ordinary Share at a price for the Ordinary Share determined by the Directors.

## **7.6 Notice of forfeiture**

If any share is forfeited under article 7.3 notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

## **7.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any surrendered share is taken to be a forfeited share.

## **7.8 Cancellation of forfeiture**

At any time before a sale or disposition of a share, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

## **7.9 Effect of forfeiture on former holder's liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares; and

- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and also reasonable expenses of sale, but the former Member's liability ceases if and when the Company receives payment in full of all such money and, if applicable, interest and expenses in respect of forfeited shares.

#### **7.10 Evidence of forfeiture**

A statement in writing declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

#### **7.11 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition and may execute or otherwise effect a transfer of the share in favour of the person to whom the share is sold or disposed of and is not obliged to ensure that any part of the money which the person has paid for the share is paid to the former holder of the share.

#### **7.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

#### **7.13 Irregularity or invalidity**

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share under this article 7.

#### **7.14 Forfeiture applies to non-payment of instalment**

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

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## **8 General meetings**

### **8.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **8.2 Convening general meeting**

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **8.3 Notice of general meeting**

- (a) Notice of a meeting of Members must be given in accordance with article 18, the Corporations Act and the Listing Rules.
- (b) Subject to article 8.3(a), the content of a notice of general meeting convened by the Directors is to be decided by the Directors as they think fit.

### **8.4 Calculation of period of notice**

In computing the period of notice under article 8.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **8.5 Cancellation or postponement of a meeting**

Where a meeting of Members (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place of the meeting. This article does not apply to a meeting convened in accordance with the Corporations Act by a single director, by Members or by the Directors on the request of Members or to a meeting convened by a court.

### **8.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be:

- (a) given to ASX; or
- (b) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the Directors.

### **8.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

### **8.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

### **8.9 Business at postponed meeting**

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

## **8.10 Proxy, attorney or Representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours (or any shorter period as the Directors may permit or as specified by the Corporations Act) before the time to which the holding of the meeting has been postponed.

## **8.11 Non-receipt of or defective notice**

- (a) The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.
- (b) A person who attends a general meeting waives any objection the person may have to:
  - (i) any failure to give notice, or the giving of a defective notice, of the meeting unless at the start of the meeting the person objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter which is not within the business referred to in the notice of meeting, unless the person objects to the consideration of the matter when first presented.

## **8.12 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate general meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

## **8.13 Proxy, attorney or Representative appointments**

- (a) An instrument appointing a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) and received at any time that the Directors prescribe or accept, or the chairperson of a general meeting accepts.
- (b) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment received at the electronic address or by the electronic means specified in the notice is taken to have been received at the Registered Office and validated by the Member if there is compliance with the requirements set out in the notice.

- (c) If the Company receives an instrument or form appointing a proxy, attorney or representative from a Member and the Directors consider that it is not properly executed or authenticated, or is incomplete or unclear:
- (i) if the name, or the name of the office, of the proxy, attorney or representative, is not filled in or is unclear, then the proxy, attorney or representative of that Member is the person specified by the Company in the instrument or form of proxy or if no person is specified, the chairperson of that meeting;
  - (ii) if the instrument or form has not been duly signed or authenticated, the Company may return the instrument or form to the appointing Member and request the Member sign or authenticate the instrument or form and return it to the Company within a period determined by the Directors (which may be later than the time specified in the notice of meeting for the receipt of proxy appointments); and
  - (iii) if the instrument or form is otherwise unclear or incomplete, the Company may:
    - (A) by oral or written communication, clarify with the Member any instruction on the appointment; and
    - (B) complete or amend the contents of any instrument or form to reflect the clarification in the instructions received from the Member (which may occur later than the time specified in the notice of meeting for the receipt of proxy appointments) and the Member appoints the Company as its attorney for this purpose.

#### **8.14 Proxy's authority to speak and vote**

A proxy's authority to speak and vote for a Member is not suspended while the appointing Member is present at the general meeting.

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## **9 Proceedings at general meetings**

### **9.1 Membership at a specified time**

The Directors may determine, for the purposes of a particular general meeting, that all the shares that are quoted on ASX at a specified time before the meeting are taken to be held at the time of the meeting by the persons who hold them at the specified time. The determination must be made and published in accordance with the Corporations Act.

### **9.2 Number for a quorum**

Subject to article 9.5 three Members present in person or by proxy, attorney or Representative, are a quorum at a general meeting unless the Company has only one Member entitled to vote, in which case that one Member constitutes a quorum. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

Subject to article 9.9(b), a member placing a direct vote under article 9.24 is not taken into account in determining whether or not there is a quorum at a general meeting.

### **9.3 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairperson of the meeting (on the chairperson's own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **9.4 Quorum and time**

If within 15 minutes after the time appointed for a meeting (or any longer period of time as the chairperson may allow) a quorum is not present, the meeting:

- (a) if convened by a Director, or by or on requisition of Members, is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

### **9.5 Adjourned meeting**

At a meeting adjourned under article 9.4(b), those Members present in person or proxy, attorney or Representative are a quorum.

### **9.6 Appointment and powers of chairperson of general meeting**

If the Directors have elected one of their number as chairperson of their meetings, that person is entitled to preside as chairperson at a general meeting.

### **9.7 Absence of chairperson at general meeting**

- (a) If a general meeting is held and:
  - (i) a chairperson has not been elected by the Directors; or
  - (ii) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairperson of the meeting (in order of precedence):

- (ii) a deputy chairperson (if any);
- (iii) a Director chosen by a majority of the Directors present;
- (iv) the only Director present; or
- (v) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

- (b) If at a general meeting the chairperson of that meeting acting under article 9.6 or article 9.7(a) is unable to or unwilling to chair all or part of that meeting, the chairperson may:
  - (i) withdraw during the relevant part of the proceedings; and
  - (ii) nominate any person who immediately before the meeting was a Director or who has been nominated for election as a Director at the meeting to be acting chairperson of the meeting during the relevant part of the proceedings.

On the conclusion of the relevant part of the proceedings, the acting chairperson of the meeting is to withdraw and the chairperson of the meeting acting under article 9.6 or article 9.7(a) is to resume as chairperson of the meeting.

- (c) If a proxy instrument appoints the chairperson of the meeting as proxy for the part of the proceedings for which an acting chairperson is nominated, the proxy instrument is taken to be in favour of that acting chairperson for the relevant part of the proceedings.

## **9.8 Conduct of general meetings**

The chairperson of a general meeting (including any person acting with the authority of the chairperson):

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require any person wishing to attend the meeting to comply with searches, restrictions or other security arrangements considered appropriate;
- (c) may refuse entry to, or require security measures be taken in respect of any person who does not comply with security arrangements, who uses a recording or broadcasting device without consent, or who possesses an article considered to be dangerous, offensive or liable to cause disruption, or who was not entitled to notice of the meeting;
- (d) subject to the Corporations Act, if there is insufficient room at the meeting venue, may arrange another or a second venue (without giving notice or putting the matter to a vote);
- (e) may require the adoption of any procedure which is in the chairperson's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (f) may determine that a vote be disregarded and treated as not having been cast (without requiring that the matter be put to a vote), if a person purports to cast a vote at or for the purposes of a general meeting in contravention of the Corporations Act or Listing Rules;
- (g) subject to the Corporations Act, may refuse to allow:
  - (i) any amendment to be moved to a resolution set out in the notice of that meeting;
  - (ii) any business to be transacted unless the general nature of the business is stated in the notice calling the meeting;

- (h) may withdraw from consideration by the meeting any resolution that is set out in the notice of that meeting (other than those requisitioned by Members or required by law); and
- (i) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairperson under this article (including any person acting with the chairperson's authority) is final.

## **9.9 Multiple venues**

- (a) The Company may hold a meeting of Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio visual communication device which, by itself or in conjunction with other arrangements:
  - (i) gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
  - (ii) enables the Members in the separate meeting place to vote on a poll,

a Member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if they were present at the main place.

- (c) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in article 9.9(b) is not satisfied, the chairperson may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under article 9.9(b)) and transact business, and no Member may object to the meeting being held or continuing.

## **9.10 Adjournment of general meeting**

The chairperson of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairperson may, but need not, seek the approval of the Members present. Unless required by the chairperson, no vote may be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.



### **9.11 Notice of adjourned meeting**

No new notice of the adjourned meeting need be given unless required by the Corporations Act. Notice of any adjourned meeting which may become necessary may be included in the notice convening the original meeting.

### **9.12 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **9.13 When a poll is effectively demanded**

- (a) At a general meeting, a poll may be demanded by Members in accordance with the Corporations Act (and not otherwise) or by the chairperson.
- (b) The poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.

### **9.14 Poll**

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) The results of the poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the chairperson considers appropriate.

### **9.15 Equality of votes - no casting vote for chairperson**

If there is an equality of votes, either on a show of hands or on a poll, the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative.

### **9.16 Voting on show of hands**

- (a) Subject to any rules prescribed by the Directors pursuant to article 9.24, at any general meeting a resolution put to the vote of the meeting will be decided on a show of hands unless:
  - (i) a poll is required under the Corporations Act because the Company is on the official list of ASX; and

- (ii) the notice of meeting set out an intention to propose the resolution and stated the resolution; or
  - (iii) the Company has given notice of a Members' resolution under the Corporations Act; or
  - (iv) a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### 9.17 Entitlement to vote

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution (including article 9.26 and any rules prescribed by the Directors pursuant to article 9.24):

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll:
  - (i) each Member present in person has one vote for each fully paid share held by the Member;
  - (ii) each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents; and
  - (iii) each Member who has duly lodged a valid direct vote in respect of the relevant resolution under article 9.24 has one vote for each fully paid share held by the Member.

A Member is not entitled to vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

### 9.18 Voting on a poll for partly paid shares

Subject to article 9.21 and the terms on which shares are issued, if a Member holds partly paid shares, the number of votes the Member has in respect of those shares on a poll is determined as follows:

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

where:

A is the number of those shares held by the Member;

B is the amount paid on each of those shares excluding any amount:

- (a) paid or credited as paid in advance of a call; and

- (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of those shares) of the consideration received for the issue of those shares;

C is the issue price of each of those shares; and

D is the number of votes attached to those shares.

### **9.19 Fractions disregarded for a poll**

On the application of article 9.18, disregard any fraction which arises.

### **9.20 Joint shareholders' vote**

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

### **9.21 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

### **9.22 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share in respect of which the appointment or authority was given.

### **9.23 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairperson of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

### **9.24 Direct voting**

The Directors may determine that at any general meeting or class meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A "direct vote" includes a

vote delivered to the Company by post, or other electronic means approved by Directors. The Directors may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.

## **9.25 Treatment of direct votes**

A direct vote on a resolution at a meeting in respect of a share cast in accordance with article 9.24 is of no effect and will be disregarded:

- (a) if, at the time of the resolution, the person who cast the direct vote:
  - (i) is not entitled to vote on the resolution in respect of the share; or
  - (ii) would not be entitled to vote on the resolution in respect of the share if the person were present at the meeting at which the resolution is considered;
- (b) if, had the vote been cast in person at the meeting at which the resolution is considered:
  - (i) the vote would not be valid; or
  - (ii) the Company would be obliged to disregard the vote;
- (c) subject to any rules prescribed by the Directors, if the person who cast the direct vote is present in person at the meeting at the time the resolution is considered; and
- (d) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Directors under article 9.24.

## **9.26 Multiple votes**

Subject to any rules prescribed by the Directors, if the Company receives a valid direct vote on a resolution in accordance with articles 9.24 and 9.25 and, prior to, after or at the same time as receipt of the direct vote, the Company receives an instrument appointing a proxy, attorney or Representative to vote on behalf of the same Member on that resolution, the Company may regard the direct vote as effective in respect of that resolution and disregard any vote cast by the proxy, attorney or Representative on the resolution at the meeting.

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# **10 The Directors**

## **10.1 Number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than three nor more than:

- (a) sixteen; or
- (b) any lesser number than sixteen determined by the Directors from time to time (but the number must not be less than the number of Directors in office at the time any determination takes effect).

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

## **10.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

## **10.3 Retirement and election of Directors**

- (a) A Director must not hold office without re-election:
- (i) past the third annual general meeting following the Director's appointment or last election; or
  - (ii) for more than 3 years,
- whichever is the longer.
- (b) There must be an election of Directors at each annual general meeting of the Company. This can be satisfied by one or more of the following, so long as the maximum number of Directors determined in accordance with article 10.1 is not exceeded:
- (i) a person standing for election as a new Director in accordance with articles 10.5 or 10.6;
  - (ii) any Director who was appointed under article 10.7 standing for election as a Director;
  - (iii) any Director who is retiring at the end of the annual general meeting due to the tenure limitation in article 10.3(a), standing for re-election; or
  - (iv) if no person or Director is standing for election or re-election in accordance with paragraphs (i), (ii) or (iii), any Director who wishes to retire and stand for re-election. Otherwise, the person who has been a Director the longest without re-election must retire and stand for re-election. If 2 or more Directors have been a Director the longest and an equal time without re-election, then in default of agreement, the Director to retire will be determined by lot.
- (c) This article does not apply to one Managing Director who is exempt from retirement and re-election in accordance with article 12.29.

## **10.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

## **10.5 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

## **10.6 Eligibility for election as Director**

Except for:

- (a) a person who is eligible for election or re-election under article 10.3 or 10.7; or

- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least 45 business days before the general meeting but no more than 90 business days before the general meeting.

### **10.7 Casual vacancy or additional Director**

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with article 10.1.

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting. This provision does not apply to the one Managing Director who is exempted from retirement by rotation in accordance with article 12.29.

### **10.8 Directors' remuneration**

Subject to the Listing Rules, the Directors are to be remunerated for their services as Directors as follows:

- (a) the total amount or value of the remuneration of the Directors must not exceed the amount per annum as determined from time to time by the Company in general meeting. (The notice convening the meeting must include the proposal to increase the Directors' remuneration and specify both the amount of the increase and the new yearly sum proposed for determination);
- (b) the amount of the remuneration is to be divided among the Directors in the proportion and manner they agree or, in default of agreement, among them equally;
- (c) the remuneration is to be provided wholly in cash unless the Directors, with the agreement of the Director concerned, determine that part is to be satisfied in the form of non-cash benefits (including the issue or purchase of shares in the Company or the grant of options to subscribe for such shares);
- (d) the sum determined by the Company in general meeting under article 10.8(a) does not include payments or remuneration under articles 10.10 (unless otherwise determined), 10.11, 10.12 or 20;
- (e) in making a determination under paragraph (c), the Directors may fix the value of any non-cash benefit;
- (f) the Directors' remuneration accrues from day to day, except for any non-cash benefit which is taken to accrue at the time the benefit is provided, subject to the terms on which the benefit is provided; and
- (g) this article 10.8 does not apply to the remuneration of the Managing Director or any other Director appointed under article 12.27.

### **10.9 Superannuation contributions**

If required by law, the Company may make contributions to a fund for the purpose of making provision for or obtaining superannuation benefits for a Director.

## 10.10 Additional or special duties

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 10.8.

## 10.11 Retirement benefit

Subject to the Listing Rules and Corporations Act, the Company may pay a former Director, or the personal representatives of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retiring benefit. A retirement benefit paid under this article is not remuneration to which article 10.8 applies.

## 10.12 Expenses

A Director is also entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

## 10.13 Director's interests

- (a) Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:
- (i) hold any office or place of profit in the Company, except that of auditor;
  - (ii) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
  - (iii) enter into any contract or arrangement with the Company;
  - (iv) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or persons dependent on or connected with them;
  - (v) act in a professional capacity (or be a member of a firm or a director or employee of a body corporate which acts in a professional capacity) for the Company, except as auditor;
  - (vi) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
  - (vii) exercise the voting power conferred by securities in or of any entity held by the Company, as they determine including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity; and
  - (viii) act as a nominee or representative of a shareholder of the Company, on terms agreed with the Company.

- (b) A Director may do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this article is also a reference to each Related Body Corporate of the Company.

#### **10.14 Signing documents**

A Director is not disqualified because of a material personal interest from signing or participating in the execution of a document by or on behalf of the Company.

#### **10.15 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from the office by notice in writing to the Company;
- (c) is not present personally, using technology, by proxy or represented by an Alternate Director at meetings of the Directors for a continuous period of six months without leave of absence from the Directors;
- (d) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that as a Director; or
- (e) is a Managing Director or Executive Director and ceases to be employed by the Company or a Related Body Corporate.

#### **10.16 Share qualification of Directors**

A Director is not required to own any shares as a qualification for office.

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## **11 Powers and duties of Directors**

### **11.1 Directors to manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **11.2 Specific powers of Directors**

Without limiting the generality of article 11.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue



debentures or other securities or give any other security for a debt, liability or obligation of the Company or of any other person.

### **11.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **11.4 Provisions in power of attorney**

Any power of attorney under article 11.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **11.5 Minutes**

The Directors must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

### **11.6 Signing of cheques**

The Directors may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

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## **12 Proceedings of Directors**

### **12.1 Directors' meetings**

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

### **12.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### **12.3 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote. Their decision is for all purposes a decision of the Directors.

### **12.4 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

## **12.5 Chairperson's casting vote**

In the event of an equality of votes, the chairperson of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

## **12.6 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person, approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit.

An Alternate Director is not required to own any shares as a qualification for office.

## **12.7 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's place.

## **12.8 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.

## **12.9 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

## **12.10 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under articles 10.8, 10.9 or 10.11.

## **12.11 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

## **12.12 Appointment or termination**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice signed by the Director who makes or made the appointment and delivered to the Company.

## **12.13 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

#### **12.14 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the meeting has one vote for that other Director and one vote as a Director in that capacity.

#### **12.15 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is two or any greater number determined by the Directors from time to time.

#### **12.16 Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 10.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

#### **12.17 Chairperson of Directors**

The Directors may elect one of their number as chairperson of their meetings and may also determine the period for which the person elected as chairperson is to hold office.

#### **12.18 Absence of chairperson at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairperson has not been elected under article 12.17; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairperson of the meeting.

#### **12.19 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of at least one Director and such other persons as they think fit.

#### **12.20 Powers delegated to Committees**

A committee to which any powers have been delegated under article 12.19 must exercise those powers in accordance with any directions of the Directors.

### **12.21 Chairperson of Committee**

The members of a Committee may elect one of their number as chairperson of their meetings. If a meeting of a Committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairperson of the meeting.

### **12.22 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

### **12.23 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members present and voting. In the event of an equality of votes the chairperson of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

### **12.24 Delegation of Directors' powers**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

### **12.25 Circulating resolutions**

- (a) A resolution assented to by all the Directors who are eligible to vote on a resolution and which contains a statement to the effect that the Directors are in favour of the resolution is as valid and effectual as if it had been passed at a meeting of the Directors held at the time when the resolution was last assented to by an eligible Director. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.
- (b) A Director will be excluded for the purposes of article 12.25(a) if that Director:
  - (i) is on a leave of absence approved by the Directors;
  - (ii) has notified the chairperson or the Secretary that they may be uncontactable for a certain period of time and the resolution in question is put to the Directors during that period;
  - (iii) becomes incapacitated due to ill health or other unforeseen circumstances and is unable to consider the resolution in question;
  - (iv) disqualifies themselves from considering the resolution in question; or
  - (v) would be prohibited by the Corporations Act or other laws or regulations from voting on the resolution in question.
- (c) Any document referred to in this article 12.25 may be in the form of an electronic notification. Separate copies of a document (including in

electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.

- (d) A Director may consent to a resolution by signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution.
- (e) Alternatively, a Director may consent to a resolution by giving the Company a written notice (including by electronic means) addressed to and received by the Secretary or the Chairperson:
  - (i) that signifies the Director's assent to the resolution;
  - (ii) that sets out the terms of the resolution or clearly identifies those terms; and
  - (iii) if the Director has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code), that authenticates the Director's consent by those specified means.
- (f) This article 12.25 applies to resolutions of Director's Committees as if the references to Directors were references to Committee members.

#### **12.26 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

#### **12.27 Appointment of Managing and Executive Directors**

The Directors may:

- (a) appoint an employee of the Company or one of its subsidiaries to the office of Managing Director or Executive Director of the Company, to hold office as Director for the period determined at the time of appointment, but not to exceed the term of employment of the employee; and
- (b) subject to the terms of any employment contract between the relevant Director and the Company or subsidiary, at any time remove or dismiss any Managing Director or Executive Director from that employment with that company in which event the appointment as a Director will automatically cease.

#### **12.28 Ceasing to be Managing or Executive Director**

A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

## **12.29 One Managing Director exempt from retirement by rotation**

One Managing Director, nominated by the Directors, is exempt from retirement by rotation and is not counted under article 10.3 for determining the number of Directors to retire by rotation.

## **12.30 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

## **12.31 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

## **12.32 Powers of delegation**

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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# **13 Secretary**

## **13.1 Appointment of Secretary**

There must be at least one secretary of the Company who is to be appointed by the Directors.

## **13.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

## **13.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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# **14 Seals**

## **14.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

## **14.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **15 Inspection of records**

### **15.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

### **15.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **16 Dividends and reserves**

### **16.1 Payment of dividend**

- (a) Subject to the Corporations Act, this Constitution and the rights of persons (if any) entitled to shares with special rights to dividend, the Directors may determine that a dividend is payable or declare a dividend, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend. The Directors may rescind or alter any such determination or declaration before payment is made.
- (b) The Directors may, before determining or paying any dividend to Members:
  - (i) set aside any sums as they think proper as a reserve, which at the discretion of the Directors may be applied for any purpose they decide, including being used in the business of the Company or invested in investments selected by the Directors (and the Directors may vary and deal with those investments as they decide); or
  - (ii) carry forward any amount which the Directors decide not to distribute or to transfer to a reserve; or
  - (iii) carry out the steps in both rules 16.1(b)(i) and 16.1(b)(ii).

### **16.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

### **16.3 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of any shares issued to the contrary, all sums that the

Company determines are to be distributed among the Members as dividends are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

#### **16.4 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member all sums of money (if any) presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.

#### **16.5 Distribution of specific assets**

When resolving to pay a dividend, or to return capital by a reduction of capital, a buy-back or otherwise, the Directors may:

- (a) resolve that the dividend or return of capital be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend or return of capital, including shares in or debentures or other securities of the Company or any other body corporate or trust; and
- (b) direct that the dividend or return of capital payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend or return of capital payable in respect of other shares be paid in cash.

#### **16.6 Ancillary powers regarding distributions**

- (a) In relation to any decision to pay a dividend or to return capital by a reduction of capital, a buy-back or otherwise, the Directors may:
  - (i) settle any difficulty that arises in making the distribution as they think expedient and, in particular:
    - (A) make cash payments in cases where Members are entitled to fractions of shares, debentures or other securities;
    - (B) decide that amounts or fractions of less than a particular value decided by the Directors may be disregarded in



order to adjust the rights of all parties by withholding assets, cash, shares, debentures or other securities where the Company is required to make a payment in respect of the Member to a government or taxing authority in relation to the distribution or issue;

- (C) decide to make distributions by disregarding transfers of shares or aggregating parcels of shares where they form the opinion that shareholdings have been split or aggregated to obtain the benefit of rounding on fractions of shares; and
  - (D) for an electronic transfer, if no account is nominated, or payment is rejected or refunded, the Company may credit the amount to an account of the Company until the Member nominates a valid account, or the amount is otherwise dealt with under article 16.8;
- (ii) fix the value for distribution of any specific assets;
  - (iii) pay cash or issue shares, debentures or other securities to any Member in order to adjust the rights of all parties;
  - (iv) vest any of those specific assets, cash, shares, debentures or other securities in a trustee or nominee on trust for the persons entitled to the distribution or capitalised amount, on such terms that seem expedient to the Directors; and
  - (v) authorise any person to make, on behalf of the Members, or a particular Member, entitled to any specific assets, cash, shares, debentures or other securities as a result of the decision, an agreement (including in writing) with the Company or another person which provides, as appropriate, for the distribution or issue to them of the assets, cash, shares, debentures or other securities and by applying to them their respective proportions of the amount resolved to be distributed.
- (b) Any agreement made under an authority referred to in article 16.6(a)(v) is effective and binds all Members concerned.
  - (c) Instead of making a distribution or issue of specific assets, shares, debentures or other securities to a particular Member, the Directors may make a cash payment to that Member or allocate some or all of the assets, shares, debentures or other securities to a trustee to be sold on behalf of, and for the benefit of, or in respect of, that Member, if:
    - (i) the distribution or issue would otherwise be illegal or unlawful;
    - (ii) the distribution or issue would give rise to parcels of securities which do not constitute a marketable parcel;
    - (iii) in the Directors' discretion, the distribution or issue would, for any reason, be impracticable; or
    - (iv) the Member so agrees.
  - (d) If the Company distributes to Members (either generally or to specific Members) shares, debentures or securities of the Company or another body corporate or trust (whether as a dividend or return of capital or otherwise and whether or not for value), each of those Members appoints the Company, and any officer of the Company nominated on

their behalf by the Directors, as his or her agent or attorney to do anything needed or desirable to give effect, or assist in giving effect, to that distribution, including agreeing to become a member, holder of shares, holder of debentures or holder of securities of the Company or that other body corporate or trust.

## **16.7 Payments in respect of shares**

- (a) A dividend, interest or other money payable in cash in respect of shares may be paid using any payment method chosen by the Directors, including:
- (i) by cheque sent through the post directed to the address of the holder as shown in the Register or, in the case of joint holders, to the address of the joint holder first named in the Register;
  - (ii) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
  - (iii) by any method of direct credit or electronic transfer determined by the Directors to an account (of a type approved by the Directors) as provided in writing by the holder or holders shown on the Register, or to such person or place directed by them.

Payment of any money under this article is at the risk of the Member to whom it is sent.

- (b) If the Directors determine under article 16.7(a)(iii) that payments will be made only by direct credit or electronic transfer into an account (of a type approved by the Directors) nominated by a holder(s) shown on the Register, but no such account is nominated by the holder or an electronic transfer into the nominated account is rejected or refunded, the Company may credit the amount payable to an account of the Company or its nominee to be held until
- (i) the holder nominates a valid account; or
  - (ii) the amount is required to be dealt with in accordance with any law relating to unclaimed moneys.
- (c) An amount credited to an account under articles 16.7(a)(iii) or 16.7(b) is to be treated as having been paid to the holder at the time it is credited to that account. The Company will not be a trustee of the money and no interest will accrue on that amount.

## **16.8 Unclaimed dividends or other distributions**

Unclaimed dividends or other distributions may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

## **16.9 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

## **16.10 Election to reinvest dividend**

Subject to Listing Rules and the following paragraph, the Directors may grant to Members or any class of Members the right to elect to reinvest cash dividends

paid by the Company by subscribing for shares in the Company of the same class on such terms and conditions as the Directors think fit. The Directors may at any time on notice to the Members or class of Members terminate or suspend any reinvestment plan granted to Members or a class of Members under this article.

### **16.11 Election to accept shares or payments in lieu of dividend**

Subject to the Listing Rules, the Directors may determine in respect of any dividend which it is proposed to pay on any shares of the Company that Members may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead a payment or a distribution other than a dividend (including without limitation, an issue or transfer of securities credited as fully paid ) from the Company, a Related Body Corporate of the Company or any other entity determined by the Directors, on such terms as the Directors think fit.

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## **17 Capitalisation of profits**

### **17.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 17.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **17.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under article 17.1 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares, debentures or other securities to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

### **17.3 Effecting the resolution**

The Directors may do all things necessary to give effect to the resolution in article 17.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares, debentures or other securities become issuable in fractions;

- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares, debentures or other securities on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares, debentures or other securities; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,and any agreement so made is effective and binding on all the Members concerned;
- (c) fix the value of specified assets; and
- (d) vest property in trustees.

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## **18 Service of documents**

### **18.1 Document includes notice**

In this article 18, a reference to a document includes a notice and a notification by electronic means.

### **18.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

### **18.3 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to an electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
  - (i) the document is available; and
  - (ii) how the Member may use the nominated access means to access the document.

### **18.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

## **18.5 Electronic means**

If a document is sent by electronic means, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the electronic transmission; and
- (b) is taken to have been given and received on the day after the date of its transmission.

## **18.6 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member personally, by post or by other electronic means on a particular date is prima facie evidence that the document was so sent, delivered or given on that date.

## **18.7 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

## **18.8 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this article to the person from whom that person derives title prior to registration of that person's title in the Register.

## **18.9 Service on the Company**

A document required under this Constitution or the Corporations Act to be given to the Company must be given in writing (which includes an electronic communication), or in such other manner as the Directors determine. The document must bear the actual, or electronic signature of the Member or a duly authorised office or representative of the Member unless the Directors dispense with this requirement. Service is only effective at the time of receipt in legible form.

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# **19 Winding up**

## **19.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

## **19.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a Special Resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is

compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.

### **19.3 Shares issued on special terms**

Articles 19.1 and 19.2 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **20 Indemnity and insurance**

### **20.1 Indemnity**

The Company may indemnify any current or former Director, Secretary or officer of the Company or subsidiary of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs);
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **20.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Secretary or officer of the Company or of a subsidiary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, except to the extent that:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

### **20.3 Contract**

The Company may enter into an agreement with a person referred to in articles 20.1 and 20.2 with respect to matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to books of the Company or a Related Body Corporate conferred by the Corporations Act or otherwise by law.

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## 21 Restricted Securities

### 21.1 Definitions

In this article 21:

- (a) **dispose** and **disposed** of have the meaning given in the Listing Rules;
- (b) **Escrow Period** means, in relation to Restricted Securities, the escrow period applicable to those Restricted Securities under the Listing Rules;
- (c) **Holding Lock** has the meaning given in the Listing Rules; and
- (d) **Restricted Securities** has the meaning given in the Listing Rules.

### 21.2 Disposal during Escrow Period

- (a) A holder of Restricted Securities must not dispose of, or agree to dispose of, Restricted Securities during the Escrow Period applicable to those securities, except as permitted by the Listing Rules or ASX.
- (b) The Company must not, and will refuse to, acknowledge any disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

### 21.3 Breach of Restriction Agreement or Listing Rules

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

### 21.4 Agreement

If the Restricted Securities are in the same class as Securities that are quoted on ASX, the holder will be deemed to have agreed in writing that the Restricted Securities must be kept on the Company's issuer sponsored sub-register and are to have a Holding Lock applied for the Escrow Period.

### 21.5 No entitlement

The holder of Restricted Securities will not be entitled to participate in any return of capital on those Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

### 21.6 Breach

If a holder of Restricted Securities breaches a Restriction Agreement or this article 21, the holder of the Restricted Securities will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of the Restricted Securities for so long as the breach continues.

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## 22 Small Holdings

### 22.1 Divestment Notice

This article 22 applies while the shares are Officially Quoted.

Subject to the provisions of this article 22, the Company may, at the discretion of the Directors, from time to time, sell or redeem any Shares held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.

If the Directors determine that a Member is a Small Holder or a New Small Holder, the Company may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Shares comprising and the Market Price of the Small Holding or New Small Holding and the date on which the Market Price was determined;
- (b) that the Company intends to sell the Relevant Shares in accordance with this article after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initiate a holding adjustment to move those Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those Operating Rules.

## **22.2 Relevant Period**

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

## **22.3 Company can sell Relevant Shares**

At the end of the Relevant Period, the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that:
  - (i) the Member desires to retain the Relevant Shares; or
  - (ii) the Shares of the Member have increased to at least a marketable parcel (as provided under the Listing Rules),  
  
in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) the Relevant Shares of a Member who is a New Small Holder.

## **22.4 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this article 22; however, unless the Relevant Shares are sold within six



weeks after the end of the Relevant Period, the Company's right to sell the Relevant Shares under the Divestment Notice relating to those shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

## **22.5 Company as Member's attorney**

To effect the sale and transfer by the Company of Relevant Shares of a Member, the Member appoints the Company and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.

## **22.6 Conclusive evidence**

A statement in writing by or on behalf of the Company under this article 22 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this article 22 is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.

## **22.7 Registering the purchaser**

The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this article. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this article.

## **22.8 Payment of proceeds**

Subject to article 22.9, where:

- (a) Relevant Shares of a Member are sold by the Company on behalf of the Member under this article; and
- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are not certificated) has been received by the Company,

the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds using any payment method chosen by the Company including under article 16.7. Payment of any money under this article is at the risk of the Member to whom it is sent.

## **22.9 Costs**

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this article, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In

any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

#### **22.10 Remedy limited to damages**

The remedy of a Member to whom this article 22 applies in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person. The Company is only liable if it has failed to comply with the requirements of this article 22 and its liability is limited to the value of the Relevant Shares at the time of sale.

#### **22.11 Dividends and voting suspended**

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this article, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this article, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that Member are transferred; and
- (b) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.

#### **22.12 Twelve month limit**

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by article 22.13).

#### **22.13 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this article 22 to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite article 22.12 and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

#### **22.14 Definitions**

In this article 22:

**Divestment Notice** means a notice given under article 22.1 to a Small Holder or a New Small Holder.

**Market Price** means, in relation to a Share, the Weighted Average Market Price of Shares during the ten Stock Exchange trading days ending two Stock Exchange trading days prior to the date of the calculation, provided that if the Weighted Average Market Price is calculated in respect of Shares which have an entitlement to distributions which is different to the entitlement of new Shares the Company must make an appropriate adjustment of the Weighted Average Market Price to reflect the difference.

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding** means a holding of Shares (created by the transfer of a parcel of Shares) created after the date on which article 22 came into effect, the aggregate Market Price of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares, as provided under the Listing Rules.

**Relevant Period** means the period specified in a Divestment Notice under article 22.2.

**Relevant Shares** are the Shares specified in a Divestment Notice.

**Shares** for the purposes of article 22 are shares in the Company all of the same class.

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding.

**Small Holding** means a holding of Shares the aggregate Market Price of which at the relevant date is less than a marketable parcel of Shares as provided under the Listing Rules.

**Stock Exchange** means the securities market operated by ASX and each and every other stock exchange and marketing institution in Australia on which for the time being Shares are listed for quotation with the approval of the Directors.

**Weighted Average Market Price** means:

- (a) the aggregate of the prices at which each Relevant Share was sold during the relevant period divided by the number of sold during that period, in the case of both the sales prices and numbers, as reported by the Stock Exchange but excluding sales that occur otherwise than in the ordinary course of trading on ASX (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, overseas sales, sales pursuant to the exercise of options over Shares and overnight crossings) and any other sales which the Company reasonably considers may not be fairly reflective of natural supply and demand; or
- (b) if no such sale occurred, the price at which the last recorded sale of a Relevant Share occurred prior to the commencement of the relevant period.

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## 23 Definitions and Interpretation

### 23.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 12.6).

**ASX** means ASX Limited (ACN 008 624 691) or the market operated by it as the context requires.

**Committee** means a committee of Directors constituted under article 12.19.

**Company** means Scentre Group Limited (ABN 66 001 671 496), as that name may be changed from time to time.

**Constitution** means this constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**CS Facility** means a licensed clearing and settlement facility that is prescribed by regulations made for the purposes of the definition of CS Facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Executive Director** means a person appointed as an executive director under article 12.27.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules.

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable to the Company while the Company is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**Managing Director** means a person appointed as a managing director under article 12.27.

**Market Rate** means the average mid rate for bills of exchange which have a tenor of three months which average is displayed on the "BBSW" page of the Thomson Reuters Screen (or the appropriate page of such information service which publishes that rate from time to time in place of Thompson Reuters) on the first day of each three month period for which the rate is to be determined or, if there is a manifest error in the calculation of that average rate or it is not displayed by 10.30am Sydney time on that day, then the rate specified in good faith by the Directors as the average rate for bills of that tenor bid and offered by at least four leading financial institutions in Sydney on that date (whether such bids and offers are displayed on the "BBSW" page or otherwise evidenced).

**Member** means a person entered in the Register as the holder of shares in the capital of the Company.

**Officially Quoted** means quotation as the official list of ASX, including when quotation is suspended for a continuous period of not more than 60 days.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Ordinary Shares** means ordinary voting shares in the capital of the Company having the rights and being subject to the restrictions specified in this Constitution or by the Directors. **Ordinary Share** has a corresponding meaning.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution, including any revised rate or new determination, and in the absence of a determination means the Market Rate plus 3% per annum.

**Register** means the register of Members of the Company under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office of the Company.

**Related Body Corporate** has the same meaning as related body corporate has in the Corporations Act.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Restriction Agreement** means a restriction agreement or deed in a form set out in the Listing Rules or otherwise approved by ASX.

**Secretary** means a person appointed under article 13.1 as secretary of the Company and, where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Securities** includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity, in each case as issued or granted by the Company.

**share** means a share in the capital of the Company.

**Special Resolution** has the same meaning as in the Corporations Act.

**State** means the State or Territory in which the Company is for the time being registered.

**Uncertificated Securities Holding** means Securities that under the Corporations Act, the Listing Rules or any Uncertificated Transfer System may be held in uncertificated form.

**Uncertificated Transfer System** means any system operated under the Corporations Act, the Listing Rules or the Operating Rules that regulates the transfer of registration of, or the settlement transactions affecting, Securities in uncertificated form and includes CHESS (as defined in the operating rules of ASX Settlement Pty Ltd) as it applies to Securities in certificated and uncertificated form.

## 23.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes an individual, firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, an authority or any other entity or organisation;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(general words)** the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) **(documents)** a reference to a document includes any variation or replacement of it;
- (f) **(laws)** a reference to “law” includes common law, principles of equity and legislation (including regulations);

- (g) **(regulations)** a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations) ;
- (h) **(amendments to statutes)** a reference to a law or a provision of a law or legislation includes consolidations, amendments, re-enactments or replacements of any of them, whether by the State or the Commonwealth of Australia or otherwise;
- (i) **(cash)** a reference to a payment “in cash” includes payments by cash, or by electronic funds transfer;
- (j) **(currency)** a reference to a monetary amount is a reference to the currency of Australia unless otherwise specified;
- (k) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (l) **(amount paid)** a reference to an amount paid on a share includes an amount credited as paid on that share;
- (m) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;
- (n) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (o) **(groups of persons)** a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (p) **(amendments)** a reference to amend includes to delete or replace;
- (q) **(calendar periods)** a reference to a year, quarter or month means a calendar year, calendar quarter or calendar month respectively; and
- (r) **(present)** a reference to being “present” at a meeting includes:
  - (i) at a meeting of Members:
    - (A) a Member being present in person;
    - (B) a Member being present by proxy, attorney or Representative;
    - (C) to the extent permitted by law, a Member participating using technology approved by the Directors in accordance with this Constitution; and
    - (D) except in any article which specifies a quorum, a Member who has duly lodged a valid direct vote in relation to the meeting; and
  - (ii) at a meeting of Directors, participating using technology consented to by all Directors.

### **23.3 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

### **23.4 Listing Rules interpretation**

In this Constitution, a word or expression defined or used in the Listing Rules has the same meaning when used in this Constitution in a similar context.

### **23.5 Headings and labels**

Headings and labels used for definitions are inserted for convenience and are not to affect the interpretation of this Constitution.

### **23.6 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

### **23.7 Currency**

The Directors may:

- (a) differentiate between Members as to the currency in which any amount payable to a Member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution in a currency other than Australian and the amount payable will be converted from Australian currency in any manner, at any time and at any exchange rate as the Directors think fit; and
- (c) in deciding the currency in which a payment is to be made to a Member, have regard to the registered address of the Member, the register on which a Member’s shares are registered and any other matters as the Directors consider appropriate.

### **23.8 Application of Listing Rules**

In this Constitution a reference to the Listing Rules only applies while the Company is admitted to the official list of ASX. While the Company is on the official list of ASX the following clauses apply:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);

- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.



# Constitution

## Schedule 1 - Terms of preference shares

The Company may issue preference shares under article 1.2 on the following terms.

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### 1 Dividend rights and priority of payment

- (b) Each preference share confers on the holder a right to receive a dividend (“**Dividend**”) at the rate or in the amount and on the conditions decided by the Directors under the terms of issue unless, and to the extent that, the Directors decide under the terms of issue that there is no right to receive a Dividend.
- (c) Without limiting the conditions which, under the terms of issue, the Directors may impose upon any right to receive a Dividend, the Directors may under the terms of issue, impose conditions upon the right to receive a Dividend which may be changed or reset at certain times or upon certain events and in the manner and to the extent the Directors decide under the terms of issue.
- (d) Any Dividend:
  - (i) is non-cumulative unless, and to the extent that, the Directors decide otherwise under the terms of issue; and
  - (ii) will rank for payment:
    - (A) in priority to Ordinary Shares unless, and to the extent that, the Directors decide otherwise under the terms of issue;
    - (B) in priority to shares in any other class of shares or class of preference shares expressed under the terms of issue to rank behind for the payment of dividends;
    - (C) equally with shares in any other class of shares or class of preference shares expressed under the terms of issue to rank equally for the payment of dividends; and
    - (D) behind shares in any other class of shares or class of preference shares expressed under the terms of issue to rank in priority for the payment of dividends.
- (e) If, and to the extent that, the Directors decide under the terms of issue, each preference share may, in addition to any right to receive a Dividend, participate equally with the Ordinary Shares in distribution of profits available as dividends.
- (f) Each preference share confers on its holder:
  - (i) if, and to the extent that the Dividend is cumulative, the right in a winding up or on redemption to payment of the amount of any Dividend accrued but unpaid on the share at the commencement of the winding up or the date of redemption, whether earned or determined or not; and

- (ii) if, and to the extent that the Dividend is non-cumulative, and if, and to the extent that, the Directors decide under the terms of issue, the right in a winding up or on redemption to payment of the amount of any Dividend accrued but unpaid for the period commencing on the dividend payment date which has then most recently occurred and ending on the commencement of the winding up or the date of redemption, whether earned or determined or not,

with the same priority in relation to each other class of shares as the priority that applies in relation to the payment of the Dividend.

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## **2 Entitlement to payment of capital sum**

- (a) Each preference share confers on its holder the right in a winding up or on a redemption to payment of:
  - (i) any amount paid on the share, or any amount fixed by the Directors under the terms of issue or capable of determination pursuant to a mechanism adopted by the Directors under the terms of issue; and
  - (ii) a further amount out of the surplus assets and profits of the Company on the conditions decided by the Directors under the terms of issue unless, and to the extent that, the Directors decide under the terms of issue that there is no right to any payment of a further amount out of the surplus assets and profits of the Company,

in priority to Ordinary Shares and, unless the Directors decide otherwise under the terms of issue, in priority to shares in any other class of shares or class of preference shares expressed to rank behind on a winding up, equally with shares in any other class of shares or class of preference shares expressed to rank equally on a winding up, and behind shares in any other class of shares or class of preference shares expressed to rank in priority on a winding up.

- (b) Unless otherwise decided by the Directors under the terms of issue, a preference share does not confer on its holder any right to participate in the profits or property of the Company except as set out in this schedule 1.

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## **3 Bonus issues and capitalisation of profits**

If, and to the extent that the Directors decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.

---

## **4 Voting rights**

- (a) A preference share does not entitle its holder to vote at any general meeting of the Company except on the questions, proposals or resolutions or during periods of time or in circumstances identified by the Directors in the terms of issue, which, unless the Directors decide otherwise under the terms of issue, are as follows:
  - (i) a proposal:

- (A) to reduce the share capital of the Company;
  - (B) that affects rights attached to the share;
  - (C) to wind up the Company; or
  - (D) for the disposal of the whole of the property, business and undertaking of the Company;
- (ii) a resolution to approve the terms of a buy-back agreement;
  - (iii) during a period in which a Dividend or part of a Dividend on the share is in arrears; and
  - (iv) during the winding up of the Company.
- (b) Each holder of a preference share who has a right to vote on a resolution is entitled to the number of votes specified in article 9.17 of the Constitution.

---

## 5 Meeting

Each preference share confers on its holder the same rights as those conferred by the Constitution upon the holders of Ordinary Shares in relation to receiving notices (including notices of general meetings), reports, balance sheets and audited accounts and of attending and being heard at all general meetings of the Company.

---

## 6 Foreign currency

Where any amount is payable by the Company to the holder of a preference share in a currency other than Australian dollars, and the amount is not paid when due or the Company has commenced winding up, the holder may give notice to the Company requiring payment of an amount in Australian dollars equal to the foreign currency amount calculated by applying the reference rate on the date of payment for the sale of the currency in which the payment is to be made for Australian dollars. Reference rate means the rate applicable in the market and at the time determined by the Directors before allotment of those preference shares and specified in the terms of issue for those preference shares.

---

## 7 Conversion to Ordinary Shares

Subject to the Corporations Act, any other applicable laws and the terms of issue of a preference share as determined by the Directors:

- (a) a preference share which may be converted into an Ordinary Shares in accordance with its terms of issue, at the time of conversion and without any further act:
    - (i) has the same rights as a fully paid Ordinary Shares; and
    - (ii) ranks equally with other fully paid Ordinary Shares on issue,
- however, the terms of issue of the preference share may provide otherwise including for the issue of additional Ordinary Shares on conversion as determined by the Directors; and

- (b) the conversion does not constitute a cancellation, redemption or termination of the preference share or the issue, allotment or creation of new shares, but has the effect of varying the status of, and the rights attaching to, the preference share so that it becomes an Ordinary Share.

---

## **8 Amendment to the terms**

Subject to complying with all applicable laws, the Company may, without the consent of preference shareholders, amend or add to the terms of the preference shares if, in the opinion of the Company, the amendment or addition is:

- (a) of a formal, minor or technical nature;
- (b) to correct a manifest error;
- (c) made to comply with any applicable law, Listing Rule or requirement of ASX;
- (d) convenient for the purpose of obtaining or maintaining the listing of the Company or quotation of the preference shares; or
- (e) is not likely to be or become materially prejudicial to the preference shareholders.

---

## **9 Variation of rights**

Subject to paragraph 8 and the terms of issue of a preference share as determined by the Directors, the rights attaching to a preference share may only be varied or cancelled:

- (a) by a special resolution passed at a meeting of preference shareholders entitled to vote and holding shares in that class; or
- (b) with the written consent of holders of at least 75% of the issued shares of that class.

---

## **10 Further issue of shares**

If the Company issues new preference shares that rank equally with existing preference shares, the issue will not be taken to vary the rights attached to the existing preference shares unless otherwise determined by the Directors in the terms of issue of the existing shares.

# Constitution

## Schedule 2 – Stapling provisions

On and from any Stapling Commencement Time, these Stapling Provisions:

- (a) apply to each Issuer in respect of its respective Stapled Entity and its Attached Securities;
- (b) apply to each Constituent Document and prevail over all other provisions of the Constituent Documents, except to the extent provided in the Constituent Documents or where this would result in a breach of the Corporations Act, the Listing Rules or other law; and
- (c) apply until they cease to apply in accordance with the Constituent Documents.

Unless the contrary intention appears, in this schedule a reference to a “**paragraph**” is a reference to a numbered provision of this schedule.

---

### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, in this schedule capitalised terms not defined in this paragraph 1.1 have the same meaning as in the Constitution, and:

**Accession Deed** means the deed of that name between each Issuer and any issuer of a New Attached Security by which that issuer of a New Attached Security accedes to the Stapling Deed.

**ASIC** means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

**ASIC Relief** means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

**Constituent Documents** means the constituent documents of a Stapled Entity and includes the Constitution.

**Controlled Entity** means any subsidiary or any trust or other entity, whether or not a legal entity, which is owned or controlled by an entity for accounting purposes.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of a Stapled Security.

**Group** means the Stapled Entities and any Controlled Entity of a Stapled Entity.

**Intra-Group Loan** means a loan or financial assistance provided by a Stapled Entity to any entity in the Group including guaranteeing or indemnifying or granting security in favour of that entity.

**Investor** means a holder of a Stapled Security.

**Issuer** means:

- (a) in the context of the Constitution, means the Company; and
- (b) in the context of the Constituent Document of any other Attached Security, means the issuer of the Attached Security.

**New Attached Security** means a Security that the Directors have determined be Stapled to shares, options, debentures or other securities issued by the Company and, if applicable, to the other Securities which are Stapled to such shares, options, debentures or other securities issued by the Company at that time.

**Other Attached Security** means:

- (a) in respect of a share, option, debenture or other security issued by the Company, an identical number of each Attached Security other than the share, option, debenture or other security issued by the Company; and
- (b) in respect of any New Attached Security, an identical number of each Attached Security other than a New Attached Security.

**Other Issuer** means:

- (a) in respect of the Company, each Issuer other than the Company; and
- (b) in respect of the issuer of any New Attached Security, each Issuer other than the issuer of the New Attached Security.

**Register** means the register of Investors kept or caused to be kept by the Stapled Entities under paragraph 4 and the Corporations Act.

**Registered** means recorded in the Register.

**Registrar** means the person appointed to maintain the Register.

**Restapling** means a determination by the Issuer of an Unstapled Security that Stapling should recommence in respect of that Unstapled Security.

**Security** means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture, and includes any share, option, debenture or other security issued by the Company.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Stapling Deed or an Accession Deed.

**Stapled Security** means the Stapled security created by the Stapling together of the Attached Securities.

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities. "Stapled" has a corresponding meaning.

**Stapling Commencement Time** means 30 June 2014 and, after that time, the most recent time and date on which the Directors determine that the Stapling Provisions commence to apply.

**Stapling Provisions** means the provisions contained in article 2 and in this schedule 2.

**Stapling Deed** means a deed entered into between the Company and the Other Issuers setting out how they will co-operate in the conduct of the Stapled Entities as if they were one economic entity and the Stapled Securities were one security.

**Stapling Proposal** means a proposal to cause the:

- (a) Stapling of any other Securities to the shares, options, debentures or other securities issued by the Company;
- (b) Unstapling of one or more Attached Securities; or
- (c) Restapling of one or more Unstapled Securities.

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group, and any amending, supplemental and other document that the Issuer and the Other Issuers consider necessary or desirable in connection with those objectives.

**Unstapled Security** means a Security which was an Attached Security and ceases to be Stapled to a share, option, debenture or other security issued by the Company.

**Unstapling** means the process that results in one or more of the Attached Securities ceasing to be Stapled to a share, option, debenture or other security issued by the Company. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

---

## **2 Stapling - general intention**

### **2.1 Stapled Securities - general intention**

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Time. Subject to paragraph 6 it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Stapled Securities will be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;

- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the same person.

## **2.2 Transaction Documents**

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

## **2.3 Stapling matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Each Investor, by acquiring a Stapled Security will be taken to have consented to the Stapling of the Stapled Security and to each provision in the Constituent Documents.

---

# **3 Dealing in Stapled Securities**

## **3.1 Stapling**

Subject to paragraph 6, on and from the Stapling Commencement Time, each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security and the Issuer must not:

- (a) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the same person for each Other Attached Security for issue or sale;
- (b) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
- (c) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
- (d) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the same person at the same time;
- (e) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the same person;
- (f) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
- (g) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested



dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.

Each Security issued by a Stapled Entity after the Stapling Commencement Time must be Stapled to each Other Attached Security immediately on the date of issue of the new Security.

### 3.2 Dealing in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Time, the Issuer must not:
- (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing,  
  
if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with paragraph 6.
- (b) **(Attached Securities)** Subject to paragraph 6, on and from the Stapling Commencement Time, the Issuer must not:
- (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Stapling Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Stapling Proposal involving each Other Attached Security;  
or
  - (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the same person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.
- (e) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to the same person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.

- (f) **(Disposal)** The Issuer must not dispose of, or cause the disposal of, an Attached Security unless at the same time each Other Attached Security is also disposed of in the same manner and to the same person.
- (g) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer, issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### **3.3 Consistency with the Constituent Documents**

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### **3.4 Joint quotation as Stapled Securities**

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### **3.5 Joint certificates or joint holding statements**

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### **3.6 Stapling and separate entities**

Despite any other provision of this schedule, each Stapled Entity remains a separate legal entity, separately admitted to the official list of ASX (if applicable), although the Attached Securities may be jointly Officially Quoted as Stapled Securities.

---

## **4 Single Register**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the Other Attached Securities are recorded.

---

## **5 Stapling of New Attached Securities**

A determination under article 2.2 that a Security is a New Attached Security may only be made if:

- (a) while the Stapled Securities are Officially Quoted, the New Attached Security is also Officially Quoted and the ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
- (b) while the Stapled Securities are Officially Quoted, ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;

- (c) each Other Issuer (including the issuer of the New Attached Security) has agreed:
  - (i) to the Stapling of the New Attached Security to the Stapled Security; and
  - (ii) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and
- (d) the Constituent Documents of the Issuer of the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
- (e) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
- (f) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, any required approval of the members of each Stapled Entity has been obtained; and
- (g) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.

---

## **6 Unstapling**

### **6.1 Procedure for Unstapling**

Subject to this paragraph 6, from the Stapling Commencement Time each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### **6.2 Unstapling an Attached Security**

- (a) A determination under article 2.2 to Unstaple one or more Attached Securities from the Stapled Security may only be made:
  - (i) while the Stapled Securities are Officially Quoted, if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Attached Securities from the Share and the Share and any remaining Attached Securities will remain Officially Quoted as a Share or a Stapled Security;
  - (ii) if each Other Issuer has agreed:
    - (A) to the Unstapling; and
    - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole; and
  - (iii) if the Stapling Provisions will cease to apply in respect of each Attached Security which is to be Unstapled.
- (b) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### **6.3 Unstapling the Stapled Securities**

- (a) Subject to paragraph 6.3(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security or the Attached Securities (as applicable) will be Unstapled on the occurrence of an Unstapling Event.
- (b) A determination under paragraph 6.3(a) may only be made if:
  - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Other Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under paragraph 6.3(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

---

## **7 Duties and obligations of Issuer**

### **7.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief) while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **7.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

---

## **8 Meetings of Investors**

### **8.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **8.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

### **8.3 Other attendees**

The auditor of each Stapled Entity and the representatives of each Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

---

## **9 General**

### **9.1 Small Holdings**

A reference to a “Small Holding” in each Constituent Document is taken to be a reference a small holding of Stapled Securities.

### **9.2 Intra-Group Loans**

Subject to the Corporations Act as modified by any applicable ASIC Relief, without limiting the Constituent Documents, the Company and each Other Issuer may enter into Intra-Group Loans.

### **9.3 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.

# Constitution of Scentre Group Trust 1

Manager: Scentre Management Limited

(ACN 001 670 579)

Consolidated constitution of Scentre Group Trust 1 incorporating all amendments up to and including the amendments made by supplemental deed poll dated 4 April 2024.

This is not a legally binding document. Reference should be made to the original constitution and the amending deeds for the operative provisions of the constitution.

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# Constitution of Scentre Group Trust 1

## 1 Name of Trust

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- 1.1 The Trust is called Scentre Group Trust 1,<sup>1</sup> or such other name as the Manager determines from time to time.
- 1.2 If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

## 2 Assets held on trust

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- 2.1 The Assets shall be vested in and held by the Manager on trust for the Members, subject to the terms and conditions of this constitution.
- 2.2 The Assets must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme, if and to the extent that the Corporations Act so requires.

## 3 Units, Options and Financial Instruments

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### Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to rights, obligations or restrictions attaching to any particular Unit, each Fully Paid Unit confers on the holder an equal, undivided interest in the Trust.
- 3.3 A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

### Units

- 3.4 Subject to the Corporations Act, the Manager may create and issue Units. The Manager may not issue different classes of Units except Units which may temporarily be of a different class due to different income entitlements under clause 3.27. Except to the extent specified in the terms of issue of Units, all Units will rank pari passu.

### Options

- 3.5 The Manager may create and issue Options on such terms as the Manager determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act.

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<sup>1</sup>The name of the Trust was changed on 30 June 2014 from Westfield Trust to Scentre Group Trust 1.

- 3.6 An Option will not confer any interest in or any rights to participate in the income or capital of the Trust. Options may be issued with Units or separately. A person becomes an Option Holder when their holding of Options is entered in the Register of Option Holders.

An offer of Options may be renounced in favour of another person unless it is expressed as non-renounceable. The terms of issue may allow the Manager to buy back the Options.

- 3.7 While Stapling applies:
- (a) an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the Same Person acquires an identical number of Attached Securities which are then Stapled to the Units; and
  - (b) an Option over a Unit may only be offered, issued, transferred or redeemed if arrangements are in place such that on exercise of the Option, the Same Person acquires or retains (as applicable) an identical number of Options over Attached Securities.

#### **Other jurisdictions**

- 3.8 If the Trust is a Registered Scheme and the Manager is making a pro rata offer of Options to Members which complies with the conditions for a pro rata offer of Units set out in clause 5.4, the Manager is not required to offer Options to persons whose address on the Register is outside Australia and New Zealand (or who holds Units on behalf of a person outside Australia or New Zealand) in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.

#### **Exercise of Options**

- 3.9 To exercise an Option, the holder of the Option must give notice to the Manager in accordance with the terms of the Option, together with payment of the exercise price. The Option Holder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.

#### **Lapse of Options**

- 3.10 An Option lapses on the earliest of:
- (a) the date stipulated in the terms of issue of the Option; or
  - (b) the termination of the Trust; or
  - (c) the winding up of the Trust,
- and the liability of the Manager ceases in respect of the Option.

#### **Rights attaching to Units and Options**

- 3.11 Subject to the Corporations Act, the interests of Members holding Units will prevail over the interests of holders of Options in the case of conflict.



## Partly paid units

- 3.12 Subject to clause 4, the Manager may offer Units for sale or subscription on terms that the Application Price is payable by one or more instalments of such amounts payable at such times as the Manager determines. The Manager may determine that the rights and entitlements of those Units (including the right to participate in the Distributable Income) will be altered. All the terms and conditions of such an offer (including the details of any altered rights and entitlements) must be set out in the document offering the Units for sale. If any Partly Paid Units are issued with altered rights or entitlements, the provisions of this constitution as they apply to such Partly Paid Units must be read subject to those altered rights and entitlements. While Stapling applies Units may not be issued partly paid unless there is, at the same time, a corresponding issue of Attached Securities which are also partly paid. A call will not be regarded as having been validly paid unless any amount payable at the same time in relation to partly paid Attached Securities is also paid.

## Forfeiture

- 3.13 If a Member fails to pay in full any instalment due on any Partly Paid Unit on or by the due date, the Manager may, while any part of the instalment remains unpaid, notify the Member that, if the instalment is not paid in full on or by a specified time and day (not earlier than 14 days from the date of service of the notice) ("**Specified Date**"), the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited and, if Stapling applies, an equal number of Attached Securities will also be liable to be forfeited.
- 3.14 If any part of the instalment remains unpaid after the Specified Date:
- (a) any Partly Paid Unit in respect of which the notice has been given (together with the Attached Securities if Stapling applies) may, at any time after the Specified Date before the required instalment has been paid, be forfeited if the Manager so determines effective at such time as the Manager determines; and
  - (b) all voting rights and entitlements to the distribution of income and capital in connection with any Partly Paid Unit and, if Stapling applies, the Attached Securities in respect of which the notice has been given are suspended until reinstated by the Manager and, in the case of the Attached Securities, the Stapled Entities.

From the date of forfeiture:

- (c) the holder of the Partly Paid Unit and, if Stapling applies, Attached Securities ceases to be a Member of the Trust and of each Stapled Entity in respect of the Attached Securities (and has no claims against the Manager or the Trust or the Stapled Entities in respect of the forfeited Unit and the forfeited Attached Securities); and
- (d) if required in order for ASIC relief to be effective, the Manager holds the Partly Paid Unit on trust for the Members.

- 3.15 A forfeited Partly Paid Unit and, if Stapling applies, any Attached Securities may, subject to compliance with the Corporations Act and the conditions of any ASIC relief and the Listing Rules, be sold or otherwise disposed of:
- (a) at a price equal to that received from the sale of the Partly Paid Units and, if Stapling applies, any Attached Securities in the normal course of business on ASX; or
  - (b) by public auction; or
  - (c) by private treaty.

At any time before a sale or disposition under this clause 3.15, the forfeiture may be cancelled on such terms as the Manager thinks fit and shall be cancelled when the Member pays to the Manager the full amount owing in respect of such Units and, if Stapling applies, to the Stapled Entities the full amount owing in respect of the Attached Securities.

- 3.16 The former holder of a Partly Paid Unit which has been forfeited remains liable to pay to the Manager on demand:
- (a) all money which at the date of forfeiture were payable by the holder to the Manager in respect of the forfeited Partly Paid Unit;
  - (b) all costs incurred in connection with the forfeiture, including, any costs incurred in connection with any proceedings brought against the former holder to recover the instalment or part of the instalment; and
  - (c) interest calculated at the Prescribed Interest Rate on the daily balance of the amounts in (a) and (b) from the date they become due for payment or were incurred to the date of payment.

The former Partly Paid Unit holder's liability under this clause 3.16 ceases if and when the Manager receives payment in full of all such amounts.

- 3.17 A statement signed by an authorised officer of the Manager that a Partly Paid Unit and, if Stapling applies, the relevant Attached Securities have been forfeited on a stated date is conclusive evidence of that fact as against all persons claiming to be entitled to the forfeited Partly Paid Unit and the Attached Securities.
- 3.18 Where a Partly Paid Unit and the relevant Attached Securities are forfeited pursuant to clauses 3.13 to 3.17, the Manager may:
- (a) receive the consideration, if any, given for the forfeited Partly Paid Unit and relevant Attached Securities on the sale or disposal (or the Manager may determine that the consideration will be received in whole or in part by the Stapled Entities);
  - (b) execute (or procure that the Stapled Entities execute) a transfer of such Partly Paid Unit and relevant Attached Securities in favour of the person to whom the Partly Paid Unit and relevant Attached Securities are sold or disposed of and that person must then be registered as the holder of that Partly Paid Unit and relevant Attached Securities,

The Manager and the person acquiring the Partly Paid Units and relevant Attached Securities are not obliged to ensure that any part of the money which has been paid for the Partly Paid Unit and relevant Attached Securities is paid to the former holder of the Partly Paid Unit and relevant Attached Securities nor shall the person's title to that Partly Paid Unit or relevant Attached Securities be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Partly Paid Unit or the relevant Attached Securities.

- 3.19 Subject to the conditions of any applicable ASIC relief, where forfeited Partly Paid Units and relevant Attached Securities are sold or disposed of for cash, the Manager must deduct from the cash received:
- (a) all moneys which at the date of forfeiture were payable to the Manager in respect of the forfeited Partly Paid Units;
  - (b) all costs incurred in connection with the forfeiture including, any costs incurred in connection with any proceedings brought against the former holder to recover the instalment or part of the instalment;
  - (c) interest calculated at the Prescribed Interest Rate on the daily balance of the amounts in (a) and (b) from the day they became due for payment or were incurred up to and including the date of forfeiture; and
  - (d) all amounts which have been or will be incurred for commissions, Taxes, transfer fees and other usual charges, if any, on the sale or disposal of the Partly Paid Unit.

The Manager may retain the amounts so deducted as Assets, but the balance remaining (if any) must be paid to the Member whose Partly Paid Units were forfeited.

- 3.20 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.
- 3.21 The Manager is not liable to any former or current holder of Partly Paid Units and Attached Securities for any loss incurred in relation to the sale or disposal of the forfeited Partly Paid Units and Attached Securities.

### **Fractions of Units and Options**

- 3.22 Fractions of a Unit or Option may be issued by the Manager, but while the Units or Options are Officially Quoted, fractions of a Unit or Option may not be issued. If any fractions of Units or Options are on issue at a time when the Trust is to be Listed, the Manager may cancel the fractions with effect from the date of Listing.
- 3.23 Subject to clause 5.7(b), where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue, redemption or other creation or cancellation of a fraction of one Unit or Option, that fraction may be rounded down or up to such number of decimal places as the Manager determines.

- 3.24 The provisions of the constitution relating to Units and Members apply to fractions of Units and Options in the proportion which the fraction bears to one Unit or Option.
- 3.25 Any excess application or other money or property which results from rounding becomes an Asset.

#### Uncertificated trading

- 3.26 If and for so long as dealings in any Units, Options or Financial Instruments take place under an Uncertificated Transfer System:
- (a) the Manager need not issue any certificate in respect of Units, Options or Financial Instruments held as an Uncertificated Securities Holding; and
  - (b) the Register may distinguish between Units, Options or Financial Instruments held in certificated form, and securities held as an Uncertificated Securities Holding.

#### Income entitlement of Units

- 3.27 The Manager may issue Units on terms that the Units:
- (a) participate fully for Distributable Income in respect of the Distribution Period in which they are issued; or
  - (b) do not entitle the holder of the Units to receive a distribution of Distributable Income in respect of the Distribution Period in which the Units are issued; or
  - (c) entitle the holders to receive Distributable Income in respect of the Distribution Period in which the Units are issued which is not greater than the proportion of the Distributable Income to which a Member holding a Unit during the whole of that Distribution Period would be entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

#### Capital reallocation

- 3.28
- (a) The Manager may at any time distribute an amount of capital of the Trust to the Members on terms that the amount distributed in respect of each Unit is to be applied by the Manager as agent for and on behalf of each Member by paying that amount at the direction of each Member to one or more Stapled Entities as an additional capital payment in respect of the relevant Attached Security of that Stapled Entity which is already issued and to which the Unit is Stapled (the “**Outgoing Capital Reallocation Amount**”), and if the Manager determines to pay a distribution as an Outgoing Capital Reallocation Amount, then:

- 
- (i) the Outgoing Capital Reallocation Amount to be applied on behalf of a Member is to be as nearly as practicable in the same proportion as that which the number of Units the Member holds bears to the total number of Units on issue as at a date determined by the Manager;
  - (ii) each Member is deemed to have directed the Manager to pay the Outgoing Capital Reallocation Amount to the relevant Stapled Entity or Entities on the basis set out in this clause 3.28;
  - (iii) the Manager must pay the Outgoing Capital Reallocation Amount on the basis set out in this clause 3.28; and
  - (iv) each Member will be deemed to have irrevocably appointed the Manager as its attorney and agent to do all things the Manager considers necessary to give effect to the reallocation of capital under this clause 3.28(a).
- (b) If at any time, a Stapled Entity proposes to undertake a capital distribution (if it is a trust) or an equal reduction of capital (if it is a company) on terms that the whole or any part of the amount to be paid in respect of each Attached Security of which that Stapled Entity is the issuer by way of capital distribution or capital reduction ("**Incoming Capital Reallocation Amount**") is to be paid to or for the benefit of the Trust, then:
- (i) each Member is deemed to have directed the Manager to accept the Incoming Capital Reallocation Amount;
  - (ii) each Member is deemed to have appointed the Manager as their attorney and agent to do all things the Manager considers necessary to give effect to the receipt of the Incoming Capital Reallocation Amount by the Manager;
  - (iii) if the Stapled Entity is a company which proposes to undertake an equal reduction of capital, then each Member irrevocably appoints and directs the Manager to do the following on the Member's behalf and in the Member's name:
    - (A) consent in writing (which consent may be a single document or two or more documents executed by the Manager on behalf of all Members) to any variation of the rights attaching to any shares in the Stapled Entity held by the Member constituted by any modification of the constitution of the Stapled Entity that increases or provides for an increase in the liability of the Member in its capacity as a holder of shares to contribute to the share capital of the Stapled Entity, and that increase in that liability; and

- (B) agree in writing (which agreement may be a single document or two or more documents executed by the Manager on behalf of all Members) to the increase in the Member's liability to contribute to the share capital of the Stapled Entity in accordance with the constitution of the Stapled Entity,

and the Manager will receive the Incoming Capital Reallocation Amount as an additional capital payment in respect of the Unit to which the relevant Attached Security is Stapled. All amounts so received by the Manager are Assets.

## Financial Instruments

3.29 Without limiting clause 12, but subject to the Corporations Act:

- (a) the Manager may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) ("**Financial Instruments**"); and
- (b) Financial Instruments may be issued:
- (i) at an application price (which may be nil) determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at an application price of \$100 per Financial Instrument; and
- (ii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversion or otherwise, provided that while Stapling applies, the Financial Instrument must convert into one or more Stapled Securities, not Units alone) as the Manager determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act.

3.30 Subject to the Corporations Act and except as provided in the terms of issue of the Financial Instrument:

- (a) a Financial Instrument will not confer any interest in or any rights to participate in the income or capital of the Trust, but otherwise the Holder of a Financial Instrument holds that Financial Instrument subject to the rights, restrictions and obligations attaching to that Financial Instrument; and
- (b) a Holder of a Financial Instrument who is not a Member is not entitled to any other rights of a Member.

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## 4 Transfer, transmission and joint holders

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### Transfer of Units, Options and Financial Instruments

- 4.1 Units, Options and Financial Instruments may be transferred subject to their terms, this clause 4 and clause 27.

### Transfer if not Officially Quoted

- 4.2 If Units, Options or Financial Instruments are not Officially Quoted transfers must be:
- (a) in a form approved by the Manager;
  - (b) accompanied by any evidence the Manager reasonably requires to show the right of the transferor to make the transfer; and
  - (c) if the Manager requires, be presented for Registration duly stamped.

If Units, Options or Financial Instruments the subject of a proposed transfer are not Officially Quoted, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal.

To the maximum extent permitted by law, the Manager may (or may direct or procure the Registrar to) put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.

### Transfer if Officially Quoted

- 4.3 Subject to this constitution and the Listing Rules, if a Unit, Option or Financial Instrument is Officially Quoted, it is transferable:
- (a) as provided by the Operating Rules of a CS Facility if applicable; or
  - (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

If a duly completed instrument of transfer:

- (c) is used to transfer a Unit, Option or Financial Instrument in accordance with paragraph (b); and
- (d) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Manager properly requires to show the right of the transferor to make the transfer,

the Manager must, subject to the Manager's powers, register the transferee as the Member, Option Holder or Holder of a Financial Instrument as relevant.

**When transfer is effective**

- 4.4 Except as provided by any applicable Operating Rules of a CS Facility, a transfer is not effective until Registered.

**Manager may request holding lock or refuse to register transfer**

- 4.5 If the Units, Options or Financial Instruments are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:
- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units, Options or Financial Instruments from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
  - (b) refuse to Register a transfer of other Units, Options or Financial Instruments to which paragraph (a) does not apply.

**Manager must request holding lock or refuse to register transfer**

- 4.6 The Manager must:
- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units, Options or Financial Instruments from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
  - (b) refuse to register any transfer of Units, Options or Financial Instruments to which paragraph (a) does not apply,

if the Corporations Act or Listing Rules require the Manager to do so or the transfer is in breach of clause 27.

**Notice of holding locks and refusal to register transfer**

- 4.7 If, in the exercise of its rights under clauses 4.5 or 4.6, the Manager requests the application of a holding lock to prevent a transfer of Units, Options or Financial Instruments or refuses to Register a transfer of Units, Options or Financial Instruments it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:
- (a) the holder of the Units, Options or Financial Instruments;
  - (b) the purported transferee; and
  - (c) the broker lodging the transfer, if any.

Failure to give notice does not, however, invalidate the decision of the Manager.



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**Joint tenancy**

- 4.8 Persons Registered jointly as a Member, or holder of an Option or Financial Instrument, hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

**Transmission on death**

- 4.9 If a holder of Units, Options or Financial Instruments, who does not hold them jointly, dies, the Manager will recognise only the personal representative of the holder as being entitled to the holder's interest in the Units, Options or Financial Instruments.

**Information given by personal representative**

- 4.10 If the personal representative gives the Manager the information it reasonably requires to establish the representative's entitlement to be registered as a holder of the Units, Options or Financial Instruments:
- (a) the personal representative may:
    - (i) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
    - (ii) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person; and
  - (b) the personal representative is entitled, whether or not registered as the holder of the Units, Options or Financial Instruments, to the same rights as the previous holder.

On receiving an election under paragraph (a)(i), the Manager must register the personal representative as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (a)(ii) is subject to the clauses that apply to transfers generally.

**Death of joint owner**

- 4.11 If a holder of Units, Options or Financial Instruments, who holds them jointly, dies, the Manager will recognise only the survivor as being entitled to the holder's interest in the Units, Options or Financial Instruments. The estate of the holder is not released from any liability in respect of the Units, Options or Financial Instruments.

**Transmission on bankruptcy**

- 4.12 If a person entitled to Units, Options or Financial Instruments because of the bankruptcy of a holder of Units, Options or Financial Instruments gives the Manager the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, Options or Financial Instruments, the person may:

- (a) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
- (b) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person.

On receiving an election under paragraph (a), the Manager must register the person as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (b) is subject to the clauses that apply to transfers generally.

This clause has effect subject to the Bankruptcy Act 1966 (Cwlth).

### **Transmission on mental incapacity**

4.13 If a person entitled to Units, Options or Financial Instruments because of the mental incapacity of a holder of Units, Options or Financial Instruments gives the Manager the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, Options or Financial Instruments:

- (a) the person may:
  - (i) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
  - (ii) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person; and
- (b) the person is entitled, whether or not registered as the holder of the Units, Options or Financial Instruments, to the same rights as the previous holder.

On receiving an election under paragraph (a)(i), the Manager must register the person as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (a)(ii) is subject to the clauses that apply to transfers generally.

## **5 Application Price**

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### **Application Price**

- 5.1 Subject the Stapling Provisions while they apply, the application price for a Unit must be calculated as follows:
- (a) in the case of a proportionate offer (including a rights issue), in accordance with clause 5.4;

- (b) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 5.6;
- (c) in the case of reinvestment of distributions, in accordance with clauses 5.7 or 5.8;
- (d) in the case of Units issued pursuant to the exercise of an Option, at a price calculated in accordance with clause 5.9;
- (e) subject to paragraphs (a) to (d), in all other cases while Units are Officially Quoted, the Market Price of Units applicable on the date as at which the application price is to be calculated; and
- (f) while Units are not Officially Quoted, in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue.}}$$

#### **Time for calculation**

- 5.2 Each of the variables in clause 5.1(f) must be determined as at the next Valuation Time after:
- (a) the Manager receives the application for Units; or
  - (b) the Manager receives the application money (even if paid or to be paid into the Applications Account) or the property against which Units are to be issued is vested in the Manager,
- whichever happens later.

#### **Rounding**

- 5.3 Subject to the Listing Rules, the Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset.

#### **Pro rata rights issues**

- 5.4 Subject to the terms of any applicable ASIC Relief and the Listing Rules, the Manager may offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager:
- (a) provided that, subject to paragraph (b) of this clause 5.4, all Members are offered Units in proportion to the value of the Member's Units at the relevant date; but
  - (b) the Manager may exclude a Member from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act (as modified by ASIC Relief).

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**Terms of pro rata issues**

## 5.5

- (a) Any offer made under clause 5.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 5.4. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 5.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 5.4, the underwriter may take up any Units not subscribed for by Members.

**Placements and security purchase plan while Listed**

## 5.6

- While Units are Officially Quoted and not suspended from quotation, the Manager may at any time issue Units by way of a placement or under a security purchase plan:
- (a) at the Market Price of Units on the day immediately before the date on which the Units are offered or, if there is no offer, the day immediately before the date on which the Units are issued; or
  - (b) at a price and on terms determined by the Manager, provided that the Manager complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.

## Application Price while Listed if reinvestment applies

### 5.7

- (a) If reinvestment of distributions payable to a Member under clause 10.10 applies while the Units are Officially Quoted, subject to the terms of any applicable ASIC Relief and the Listing Rules, the Manager may issue Units on the basis that the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the price will be the Market Price of the Units.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

## Reinvestment while not Listed

- 5.8 While Units are not Officially Quoted, subject to the terms of any applicable ASIC Relief, the Manager may issue Units on the basis that the application price payable for each additional Unit on reinvestment of distributions payable to a Member under clause 10.10 is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the application price will be as calculated under clause 5.1(f) on the first Business Day after the end of the Distribution Period to which the distribution relates.

## Options

- 5.9 Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Trust is a Registered Scheme, the Manager may issue Options over Units:
  - (a) at an application price (which may be nil) determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at a nil Application Price; and
  - (b) on the basis that the Application Price for a Unit to be issued on exercise of the Option is a price determined by the Manager:
    - (i) while the Units are Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue or a placement of Units (as applicable), or under clause 5.1(f);
    - (ii) while the Units are not Officially quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 5.1(f).

## Financial Instruments

- 5.10 The application price of a Financial Instrument is the price determined in accordance with clause 3.29.

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## 6 Application procedure for Units, Options and Financial Instruments

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### Application form

- 6.1 An applicant for Units or Options must complete an application form approved by the Manager, if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

### Payment

- 6.2 Payment in respect of an application for Units or Options must be made in a form acceptable to the Manager, including by a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it. Payment must:
- (a) accompany the application; or
  - (b) be received by or made available to the Manager or any other person nominated by the Manager for that purpose within such period before or after the Manager receives the application form as the Manager determines from time to time, or as the terms of issue of the relevant Unit or Option contemplate; or
  - (c) comprise a reinvestment of distribution in accordance with clauses 5.7 or 5.8.
- 6.3 If the Manager accepts a transfer of property other than cash:
- (a) the value attributed to any property to be vested must be equivalent to a price at which the Manager could properly buy the property and, if the Manager requires, the applicant must provide a recent valuation of the property.
  - (b) any additional costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factored into the Application Price for the Units must be paid by the applicant either directly or by deducting them from the value of the property before the number of Units to be issued is calculated.

### Manager may reject

- 6.4 Subject to the Listing Rules, the Manager may reject an application in whole or in part, without giving any reason for the rejection.

### Minimum amounts

- 6.5 The Manager may set a minimum application amount or a minimum holding for the Trust whether in respect of all Units or Options or in respect of Partly Paid Units. The Manager may alter or waive any such minimum application amount or minimum holding requirement at any time.

### Issue date

- 6.6 Except in the case of a reinvestment of distribution in accordance with this constitution, Units or Options are taken to be issued:

- (a) when:
- (i) the Manager accepts the application; or
  - (ii) the Manager receives the application money, or the property against which the Units or Options are to be issued is vested in the Manager,
- whichever happens later; or
- (b) at such other time as the Manager determines

Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the Record Date for the relevant Distribution Period.

### Uncleared funds

- 6.7 Units or Options issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if so determined by the Manager if the funds are not:
- (a) subsequently cleared; or
  - (b) the property does not vest in the Manager;
- within one month of receipt of the application.

### Application procedure for Financial Instruments

- 6.8 The provisions of this clause 6 apply to applications for Financial Instruments with any necessary adaptations.

### Restriction on issue and redemption of Units

- 6.9 No Units may be issued or redeemed after the 80<sup>th</sup> anniversary of the day the Trust commenced if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

## 7 Redemption Price of Units, Options and Financial Instruments

### Redemption Price

- 7.1 Subject to clauses 8.11, 8.15 and 8.16, the redemption price for a Unit must be calculated as follows:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units in issue}}$$

### Time for calculation

- 7.2 Each of the variables in clause 7.1 must be determined:

- (a) while the Trust is a Registered Scheme and is Liquid, and at all times when the Trust is not a Registered Scheme, as at the next Valuation Time after the Manager receives the redemption request or determines that the Units are to be redeemed, whichever is the earlier; or
- (b) while the Trust is a Registered Scheme and is not Liquid, as at the last Valuation Time before the withdrawal offer is made.

### Redemption Price of Options

7.3 The redemption price of an Option is:

- (a) while the Options are quoted for trading on ASX, its Market Price, and
- (b) while the Options are not quoted for trading on ASX, the price determined in accordance with the principles in paragraph (c) of the definition of Market Value in clause 29.1.

### Redemption price of Financial Instruments

7.4 Subject to the terms of the relevant Financial Instruments and the Corporations Act, a Financial Instrument may be redeemed at a redemption price determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at a redemption price of \$100 per Financial Instrument.

### Rounding

7.5 Subject to the Listing Rules, the Redemption Price may be rounded as the Manager determines but the amount of the rounding must not be more than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset of the Trust.

## 8 Redemption procedures

### While Officially Quoted

8.1 While Units are Officially Quoted:

- (a) clauses 8.11 to 8.13 apply only to the extent provided for in clause 8.16;
- (b) clauses 8.10 and 8.14 to 8.18 apply; and
- (c) clauses 8.2 to 8.9 do not apply.

If the Stapling Provisions apply and Units comprise part of a Stapled Security that is Officially Quoted, clauses 8.15 and 8.16 apply with any necessary modifications.



**Request for redemption**

- 8.2 A Member may make a request for the redemption of some or all of their Units by giving the Manager notice in writing of the request specifying the number or value of Units to be redeemed and sufficient details to identify the Member, or in any other manner approved by the Manager, and the Manager must give effect to that request at the time and in the manner set out in this clause 8.
- 8.3 A Member may not withdraw a redemption request unless the Manager agrees.

**When Trust is Liquid or not a Registered Scheme**

- 8.4 Clauses 8.5 and 8.7 apply only:
- (a) while the Trust is Liquid; and
  - (b) while the Trust is not Liquid but is not a Registered Scheme.

**Manager must redeem**

- 8.5 Subject to the Corporations Act and the Listing Rules, the Manager must:
- (a) redeem a Unit which is the subject of a valid redemption request, and ensure that the redemption is recorded in the Register, within 60 days of receipt of the request or such longer period as allowed by clause 8.6; and
  - (b) pay the Redemption Price to the Member or former Member whose Units have been redeemed within 21 days of the redemption.

**Delayed redemption**

- 8.6
- (a) Subject to clause 8.6(b), if the Manager has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as a restricted market for any Assets, the period allowed for redemption of the Units may be extended by the number of days during which such circumstances apply.
  - (b) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Manager must pay the redemption proceeds to the withdrawing Member or former Member within 21 days of the date on which the withdrawal offer close.

**Minimum holding**

- 8.7 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.

**Increased minimum**

- 8.8 If the Manager increases the minimum holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

**No redemptions after termination**

- 8.9 The Manager need not give effect to a redemption request received between the date the Trust is terminated and the date of winding up.

**Payment from the Assets**

- 8.10 The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

**While Trust is not Liquid**

- 8.11 While the Trust is not Liquid, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind. While the Trust is a Registered Scheme and is not Liquid, if there is no withdrawal offer currently open for acceptance by Members, a Member has no right to request withdrawal from the Trust.

**Manager not obliged**

- 8.12 The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by sending a copy of the offer to all Members, or making a copy of the offer available by electronic means and giving notice to Members that it is available. The Manager may cancel a withdrawal offer by sending a copy of the notice of cancellation to all Members, or making a copy of that notice available by electronic means and giving notice to Members that it is available.

**Sums owed to Manager**

- 8.13 The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member. While the Trust is Liquid or not a Registered Scheme, the Manager may redeem without a redemption request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

**When Units are redeemed**

- 8.14 Units are taken to be redeemed at the time at which the Redemption Price is known and the redemption is recorded (or required under clause 8.5 to be recorded) in the Register, and from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

### On-market buy backs

- 8.15 While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

### Withdrawal offers while Listed

- 8.16 While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 8.11 in which case clauses 8.11 to 8.13 apply in relation to the withdrawal offer, and the Redemption Price is to be calculated in accordance with clause 7.2(b).

### Redemption of Options

- 8.17 The provisions of this clause 8 apply to the redemption of Options, with any necessary adaptations. The Redemption Price of an Option is to be determined under clause 7.3.

### Redemption of Financial Instruments

- 8.18 The provisions of this clause 8 apply to the redemption of Financial Instruments with any necessary adaptations. The Redemption Price of a Financial Instrument is to be determined under clause 7.4.

## 9 Valuation of Assets

### Periodic valuations

- 9.1 The Manager may cause an Asset to be valued at any time and, while the Trust is a Registered Scheme, must do so as and when required by the Corporations Act.

### Net Asset Value

- 9.2 The Manager may determine Net Asset Value at any time, including more than once on each day.

### Valuation methods

- 9.3 The Manager may determine the value of an Asset, and determine valuation methods and policies for each category of Asset and change them from time to time. While the Trust is a Registered Scheme, the Manager's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Application Price or Redemption Price of a Unit, the value must be reasonably current. In the absence of any other determination by the Manager, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

## Currency conversion

- 9.4 Where it is necessary for the purposes of a valuation to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank, or an independent pricing provider (such as Reuters) nominated by the Manager. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency.

## 10 Income and Distributions

### Standing principles for determining Distributable Income

- 10.1 The Manager may determine standing principles for calculating and distributing the Distributable Income for any Financial Year or Distribution Period and may change the principles from time to time. Without limiting this clause 10.1, the standing principles may:
- (a) include amounts of capital (or amounts which would have been capital, disregarding any recharacterisation in accordance with clause 10.17) in Distributable Income;
  - (b) treat amounts of income (or amounts which would have been income, disregarding any recharacterisation in accordance with clause 10.17) as capital; and
  - (c) permit the application of income receipts, profits or gains of the Trust to meet expenses of a revenue or capital nature (disregarding any classification of those expenses in accordance with clause 10.17), in the determination of Distributable Income.

### Determination of Distributable Income

- 10.2
- (a) The Manager must determine the Distributable Income for each Distribution Period and for each Financial Year. In the case of any Distribution Period which does not end at the end of a Financial Year this determination of the Distributable Income for that Distribution Period may be an estimate.
  - (b) The Distributable Income is to be:
    - (i) if the Manager has determined standing principles under clause 10.1 which are applicable to the Financial Year or Distribution Period, the amount calculated by applying those principles in respect of the Financial Year or Distribution Period; and
    - (ii) if there are no standing principles which are applicable to the Financial Year or Distribution Period under clause 10.1,

so much of the income of the Trust determined according to ordinary concepts as is available for that period for distribution after payment of, or the provision for, costs, expenses and outgoings in accordance with normal concepts and the terms of this constitution.

- (c) In the case of each Distribution Period which ends at the end of a Financial Year, the Distributable Income for that Distribution Period is to be the amount by which the Distributable Income for the Financial Year exceeds the aggregate of the Distributable Income or estimated Distributable Income in respect of any prior Distribution Periods during that Financial Year.
- (d) The Manager may treat as expenses of the Trust all coupon, interest, distribution or other periodic payments if any, required to be paid by the Manager to Holders of Financial Instruments in accordance with the terms of those Financial Instruments.

### **Accounts**

- 10.3 Notwithstanding that the Distributable Income of the Trust is to be determined in accordance with clauses 10.1 and 10.2, the accounts of the Trust may be prepared in accordance with applicable accounting standards, including international financial reporting standards to the extent required or relevant, 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 Income of the Trust pursuant to clause 10.2.

### **Present entitlement**

- 10.4 Subject to clauses 3.27, 10.17 and 10.20, each person Registered as a Member at the end of the last day of a Distribution Period is presently entitled to the Distributable Income of the Trust for that Distribution Period in the proportion which the number of Units held by the Member bears to the total number of Units then on issue.

### **Record Date**

- 10.5 The Manager must determine the Record Date for the purpose of determining the persons who are entitled to be paid a distribution, which will be the last day of the Distribution Period unless otherwise determined by the Manager at any time prior to the payment of that distribution. The payment by the Manager in respect of any Units of an amount of the Distributable Income calculated in accordance with this constitution in respect of those Units to the Member registered in respect of those Units as at the Record Date is a good and sufficient discharge to the Manager in respect of any liability it may have to any person in respect of any such entitlement with respect to those Units.

### **Reserve for distribution**

- 10.6 Upon a person or persons becoming entitled to a share or shares in the Distributable Income for a Distribution Period, the Manager must set aside

assets with a total value which is, in the Manager's reasonable opinion, likely to be equal to, or to be a fair approximation of, the aggregate amount of those shares of Distributable Income for distribution. Those Assets may, if necessary, be converted to money by the Manager for the purposes of payment.

#### **Over/under provisions**

- 10.7 Following the distribution of those shares of the Distributable Income for a Distribution Period out of the Assets set aside under clause 10.6:
- (a) if there is an over provision, the excess remains part of the Trust;  
and
  - (b) if there is an under provision, the Manager may apply further Assets to meet the distribution.

#### **Distribution of Distributable Income**

- 10.8 Subject to any deductions made under clause 10.16, the Manager must distribute to each person the person's entitlement to Distributable Income for a Distribution Period. That distribution must occur within two months after the Distribution Calculation Date for the Distribution Period.

#### **Other Distributions**

- 10.9 The Manager may at any time distribute any amount of capital or income to Members pro rata according to the number of Units in the Trust they hold as at a time decided by the Manager. The distribution may be in cash, by way of additional Units or in the form of other Assets under clause 11.9.

#### **Availability of reinvestment**

- 10.10 The Manager may decide whether to permit or require the Members to reinvest some or all of any distribution.

#### **Terms of reinvestment**

- 10.11 If the Manager decides to permit or require reinvestment, it must notify Members of the procedure and terms for reinvestment and any change in the procedure or terms.

#### **Separate accounts**

- 10.12 The Manager may keep separate accounts of different categories or sources, or both, of receipts, profits, gains, deductions or credits for tax purposes, and may allocate receipts, profits gains, deductions or credits from a particular category or source, or both, to particular Members. Where the Manager allocates receipts, profits, gains, deductions or credits from a particular category or source to a Member other than pro rata with all other Members, the Manager must notify the Member.

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**Issue date**

- 10.13 If reinvestment applies, the Manager is taken to have received and accepted an application to reinvest distributions and the Units are taken to be issued on the date determined in accordance with clause 6.6.

**Position on transfer of Units**

- 10.14 A person who is or was a Member as at a Record Date remains entitled to their share (if any) of the Distributable Income under clause 10.4 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

**Deductions from Distributable Income**

- 10.15 The Manager may deduct from any entitlement of a person to a share of Distributable Income any amount which the Manager is required or authorised to deduct under clause 11.8 and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid, distributed or reimbursed out of the Trust or reimbursing the Manager for the payment of the Tax to the person or authority entitled to it.

**Fractions**

- 10.16 If the share of Distributable Income for a Member determined under clause 10.4 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated and under clause 10.4 and the fraction of the cent becomes an Asset.

**Classification of items**

- 10.17 Without limiting clause 10.2, the Manager may determine:
- (a) whether any receipt, profit gain, cost, expense or outgoing is to be treated, for the purposes of this constitution, as being on income or capital account and may, in making that determination, reclassify amounts which are income as capital, and amounts which are capital as income;
  - (b) the extent to which reserves or provisions need to be made; and
  - (c) whether any item of income should be recognised as it is received or as it accrues (but not yet received).

**Liability**

- 10.18 The Manager does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 10, or the AMIT Regime, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

**Member may direct**

- 10.19 The Manager may act on a direction given by a Member in such form as the Manager requires to pay to a third party nominated in the direction all or part of the Member's entitlement to distributions of income and capital under this clause 10 or under clause 22 on winding up.

**Tax attributable to certain Members**

- 10.20 Where any Tax attributable to the ownership of Units by certain Members is paid or to be paid from the Assets, the entitlement to Distributable Income of those Members may be adjusted by the Manager so that the entitlement to Distributable Income of all other Members is equivalent to the amount they would receive in the absence of such Taxes.

**Periodic payments to Holders of Financial Instruments**

- 10.21 The Manager must pay to Holders of Financial Instruments all coupon, interest, distribution or other periodic payments required to be paid to the Holders of Financial Instruments under the terms of those Financial Instruments with such payments to be made at the time and in the manner set out in the terms of those Financial Instruments.

**Distributions Paid in Different Currencies**

- 10.22 The Manager may provide a facility under which Members may receive their entitlement to the Distributable Income from time to time in such currency or currencies as they may request by notice to the Manager in writing and which the Manager may approve, and in such event the Manager may arrange to convert a Member's entitlement to Distributable Income into the currency in which it is to be paid on a date being:

- (a) the date that the Distributable Income in respect of a Distribution Period is determined,
- (b) the Distribution Calculation Date in respect of a Distribution Period,
- (c) the date of payment of distribution entitlements in respect of a Distribution Period; or
- (d) such other date as the Manager may determine.

The Manager may maintain bank accounts in such currencies as may be appropriate for this purpose.

**10A AMIT Regime****AMIT election**

- 10A.1 The Manager may, under the AMIT Regime, make an election to determine the Trust to be an attribution managed investment trust for the purposes of the Tax Act.



## Unders and overs

- 10A.2 The Manager may determine how any Unders or Overs that arise for the Trust are to be dealt with in accordance with the AMIT Regime. The Trustee is not liable to any Member or former Member with respect to how it addresses any Unders or Overs, provided that the Trustee addresses the Unders and Overs in accordance with the AMIT Regime, and irrespective of whether the choices made result in an attribution outcome for a Member or former Member that is different from the attribution outcome if the Manager had not made the choice, or had made the choice differently.

## Attribution of taxable income to Member

- 10A.3 Following the end of a Financial Year which is an AMIT Income Year, the Manager must attribute the Determined Trust Components of each particular category or character for tax purposes to Members in accordance with the Tax Act.
- 10A.4 The Manager may establish principles (“**Attribution Principles**”) to determine the manner in which Determined Trust Components are attributed to Members.
- 10A.5 If there are no Attribution Principles for an AMIT Income Year the Manager must attribute to each Member in respect of an AMIT Income Year:
- (a) if distributions have been paid to Members in respect of the AMIT Income Year (whether of Distributable Income or any other distributions pursuant to clause 10.9), so much of any Determined Trust Components of the Trust for the AMIT Income Year as the Manager reasonably determines based on the Member’s proportionate share of the total distributions paid in respect of the AMIT Income Year; and
  - (b) if no distributions have been paid to Members in respect of the AMIT Income Year, so much of any Determined Trust Components of the Trust for the AMIT Income Year as the Manger reasonably determines based on the Member’s proportionate share of the total units on issue as at the last day of the AMIT Income Year.

## Member must notify, provide information and indemnify Manager in relation to objections

- 10A.6 If a Member or former Member objects to the basis of the attribution of the Determined Member Components for the purposes of the AMIT Regime, including, without limitation, by making a Member Objection Choice, the Member or former Member must:
- (a) provide the Manager with a copy of the objection notice, including the basis for objection, within the time the member is required to do so under the Tax Act;

- (b) provide to the Manager any information the Manager reasonably requests in order to assess the Member's objection or proposed objection; and
- (c) indemnify the Manager against all costs and liabilities incurred by the Manager as a result of the objection or proposed objection.

#### **Consequences if objection made**

- 10A.7 If a Member or former Member makes an objection to the basis of attributing the Determined Trust Components of the Trust under the AMIT Regime, including, without limitation, by making a Member Objection Choice the Manager may:
- (a) take such action as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members to be protected, including in dealings with the Commissioner of Taxation; and
  - (b) amend its attribution of the relevant Determined Trust Components to the Members, having regard to the principles in clauses 10A.3, 10A.4 and 10A.5, and issue amended AMMA Statements to Members.

#### **Limitation of liability**

- 10A.8 The Manager has no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to an objection to the basis of attribution of the Determined Trust Components of the Trust under the AMIT Regime, including, without limitation, by the Member making a Member Objection Choice.

#### **Manager has a right to be indemnified for Tax payable**

- 10A.9 Without limiting clause 18, each Member or former Member is required to indemnify the Manager for:
- (a) any Tax payable by the Manager as a result of the application of the AMIT Regime which the Manager reasonably determines relates to the Member or former Member; and
  - (b) any other costs, expenses or liabilities incurred by the Manager as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under this clause.

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

- 10A.10 The Manager may, if it is entitled to be indemnified by a Member or former Member under clause 10A.9, or under the AMIT Regime:
- (a) deduct (under clause 11.8) from any amounts owing to the particular Member, the aggregate of any amounts which the Manager is entitled to be indemnified under clause 10A.9, or under the AMIT Regime; and
  - (b) redeem (under clause 8.13) Units held by the Member to satisfy any amounts owed to the Manager under clause 10A.9.

## 11 Payments

### Payment method

- 11.1 Money payable by the Manager to an Investor may be paid in any manner the Manager decides, including:
- (a) by cheque sent through the post directed to the address of the Investor as shown in the Register or, in the case of joint holders, to the address of the joint holder first named in the Register;
  - (b) by cheque sent through the post directed to such other address as the Investor or joint holder in writing directs; or
  - (c) by any method of direct credit or electronic transfer determined by the Manager to an account (of a type approved by the Manager) as provided in writing by the Investor or holders shown on the Register, or to such person or place directed by them.

Payment of any money under this clause is at the risk of the Investor to whom it is sent.

- 11.2 If the Manager determines under clause 11.1(c) that payments will be made only by direct credit or electronic transfer into an account (of a type approved by the Manager) nominated by the Investor or holder(s) shown on the Register, but no such account is nominated by the Investor or holder(s) or an electronic transfer into the nominated account is rejected or refunded, the Manager may credit the amount payable to an account of the Manager or its nominee held on behalf of the Trust to be held until:
- (a) the Investor nominates a valid account; or
  - (b) the amount is required to be dealt with in accordance with any law relating to unclaimed moneys.

- 11.3 An amount credited to an account under clauses 11.1(c) or 11.2 is to be treated as having been paid to the Investor at the time it is credited to that account. The Manager will not be a trustee of the money other than under this constitution and no interest will accrue on that amount.

### Electronic transfers

- 11.4 Without limitation to clauses 11.1 and 11.2, if the Manager attempts to make a payment of money to an Investor by electronic transfer and that transfer is unsuccessful, notwithstanding any instruction or agreement to the contrary, the Manager may send that money by cheque to the Investor at the last known address of that Investor.

### Cheques

- 11.5 The Manager may cancel any cheque which is not presented within 12 months from its date of issue. Where a cheque which is cancelled was drawn in favour of an Investor, the Manager may reinvest the money in Units and if relevant Attached Securities in the name of that Investor at the application price for the Units and Attached Securities prevailing at the time the cheque is cancelled (if the Investor is a Member) or deal with the money in accordance with any relevant legislation dealing with unclaimed moneys.

**Rounding**

- 11.6 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

**Joint Investors**

- 11.7 A payment to any one of joint Investors will discharge the obligations of the Manager in respect of the payment.

**Deduction of Tax and amounts owing**

- 11.8 The Manager may deduct from any amount to be paid to, or received from, a person who is or has been an Investor, any amount of Tax (or an estimate of it) or any other amount which the Manager is required or authorised to deduct in respect of that payment or receipt by any applicable law or by this constitution, or which the Manager considers should be deducted.

**Transfer of Assets**

- 11.9 The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution of income or capital, or on winding up of the Trust, either:
- (a) with the consent of the Member; or
  - (b) if the Manager reasonably considers the transfer of Assets rather than cash is in the best interests of Members, without the consent of the Member.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the redemption, withdrawal offer or distribution (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions). If paragraph (a) of this clause 11.9 applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

For the purposes of this clause 11.9, the Manager is appointed as agent and attorney of each Member with power to agree on the Member's behalf to the transfer of Assets to the Member and to execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the transfer of Assets, including agreeing to become a member and/or holder of securities of a company or other body corporate or trust.

**12 Powers of the Manager****General powers**

- 12.1 Subject to this constitution, the Manager has all the legal capacity and powers in respect of the Trust both inside and outside Australia that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

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**Contracting powers**

- 12.2 The Manager in its capacity as trustee of the Trust has power to enter into any form of contract and to incur all types of obligations and liabilities, including:
- (a) to borrow or raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities);
  - (b) to grant all types of security (whether for the obligations of the Manager or another person);
  - (c) to grant guarantees and indemnities; and
  - (d) to enter into derivatives.

**Investment and lending powers**

- 12.3 The Manager in its capacity as trustee of the Trust may invest in, dispose of, or otherwise deal with property and rights in its absolute discretion. This includes the power to:
- (a) invest the whole or part of the Assets in a single type of asset, or in trusts or other entities managed or controlled by the Manager or its related body corporate, or such other investments as the Manager determines; and
  - (b) lend money and on-lend or provide financial accommodation to any person.

**Power of delegation**

- 12.4 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 12.5 The Manager may include in any such authorisation provisions to protect and assist those dealing with the agent or delegate, and to limit the Manager's liability as against persons other than a Member (in their capacity as a Member), as the Manager thinks fit.
- 12.6 The agent or delegate may be an associate of the Manager.

**Exercise of discretion**

- 12.7 The Manager may in its absolute discretion decide how and when to exercise its powers.

**Underwriting**

- 12.8 The Manager may enter into an arrangement with a person to underwrite:

- (a) the subscription, issue, offer for sale or purchase of Units, Options or Stapled Securities;
- (b) any instalment payment on Partly Paid Units;
- (c) the exercise of Options;
- (d) any security or debt instrument; or
- (e) any obligation (actual or prospective) or thing of any kind

on such terms as the Manager determines (including that the underwriter may take up any of those things not otherwise subscribed for or sold). Unless the agreement between the Manager and the underwriter expressly states the contrary intention, the underwriter will not be an agent or delegate of the Manager.

### **Voting**

- 12.9 Subject to the Corporations Act, the Manager may exercise all voting rights conferred by the Assets at its absolute discretion.

### **Credit Rating**

- 12.10 The Manager may arrange to have the Trust given a credit rating by a Ratings Agency and provide undertakings to the Ratings Agency from time to time in order to maintain any credit rating assigned to the Trust.

### **No limitation**

- 12.11 Nothing in this clause 11 limits anything else in this clause 11.

## **13 Retirement of Manager**

### **While a Registered Scheme**

- 13.1 While the Trust is a Registered Scheme, the Manager :
- (a) may retire as the responsible entity of the Trust as permitted by law; and
  - (b) must retire as the responsible entity of the Trust when required by law.

Subject to law, the Manager may appoint in writing another person to be the Manager.

### **While not a Registered Scheme**

- 13.2 While the Trust is not a Registered Scheme, the Manager:
- (a) may retire on 3 months' notice to Members (or such shorter period as they agree); and

- (b) must retire as the trustee of the Trust if required by law or by all Members.

On retirement, the Manager may appoint in writing another person to be the Manager.

### **New Manager**

- 13.3 Any replacement Manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

### **Release**

- 13.4 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.

## **14 Notices to Investors**

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### **Document includes notice**

- 14.1 In this clause 14, a reference to a document includes a notice and a notification by electronic means.

### **Form of document**

- 14.2 Unless expressly stated otherwise in this constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this constitution must be in writing.

### **Methods of service**

- 14.3 The Manager may give a document to an Investor:
  - (a) personally;
  - (b) by sending it by post to the address for the Investor in the Register or an alternative address nominated by the Investor;
  - (c) by sending it to an electronic address nominated by the Investor; or
  - (d) by notifying the Investor by an electronic means nominated by the Investor that:
    - (i) the document is available; and
    - (ii) how the Investor may use the nominated access means to access the document.

### **Post**

- 14.4 A document sent by post:
  - (a) if sent to an address in Australia, may be sent by ordinary post; and

- (b) if sent to an address outside Australia, must be sent by airmail, and in either case is taken to have been received on the day after the date of its posting.

### **Electronic means**

- 14.5 If a document is sent by electronic means, delivery of the document is taken:
- (a) to be effected by properly addressing and transmitting the electronic transmission; and
  - (b) is taken to have been given and received on the day after the date of its transmission.

### **Evidence of service**

- 14.6 A certificate in writing signed by a director or a secretary of the Manager stating that a document was sent, delivered or given to an Investor personally, by post or by other electronic means on a particular date is prima facie evidence that the document was so sent, delivered or given on that date.

### **Joint Investors**

- 14.7 A document may be given by the Manager to the joint Investors by giving it to the joint Investor first named in the Register.

### **Persons entitled to Units**

- 14.8 A person who by operation of law, transfer or other means whatsoever becomes entitled to any Unit is absolutely bound by every document given in accordance with this clause 14 to the person from whom that person derives title prior to registration of that person's title in the Register.

## **15 Notices to the Manager**

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A document given to the Manager for the purposes of this constitution or the Corporations Act must be given in writing (which includes an electronic communication), or in such other manner as the Manager determines. The document must bear the actual, or electronic signature of the Investor or a duly authorised officer or representative of the Investor unless the Manager dispenses with this requirement. Service is only effective at the time of receipt in legible form.

## **16 Meetings and Resolutions of Investors**

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### **Convening Members' meeting**

- 16.1 The Manager may at any time convene a Members' meeting whenever it thinks fit and must do so if required by the Corporations Act.



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**Members request for meeting - not Registered Scheme**

- 16.2 While the Trust is not a Registered Scheme, the Manager must convene a meeting of Members to consider a proposed resolution if the Manager receives a requisition in writing to convene a meeting to consider the resolution signed by Members with at least 25% of the votes that may be cast on the resolution.

**Members' request for meeting - Registered Scheme**

- 16.3 While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

**Notice while not Registered Scheme**

- 16.4 While the Trust is not a Registered Scheme:
- (a) a meeting of Members must be convened by notice sent to every Member entitled to attend and vote at the meeting;
  - (b) the notice of meeting need not set out the terms of any resolution to be proposed, but must state the general nature of the business to be transacted at the meeting. Sections 252B(6), (7) and (9) of the Corporations Act will apply to the calling of meetings as if the Trust is a Registered Scheme; and
  - (c) at least 10 days' notice of a meeting must be given to Members or such shorter notice as they agree.

**Notice while Registered Scheme**

- 16.5
- (a) While the Trust is a Registered Scheme, notice of a meeting of Members must be given in accordance with clause 14 and the Corporations Act, and while the Trust is Listed, the Listing Rules.
  - (b) Subject to clause 16.5(a), the content of a notice of Members' meeting convened by the Manager is to be decided by the Manager as it thinks fit.

**Cancellation or postponement of a meeting**

- 16.6 Where a meeting of Members is convened by the Manager, it may by notice, whenever it thinks fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place of the meeting. This clause does not apply to a meeting convened in accordance with the Corporations Act by Members, or by the Manager on the request of Members or to a meeting convened by a court.

**Proxy, attorney or Representative at postponed meeting**

- 16.7 Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a Members' meeting to be held on a specified date or at a Members' meeting or Members' meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a Representative unless the Member appointing the proxy, attorney or Representative gives to the Manager at its registered office notice in writing to the contrary not less than 48 hours (or any shorter period as the Manager may permit or as specified by the Corporations Act) before the time to which the holding of the meeting has been postponed.

#### **Non-receipt of or defective notice**

##### 16.8

- (a) The non-receipt of notice of a Members' meeting or cancellation or postponement of a Members' meeting by, or the accidental omission to give notice of a Members' meeting or cancellation or postponement of a Members' meeting to, a person entitled to receive notice does not invalidate any resolution passed at the Members' meeting or at a postponed meeting or the cancellation or postponement of a meeting.
- (b) A person who attends a Members' meeting waives any objection the person may have to:
  - (i) any failure to give notice, or the giving of a defective notice, of the meeting unless at the start of the meeting the person objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter which is not within the business referred to in the notice of meeting, unless the person objects to the consideration of the matter when first presented.

#### **Proxy, attorney or Representative appointments**

##### 16.9

- (a) An instrument appointing a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) and received at any time that the Manager prescribes or accepts, or the chairperson of a Members' meeting accepts.
- (b) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment received at the electronic

address or by the electronic means specified in the notice is taken to have been received at the registered office of the Manager and validated by the Member if there is compliance with the requirements set out in the notice.

- (c) If the Manager receives an instrument or form appointing a proxy, attorney or representative from a Member and the Manager considers that it is not properly executed or authenticated, or is incomplete or unclear:
- (i) if the name, or the name of the office, of the proxy, attorney or representative, is not filled in or is unclear, then the proxy, attorney or representative of that Member is the person specified by the Manager in the instrument or form of proxy or if no person is specified, the chairperson of that meeting;
  - (ii) if the instrument or form has not been duly signed or authenticated, the Manager may return the instrument or form to the appointing Member and request the Member sign or authenticate the instrument or form and return it to the Manager within a period determined by the Manager (which may be later than the time specified in the notice of meeting for the receipt of proxy appointments); and
  - (iii) if the instrument or form is otherwise unclear or incomplete, the Manager may:
    - (A) by oral or written communication, clarify with the Member any instruction on the appointment; and
    - (B) complete or amend the contents of any instrument or form to reflect the clarification in the instructions received from the Member (which may occur later than the time specified in the notice of meeting for the receipt of proxy appointments) and the Member appoints the Manager as its attorney for this purpose.

### **Proxy's authority to speak and vote**

- 16.10 A proxy's authority to speak and vote for a Member is not suspended while the appointing Member is present at the Members' meeting.

### **Number for a quorum**

- 16.11 Subject to clause 16.14, three Members present in person or by proxy, attorney or Representative, are a quorum at a Members' meeting unless the Trust has only one Member entitled to vote, in which case that one Member constitutes a quorum. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

Subject to clause 16.18(b), a Member placing a direct vote under clause 16.30 is not taken into account in determining whether or not there is a quorum at a Members' meeting.

### **Requirement for a quorum**

- 16.12 An item of business may not be transacted at a Members' meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairperson of the meeting (on the chairperson's own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **Quorum and time**

- 16.13 If within 15 minutes after the time appointed for a meeting (or any longer period of time as the chairperson may allow) a quorum is not present, the meeting:
- (a) if convened by on requisition of Members, is dissolved; and
  - (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Manager appoints by notice to the Members and others entitled to notice of the meeting.

### **Adjourned meeting**

- 16.14 At a meeting adjourned under clause 16.13(b), those Members present in person or by proxy, attorney or Representative are a quorum.

### **Absence of chairperson at Members' meeting**

- 16.15
- (a) Subject to the Corporations Act, the Manager may appoint a person to chair a meeting of Members.
  - (b) If a Members' meeting is held and the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may preside as chairperson of the meeting (in order of precedence):
    - (i) a person appointed in writing by the Manager as deputy chairperson (if any), including any director of the Manager; or

- (ii) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.
- (c) If at a Members' meeting the chairperson of that meeting acting under clauses 16.15(a) or 16.15(b) is unable or unwilling to chair all or part of that meeting, the chairperson may:
- (i) withdraw during the relevant part of the proceedings; and
  - (ii) subject to the Corporations Act, nominate any person who is a director of the Manager to be acting chairperson of the meeting during the relevant part of the proceedings.

On the conclusion of the relevant part of the proceedings, the acting chairperson of the meeting is to withdraw and the chairperson of the meeting acting under clauses 16.15(a) or 16.15(b) is to resume as chairperson of the meeting.

- (d) If a proxy instrument appoints the chairperson of the meeting as proxy for the part of the proceedings for which an acting chairperson is nominated, the proxy instrument is taken to be in favour of that acting chairperson for the relevant part of the proceedings.

### **Conduct of Members' meetings**

- 16.16 The chairperson of a Members' meeting (including any person acting with the authority of the chairperson):
- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (b) may require any person wishing to attend the meeting to comply with searches, restrictions or other security arrangements considered appropriate;
  - (c) may refuse entry to, or require security measures be taken in respect of any person who does not comply with security arrangements, who uses a recording or broadcasting device without consent, or who possesses an article considered to be dangerous, offensive or liable to cause disruption, or who was not entitled to notice of the meeting;
  - (d) subject to the Corporations Act, if there is insufficient room at the meeting venue, may arrange another or a second venue (without giving notice or putting the matter to a vote);
  - (e) may require the adoption of any procedure which is in the chairperson's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the Members' meeting; and
  - (f) may determine that a vote be disregarded and treated as not having been cast (without requiring that the matter be put to a vote), if a

person purports to cast a vote at or for the purposes of a Members' meeting in contravention of the Corporations Act or Listing Rules;

- (g) subject to the Corporations Act, may refuse to allow:
  - (i) any amendment to be moved to a resolution set out in the notice of that meeting;
  - (ii) any business to be transacted unless the general nature of the business is stated in the notice calling the meeting;
- (h) may withdraw from consideration by the meeting any resolution that is set out in the notice of that meeting (other than those requisitioned by Members or required by law); and
- (i) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairperson under this clause (including any person acting with the chairperson's authority) is final.

- 16.17 A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

## Multiple venues

### 16.18

- (a) Subject to this clause 16, the Corporations Act and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted, including a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) If a separate meeting place is linked to the main place of a Members' meeting by an instantaneous audio visual communication device which, by itself or in conjunction with other arrangements:
  - (i) gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
  - (ii) enables the Members in the separate meeting place to vote on a poll,

a Member present at the separate meeting place is taken to be present at the Members' meeting and entitled to exercise all rights as if they were present at the main place.

- (c) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in clause 16.18(b) is not satisfied, the chairperson may:
- (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under clause 16.18(b)) and transact business, and no Member may object to the meeting being held or continuing.

### **Adjournment of Members' meeting**

- 16.19 The chairperson of a Members' meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairperson may, but need not, seek the approval of the Members present. Unless required by the chairperson, no vote may be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### **Notice of adjourned meeting**

- 16.20 No new notice of the adjourned meeting need be given unless required by the Corporations Act. Notice of any adjourned meeting which may become necessary may be included in the notice convening the original meeting.

### **Questions decided by majority**

- 16.21 Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **When a poll is effectively demanded**

16.22

- (a) At a Members' meeting, a poll may be demanded by Members in accordance with the Corporations Act (and not otherwise) or by the chairperson.
- (b) The poll may be demanded:
  - (i) before a vote is taken;

- (ii) before the voting results on a show of hands are declared; or
- (iii) immediately after the voting results on a show of hands are declared.

## **Poll**

### 16.23

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) The results of the poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the chairperson considers appropriate.

## **Equality of votes - no casting vote for chairperson**

- 16.24 If there is an equality of votes, either on a show of hands or on a poll, the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative.

## **Circulated Resolution**

- 16.25 The Manager may make arrangements whereby Members may pass written resolutions which have been circulated for that purpose by completing (in a form satisfactory to the Manager) and returning such resolutions to the Manager within the time specified in the circulated resolution.

## **Resolutions binding**

- 16.26 A Resolution of Members binds all Members, whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

## **Objection to voting qualification**

### 16.27

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:



- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairperson of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

### **Voting - not a Registered Scheme**

16.28 While the Trust is not a Registered Scheme:

- (a) voting is by a show of hands, unless a poll is duly demanded or the Resolution proposed is required by this constitution or by law to be decided by a percentage of all Units; and
- (b) subject to the rights, obligations and restrictions attaching to any particular Units, each Member which is present in person or by proxy has:
  - (i) on a show of hands, one vote; and
  - (ii) on a poll, one vote for each whole Unit held.

In the case of joint Members, only the first named in the Register may vote unless the Manager otherwise agrees.

### **Voting – Registered Scheme**

16.29 While the Trust is a Registered Scheme, the provisions of the Corporations Act governing voting for meetings of members of Registered Schemes apply to the Trust.

### **Direct voting**

16.30 The Manager may determine that at a meeting of Members, a Member who is entitled to attend and vote on a Resolution at that meeting is entitled to a direct vote in respect of that Resolution. A “direct vote” includes a vote delivered to the Manager by post or other electronic means approved by the Manager. The Manager may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.

16.31 A direct vote on a Resolution at a meeting in respect of a Unit cast in accordance with clause 16.30 is of no effect and will be disregarded:

- (a) if, at the time of the Resolution, the person who cast the direct vote:
  - (i) is not entitled to vote on the Resolution in respect of the Unit; or
  - (ii) would not be entitled to vote on the Resolution in respect of the Unit if the person were present at the meeting of Members at which the Resolution is considered;

- (b) if, had the vote been cast in person at the meeting of Members at which the Resolution is considered:
  - (i) the vote would not be valid; or
  - (ii) the Manager would be obliged to disregard the vote;
- (c) subject to any rules prescribed by the Manager, if the person who cast the direct vote is present in person at the meeting of Members at the time the Resolution is considered; and
- (d) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Manager under clause 16.30.

16.32 Subject to any rules prescribed by the Manager, if the Manager receives a valid direct vote on a Resolution in accordance with clauses 16.30 and 16.31 and, prior to, after or at the same time as receipt of the direct vote, the Manager receives an instrument appointing a proxy, attorney or representative to vote on behalf of the same Member on that Resolution, the Manager may regard the direct vote as effective in respect of that Resolution and disregard any vote cast by the proxy, attorney or representative on the Resolution at the meeting of Members.

#### **Proxies**

16.33 Subject to clause 16.9, the provisions of the Corporations Act governing proxies for meetings of members of Registered Schemes apply to the Trust.

#### **Procedural irregularities**

16.34 A meeting of Members is not invalidated because of any procedural irregularity within the meaning of section 1322 of the Corporations Act.

#### **Minutes**

16.35 The minutes of a meeting of Members signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

#### **Option holders, Holders of Financial Instruments and classes**

16.36 The Manager may convene a meeting of a class of Members, or of Option Holders or a class of Option Holders, or of Holders of Financial Instruments or a class of Holders of Financial Instruments, and must do so if required by the Corporations Act. If it does so, this clause 16 applies as if it referred to Members of a class, or to Option Holders or Option Holders of a class, or to Holders of Financial Instruments or a class of Holders of Financial Instruments (as relevant) rather than Members or to a "Members' meeting", and with any other necessary adaptations, except that Option Holders may exercise any right they may have under the Corporations Act to attend a meeting and vote on a Resolution of Members, but otherwise may not vote on a Resolution of Members or attend a meeting of Members. If and to the

extent a Holder of Financial Instruments is entitled under the Corporations Act to vote at a meeting of Members, any resolution passed at that meeting will be binding on them.

## 17 Rights and liabilities of Manager

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### Holding Units

- 17.1 The Manager and its associates may hold Units, Options or Financial Instruments, or interests in any trust or company which is an associate of any of them, in any capacity.

### Other capacities

- 17.2 Subject to the Corporations Act, the Manager (and any of its associates to the extent applicable) may:
- (a) deal with itself (as trustee of the Trust or in another capacity), an associate or with any Investor;
  - (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate, or with any Investor, and retain for its own benefit any profits or benefits derived from any such contract or transaction; and
  - (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust.

### Manager may rely

- 17.3 The Manager may take and may act on:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
  - (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters on which they are consulted;
  - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
  - (d) any other document provided to the Manager in connection with the Trust on which it is reasonable for the Manager to rely,

and the Manager will not be liable for anything done, suffered or omitted to be done by it in good faith in reliance on that opinion, advice, statement, information or document.

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## 18 Limitation of liability and indemnity in favour of Manager

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### Limitation on Manager's liability

- 18.1 Subject to the Corporations Act, if the Manager acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Investors for any loss suffered in any way relating to the Trust.
- 18.2 Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust, including any liability under any contracts which it enters into as trustee of the Trust or in relation to any Assets, is limited to the Manager's ability to be indemnified out of the Assets.

### Indemnity in favour of Manager

- 18.3 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing its duties, or properly exercising any of its powers in the proper performance of its duties, in relation to the Trust.

### Liability for agents

- 18.4 To the extent permitted by the Corporations Act, the indemnity under clause 18.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 18.5 The indemnity under clause 18.3 is in addition to any indemnity allowed by law. It continues to apply in respect of any person who was the Manager after that person retires or is removed as trustee or responsible entity of the Trust.

### Right of indemnity not affected by unrelated breach

- 18.6 Where a Liability is incurred pursuant to a proper performance of the Manager's duties or in the proper exercise of its powers in the proper performance of its duties in relation to the Trust under this constitution or at law, the Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to itself or to any creditor of the Manager (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Manager or by any person or entity acting on behalf of the Manager.

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## 19 Liability of Investors

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### Liability limited

- 19.1 Subject to clauses 19.3 and 19.5, the liability of a Member, Option Holder or Holder of Financial Instruments is limited to the amount, if any, of any unpaid instalment of Application Price and any other amount, if any, which remains unpaid in relation to their subscription for their Units, Options or Financial Instruments.

**Member need not indemnify**

- 19.2 A Member, Option Holder or Holder of Financial Instruments need not indemnify the Manager if there is a deficiency in the Assets or if the claim of any creditor of the Manager in respect of the Trust cannot be satisfied out of the Assets.

**Tax or user pays costs**

- 19.3 The Manager is entitled to be indemnified by any current or former Investor to the extent that the Manager incurs any liability for Tax or costs which are not properly an expense of the Trust as a result of:
- (a) that person's action or inaction;
  - (b) an act or omission requested by that person; or
  - (c) any other matter arising in connection with Units, Options or Financial Instruments held by that person.

**Joint Investors**

- 19.4 Current and former joint Members, Option Holders and Holders of Financial Instruments are jointly and severally liable in respect of all payments including payments of Tax to which clause 19.3 applies.

**Recourse**

- 19.5 In the absence of separate agreement with a Member, Option Holder or Holder of Financial Instruments, and except for the amounts referred to in clauses 19.1 and 19.3, the recourse of the Manager and any creditor is limited to the Assets.

**Restrictions on Members**

- 19.6 An Investor:
- (a) must not interfere with any rights or powers of the Manager under this constitution;
  - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
  - (c) may not require an Asset to be transferred to them.

**No partnership**

- 19.7 Except as expressly provided in this constitution, there is no relationship of partnership or agency between the Manager and any Investor. Nothing in this constitution is to be construed as creating any association, joint venture or partnership among the Trust and any Stapled Entity for any purpose or authorising the share of the benefit of any assets (and any profits from assets) of the Trust or any Stapled Entity as a result of the Stapling.

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## 20 Remuneration and expenses of Manager

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### Subject to the Corporations Act

- 20.1 While the Trust is a Registered Scheme, the fees in this clause 20 may only be paid to the Manager to the extent they are payable in relation to the proper performance of the Manager's duties as responsible entity of the Trust.

### Management fee

- 20.2 The Manager is entitled to be paid a fee out of the Assets for its services in relation to the operation of the Trust equal to the Manager's reasonable estimate of its costs, including all overheads and internal expenses of the Manager, whether incurred directly by the Manager or reimbursed by the Manager to any of its related bodies corporate, for which it is not otherwise reimbursed pursuant to clause 20.6. The entitlement to this fee continues to the date of final distribution in accordance with clause 22. However, the Manager is not entitled to a management fee in respect of any period during which it is not appointed as trustee or responsible entity of the Trust.
- 20.3 The fee payable pursuant to clause 20.2 is to be payable from time to time upon demand by the Manager. The Manager may make demand for payment for all or part of the fee at any time if it has incurred costs whether or not it has paid those costs.
- 20.4 The Manager must produce a statement within 1 month from the end of each Quarter setting out the management fee for the Quarter and any amount remaining unpaid.

### Waiver of fees and expenses

- 20.5 The Manager may in respect of any period accept lower fees than it is entitled to receive or waive fees that it is entitled to receive under this constitution in respect of that period, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

### Costs and expenses

- 20.6 All costs and expenses incurred by the Manager in connection with the Trust and its consolidated or controlled entities (including a controlled sub trust) are payable or reimburseable out of the Assets or out of the assets of a consolidated or controlled entity of the Trust (including a controlled sub trust) but, while the Trust is a Registered Scheme, payment or reimbursement is only available in relation to the proper performance of the Manager's duties as responsible entity of the Trust. This includes any costs or expenses connected with the following, and no paragraph of this clause 20.6 limits any other paragraph:
- (a) this constitution and any amendment or proposed amendment to this constitution, the formation of any investment vehicle in which the Trust expects to have a direct or indirect interest substantially in proportion to the proposed interest;

- (b) the preparation, review, distribution and promotion of any prospectus, product disclosure statement or offering memorandum in respect of Units, Stapled Securities, Options, Financial Instruments or other promotion of the Trust or the Stapled Entities;
- (c) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the acts of the Manager or its agents in connection with the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register;
- (f) borrowing arrangements and raising money on behalf of the Trust or guarantees in connection with the Trust, including hedging costs and any gearing facility;
- (g) the admission of the Trust or Stapled Entities to the official list of ASX or any other recognised stock exchange, compliance with the rules of the exchange and quotation of any Units, Stapled Securities, Options, securities, debt instruments or other things of any kind;
- (h) any issue of Units, Stapled Securities, Options or Financial Instruments or any interests in, or rights associated with Units, Stapled Securities, Options or Financial Instruments or any other obligation (including any other securities or debt instruments of any kind) issued by the Trust or a Stapled Entity;
- (i) fees and expenses payable under property management agreements, including to related bodies corporate of the Manager;
- (j) fees and expenses payable under development framework agreements and design and construction agreements, including to related bodies corporate of the Manager;
- (k) investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management, supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (l) the services of asset managers, property managers, development managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any real property in which the Trust has a direct or indirect interest, which may include an associate of the Manager;

- (m) rates, development, repair, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants, costs of leasing (including marketing) and leasing incentives in relation to any real property in which the Trust has a direct or indirect interest;
- (n) travel and accommodation expenses of directors and employees of the Manager in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed Asset;
- (o) underwriting or managing any subscription or purchase of Units, Options or Financial Instruments, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under such agreement;
- (p) convening and holding meetings of Members and/or holders of Options, the implementation of any Resolutions and communications with Members and attending any meeting of the Stapled Entities;
- (q) Tax (including any amount charged by a supplier of goods or services or both to the Manager by way of or as a reimbursement for GST) and financial institution fees;
- (r) the engagement of agents, delegates, valuers, contractors, advisers (including legal advisers) and any other persons whether or not they are associates of the Manager;
- (s) preparation and audit of the taxation returns and accounts of the Trust;
- (t) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (u) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this sub-paragraph must be repaid;
- (v) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to, or insurance premiums paid in respect of Compliance Committee Members;



- (w) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to, or insurance premiums paid in respect of, external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (x) fees payable to any audit committee for the Trust appointed in accordance with ASX corporate governance guidelines or otherwise;
- (y) the cost of handling complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution Trust;
- (z) the cost of the Manager employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
- (aa) the preparation, implementation, operation, amendment and audit of the compliance plan;
- (bb) complying with any law, and any request or requirement of the ASIC and ASX;
- (cc) the registration of the Trust as a managed investments scheme and anything incidental to obtaining such registration;
- (dd) interest, discount, acceptance fees and all other borrowing costs and like amounts, banks fees and other charges;
- (ee) the costs of preparing, printing and sending to Members and/or holders of Options or Financial Instruments accounts, reports, distribution statements, cheques, circulars and other notices;
- (ff) any Stapling of Units to Attached Securities;
- (gg) in connection with any Stapling Proposal, Top Hat Proposal, Exchange Proposal or any other Reorganisation Proposal; and
- (hh) having the Trust rated by a Ratings Agency,

In this clause 20.6, "expenses" may include amounts paid by the Manager to related bodies corporate.

## **GST**

- 20.7 The fees payable to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including the supply of any goods, services, rights, benefits or things) then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an

additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

- 20.8 In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Manager is entitled to recover out of the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax.
- 20.9 If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:
- (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this constitution (including any increase in the amount charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or
  - (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with proper performance of the Manager's duties under this constitution (including the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);

and such increased cost or reduction is not compensated for by any other provision of this constitution, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.

## 21 Duration of the Trust

### Initial settlement

- 21.1 The Trust commenced on 1 April 1982 in accordance with clauses 2(2) and 11(1) of the deed dated 1 April 1982 between Westfield P.T.M. Limited, Perpetual Trustee Company Limited and P.T. Limited.

### Termination

- 21.2 The Trust terminates on the earlier of:
- (a) the date specified by the Manager as the date of termination of the Trust in a notice given to Members; and
  - (b) the date on which the Trust terminates in accordance with another provision of this constitution or by law.

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## 22 Procedure on termination

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### Realisation of Assets and payment of expenses

22.1 Following termination of the Trust, the Manager must:

- (a) realise the Assets, except to the extent that it determines to distribute Assets to Members in accordance with clause 11.9 pro rata according to their holding of Units as part of the winding up of the Trust; and
- (b) make payments (or set aside estimated amounts) from the Assets to pay the Trust's expenses and liabilities, and the costs or anticipated costs of winding up the Trust. These amounts will reduce the proceeds of winding up that a Member may otherwise receive, but a Member is not required to pay any of these amounts from their own funds.

To the extent that realisation of Assets is required, it must be completed in 180 days if practicable and in any event as soon as possible after that. The Manager may, however, postpone realisation of the Assets or any Asset if the Manager reasonably considers it would be in the best interests of Members to do so, and the Manager is not responsible for any consequent loss or damage attributable to that postponement.

### Auditor and liquidator

22.2

- (a) If, at the time it is to be wound up, the Trust is a Registered Scheme, the Manager must arrange for an independent audit of the final accounts of the Trust by a registered company auditor.
- (b) If the Trust is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Trustee to meet Liabilities from the Assets as and when they fall due, the Trustee may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the powers of the Trustee under this constitution as necessary to facilitate the winding up.

### Call on Partly Paid Units

22.3 If there is or (in the Manager's reasonable opinion) will be a deficiency in the Assets after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, any holder of Partly Paid Units must pay to the Manager on demand an amount determined by the Manager being whichever of the following the Manager requires:

- (a) the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the holder; or
- (b) the amount calculated as:

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

Where:

- P = the amount to be paid to the Manager;
- A = the amount of the deficiency referred to in this clause 22.3;
- B = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue; and
- C = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the holder.

- 22.4 A reference in clauses 22.3 and 22.6 to Partly Paid Units includes a reference to partly paid Options.

#### **Distribution following termination**

- 22.5 Any net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated, including the entitlement of Members to Distributable Income and amounts owing to Holders of Financial Instruments) and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members pro rata according to the number of Units they hold, but on the basis that such proceeds are divided amongst all Units in proportion to the respective proportions of the Application Price paid on such Units.

If any Option Holders have an entitlement to participate in the net proceeds of realisation, this calculation must be adjusted in a manner determined by the Manager to take that entitlement into account.

- 22.6 If any holder of a Partly Paid Unit fails to pay any amount remaining unpaid on that Partly Paid Unit in accordance with clause 22.3, the Manager may apply (with or without the consent of the holder) part or all of any distribution payable to that holder in full or partial satisfaction of the amount due under clause 22.3.
- 22.7 The entitlement, if any, of a holder of an Option to any distribution of net proceeds of realisation will be determined by the terms of issue of that Option.
- 22.8 The Manager may distribute the proceeds of realisation in instalments.
- 22.9 Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the later of:

- (a) the date on which there are no amounts owing under clauses 22.3 or 22.4 which the Manager reasonably believes are recoverable; and
- (b) the date of final distribution under clauses 22.5 to 22.8.

During that period, the Manager may not accept any application for Units from a person who is not an existing Member.

## **23 Amendments to this constitution and application of provisions**

### **Manager may amend**

23.1 Subject to section 601GC of the Corporations Act while that section applies to the Trust, this constitution may be amended:

- (a) by Resolution of Members; or
- (b) by deed executed by the Manager.

If the constitution is amended by Resolution of Members, the Manager may give effect to the amendments by executing a supplemental deed.

### **Listing Rules**

23.2 While the Trust is Listed:

- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

## Corporations Act and ASIC Relief

### 23.3

- (a) If the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Manager has determined it wishes to rely or which is expressly applicable to the Trust and the Manager requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("**Required Provisions**"); or
- (b) if any part of this constitution (a "**Required Part**") is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX ("**Regulatory Requirement**") and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

- (i) authorise the Manager to make the amendments referred to in this clause 23.3 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

## Application of Corporations Act and Listing Rules

### 23.4 In this constitution:

- (a) except as otherwise provided in a particular clause or by law, a requirement of the Corporations Act only applies while the Trust is a Registered Scheme; and
- (b) a requirement of the Listing Rules only applies while the Units are Officially Quoted.

## ASIC Class Orders

- 23.5 In accordance with ASIC Instrument 2017/125 or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this constitution because of the operation of clause 23.3 that is covered by such instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 23.5 applies are made pursuant to the power in clause 23.1 but in

respect of such changes the requirements of clause 23.1 are to be read subject to this clause 23.5.

### **Paramountcy of provisions**

23.6 Subject to clause 29.7 and the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:

- (a) first, clauses 23.2 and 23.3 and provisions taken to be included or amended under them;
- (b) then, the Stapling Provisions set out in Schedule 1 and the provisions in clause 24 regarding Stapling and the Stapling Provisions; and
- (c) then, the Reorganisation Proposals set out in clauses 24.3 to 24.7.

Paragraphs (b) and (c) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

## **24 Stapling Provisions and Reorganisation Proposals**

### **Stapling**

24.1

- (a) Stapling of Units to the other components of Stapled Securities has already commenced and accordingly the Stapling Provisions apply. The Manager has the further powers in relation to Stapling and Unstapling set out in this clause 24 and Schedule 1.
- (b) The Manager may determine in respect of any future Stapling:
  - (i) that the Stapling Provisions will take effect in accordance with clause 24.2; and
  - (ii) the Stapling Commencement Time.

### **Stapling Provisions**

24.2 Subject to clause 24.1(a), if the Manager determines, the Stapling Provisions take effect on and from the Stapling Commencement Time until they cease to apply in accordance with this constitution.

While the Stapling Provisions apply:

- (a) subject to clause 23.6, this constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act, the Listing Rules or any other law; and

- (b) provisions of this constitution, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

### **Power to enter into Reorganisation Proposals**

24.3 Without limiting clause 12 the Manager may enter into:

- (a) without reference to or approval from Members:
  - (i) a Consolidation or Division Proposal;
  - (ii) a Stapling Proposal; or
- (b) a Realisation Transaction, a Top Hat Proposal, an Exchange Proposal and any other Reorganisation Proposal, which is in each case approved by Ordinary Resolution.

It is a term of issue of each Unit that the Unit may be subject to a Reorganisation Proposal as provided in this clause 24.3. Each Unit Holder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

### **Power to give effect to the Stapling Provisions and Reorganisation Proposals**

24.4

- (a) In order to effect a Stapling of securities to the Units as contemplated by clause 24.1 and Schedule 1, the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions.
- (b) If the Manager determines to enter into a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal in accordance with clause 24.3, then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (c) If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 24.3(b), then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

### **Specific Powers**

24.5 Without limiting clause 24.4, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 24.3(b), the Manager has power to:



- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
- (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body, and be bound by the constitution of that company or body;
- (c) issue Units;
- (d) transfer Assets;
- (e) if Units or other securities are to be transferred as part of a Reorganisation Proposal, to give on behalf of Members a warranty as to good and unencumbered title the Units or securities to be transferred, and other warranties customary in a transfer of securities; and
- (f) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

#### **Appointment of Manager as agent and attorney**

24.6 Without limiting clause 24.5, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 24.3(b), the Manager is irrevocably appointed the agent and attorney of each Member to:

- (a) apply any proceeds referred to in clause 24.5(a) on behalf of the Member;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;
- (c) execute a transfer of Assets to a Member; and
- (d) execute all documents and do all things (including giving all consents and warranties) which the Manager reasonably considers are necessary or desirable to give effect to the Stapling or relevant transaction or proposal.

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

#### **Liability of Manager**

24.7 The Manager has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Manager doing or

refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling or any Reorganisation Proposal.

#### **Paramountcy of provision**

- 24.8 The provisions of this clause 24 prevail over other provisions of this constitution in the case of any inconsistency to the extent provided in clause 23.6.

## **25 Compliance committee**

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If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.

## **26 Complaints**

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While the Trust is a Registered Scheme, if an Investor submits to the Manager a Complaint in relation to the Trust, the Manager:

- (a) must, if the Investor is a Retail Client, comply with the requirements of section 912A(2) of the Corporations Act applicable to the Complaint; and
- (b) in respect of a Complaint from an Investor who is not a Retail Client:
  - (i) must acknowledge receipt of the Complaint as soon as possible and in any event within 14 days from receipt;
  - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle Complaints;
  - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the Complaint by endeavouring to correct the error;
  - (iv) may give any of the following remedies to the complainant:
    - (A) information and explanation regarding the circumstances giving rise to the Complaint;
    - (B) an apology; or
    - (C) compensation for loss incurred by the Investor as a direct result of the breach (if any); and

- (v) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the Complaint:
  - (A) the determination in relation to the Complaint;
  - (B) the remedies (if any) available to the Investor; and
  - (C) information regarding any further avenue for Complaint.
- (c) For the purposes of this clause 26, a reference to an Investor includes any person who has an “interest” in the Trust as that term is defined in section 9 of the Corporations Act.

## 27 Restricted Securities

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- 27.1 This clause 27 applies while the Units or Stapled Securities are Officially Quoted.
- 27.2 In this clause 27:
  - (a) **dispose and disposed** of have the meaning given in the Listing Rules;
  - (b) **Escrow Period** means, in relation to Restricted Securities, the escrow period applicable to those Restricted Securities under the Listing Rules;
  - (c) **Holding Lock** has the meaning given in the Listing Rules;
  - (d) **Restriction Agreement** means a restriction agreement or deed in a form set out in the Listing Rules or otherwise approved by ASX; and
  - (e) **Restricted Securities** has the meaning given in the Listing Rules.
- 27.3 If the Listing Rules require, a holder of Restricted Securities must not dispose of, or agree to dispose of, Restricted Securities during the Escrow Period applicable to those securities, except as permitted by the Listing Rules or ASX. The Manager must not, and will refuse to, acknowledge any disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- 27.4 During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Restricted Securities.
- 27.5 If the Restricted Securities are in the same class as Securities that are quoted on ASX, the holder will be deemed to have agreed in writing that

the Restricted Securities must be kept on the Trust's issuer sponsored sub-register and are to have a Holding Lock applied for the Escrow Period.

- 27.6 The holder of Restricted Securities will not be entitled to participate in any return of capital on those Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- 27.7 If a holder of Restricted Securities breaches a Restriction Agreement or this clause 27, the holder of the Restricted Securities will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of the Restricted Securities for so long as the breach continues.

## 28 Small holdings

- 28.1 This clause 28 applies while the Units or Stapled Securities are Officially Quoted.
- 28.2 Subject to the provisions of this clause 28, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.
- 28.3 If the Manager determines that a Member is a Small Holder or a New Small Holder the Manager may give the Member a Divestment Notice to notify the Member:
- (a) that the Member is a Small Holder or a New Small Holder, the number of Units comprising and the Market Price of the Small Holding or New Small Holding and the date on which the Market Price was determined;
  - (b) that the Manager intends to sell the Relevant Units in accordance with this clause 28 after the end of the Relevant Period specified in the Divestment Notice;
  - (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Manager in writing that the Member desires to retain the Relevant Units and that, if the Member does so, the Manager will not be entitled to sell the Relevant Units under that Divestment Notice; and
  - (d) after the end of the Relevant Period the Manager may for the purpose of selling the Relevant Units that are in a CS Facility holding initiate a holding adjustment to move those Units from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with those Operating Rules.

- 28.4 For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a

- Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.
- 28.5 At the end of the Relevant Period, the Manager is entitled to sell on-market or in any other way determined by the Manager:
- (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Manager in writing before the end of the Relevant Period that:
    - (i) the Member desires to retain the Relevant Units; or
    - (ii) the Units of the Member have increased to at least a marketable parcel (as provided under the Listing Rules),in which event the Manager must not sell those Relevant Units under that Divestment Notice; and
  - (b) the Relevant Units of a Member who is a New Small Holder.
- 28.6 The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 28 but unless the Relevant Units are sold within six weeks after the end of the Relevant Period, the Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.
- 28.7 To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each of its directors and secretaries jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:
- (a) to initiate a holding adjustment to move the Relevant Units from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
  - (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.
- 28.8 A statement in writing by or on behalf of the Manager under this clause 28 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 28 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.
- 28.9 The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause 28. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred

to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 28.

Subject to clause 28.10, where Relevant Units of a Member are sold by the Manager on behalf of the Member under this clause, the Manager must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds using any payment method chosen by the Manager including under clause 11 . Payment of any money under this clause 28 is at the risk of the Member to whom it is sent.

- 28.10 In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause 28, the Manager is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Manager. In any other case, the Manager or a purchaser must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Manager in connection with the sale and transfer of the Relevant Units.
- 28.11 The remedy of a Member to whom this clause 28 applies, in respect of the sale of the Relevant Units of that Member, is expressly limited to a right of action in damages against the Manager to the exclusion of any other right, remedy or relief against any other person. The Manager is only liable if it has failed to comply with the requirements of this clause 28 and its liability is limited to the value of the Relevant Units at the time of sale.
- 28.12 Unless the Manager determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause 28, then despite any other provisions in this constitution, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a New Small Holder. Any distributions that would, but for this clause 28, have been paid to that Member must be held by the Manager and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.
- 28.13 If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 28.14).
- 28.14 From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this clause 28 to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite clause 28.13 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.

28.15 While Stapling applies:

- (a) the references to Units and Relevant Units in this clause 28 will apply to the Stapled Securities held by the Member; and
- (b) no sale under this clause 28 may occur unless, at the same time as Units are sold, an identical number of Attached Securities are also sold to the Same Person.

## 29 Interpretation

### Definitions

29.1 In this constitution, these words and phrases have the following meaning unless the contrary intention appears:

**AMIT:** a trust which is an attribution managed investment trust for the purposes of the Tax Act.

**AMIT Income Year:** an income year in which the Trust is an AMIT.

**AMIT Regime:** the regime for the taxation of AMITs, and their members, as set out in the Tax Act.

**AMMA Statement:** has the meaning given to that phrase in the Tax Act.

**Application Price:** the application price for a Unit, Option or Financial Instrument determined in accordance with, or pursuant to, clause 5 or paragraph 4 of Schedule 1.

**Applications Account:** an account in which the Manager or, if permitted, its agent holds money on trust for applicants for Units, Options or Financial Instruments in accordance with section 1017E of the Corporations Act or otherwise.

**Approved Valuer:** any person, appointed by the Manager but independent of the Manager, who is properly qualified to conduct a valuation.

**ASIC:** the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

**ASIC relief:** any declaration or modification made or exemption granted by ASIC at any time and remaining in force and applicable to the Trust or the Manager.

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units, Options or Financial Instruments have not yet been issued, or proceeds of redemption which have not yet been paid. For the purpose of calculating Net Asset Value, any amount set aside for distribution under clause 10.6 is also not an asset of the Trust.

**ASX:** ASX Limited and each and every other stock exchange and marketing institution in Australia on which for the time being Units or Options are listed for quotation with the approval of the Manager.

**Attached Securities:** has the same meaning as in Schedule 1.

**Business Day:** while Units are Officially Quoted, a day which is a Trading Day for the purpose of the Listing Rules, or if not Officially Quoted, a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney and Melbourne.

**Complaint:** an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

**Compliance Committee Member:** a member of a compliance committee established by the Manager in connection with the Trust.

**Consolidation or Division Proposal:** a proposal to consolidate, divide or convert Units, Options or Financial Instruments in a ratio determined by the Manager, including rounding of the number of Units, Options or Financial Instruments as the Manager determines.

**Corporations Act:** Corporations Act 2001 (Cwlth), and a reference to the Corporations Act or a provision of it includes a reference to the Corporations Act or that provision as modified by any applicable ASIC Relief.

**CS Facility:** a licensed clearing and settlement facility that is prescribed by regulations made for the purposes of the definition of CS Facility in the Corporations Act.

**CS Facility Operator:** the operator of the CS Facility.

**Determined Member Component:** has the meaning given to that phrase in the Tax Act.

**Determined Trust Component:** has the meaning given to that phrase in the Tax Act.

**Distributable Income:** for a period is the amount determined by the Manager under clauses 10.1 and 10.2.

**Distribution Calculation Date:** the last day of each Financial Year and such other days as the Manager designates.

**Distribution Period:**

- (a) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and



- (b) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

**Divestment Notice:** a notice given under clause 28 to a Small Holder or a New Small Holder.

**Escrow Period:** has the same meaning as in the Listing Rules.

**Exchange Proposal:** a proposal whereby a written offer to transfer or redeem some or all of their Units, Options or Financial Instruments is made to Investors or to specific Investors in consideration of any or all of:

- (a) the issue or transfer of units in another trust, or interests of whatever nature in or in relation to another entity;
- (b) a cash payment; and
- (c) a transfer of assets.

**Financial Instrument:** has the meaning given in clause 3.29.

**Financial Year:**

- (a) for the last financial year, the period from 1 January before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (b) in all other circumstances, the 12 month period ending on 31 December in each year.

**Fully Paid Unit:** a Unit on which the Application Price has been fully paid.

**GST:** a goods and services tax, value added tax, consumption tax or a similar tax, or a tax on services only.

**Holder of a Financial Instrument:** the person Registered in the register of Financial Instrument holders and includes persons jointly Registered or, if no such register is kept, the holder of a Financial Instrument.

**Investor:** a Member, Option Holder or Holder of Financial Instruments, or holder of Stapled Securities.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Manager in respect of the Trust in accordance with the Listing Rules.

**Liabilities:** all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust and (subject to the terms of issue of the relevant Financial Instruments) the amount which would be payable to the Holders of Financial Instruments on the redemption of outstanding Financial Instruments under clause 7.4, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

**Liquid:** has the same meaning as in the Corporations Act.

**Listed:** admitted to the Official List whether or not quotation of Units, Stapled Securities or Options is deferred, suspended or subjected to a trading halt, and **Listing** has a corresponding meaning.

**Listing Rules:** the listing rules of the ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Manager:**

- (a) unless paragraph (b) applies, the first trustee and responsible entity of the Trust, being Scentre Management Limited (ACN 001 670 579), and any successor for the time being as trustee or responsible entity; and
- (b) while the Trust is a Registered Scheme, the company which is registered with ASIC as the responsible entity for the Trust under the Corporations Act.

**Market Price of a Unit:** on a particular day is:

- (a) the Weighted Average Market Price per Unit for the Pricing Period which ends 2 Trading Days before the relevant day, provided that if the Weighted Average Market Price is calculated in respect of Units which have an entitlement to distributions which is different to the entitlement of new Units the Manager must make an appropriate adjustment of the Weighted Average Market Price to reflect the difference; or
- (b) if:
  - (i) Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) In the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit that an Approved Valuer determines to be the market price of the Unit on the relevant day, having regard to the recent trading prices of Units, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant

and appropriate), and any other matters which the valuer believes should be taken into account.

If it is necessary to calculate the Market Price of a Financial Instrument or an Option over a Unit, it is to be determined according to the definition of Market Price of a Unit, with a reference to a Unit in that definition being read as a reference to a Financial Instrument or an Option over a Unit, as the case requires.

**Market Value** of an Asset means:

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, at face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Manager, unless:
  - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
  - (ii) the Manager reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by an Approved Valuer;
  - (iii) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the trust on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the trust is operated by the Manager or a related body corporate of the Manager, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the trust;
- (c) in the case of any other Asset, the value of the Asset determined in accordance with accounting standards or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an Approved Valuer.

**Market Rate:** the average mid rate for bills of exchange which have a tenor of three months which average is displayed on the “BBSW” page of the Thomson Reuters Screen (or the appropriate page of such information service which publishes that rate from time to time in place of Thompson

Reuters) on the first day of each three month period for which the rate is to be determined or, if there is a manifest error in the calculation of that average rate or it is not displayed by 10.30am Sydney time on that day, then the rate specified in good faith by the Manager as the average rate for bills of that tenor bid and offered by at least four leading financial institutions in Sydney on that date (whether such bids and offers are displayed on the "BBSW" page or otherwise evidenced).

**Member:** the person Registered as the holder of a Unit (including persons jointly Registered).

**Member Objection Choice:** a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.

**Net Asset Value:** the value of the Assets calculated in accordance with clause 9 less the Liabilities.

**New Small Holder:** a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding:** a holding of Units or, while Stapling applies, Stapled Securities (created by the transfer of a parcel of Units) created after the current clause 28. came into effect, the aggregate Market Price of which at the time a proper transfer was initiated or a paper based transfer was lodged was less than a marketable parcel of Units as defined in the Listing Rules..

**Official List:** the official list of ASX as defined in the Listing Rules.

**Officially Quoted:** quoted on the Official List including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension and **Official Quotation** has a corresponding meaning.

**Operating Rules:** the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended from time to time (whether in respect of the Trust or generally).

**Option:** an option to subscribe for a Unit or a Stapled Security.

**Option Holder:** the person Registered in the Register of option holders.

**Ordinary Resolution:** a Resolution of Members where the required majority is a simple majority.

**Over:** has the meaning given to that term in the Tax Act.

**Partly Paid Unit:** a Unit on which the Application Price has not been paid in full.

**Prescribed Interest Rate:** the rate determined by the Manager for the purpose of this constitution, including any revised rate or new

determination, and in the absence of a determination means the Market Rate plus 3% per annum.

**Pricing Period:** means the period of ten consecutive Trading Days ending on the Trading Day determined by the Manager.

**Quarter** means each 3 month period ending on the Quarter End Date or a shorter period which begins on the day after a Quarter End Date and ends on the date of retirement of the Manager or the final distribution on winding up of the Trust.

**Quarter End Date** means each 31 March, 30 June, 30 September and 31 December.

**Ratings Agency** means any recognised ratings agency as determined by the Manager.

**Realisation Transaction:** a transaction which enables all Members to realise all or a substantial portion of their investment in the Trust, including:

- (a) a sell down of a substantial portion of the Units where all Members have the opportunity to participate in the sell down;
- (b) a sale of substantial Assets where all Members have an opportunity to have their Units redeemed or transferred; or
- (c) any other arrangement which has substantially the same economic effect as a transaction referred to in paragraph (a) or (b).

**Redemption Price:** the redemption price calculated in accordance with clause 7.

**Record Date:** the date for the lodgement of transfers for the purpose of identifying the Members who are to have relevant entitlements.

**Register:** the register of Members and, if applicable, Option Holders or Holders of Financial Instruments which is kept by or on behalf of the Manager.

**Registered:** recorded in the Register.

**Registered Scheme:** a trust which is registered with ASIC as a managed investment scheme under the Corporations Act.

**Registrar:** the person appointed to maintain the Register.

**Registration:** recording in the Register.

**Relevant Period:** the period specified in a Divestment Notice under clause 28.

**Relevant Units:** the Units specified in a Divestment Notice.

**Reorganisation Proposal:**

- (a) any Realisation Transaction;
- (b) a Consolidation or Division Proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal; or

any other proposal to reorganise or restructure the capital of the Trust and, if relevant, any Stapled Entity, in any way.

**Representative:** a person appointed to represent a corporate Member at a Members' meeting in accordance with the Corporations Act.

**Resolution:**

- (a) Subject to clause 16.32 and rules prescribed by the Manager pursuant to clause 16.30, a resolution passed at a meeting of Members (or if applicable Option Holders or Holders of Financial Instruments):
  - (i) on a show of hands, by the required majority of Members (or if applicable Option Holders or Holders of Financial Instruments) present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll, by the required majority of votes cast by Members (or if applicable Option Holders or Holders of Financial Instruments) present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members (or if applicable Option Holders or Holders of Financial Instruments) holding the required majority of the Units, Options or Financial Instruments.

Except where this constitution or any applicable law provides otherwise, the "required majority" is a simple majority.

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

**Retail Client:** has the same meaning as in the Corporations Act.

**Same Person** means:

- (a) while the Trust is not Listed, either a single person or two (but not more than two) bodies, at least one of which is a trustee of a unit trust, and securities issued by those two bodies are linked or stapled; or
- (b) while the Trust is Listed, a single person.

**Small Holder** is a Member who is a holder or a joint holder of a Small Holding.

**Small Holding:** a holding of Units or, while Stapling applies, Stapled Securities the aggregate Market Price of which at the relevant date is less than a marketable parcel of Units or, while Stapling applies, Stapled Securities, as provided under the Listing Rules.

**Stapled Entity:** has the same meaning as in Schedule 1.

**Stapled Security:** has the same meaning as in Schedule 1.

**Stapling:** has the same meaning as in Schedule 1.

**Stapling Commencement Time:** the latest time at which Stapling of the Units to Attached Securities commences as determined by the Manager.

**Stapling Proposal:** a proposal to cause the Stapling of any other securities or financial products to the Units.

**Stapling Provisions:** the provisions relating to Stapling in Schedule 1, including where these are applied under clause 24.

**Tax:** all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST.

**Tax Act:** the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act, as appropriate, and any provisions of any succeeding legislation replacing sections of the 1936 Act and the 1997 Act referred to in this constitution.

**Top Hat Proposal:** a proposal that each Member should exchange their Units for an equivalent value of units in the Top Trust.

**Top Trust:** a trust of which the Manager or a related body corporate of the Manager is also the responsible entity or 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.

**Trading Day:** has the same meaning as in the Listing Rules.

**Transaction Costs:** an amount determined by the Manager as appropriate to factor into the Application Price or the Redemption Price to avoid an adverse impact on other Members holding Units arising from transaction expenses which would be incurred if an acquisition or disposal of Assets was carried out because of the issue or redemption of Units. Unless the Manager otherwise determines, the amount is:

- (a) when calculating the Application Price, the Manager's estimate of the total transaction costs of acquiring all of the Trust's existing assets; and
- (b) when calculating the Redemption Price, the Manager's estimate of the total transaction costs of selling all of the Trust's existing assets,

in each case adjusted if appropriate for any effect of assets being held through subsidiaries of the Trust or other investment vehicles.

**Trust:** the trust constituted under or governed by this constitution.

**Trust Component:** has the meaning given to that phrase in the Tax Act.

**Uncertificated Securities Holding:** securities that under the Corporations Act, the Listing Rules or any Uncertificated Transfer System may be held in uncertificated form.

**Uncertificated Transfer System:** any system operated under the Corporations Act, the Listing Rules or the Operating Rules that regulates the transfer of registration of, or the settlement transactions affecting, securities in uncertificated form and includes CHES (as defined in the operating rules of ASX Settlement Pty Ltd) as it applies to securities in certificated and uncertificated form.

**Under:** has the meaning given to that phrase in the Tax Act.

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution.

**Valuation Time:** a time at which the Manager calculates Net Asset Value.

**Weighted Average Market Price for a Pricing Period** means:

- (a) the aggregate of the prices at which each relevant Unit, Stapled Security or Option was sold during the relevant Pricing Period divided by the number of Units, Stapled Securities or Options sold during that period, in the case of both the sales prices and numbers, as reported by the ASX, but excluding sales that occur otherwise than in the ordinary course of trading on ASX (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, overseas sales, sales pursuant to the exercise of options over Units and overnight crossings) and any other sales which the Manager reasonably considers may not be fairly reflective of natural supply and demand; or
- (b) if no sale was made in the Pricing Period, the average of the price offered by a willing purchaser for such Units, Stapled Securities or Options ("bid price") and the price offered by a willing vendor for such Units, Stapled Securities or Options ("ask price") as quoted on the ASX during the Pricing Period; or



- (c) if either no bid or ask prices were quoted during the Pricing Period, the last sale price as quoted on the ASX prior to the Pricing Period.

## Interpretation

29.2 In this constitution, unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes an individual, firm, a body corporate, an unincorporated association, an authority or any other entity or organisation;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(general words)** the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) **(documents)** a reference to a document (including this constitution) includes any variation or replacement of it;
- (f) **(laws)** a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (g) **(regulations)** a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (h) **(amendments to statutes)** a reference to a law or a provision of a law or legislation includes consolidations, amendments, re-enactments or replacements of any of them, whether by the State or the Commonwealth of Australia or otherwise;
- (i) **(cash)** a reference to a payment “in cash” includes payments by cash, or by electronic funds transfer;
- (j) **(currency)** a reference to a monetary amount is a reference to the currency of Australia unless otherwise specified;
- (k) **(from time to time)** a power, an authority or a discretion reposed in the Manager in Members’ meeting or a Member may be exercised at any time and from time to time;
- (l) **(amount paid)** a reference to an amount paid on a security includes an amount credited as paid on that security;
- (m) **(signed)** where, by a provision of this constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Manager;

- (n) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (o) **(groups of persons)** a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (p) **(Corporations Act)** an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (q) **(Listing Rules)** In this constitution, a word or expression defined or used in the Listing Rules has the same meaning when used in this Constitution in a similar context;
- (r) **(amendments)** a reference to amend includes to delete or replace;
- (s) **(headings and labels)** headings and labels are inserted for convenience only and do not affect interpretation of this constitution;
- (t) **(calendar periods)** a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively;
- (u) **(present)** the word “present” in the context of a person being present at a meeting includes participating using technology approved by the Manager for the purposes of the meeting, and at a meeting of Members also includes:
- (i) a Member being present in person;
  - (ii) a Member being present by proxy, attorney, or Representative; and
  - (iii) except in any clause which specifies a quorum, a Member who has duly lodged a direct vote in relation to the meeting.
- 29.3 Any cover page, table of contents, footnotes, marginal notes and finding lists are for convenience only and do not form part of this constitution.
- 29.4 An expert will be independent of the Manager for the purposes of this constitution if the expert delivers to the Manager a signed statement to the effect that it regards itself as being independent of the Manager. The fact that the Manager may have selected or instructed the expert does not itself mean that the expert is not independent of the Manager.

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**Other documents**

- 29.5 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

**Constitution legally binding**

- 29.6 This constitution binds the Manager and each present and future Member and (to the extent relevant) each present and future Option Holder and Holder of Financial Instruments, and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

**Corporations Act prevails**

- 29.7 Despite anything in this constitution, while the Trust is a Registered Scheme, to the extent that a clause of this constitution is inconsistent with the provisions of the Corporations Act applicable to registered managed investment schemes, that provision is of no effect to the extent of the inconsistency, but not otherwise.

**Severance**

- 29.8 If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid in a jurisdiction for any reason, then it is severed for that jurisdiction without affecting the validity or operation of any other provision of this constitution or of that provision in any other jurisdiction.

**Governing law**

- 29.9 This constitution is governed by the law of New South Wales.

**Other obligations and limitations excluded**

- 29.10 Except as required by the Corporations Act:
- (a) all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including any obligation of the Manager in its capacity as trustee of the Trust arising under any statute; and
  - (b) anything in any statute or regulation which might limit the powers or discretions of the Manager under this constitution is expressly excluded to the extent permitted by law.

**Schedules**

- 29.11 Schedules to this constitution are an operative part of it.

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## Schedule 1 - Stapling Provisions

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On and from any Stapling Commencement Time determined by the Issuer, these Stapling Provisions:

- (a) apply to each Issuer in respect of its respective Stapled Entity and its Attached Securities;
- (b) apply to each Constituent Document and prevail over all other provisions of the Constituent Document, except to the extent provided in the Constituent Document or where this would result in a breach of the Corporations Act, the Listing Rules or other law; and
- (c) apply until they cease to apply in accordance with the Constituent Documents.

Unless the contrary intention appears, in this schedule a reference to a “**paragraph**” is a reference to a numbered provision of this schedule.

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## Definitions and interpretation

### 1.1 Definitions

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

**Accession Deed** means the deed of that name between each Issuer and:

- (a) any new Manager; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Scentre Group Stapling Deed.

**Amounts** has the meaning given in paragraph 8(c)(i).

**Application Price** means:

- (a) in respect of a Unit, the application price for the Unit calculated in accordance with clause 5.1 of the Trust Constitution or paragraph 4 of this schedule;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security;
- (c) in respect of a Stapled Security, the application price for a Stapled Security calculated in accordance with this schedule; and
- (d) in respect of the issue of an Option, the amount (if any) determined by the Manager under clause 5.9 of the Trust Constitution or paragraph 4.4 of this schedule; and
- (e) in respect of a Financial Instrument, the amount determined by the Manager under clause 3.29 of the Trust Constitution.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

**Constituent Documents** means the constituent documents of a Stapled Entity and includes the Trust Constitution.

**Controlled Entity** means any subsidiary or any trust or other entity, whether or not a legal entity, which is owned or controlled by an entity for accounting purposes.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of a Stapled Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with paragraph 8(b).

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**Foreign Investor** means an Investor whose address on the Register is in a jurisdiction other than Australia.

**Group** means the Stapled Entities and any Controlled Entity of a Stapled Entity.

**Intra-Group Loan** means a loan or financial assistance provided by a Stapled Entity to any entity in the Group including but not limited to guaranteeing or indemnifying or granting security in favour of that entity.

**Investor** means, in this Schedule 1, a person entered in the Register as a holder of a Stapled Security (which includes a Unit), but does not include a person in their capacity as holder of an Option or Financial Instrument unless the Option or Financial Instrument is an Attached Security.

**Issuer:**

- (a) in the context of the Trust Constitution, means the Manager; and
- (b) in the context of the Constituent Document of any other Attached Security, means the issuer of the Attached Security.

**Market Price of a Stapled Security on a particular day is:**

- (a) the Weighted Average Market Price per Stapled Security for sales on ASX for the Pricing Period which ends 2 Trading Days before the relevant day, provided that if the Weighted Average Market Price is calculated in respect of Stapled Securities which have an entitlement to distributions which is different to the entitlement of new Stapled Securities the Manager must make an appropriate adjustment to the Weighted Average Market Price to reflect the difference; or

- (b) if:
- (i) Stapled Securities have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security that an Approved Valuer determines to be the market price of the Stapled Security on the relevant day, having regard to the market price of Stapled Securities, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the valuer believes should be taken into account.

If it is necessary to calculate the Market Price of an Option over a Stapled Security, it would be determined according to the definition of Market Price of a Stapled Security, with a reference to a Stapled Security in that definition being read as a reference to an Option over a Stapled Security.

**New Attached Security** has the meaning given in paragraph 6(a).

**Other Attached Security** means:

- (a) in respect of a Unit, an identical number of each Attached Security other than a Unit; and
- (b) in respect of any New Attached Security, an identical number of each Attached Security other than a New Attached Security.

**Other Issuer** means:

- (a) in respect of the Manager, each Issuer other than the Manager; and
- (b) in respect of the issuer of any New Attached Security, each Issuer other than the issuer of the New Attached Security.

**Ratings Agency** means any recognised ratings agency as determined by the Manager.

**Record Date** has the same meaning as in the Trust Constitution.

**Register** means the register of Investors kept or caused to be kept by the Stapled Entities under paragraph 4.3 and the Corporations Act.

**Registered** means recorded in the Register.

**Registrar** means the person appointed to maintain the Register.

**Restapling** means a determination by the Issuer of an Unstapled Security that Stapling should recommence in respect of that Unstapled Security, as referred to in paragraph 7.3.

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the

Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee:

- (a) is entered in the Register in respect of those Stapled Securities;
- (b) will receive the New Attached Securities pursuant to the Stapling; and
- (c) will sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in paragraphs 8(c) and (d).

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Scentre Group Stapling Deed** means the deed entered into between the Issuer and Other Issuers setting out how they will co-operate in the conduct of the Stapled Entities as if they were one economic entity and the Stapled Securities were one security.

**Security** means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture, and includes a Unit, Option or Financial Instrument.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Scentre Group Stapling Deed or an Accession Deed.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities. “**Stapled**” has a corresponding meaning.

**Stapling Commencement Time** means the most recent time and date on which the Issuer determines that the Stapling of Attached Securities is to commence.

**Stapling Matter** means a matter specified in paragraph 2.3(b).

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group, and any amending, supplemental and other document that the Issuer and the Other Issuers consider necessary or desirable in connection with those objectives.

**Transfer** has the meaning given in paragraph 6(d).

**Trust** means the trust the subject of the Trust Constitution.

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**Trust Constitution** means the constitution establishing the Trust of which this schedule forms an operative part.

**Unit** means a unit in the Trust.

**Unstapled Security** means a Security which was an Attached Security and ceases to be Stapled to the Unit.

**Unstapling** means the process that results in one or more of the Attached Securities ceasing to be Stapled to the Unit. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

## 1.2 Interpretation

Unless the contrary intention appears, the interpretation provisions in clauses 29.2 and 23 of the Trust Constitution apply to this schedule.

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## 2 Stapling - general intention

### 2.1 Stapled Securities - general intention

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Time. Subject to paragraph 7 it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Stapled Securities will be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the Same Person.

### 2.2 Transaction Documents

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.



### 2.3 Stapling Matters

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor, by acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including the following Stapling Matters:
  - (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation Proposal regarding the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Small Holding of Stapled Securities;
  - (iv) the restrictions on Stapled Securities that are Restricted Securities;
  - (v) the Stapling of New Attached Securities to the Stapled Securities;
  - (vi) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (vii) the Unstapling of one or more Attached Securities;
  - (viii) the Restapling of an Unstapled Security;
  - (ix) the Unstapling of the Stapled Securities; and
  - (x) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with paragraph 8.
- (c) To effect a Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter.
- (d) Without limiting paragraph 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under paragraph 6, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
  - (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
  - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer,

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considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under paragraph 6.

- (e) Without limiting paragraph 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under paragraph 8, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
  - (i) receive and apply the Amounts referred to in paragraph 8(c)(i) in the manner contemplated in paragraph 8;
  - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
  - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
  - (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under paragraph 8.
- (f) The Issuer may:
  - (i) appoint (and revoke the appointment of) substitute attorneys to exercise the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this paragraph 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome.
- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under paragraphs 2.3(e) and 8 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of paragraph 8 (Designated Foreign Investors) to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

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## **3 Dealing in Stapled Securities**

### **3.1 Stapling**

Subject to paragraph 7, on and from the Stapling Commencement Time, each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security and the Issuer must not:

- (a) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the Same Person for each Other Attached Security for issue or sale;

- (b) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
- (c) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
- (d) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the Same Person at the same time;
- (e) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the Same Person;
- (f) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
- (g) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.

Each Security issued by a Stapled Entity after the Stapling Commencement Time must be Stapled to each Other Attached Security immediately on the date of issue of the new Security.

### 3.2 Dealing in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Time, the Issuer must not:
  - (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing,

if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with paragraph 7.
- (b) **(Attached Securities)** Subject to paragraph 7, on and from the Stapling Commencement Time, the Issuer must not:
  - (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each Other Attached Security;

- (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.
- (e) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to the Same Person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.
- (f) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each Other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the Same Person.
- (g) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer, issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### 3.3 Consistency with the Constituent Documents

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### 3.4 Joint quotation as Stapled Securities

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### 3.5 Joint certificates or joint holding statements

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### 3.6 Stapling and separate entities

Despite any other provision of this schedule, each Stapled Entity remains a separate legal entity, separately admitted to the Official List (if applicable), although the Attached Securities may be jointly Officially Quoted as Stapled Securities.

## 4 Allocation of Application Price

### 4.1 Application Price

- (a) Subject to paragraph 4.1(c), while Units are Officially Quoted as part of a Stapled Security, the application price payable for any Unit is the Market Price of a Stapled Security minus the Application Price of the Other Attached Securities, or the amount determined by the Manager in accordance with paragraph 4.2.
- (b) Subject to paragraph 4.1(c), while the Units are not Officially Quoted but are Stapled, the application price payable for a Unit is the price calculated under clause 5.1(f) of the Trust Constitution, and the application price of Stapled Securities is the sum of that amount and the Application Price of the Other Attached Securities.
- (c) The Manager may determine a different application price for any Units (subject to the Corporations Act as modified by any applicable ASIC Relief and the Listing Rules) in the case of:
  - (i) offers made at substantially the same time to persons who were Investors on a date determined by the Manager:
    - (A) provided that all Investors are offered Stapled Securities in proportion to the value of the Investor's Stapled Securities at the relevant date on a pro rata basis, whether or not the right to acquire those Stapled Securities is renounceable; but
    - (B) an Investor may be excluded from the pro rata offer if to do so would not cause the Manager to be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief, whether or not the right of entitlement is renounceable.

If the Trust is a Registered Scheme and the Manager is making an offer of Stapled Securities to Investors which otherwise complies with this paragraph 4.1(c)(i), the Manager is not required to offer Stapled Securities to persons in the circumstances permitted under the applicable ASIC Relief and the Listing Rules.

Any offer made under this paragraph 4.1(c) must specify the period during which it may be accepted. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units and Stapled Securities. Any Investor may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

Any Stapled Securities offered for subscription under this paragraph 4.1(c) which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application price payable in relation to such further offer must not be less than that at which the Units and Stapled Securities were originally offered to Investors.

- (ii) If an underwriter has underwritten any offer for subscription of Stapled Securities under this paragraph 4.1(c), the underwriter may take up any Stapled Securities not subscribed for by Investors;

- (iii) a distribution reinvestment, where the application price is determined in accordance with paragraph 4.3;
- (iv) a placement of Stapled Securities that complies with the Listing Rules and any applicable ASIC Relief;
- (v) a security purchase plan that complies with the Listing Rules and any applicable ASIC Relief; and
- (vi) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Relief.

#### **4.2 Apportionment of Application Price**

- (a) Subject to paragraph 4.1(b), if a Unit is to be issued as part of a Stapled Security and the Trust Constitution contains a provision for the calculation or determination of the Application Price for a Stapled Security but not for the Unit, the Manager must determine what part of the Application Price of a Stapled Security is to represent the Application Price of a Unit for the purposes of the Trust Constitution.
- (b) Unless otherwise agreed between the Manager and the Other Issuers, the Application Price for a Stapled Security will be allocated among the Application Price of the Unit and the Application Price of the Other Attached Securities in the ratio that the net assets of each relevant Stapled Entity (adjusted for the net market value of its investments) at the end of the relevant period immediately before the issue of the Stapled Security, bears to the amount of the aggregate net assets of those Stapled Entities (adjusted for the net market value of their investments) at the end of the relevant period immediately before the issue of the Stapled Security.
- (c) Where an Option to acquire a Stapled Security is issued after the Stapling Commencement Time, the allocation of the issue price of the option must be determined in the same manner as under paragraph 4.2(b).
- (d) The allocation of the Application Price for a Stapled Security under this paragraph 4.2 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

#### **4.3 Application Price if reinvestment applies**

- (a) If a reinvestment of capital or income payable to an Investor under clause 10.10 of the Trust Constitution applies while Units are Officially Quoted and Stapled, subject to the Listing Rules the aggregate of the Application Price for each additional Unit issued and the Application Price for the Other Attached Securities upon reinvestment is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued upon reinvestment, the price will be the Market Price for Stapled Securities for the Pricing Period.
- (b) While Units are not Officially Quoted but are Stapled, the application price payable for each additional Unit on a reinvestment of capital or income payable to the Investor under clause 10.10 of the Trust Constitution is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the price for a Unit will be the Application Price calculated under clause 5.1(f) of the Trust Constitution on the first Business Day after the end of the Distribution Period to which the distribution relates.

- (c) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the number of Stapled Securities issued will be rounded down to the nearest whole Stapled Security and any remaining amount becomes an asset of the Trust or Stapled Entity to which the distribution relates.

#### **4.4 Application Price of Options over Stapled Securities**

Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Trust is a Registered Scheme, the Manager and the Stapled Entities may issue Options over Stapled Securities:

- (a) at an application price (which may be nil) determined by the Manager and the Stapled Entities if permissible under the Corporations Act as modified by ASIC Relief or, if such determination may not be made, at a nil Application Price; and
- (b) on the basis that the Application Price for a Unit as a component of a Stapled Security to be issued on exercise of the Option is a price determined:
- (i) while the Units are Officially Quoted, in accordance with paragraphs 4.1 and 4.2 of this schedule;
- (ii) while the Stapled Securities are not Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 5.1(f) of the Trust Constitution.

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## **5 Single Register**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the Other Attached Securities are recorded.

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## **6 Power to add New Attached Securities**

- (a) Subject to paragraph 6(b), the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is a New Attached Security and cause it to be Stapled to the Stapled Securities. A determination under this paragraph may be made on such terms as the Issuer considers appropriate.
- (b) Subject to paragraph (c), a determination that a Security is a New Attached Security may only be made if:
- (i) while the Units are Officially Quoted, the New Attached Security is also Officially Quoted, or ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
- (ii) while the Units are Officially Quoted, ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;
- (iii) each Other Issuer (including the issuer of the New Attached Security) has agreed:
- (A) to the Stapling of the New Attached Security to the Stapled Security;  
and

- 
- (B) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and
  - (iv) the Constituent Documents in relation to the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
  - (v) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (vi) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, any required approval of the members of each Stapled Entity has been obtained; and
  - (vii) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this paragraph 6.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (“**Transfer**”).
  - (e) A transfer of a New Attached Security made under this paragraph 6 will be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate for a New Attached Security in order for that Issuer to Register the transfer of the New Attached Security. The transfer will be evidenced by, and have full effect from, its Registration by the relevant Issuer in the Register.

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## 7 Unstapling

### 7.1 Procedure for Unstapling

Subject to this paragraph 7, from the Stapling Commencement Time each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### 7.2 Unstapling an Attached Security

- (a) Subject to this paragraph 7, the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Manager may, without the need for approval by Members, determine or consent to a determination by the Issuer of any Attached Securities that one or more Attached Securities are to be Unstapled from the Stapled Security at a time and date set or approved by the Manager.
- (b) A determination under paragraph 7.2(a) may only be made:



- (i) while the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Attached Securities from the Unit and the Unit and any remaining Attached Securities will remain Officially Quoted as a Unit or a Stapled Security; and
  - (ii) if each Other Issuer has agreed:
    - (A) to the Unstapling; and
    - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole; and
  - (iii) if the Stapling Provisions will cease to apply in respect of each Attached Security which is to be Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### **7.3 Restapling**

If an Issuer determines that its Attached Securities are to be Unstapled under paragraph 7.2(a) or 7.4, this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

### **7.4 Unstapling the Stapled Securities**

- (a) Subject to paragraph 7.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security or the Attached Securities (as applicable) will be Unstapled on the occurrence of an Unstapling Event.
- (b) A determination under paragraph 7.4(a) may only be made if:
  - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Other Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under paragraph 7.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

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## **8 Designated Foreign Investors**

- (a) Without limiting paragraph 6(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under paragraph 6, the provisions of this paragraph 8 apply.

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- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:
- (i) the number of Foreign Investors in the foreign place;
  - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
- (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (“**Amounts**”) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to paragraph 8(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
- (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date; and
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
  - (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and

- (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit upon sale of a Stapled Security under paragraph 8(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Manager.

---

## **9 Duties and obligations of Issuer**

### **9.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief) while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **9.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

---

## **10 Meetings of Investors**

### **10.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **10.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

### **10.3 Other attendees**

The auditor of each Stapled Entity and the representatives of each Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

---

## **11 General**

### **11.1 Other capacities**

Subject to the Corporations Act, the Manager (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Trust or in another capacity) and any Stapled Entity (or their associates); and
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or any Stapled Entity (or their associates) and retain for its own benefit any profits or benefits derived from any such contract or transaction.

#### **11.2 Expenses in relation to the Trust**

- (a) A reference to "Unit" in clause 20.6 of the Trust Constitution is a reference to it as part of a Stapled Security, and a reference to "Trust" is a reference to the Trust as part of the Group.
- (b) Clause 20.6 of the Trust Constitution is taken to also include expenses in connection with:
  - (i) establishing, administering and managing the Stapling, including the costs incurred in enforcing Stapling, the Stapling of New Attached Securities, the Unstapling of an Attached Security, the Restapling of Unstapled Attached Securities and the Unstapling of the Stapled Securities; and
  - (ii) organising, convening and holding meetings of Investors, implementing any Resolutions and communicating with Investors.

#### **11.3 Transfers, transmissions and joint holdings**

A reference to a Unit in the provisions of clause 4 of the Trust Constitution is taken to include a reference to a Stapled Security.

#### **11.4 Small Holdings**

A reference to a "Small Holding" in each Constituent Document is taken to be a reference a small holding of Stapled Securities.

#### **11.5 Intra-Group Loans**

Subject to the Corporations Act, without limiting the Constituent Documents or the Scentre Group Stapling Deed, the Manager may, in its capacity as trustee of the Trust, and each Other Issuer may, enter into Intra-Group Loans.

#### **11.6 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.

#### **11.7 Other Attached Security**

If a New Attached Security, which is an interest in a trust, is to be Stapled to the Stapled Securities, then paragraphs 4.1(a), 4.1(c), 4.2(a), 4.3, 11.1 and 11.2 apply in relation to that New Attached Security with the necessary changes.

# Constitution

## Scentre Group Trust 2

Manager: RE1 Limited (ABN 80 145 743 862)

Date of Constitution: 28 November 2001

Consolidated constitution of Scentre Group Trust 2 incorporating all amendments up to and including the amendments made by supplemental deed poll dated 4 April 2024.

This is not a legally binding document. Reference should be made to the original constitution and the amending deeds for the operative provisions of the constitution.

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# Constitution of Scentre Group Trust 2

**Date:** 28 November 2001

## Operative provisions:

This deed poll is declared by Trust Company of Australia Limited (ABN 59 004 027 749)<sup>1</sup> to be the constitution of the Westfield Retail Trust 1.<sup>2</sup>

## 1 Name of Trust

---

- 1.1 The Trust is called Scentre Group Trust 2 or by such other name as the Manager determines from time to time.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

## 2 Assets held on trust

---

- 2.1 The Manager must hold the Assets on trust for Members.
- 2.2 The Assets vest in the Manager. The Manager must identify the Assets as property and rights of the Trust in its records, but while the Trust is not a Registered Scheme, the Manager may combine the Assets with any other property or rights. While the Trust is a Registered Scheme, any Assets held by the Manager as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Manager or any other managed investment scheme if and to the extent that the Corporations Act so requires. Subject to law, the Manager may have assets held by a Custodian.

## 3 Units, Options and Financial Instruments

---

### Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any rights, obligations or restrictions attaching to any particular Unit, each Unit confers an equal undivided interest.
- 3.3 A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- 3.4 Subject to the Corporations Act, the Manager may create and issue Units. The Manager may not issue different classes of Units except Units which may temporarily be of a different class due to different income entitlements under clause 3.16. Except to the extent specified in their terms of issue, all Units will rank equally.

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<sup>1</sup> The Manager was changed on 7 September 2010 to RE1 Limited ACN 145 743 862.

<sup>2</sup> The name of the Trust was changed on 30 June 2014 from Westfield Retail Trust 1 to Scentre Group Trust 2.  
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## Options

- 3.5 The Manager may create and issue Options on such terms as the Manager determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act. An Option will not confer any interest in or any rights to participate in the income or capital of the Trust. Options may be issued with Units or separately. A person becomes an Option Holder when their holding of Options is entered in the Register of Option Holders.

An offer of Options may be renounced in favour of another person unless it is expressed as non-renounceable. The terms of issue may allow the Manager to buy back the Options.

- 3.6 While Stapling applies:
- (a) an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the Same Person acquires an identical number of Attached Securities which are then Stapled to the Units; and
  - (b) an Option over a Unit may only be offered, issued, transferred or redeemed if arrangements are in place such that on exercise of the Option, the Same Person acquires or retains (as applicable) an identical number of Options over Attached Securities.

## Other jurisdictions

- 3.7 If the Trust is a Registered Scheme and the Manager is making a pro rata offer of Options to Members which complies with the conditions for a pro rata offer of Units set out in clause 5.4, the Manager is not required to offer Options to persons whose address on the Register is outside Australia and New Zealand (or who holds Units on behalf of a person outside Australia or New Zealand) in the circumstances permitted under the applicable ASIC Relief<sup>3</sup> and, if relevant, the Listing Rules.

## Exercise of Options

- 3.8 To exercise an Option, the holder of the Option must give notice to the Manager in accordance with the terms of the Option, together with payment of the exercise price. The Option Holder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.

## Lapse of Options

- 3.9 An Option lapses on the earliest of:
- (a) the date stipulated in the terms of issue of the Option; or
  - (b) the termination of the Trust; or
  - (c) the winding up of the Trust,
- and the liability of the Manager ceases in respect of the Option.

## Rights attaching to Units and Options

- 3.10 Subject to the Corporations Act, the interests of Members holding Units will prevail over the interests of holders of Options in the case of conflict.

<sup>3</sup> See ASIC Class Order [CO 13/656].

### **Fractions of Units and Options**

- 3.11 Fractions of a Unit or Option may be issued by the Manager, but while the Units or Options are Officially Quoted, fractions of a Unit or Option may not be issued. If any fractions of Units or Options are on issue at a time when the Trust is to be Listed, the Manager may cancel the fractions with effect from the date of Listing.
- 3.12 Subject to clause 5.7(b), where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue, redemption or other creation or cancellation of a fraction of one Unit or Option, that fraction may be rounded down or up to such number of decimal places as the Manager determines.
- 3.13 The provisions of the constitution relating to Units and Members apply to fractions of Units and Options in the proportion which the fraction bears to one Unit or Option.

### **Rounding**

- 3.14 Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Trust.

### **Uncertificated trading**

- 3.15 If and for so long as dealings in any Units, Options or Financial Instruments take place under an Uncertificated Transfer System:
- (a) the Manager need not issue any certificate in respect of Units, Options or Financial Instruments held as an Uncertificated Securities Holding; and
  - (b) the Register may distinguish between Units, Options or Financial Instruments held in certificated form, and securities held as an Uncertificated Securities Holding.

### **Income entitlement of Units**

- 3.16 The Manager may issue Units on terms that the Units:
- (a) participate fully for Distributable Income in respect of the Distribution Period in which they are issued; or
  - (b) do not entitle the holder of the Units to receive a distribution of Distributable Income in respect of the Distribution Period in which the Units are issued; or
  - (c) entitle the holders to receive Distributable Income in respect of the Distribution Period in which the Units are issued which is not greater than the proportion of the Distributable Income to which a Member holding a Unit during the whole of that Distribution Period would be entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

### **Consolidation and division of Units, Options and Financial Instruments**

- 3.17 Units, Options and Financial Instruments may be consolidated or divided as determined by the Manager. While Stapling applies, no consolidation or division of Units or Options may occur unless at the same time as Units are consolidated or divided, there is a corresponding consolidation or division of each Attached Security.

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**Capital reallocation**

## 3.18

- (a) The Manager may at any time distribute an amount of capital of the Trust to the Members on terms that the amount distributed in respect of each Unit is to be applied by the Manager as agent for and on behalf of each Member by paying that amount at the direction of each Member to one or more Stapled Entities as an additional capital payment in respect of the relevant Attached Security of that Stapled Entity which is already issued and to which the Unit is Stapled (the “**Outgoing Capital Reallocation Amount**”), and if the Manager determines to pay a distribution as an Outgoing Capital Reallocation Amount, then:
- (i) the Outgoing Capital Reallocation Amount to be applied on behalf of a Member is to be as nearly as practicable in the same proportion as that which the number of Units the Member holds bears to the total number of Units on issue as at a date determined by the Manager;
  - (ii) each Member is deemed to have directed the Manager to pay the Outgoing Capital Reallocation Amount to the relevant Stapled Entity or Entities on the basis set out in this clause 3.18;
  - (iii) the Manager must pay the Outgoing Capital Reallocation Amount on the basis set out in this clause 3.18; and
  - (iv) each Member will be deemed to have irrevocably appointed the Manager as its attorney and agent to do all things the Manager considers necessary to give effect to the reallocation of capital under this clause 3.18 (a).
- (b) If at any time, a Stapled Entity proposes to undertake a capital distribution (if it is a trust) or an equal reduction of capital (if it is a company) on terms that the whole or any part of the amount to be paid in respect of each Attached Security of which that Stapled Entity is the issuer by way of capital distribution or capital reduction (“**Incoming Capital Reallocation Amount**”) is to be paid to or for the benefit of the Trust, then:
- (i) each Member is deemed to have directed the Manager to accept the Incoming Capital Reallocation Amount;
  - (ii) each Member is deemed to have appointed the Manager as their attorney and agent to do all things the Manager considers necessary to give effect to the receipt of the Incoming Capital Reallocation Amount by the Manager;
  - (iii) if the Stapled Entity is a company which proposes to undertake an equal reduction of capital, then each Member irrevocably appoints and directs the Manager to do the following on the Member’s behalf and in the Member’s name:
    - (A) consent in writing (which consent may be a single document or two or more documents executed by the Manager on behalf of all Members) to any variation of the rights attaching to any shares in the

Stapled Entity held by the Member constituted by any modification of the constitution of the Stapled Entity that increases or provides for an increase in the liability of the Member in its capacity as a holder of shares to contribute to the share capital of the Stapled Entity, and that increase in that liability; and

- (B) agree in writing (which agreement may be a single document or two or more documents executed by the Manager on behalf of all Members) to the increase in the Member's liability to contribute to the share capital of the Stapled Entity in accordance with the constitution of the Stapled Entity,

and the Manager will receive the Incoming Capital Reallocation Amount as an additional capital payment in respect of the Unit to which the relevant Attached Security is Stapled. All amounts so received by the Manager are Assets.

### Financial Instruments

3.19 Without limiting clause 13, but subject to the Corporations Act:

- (a) the Manager may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) ("**Financial Instruments**"); and
- (b) Financial Instruments may be issued:
- (i) at an application price (which may be nil) determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at an application price of \$100 per Financial Instrument; and
- (ii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversion or otherwise, provided that while Stapling applies, the Financial Instrument must convert into one or more Stapled Securities, not Units alone) as the Manager determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act.

3.20 Subject to the Corporations Act and except as provided in the terms of issue of the Financial Instrument:

- (a) a Financial Instrument will not confer any interest in or any rights to participate in the income or capital of the Trust, but otherwise the Holder of a Financial Instrument holds that Financial Instrument subject to the rights, restrictions and obligations attaching to that Financial Instrument; and
- (b) a Holder of a Financial Instrument who is not a Member is not entitled to any other rights of a Member.

## **4 Transfer, transmission and joint holders**

### **Transfer of Units, Options and Financial Instruments**

- 4.1 Units, Options and Financial Instruments may be transferred subject to their terms, this clause 4 and clause 29.

### **Transfer if not Officially Quoted**

- 4.2 If Units, Options or Financial Instruments are not Officially Quoted transfers must be:
- (a) in a form approved by the Manager;
  - (b) accompanied by any evidence the Manager reasonably requires to show the right of the transferor to make the transfer; and
  - (c) if the Manager requires, be presented for Registration duly stamped.

If Units, Options or Financial Instruments the subject of a proposed transfer are not Officially Quoted, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal.

To the maximum extent permitted by law, the Manager may (or may direct or procure the Registrar to) put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.

### **Transfer if Officially Quoted**

- 4.3 Subject to this constitution and the Listing Rules, if a Unit, Option or Financial Instrument is Officially Quoted, it is transferable:
- (a) as provided by the Operating Rules of a CS Facility if applicable; or
  - (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

If a duly completed instrument of transfer:

- (c) is used to transfer a Unit, Option or Financial Instrument in accordance with paragraph (b); and
- (d) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Manager properly requires to show the right of the transferor to make the transfer,

the Manager must, subject to the Manager's powers, register the transferee as the Member, Option Holder or Holder of a Financial Instrument as relevant.

### **When transfer is effective**

- 4.4 Except as provided by any applicable Operating Rules of a CS Facility, a transfer is not effective until Registered.

### **Manager may request holding lock or refuse to register transfer**

- 4.5 If the Units, Options or Financial Instruments are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units, Options or Financial Instruments from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to Register a transfer of other Units, Options or Financial Instruments to which paragraph (a) does not apply.

**Manager must request holding lock or refuse to register transfer**

4.6 The Manager must:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units, Options or Financial Instruments from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to register any transfer of Units, Options or Financial Instruments to which paragraph (a) does not apply,

if the Corporations Act or Listing Rules require the Manager to do so or the transfer is in breach of clause 29.

**Notice of holding locks and refusal to register transfer**

4.7 If, in the exercise of its rights under clauses 4.5 or 4.6, the Manager requests the application of a holding lock to prevent a transfer of Units, Options or Financial Instruments or refuses to Register a transfer of Units, Options or Financial Instruments, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

- (a) the holder of the Units, Options or Financial Instruments;
- (b) the purported transferee; and
- (c) the broker lodging the transfer, if any.

Failure to give notice does not, however, invalidate the decision of the Manager.

**Joint tenancy**

4.8 Persons Registered jointly as a Member, or holder of an Option or Financial Instrument, hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

**Transmission on death**

4.9 If a holder of Units, Options or Financial Instruments, who does not hold them jointly, dies, the Manager will recognise only the personal representative of the holder as being entitled to the holder's interest in the Units, Options or Financial Instruments.

**Information given by personal representative**

4.10 If the personal representative gives the Manager the information it reasonably requires to establish the representative's entitlement to be registered as a holder of the Units, Options or Financial Instruments:

- (a) the personal representative may:

- (i) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
  - (ii) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the Units, Options or Financial Instruments, to the same rights as the previous holder.

On receiving an election under paragraph (a)(i), the Manager must register the personal representative as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (a)(ii) is subject to the clauses that apply to transfers generally.

#### **Death of joint owner**

- 4.11 If a holder of Units, Options or Financial Instruments, who holds them jointly, dies, the Manager will recognise only the survivor as being entitled to the holder's interest in the Units, Options or Financial Instruments. The estate of the holder is not released from any liability in respect of the Units, Options or Financial Instruments.

#### **Transmission on bankruptcy**

- 4.12 If a person entitled to Units, Options or Financial Instruments because of the bankruptcy of a holder of Units, Options or Financial Instruments gives the Manager the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, Options or Financial Instruments, the person may:
- (a) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
  - (b) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person.

On receiving an election under paragraph (a), the Manager must register the person as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (b) is subject to the clauses that apply to transfers generally.

This clause has effect subject to the Bankruptcy Act 1966 (Cwlth).

#### **Transmission on mental incapacity**

- 4.13 If a person entitled to Units, Options or Financial Instruments because of the mental incapacity of a holder of Units, Options or Financial Instruments gives the Manager the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, Options or Financial Instruments:

- (a) the person may:

- (i) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
  - (ii) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person; and
- (b) the person is entitled, whether or not registered as the holder of the Units, Options or Financial Instruments, to the same rights as the previous holder.

On receiving an election under paragraph (a)(i), the Manager must register the person as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (a)(ii) is subject to the clauses that apply to transfers generally.

## 5 Application Price for Units, Options and Financial Instruments

### Application Price

- 5.1 Subject to clause 22.1 and the Stapling Provisions while they apply, the application price for a Unit must be calculated as follows:
- (a) in the case of a proportionate offer (including a rights issue), in accordance with clause 5.4;
  - (b) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 5.6;
  - (c) in the case of reinvestment of distributions, in accordance with clauses 5.7 or 5.8;
  - (d) in the case of Units issued pursuant to the exercise of an Option, at a price calculated in accordance with clause 5.9;
  - (e) subject to paragraphs (a) to (d), in all other cases while Units are Officially Quoted, the Market Price of Units applicable on the date as at which the application price is to be calculated; and
  - (f) while Units are not Officially Quoted, in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue.}}$$

### Time for calculation

- 5.2 Each of the variables in clause 5.1(f) must be determined as at the next Valuation Time after:
- (a) the Manager receives the application for Units; or
  - (b) the Manager receives the application money (even if paid or to be paid into the Applications Account) or the property against which Units are to be issued is vested in the Manager,

whichever happens later.



## Rounding

- 5.3 Subject to the Listing Rules, the Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset.

## Pro rata rights issues

- 5.4 Subject to the terms of any applicable ASIC Relief<sup>4</sup> and the Listing Rules, the Manager may offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager:
- (a) provided that, subject to paragraph (b) of this clause 5.4, all Members are offered Units in proportion to the value of the Member's Units at the relevant date; but
  - (b) the Manager may exclude a Member from the pro rata offer<sup>5</sup> if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act (as modified by ASIC Relief).<sup>6</sup>

## Terms of pro rata issues

- 5.5
- (a) Any offer made under clause 5.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 5.4. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
  - (b) Any Units offered for subscription under clause 5.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
  - (c) If an underwriter has underwritten any offer for subscription of Units under clause 5.4, the underwriter may take up any Units not subscribed for by Members.

## Placements and security purchase plan while Listed

- 5.6 While Units are Officially Quoted and not suspended from quotation, the Manager may at any time issue Units by way of a placement or under a security purchase plan:
- (a) at the Market Price of Units on the day immediately before the date on which the Units are offered or, if there is no offer, the day immediately before the date on which the Units are issued; or

<sup>4</sup> See ASIC Class Order [CO 13/655] notional section 601GAD(3) and Regulatory Guide 134.

<sup>5</sup> The clause assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.

<sup>6</sup> See ASIC Class Order [CO 13/656] (Exemption – Equality of treatment).

- (b) at a price and on terms determined by the Manager, provided that the Manager complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.<sup>7</sup>

### Reinvestment while Listed

#### 5.7

- (a) If reinvestment of distributions payable to a Member under clause 11.14 applies while the Units are Officially Quoted, subject to the terms of any applicable ASIC Relief<sup>8</sup> and the Listing Rules, the Manager may issue Units on the basis that the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the price will be the Market Price of the Units.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

### Reinvestment while not Listed

- 5.8 While Units are not Officially Quoted, subject to the terms of any applicable ASIC Relief<sup>9</sup>, the Manager may issue Units on the basis that the application price payable for each additional Unit on reinvestment of distributions payable to a Member under clause 11.14 is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the application price will be as calculated under clause 5.1(f) on the first Business Day after the end of the Distribution Period to which the distribution relates.

### Options

- 5.9 Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Trust is a Registered Scheme, the Manager may issue Options over Units:
- (a) at an application price (which may be nil) determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at a nil Application Price; and
- (b) on the basis that the Application Price for a Unit to be issued on exercise of the Option is a price determined by the Manager:
- (i) while the Units are Officially Quoted, in accordance with the terms of ASIC Relief<sup>10</sup> for a rights issue or a placement of Units (as applicable), or under clause 5.1(e);
- (ii) while the Units are not Officially quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 5.1(f).

<sup>7</sup> See ASIC Class Orders [CO13/655] notional section 601GAD(2) and (4) and [CO 09/425].

<sup>8</sup> See ASIC Class Order [CO 13/655].

<sup>9</sup> See ASIC Class Order [CO 13/655] notional section 601GAD(5).

<sup>10</sup> See ASIC Class Order [CO 13/655] notional section 601GAD (3)(b).

**Financial Instruments**

- 5.10 The application price of a Financial Instrument is the price determined in accordance with clause 3.19(b).

**6 Application procedure for Units, Options and Financial Instruments****Application form**

- 6.1 An applicant for Units or Options must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

**Payment**

- 6.2 Payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or any other person nominated by the Manager for that purpose, must:

- (a) accompany the application;
- (b) be received by or made available to the Manager or the Custodian within such period before or after the Manager receives the application form as the Manager determines from time to time, or as the terms of issue of the relevant Unit or Option contemplate; or
- (c) comprise a reinvestment of distribution in accordance with this constitution.

If the Manager accepts a transfer of property other than cash:

- (i) the value attributed to the property must be equivalent to a price at which the Manager could properly buy the property and, if the Manager requires, the applicant must provide a recent valuation of the property;<sup>11</sup> and
- (ii) any additional costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factored into the Application Price for the Units must be paid by the applicant either directly or by deducting the costs from the value of the property before the number of Units to be issued is calculated.

**Manager may reject**

- 6.3 Subject to the Listing Rules, the Manager may reject an application in whole or in part without giving any reason for the rejection.

**Minimum amounts**

- 6.4 The Manager may set a minimum application amount and a minimum holding for the Trust in respect of Units or Options and alter or waive those amounts at any time.

**Issue date**

- 6.5 Except in the case of a reinvestment of distribution in accordance with this constitution, Units or Options are taken to be issued when:
- (a) the Manager accepts the application; or

<sup>11</sup> ASIC RG 134.42.

- (b) the Manager receives the application money, or the property against which the Units or Options are to be issued is vested in the Manager,

whichever happens later.

Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the Record Date for the relevant Distribution Period.

#### **Uncleared funds**

- 6.6 Units or Options issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

#### **Application procedure for Financial Instruments**

- 6.7 The provisions of this clause 6 apply to applications for Financial Instruments with any necessary adaptations.

## **7 Redemption Price of Units, Options and Financial Instruments**

### **Redemption Price**

- 7.1 Subject to clauses 8.11, 8.15 and 8.16, the redemption price for a Unit must be calculated as follows:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Units in issue}}$$

### **Time for calculation**

- 7.2 Each of the variables in clause 7.1 must be determined:
- (a) while the Trust is a Registered Scheme and is Liquid, and at all times when the Trust is not a Registered Scheme, as at the next Valuation Time after the Manager receives the redemption request or determines that the Units are to be redeemed, whichever is the earlier; or
- (b) while the Trust is a Registered Scheme and is not Liquid, as at the last Valuation Time before the withdrawal offer is made.

### **Redemption Price of Options**

- 7.3 The redemption price of an Option is:
- (a) while the Options are quoted for trading on ASX, its Market Price, and
- (b) while the Options are not quoted for trading on ASX, the price determined in accordance with the principles in paragraph (c) of the definition of Market Value in clause 31.1.

### **Redemption price of Financial Instruments**

- 7.4 Subject to the terms of the relevant Financial Instruments and the Corporations Act, a Financial Instrument may be redeemed at a redemption price determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at a redemption price of \$100 per Financial Instrument.

**Rounding**

- 7.5 Subject to the Listing Rules, the Redemption Price may be rounded as the Manager determines but the amount of the rounding must not be more than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset of the Trust.

**8 Redemption procedures****While Officially Quoted**

8.1 While Units are Officially Quoted:

- (a) clauses 8.11 to 8.13 apply only to the extent provided for in clause 8.16;
- (b) clauses 8.10 and 8.14 to 8.18 apply; and
- (c) clauses 8.2 to 8.9 do not apply.

If the Stapling Provisions apply and Units comprise part of a Stapled Security that is Officially Quoted, clauses 8.15 and 8.16 apply with any necessary modifications.

**Request for redemption**

8.2 A Member may make a request for the redemption of some or all of their Units by giving the Manager notice in writing of the request specifying the number or value of Units to be redeemed and sufficient details to identify the Member, or in any other manner approved by the Manager, and the Manager must give effect to that request at the time and in the manner set out in this clause 8.

8.3 A Member may not withdraw a redemption request unless the Manager agrees.

**When Trust is Liquid or not a Registered Scheme**

8.4 Clauses 8.5 and 8.7 apply only:

- (a) while the Trust is Liquid; and
- (b) while the Trust is not Liquid but is not a Registered Scheme.

**Manager must redeem**

8.5 Subject to the Corporations Act and the Listing Rules, the Manager must:

- (a) redeem a Unit which is the subject of a valid redemption request, and ensure that the redemption is recorded in the Register, within 60 days of receipt of the request or such longer period as allowed by clause 8.6; and
- (b) pay the Redemption Price to the Member or former Member whose Units have been redeemed within 21 days of the redemption.

**Delayed redemption**

8.6

- (a) Subject to clause 8.6(b), if the Manager has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside

its control such as a restricted market for any Assets, the period allowed for redemption of the Units may be extended by the number of days during which such circumstances apply.

- (b) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Manager must pay the redemption proceeds to the withdrawing Member or former Member within 21 days of the date on which the withdrawal offer close.<sup>12</sup>

### **Minimum holding**

- 8.7 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.

### **Increased minimum**

- 8.8 If the Manager increases the minimum holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

### **No redemptions after termination**

- 8.9 The Manager need not give effect to a redemption request received between the date the Trust is terminated and the date of winding up.

### **Payment from the Assets**

- 8.10 The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

### **While Trust is not Liquid**

- 8.11 While the Trust is not Liquid, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind. While the Trust is a Registered Scheme and is not Liquid, if there is no withdrawal offer currently open for acceptance by Members, a Member has no right to request withdrawal from the Trust.

### **Manager not obliged**

- 8.12 The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by sending a copy of the offer to all Members, or making a copy of the offer available by electronic means and giving notice to Members that it is available. The Manager may cancel a withdrawal offer by sending a copy of the notice of cancellation to all Members, or making a copy of such notice available by electronic means and giving notice to Members that it is available.

### **Sums owed to Manager**

- 8.13 The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member. While the Trust is Liquid or not a Registered Scheme, the Manager may redeem without a redemption request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

<sup>12</sup> Section 601KD.

**When Units are redeemed**

- 8.14 Units are taken to be redeemed at the time at which the Redemption Price is known and the redemption is recorded (or required under clause 8.5 to be recorded) in the Register, and

from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

**On-market buy-backs**

- 8.15 While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

**Withdrawal offers while Listed**

- 8.16 While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 8.11 in which case clauses 8.11 to 8.13 apply in relation to the withdrawal offer, and the Redemption Price is to be calculated in accordance with clause 7.2(b).

**Redemption of Options**

- 8.17 The provisions of this clause 8 apply to the redemption of Options, with any necessary adaptations. The Redemption Price of an Option is to be determined under clause 7.3.

**Redemption of Financial Instruments**

- 8.18 The provisions of this clause 8 apply to the redemption of Financial Instruments with any necessary adaptations. The Redemption Price of a Financial Instrument is to be determined under clause 7.4.

**9 Valuation of Assets****Periodic valuations**

- 9.1 The Manager may cause an Asset to be valued at any time and, while the Trust is a Registered Scheme, must do so as and when required by the Corporations Act.

**Net Asset Value**

- 9.2 The Manager may determine Net Asset Value at any time, including more than once on each day.

**Valuation methods**

- 9.3 The Manager may determine the value of an Asset, and determine valuation methods and policies for each category of Asset and change them from time to time. While the Trust is a Registered Scheme, the Manager's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Application Price or Redemption Price of a

Unit, the value must be reasonably current.<sup>13</sup> In the absence of any other determination by the Manager, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

### **Currency conversion**

- 9.4 Where it is necessary for the purposes of a valuation to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank, or an independent pricing provider (such as Reuters) nominated by the Manager. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency.

## **10 Accounts**

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The financial reports of the Trust must be prepared, audited, lodged with ASIC and distributed to Members by the Manager as required by the Corporations Act and the Listing Rules.

## **11 Income and distributions to Members**

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### **Standing principles for determining Distributable Income**

- 11.1 The Manager may determine standing principles for calculating and distributing the Distributable Income for any Financial Year or Distribution Period and may change the principles from time to time. Without limiting this clause 11.1, the standing principles may:
- (a) include amounts of capital (or amounts which would have been capital, disregarding any recharacterisation in accordance with clause 11.13) in Distributable Income;
  - (b) treat amounts of income (or amounts which would have been income, disregarding any recharacterisation in accordance with clause 11.13) as capital; and
  - (c) permit the application of income receipts, profits or gains of the Trust to meet expenses of a revenue or capital nature (disregarding any classification of those expenses in accordance with clause 11.13), in the determination of Distributable Income.

### **Determination of Distributable Income**

- 11.2
- (a) The Manager must determine the Distributable Income for each Distribution Period and for each Financial Year. In the case of any Distribution Period which does not end at the end of a Financial Year this determination of the Distributable Income for that Distribution Period may be an estimate.
  - (b) The Distributable Income is to be:
    - (i) if the Manager has determined standing principles under clause 11.1 which are applicable to the Financial Year or Distribution Period, the amount calculated by applying

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<sup>13</sup> ASIC RG 134.110 provides guidance on the meaning of “reasonably current”.



those principles in respect of the Financial Year or Distribution Period; and

- (ii) if there are no standing principles which are applicable to the Financial Year or Distribution Period under clause 11.1, so much of the income of the Trust determined according to ordinary concepts as is available for that period for distribution after payment of, or the provision for, costs, expenses and outgoings in accordance with normal concepts and the terms of this constitution.
- (c) In the case of each Distribution Period which ends at the end of a Financial Year, the Distributable Income for that Distribution Period is to be the amount by which the Distributable Income for the Financial Year exceeds the aggregate of the Distributable Income or estimated Distributable Income in respect of any prior Distribution Periods during that Financial Year.
- (d) The Manager may treat as expenses of the Trust all coupon, interest, distribution or other periodic payments if any, required to be paid by the Manager to Holders of Financial Instruments in accordance with the terms of those Financial Instruments.

#### **Accounting standards**

- 11.3 The preparation of the accounts of the Trust in accordance with applicable accounting standards including international financial reporting standards to the extent required or relevant and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 11.2.

#### **Present entitlement**

- 11.4 Subject to clauses 3.16, 11.12 and 11.20, each person Registered as a Member at the end of the last day of a Distribution Period is presently entitled to the Distributable Income of the Trust for that Distribution Period in the proportion that the number of Units held by the Member bears to the total number of Units then on issue.

#### **Record Date**

- 11.5 The Manager must determine the Record Date for the purpose of determining the persons who are entitled to be paid a distribution, which will be the last day of the Distribution Period unless otherwise determined by the Manager at any time prior to the payment of that distribution. The payment by the Manager in respect of any Units of an amount of the Distributable Income calculated in accordance with this constitution in respect of those Units to the Member registered in respect of those Units as at the Record Date is a good and sufficient discharge to the Manager in respect of any liability it may have to any person in respect of any such entitlement with respect to those Units.

#### **Reserve for distribution**

- 11.6 Upon a person or persons becoming entitled to a share or shares in the Distributable Income for a Distribution Period, the Manager must set aside assets with a total value which is, in the Manager's reasonable opinion, likely to be equal to, or to be a fair approximation of, the aggregate amount of those shares of Distributable Income for distribution. Those Assets may, if necessary, be converted to money by the Manager for the purposes of payment.

**Over/under provisions**

- 11.7 Following the distribution of those shares of the Distributable Income for a Distribution Period out of the Assets set aside under clause 11.6:
- (a) if there is an over provision, the excess remains part of the Trust; and
  - (b) if there is an under provision, the Manager may apply further Assets to meet the distribution.

**Distribution of Distributable Income**

- 11.8 Subject to any deductions made under clause 11.11, the Manager must distribute to each person the person's entitlement to Distributable Income for a Distribution Period. That distribution must occur within two months after the Distribution Calculation Date for the Distribution Period.

**Separate accounts**

- 11.9 The Manager may keep separate accounts of different categories or sources, or both, of receipts, profits, gains, deductions or credits for tax purposes, and may allocate receipts, profits gains, deductions or credits from a particular category or source, or both, to particular Members. Where the Manager allocates receipts, profits, gains, deductions or credits from a particular category or source to a Member other than pro rata with all other Members, the Manager must notify the Member.

**Position on transfer of Units**

- 11.10 A person who is or was a Member as at a Record Date remains entitled to their share (if any) of the Distributable Income under clause 11.4 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

**Deductions from Distributable Income**

- 11.11 The Manager may deduct from any entitlement of a person to a share of Distributable Income any amount which the Manager is required or authorised to deduct under clause 12.8 and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid, distributed or reimbursed out of the Trust or reimbursing the Manager for the payment of the Tax to the person or authority entitled to it.

**Fractions**

- 11.12 If the share of Distributable Income for a Member determined under clause 11.4 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated and under clause 11.4 and the fraction of the cent becomes an Asset.

**Classification of items**

- 11.13 Without limiting clause 11.2, the Manager may determine:
- (a) whether any receipt, profit gain, cost, expense or outgoing is to be treated, for the purposes of this constitution, as being on income or capital account and may, in making that determination, reclassify amounts which are income as capital, and amounts which are capital as income;
  - (b) the extent to which reserves or provisions need to be made; and
  - (c) whether any item of income should be recognised as it is received or as it accrues (but not yet received).

**Availability of reinvestment**

- 11.14 The Manager may decide whether to permit or require the Members to reinvest some or all of any distribution.

**Terms of reinvestment**

- 11.15 If the Manager decides to permit or require reinvestment, it must notify Members of the procedure and terms for reinvestment and any change in the procedure or terms.

**Issue date**

- 11.16 If reinvestment applies, the Manager is taken to have received and accepted an application to reinvest distributions and the Units are taken to be issued on the date determined in accordance with clause 6.5.

**Liability**

- 11.17 The Manager does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 11 or the AMIT Regime, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

**Other distributions**

- 11.18 The Manager may at any time distribute any amount of capital or income to Members pro rata according to the number of Units they hold as at a time decided by the Manager. The distribution may be in cash, by way of additional Units, or in the form of other Assets under clause 12.9.

**Member may direct**

- 11.19 The Manager may act on a direction given by a Member in such form as the Manager requires to pay to a third party nominated in the direction all or part of the Member's entitlement to distributions of income and capital under this clause 11 or under clause 23 on winding up.

**Tax attributable to certain Members**

- 11.20 Where any Tax attributable to the ownership of Units by certain Members is paid or to be paid from the Assets, the entitlement to Distributable Income of those Members may be adjusted by the Manager so that the entitlement to Distributable Income of all other Members is equivalent to the amount they would receive in the absence of such Taxes.

**Periodic payments to Holders of Financial Instruments**

- 11.21 The Manager must pay to Holders of Financial Instruments all coupon, interest, distribution or other periodic payments required to be paid to the Holders of Financial Instruments under the terms of those Financial Instruments with such payments to be made at the time and in the manner set out in the terms of those Financial Instruments.

**Distributions paid in different currencies**

- 11.22 The Manager may provide a facility whereby Members may receive their entitlement to the Distributable Income from time to time in such currency or currencies as they may request by notice to the Manager in writing and which the Manager may approve and in such event the Manager may arrange to convert a Member's entitlement to Distributable Income into the currency in which it is to be paid on a date being the date that the Distributable Income in respect of a Distribution Period is determined, the Distribution Calculation Date in respect of a Distribution Period, the date of payment of distribution entitlements in respect of a Distribution Period

or such other date as the Manager may determine, and the Manager may maintain bank accounts in such currencies as may be appropriate for this purpose.

## 11A AMIT Regime

### AMIT election

11A.1 The Manager may, under the AMIT Regime, make an election to determine the Trust to be an attribution managed investment trust for the purposes of the Tax Act.

### Unders and overs

11A.2 The Manager may determine how any Unders or Overs that arise for the Trust are to be dealt with in accordance with the AMIT Regime. The Trustee is not liable to any Member or former Member with respect to how it addresses any Unders or Overs, provided that the Trustee addresses the Unders and Overs in accordance with the AMIT Regime, and irrespective of whether the choices made result in an attribution outcome for a Member or former Member that is different from the attribution outcome if the Manager had not made the choice, or had made the choice differently.

### Attribution of taxable income to Member

11A.3 Following the end of a Financial Year which is an AMIT Income Year, the Manager must attribute the Determined Trust Components of each particular category or character for tax purposes to Members in accordance with the Tax Act.

11A.4 The Manager may establish principles (“**Attribution Principles**”) to determine the manner in which Determined Trust Components are attributed to Members.

11A.5 If there are no Attribution Principles for an AMIT Income Year the Manager must attribute to each Member in respect of an AMIT Income Year:

- (a) if distributions have been paid to Members in respect of the AMIT Income Year (whether of Distributable Income or other distributions pursuant to clause 11.18), so much of any Determined Trust Components of the Trust for the AMIT Income Year as the Manager reasonably determines based on the Member’s proportionate share of the total distributions paid in respect of the AMIT Income Year; and
- (b) if no distributions have been paid to Members in respect of the AMIT Income Year., so much of any Determined Trust Components of the Trust for the AMIT Income Year as the Manager reasonably determines based on the Member’s proportionate share of the total units on issue as at the last day of the AMIT Income Year.

### Member must notify, provide information and indemnify Manager in relation to objections

11A.6 If a Member or former Member objects to the basis of the attribution of the Determined Member Components for the purposes of the AMIT Regime, including, without limitation, by making a Member Objection Choice, the Member or former Member must:

- (a) provide the Manager with a copy of the objection notice, including the basis for objection, within the time the member is required to do so under the Tax Act;
- (b) provide to the Manager any information the Manager reasonably requests in order to assess the Member's objection or proposed objection; and
- (c) indemnify the Manager against all costs and liabilities incurred by the Manager as a result of the objection or proposed objection.

### **Consequences if objection made**

11A.7 If a Member or former Member makes an objection to the basis of attributing the Determined Trust Components of the Trust under the AMIT Regime, including, without limitation, by making a Member Objection Choice the Manager may:

- (a) take such action as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members to be protected, including in dealings with the Commissioner of Taxation; and
- (b) amend its attribution of the relevant Determined Trust Components to the Members, having regard to the principles in clauses 11A.3, 11A.4 and 11A.5, and issue amended AMMA Statements to Members.

### **Limitation of liability**

11A.8 The Manager has no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to an objection to the basis of attribution of the Determined Trust Components of the Trust under the AMIT Regime, including, without limitation, by the Member making a Member Objection Choice.

### **Manager has a right to be indemnified for Tax payable**

11A.9 Without limiting clause 19, each Member or former Member is required to indemnify the Manager for:

- (a) any Tax payable by the Manager as a result of the application of the AMIT Regime which the Manager reasonably determines relates to the Member or former Member; and
- (b) any other costs, expenses or liabilities incurred by the Manager as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under this clause.

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

11A.10 The Manager may, if it is entitled to be indemnified by a Member or former Member under clause 11A.9, or under the AMIT Regime:

- (a) deduct (under clause 12.8) from any amounts owing to the particular Member, the aggregate of any amounts which the Manager is entitled to be indemnified under clause 11A.9, or under the AMIT Regime; and

- (b) redeem (under clause 8.13) Units held by the Member to satisfy any amounts owed to the Manager under clause 11A.9.

## 12 Payments

### Payment method

- 12.1 Money payable by the Manager to an Investor may be paid in any manner the Manager decides, including:
- (a) by cheque sent through the post directed to the address of the Investor as shown in the Register or, in the case of joint holders, to the address of the joint holder first named in the Register;
  - (b) by cheque sent through the post directed to such other address as the Investor or joint holder in writing directs; or
  - (c) by any method of direct credit or electronic transfer determined by the Manager to an account (of a type approved by the Manager) as provided in writing by the Investor or holders shown on the Register, or to such person or place directed by them.

Payment of any money under this clause is at the risk of the Investor to whom it is sent.

- 12.2 If the Manager determines under clause 12.1(c) that payments will be made only by direct credit or electronic transfer into an account (of a type approved by the Manager) nominated by the Investor or holder(s) shown on the Register, but no such account is nominated by the Investor or holder(s) or an electronic transfer into the nominated account is rejected or refunded, the Manager may credit the amount payable to an account of the Manager or its nominee held on behalf of the Trust to be held until:
- (a) the Investor nominates a valid account; or
  - (b) the amount is required to be dealt with in accordance with any law relating to unclaimed moneys.
- 12.3 An amount credited to an account under clauses 12.1(c) or 12.2 is to be treated as having been paid to the Investor at the time it is credited to that account. The Manager will not be a trustee of the money other than under this constitution and no interest will accrue on that amount.

### Cheques

- 12.4 The Manager may cancel any cheque which is not presented within 6 months from its date of issue. Where a cheque which is cancelled was drawn in favour of an Investor, the Manager may reinvest the money in Units (and if relevant Attached Securities) in the name of that Investor at the application price for the Units and Attached Securities prevailing at the time the cheque is cancelled (if the Investor is a Member) or deal with the money in accordance with any relevant legislation dealing with unclaimed moneys.

### Electronic transfers

- 12.5 Without limitation to clauses 12.1 and 12.2, if the Manager attempts to make a payment to an Investor by electronic transfer of funds or any other means and the transfer is unsuccessful, the Manager may send that money by cheque to the Investor to the last known address of that Investor.

**Rounding**

- 12.6 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

**Joint Investors**

- 12.7 A payment to any one of joint Investors will discharge the obligations of the Manager in respect of the payment.

**Deduction of Tax and amounts owing**

- 12.8 The Manager may deduct from any amount to be paid to or received from a person who is or has been an Investor:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Investor to the Manager or any other person,

which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

**Transfer of Assets**

- 12.9 The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution of income or capital, or on winding up of the Trust, either:

- (a) with the consent of the Member; or
- (b) if the Manager reasonably considers the transfer of Assets rather than cash is in the best interests of Members, without the consent of the Member.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the redemption, withdrawal offer or distribution (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions<sup>14</sup>). If paragraph (a) of this clause 12.9 applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

For the purposes of this clause 12.9, the Manager is appointed as agent and attorney of each Member with power to agree on the Member's behalf to the transfer of Assets to the Member and to execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the transfer of Assets, including agreeing to become a member and / or holder of securities of a company or other body corporate or trust.

**13 Powers of the Manager****General powers**

- 13.1 Subject to this constitution, the Manager has all the legal capacity and powers both inside and outside Australia in respect of the Trust that it is

<sup>14</sup> ASIC RG 134.178.

possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

### **Contracting and borrowing powers**

- 13.2 The Manager in its capacity as trustee of the Trust has power to enter into any form of contract and to incur all types of obligations and liabilities including:
- (a) to borrow or raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities);
  - (b) to grant all types of security (whether for the obligations of the Manager or another person);
  - (c) to grant guarantees and indemnities; and
  - (d) to enter into derivatives.

### **Investment and lending powers**

- 13.3 The Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion. This includes the power to:
- (a) invest the whole or part of the Assets in a single type of asset, or in trusts or other entities managed or controlled by the Manager or its related body corporate, or such other investments as the Manager determines;
  - (b) lend money and on-lend or provide financial accommodation to any person.

### **Power of delegation**

- 13.4 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 13.5 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate, and to limit the Manager's liability as against persons other than a Member (in their capacity as a Member), as the Manager thinks fit.
- 13.6 The agent or delegate may be an associate of the Manager.

### **Exercise of discretion**

- 13.7 Subject to clause 18.4, the Manager may in its absolute discretion decide how and when to exercise its powers.

### **Underwriting**

- 13.8 Subject to the Corporations Act, the Manager may enter into an agreement with a person (including an associate of the Manager) to underwrite the subscription or purchase of Units, Options or Financial Instruments or to manage the offer of Units, Options or Financial Instruments on such terms as the Manager determines (including that the underwriter may take up any of those things not otherwise subscribed for or sold). Unless the agreement expressly states otherwise, the underwriter or offer manager will not be an agent or delegate of the Manager.



**Voting**

- 13.9 Subject to the Corporations Act, the Manager may exercise all voting rights conferred by the Assets at its absolute discretion.

**Credit rating**

- 13.10 The Manager may arrange to have the Trust given a credit rating by a Ratings Agency and provide undertakings to the Ratings Agency from time to time in order to maintain any credit rating assigned to the Trust.

**No limitation**

- 13.11 Nothing in this clause 13 limits anything else in this clause 13.

**14 Retirement of Manager**

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**While a Registered Scheme**

- 14.1 While the Trust is a Registered Scheme, the Manager:
- (a) may retire as the responsible entity of the Trust as permitted by law; and
  - (b) must retire as the responsible entity of the Trust when required by law.

Subject to law, the Manager may appoint in writing another person to be the Manager.

**While not a Registered Scheme**

- 14.2 While the Trust is not a Registered Scheme, the Manager:
- (a) may retire on 3 months' notice to Members (or such shorter period as they agree); and
  - (b) must retire as the trustee of the Trust if required by law or by all Members.

On retirement, the Manager may appoint in writing another person to be the Manager.

**New Manager**

- 14.3 Any proposed replacement Manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

**Release**

- 14.4 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.

**15 Notices to Investors**

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**Document includes notice**

- 15.1 In this clause 15, a reference to a document includes a notice and a notification by electronic means.

**Form of document**

- 15.2 Unless expressly stated otherwise in this constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this constitution must be in writing.

**Methods of service**

- 15.3 The Manager may give a document to an Investor:
- (a) personally;
  - (b) by sending it by post to the address for the Investor in the Register or an alternative address nominated by the Investor;
  - (c) by sending it to an electronic address nominated by the Investor; or
  - (d) by notifying the Investor by an electronic means nominated by the Investor that:
    - (i) the document is available; and
    - (ii) how the Investor may use the nominated access means to access the document.

**Post**

- 15.4 A document sent by post:
- (a) if sent to an address in Australia, may be sent by ordinary post; and
  - (b) if sent to an address outside Australia, must be sent by airmail,
- and in either case is taken to have been received on the day after the date of its posting.

**Electronic means**

- 15.5 If a document is sent by electronic means, delivery of the document is taken:
- (a) to be effected by properly addressing and transmitting the electronic transmission; and
  - (b) is taken to have been given and received on the day after the date of its transmission.

**Evidence of service**

- 15.6 A certificate in writing signed by a director or a secretary of the Manager stating that a document was sent, delivered or given to an Investor personally, by post or by other electronic means on a particular date is prima facie evidence that the document was so sent, delivered or given on that date.

**Joint Investors**

- 15.7 A document may be given by the Manager to the joint Investors by giving it to the joint Investor first named in the Register.

**Persons entitled to Units**

- 15.8 A person who by operation of law, transfer or other means whatsoever becomes entitled to any Unit is absolutely bound by every document given in accordance with this clause 15 to the person from whom that person derives title prior to registration of that person's title in the Register.

## 16 Notices to the Manager

- 16.1 A document given to the Manager for the purposes of this constitution or the Corporations Act must be given in writing (which includes an electronic communication), or in such other manner as the Manager determines. The document must bear the actual, or electronic signature of the Investor or a duly authorised officer or representative of the Investor unless the Manager dispenses with this requirement. Service is only effective at the time of receipt in legible form.

## 17 Meetings and Resolutions of Investors

### Convening Members' meeting

- 17.1 The Manager may at any time convene a Members' meeting whenever it thinks fit and must do so if required by the Corporations Act.

### Members request for meeting - not Registered Scheme

- 17.2 While the Trust is not a Registered Scheme, the Manager must convene a meeting of Members to consider a proposed resolution if the Manager receives a requisition in writing to convene a meeting to consider the resolution signed by Members with at least 25% of the votes that may be cast on the resolution.

### Members' request for meeting - Registered Scheme

- 17.3 While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

### Notice while not Registered Scheme

- 17.4 While the Trust is not a Registered Scheme:
- (a) a meeting of Members must be convened by notice sent to every Member entitled to attend and vote at the meeting;
  - (b) the notice of meeting need not set out the terms of any resolution to be proposed, but must state the general nature of the business to be transacted at the meeting. Sections 252B(6), (7) and (9) of the Corporations Act will apply to the calling of meetings as if the Trust is a Registered Scheme; and
  - (c) at least 10 days' notice of a meeting must be given to Members or such shorter notice as they agree.

### Notice while Registered Scheme

- 17.5
- (a) While the Trust is a Registered Scheme, notice of a meeting of Members must be given in accordance with clause 15 and the Corporations Act, and while the Trust is Listed, the Listing Rules.
  - (b) Subject to clause 17.5(a), the content of a notice of Members' meeting convened by the Manager is to be decided by the Manager as it thinks fit.

### Cancellation or postponement of a meeting

- 17.6 Where a meeting of Members is convened by the Manager, it may by notice, whenever it thinks fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place

of the meeting. This clause does not apply to a meeting convened in accordance with the Corporations Act by Members, or by the Manager on the request of Members or to a meeting convened by a court.

### **Proxy, attorney or Representative at postponed meeting**

17.7 Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a Members' meeting to be held on a specified date or at a Members' meeting or Members' meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a Representative unless the Member appointing the proxy, attorney or Representative gives to the Manager at its registered office notice in writing to the contrary not less than 48 hours (or any shorter period as the Manager may permit or as specified by the Corporations Act) before the time to which the holding of the meeting has been postponed.

### **Non-receipt of or defective notice**

17.8

- (a) The non-receipt of notice of a Members' meeting or cancellation or postponement of a Members' meeting by, or the accidental omission to give notice of a Members' meeting or cancellation or postponement of a Members' meeting to, a person entitled to receive notice does not invalidate any resolution passed at the Members' meeting or at a postponed meeting or the cancellation or postponement of a meeting.
- (b) A person who attends a Members' meeting waives any objection the person may have to:
  - (i) any failure to give notice, or the giving of a defective notice, of the meeting unless at the start of the meeting the person objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter which is not within the business referred to in the notice of meeting, unless the person objects to the consideration of the matter when first presented.

### **Proxy, attorney or Representative appointments**

17.9

- (a) An instrument appointing a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) and received at any time that the Manager prescribes or accepts, or the chairperson of a Members' meeting accepts.

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- (b) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment received at the electronic address or by the electronic means specified in the notice is taken to have been received at the registered office of the Manager and validated by the Member if there is compliance with the requirements set out in the notice.
  - (c) If the Manager receives an instrument or form appointing a proxy, attorney or representative from a Member and the Manager considers that it is not properly executed or authenticated, or is incomplete or unclear:
    - (i) if the name, or the name of the office, of the proxy, attorney or representative, is not filled in or is unclear, then the proxy, attorney or representative of that Member is the person specified by the Manager in the instrument or form of proxy or if no person is specified, the chairperson of that meeting;
    - (ii) if the instrument or form has not been duly signed or authenticated, the Manager may return the instrument or form to the appointing Member and request the Member sign or authenticate the instrument or form and return it to the Manager within a period determined by the Manager (which may be later than the time specified in the notice of meeting for the receipt of proxy appointments); and
    - (iii) if the instrument or form is otherwise unclear or incomplete, the Manager may:
      - (A) by oral or written communication, clarify with the Member any instruction on the appointment; and
      - (B) complete or amend the contents of any instrument or form to reflect the clarification in the instructions received from the Member (which may occur later than the time specified in the notice of meeting for the receipt of proxy appointments) and the Member appoints the Manager as its attorney for this purpose.

**Proxy's authority to speak and vote**

- 17.10 A proxy's authority to speak and vote for a Member is not suspended while the appointing Member is present at the Members' meeting.

**Number for a quorum**

- 17.11 Subject to clause 17.14, three Members present in person or by proxy, attorney or Representative, are a quorum at a Members' meeting unless the Trust has only one Member entitled to vote, in which case that one Member constitutes a quorum. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:
- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and

- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

Subject to clause 17.18(b), a Member placing a direct vote under clause 17.30 is not taken into account in determining whether or not there is a quorum at a Members' meeting.

#### **Requirement for a quorum**

- 17.12 An item of business may not be transacted at a Members' meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairperson of the meeting (on the chairperson's own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

#### **Quorum and time**

- 17.13 If within 15 minutes after the time appointed for a meeting (or any longer period of time as the chairperson may allow) a quorum is not present, the meeting:
- (a) if convened by on requisition of Members, is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Manager appoints by notice to the Members and others entitled to notice of the meeting.

#### **Adjourned meeting**

- 17.14 At a meeting adjourned under clause 17.13(b), those Members present in person or by proxy, attorney or Representative are a quorum.

#### **Absence of chairperson at Members' meeting**

- 17.15
- (a) Subject to the Corporations Act, the Manager may appoint a person to chair a meeting of Members.
- (b) If a Members' meeting is held and the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may preside as chairperson of the meeting (in order of precedence):
- (i) a person appointed in writing by the Manager as deputy chairperson (if any), including any director of the Manager; or
- (ii) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.
- (c) If at a Members' meeting the chairperson of that meeting acting under clauses 17.15(a) or 17.15(b) is unable to unwilling to chair all or part of that meeting, the chairperson may:
- (i) withdraw during the relevant part of the proceedings; and
- (ii) subject to the Corporations Act, nominate any person who is a director of the Manager to be acting chairperson

of the meeting during the relevant part of the proceedings.

On the conclusion of the relevant part of the proceedings, the acting chairperson of the meeting is to withdraw and the chairperson of the meeting acting under 17.15(a) or 17.15(b) is to resume as chairperson of the meeting.

- (d) If a proxy instrument appoints the chairperson of the meeting as proxy for the part of the proceedings for which an acting chairperson is nominated, the proxy instrument is taken to be in favour of that acting chairperson for the relevant part of the proceedings.

### **Conduct of Members' meetings**

17.16 The chairperson of a Members' meeting (including any person acting with the authority of the chairperson):

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require any person wishing to attend the meeting to comply with searches, restrictions or other security arrangements considered appropriate;
- (c) may refuse entry to, or require security measures be taken in respect of any person who does not comply with security arrangements, who uses a recording or broadcasting device without consent, or who possesses an article considered to be dangerous, offensive or liable to cause disruption, or who was not entitled to notice of the meeting;
- (d) subject to the Corporations Act, if there is insufficient room at the meeting venue, may arrange another or a second venue (without giving notice or putting the matter to a vote);
- (e) may require the adoption of any procedure which is in the chairperson's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the Members' meeting; and
- (f) may determine that a vote be disregarded and treated as not having been cast (without requiring that the matter be put to a vote), if a person purports to cast a vote at or for the purposes of a Members' meeting in contravention of the Corporations Act or Listing Rules;
- (g) subject to the Corporations Act, may refuse to allow:
  - (i) any amendment to be moved to a resolution set out in the notice of that meeting;
  - (ii) any business to be transacted unless the general nature of the business is stated in the notice calling the meeting;
- (h) may withdraw from consideration by the meeting any resolution that is set out in the notice of that meeting (other than those requisitioned by Members or required by law); and

- (i) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairperson under this clause (including any person acting with the chairperson's authority) is final.

- 17.17 A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **Multiple venues**

17.18

- (a) Subject to this clause 17, the Corporations Act and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted, including a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) If a separate meeting place is linked to the main place of a Members' meeting by an instantaneous audio visual communication device which, by itself or in conjunction with other arrangements:
  - (i) gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
  - (ii) enables the Members in the separate meeting place to vote on a poll,

a Member present at the separate meeting place is taken to be present at the Members' meeting and entitled to exercise all rights as if they were present at the main place.

- (c) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in clause 17.18(b) is not satisfied, the chairperson may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under clause 17.18(b)) and transact business, and no Member may object to the meeting being held or continuing.

### **Adjournment of Members' meeting**

- 17.19 The chairperson of a Members' meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.



In exercising this discretion, the chairperson may, but need not, seek the approval of the Members present. Unless required by the chairperson, no vote may be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **Notice of adjourned meeting**

17.20 No new notice of the adjourned meeting need be given unless required by the Corporations Act. Notice of any adjourned meeting which may become necessary may be included in the notice convening the original meeting.

#### **Questions decided by majority**

17.21 Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **When a poll is effectively demanded**

17.22

- (a) At a Members' meeting, a poll may be demanded by Members in accordance with the Corporations Act (and not otherwise) or by the chairperson.
- (b) The poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.

#### **Poll**

17.23

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) The results of the poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the chairperson considers appropriate.

**Equality of votes - no casting vote for chairperson**

- 17.24 If there is an equality of votes, either on a show of hands or on a poll, the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative.

**Circulated Resolution**

- 17.25 The Manager may make arrangements whereby Members may pass written resolutions which have been circulated for that purpose by completing (in a form satisfactory to the Manager) and returning such resolutions to the Manager within the time specified in the circulated resolution.

**Resolutions binding**

- 17.26 A Resolution of Members binds all Members, whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

**Objection to voting qualification**

- 17.27 An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
- (a) may not be raised except at that meeting or adjourned meeting; and
  - (b) must be referred to the chairperson of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

**Voting - not a Registered Scheme**

- 17.28 While the Trust is not a Registered Scheme:
- (a) voting is by a show of hands, unless a poll is duly demanded or the Resolution proposed is required by this constitution or by law to be decided by a percentage of all Units; and
  - (b) subject to the rights, obligations and restrictions attaching to any particular Units, each Member which is present in person or by proxy has:
    - (i) on a show of hands, one vote; and
    - (ii) on a poll, one vote for each whole Unit held.

In the case of joint Members, only the first named in the Register may vote unless the Manager otherwise agrees.

**Voting - Registered Scheme**

- 17.29 While the Trust is a Registered Scheme, the provisions of the Corporations Act governing voting for meetings of members of Registered Schemes apply to the Trust.

**Direct voting**

- 17.30 The Manager may determine that at a meeting of Members, a Member who is entitled to attend and vote on a Resolution at that meeting is entitled to a direct vote in respect of that Resolution. A "direct vote" includes a vote delivered to the Manager by post or other electronic means

approved by the Manager. The Manager may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.

- 17.31 A direct vote on a Resolution at a meeting in respect of a Unit cast in accordance with clause 17.30 is of no effect and will be disregarded:
- (a) if, at the time of the Resolution, the person who cast the direct vote:
    - (i) is not entitled to vote on the Resolution in respect of the Unit; or
    - (ii) would not be entitled to vote on the Resolution in respect of the Unit if the person were present at the meeting of Members at which the Resolution is considered;
  - (b) if, had the vote been cast in person at the meeting of Members at which the Resolution is considered:
    - (i) the vote would not be valid; or
    - (ii) the Manager would be obliged to disregard the vote;
  - (c) subject to any rules prescribed by the Manager, if the person who cast the direct vote is present in person at the meeting of Members at the time the Resolution is considered; and
  - (d) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Manager under clause 17.30.
- 17.32 Subject to any rules prescribed by the Manager, if the Manager receives a valid direct vote on a Resolution in accordance with clauses 17.30 and 17.31 and, prior to, after or at the same time as receipt of the direct vote, the Manager receives an instrument appointing a proxy, attorney or representative to vote on behalf of the same Member on that Resolution, the Manager may regard the direct vote as effective in respect of that Resolution and disregard any vote cast by the proxy, attorney or representative on the Resolution at the meeting of Members.

#### **Proxies**

- 17.33 Subject to clause 17.9, the provisions of the Corporations Act governing proxies for meetings of members of Registered Schemes apply to the Trust.

#### **Procedural irregularities**

- 17.34 A meeting of Members is not invalidated because of any procedural irregularity within the meaning of section 1322 of the Corporations Act.

#### **Minutes**

- 17.35 The minutes of a meeting of Members signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

#### **Option holders, Holders of Financial Instruments and classes**

- 17.36 The Manager may convene a meeting of a class of Members, or of Option Holders or a class of Option Holders, or of Holders of Financial

Instruments or a class of Holders of Financial Instruments, and must do so if required by the Corporations Act. If it does so, this clause 17 applies as if it referred to Members of a class, or to Option Holders or Option Holders of a class, or to Holders of Financial Instruments or a class of Holders of Financial Instruments (as relevant) rather than Members or to a "Members' meeting", and with any other necessary adaptations, except that Option Holders may exercise any right they may have under the Corporations Act to attend a meeting and vote on a Resolution of Members, but otherwise may not vote on a Resolution of Members or attend a meeting of Members. If and to the extent a Holder of Financial Instruments is entitled under the Corporations Act to vote at a meeting of Members, any resolution passed at that meeting will be binding on them.

## 18 Rights and liabilities of Manager

### Holding Units

- 18.1 The Manager and its associates may hold Units, Options or Financial Instruments, or interests in any trust or company which is an associate of any of them, in any capacity.

### Other capacities

- 18.2 Subject to the Corporations Act, the Manager (and any of its associates to the extent applicable) may:
- (a) deal with itself (as trustee of the Trust or in another capacity), an associate or with any Investor;
  - (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate or with any Investor and retain for its own benefit any profits or benefits derived from any such contract or transaction; and
  - (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust.

### Manager may rely

- 18.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
  - (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
  - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
  - (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely,

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

### **Control by Members**

- 18.4 This clause 18.4 applies while the Trust is not a Registered Scheme and no application is with ASIC to register the Trust as a Registered Scheme. Despite any other provision of this constitution, the Manager must act in accordance with the directions that are not inconsistent with the Manager's duties under this constitution, the terms of its Licence and at law given from time to time by the sole Member (if any) or jointly by all Members so as to allow the Members acting together to have day to day control over the operation of the Trust. The Manager may seek directions from the Members on any matter. The Manager is not required to act on any direction to incur a liability unless its liability is limited to the Assets.

## **19 Limitation of liability and indemnity in favour of Manager**

### **Limitation on Manager's liability**

- 19.1 While the Trust is a Registered Scheme, the Manager is not liable in contract, tort or otherwise to Investors for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

### **Liability while Trust is not a Registered Scheme**

- 19.2 While the Trust is not a Registered Scheme, if the Manager acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Investors for any loss suffered in any way relating to the Trust.

### **Liability limited to Assets**

- 19.3 Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Manager's ability to be indemnified from the Assets.

### **Indemnity in favour of Manager**

- 19.4 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing its duties, or properly exercising any of its powers in the proper performance of its duties in relation to the Trust.

### **Liability for agents**

- 19.5 To the extent permitted by the Corporations Act, and otherwise without limitation, the indemnity in clause 19.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 19.6 The indemnity in clause 19.4 is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed from the office it holds in relation to the Trust.

### **Right of indemnity not affected by unrelated breach**

- 19.7 Where a Liability is incurred pursuant to a proper performance of the Manager's duties or in the proper exercise of its powers in the proper performance of its duties in relation to the Trust under this constitution or at law, the Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to itself or to any

creditor of the Manager (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Manager or by any person or entity acting on behalf of the Manager.

## 20 Liability of Investors

### Liability limited

- 20.1 Subject to clauses 20.3 and 20.5, the liability of a Member, Option Holder or Holder of Financial Instruments is limited to the amount if any which remains unpaid in relation to their subscription for their Units, Options or Financial Instruments.

### Member need not indemnify

- 20.2 A Member, Option Holder or Holder of Financial Instruments need not indemnify the Manager if there is a deficiency in the Assets or if the claim of any creditor of the Manager in respect of the Trust cannot be satisfied out of the Assets.

### Tax or user pays costs

- 20.3 The Manager is entitled to be indemnified by any current or former Investor to the extent that the Manager incurs any liability for Tax or costs which are not properly an expense of the Trust as a result of:
- (a) that person's action or inaction;
  - (b) an act or omission requested by that person, other than directions given pursuant to clause 18.4; or
  - (c) any other matter arising in connection with Units, Options or Financial Instruments held by that person.

### Joint Investors

- 20.4 Current and former joint Members, Option Holders and Holders of Financial Instruments are jointly and severally liable in respect of all payments including payments of Tax to which the next preceding paragraph applies.

### Recourse

- 20.5 In the absence of separate agreement with a Member, Option Holder or Holder of Financial Instruments, and except for the amounts referred to in clause 20.1 and 20.3, the recourse of the Manager and any creditor is limited to the Assets.

### Restrictions on Members

- 20.6 Subject to clause 18.4, an Investor:
- (a) must not interfere with any rights or powers of the Manager under this constitution;
  - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
  - (c) may not require an Asset to be transferred to them.

**No partnership**

- 20.7 Except as expressly provided in this constitution, there is no relationship of partnership or agency between the Manager and any Investor. Nothing in this constitution is to be construed as creating any association, joint venture or partnership among the Trust and any Stapled Entity for any purpose or authorising the share of the benefit of any assets (and any profits from assets) of the Trust or any Stapled Entity as a result of the Stapling.

**21 Remuneration and expenses of Manager****Subject to the Corporations Act**

- 21.1 While the Trust is a Registered Scheme, the fees in this clause 21 may only be paid to the Manager to the extent they are payable in relation to the proper performance of the Manager's duties as responsible entity of the Trust.

**Management fee**

- 21.2 The Manager is entitled to be paid a fee out of the Assets for its services in relation to the operation of the Trust equal to the Manager's reasonable estimate of its costs, including all overheads and internal expenses<sup>15</sup> of the Manager, whether incurred directly by the Manager or reimbursed by the Manager to any of its related bodies corporate, for which it is not otherwise reimbursed under clause 21.4.

This fee is to be payable from time to time upon demand by the Manager, provided that the Manager may make a demand for payment of all or part of the fee at any time if it has incurred the relevant costs, whether or not it has paid those costs. The Manager must produce a statement within 1 month from the end of each Quarter setting out the management fee for the Quarter and any amount remaining unpaid.

The entitlement to this fee continues to the date of final distribution in accordance with clause 23. However, the Manager is not entitled to a management fee in respect of any period during which it is not appointed as trustee or responsible entity of the Trust.

**Waiver of any fees and expenses**

- 21.3 The Manager may accept lower fees than the fees (if any) to which it is entitled under this constitution or not seek reimbursement of all costs and expenses to which it is entitled, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

**Costs and expenses**

- 21.4 All costs and expenses incurred by the Manager in connection with the Trust and its consolidated or controlled entities (including a controlled sub trust), including in performing and being able to perform its role as Manager, are payable or reimburseable out of the Assets or out of the assets of a consolidated or controlled entity of the Trust (including a controlled sub trust) but, while the Trust is a Registered Scheme, payment or reimbursement is only available in relation to the proper performance of the Manager's duties as responsible entity of the Trust. This includes costs and expenses connected with the following, and no paragraph of this clause 21.4 limits any other paragraph:

<sup>15</sup> The Manager's internal expenses that relate to the Trust may include the fees of directors of the Manager and the cost of their directors' and officers' liability insurance, the cost of premises, computer systems and staff and related expenses.

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- (a) this constitution, any amendment or proposed amendment to this constitution, the formation of the Trust and any investment vehicle in which the Trust expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
  - (b) registration of the Trust as a Registered Scheme;
  - (c) the preparation, review, distribution and promotion of any product disclosure statement, prospectus or offering memorandum in respect of Units, Options, Financial Instruments or Stapled Securities, or other promotion of the Trust or the Stapled Entities;
  - (d) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
  - (e) any proposed acquisition, disposal or other dealing with an investment;
  - (f) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register;
  - (g) borrowing arrangements and raising money on behalf of the Trust or guarantees in connection with the Trust, including hedging costs and any gearing facility;
  - (h) costs of the admission of the Trust to the Official List, the quotation of Units or any Options or Financial Instruments on ASX or any other recognised stock exchange and compliance with the Listing Rules or the rules of any other exchange and the quotation of any Units, Stapled Securities, Options, securities, debt instruments or other things of any kind;
  - (i) an issue of Units, Stapled Securities, Options or Financial Instruments or any interests in, or rights associated with Units, Stapled Securities, Options or Financial Instruments or any other obligation (including any other securities or debt instruments of any kind) issued by the Trust or a Stapled Entity;
  - (j) convening and holding meetings of Investors or any class of them, the implementation of any Resolutions and communications with Investors and attending any meetings of a Stapled Entity;
  - (k) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
  - (l) financial institution fees;
  - (m) fees payable to RE Holding Company Pty Limited under the WRT Internal Reimbursement Agreement dated 20 December 2010;
  - (n) fees and expenses payable under property management agreements, including to related bodies corporate of the Manager;



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- (o) fees and expenses payable under development framework agreements and design and construction agreements, including to related bodies corporate of the Manager;
  - (p) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
  - (q) investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management, supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
  - (r) the services of asset managers, property managers, development managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any real property in which the Trust has a direct or indirect interest, which may include an associate of the Manager;
  - (s) rates, development, repair, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants, costs of leasing (including marketing) and leasing incentives in relation to any real property in which the Trust has a direct or indirect interest;
  - (t) travel and accommodation expenses of directors and employees of the Manager in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed Asset;
  - (u) underwriting or managing any subscription or purchase of Units, Options or Financial Instruments, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under such agreement;
  - (v) accounting and compliance with taxation laws and procedures (whether internal expenses of the Manager or paid to third parties) preparation and audit of the taxation returns and accounts of the Manager and the Trust;
  - (w) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
  - (x) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this sub-paragraph must be repaid;

- (y) all damages, expenses, payments, legal and other costs and disbursements incurred by the Manager in relation to or in connection with any claim, dispute or litigation (“**Claim**”) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Manager;
- (z) any compliance committee established by the Manager in connection with the Trust, including any fees paid to or insurance premiums in respect of Compliance Committee Members;
- (aa) while the Trust is a Registered Scheme and there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (bb) fees payable to any audit committee for the Trust appointed in accordance with ASX corporate governance guidelines or otherwise;
- (cc) the costs of preparing, printing and sending to Members and/or holders of Options or Financial Instruments accounts, reports, distribution statements, cheques, circulars and other notices;
- (dd) the cost of handling complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution Trust;
- (ee) the cost of the Manager employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
- (ff) the preparation, implementation, amendment and audit of any compliance plan for the Trust; and
- (gg) complying with any law, and any request or requirement of ASIC or ASX;
- (hh) any Stapling of Units to Attached Securities;
- (ii) in connection with any Stapling Proposal, Top Hat Proposal, Exchange Proposal or any other Reorganisation Proposal; and
- (jj) having the Trust rated by a Ratings Agency.

In this clause 21, “expenses” may include amounts paid by the Manager to related bodies corporate.

## GST

- 21.5 The fees payable out of the Assets to the Manager under this constitution do not include any amount referable to GST. If the Manager is or

becomes liable to pay GST in respect of any supply under or in connection with this constitution (including the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

### **Input tax credits**

- 21.6 In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Manager is entitled to recover out of the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax.
- 21.7 If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:
- (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this constitution (including any increase in the amount charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or
  - (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with proper performance of the Manager's duties under this constitution (including the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);

and such increased cost or reduction is not compensated for by any other provision of this constitution, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.

### **Amendment of fee provisions is contemplated**

- 21.8 Without limiting clause 24, the Manager has power to amend any part of this clause 21 with the effect of increasing or decreasing any amount of fees due to it, or introducing new types of fees, or to otherwise amend, delete or replace any of the provisions of this clause 21, if:
- (a) while the Trust is a Registered Scheme, the Manager complies with any applicable requirements of the Corporations Act relating to:
    - (i) amending the constitution of a Registered Scheme, and
    - (ii) increasing fees or charges in relation to a Registered Scheme, or
  - (b) while the Trust is not a Registered Scheme, the Manager obtains the written consent of the sole Member or, if there is more than

one Member, gives at least 5 Business Days' prior notice to Members of the amendment.

## 22 Duration of the Trust

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### Initial settlement

- 22.1 The Trust commences when the Manager's nominee subscribes \$100 for Units in the Trust. The Manager's nominee must be issued with 100 Units in return for that payment.

### Termination

- 22.2 The Trust terminates on the earliest of:
- (a) while the Trust is a Registered Scheme:
    - (i) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
    - (ii) a date determined by the Manager and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
  - (b) while the Trust is not a Registered Scheme, the date specified by the Manager as the date of termination of the Trust in a notice given to Members; and
  - (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law.

### Restriction on issue and redemption of Units

- 22.3 Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

## 23 Procedure on termination

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### Realisation of Assets and payment of expenses

- 23.1 Following termination of the Trust, the Manager must:
- (a) realise the Assets, except to the extent that it determines to distribute Assets to Members in accordance with clause 12.9 pro rata according to their holding of Units as part of the winding up of the Trust; and
  - (b) make payments (or set aside estimated amounts) from the Assets to pay the Trust's expenses and liabilities, and the costs or anticipated costs of winding up the Trust. These amounts will reduce the proceeds of winding up that a Member may otherwise receive, but a Member is not required to pay any of these amounts from their own funds.

To the extent that realisation of Assets is required, it must be completed in 180 days if practicable and in any event as soon as possible after that. The Manager may, however, postpone realisation of the Assets or any Asset if the Manager reasonably considers it would be in the best interests

of Members to do so, and the Manager is not responsible for any consequent loss or damage attributable to that postponement.

### **Auditor and liquidator**

23.2

- (a) If, at the time it is to be wound up, the Trust is a Registered Scheme, the Manager must arrange for an independent audit of the final accounts of the Trust by a registered company auditor.
- (b) If the Trust is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Trustee to meet Liabilities from the Assets as and when they fall due, the Trustee may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the powers of the Trustee under this constitution as necessary to facilitate the winding up.

### **Distribution following termination**

23.3

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) including entitlements of Members to Distributable Income, amounts owing to Holders of Financial Instruments and meeting the expenses (including anticipated expenses) of the termination, must be distributed pro rata to Members according to the number of Units they hold. The Manager may distribute proceeds of realisation in instalments.

If any Option Holders have an entitlement to participate in the net proceeds of realisation this calculation must be adjusted in a manner determined by the Manager to take that entitlement into account. The entitlement, if any, of an Option Holder to any distribution of the net proceeds of realisation will be determined by the terms of issue of that Option.

### **Provisions continue to apply**

23.4

The provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 23.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member, and the Manager is under no obligation to consider or process redemption requests received after the date of termination.

## **24 Amendments to this constitution**

### **Manager may amend**

24.1

Subject to the Corporations Act, while the Trust is a Registered Scheme, this constitution may be amended:

- (a) by Resolution of Members; or
- (b) by deed executed by the Manager.

If the constitution is amended by Resolution of Members, the Manager may give effect to the amendments by executing a supplemental deed.

### **While not a Registered Scheme**

24.2

The Manager may amend this constitution by deed while clause 24.1 does not apply.

## 25 Stapling Provisions and Reorganisation Proposals

### Stapling

- 25.1
- (a) Stapling of Units to the other components of Stapled Securities has already commenced and accordingly the Stapling Provisions apply. The Manager has the further powers in relation to Stapling and Unstapling set out in this clause 25 and Schedule 1.
  - (b) The Manager may determine in respect of any future Stapling:
    - (i) that the Stapling Provisions will take effect in accordance with clause 25.2; and
    - (ii) the Stapling Commencement Time.

### Stapling Provisions

- 25.2 Subject to clause 25.1(a), if the Manager determines, the Stapling Provisions take effect on and from the Stapling Commencement Time until they cease to apply in accordance with this constitution.

While the Stapling Provisions apply:

- (a) subject to clause 26.5, this constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act, the Listing Rules or any other law; and
- (b) provisions of this constitution, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

### Power to enter into Reorganisation Proposals

- 25.3 Without limiting clause 13 the Manager may enter into:
- (a) without reference to or approval from Members:
    - (i) a Consolidation or Division Proposal;
    - (ii) a Stapling Proposal; or
  - (b) a Realisation Transaction, a Top Hat Proposal, an Exchange Proposal and any other Reorganisation Proposal, which is in each case approved by Ordinary Resolution.

It is a term of issue of each Unit, that the Unit may be subject to a Reorganisation Proposal as provided in this clause 25.3. Each Unit Holder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

### Power to give effect to the Stapling Provisions and Reorganisation Proposals

- 25.4
- (a) In order to effect a Stapling of securities to the Units as contemplated by clause 25.1(a) and Schedule 1, the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions.

- (b) If the Manager determines to enter into a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal in accordance with clause 25.3, then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (c) If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 25.3(b), then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

### **Specific Powers**

- 25.5 Without limiting clause 25.4, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 25.3(b), the Manager has power to:
- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
  - (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body, and be bound by the constitution of that company or body;
  - (c) issue Units;
  - (d) transfer Assets;
  - (e) if Units or other securities are to be transferred as part of a Reorganisation Proposal, to give on behalf of Members a warranty as to good and unencumbered title the Units or securities to be transferred, and other warranties customary in a transfer of securities; and
  - (f) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

### **Appointment of Manager as agent and attorney**

- 25.6 Without limiting clause 25.5, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 25.3(b), the Manager is irrevocably appointed the agent and attorney of each Member to:
- (a) apply any proceeds referred to in clause 25.5(a) on behalf of the Member;
  - (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;

- (c) execute a transfer of Assets to a Member; and
- (d) execute all documents and do all things (including giving all consents and warranties) which the Manager reasonably considers are necessary or desirable to give effect to the Stapling or relevant transaction or proposal.

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

### **Liability of Manager**

- 25.7 The Manager has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling or any Reorganisation Proposal.

### **Paramourncy of provision**

- 25.8 The provisions of this clause 25 prevail over other provisions of this constitution in the case of any inconsistency to the extent provided in clause 26.

## **26 Regulatory provisions and paramourncy**

### **Listing Rules**

- 26.1 While the Trust is included in the Official List:
- (a) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act will not be done;
  - (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
  - (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is taken to contain that provision;
  - (e) if the Listing Rules require this constitution not to contain a provision and it contains the provision, this constitution is taken not to contain that provision; and
  - (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.

### **Corporations Act and ASIC Relief**

- 26.2
- (a) If the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Manager has determined it wishes to rely or which is expressly applicable to the Trust and the Manager requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply (“**Required Provisions**”); or



- (b) if any part of this constitution (a “**Required Part**”) is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX (“**Regulatory Requirement**”) and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

- (i) authorise the Manager to make the amendments referred to in this clause 26.2 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

#### **Application of Corporations Act and Listing Rules**

26.3 In this constitution:

- (a) except as otherwise provided in a particular clause or by law, a requirement of the Corporations Act only applies while the Trust is a Registered Scheme; and
- (b) a requirement of the Listing Rules only applies while the Units are Officially Quoted.

#### **ASIC Class Orders**

26.4 In accordance with ASIC Instrument 2017/125 or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this constitution because of the operation of clause 26.2 that is covered by such instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 26.4 applies are made pursuant to the power in clause 24 but in respect of such changes the requirements of clause 24 are to be read subject to this clause 26.4.

#### **Paramountcy of provisions**

26.5 Subject to clause 31.6 and the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:

- (a) first, clauses 26.1 and 26.2 and provisions taken to be included or amended under them;
- (b) then, the Stapling Provisions set out in Schedule 1 and the provisions in clause 25 regarding Stapling and the Stapling Provisions; and
- (c) then, the Reorganisation Proposals set out in clauses 25.3 to 25.7.

Paragraphs (b), (c) and (d) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

## 27 Compliance committee

While the Trust is a Registered Scheme, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.

## 28 Complaints

While the Trust is a Registered Scheme, if an Investor submits to the Manager a Complaint in relation to the Trust, the Manager:

- (a) must, if the Investor is a Retail Client, comply with the requirements of section 912A(2) of the Corporations Act applicable to the Complaint;<sup>16</sup> and
- (b) in respect of a Complaint from an Investor who is not a Retail Client:<sup>17</sup>
  - (i) must acknowledge receipt of the Complaint as soon as possible and in any event within 14 days from receipt;
  - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle Complaints;
  - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the Complaint by endeavouring to correct the error;
  - (iv) may give any of the following remedies to the complainant:
    - (A) information and explanation regarding the circumstances giving rise to the Complaint;
    - (B) an apology; or
    - (C) compensation for loss incurred by the Investor as a direct result of any breach; and
  - (v) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the Complaint:
    - (A) the determination in relation to the Complaint;
    - (B) any remedies available to the Investor; and

<sup>16</sup> See ASIC RG 134.135.

<sup>17</sup> The Manager may treat retail and wholesale clients differently for this purpose – see RG 134.145 and [CO/656].

- (C) information regarding any further avenue for Complaint.
- (c) For the purposes of this clause 28, a reference to an Investor includes any person who has an “interest” in the Trust as that term is defined in section 9 of the Corporations Act.

## 29 Restricted Securities

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- 29.1 This clause 29 applies while the Units or Stapled Securities are Officially Quoted.
- 29.2 In this clause 29:
- (a) **dispose and disposed** of have the meaning given in the Listing Rules;
  - (b) **Escrow Period** means, in relation to Restricted Securities, the escrow period applicable to those Restricted Securities under the Listing Rules;
  - (c) **Holding Lock** has the meaning given in the Listing Rules;
  - (d) **Restriction Agreement** means a restriction agreement or deed in a form set out in the Listing Rules or otherwise approved by ASX; and
  - (e) **Restricted Securities** has the meaning given in the Listing Rules.
- 29.3 If the Listing Rules require, a holder of Restricted Securities must not dispose of, or agree to dispose of, Restricted Securities during the Escrow Period applicable to those securities, except as permitted by the Listing Rules or ASX. The Manager must not, and will refuse to, acknowledge any disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- 29.4 During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Restricted Securities.
- 29.5 If the Restricted Securities are in the same class as Securities that are quoted on ASX, the holder will be deemed to have agreed in writing that the Restricted Securities must be kept on the Trust’s issuer sponsored sub-register and are to have a Holding Lock applied for the Escrow Period.
- 29.6 The holder of Restricted Securities will not be entitled to participate in any return of capital on those Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- 29.7 If a holder of Restricted Securities breaches a Restriction Agreement or this clause 29, the holder of the Restricted Securities will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of the Restricted Securities for so long as the breach continues.

## 30 Small holdings

- 30.1 This clause 30 applies while Units or Stapled Securities are Officially Quoted.
- 30.2 Subject to the provisions of this clause 30, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.
- 30.3 If the Manager determines that a Member is a Small Holder or a New Small Holder the Manager may give the Member a Divestment Notice to notify the Member:
- (a) that the Member is a Small Holder or a New Small Holder, the number of Units making up and the Market Price of the Small Holding or New Small Holding and the date on which the Market Price was determined;
  - (b) that the Manager intends to sell the Relevant Units in accordance with this clause after the end of the Relevant Period specified in the Divestment Notice;
  - (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Manager in writing that the Member desires to retain the Relevant Units and that, if the Member does so, the Manager will not be entitled to sell the Relevant Units under that Divestment Notice; and
  - (d) after the end of the Relevant Period the Manager may for the purpose of selling the Relevant Units that are in a CS Facility holding initiate a holding adjustment to move those Units from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with those Operating Rules.

- 30.4 For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.
- 30.5 At the end of the Relevant Period the Manager is entitled to sell on-market or in any other way determined by the Manager:
- (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Manager in writing before the end of the Relevant Period that:
    - (i) the Member desires to retain the Relevant Units; or
    - (ii) the Units of the Member have increased to at least a marketable parcel (as provided under the Listing Rules),
 in which event the Manager must not sell those Relevant Units under that Divestment Notice; and

- (b) the Relevant Units of a Member who is a New Small Holder.
- 30.6 The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 30 but unless the Relevant Units are sold within six weeks after the end of the Relevant Period the Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.
- 30.7 To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each of its directors and secretaries jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:
- (a) to initiate a holding adjustment to move the Relevant Units from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.
- 30.8 A statement in writing by or on behalf of the Manager under this clause 30 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 30 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.
- 30.9 The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause 30. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 30.
- Subject to clause 30.10, where Relevant Units of a Member are sold by the Manager on behalf of the Member under this clause, the Manager must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds using any payment method chosen by the Manager including under clause 12. Payment of any money under this clause 30 is at the risk of the Member to whom it is sent.
- 30.10 In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause 30, the Manager is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Manager. In any other case, the Manager or a purchase must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Manager in connection with the sale and transfer of the Relevant Units.
- 30.11 The remedy of a Member to whom this clause 30 applies, in respect of the sale of the Relevant Units of that Member, is expressly limited to a right of action in damages against the Manager to the exclusion of any other right, remedy or relief against any other person. The Manager is only

liable if it has failed to comply with the requirements of this clause 30 and its liability is limited to the value of the Relevant Units at the time of sale.

- 30.12 Unless the Manager determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause 30, then despite any other provisions in this constitution, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a New Small Holder. Any distributions that would, but for this clause 30, have been paid to that Member must be held by the Manager and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.
- 30.13 If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 30.14).
- 30.14 From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this clause 30 to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite clause 30.13 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.
- 30.15 While Stapling applies:
- (a) the references to Units or Relevant Units in this clause 30 will apply to the Stapled Securities held by the Member; and
  - (b) no sale under this clause 30 may occur unless, at the same time as Units are sold, an identical number of Attached Securities are also sold to the Same Person.

## 31 Interpretation

### Definitions

- 31.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:
- AMIT:** a trust which is an attribution managed investment trust for the purposes of the Tax Act.
- AMIT Income Year:** an income year in which the Trust is an AMIT.
- AMIT Regime:** the regime for the taxation of AMITs, and their members, as set out in the Tax Act.
- AMMA Statement:** has the meaning given to that phrase in the Tax Act.
- Application Price:** the application price for a Unit, Option or Financial Instrument determined in accordance with clause 5 or paragraph 4 of Schedule 1.
- Applications Account:** an account in which the Manager or, if permitted, its agent holds money on trust for applicants for Units, Options or

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Financial Instruments in accordance with section 1017E of the Corporations Act or otherwise.

**Approved Valuer:** any person, appointed by the Manager but independent of the Manager, who is properly qualified to conduct a valuation.

**ASIC:** the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

**ASIC Relief:** an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units, Options or Financial Instruments have not yet been issued, proceeds of redemption which have not yet been paid or any amounts which have been set aside for distribution to Members under clauses 11.6 or 11.18 (and, in the intervening period between the end of a Distribution Period and the setting aside of an amount under clause 11.6, the Manager's reasonable estimate of such amount).

**ASX:** ASX Limited or the market operated by it as the context requires.

**Attached Securities:** has the same meaning as in Schedule 1.

**Business Day:** while Units are not Officially Quoted, a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney and Melbourne, or, while Units are Officially Quoted, a day which is a Trading Day for the purposes of the Listing Rules.

**Complaint:** an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

**Compliance Committee Member:** a member of a compliance committee established by the Manager in connection with the Trust.

**Consolidation or Division Proposal:** a proposal to consolidate, divide or convert Units, Options or Financial Instruments in a ratio determined by the Manager, including rounding of the number of Units, Options or Financial Instruments as the Manager determines.

**Corporations Act:** the Corporations Act 2001 (Cwlth), and a reference to the Corporations Act or a provision of it includes a reference to the Corporations Act or that provision as modified by any applicable ASIC Relief.

**CS Facility:** a licensed clearing and settlement facility that is prescribed by regulations made for the purposes of the definition of CS Facility in the Corporations Act.

**CS Facility Operator:** the operator of the CS Facility.

**Custodian:** a person holding or appointed to hold Assets as custodian for the Manager.

**Determined Member Component:** has the meaning given to that phrase in Tax Act.

**Determined Trust Component:** has the meaning given to that phrase in the Tax Act.

**Distributable Income:** for a period is the amount determined by the Manager under clauses 11.1 and 11.2.

**Distribution Calculation Date:** the last day of each Financial Year and such other days as the Manager designates.

**Distribution Period:**

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

**Divestment Notice:** a notice given under clause 30 to a Small Holder or a New Small Holder.

**Escrow Period:** has the same meaning as in the Listing Rules.

**Exchange Proposal:** a proposal whereby a written offer to transfer or redeem some or all of their Units, Options or Financial Instruments is made to Investors or to specific Investors in consideration of any or all of:

- (a) the issue or transfer of units in another trust, or interests of whatever nature in or in relation to another entity;
- (b) a cash payment; and
- (c) a transfer of assets.

**Financial Instrument:** has the meaning given in clause 3.19.

**Financial Year:**

- (a) for the first financial year, the period from the establishment of the Trust to the next 31 December;
- (b) for the last financial year, the period from 1 January before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 31 December in each year.

**GST:** a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

**Holder of a Financial Instrument:** the person Registered in the register of Financial Instrument holders and includes persons jointly Registered or, if no such register is kept, the holder of a Financial Instrument.



**Investor:** a Member, Option Holder or Holder of Financial Instruments, or holder of Stapled Securities.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Manager in respect of the Trust in accordance with the Listing Rules.

**Liabilities:** all present liabilities of the Trust including any provision taken into account in determining the liabilities of the Trust and (subject to the terms of issue of the relevant Financial Instruments) the amount which would be payable to the Holders of Financial Instruments on the redemption of outstanding Financial Instruments under clause 7.4, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

**Licence:** an Australian financial services licence.

**Liquid:** has the same meaning as in the Corporations Act.

**Listed:** admitted to the Official List whether or not the quotation of Units, Stapled Securities or Options is deferred, suspended or subjected to a trading halt, and **Listing** has a corresponding meaning.

**Listing Rules:** the listing rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Manager:** means:

- (a) unless paragraph (b) applies, the first trustee of the Trust, being Trust Company of Australia Limited, and any successor for the time being as trustee; and
- (b) while the Trust is a Registered Scheme, the company which is registered with ASIC as the responsible entity for the Trust under the Corporations Act.

**Market Price of a Unit:** on a particular day is:

- (a) the Weighted Average Market Price per Unit for the Pricing Period which ends 2 Trading Days before the relevant day, provided that if the Weighted Average Market Price is calculated in respect of Units which have an entitlement to distributions which is different to the entitlement of new Units the Manager must make an appropriate adjustment of the Weighted Average Market Price to reflect the difference; or
- (b) if:
  - (i) Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair

reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit that an Approved Valuer determines to be the market price of the Unit on the relevant day, having regard to the recent trading prices of Units, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the valuer believes should be taken into account.

If it is necessary to calculate the Market Price of a Financial Instrument or an Option over a Unit, it is to be determined according to the definition of Market Price of a Unit, with a reference to a Unit in that definition being read as a reference to a Financial Instrument or an Option over a Unit, as the case requires.

**Market Value** of an Asset means:

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, at face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Manager, unless:
  - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
  - (ii) the Manager reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by an Approved Valuer;
  - (iii) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the trust on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the trust is operated by the Manager or a related body corporate of the Manager, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the trust;
- (c) in the case of any other Asset, the value of the Asset determined in accordance with accounting standards or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an Approved Valuer.

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**Member:** the person Registered as the holder of a Unit (including persons jointly Registered).

**Member Objection Choice:** a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.

**Net Asset Value:** the value of the Assets calculated in accordance with clause 9 less the Liabilities.

**New Small Holder:** a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding:** a holding of Units, or while Stapling applies, Stapled Securities (created by the transfer of a parcel of Units) the aggregate Market Price of which at the time a proper transfer was initiated or a paper based transfer was lodged was less than a marketable parcel of Units as defined in the Listing Rules.

**Offer Document:** a product disclosure statement or other offering document pursuant to which Units are offered for subscription whether alone or as part of Stapled Securities, as amended, supplemented or replaced from time to time.

**Official List:** the official list of ASX as defined in the Listing Rules.

**Officially Quoted:** quoted on the Official List including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension and Official Quotation has a corresponding meaning.

**Operating Rules:** the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended from time to time (whether in respect of the Trust or generally).

**Option:** an option to subscribe for a Unit or a Stapled Security.

**Option Holder:** the person Registered in the Register of option holders.

**Ordinary Resolution:** a Resolution of Members where the required majority is a simple majority.

**Over:** has the meaning given to that term in the Tax Act.

**Pricing Period:** the period of 10 consecutive Trading Days ending on the Trading Day determined by the Manager.

**Quarter:** each 3 month period ending on the Quarter End Date or a shorter period which begins on the day after a Quarter End Date and ends on the date of retirement of the Manager or the final distribution on winding up of the Trust.

**Quarter End Date:** each 31 March, 30 June, 30 September and 31 December.

**Ratings Agency** means any recognised ratings agency as determined by the Manager.

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**Realisation Transaction:** a transaction which enables all Members to realise all or a substantial portion of their investment in the Trust, including:

- (a) a sell down of a substantial portion of the Units where all Members have the opportunity to participate in the sell down;
- (b) a sale of substantial Assets where all Members have an opportunity to have their Units redeemed or transferred; or
- (c) any other arrangement which has substantially the same economic effect as a transaction referred to in paragraph (a) or (b).

**Record Date:** the date determined by the Manager as the date for lodgement of transfers for the purpose of identifying the Members who are to have relevant entitlements.

**Redemption Price:** the redemption price of a Unit or Option calculated in accordance with clause 7.

**Register:** the register of Members and, if applicable, Option Holders or Holders of Financial Instruments which is kept by or on behalf of the Manager.

**Registered:** recorded in the Register.

**Registered Scheme:** a trust which is registered with ASIC as a managed investment scheme under the Corporations Act.

**Registrar:** the person appointed to maintain the Register.

**Registration:** recording in the Register.

**Relevant Period:** the period specified in a Divestment Notice under clause 30.

**Relevant Units:** the Units specified in a Divestment Notice.

**Reorganisation Proposal:**

- (a) any Realisation Transaction;
- (b) a Consolidation or Division Proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal; or

any other proposal to reorganise or restructure the capital of the Trust and, if relevant, any Stapled Entity, in any way.

**Representative:** a person appointed to represent a corporate Member at a Members' meeting in accordance with the Corporations Act.

**Resolution:**

- (a) Subject to clause 17.32 and rules prescribed by the Manager pursuant to clause 17.30, a resolution passed at a meeting of Members (or if applicable Option Holders or Holders of Financial Instruments):
  - (i) on a show of hands, by the required majority of Members (or if applicable Option Holders or Holders of Financial Instruments) present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll, by the required majority of votes cast by Members (or if applicable Option Holders or Holders of Financial Instruments) present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members (or if applicable Option Holders or Holders of Financial Instruments) holding the required majority of the Units, Options or Holders of Financial Instruments.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority.

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

**Retail Client:** has the same meaning as in the Corporations Act.

**Same Person** means:

- (a) while the Trust is not Listed, either a single person or two (but not more than two) bodies, at least one of which is a trustee of a unit trust, and securities issued by those two bodies are linked or stapled; or
- (b) while the Trust is Listed, a single person.

**Small Holder** is a Member who is a holder or a joint holder of a Small Holding.

**Small Holding:** a holding of Units or, while Stapling applies, Stapled Securities, the aggregate Market Price of which at the relevant date is less than a marketable parcel of Units or, while Stapling applies, Stapled Securities, as provided under the Listing Rules.

**Stapled Entity:** has the same meaning as in Schedule 1.

**Stapled Security:** has the same meaning as in Schedule 1.

**Stapled Trust:** the trust known as Westfield Retail Trust 2.

**Stapling:** has the same meaning as in Schedule 1.

**Stapling Commencement Time:** the most recent time and date on which the Manager determines that the Stapling Provisions commence including in accordance with clause 25.1.

**Stapling Proposal:** a proposal to cause the Stapling of any other securities or financial products to the Units.

**Stapling Provisions:** the provisions relating to Stapling in Schedule 1, including where these are applied under clause 25.

**Tax:** all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST, together with interest and penalties.

**Tax Act:** the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act, as appropriate.

**Top Hat Proposal:** a proposal that each Member should exchange their Units for an equivalent value of units in the Top Trust.

**Top Trust:** a trust of which the Manager or a related body corporate of the Manager is also the responsible entity or 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.

**Trading Day:** has the same meaning as in the Listing Rules.

**Transaction Costs:** an amount determined by the Manager as appropriate to factor into the Application Price or the Redemption Price to avoid an adverse impact on other Members holding Units arising from transaction expenses which would be incurred if an acquisition or disposal of Assets was carried out because of the issue or redemption of Units. Unless the Manager otherwise determines, the amount is:

- (a) when calculating the Application Price, the Manager’s estimate of the total transaction costs of acquiring all of the Trust’s existing assets; and
- (b) when calculating the Redemption Price, the Manager’s estimate of the total transaction costs of selling all of the Trust’s existing assets,

in each case adjusted if appropriate for any effect of assets being held through subsidiaries of the Trust or other investment vehicles.

**Trust:** the trust constituted under or governed by this constitution.

**Trust Component:** has the meaning given to that phrase in the Tax Act.

**Under:** has the meaning given to that phrase in the Tax Act.

**Uncertificated Securities Holding:** securities that under the Corporations Act, the Listing Rules or any Uncertificated Transfer System may be held in uncertificated form.

**Uncertificated Transfer System:** any system operated under the Corporations Act, the Listing Rules or the Operating Rules that regulates the transfer of registration of, or the settlement transactions affecting, securities in uncertificated form and includes CHESS (as defined in the

operating rules of ASX Settlement Pty Ltd) as it applies to securities in certificated and uncertificated form.

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution.

**Valuation Time:** a time at which the Manager calculates Net Asset Value.

**Weighted Average Market Price** for a Pricing Period means:

- (a) the aggregate of the prices at which each relevant Unit, Stapled Security or Option was sold during the Pricing Period divided by the number of Units, Stapled Securities or Options sold during that period, in the case of both the sales prices and numbers, as reported by ASX, but excluding sales that occur otherwise than in the ordinary course of trading on ASX (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, overseas sales, sales pursuant to the exercise of options over Units and overnight crossings) and any other sales which the Manager reasonably considers may not be fairly reflective of natural supply and demand; or
- (b) if no sale was made in the Pricing Period, the average of the price offered by a willing purchaser for such Units, Stapled Securities or Options (“bid price”) and the price offered by a willing vendor for such Units, Stapled Securities or Options (“ask price”) as quoted on the ASX during the Pricing Period; or
- (c) if either no bid or ask prices were quoted during the Pricing Period, the last sale price as quoted on the ASX prior to the Pricing Period.

## Interpretation

31.2 Unless the contrary intention appears, in this constitution:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes an individual, firm, a body corporate, an unincorporated association, an authority or any other entity or organisation;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(general words)** the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) **(documents)** a reference to a document (including this constitution) includes any variation or replacement of it;
- (f) **(laws)** a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (g) **(regulations)** a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);

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- (h) **(amendments to statutes)** a reference to a law or a provision of a law or legislation includes consolidations, amendments, re-enactments or replacements of any of them, whether by the State or the Commonwealth of Australia or otherwise;
- (i) **(cash)** a reference to a payment “in cash” includes payments by cash, or by electronic funds transfer;
- (j) **(currency)** a reference to a monetary amount is a reference to the currency of Australia unless otherwise specified;
- (k) **(from time to time)** a power, an authority or a discretion reposed in the Manager in Members’ meeting or a Member may be exercised at any time and from time to time;
- (l) **(amount paid)** a reference to an amount paid on a security includes an amount credited as paid on that security;
- (m) **(signed)** where, by a provision of this constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Manager;
- (n) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (o) **(groups of persons)** a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (p) **(Corporations Act)** an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (q) **(Listing Rules)** In this constitution, a word or expression defined or used in the Listing Rules has the same meaning when used in this Constitution in a similar context;
- (r) **(amendments)** a reference to amend includes to delete or replace;
- (s) **(headings and labels)** headings and labels are inserted for convenience only and do not affect interpretation of this constitution;
- (t) **(calendar periods)** a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively;
- (u) **(present)** the word “present” in the context of a person being present at a meeting includes participating using technology approved by the Manager for the purposes of the meeting, and at a meeting of Members also includes:



- (i) a Member being present in person;
- (ii) a Member being present by proxy, attorney, or Representative; and
- (iii) except in any clause which specifies a quorum, a Member who has duly lodged a direct vote in relation to the meeting.

31.3 Any cover page, table of contents, footnotes, marginal notes and finding lists are for convenience only and do not form part of this constitution.

#### **Other documents**

31.4 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

#### **Constitution legally binding**

31.5 This constitution binds the Manager, each present and future Member, each present and future Option Holder and each present and future Holder of Financial Instruments and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

#### **Corporations Act prevails**

31.6 Despite anything in this constitution, while the Trust is a Registered Scheme, to the extent that a clause of this constitution is inconsistent with the provisions of the Corporations Act applicable to registered managed investment schemes, that provision is of no effect to the extent of the inconsistency, but not otherwise.<sup>18</sup>

#### **Severance**

31.7 If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid in a jurisdiction for any reason, then it is severed for that jurisdiction without affecting the validity or operation of any other provision of this constitution or of that provision in any other jurisdiction.

#### **Governing law**

31.8 This constitution is governed by the law of New South Wales.

#### **Other obligations excluded**

31.9 To the maximum extent permitted by law, all restrictions on the exercise of the Manager's powers, or obligations which might otherwise be implied or imposed by law or equity, are expressly excluded, including any obligation of the Manager in its capacity as trustee of the Trust arising under any statute other than the Corporations Act.

#### **Schedules**

31.10 Schedules to this constitution are an operative part of it.

<sup>18</sup> ASIC RG 134.213.

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## Schedule 1 - Stapling Provisions

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On and from any Stapling Commencement Time determined by the Issuer, these Stapling Provisions:

- (a) apply to each Issuer in respect of its respective Stapled Entity and its Attached Securities;
- (b) apply to each Constituent Document and prevail over all other provisions of the Constituent Document, except to the extent provided in the Constituent Document or where this would result in a breach of the Corporations Act, the Listing Rules or other law; and
- (c) apply until they cease to apply in accordance with the Constituent Documents.

Unless the contrary intention appears, in this schedule a reference to a “**paragraph**” is a reference to a numbered provision of this schedule.

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## Definitions and interpretation

### 1.1 Definitions

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

**Accession Deed** means the deed of that name between each Issuer and:

- (a) any new Manager; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Scentre Group Stapling Deed.

**Amounts** has the meaning given in paragraph 8(c)(i).

**Application Price** means:

- (a) in respect of a Unit, the application price for the Unit calculated in accordance with clause 5.1 of the Trust Constitution or paragraph 4 of this schedule;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security;
- (c) in respect of a Stapled Security, the application price for a Stapled Security calculated in accordance with this schedule;
- (d) in respect of the issue of an Option, the amount (if any) determined by the Manager under clause 5.9 of the Trust Constitution or paragraph 4.4 of this schedule; and
- (e) in respect of the issue of a Financial Instrument, the amount determined under clause 3.19 of the Trust Constitution.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

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**Constituent Documents** means the constituent documents of a Stapled Entity and includes the Trust Constitution.

**Controlled Entity** means any subsidiary or any trust or other entity, whether or not a legal entity, which is owned or controlled by an entity for accounting purposes.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of a Stapled Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with paragraph 8(b).

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**Foreign Investor** means an Investor whose address on the Register is in a jurisdiction other than Australia.

**Group** means the Stapled Entities and any Controlled Entity of a Stapled Entity.

**Intra-Group Loan** means a loan or financial assistance provided by a Stapled Entity to any entity in the Group including but not limited to guaranteeing or indemnifying or granting security in favour of that entity.

**Investor** means, in this Schedule 1, a person entered in the Register as a holder of a Stapled Security (which includes a Unit), but does not include a person in their capacity as holder of an Option or Financial Instrument unless the Option or Financial Instrument is an Attached Security.

**Issuer:**

- (a) in the context of the Trust Constitution, means the Manager; and
- (b) in the context of the Constituent Document of any other Attached Security, means the issuer of the Attached Security.

**Market Price of a Stapled Security** on a particular day is:

- (a) the Weighted Average Market Price per Stapled Security for sales on ASX for the Pricing Period which ends 2 Trading Days before the relevant day, provided that if the Weighted Average Market Price is calculated in respect of Stapled Securities which have an entitlement to distributions which is different to the entitlement of new Stapled Securities the Manager must make an appropriate adjustment to the Weighted Average Market Price to reflect the difference; or

- (b) if:
- (i) Stapled Securities have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security that an Approved Valuer determines to be the market price of the Stapled Security on the relevant day, having regard to the market price of Stapled Securities, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the valuer believes should be taken into account.

If it is necessary to calculate the Market Price of an Option over a Stapled Security, it would be determined according to the definition of Market Price of a Stapled Security, with a reference to a Stapled Security in that definition being read as a reference to an Option over a Stapled Security.

**New Attached Security** has the meaning given in paragraph 6(a).

**Other Attached Security** means:

- (a) in respect of a Unit, an identical number of each Attached Security other than a Unit; and
- (b) in respect of any New Attached Security, an identical number of each Attached Security other than a New Attached Security.

**Other Issuer** means:

- (a) in respect of the Manager, each Issuer other than the Manager; and
- (b) in respect of the issuer of any New Attached Security, each Issuer other than the issuer of the New Attached Security.

**Ratings Agency** means any recognised ratings agency as determined by the Manager.

**Register** means the register of Investors kept or caused to be kept by the Stapled Entities under paragraph 5 and the Corporations Act.

**Registered** means recorded in the Register.

**Registrar** means the person appointed to maintain the Register.

**Restapling** means a determination by the Issuer of an Unstapled Security that Stapling should recommence in respect of that Unstapled Security, as referred to in paragraph 7.3.

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee:

- (a) is entered in the Register in respect of those Stapled Securities;

- (b) will receive the New Attached Securities pursuant to the Stapling; and
- (c) will sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in paragraphs 8(c) and (d).

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Scentre Group Stapling Deed** means the deed entered into between the Issuer and Other Issuers setting out how they will co-operate in the conduct of the Stapled Entities as if they were one economic entity and the Stapled Securities were one security.

**Security** means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture, and includes a Unit, Option or Financial Instrument.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Scentre Group Stapling Deed or an Accession Deed.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities. “**Stapled**” has a corresponding meaning.

**Stapling Commencement Time** means the most recent time and date on which the Issuer determines that the Stapling of Attached Securities is to commence.

**Stapling Matter** means a matter specified in paragraph 2.3(b).

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group, and any amending, supplemental and other document that the Issuer and the Other Issuers consider necessary or desirable in connection with those objectives.

**Transfer** has the meaning given in paragraph 6(d).

**Trust** means the trust the subject of the Trust Constitution.

**Trust Constitution** means the constitution establishing the Trust of which this schedule forms an operative part.

**Unit** means a unit in the Trust.

**Unstapled Security** means a Security which was an Attached Security and ceases to be Stapled to the Unit.

**Unstapling** means the process that results in one or more of the Attached Securities ceasing to be Stapled to the Unit. “**Unstapled**” has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

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- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
  - (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
  - (c) a winding-up is commenced in respect of a Stapled Entity.

## **1.2 Interpretation**

Unless the contrary intention appears, the interpretation provisions in clauses 31.2 and 26 of the Trust Constitution apply to this schedule.

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## **2 Stapling - general intention**

### **2.1 Stapled Securities - general intention**

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Time. Subject to paragraph 7 it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Stapled Securities will be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the Same Person.

### **2.2 Transaction Documents**

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

### **2.3 Stapling Matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor, by acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including the following Stapling Matters:
  - (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation Proposal regarding the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Small Holding of Stapled Securities;
  - (iv) the restrictions on Stapled Securities that are Restricted Securities;
  - (v) the Stapling of New Attached Securities to the Stapled Securities;

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- (vi) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (vii) the Unstapling of one or more Attached Securities;
  - (viii) the Restapling of an Unstapled Security;
  - (ix) the Unstapling of the Stapled Securities; and
  - (x) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with paragraph 8.
- (c) To effect a Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's:
- (i) agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
  - (ii) [deleted].
- (d) Without limiting paragraph 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under paragraph 6, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
- (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
  - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under paragraph 6.
- (e) Without limiting paragraph 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under paragraph 8, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
- (i) receive and apply the Amounts referred to in paragraph 8(c)(i) in the manner contemplated in paragraph 8;
  - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
  - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
  - (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under paragraph 8.

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- (f) The Issuer may:
    - (i) appoint (and revoke the appointment of) substitute attorneys to exercise the powers given to the Issuer in relation to any Stapling Matter; and
    - (ii) do all acts and things and execute all documents under this paragraph 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome.
  - (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under paragraphs 2.3(e) and 8 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of paragraph 8 (Designated Foreign Investors) to be met.
  - (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.
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### **3 Dealing in Stapled Securities**

#### **3.1 Stapling**

Subject to paragraph 7, on and from the Stapling Commencement Time, each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security and the Issuer must not:

- (a) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the Same Person for each Other Attached Security for issue or sale;
- (b) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
- (c) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
- (d) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the Same Person at the same time;
- (e) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the Same Person;
- (f) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
- (g) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.



Each Security issued by a Stapled Entity after the Stapling Commencement Time must be Stapled to each Other Attached Security immediately on the date of issue of the new Security.

### 3.2 Dealing in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Time, the Issuer must not:
- (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing,
- if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with paragraph 7.
- (b) **(Attached Securities)** Subject to paragraph 7, on and from the Stapling Commencement Time, the Issuer must not:
- (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each Other Attached Security;
  - (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.
- (e) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to the Same Person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.
- (f) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each Other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the Same Person.
- (g) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer, issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### 3.3 Consistency with the Constituent Documents

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent

with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### **3.4 Joint quotation as Stapled Securities**

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### **3.5 Joint certificates or joint holding statements**

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### **3.6 Stapling and separate entities**

Despite any other provision of this schedule, each Stapled Entity remains a separate legal entity, separately admitted to the Official List (if applicable), although the Attached Securities may be jointly Officially Quoted as Stapled Securities.

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## **4 Allocation of Application Price**

### **4.1 Application Price**

- (a) Subject to paragraph 4.1(c), while Units are Officially Quoted as part of a Stapled Security, the application price payable for any Unit is the Market Price of a Stapled Security minus the Application Price of the Other Attached Securities, or the amount determined by the Manager in accordance with paragraph 4.2.
- (b) Subject to paragraph 4.1(c), while the Units are not Officially Quoted but are Stapled, the application price payable for a Unit is the price calculated under clause 5.1(f) of the Trust Constitution, and the application price of Stapled Securities is the sum of that amount and the Application Price of the Other Attached Securities.
- (c) The Manager may determine a different application price for any Units (subject to the Corporations Act as modified by any applicable ASIC Relief and the Listing Rules) in the case of:
  - (i) offers made at substantially the same time to persons who were Investors on a date determined by the Manager:
    - (A) provided that all Investors are offered Stapled Securities in proportion to the value of the Investor's Stapled Securities at the relevant date on a pro rata basis, whether or not the right to acquire those Stapled Securities is renounceable; but
    - (B) an Investor may be excluded from the pro rata offer if to do so would not cause the Manager to be in contravention of paragraph 601FC(1)(d) of the Corporations Act (as modified by ASIC Relief) whether or not the right of entitlement is renounceable.

If the Trust is a Registered Scheme and the Manager is making an offer of Stapled Securities to Investors which otherwise complies with this paragraph 4.1(c)(i), the Manager is not required to offer Stapled Securities to persons in the circumstances permitted under the applicable ASIC Relief and the Listing Rules.

Any offer made under this paragraph 4.1(c) must specify the period during which it may be accepted. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units and Stapled Securities. Any Investor may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

Any Stapled Securities offered for subscription under this 4.1(c) which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application price payable in relation to such further offer must not be less than that at which the Units and Stapled Securities were originally offered to Investors.

- (ii) If an underwriter has underwritten any offer for subscription of Stapled Securities under this paragraph 4.1(c), the underwriter may take up any Stapled Securities not subscribed for by Investors;
- (iii) a distribution reinvestment, where the application price is determined in accordance with paragraph 4.3;
- (iv) a placement of Stapled Securities that complies with the Listing Rules and any applicable ASIC Relief;
- (v) a security purchase plan that complies with the Listing Rules and any applicable ASIC Relief; and
- (vi) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Relief.

#### **4.2 Apportionment of Application Price**

- (a) Subject to paragraph 4.1(b) if a Unit is to be issued as part of a Stapled Security and the Trust Constitution contains a provision for the calculation or determination of the Application Price for a Stapled Security but not for the Unit, the Manager must determine what part of the Application Price of a Stapled Security is to represent the Application Price of a Unit for the purposes of the Trust Constitution.
- (b) Unless otherwise agreed between the Manager and the Other Issuers, the Application Price for a Stapled Security will be allocated among the Application Price of the Unit and the Application Price of the Other Attached Securities in the ratio that the net assets of each relevant Stapled Entity (adjusted for the net market value of its investments) at the end of the relevant period immediately before the issue of the Stapled Security, bears to the amount of the aggregate net assets of those Stapled Entities (adjusted for the net market value of their investments) at the end of the relevant period immediately before the issue of the Stapled Security.
- (c) Where an Option to acquire a Stapled Security is issued after the Stapling Commencement Time, the allocation of the issue price of the option must be determined in the same manner as under paragraph 4.2(b).
- (d) The allocation of the Application Price for a Stapled Security under this paragraph 4.2 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

#### **4.3 Application Price if reinvestment applies**

- (a) If a reinvestment of capital or income payable to an Investor under clause 11 of the Trust Constitution applies while Units are Officially Quoted and Stapled, subject to the Listing Rules the aggregate of the Application Price for each additional Unit issued and

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the Application Price for the Other Attached Securities upon reinvestment is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued upon reinvestment, the price will be the Market Price for Stapled Securities for the Pricing Period.

- (b) While Units are not Officially Quoted but are Stapled, the application price payable for each additional Unit on a reinvestment of capital or income payable to the Investor under clause 11 of the Trust Constitution is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the price for a Unit will be the Application Price calculated under clause 5.1(f) of the Trust Constitution on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (c) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the number of Stapled Securities issued will be rounded down to the nearest whole Stapled Security and any remaining amount becomes an asset of the Trust or Stapled Entity to which the distribution relates.

#### **4.4 Application Price of Options over Stapled Securities**

Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Trust is a Registered Scheme, the Manager and the Stapled Entities may issue Options over Stapled Securities:

- (a) at an application price (which may be nil) determined by the Manager and the Stapled Entities if permissible under the Corporations Act as modified by ASIC Relief or, if such determination may not be made, at a nil Application Price; and
- (b) on the basis that the Application Price for a Unit as a component of a Stapled Security to be issued on exercise of the Option is a price determined:
  - (i) while the Units are Officially Quoted, in accordance with paragraphs 4.1 and 4.2 of this schedule;
  - (ii) while the Stapled Securities are not Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 5.1(f) of the Trust Constitution.

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## **5 Single Register**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the Other Attached Securities are recorded.

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## **6 Power to add New Attached Securities**

- (a) Subject to paragraph 6(b), the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is a New Attached Security and cause it to be Stapled to the Stapled Securities. A determination under this paragraph may be made on such terms as the Issuer considers appropriate.
- (b) Subject to paragraph (c), a determination that a Security is a New Attached Security may only be made if:
  - (i) while the Units are Officially Quoted, the New Attached Security is also Officially Quoted, or ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;

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- (ii) while the Units are Officially Quoted, ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;
  - (iii) each Other Issuer (including the issuer of the New Attached Security) has agreed:
    - (A) to the Stapling of the New Attached Security to the Stapled Security; and
    - (B) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and
  - (iv) the Constituent Documents in relation to the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
  - (v) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (vi) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, any required approval of the members of each Stapled Entity has been obtained; and
  - (vii) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this paragraph 6.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (“**Transfer**”).
  - (e) A transfer of a New Attached Security made under this paragraph 6 will be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate for a New Attached Security in order for that Issuer to Register the transfer of the New Attached Security. The transfer will be evidenced by, and have full effect from, its Registration by the relevant Issuer in the Register.

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## 7 Unstapling

### 7.1 Procedure for Unstapling

Subject to this paragraph 7, from the Stapling Commencement Time each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### 7.2 Unstapling an Attached Security

- (a) Subject to this paragraph 7, the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Manager may, without the need for approval by Members, determine or consent to a determination by the Issuer of any Attached Securities that one or more Attached Securities are to be Unstapled from the Stapled Security at a time and date set or approved by the Manager.

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- (b) A determination under paragraph 7.2(a) may only be made:
    - (i) while the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Attached Securities from the Unit and the Unit and any remaining Attached Securities will remain Officially Quoted as a Unit or a Stapled Security; and
    - (ii) if each Other Issuer has agreed:
      - (A) to the Unstapling; and
      - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole; and
    - (iii) if the Stapling Provisions will cease to apply in respect of each Attached Security which is to be Unstapled.
  - (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### 7.3 Restapling

If an Issuer determines that its Attached Securities are to be Unstapled under paragraph 7.2(a) or 7.4, this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

### 7.4 Unstapling the Stapled Securities

- (a) Subject to paragraph 7.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security or the Attached Securities (as applicable) will be Unstapled on the occurrence of an Unstapling Event.
- (b) A determination under paragraph 7.4(a) may only be made if:
  - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Other Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under paragraph 7.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

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## 8 Designated Foreign Investors

- (a) Without limiting paragraph 6(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under paragraph 6, the provisions of this paragraph 8 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it

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would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:

- (i) the number of Foreign Investors in the foreign place;
  - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
- (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (“**Amounts**”) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to paragraph 8(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
- (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date; and
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
  - (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and
  - (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit upon sale of a Stapled Security under paragraph 8(d)(iii) is the

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amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Manager.

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## **9 Duties and obligations of Issuer**

### **9.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief) while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **9.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

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## **10 Meetings of Investors**

### **10.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **10.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

### **10.3 Other attendees**

The auditor of each Stapled Entity and the representatives of each Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

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## **11 General**

### **11.1 Other capacities**

Subject to the Corporations Act, the Manager (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Trust or in another capacity) and any Stapled Entity (or their associates); and
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or any Stapled Entity (or their associates) and retain for its own benefit any profits or benefits derived from any such contract or transaction.



## **11.2 Expenses in relation to the Trust**

- (a) A reference to “Unit” in clause 21.4 of the Trust Constitution is a reference to it as part of a Stapled Security, and a reference to “Trust” is a reference to the Trust as part of the Group.
- (b) Clause 21.4 of the Trust Constitution is taken to also include expenses in connection with:
  - (i) establishing, administering and managing the Stapling, including the costs incurred in enforcing Stapling, the Stapling of New Attached Securities, the Unstapling of an Attached Security, the Restapling of Unstapled Attached Securities and the Unstapling of the Stapled Securities; and
  - (ii) organising, convening and holding meetings of Investors, implementing any Resolutions and communicating with Investors.

## **11.3 Transfers, transmissions and joint holdings**

A reference to a Unit in the provisions of clause 4 of the Trust Constitution is taken to include a reference to a Stapled Security.

## **11.4 Small Holdings**

A reference to a “Small Holding” in each Constituent Document is taken to be a reference a small holding of Stapled Securities.

## **11.5 Intra-Group Loans**

Subject to the Corporations Act, without limiting the Constituent Documents or the Scentre Group Stapling Deed, the Manager may, in its capacity as trustee of the Trust, and each Other Issuer may, enter into Intra-Group Loans.

## **11.6 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.

## **11.7 Other Attached Security**

If a New Attached Security, which is an interest in a trust, is to be Stapled to the Stapled Securities, then paragraphs 4.1(a), 4.1(c), 4.2(a), 4.3, 11.1 and 11.2 apply in relation to that New Attached Security with the necessary changes.

# Constitution

## Scentre Group Trust 3

**Manager: RE2 Limited**

(ABN 41 145 744 065)

**Date of Constitution: 19 October 2010**

Consolidated constitution of Scentre Group Trust 3 incorporating all amendments up to and including the amendments made by supplemental deed poll dated 4 April 2024.

This is not a legally binding document. Reference should be made to the original constitution and the amending deeds for the operative provisions of the constitution.

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# Constitution of Scentre Group Trust 3

**Date:** 19 October 2010

## Operative provisions:

This deed poll is declared by RE2 Limited (ABN 41 145 744 065) to be the constitution of the Westfield Retail Trust 2.<sup>1</sup>

### 1 Name of Trust

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- 1.1 The Trust is called Scentre Group Trust 3 or by such other name as the Manager determines from time to time.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

### 2 Assets held on trust

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- 2.1 The Manager must hold the Assets on trust for Members.
- 2.2 The Assets vest in the Manager. The Manager must identify the Assets as property and rights of the Trust in its records, but while the Trust is not a Registered Scheme, the Manager may combine the Assets with any other property or rights. While the Trust is a Registered Scheme, any Assets held by the Manager as responsible entity of the Trust must be clearly identified as property of the Trust and held separately from the assets of the Manager or any other managed investment scheme if and to the extent that the Corporations Act so requires. Subject to law, the Manager may have assets held by a Custodian.

### 3 Units, Options and Financial Instruments

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#### Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to any rights, obligations or restrictions attaching to any particular Unit, each Unit confers an equal undivided interest.
- 3.3 A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- 3.4 Subject to the Corporations Act, the Manager may create and issue Units. The Manager may not issue different classes of Units except Units which may temporarily be of a different class due to different income entitlements under clause 3.16. Except to the extent specified in their terms of issue, all Units will rank equally.

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<sup>1</sup> The name of the Trust was changed on 30 June 2014 from Westfield Retail Trust 2 to Scentre Group Trust 3.  
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## Options

- 3.5 The Manager may create and issue Options on such terms as the Manager determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act. An Option will not confer any interest in or any rights to participate in the income or capital of the Trust. Options may be issued with Units or separately. A person becomes an Option Holder when their holding of Options is entered in the Register of Option Holders.

An offer of Options may be renounced in favour of another person unless it is expressed as non-renounceable. The terms of issue may allow the Manager to buy back the Options.

- 3.6 While Stapling applies:
- (a) an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the Same Person acquires an identical number of Attached Securities which are then Stapled to the Units; and
  - (b) an Option over a Unit may only be offered, issued, transferred or redeemed if arrangements are in place such that on exercise of the Option, the Same Person acquires or retains (as applicable) an identical number of Options over Attached Securities.

## Other jurisdictions

- 3.7 If the Trust is a Registered Scheme and the Manager is making a pro rata offer of Options to Members which complies with the conditions for a pro rata offer of Units set out in clause 5.4, the Manager is not required to offer Options to persons whose address on the Register is outside Australia and New Zealand (or who holds Units on behalf of a person outside Australia or New Zealand) in the circumstances permitted under the applicable ASIC Relief<sup>2</sup> and, if relevant, the Listing Rules.

## Exercise of Options

- 3.8 To exercise an Option, the holder of the Option must give notice to the Manager in accordance with the terms of the Option, together with payment of the exercise price. The Option Holder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.

## Lapse of Options

- 3.9 An Option lapses on the earliest of:
- (a) the date stipulated in the terms of issue of the Option; or
  - (b) the termination of the Trust; or
  - (c) the winding up of the Trust,
- and the liability of the Manager ceases in respect of the Option.

<sup>2</sup> See ASIC Class Order [CO 13/656].

### **Rights attaching to Units and Options**

- 3.10 Subject to the Corporations Act, the interests of Members holding Units will prevail over the interests of holders of Options in the case of conflict.

### **Fractions of Units and Options**

- 3.11 Fractions of a Unit or Option may be issued by the Manager, but while the Units or Options are Officially Quoted, fractions of a Unit or Option may not be issued. If any fractions of Units or Options are on issue at a time when the Trust is to be Listed, the Manager may cancel the fractions with effect from the date of Listing.
- 3.12 Subject to clause 5.7(b), where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue, redemption or other creation or cancellation of a fraction of one Unit or Option, that fraction may be rounded down or up to such number of decimal places as the Manager determines.
- 3.13 The provisions of the constitution relating to Units and Members apply to fractions of Units and Options in the proportion which the fraction bears to one Unit or Option.

### **Rounding**

- 3.14 Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Trust.

### **Uncertificated trading**

- 3.15 If and for so long as dealings in any Units, Options or Financial Instruments take place under an Uncertificated Transfer System:
- (a) the Manager need not issue any certificate in respect of Units, Options or Financial Instruments held as an Uncertificated Securities Holding; and
  - (b) the Register may distinguish between Units, Options or Financial Instruments held in certificated form, and securities held as an Uncertificated Securities Holding.

### **Income entitlement of Units**

- 3.16 The Manager may issue Units on terms that the Units:
- (a) participate fully for Distributable Income in respect of the Distribution Period in which they are issued; or
  - (b) do not entitle the holder of the Units to receive a distribution of Distributable Income in respect of the Distribution Period in which the Units are issued; or
  - (c) entitle the holders to receive Distributable Income in respect of the Distribution Period in which the Units are issued which is not greater than the proportion of the Distributable Income to which a Member holding a Unit during the whole of that Distribution Period would be entitled, multiplied by the number of days from the date of allotment of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period.

## Consolidation and division of Units, Options and Financial Instruments

- 3.17 Units, Options and Financial Instruments may be consolidated or divided as determined by the Manager. While Stapling applies, no consolidation or division of Units or Options may occur unless at the same time as Units are consolidated or divided, there is a corresponding consolidation or division of each Attached Security.

## Capital reallocation

3.18

- (a) The Manager may at any time distribute an amount of capital of the Trust to the Members on terms that the amount distributed in respect of each Unit is to be applied by the Manager as agent for and on behalf of each Member by paying that amount at the direction of each Member to one or more Stapled Entities as an additional capital payment in respect of the relevant Attached Security of that Stapled Entity which is already issued and to which the Unit is Stapled (the “**Outgoing Capital Reallocation Amount**”), and if the Manager determines to pay a distribution as an Outgoing Capital Reallocation Amount, then:
- (i) the Outgoing Capital Reallocation Amount to be applied on behalf of a Member is to be as nearly as practicable in the same proportion as that which the number of Units the Member holds bears to the total number of Units on issue as at a date determined by the Manager;
  - (ii) each Member is deemed to have directed the Manager to pay the Outgoing Capital Reallocation Amount to the relevant Stapled Entity or Entities on the basis set out in this clause 3.18;
  - (iii) the Manager must pay the Outgoing Capital Reallocation Amount on the basis set out in this clause 3.18; and
  - (iv) each Member will be deemed to have irrevocably appointed the Manager as its attorney and agent to do all things the Manager considers necessary to give effect to the reallocation of capital under this clause 3.18(a).
- (b) If at any time, a Stapled Entity proposes to undertake a capital distribution (if it is a trust) or an equal reduction of capital (if it is a company) on terms that the whole or any part of the amount to be paid in respect of each Attached Security of which that Stapled Entity is the issuer by way of capital distribution or capital reduction (“**Incoming Capital Reallocation Amount**”) is to be paid to or for the benefit of the Trust, then:
- (i) each Member is deemed to have directed the Manager to accept the Incoming Capital Reallocation Amount;



- (ii) each Member is deemed to have appointed the Manager as their attorney and agent to do all things the Manager considers necessary to give effect to the receipt of the Incoming Capital Reallocation Amount by the Manager;
- (iii) if the Stapled Entity is a company which proposes to undertake an equal reduction of capital, then each Member irrevocably appoints and directs the Manager to do the following on the Member's behalf and in the Member's name:
  - A. consent in writing (which consent may be a single document or two or more documents executed by the Manager on behalf of all Members) to any variation of the rights attaching to any shares in the Stapled Entity held by the Member constituted by any modification of the constitution of the Stapled Entity that increases or provides for an increase in the liability of the Member in its capacity as a holder of shares to contribute to the share capital of the Stapled Entity, and that increase in that liability; and
  - B. agree in writing (which agreement may be a single document or two or more documents executed by the Manager on behalf of all Members) to the increase in the Member's liability to contribute to the share capital of the Stapled Entity in accordance with the constitution of the Stapled Entity,

and the Manager will receive the Incoming Capital Reallocation Amount as an additional capital payment in respect of the Unit to which the relevant Attached Security is Stapled. All amounts so received by the Manager are Assets.

### **Financial Instruments**

3.19 Without limiting clause 13, but subject to the Corporations Act:

- (a) the Manager may, in addition to Units and Options, issue any other interests, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) ("**Financial Instruments**"); and
- (b) Financial Instruments may be issued:
  - (i) at an application price (which may be nil) determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at an application price of \$100 per Financial Instrument; and

- (ii) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversion or otherwise, provided that while Stapling applies, the Financial Instrument must convert into one or more Stapled Securities, not Units alone) as the Manager determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act.

3.20 Subject to the Corporations Act and except as provided in the terms of issue of the Financial Instrument:

- (a) a Financial Instrument will not confer any interest in or any rights to participate in the income or capital of the Trust, but otherwise the Holder of a Financial Instrument holds that Financial Instrument subject to the rights, restrictions and obligations attaching to that Financial Instrument; and
- (b) a Holder of a Financial Instrument who is not a Member is not entitled to any other rights of a Member.

## **4 Transfer, transmission and joint holders**

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### **Transfer of Units, Options and Financial Instruments**

4.1 Units, Options and Financial Instruments may be transferred subject to their terms, this clause 4 and clause 29.

### **Transfer if not Officially Quoted**

4.2 If Units, Options or Financial Instruments are not Officially Quoted transfers must be:

- (a) in a form approved by the Manager;
- (b) accompanied by any evidence the Manager reasonably requires to show the right of the transferor to make the transfer; and
- (c) if the Manager requires, be presented for Registration duly stamped.

If Units, Options or Financial Instruments the subject of a proposed transfer are not Officially Quoted, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal.

To the maximum extent permitted by law, the Manager may (or may direct or procure the Registrar to) put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.

**Transfer if Officially Quoted**

4.3 Subject to this constitution and the Listing Rules, if a Unit, Option or Financial Instrument is Officially Quoted, it is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

If a duly completed instrument of transfer:

- (c) is used to transfer a Unit, Option or Financial Instrument in accordance with paragraph (b); and
- (d) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Manager properly requires to show the right of the transferor to make the transfer,

the Manager must, subject to the Manager's powers, register the transferee as the Member, Option Holder or Holder of a Financial Instrument as relevant.

**When transfer is effective**

4.4 Except as provided by any applicable Operating Rules of a CS Facility, a transfer is not effective until Registered.

**Manager may request holding lock or refuse to register transfer**

4.5 If the Units, Options or Financial Instruments are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units, Options or Financial Instruments from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to Register a transfer of other Units, Options or Financial Instruments to which paragraph (a) does not apply.

**Manager must request holding lock or refuse to register transfer**

4.6 The Manager must:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Units, Options or Financial Instruments from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to register any transfer of Units, Options or Financial Instruments to which paragraph (a) does not apply,

if the Corporations Act or Listing Rules require the Manager to do so or the transfer is in breach of clause 29.

### **Notice of holding locks and refusal to register transfer**

4.7 If, in the exercise of its rights under clauses 4.5 or 4.6, the Manager requests the application of a holding lock to prevent a transfer of Units, Options or Financial Instruments or refuses to Register a transfer of Units, Options or Financial Instruments, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

- (a) the holder of the Units, Options or Financial Instruments;
- (b) the purported transferee; and
- (c) the broker lodging the transfer, if any.

Failure to give notice does not, however, invalidate the decision of the Manager.

### **Joint tenancy**

4.8 Persons Registered jointly as a Member, or holder of an Option or Financial Instrument, hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

### **Transmission on death**

4.9 If a holder of Units, Options or Financial Instruments, who does not hold them jointly, dies, the Manager will recognise only the personal representative of the holder as being entitled to the holder's interest in the Units, Options or Financial Instruments.

### **Information given by personal representative**

4.10 If the personal representative gives the Manager the information it reasonably requires to establish the representative's entitlement to be registered as a holder of the Units, Options or Financial Instruments:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
  - (ii) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the Units, Options or Financial Instruments, to the same rights as the previous holder.

On receiving an election under paragraph (a)(i), the Manager must register the personal representative as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (a)(ii) is subject to the clauses that apply to transfers generally.

**Death of joint owner**

- 4.11 If a holder of Units, Options or Financial Instruments, who holds them jointly, dies, the Manager will recognise only the survivor as being entitled to the holder's interest in the Units, Options or Financial Instruments. The estate of the holder is not released from any liability in respect of the Units, Options or Financial Instruments.

**Transmission on bankruptcy**

- 4.12 If a person entitled to Units, Options or Financial Instruments because of the bankruptcy of a holder of Units, Options or Financial Instruments gives the Manager the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, Options or Financial Instruments, the person may:

- (a) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
- (b) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person.

On receiving an election under paragraph (a), the Manager must register the person as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (b) is subject to the clauses that apply to transfers generally.

This clause has effect subject to the Bankruptcy Act 1966 (Cwlth).

**Transmission on mental incapacity**

- 4.13 If a person entitled to Units, Options or Financial Instruments because of the mental incapacity of a holder of Units, Options or Financial Instruments gives the Manager the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Units, Options or Financial Instruments:

- (a) the person may:
  - (i) by giving a written and signed notice to the Manager, elect to be registered as the holder of the Units, Options or Financial Instruments; or
  - (ii) by giving a completed transfer form to the Manager, transfer the Units, Options or Financial Instruments to another person; and
- (b) the person is entitled, whether or not registered as the holder of the Units, Options or Financial Instruments, to the same rights as the previous holder.

On receiving an election under paragraph (a)(i), the Manager must register the person as the holder of the Units, Options or Financial Instruments.

A transfer under paragraph (a)(ii) is subject to the clauses that apply to transfers generally.

## 5 Application Price for Units, Options and Financial Instruments

### Application Price

- 5.1 Subject to clause 22.1 and the Stapling Provisions while they apply, the application price for a Unit must be calculated as follows:
- (a) in the case of a proportionate offer (including a rights issue), in accordance with clause 5.4;
  - (b) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 5.6;
  - (c) in the case of reinvestment of distributions, in accordance with clauses 5.7 or 5.8;
  - (d) in the case of Units issued pursuant to the exercise of an Option, at a price calculated in accordance with clause 5.9;
  - (e) subject to paragraphs (a) to (e), in all other cases while Units are Officially Quoted, the Market Price of Units applicable on the date as at which the application price is to be calculated; and
  - (f) while Units are not Officially Quoted, in accordance with the following formula:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue.}}$$

### Time for calculation

- 5.2 Each of the variables in clause 5.1(f) must be determined as at the next Valuation Time after:
- (a) the Manager receives the application for Units; or
  - (b) the Manager receives the application money (even if paid or to be paid into the Applications Account) or the property against which Units are to be issued is vested in the Manager,

whichever happens later.

### Rounding

- 5.3 Subject to the Listing Rules, the Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an Asset.

### Pro rata rights issues

- 5.4 Subject to the terms of any applicable ASIC Relief<sup>3</sup> and the Listing Rules, the Manager may offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager:

<sup>3</sup> See ASIC Class Order [CO 13/655] notional section 601GAD(3) and Regulatory Guide 134.

- (a) provided that, subject to paragraph (b) of this clause 5.4, all Members are offered Units in proportion to the value of the Member's Units at the relevant date; but
- (b) the Manager may exclude a Member from the pro rata offer<sup>4</sup> if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act (as modified by ASIC Relief).<sup>5</sup>

### **Terms of pro rata issues**

#### 5.5

- (a) Any offer made under clause 5.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 5.4. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 5.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 5.4, the underwriter may take up any Units not subscribed for by Members.

### **Placements and security purchase plan while Listed**

5.6 While Units are Officially Quoted and not suspended from quotation, the Manager may at any time issue Units by way of a placement or under a security purchase plan:

- (a) at the Market Price of Units on the day immediately before the date on which the Units are offered or, if there is no offer, the day immediately before the date on which the Units are issued; or
- (b) at a price and on terms determined by the Manager, provided that the Manager complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.<sup>6</sup>

<sup>4</sup> The clause assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.

<sup>5</sup> See ASIC Class Order [CO 13/656] (Exemption – Equality of treatment).

<sup>6</sup> See ASIC Class Orders [CO13/655] notional section 601GAD(2) and (4) and [CO 09/425].

## Reinvestment while Listed

### 5.7

- (a) If reinvestment of distributions payable to a Member under clause 11.15 applies while the Units are Officially Quoted, subject to the terms of any applicable ASIC Relief<sup>7</sup> and the Listing Rules, the Manager may issue Units on the basis that the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the price will be the Market Price of the Units.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

## Reinvestment while not Listed

- 5.8 While Units are not Officially Quoted, subject to the terms of any applicable ASIC Relief<sup>8</sup>, the Manager may issue Units on the basis that the application price payable for each additional Unit on reinvestment of distributions payable to a Member under clause 11.15 is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the application price will be as calculated under clause 5.1(f) on the first Business Day after the end of the Distribution Period to which the distribution relates.

## Options

- 5.9 Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Trust is a Registered Scheme, the Manager may issue Options over Units:
- (a) at an application price (which may be nil) determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at a nil Application Price; and
  - (b) on the basis that the Application Price for a Unit to be issued on exercise of the Option is a price determined by the Manager:
    - (i) while the Units are Officially Quoted, in accordance with the terms of ASIC Relief<sup>9</sup> for a rights issue or a placement of Units (as applicable), or under clause 5.1(e);
    - (ii) while the Units are not Officially quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 5.1(f).

<sup>7</sup> See ASIC Class Order [CO 13/655].

<sup>8</sup> See ASIC Class Order [CO 13/655] notional section 601GAD(5).

<sup>9</sup> See ASIC Class Order [CO 13/655] notional section 601GAD (3)(b).



## Financial Instruments

- 5.10 The application price of a Financial Instrument is the price determined in accordance with clause 3.19(b).

## 6 Application procedure for Units, Options and Financial Instruments

### Application form

- 6.1 An applicant for Units or Options must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

### Payment

- 6.2 Payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or any other person nominated by the Manager for that purpose, must:
- (a) accompany the application;
  - (b) be received by or made available to the Manager or the Custodian within such period before or after the Manager receives the application form as the Manager determines from time to time, or as the terms of issue of the relevant Unit or Option contemplate; or
  - (c) comprise a reinvestment of distribution in accordance with this constitution.

If the Manager accepts a transfer of property other than cash:

- (i) the value attributed to the property must be equivalent to a price at which the Manager could properly buy the property and, if the Manager requires, the applicant must provide a recent valuation of the property;<sup>10</sup> and
- (ii) any additional costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factored into the Application Price for the Units must be paid by the applicant either directly or by deducting the costs from the value of the property before the number of Units to be issued is calculated.

### Manager may reject

- 6.3 Subject to the Listing Rules, the Manager may reject an application in whole or in part without giving any reason for the rejection.

### Minimum amounts

- 6.4 The Manager may set a minimum application amount and a minimum holding for the Trust in respect of Units or Options and alter or waive those amounts at any time.

<sup>10</sup> ASIC RG 134.42.

**Issue date**

- 6.5 Except in the case of a reinvestment of distribution in accordance with this constitution, Units or Options are taken to be issued when:
- (a) the Manager accepts the application; or
  - (b) the Manager receives the application money, or the property against which the Units or Options are to be issued is vested in the Manager,

whichever happens later.

Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the Record Date for the relevant Distribution Period.

**Uncleared funds**

- 6.6 Units or Options issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

**Application procedure for Financial Instruments**

- 6.7 The provisions of this clause 6 apply to applications for Financial Instruments with any necessary adaptations.

**7 Redemption Price of Units, Options and Financial Instruments****Redemption Price**

- 7.1 Subject to clauses 8.11, 8.15 and 8.16, the redemption price for a Unit must be calculated as follows:

$$\frac{\text{Net Asset Value - Transaction Costs}}{\text{number of Units in issue}}$$

**Time for calculation**

- 7.2 Each of the variables in clause 7.1 must be determined:
- (a) while the Trust is a Registered Scheme and is Liquid, and at all times when the Trust is not a Registered Scheme, as at the next Valuation Time after the Manager receives the redemption request or determines that the Units are to be redeemed, whichever is the earlier; or
  - (b) while the Trust is a Registered Scheme and is not Liquid, as at the last Valuation Time before the withdrawal offer is made.

**Redemption Price of Options**

- 7.3 The redemption price of an Option is:
- (a) while the Options are quoted for trading on ASX, its Market Price, and

- (b) while the Options are not quoted for trading on ASX, the price determined in accordance with the principles in paragraph (c) of the definition of Market Value in clause 31.1.

### **Redemption price of Financial Instruments**

- 7.4 Subject to the terms of the relevant Financial Instruments and the Corporations Act, a Financial Instrument may be redeemed at a redemption price determined by the Manager if permissible under the Corporations Act or, if such determination may not be made, at a redemption price of \$100 per Financial Instrument.

### **Rounding**

- 7.5 Subject to the Listing Rules, the Redemption Price may be rounded as the Manager determines but the amount of the rounding must not be more than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset of the Trust.

## **8 Redemption procedures**

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### **While Officially Quoted**

- 8.1 While Units are Officially Quoted:
- (a) clauses 8.11 to 8.13 apply only to the extent provided for in clause 8.16;
- (b) clauses 8.10 and 8.14 to 8.18 apply; and
- (c) clauses 8.2 to 8.9 do not apply.

If the Stapling Provisions apply and Units comprise part of a Stapled Security that is Officially Quoted, clauses 8.15 and 8.16 apply with any necessary modifications.

### **Request for redemption**

- 8.2 A Member may make a request for the redemption of some or all of their Units by giving the Manager notice in writing of the request specifying the number or value of Units to be redeemed and sufficient details to identify the Member, or in any other manner approved by the Manager, and the Manager must give effect to that request at the time and in the manner set out in this clause 8.
- 8.3 A Member may not withdraw a redemption request unless the Manager agrees.

### **When Trust is Liquid or not a Registered Scheme**

- 8.4 Clauses 8.5 and 8.7 apply only:
- (a) while the Trust is Liquid; and
- (b) while the Trust is not Liquid but is not a Registered Scheme.

### **Manager must redeem**

- 8.5 Subject to the Corporations Act and the Listing Rules, the Manager must:

- (a) redeem a Unit which is the subject of a valid redemption request, and ensure that the redemption is recorded in the Register, within 60 days of receipt of the request or such longer period as allowed by clause 8.6; and
- (b) pay the Redemption Price to the Member or former Member whose Units have been redeemed within 21 days of the redemption.

### **Delayed redemption**

8.6

- (a) Subject to clause 8.6(b), if the Manager has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as a restricted market for any Assets, the period allowed for redemption of the Units may be extended by the number of days during which such circumstances apply.
- (b) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Manager must pay the redemption proceeds to the withdrawing Member or former Member within 21 days of the date on which the withdrawal offer close.<sup>11</sup>

### **Minimum holding**

8.7

If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.

### **Increased minimum**

8.8

If the Manager increases the minimum holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

### **No redemptions after termination**

8.9

The Manager need not give effect to a redemption request received between the date the Trust is terminated and the date of winding up.

### **Payment from the Assets**

8.10

The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

### **While Trust is not Liquid**

8.11

While the Trust is not Liquid, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind. While the Trust is a Registered Scheme and is not Liquid, if there is no withdrawal offer currently open for

<sup>11</sup> Section 601KD.

acceptance by Members, a Member has no right to request withdrawal from the Trust.

### **Manager not obliged**

- 8.12 The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by sending a copy of the offer to all Members, or making a copy of the offer available by electronic means and giving notice to Members that it is available. The Manager may cancel a withdrawal offer by sending a copy of the notice of cancellation to all Members, or making a copy of such notice available by electronic means and giving notice to Members that it is available.

### **Sums owed to Manager**

- 8.13 The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member. While the Trust is Liquid or not a Registered Scheme, the Manager may redeem without a redemption request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

### **When Units are redeemed**

- 8.14 Units are taken to be redeemed at the time at which the Redemption Price is known and the redemption is recorded (or required under clause 8.5 to be recorded) in the Register, and

from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

### **On-market buy backs**

- 8.15 While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

### **Withdrawal offers while Listed**

- 8.16 While the Units are Officially Quoted the Manager may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 8.11 in which case clauses 8.11 to 8.13 apply in relation to the withdrawal offer, and the Redemption Price is to be calculated in accordance with clause 7.2(b).

### **Redemption of Options**

- 8.17 The provisions of this clause 8 apply to the redemption of Options, with any necessary adaptations. The Redemption Price of an Option is to be determined under clause 7.3.

## Redemption of Financial Instruments

- 8.18 The provisions of this clause 8 apply to the redemption of Financial Instruments with any necessary adaptations. The Redemption Price of a Financial Instrument is to be determined under clause 7.4.

## 9 Valuation of Assets

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### Periodic valuations

- 9.1 The Manager may cause an Asset to be valued at any time and, while the Trust is a Registered Scheme, must do so as and when required by the Corporations Act.

### Net Asset Value

- 9.2 The Manager may determine Net Asset Value at any time, including more than once on each day.

### Valuation methods

- 9.3 The Manager may determine the value of an Asset, and determine valuation methods and policies for each category of Asset and change them from time to time. While the Trust is a Registered Scheme, the Manager's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Application Price or Redemption Price of a Unit, the value must be reasonably current.<sup>12</sup> In the absence of any other determination by the Manager, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

### Currency conversion

- 9.4 Where it is necessary for the purposes of a valuation to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank, or an independent pricing provider (such as Reuters) nominated by the Manager. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency.

## 10 Accounts

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The financial reports of the Trust must be prepared, audited, lodged with ASIC and distributed to Members by the Manager as required by the Corporations Act and the Listing Rules.

## 11 Income and distributions to Members

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### Trust taxed as company

- 11.1 If the Trust is to be taxed as if it were a company, whether because it is or becomes a public trading trust for the purposes of Division 6C of Part III of the Tax Act or otherwise, the following provisions of this

<sup>12</sup> ASIC RG 134.110 provides guidance on the meaning of "reasonably current".

clause 11.1 apply and clauses 11.2 to 11.13 do not apply. If this clause 11.1 applies:

- (a) as soon as practicable after the end of the Financial Year the Manager must determine the income of the Trust in respect of the Financial Year, for each of taxation purposes and accounting purposes (which may be different amounts);
- (b) the Manager must provide for, and pay from the Assets of the Trust when appropriate, all taxation attributable to the income of the Trust;
- (c) the Members will not have a present entitlement at the end of a Distribution Period to the net income of the Trust;
- (d) the Manager may from time to time, including during the Financial Year, determine to pay distributions in respect of the Financial Year (each a “**Distributable Amount**”) to the Members on the Register on any date determined by the Manager (“**Books Closing Date**”);
- (e) in respect of a Distributable Amount being paid to Members under this clause 11.1:
  - (i) the Manager may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
  - (ii) the Manager must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies; and
- (f) subject to any rights attaching to any Unit, a Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

A = the aggregate of the number of Units held by the Member at the Books Closing Date;

B = the aggregate of the number of Units in issue at the Books Closing Date; and

C = the Distributable Amount.

### **Standing principles for determining Distributable Income**

- 11.2 The Manager may determine standing principles for calculating and distributing the Distributable Income for any Financial Year or Distribution Period and may change the principles from time to time. Without limiting this clause 11.2, the standing principles may:

- 
- (a) include amounts of capital (or amounts which would have been capital, disregarding any recharacterisation in accordance with clause 11.14) in Distributable Income;
  - (b) treat amounts of income (or amounts which would have been income, disregarding any recharacterisation in accordance with clause 11.14) as capital; and
  - (c) permit the application of income receipts, profits or gains of the Trust to meet expenses of a revenue or capital nature (disregarding any classification of those expenses in accordance with clause 11.14), in the determination of Distributable Income.

### **Determination of Distributable Income**

#### 11.3

- (a) The Manager must determine the Distributable Income for each Distribution Period and for each Financial Year. In the case of any Distribution Period which does not end at the end of a Financial Year this determination of the Distributable Income for that Distribution Period may be an estimate.
- (b) The Distributable Income is to be:
  - (i) if the Manager has determined standing principles under clause 11.2 which are applicable to the Financial Year or Distribution Period, the amount calculated by applying those principles in respect of the Financial Year or Distribution Period; and
  - (ii) if there are no standing principles which are applicable to the Financial Year or Distribution Period under clause 11.2, so much of the income of the Trust determined according to ordinary concepts as is available for that period for distribution after payment of, or the provision for, costs, expenses and outgoings in accordance with normal concepts and the terms of this constitution.
- (c) In the case of each Distribution Period which ends at the end of a Financial Year, the Distributable Income for that Distribution Period is to be the amount by which the Distributable Income for the Financial Year exceeds the aggregate of the Distributable Income or estimated Distributable Income in respect of any prior Distribution Periods during that Financial Year.
- (d) The Manager may treat as expenses of the Trust all coupon, interest, distribution or other periodic payments if any, required to be paid by the Manager to Holders of Financial Instruments in accordance with the terms of those Financial Instruments.



**Accounting standards**

- 11.4 The preparation of the accounts of the Trust in accordance with applicable accounting standards including international financial reporting standards to the extent required or relevant and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 11.2.

**Present entitlement**

- 11.5 Subject to clauses 3.16, 11.13 and 11.21, each person Registered as a Member at the end of the last day of a Distribution Period is presently entitled to the Distributable Income of the Trust for that Distribution Period in the proportion that the number of Units held by the Member bears to the total number of Units then on issue.

**Record Date**

- 11.6 The Manager must determine the Record Date for the purpose of determining the persons who are entitled to be paid a distribution, which will be the last day of the Distribution Period unless otherwise determined by the Manager at any time prior to the payment of that distribution. The payment by the Manager in respect of any Units of an amount of the Distributable Income calculated in accordance with this constitution in respect of those Units to the Member registered in respect of those Units as at the Record Date is a good and sufficient discharge to the Manager in respect of any liability it may have to any person in respect of any such entitlement with respect to those Units.

**Reserve for distribution**

- 11.7 Upon a person or persons becoming entitled to a share or shares in the Distributable Income for a Distribution Period, the Manager must set aside assets with a total value which is, in the Manager's reasonable opinion, likely to be equal to, or to be a fair approximation of, the aggregate amount of those shares of Distributable Income for distribution. Those Assets may, if necessary, be converted to money by the Manager for the purposes of payment.

**Over/under provisions**

- 11.8 Following the distribution of those shares of the Distributable Income for a Distribution Period out of the Assets set aside under clause 11.7:
- (a) if there is an over provision, the excess remains part of the Trust; and
  - (b) if there is an under provision, the Manager may apply further Assets to meet the distribution.

**Distribution of Distributable Income**

- 11.9 Subject to any deductions made under clause 11.12, the Manager must distribute to each person the person's entitlement to Distributable Income for a Distribution Period. That distribution must occur within two months after the Distribution Calculation Date for the Distribution Period.

**Separate accounts**

- 11.10 The Manager may keep separate accounts of different categories or sources, or both, of receipts, profits, gains, deductions or credits for tax

purposes, and may allocate receipts, profits gains, deductions or credits from a particular category or source, or both, to particular Members. Where the Manager allocates receipts, profits, gains, deductions or credits from a particular category or source to a Member other than pro rata with all other Members, the Manager must notify the Member.

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

- 11.11 A person who is or was a Member as at a Record Date remains entitled to their share (if any) of the Distributable Income under clause 11.5 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

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

- 11.12 The Manager may deduct from any entitlement of a person to a share of Distributable Income any amount which the Manager is required or authorised to deduct under clause 12.8 and all amounts deducted must be applied in reimbursing the Trust for any corresponding amount paid, distributed or reimbursed out of the Trust or reimbursing the Manager for the payment of the Tax to the person or authority entitled to it.

#### **Fractions**

- 11.13 If the share of Distributable Income for a Member determined under clause 11.5 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated and under clause 11.5 and the fraction of the cent becomes an Asset.

#### **Classification of items**

- 11.14 Without limiting clause 11.3, the Manager may determine:
- (a) whether any receipt, profit gain, cost, expense or outgoing is to be treated, for the purposes of this constitution, as being on income or capital account and may, in making that determination, reclassify amounts which are income as capital, and amounts which are capital as income;
  - (b) the extent to which reserves or provisions need to be made; and
  - (c) whether any item of income should be recognised as it is received or as it accrues (but not yet received).

#### **Availability of reinvestment**

- 11.15 The Manager may decide whether to permit or require the Members to reinvest some or all of any distribution.

#### **Terms of reinvestment**

- 11.16 If the Manager decides to permit reinvestment, it must notify Members of the procedure and terms for reinvestment and any change in the procedure or terms.

#### **Issue date**

- 11.17 If reinvestment applies, the Manager is taken to have received and accepted an application to reinvest distributions and the Units are taken to be issued on the date determined in accordance with clause 6.5.

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**Liability**

- 11.18 The Manager does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 11 or the AMIT Regime, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

**Other distributions**

- 11.19 The Manager may at any time distribute any amount of capital or income to Members pro rata according to the number of Units they hold as at a time decided by the Manager. The distribution may be in cash, by way of additional Units, or in the form of other Assets under clause 12.9.

**Member may direct**

- 11.20 The Manager may act on a direction given by a Member in such form as the Manager requires to pay to a third party nominated in the direction all or part of the Member's entitlement to distributions of income and capital under this clause 11 or under clause 23 on winding up.

**Tax attributable to certain Members**

- 11.21 Where any Tax attributable to the ownership of Units by certain Members is paid or to be paid from the Assets, the entitlement to Distributable Income of those Members may be adjusted by the Manager so that the entitlement to Distributable Income of all other Members is equivalent to the amount they would receive in the absence of such Taxes.

**Periodic payments to Holders of Financial Instruments**

- 11.22 The Manager must pay to Holders of Financial Instruments all coupon, interest, distribution or other periodic payments required to be paid to the Holders of Financial Instruments under the terms of those Financial Instruments with such payments to be made at the time and in the manner set out in the terms of those Financial Instruments.

**Distributions paid in different currencies**

- 11.23 The Manager may provide a facility whereby Members may receive their entitlement to the Distributable Income from time to time in such currency or currencies as they may request by notice to the Manager in writing and which the Manager may approve and in such event the Manager may arrange to convert a Member's entitlement to Distributable Income into the currency in which it is to be paid on a date being the date that the Distributable Income in respect of a Distribution Period is determined, the Distribution Calculation Date in respect of a Distribution Period, the date of payment of distribution entitlements in respect of a Distribution Period or such other date as the Manager may determine, and the Manager may maintain bank accounts in such currencies as may be appropriate for this purpose.

## 11A AMIT Regime

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### AMIT election

- 11A.1 The Manager may, under the AMIT Regime, make an election to determine the Trust to be an attribution managed investment trust for the purposes of the Tax Act.

### Unders and overs

- 11A.2 The Manager may determine how any Unders and Overs that arise for the Trust are to be dealt with in accordance with the AMIT Regime. The Trustee is not liable to any Member or former Member with respect to how it addresses any Unders or Overs, provided that the Trustee addresses the Unders and Overs in accordance with the AMIT Regime, and irrespective of whether the choices made result in an attribution outcome for a Member or former Member that is different from the attribution outcome if the Manager had not made the choice, or had made the choice differently.

### Attribution of taxable income to Member

- 11A.3 Following the end of a Financial Year which is an AMIT Income Year, the Manager must attribute the Determined Trust Components of each particular category or character for tax purposes to Members in accordance with the Tax Act.
- 11A.4 The Manager may establish principles (“**Attribution Principles**”) to determine the manner in which Determined Trust Components are attributed to Members.
- 11A.5 If there are no Attribution Principles for an AMIT Income Year the Manager must attribute to each Member in respect of an AMIT Income Year:
- (a) if distributions have been paid to Members in respect of the AMIT Income Year (whether of Distributable Income or other distributions pursuant to clause 11.19), so much of any Determined Trust Components of the Trust for the AMIT Income Year as the Manager reasonably determines based on the Member’s proportionate share of the total distributions paid in respect of the AMIT Income Year; and
  - (b) if no distributions have been paid to Members in respect of the AMIT Income Year, so much of any Determined Trust Components of the Trust for the AMIT Income Year as the Manager reasonably determines based on the Member’s proportionate share of the total units on issue as at the last day of the AMIT Income Year.

### Member must notify, provide information and indemnify Manager in relation to objections

- 11A.6 If a Member or former Member objects to the basis of the attribution of the Determined Member Components for the purposes of the AMIT Regime, including, without limitation, by making a Member Objection Choice, the Member or former Member must:

- (a) provide the Manager with a copy of the objection notice, including the basis for objection, within the time the Member is required to do so under the Tax Act;
- (b) provide to the Manager any information the Manager reasonably requests in order to assess the Member's objection or proposed objection; and
- (c) indemnify the Manager against all costs and liabilities incurred by the Manager as a result of the objection or proposed objection.

### **Consequences if objection made**

11A.7 If a Member or former Member makes an objection to the basis of attributing the Determined Trust Components of the Trust under the AMIT Regime, including, without limitation, by making a Member Objection Choice the Manager may:

- (a) take such action as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members to be protected, including in dealings with the Commissioner of Taxation; and
- (b) amend its attribution of the relevant Determined Trust Components to the Members, having regard to the principles in clauses 11A.3, 11A.4 and 11A.5, and issue amended AMMA Statements to Members.

### **Limitation of liability**

11A.8 The Manager has no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to an objection to the basis of attribution of the Determined Trust Components of the Trust under the AMIT Regime, including, without limitation, by the Member making a Member Objection Choice.

### **Manager has a right to be indemnified for Tax payable**

11A.9 Without limiting clause 19, each Member or former Member is required to indemnify the Manager for:

- (a) any Tax payable by the Manager as a result of the application of the AMIT Regime which the Manager reasonably determines relates to the Member or former Member; and
- (b) any other costs, expenses or liabilities incurred by the Manager as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under this clause.

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

11A.10 The Manager may, if it is entitled to be indemnified by a Member or former Member under clause 11A.9, or under the AMIT Regime:

- (a) deduct (under clause 12.8) from any amounts owing to the particular Member, the aggregate of any amounts which the Manager is entitled to be

indemnified under clause 11A.9, or under the AMIT Regime; and

- (b) redeem (under clause 8.13) Units held by the Member to satisfy any amounts owed to the Manager under clause 11A.9.

## 12 Payments

### Payment method

- 12.1 Money payable by the Manager to an Investor may be paid in any manner the Manager decides, including:
- (a) by cheque sent through the post directed to the address of the Investor as shown in the Register or, in the case of joint holders, to the address of the joint holder first named in the Register;
  - (b) by cheque sent through the post directed to such other address as the Investor or joint holder in writing directs; or
  - (c) by any method of direct credit or electronic transfer determined by the Manager to an account (of a type approved by the Manager) as provided in writing by the Investor or holders shown on the Register, or to such person or place directed by them.

Payment of any money under this clause is at the risk of the Investor to whom it is sent.

- 12.2 If the Manager determines under clause 12.1(c) that payments will be made only by direct credit or electronic transfer into an account (of a type approved by the Manager) nominated by the Investor or holder(s) shown on the Register, but no such account is nominated by the Investor or holder(s) or an electronic transfer into the nominated account is rejected or refunded, the Manager may credit the amount payable to an account of the Manager or its nominee held on behalf of the Trust to be held until:
- (a) the Investor nominates a valid account; or
  - (b) the amount is required to be dealt with in accordance with any law relating to unclaimed moneys.

- 12.3 An amount credited to an account under clauses 12.1(c) or 12.2 is to be treated as having been paid to the Investor at the time it is credited to that account. The Manager will not be a trustee of the money other than under this constitution and no interest will accrue on that amount.

### Cheques

- 12.4 The Manager may cancel any cheque which is not presented within 6 months from its date of issue. Where a cheque which is cancelled was drawn in favour of an Investor, the Manager may reinvest the money in Units (and if relevant Attached Securities) in the name of that Investor at the application price for the Units and Attached Securities prevailing at the time the cheque is cancelled (if the Investor is a Member) or deal

with the money in accordance with any relevant legislation dealing with unclaimed moneys.

### **Electronic transfers**

- 12.5 Without limitation to clauses 12.1 and 12.2, if the Manager attempts to make a payment to an Investor by electronic transfer of funds or any other means and the transfer is unsuccessful, the Manager may send that money by cheque to the Investor to the last known address of that Investor.

### **Rounding**

- 12.6 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

### **Joint Investors**

- 12.7 A payment to any one of joint Investors will discharge the obligations of the Manager in respect of the payment.

### **Deduction of Tax and amounts owing**

- 12.8 The Manager may deduct from any amount to be paid to or received from a person who is or has been an Investor:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Investor to the Manager or any other person,

which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

### **Transfer of Assets**

- 12.9 The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution of income or capital, or on winding up of the Trust, either:

- (a) with the consent of the Member; or
- (b) if the Manager reasonably considers the transfer of Assets rather than cash is in the best interests of Members, without the consent of the Member.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the redemption, withdrawal offer or distribution (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions<sup>13</sup>). If paragraph (a) of this clause 12.9 applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

<sup>13</sup> ASIC RG 134.178.

For the purposes of this clause 12.9, the Manager is appointed as agent and attorney of each Member with power to agree on the Member's behalf to the transfer of Assets to the Member and to execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the transfer of Assets, including agreeing to become a member and / or holder of securities of a company or other body corporate or trust.

## **13 Powers of the Manager**

### **General powers**

- 13.1 Subject to this constitution, the Manager has all the legal capacity and powers both inside and outside Australia 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 and acting in its personal capacity.

### **Contracting and borrowing powers**

- 13.2 The Manager in its capacity as trustee of the Trust has power to enter into any form of contract and to incur all types of obligations and liabilities including:
- (a) to borrow or raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities);
  - (b) to grant all types of security (whether for the obligations of the Manager or another person);
  - (c) to grant guarantees and indemnities; and
  - (d) to enter into derivatives.

### **Investment and lending powers**

- 13.3 The Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion. This includes the power to:
- (a) invest the whole or part of the Assets in trusts or companies that carry on a business, in a single type of asset, or in trusts or other entities managed or controlled by the Manager or its related body corporate, or such other investments as the Manager determines; and
  - (b) lend money and on-lend or provide financial accommodation to any person.

### **Power of delegation**

- 13.4 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 13.5 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate, and to limit the



Manager's liability as against persons other than a Member (in their capacity as a Member), as the Manager thinks fit.

13.6 The agent or delegate may be an associate of the Manager.

#### **Exercise of discretion**

13.7 Subject to clause 18.4, the Manager may in its absolute discretion decide how and when to exercise its powers.

#### **Underwriting**

13.8 Subject to the Corporations Act, the Manager may enter into an agreement with a person (including an associate of the Manager) to underwrite the subscription or purchase of Units, Options or Financial Instruments or to manage the offer of Units, Options or Financial Instruments on such terms as the Manager determines (including that the underwriter may take up any of those things not otherwise subscribed for or sold). Unless the agreement expressly states otherwise, the underwriter or offer manager will not be an agent or delegate of the Manager.

#### **Voting**

13.9 Subject to the Corporations Act, the Manager may exercise all voting rights conferred by the Assets at its absolute discretion.

#### **Credit rating**

13.10 The Manager may arrange to have the Trust given a credit rating by a Ratings Agency and provide undertakings to the Ratings Agency from time to time in order to maintain any credit rating assigned to the Trust.

#### **No limitation**

13.11 Nothing in this clause 13 limits anything else in this clause 13.

## **14 Retirement of Manager**

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### **While a Registered Scheme**

14.1 While the Trust is a Registered Scheme, the Manager:

- (a) may retire as the responsible entity of the Trust as permitted by law; and
- (b) must retire as the responsible entity of the Trust when required by law.

Subject to law, the Manager may appoint in writing another person to be the Manager.

### **While not a Registered Scheme**

14.2 While the Trust is not a Registered Scheme, the Manager:

- (a) may retire on 3 months' notice to Members (or such shorter period as they agree); and
- (b) must retire as the trustee of the Trust if required by law or by all Members.

On retirement, the Manager may appoint in writing another person to be the Manager.

### **New Manager**

- 14.3 Any proposed replacement Manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

### **Release**

- 14.4 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.

## **15 Notices to Investors**

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### **Document includes notice**

- 15.1 In this clause 15, a reference to a document includes a notice and a notification by electronic means.

### **Form of document**

- 15.2 Unless expressly stated otherwise in this constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this constitution must be in writing.

### **Methods of service**

- 15.3 The Manager may give a document to an Investor:
- (a) personally;
  - (b) by sending it by post to the address for the Investor in the Register or an alternative address nominated by the Investor;
  - (c) by sending it to an electronic address nominated by the Investor; or
  - (d) by notifying the Investor by an electronic means nominated by the Investor that:
    - (i) the document is available; and
    - (ii) how the Investor may use the nominated access means to access the document.

### **Post**

- 15.4 A document sent by post:
- (a) if sent to an address in Australia, may be sent by ordinary post; and
  - (b) if sent to an address outside Australia, must be sent by airmail,
- and in either case is taken to have been received on the day after the date of its posting.

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**Electronic means**

- 15.5 If a document is sent by electronic means, delivery of the document is taken:
- (a) to be effected by properly addressing and transmitting the electronic transmission; and
  - (b) is taken to have been given and received on the day after the date of its transmission.

**Evidence of service**

- 15.6 A certificate in writing signed by a director or a secretary of the Manager stating that a document was sent, delivered or given to an Investor personally, by post or by other electronic means on a particular date is prima facie evidence that the document was so sent, delivered or given on that date.

**Joint Investors**

- 15.7 A document may be given by the Manager to the joint Investors by giving it to the joint Investor first named in the Register.

**Persons entitled to Units**

- 15.8 A person who by operation of law, transfer or other means whatsoever becomes entitled to any Unit is absolutely bound by every document given in accordance with this clause 15 to the person from whom that person derives title prior to registration of that person's title in the Register.

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**16 Notices to the Manager**

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- 16.1 A document given to the Manager for the purposes of this constitution or the Corporations Act must be given in writing (which includes an electronic communication), or in such other manner as the Manager determines. The document must bear the actual, or electronic signature of the Investor or a duly authorised officer or representative of the Investor unless the Manager dispenses with this requirement. Service is only effective at the time of receipt in legible form.

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**17 Meetings and Resolutions of Investors**

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**Convening Members' meeting**

- 17.1 The Manager may at any time convene a Members' meeting whenever it thinks fit and must do so if required by the Corporations Act.

**Members request for meeting - not Registered Scheme**

- 17.2 While the Trust is not a Registered Scheme, the Manager must convene a meeting of Members to consider a proposed resolution if the Manager receives a requisition in writing to convene a meeting to consider the resolution signed by Members with at least 25% of the votes that may be cast on the resolution.

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**Members' request for meeting - Registered Scheme**

17.3 While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

**Notice while not Registered Scheme**

17.4 While the Trust is not a Registered Scheme:

- (a) a meeting of Members must be convened by notice sent to every Member entitled to attend and vote at the meeting;
- (b) the notice of meeting need not set out the terms of any resolution to be proposed, but must state the general nature of the business to be transacted at the meeting. Sections 252B(6), (7) and (9) of the Corporations Act will apply to the calling of meetings as if the Trust is a Registered Scheme; and
- (c) at least 10 days' notice of a meeting must be given to Members or such shorter notice as they agree.

**Notice while Registered Scheme**

17.5

- (a) While the Trust is a Registered Scheme, notice of a meeting of Members must be given in accordance with clause 15 and the Corporations Act, and while the Trust is Listed, the Listing Rules.
- (b) Subject to clause 17.5(a), the content of a notice of Members' meeting convened by the Manager is to be decided by the Manager as it thinks fit.

**Cancellation or postponement of a meeting**

17.6 Where a meeting of Members is convened by the Manager, it may by notice, whenever it thinks fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place of the meeting. This clause does not apply to a meeting convened in accordance with the Corporations Act by Members, or by the Manager on the request of Members or to a meeting convened by a court.

**Proxy, attorney or Representative at postponed meeting**

17.7 Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a Members' meeting to be held on a specified date or at a Members' meeting or Members' meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a Representative unless the Member appointing the proxy, attorney or Representative gives to the Manager at its registered office notice in writing to the contrary not less than 48 hours (or any shorter period as the Manager may permit or as specified by the Corporations Act) before the time to which the holding of the meeting has been postponed.

### **Non-receipt of or defective notice**

#### 17.8

- (a) The non-receipt of notice of a Members' meeting or cancellation or postponement of a Members' meeting by, or the accidental omission to give notice of a Members' meeting or cancellation or postponement of a Members' meeting to, a person entitled to receive notice does not invalidate any resolution passed at the Members' meeting or at a postponed meeting or the cancellation or postponement of a meeting.
- (b) A person who attends a Members' meeting waives any objection the person may have to:
  - (i) any failure to give notice, or the giving of a defective notice, of the meeting unless at the start of the meeting the person objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter which is not within the business referred to in the notice of meeting, unless the person objects to the consideration of the matter when first presented.

### **Proxy, attorney or Representative appointments**

#### 17.9

- (a) An instrument appointing a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) and received at any time that the Manager prescribes or accepts, or the chairperson of a Members' meeting accepts.
- (b) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment received at the electronic address or by the electronic means specified in the notice is taken to have been received at the registered office of the Manager and validated by the Member if there is compliance with the requirements set out in the notice.
- (c) If the Manager receives an instrument or form appointing a proxy, attorney or representative from a Member and the Manager considers that it is not properly executed or authenticated, or is incomplete or unclear:
  - (i) if the name, or the name of the office, of the proxy, attorney or representative, is not filled in or is unclear, then the proxy, attorney or representative of that Member is the person specified by the Manager in the

- instrument or form of proxy or if no person is specified, the chairperson of that meeting;
- (ii) if the instrument or form has not been duly signed or authenticated, the Manager may return the instrument or form to the appointing Member and request the Member sign or authenticate the instrument or form and return it to the Manager within a period determined by the Manager (which may be later than the time specified in the notice of meeting for the receipt of proxy appointments); and
  - (iii) if the instrument or form is otherwise unclear or incomplete, the Manager may:
    - (A) by oral or written communication, clarify with the Member any instruction on the appointment; and
    - (B) complete or amend the contents of any instrument or form to reflect the clarification in the instructions received from the Member (which may occur later than the time specified in the notice of meeting for the receipt of proxy appointments) and the Member appoints the Manager as its attorney for this purpose.

#### **Proxy's authority to speak and vote**

- 17.10 A proxy's authority to speak and vote for a Member is not suspended while the appointing Member is present at the Members' meeting.

#### **Number for a quorum**

- 17.11 Subject to clause 17.14, three Members present in person or by proxy, attorney or Representative, are a quorum at a Members' meeting unless the Trust has only one Member entitled to vote, in which case that one Member constitutes a quorum. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:
- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
  - (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

Subject to clause 17.18(b), a Member placing a direct vote under clause 17.30 is not taken into account in determining whether or not there is a quorum at a Members' meeting.

#### **Requirement for a quorum**

- 17.12 An item of business may not be transacted at a Members' meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairperson of the meeting

(on the chairperson's own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **Quorum and time**

- 17.13 If within 15 minutes after the time appointed for a meeting (or any longer period of time as the chairperson may allow) a quorum is not present, the meeting:
- (a) if convened by on requisition of Members, is dissolved; and
  - (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Manager appoints by notice to the Members and others entitled to notice of the meeting.

### **Adjourned meeting**

- 17.14 At a meeting adjourned under clause 17.13(b), those Members present in person or by proxy, attorney or Representative are a quorum.

### **Absence of chairperson at Members' meeting**

- 17.15
- (a) Subject to the Corporations Act, the Manager may appoint a person to chair a meeting of Members.
  - (b) If a Members' meeting is held and the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may preside as chairperson of the meeting (in order of precedence):
    - (i) a person appointed in writing by the Manager as deputy chairperson (if any), including any director of the Manager; or
    - (ii) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.
  - (c) If at a Members' meeting the chairperson of that meeting acting under clauses 17.14 or 17.15(a) is unable to unwilling to chair all or part of that meeting, the chairperson may:
    - (i) withdraw during the relevant part of the proceedings; and
    - (ii) subject to the Corporations Act, nominate any person who is a director of the Manager to be acting chairperson of the meeting during the relevant part of the proceedings.

On the conclusion of the relevant part of the proceedings, the acting chairperson of the meeting is to withdraw and the chairperson of the meeting acting under clauses 17.14 or 17.15(a) is to resume as chairperson of the meeting.

- (d) If a proxy instrument appoints the chairperson of the meeting as proxy for the part of the proceedings for which an acting chairperson is nominated, the proxy instrument is taken to be in favour of that acting chairperson for the relevant part of the proceedings.

### **Conduct of Members' meetings**

17.16 The chairperson of a Members' meeting (including any person acting with the authority of the chairperson):

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require any person wishing to attend the meeting to comply with searches, restrictions or other security arrangements considered appropriate;
- (c) may refuse entry to, or require security measures be taken in respect of any person who does not comply with security arrangements, who uses a recording or broadcasting device without consent, or who possesses an article considered to be dangerous, offensive or liable to cause disruption, or who was not entitled to notice of the meeting;
- (d) subject to the Corporations Act, if there is insufficient room at the meeting venue, may arrange another or a second venue (without giving notice or putting the matter to a vote);
- (e) may require the adoption of any procedure which is in the chairperson's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the Members' meeting; and
- (f) may determine that a vote be disregarded and treated as not having been cast (without requiring that the matter be put to a vote), if a person purports to cast a vote at or for the purposes of a Members' meeting in contravention of the Corporations Act or Listing Rules;
- (g) subject to the Corporations Act, may refuse to allow:
  - (i) any amendment to be moved to a resolution set out in the notice of that meeting;
  - (ii) any business to be transacted unless the general nature of the business is stated in the notice calling the meeting;
- (h) may withdraw from consideration by the meeting any resolution that is set out in the notice of that meeting (other than those requisitioned by Members or required by law); and
- (i) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,



and a decision by the chairperson under this clause (including any person acting with the chairperson's authority) is final.

- 17.17 A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **Multiple venues**

17.18

- (a) Subject to this clause 17, the Corporations Act and the Listing Rules, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted, including a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) If a separate meeting place is linked to the main place of a Members' meeting by an instantaneous audio visual communication device which, by itself or in conjunction with other arrangements:
- (i) gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
  - (ii) enables the Members in the separate meeting place to vote on a poll,

a Member present at the separate meeting place is taken to be present at the Members' meeting and entitled to exercise all rights as if they were present at the main place.

- (c) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in clause 17.18(b) is not satisfied, the chairperson may:
- (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under clause 17.18(b)) and transact business, and no Member may object to the meeting being held or continuing.

### **Adjournment of Members' meeting**

- 17.19 The chairperson of a Members' meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

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In exercising this discretion, the chairperson may, but need not, seek the approval of the Members present. Unless required by the chairperson, no vote may be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **Notice of adjourned meeting**

17.20 No new notice of the adjourned meeting need be given unless required by the Corporations Act. Notice of any adjourned meeting which may become necessary may be included in the notice convening the original meeting.

#### **Questions decided by majority**

17.21 Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **When a poll is effectively demanded**

17.22

- (a) At a Members' meeting, a poll may be demanded by Members in accordance with the Corporations Act (and not otherwise) or by the chairperson.
- (b) The poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.

#### **Poll**

17.23

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

- (e) The results of the poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the chairperson considers appropriate.

#### **Equality of votes - no casting vote for chairperson**

- 17.24 If there is an equality of votes, either on a show of hands or on a poll, the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative.

#### **Circulated Resolution**

- 17.25 The Manager may make arrangements whereby Members may pass written resolutions which have been circulated for that purpose by completing (in a form satisfactory to the Manager) and returning such resolutions to the Manager within the time specified in the circulated resolution.

#### **Resolutions binding**

- 17.26 A Resolution of Members binds all Members, whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

#### **Objection to voting qualification**

- 17.27 An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
- (a) may not be raised except at that meeting or adjourned meeting; and
  - (b) must be referred to the chairperson of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **Voting - not a Registered Scheme**

- 17.28 While the Trust is not a Registered Scheme:
- (a) voting is by a show of hands, unless a poll is duly demanded or the Resolution proposed is required by this constitution or by law to be decided by a percentage of all Units; and
  - (b) subject to the rights, obligations and restrictions attaching to any particular Units, each Member which is present in person or by proxy has:
    - (i) on a show of hands, one vote; and
    - (ii) on a poll, one vote for each whole Unit held.

In the case of joint Members, only the first named in the Register may vote unless the Manager otherwise agrees.

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**Voting - Registered Scheme**

- 17.29 While the Trust is a Registered Scheme, the provisions of the Corporations Act governing voting for meetings of members of Registered Schemes apply to the Trust.

**Direct voting**

- 17.30 The Manager may determine that at a meeting of Members, a Member who is entitled to attend and vote on a Resolution at that meeting is entitled to a direct vote in respect of that Resolution. A “direct vote” includes a vote delivered to the Manager by post or other electronic means approved by the Manager. The Manager may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.
- 17.31 A direct vote on a Resolution at a meeting in respect of a Unit cast in accordance with clause 17.30 is of no effect and will be disregarded:
- (a) if, at the time of the Resolution, the person who cast the direct vote:
    - (i) is not entitled to vote on the Resolution in respect of the Unit; or
    - (ii) would not be entitled to vote on the Resolution in respect of the Unit if the person were present at the meeting of Members at which the Resolution is considered;
  - (b) if, had the vote been cast in person at the meeting of Members at which the Resolution is considered:
    - (i) the vote would not be valid; or
    - (ii) the Manager would be obliged to disregard the vote;
  - (c) subject to any rules prescribed by the Manager, if the person who cast the direct vote is present in person at the meeting of Members at the time the Resolution is considered; and
  - (d) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Manager under clause 17.30.
- 17.32 Subject to any rules prescribed by the Manager, if the Manager receives a valid direct vote on a Resolution in accordance with clauses 17.30 and 17.31 and, prior to, after or at the same time as receipt of the direct vote, the Manager receives an instrument appointing a proxy, attorney or representative to vote on behalf of the same Member on that Resolution, the Manager may regard the direct vote as effective in respect of that Resolution and disregard any vote cast by the proxy, attorney or representative on the Resolution at the meeting of Members.

**Proxies**

- 17.33 Subject to clause 17.7, the provisions of the Corporations Act governing proxies for meetings of members of Registered Schemes apply to the Trust.

**Procedural irregularities**

- 17.34 A meeting of Members is not invalidated because of any procedural irregularity within the meaning of section 1322 of the Corporations Act.

**Minutes**

- 17.35 The minutes of a meeting of Members signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

**Option holders, Holders of Financial Instruments and classes**

- 17.36 The Manager may convene a meeting of a class of Members, or of Option Holders or a class of Option Holders, or of Holders of Financial Instruments or a class of Holders of Financial Instruments, and must do so if required by the Corporations Act. If it does so, this clause 17 applies as if it referred to Members of a class, or to Option Holders or Option Holders of a class, or to Holders of Financial Instruments or a class of Holders of Financial Instruments (as relevant) rather than Members or to a "Members' meeting", and with any other necessary adaptations, except that Option Holders may exercise any right they may have under the Corporations Act to attend a meeting and vote on a Resolution of Members, but otherwise may not vote on a Resolution of Members or attend a meeting of Members. If and to the extent a Holder of Financial Instruments is entitled under the Corporations Act to vote at a meeting of Members, any resolution passed at that meeting will be binding on them.

**18 Rights and liabilities of Manager****Holding Units**

- 18.1 The Manager and its associates may hold Units, Options or Financial Instruments, or interests in any trust or company which is an associate of any of them, in any capacity.

**Other capacities**

- 18.2 Subject to the Corporations Act, the Manager (and any of its associates to the extent applicable) may:
- (a) deal with itself (as trustee of the Trust or in another capacity), an associate or with any Investor;
  - (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate or with any Investor and retain for its own benefit any profits or benefits derived from any such contract or transaction; and
  - (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust.

**Manager may rely**

- 18.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
  - (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
  - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
  - (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely,

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

**Control by Members**

- 18.4 This clause 18.4 applies while the Trust is not a Registered Scheme and no application is with ASIC to register the Trust as a Registered Scheme. Despite any other provision of this constitution, the Manager must act in accordance with the directions that are not inconsistent with the Manager's duties under this constitution, the terms of its Licence and at law given from time to time by the sole Member (if any) or jointly by all Members so as to allow the Members acting together to have day to day control over the operation of the Trust. The Manager may seek directions from the Members on any matter. The Manager is not required to act on any direction to incur a liability unless its liability is limited to the Assets.

## **19 Limitation of liability and indemnity in favour of Manager**

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**Limitation on Manager's liability**

- 19.1 While the Trust is a Registered Scheme, the Manager is not liable in contract, tort or otherwise to Investors for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

**Liability while Trust is not a Registered Scheme**

- 19.2 While the Trust is not a Registered Scheme, if the Manager acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Investors for any loss suffered in any way relating to the Trust.

**Liability limited to Assets**

- 19.3 Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Manager's ability to be indemnified from the Assets.

**Indemnity in favour of Manager**

- 19.4 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing its duties, or properly exercising any of its powers in the proper performance of its duties in relation to the Trust.

**Liability for agents**

- 19.5 To the extent permitted by the Corporations Act, and otherwise without limitation, the indemnity in clause 19.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 19.6 The indemnity in clause 19.4 is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed from the office it holds in relation to the Trust.

**Right of indemnity not affected by unrelated breach**

- 19.7 Where a Liability is incurred pursuant to a proper performance of the Manager's duties or in the proper exercise of its powers in the proper performance of its duties in relation to the Trust under this constitution or at law, the Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to itself or to any creditor of the Manager (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Manager or by any person or entity acting on behalf of the Manager.

**20 Liability of Investors****Liability limited**

- 20.1 Subject to clauses 20.3 and 20.5, the liability of a Member, Option Holder or Holder of Financial Instruments is limited to the amount if any which remains unpaid in relation to their subscription for their Units, Options or Financial Instruments.

**Member need not indemnify**

- 20.2 A Member, Option Holder or Holder of Financial Instruments need not indemnify the Manager if there is a deficiency in the Assets or if the claim of any creditor of the Manager in respect of the Trust cannot be satisfied out of the Assets.

**Tax or user pays costs**

- 20.3 The Manager is entitled to be indemnified by any current or former Investor to the extent that the Manager incurs any liability for Tax or costs which are not properly an expense of the Trust as a result of:
- (a) that person's action or inaction;

- (b) an act or omission requested by that person, other than directions given pursuant to clause 18.4; or
- (c) any other matter arising in connection with Units, Options or Financial Instruments held by that person.

### **Joint Investors**

- 20.4 Current and former joint Members, Option Holders and Holders of Financial Instruments are jointly and severally liable in respect of all payments including payments of Tax to which the next preceding paragraph applies.

### **Recourse**

- 20.5 In the absence of separate agreement with a Member, Option Holder or Holder of Financial Instruments, and except for the amounts referred to in clause 20.1 and 20.3, the recourse of the Manager and any creditor is limited to the Assets.

### **Restrictions on Members**

- 20.6 Subject to clause 18.4, an Investor:
- (a) must not interfere with any rights or powers of the Manager under this constitution;
  - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
  - (c) may not require an Asset to be transferred to them.

### **No partnership**

- 20.7 Except as expressly provided in this constitution, there is no relationship of partnership or agency between the Manager and any Investor. Nothing in this constitution is to be construed as creating any association, joint venture or partnership among the Trust and any Stapled Entity for any purpose or authorising the share of the benefit of any assets (and any profits from assets) of the Trust or any Stapled Entity as a result of the Stapling.

## **21 Remuneration and expenses of Manager**

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### **Subject to the Corporations Act**

- 21.1 While the Trust is a Registered Scheme, the fees in this clause 21 may only be paid to the Manager to the extent they are payable in relation to the proper performance of the Manager's duties as responsible entity of the Trust.

### **Management fee**

- 21.2 The Manager is entitled to be paid a fee out of the Assets for its services in relation to the operation of the Trust equal to the Manager's reasonable estimate of its costs, including all overheads and internal expenses<sup>14</sup> of the Manager, whether incurred directly by the Manager

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<sup>14</sup> The Manager's internal expenses that relate to the Trust may include the fees of directors of the Manager and the cost of their directors' and officers' liability insurance, the cost of premises, computer systems and staff and related expenses.



or reimbursed by the Manager to any of its related bodies corporate, for which it is not otherwise reimbursed under clause 21.4.

This fee is to be payable from time to time upon demand by the Manager, provided that the Manager may make a demand for payment of all or part of the fee at any time if it has incurred the relevant costs, whether or not it has paid those costs. The Manager must produce a statement within 1 month from the end of each Quarter setting out the management fee for the Quarter and any amount remaining unpaid.

The entitlement to this fee continues to the date of final distribution in accordance with clause 23. However, the Manager is not entitled to a management fee in respect of any period during which it is not appointed as trustee or responsible entity of the Trust.

### **Waiver of any fees and expenses**

- 21.3 The Manager may accept lower fees than the fees (if any) to which it is entitled under this constitution or not seek reimbursement of all costs and expenses to which it is entitled, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

### **Costs and expenses**

- 21.4 All costs and expenses incurred by the Manager in connection with the Trust and its consolidated or controlled entities (including a controlled sub trust), including in performing and being able to perform its role as Manager, are payable or reimburseable out of the Assets or out of the assets of a consolidated or controlled entity of the Trust (including a controlled sub trust) but, while the Trust is a Registered Scheme, payment or reimbursement is only available in relation to the proper performance of the Manager's duties as responsible entity of the Trust. This includes costs and expenses connected with the following, and no paragraph of this clause 21.4 limits any other paragraph:
- (a) this constitution, any amendment or proposed amendment to this constitution, the formation of the Trust and any investment vehicle in which the Trust expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
  - (b) registration of the Trust as a Registered Scheme;
  - (c) the preparation, review, distribution and promotion of any product disclosure statement, prospectus or offering memorandum in respect of Units, Options, Financial Instruments or Stapled Securities, or other promotion of the Trust or the Stapled Entities;
  - (d) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
  - (e) any proposed acquisition, disposal or other dealing with an investment;
  - (f) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with the Register;

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- (g) borrowing arrangements and raising money on behalf of the Trust or guarantees in connection with the Trust, including hedging costs and any gearing facility;
  - (h) costs of the admission of the Trust to the Official List, the quotation of Units or any Options or Financial Instruments on ASX or any other recognised stock exchange and compliance with the Listing Rules or the rules of any other exchange and the quotation of any Units, Stapled Securities, Options, securities, debt instruments or other things of any kind;
  - (i) an issue of Units, Stapled Securities, Options or Financial Instruments or any interests in, or rights associated with Units, Stapled Securities, Options or Financial Instruments or any other obligation (including any other securities or debt instruments of any kind) issued by the Trust or a Stapled Entity;
  - (j) convening and holding meetings of Investors or any class of them, the implementation of any Resolutions and communications with Investors and attending any meetings of a Stapled Entity;
  - (k) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
  - (l) financial institution fees;
  - (m) fees payable to RE Holding Company Pty Limited under the WRT Internal Reimbursement Agreement dated 20 December 2010 ;
  - (n) fees and expenses payable under property management agreements, including to related bodies corporate of the Manager;
  - (o) fees and expenses payable under development framework agreements and design and construction agreements, including to related bodies corporate of the Manager;
  - (p) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
  - (q) investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management, supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
  - (r) the services of asset managers, property managers, development managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any real

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- property in which the Trust has a direct or indirect interest, which may include an associate of the Manager;
- (s) rates, development, repair, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants, costs of leasing (including marketing) and leasing incentives in relation to any real property in which the Trust has a direct or indirect interest;
  - (t) travel and accommodation expenses of directors and employees of the Manager in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed Asset;
  - (u) expenses in relation to brand alliance activities for the Trust;
  - (v) underwriting or managing any subscription or purchase of Units, Options or Financial Instruments, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under such agreement;
  - (w) accounting and compliance with taxation laws and procedures (whether internal expenses of the Manager or paid to third parties) preparation and audit of the taxation returns and accounts of the Manager and the Trust;
  - (x) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
  - (y) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this sub-paragraph must be repaid;
  - (z) all damages, expenses, payments, legal and other costs and disbursements incurred by the Manager in relation to or in connection with any claim, dispute or litigation ("**Claim**") arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Manager;

- (aa) any compliance committee established by the Manager in connection with the Trust, including any fees paid to or insurance premiums in respect of Compliance Committee Members;
- (bb) while the Trust is a Registered Scheme and there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (cc) fees payable to any audit committee for the Trust appointed in accordance with ASX corporate governance guidelines or otherwise;
- (dd) the costs of preparing, printing and sending to Members and /or holders of Options or Financial Instruments accounts, reports, distribution statements, cheques, circulars and other notices;
- (ee) the cost of handling complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution Trust;
- (ff) the cost of the Manager employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
- (gg) the preparation, implementation, amendment and audit of any compliance plan for the Trust; and
- (hh) complying with any law, and any request or requirement of ASIC or ASX;
- (ii) any Stapling of Units to Attached Securities;
- (jj) in connection with any Stapling Proposal, Top Hat Proposal, Exchange Proposal or any other Reorganisation Proposal; and
- (kk) having the Trust rated by a Ratings Agency.

In this clause 21, “expenses” may include amounts paid by the Manager to related bodies corporate.

## **GST**

- 21.5 The fees payable out of the Assets to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid an additional amount

on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

### **Input tax credits**

- 21.6 In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Manager is entitled to recover out of the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax.
- 21.7 If as a result of the imposition or introduction of GST and any reduction or abolition of any other Tax in conjunction with the imposition or introduction of GST, the Manager determines that:
- (a) there is any direct or indirect increase in the cost to the Manager of performing its duties under this constitution (including any increase in the amount charged by any supplier to the Manager of goods, services, rights benefits or any other thing); or
  - (b) there is any direct or indirect reduction in any amount received or receivable by the Manager or in the effective financial return to the Manager in connection with proper performance of the Manager's duties under this constitution (including the return on the Manager's overall capital which could have been achieved but for the imposition or introduction of GST);

and such increased cost or reduction is not compensated for by any other provision of this constitution, then the Manager may recover from the Assets such amount as, in its sole opinion but acting reasonably, will compensate the Manager for such increased cost or reduction.

### **Amendment of fee provisions is contemplated**

- 21.8 Without limiting clause 24, the Manager has power to amend any part of this clause 21 with the effect of increasing or decreasing any amount of fees due to it, or introducing new types of fees, or to otherwise amend, delete or replace any of the provisions of this clause 21, if:
- (a) while the Trust is a Registered Scheme, the Manager complies with any applicable requirements of the Corporations Act relating to:
    - (i) amending the constitution of a Registered Scheme, and
    - (ii) increasing fees or charges in relation to a Registered Scheme, or
  - (b) while the Trust is not a Registered Scheme, the Manager obtains the written consent of the sole Member or, if there is

more than one Member, gives at least 5 Business Days' prior notice to Members of the amendment.

## 22 Duration of the Trust

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### Initial settlement

- 22.1 The Trust commences when the Manager's nominee subscribes \$100 for Units in the Trust. The Manager's nominee must be issued with 100 Units in return for that payment.

### Termination

- 22.2 The Trust terminates on the earliest of:
- (a) while the Trust is a Registered Scheme:
    - (i) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
    - (ii) a date determined by the Manager and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
  - (b) while the Trust is not a Registered Scheme, the date specified by the Manager as the date of termination of the Trust in a notice given to Members; and
  - (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law.

### Restriction on issue and redemption of Units

- 22.3 Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

## 23 Procedure on termination

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### Realisation of Assets and payment of expenses

- 23.1 Following termination of the Trust, the Manager must:
- (a) realise the Assets, except to the extent that it determines to distribute Assets to Members in accordance with clause 12.9 pro rata according to their holding of Units as part of the winding up of the Trust; and
  - (b) make payments (or set aside estimated amounts) from the Assets to pay the Trust's expenses and liabilities, and the costs or anticipated costs of winding up the Trust. These amounts will reduce the proceeds of winding up that a Member may otherwise receive, but a Member is not required to pay any of these amounts from their own funds.

To the extent that realisation of Assets is required, it must be completed in 180 days if practicable and in any event as soon as

possible after that. The Manager may, however, postpone realisation of the Assets or any Asset if the Manager reasonably considers it would be in the best interests of Members to do so, and the Manager is not responsible for any consequent loss or damage attributable to that postponement.

### **Auditor and liquidator**

23.2

- (a) If, at the time it is to be wound up, the Trust is a Registered Scheme, the Manager must arrange for an independent audit of the final accounts of the Trust by a registered company auditor.
- (b) If the Trust is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Trustee to meet Liabilities from the Assets as and when they fall due, the Trustee may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the powers of the Trustee under this constitution as necessary to facilitate the winding up.

### **Distribution following termination**

23.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) including entitlements of Members to Distributable Income, amounts owing to Holders of Financial Instruments and meeting the expenses (including anticipated expenses) of the termination, must be distributed pro rata to Members according to the number of Units they hold. The Manager may distribute proceeds of realisation in instalments.

If any Option Holders have an entitlement to participate in the net proceeds of realisation this calculation must be adjusted in a manner determined by the Manager to take that entitlement into account. The entitlement, if any, of an Option Holder to any distribution of the net proceeds of realisation will be determined by the terms of issue of that Option.

### **Provisions continue to apply**

23.4 The provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 23.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member, and the Manager is under no obligation to consider or process redemption requests received after the date of termination.

## **24 Amendments to this constitution**

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### **Manager may amend**

- 24.1 Subject to the Corporations Act, while the Trust is a Registered Scheme, this constitution may be amended:
- (a) by Resolution of Members; or
  - (b) by deed executed by the Manager.

If the constitution is amended by Resolution of Members, the Manager may give effect to the amendments by executing a supplemental deed.

#### **While not a Registered Scheme**

24.2 The Manager may amend this constitution by deed while clause 24.1 does not apply.

## **25 Stapling Provisions and Reorganisation Proposals**

### **Stapling**

25.1

- (a) Stapling of Units to the other components of Stapled Securities has already commenced and accordingly the Stapling Provisions apply. The Manager has the further powers in relation to Stapling and Unstapling set out in this clause 25 and Schedule 1.
- (b) The Manager may determine in respect of any future Stapling:
  - (i) that the Stapling Provisions will take effect in accordance with clause 25.2; and
  - (ii) the Stapling Commencement Time.

### **Stapling Provisions**

25.2 Subject to clause 25.1(a), if the Manager determines, the Stapling Provisions take effect on and from the Stapling Commencement Time until they cease to apply in accordance with this constitution.

While the Stapling Provisions apply:

- (a) subject to clause 26.5, this constitution is to be read subject to the Stapling Provisions except to the extent that this would result in a breach of the Corporations Act, the Listing Rules or any other law; and
- (b) provisions of this constitution, which by their context apply only while Units are not Stapled, do not apply while Units are part of a Stapled Security.

### **Power to enter into Reorganisation Proposals**

25.3 Without limiting clause 13 the Manager may enter into:

- (a) without reference to or approval from Members:
  - (i) a Consolidation or Division Proposal;
  - (ii) a Stapling Proposal; or
- (b) a Realisation Transaction, a Top Hat Proposal, an Exchange Proposal and any other Reorganisation Proposal, which is in each case approved by Ordinary Resolution.

It is a term of issue of each Unit, that the Unit may be subject to a Reorganisation Proposal as provided in this clause 25.3. Each Unit



Holder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Reorganisation Proposals.

### **Power to give effect to the Stapling Provisions and Reorganisation Proposals**

#### 25.4

- (a) In order to effect a Stapling of securities to the Units as contemplated by clause 25.1(a) and Schedule 1, the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Stapling and the Stapling Provisions.
- (b) If the Manager determines to enter into a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal in accordance with clause 25.3, then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the relevant proposal.
- (c) If a Reorganisation Proposal is approved by an Ordinary Resolution in accordance with clause 25.3(b), then the Manager has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

### **Specific Powers**

25.5 Without limiting clause 25.4, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 25.3(b), the Manager has power to:

- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
- (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company or other body, and be bound by the constitution of that company or body;
- (c) issue Units;
- (d) transfer Assets;
- (e) if Units or other securities are to be transferred as part of a Reorganisation Proposal, to give on behalf of Members a warranty as to good and unencumbered title the Units or securities to be transferred, and other warranties customary in a transfer of securities; and

- (f) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

### **Appointment of Manager as agent and attorney**

25.6 Without limiting clause 25.5, to give effect to a Stapling and the Stapling Provisions, a Realisation Transaction, Consolidation or Division Proposal, a Stapling Proposal, a Top Hat Proposal or an Exchange Proposal, or a Reorganisation Proposal which has been approved by an Ordinary Resolution in accordance with clause 25.3(b), the Manager is irrevocably appointed the agent and attorney of each Member to:

- (a) apply any proceeds referred to in clause 25.5(a) on behalf of the Member;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities in favour of the Member;
- (c) execute a transfer of Assets to a Member; and
- (d) execute all documents and do all things (including giving all consents and warranties) which the Manager reasonably considers are necessary or desirable to give effect to the Stapling or relevant transaction or proposal.

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

### **Liability of Manager**

25.7 The Manager has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Manager doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Stapling or any Reorganisation Proposal.

### **Paramourcy of provision**

25.8 The provisions of this clause 25 prevail over other provisions of this constitution in the case of any inconsistency to the extent provided in clause 26.

## **26 Regulatory provisions and paramountcy**

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### **Listing Rules**

- 26.1 While the Trust is included in the Official List:
- (a) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act will not be done;
  - (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;

- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is taken to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains the provision, this constitution is taken not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.

### Corporations Act and ASIC Relief

#### 26.2

- (a) If the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Manager has determined it wishes to rely or which is expressly applicable to the Trust and the Manager requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply (“**Required Provisions**”); or
- (b) if any part of this constitution (a “**Required Part**”) is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX (“**Regulatory Requirement**”) and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

- (i) authorise the Manager to make the amendments referred to in this clause 26.2 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

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## Application of Corporations Act and Listing Rules

26.3 In this constitution:

- (a) except as otherwise provided in a particular clause or by law, a requirement of the Corporations Act only applies while the Trust is a Registered Scheme; and
- (b) a requirement of the Listing Rules only applies while the Units are Officially Quoted.

## ASIC Class Orders

26.4 In accordance with ASIC Instrument 2017/125 or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Trust, a change in the text of this constitution because of the operation of clause 26.2 that is covered by such instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 26.4 applies are made pursuant to the power in clause 24 but in respect of such changes the requirements of clause 24 are to be read subject to this clause 26.4.

## Paramountcy of provisions

26.5 Subject to clause 31.6 and the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:

- (a) first, clauses 26.1 and 26.2 and provisions taken to be included or amended under them;
- (b) then, the Stapling Provisions set out in Schedule 1 and the provisions in clause 25 regarding Stapling and the Stapling Provisions; and
- (c) then, the Reorganisation Proposals set out in clauses 25.3 to 25.7.

Paragraphs (b), (c) and (d) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

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## 27 Compliance committee

While the Trust is a Registered Scheme, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.

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## 28 Complaints

While the Trust is a Registered Scheme, if an Investor submits to the Manager a Complaint in relation to the Trust, the Manager:

- 
- (a) must, if the Investor is a Retail Client, comply with the requirements of section 912A(2) of the Corporations Act applicable to the Complaint;<sup>15</sup> and
  - (b) in respect of a Complaint from an Investor who is not a Retail Client:<sup>16</sup>
    - (i) must acknowledge receipt of the Complaint as soon as possible and in any event within 14 days from receipt;
    - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle Complaints;
    - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the Complaint by endeavouring to correct the error;
    - (iv) may give any of the following remedies to the complainant:
      - (A) information and explanation regarding the circumstances giving rise to the Complaint;
      - (B) an apology; or
      - (C) compensation for loss incurred by the Investor as a direct result of any breach; and
    - (v) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the Complaint:
      - (A) the determination in relation to the Complaint;
      - (B) any remedies available to the Investor; and
      - (C) information regarding any further avenue for Complaint.
  - (c) For the purposes of this clause 28, a reference to an Investor includes any person who has an “interest” in the Trust as that term is defined in section 9 of the Corporations Act.

## 29 Restricted Securities

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- 29.1 This clause 29 applies while the Units or Stapled Securities are Officially Quoted.
- 29.2 In this clause 29:

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<sup>15</sup> See ASIC RG 134.135.

<sup>16</sup> The Manager may treat retail and wholesale clients differently for this purpose – see RG 134.145 and [CO/656].

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- (a) **dispose and disposed** of have the meaning given in the Listing Rules;
  - (b) **Escrow Period** means, in relation to Restricted Securities, the escrow period applicable to those Restricted Securities under the Listing Rules;
  - (c) **Holding Lock** has the meaning given in the Listing Rules;
  - (d) **Restriction Agreement** means a restriction agreement or deed in a form set out in the Listing Rules or otherwise approved by ASX; and
  - (e) **Restricted Securities** has the meaning given in the Listing Rules.
- 29.3 If the Listing Rules require, a holder of Restricted Securities must not dispose of, or agree to dispose of, Restricted Securities during the Escrow Period applicable to those securities, except as permitted by the Listing Rules or ASX. The Manager must not, and will refuse to, acknowledge any disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- 29.4 During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Restricted Securities.
- 29.5 If the Restricted Securities are in the same class as Securities that are quoted on ASX, the holder will be deemed to have agreed in writing that the Restricted Securities must be kept on the Trust's issuer sponsored sub-register and are to have a Holding Lock applied for the Escrow Period.
- 29.6 The holder of Restricted Securities will not be entitled to participate in any return of capital on those Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- 29.7 If a holder of Restricted Securities breaches a Restriction Agreement or this clause 29, the holder of the Restricted Securities will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of the Restricted Securities for so long as the breach continues.

## 30 Small holdings

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- 30.1 This clause 30 applies while Units or Stapled Securities are Officially Quoted.
- 30.2 Subject to the provisions of this clause 30, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder or New Small Holder without request by the Small Holder or New Small Holder.

- 30.3 If the Manager determines that a Member is a Small Holder or a New Small Holder the Manager may give the Member a Divestment Notice to notify the Member:
- (a) that the Member is a Small Holder or a New Small Holder, the number of Units making up and the Market Price of the Small Holding or New Small Holding and the date on which the Market Price was determined;
  - (b) that the Manager intends to sell the Relevant Units in accordance with this clause after the end of the Relevant Period specified in the Divestment Notice;
  - (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Manager in writing that the Member desires to retain the Relevant Units and that, if the Member does so, the Manager will not be entitled to sell the Relevant Units under that Divestment Notice; and
  - (d) after the end of the Relevant Period the Manager may for the purpose of selling the Relevant Units that are in a CS Facility holding initiate a holding adjustment to move those Units from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with those Operating Rules.

- 30.4 For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.
- 30.5 At the end of the Relevant Period the Manager is entitled to sell on-market or in any other way determined by the Manager:
- (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Manager in writing before the end of the Relevant Period that
    - (i) the Member desires to retain the Relevant Units; or
    - (ii) the Units of the Member have increased to at least a marketable parcel (as provided under the Listing Rules),
 in which event the Manager must not sell those Relevant Units under that Divestment Notice; and
  - (b) the Relevant Units of a Member who is a New Small Holder.
- 30.6 The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 30 but unless the Relevant Units are sold within six weeks after the end of the Relevant Period the

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Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

- 30.7 To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each of its directors and secretaries jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:
- (a) to initiate a holding adjustment to move the Relevant Units from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
  - (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.
- 30.8 A statement in writing by or on behalf of the Manager under this clause 30 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 30 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.
- 30.9 The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause 30. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 30.
- Subject to clause 30.10, where Relevant Units of a Member are sold by the Manager on behalf of the Member under this clause, the Manager must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds using any payment method chosen by the Manager including under clause 12. Payment of any money under this clause 30 is at the risk of the Member to whom it is sent.
- 30.10 In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause 30, the Manager is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Manager. In any other case, the Manager or a purchase must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Manager in connection with the sale and transfer of the Relevant Units.
- 30.11 The remedy of a Member to whom this clause 30 applies, in respect of the sale of the Relevant Units of that Member, is expressly limited to a right of action in damages against the Manager to the exclusion of any



other right, remedy or relief against any other person. The Manager is only liable if it has failed to comply with the requirements of this clause 30 and its liability is limited to the value of the Relevant Units at the time of sale.

- 30.12 Unless the Manager determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause 30, then despite any other provisions in this constitution, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a New Small Holder. Any distributions that would, but for this clause 30, have been paid to that Member must be held by the Manager and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.
- 30.13 If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 30.14).
- 30.14 From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this clause 30 to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite clause 30.13 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.
- 30.15 While Stapling applies:
- (a) the references to Units or Relevant Units in this clause 30 will apply to the Stapled Securities held by the Member; and
  - (b) no sale under this clause 30 may occur unless, at the same time as Units are sold, an identical number of Attached Securities are also sold to the Same Person.

## 31 Interpretation

### Definitions

- 31.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:
- AMIT:** a trust which is an attribution managed investment trust for the purposes of the Tax Act.
- AMIT Income Year:** an income year in which the Trust is an AMIT.
- AMIT Regime:** the regime for the taxation of AMITs, and their members, as set out in the Tax Act.
- AMMA Statement:** has the meaning given to that phrase in the Tax Act.

**Application Price:** the application price for a Unit, Option or Financial Instrument determined in accordance with clause 5 or paragraph 4 of Schedule 1.

**Applications Account:** an account in which the Manager or, if permitted, its agent holds money on trust for applicants for Units, Options or Financial Instruments in accordance with section 1017E of the Corporations Act or otherwise.

**Approved Valuer:** any person, appointed by the Manager but independent of the Manager, who is properly qualified to conduct a valuation.

**ASIC:** the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

**ASIC Relief:** an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units, Options or Financial Instruments have not yet been issued, proceeds of redemption which have not yet been paid or any amounts which have been set aside for distribution to Members under clauses 11.6 or 11.18 (and, in the intervening period between the end of a Distribution Period and the setting aside of an amount under clause 11.6, the Manager's reasonable estimate of such amount).

**ASX:** ASX Limited or the market operated by it as the context requires

**Attached Securities:** has the same meaning as in Schedule 1

**Books Closing Date:** has the meaning given in clause 11.1.

**Business Day:** while Units are not Officially Quoted, a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney and Melbourne, or, while Units are Officially Quoted, a day which is a Trading Day for the purposes of the Listing Rules.

**Complaint:** an expression of dissatisfaction made to the Manager, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

**Compliance Committee Member:** a member of a compliance committee established by the Manager in connection with the Trust.

**Consolidation or Division Proposal:** a proposal to consolidate, divide or convert Units, Options or Financial Instruments in a ratio determined by the Manager, including rounding of the number of Units, Options or Financial Instruments as the Manager determines.

**Corporations Act:** the Corporations Act 2001 (Cwlth), and a reference to the Corporations Act or a provision of it includes a

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reference to the Corporations Act or that provision as modified by any applicable ASIC Relief.

**CS Facility:** a licensed clearing and settlement facility that is prescribed by regulations made for the purposes of the definition of CS Facility in the Corporations Act.

**CS Facility Operator:** the operator of the CS Facility.

**Custodian:** a person holding or appointed to hold Assets as custodian for the Manager.

**Determined Member Component:** has the meaning given to that phrase in the Tax Act.

**Determined Trust Component:** has the meaning given to that phrase in the Tax Act.

**Distributable Amount:** has the meaning given in clause 11.1.

**Distributable Income:** for a period is the amount determined by the Manager under clauses 11.1 and 11.2.

**Distribution Calculation Date:** the last day of each Financial Year and such other days as the Manager designates.

**Distribution Period:**

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

**Divestment Notice:** a notice given under clause 30 to a Small Holder or a New Small Holder.

**Escrow Period:** has the same meaning as in the Listing Rules.

**Exchange Proposal:** a proposal whereby a written offer to transfer or redeem some or all of their Units, Options or Financial Instruments is made to Investors or to specific Investors in consideration of any or all of:

- (a) the issue or transfer of units in another trust, or interests of whatever nature in or in relation to another entity;
- (b) a cash payment; and
- (c) a transfer of assets.

**Financial Instrument:** has the meaning given in clause 3.19.

**Financial Year:**

- (a) for the first financial year, the period from the establishment of the Trust to the next 31 December;
- (b) for the last financial year, the period from 1 January before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 31 December in each year.

**GST:** a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

**Holder of a Financial Instrument:** the person Registered in the register of Financial Instrument holders and includes persons jointly Registered or, if no such register is kept, the holder of a Financial Instrument.

**Investor:** a Member, Option Holder or Holder of Financial Instruments, or holder of Stapled Securities.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Manager in respect of the Trust in accordance with the Listing Rules.

**Liabilities:** all present liabilities of the Trust including any provision taken into account in determining the liabilities of the Trust and (subject to the terms of issue of the relevant Financial Instruments) the amount which would be payable to the Holders of Financial Instruments on the redemption of outstanding Financial Instruments under clause 7.4, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

**Licence:** an Australian financial services licence.

**Liquid:** has the same meaning as in the Corporations Act.

**Listed:** admitted to the Official List whether or not the quotation of Units, Stapled Securities or Options is deferred, suspended or subjected to a trading halt, and **Listing** has a corresponding meaning.

**Listing Rules:** the listing rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Manager:** means:

- (a) unless paragraph (b) applies, the first trustee of the Trust, being RE2 Limited, and any successor for the time being as trustee; and
- (b) while the Trust is a Registered Scheme, the company which is registered with ASIC as the responsible entity for the Trust under the Corporations Act.

**Market Price of a Unit:** on a particular day is:

- (a) the Weighted Average Market Price per Unit for the Pricing Period which ends 2 Trading Days before the relevant day, provided that if the Weighted Average Market Price is calculated in respect of Units which have an entitlement to distributions which is different to the entitlement of new Units the Manager must make an appropriate adjustment of the Weighted Average Market Price to reflect the difference; or
- (b) if:
  - (i) Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit that an Approved Valuer determines to be the market price of the Unit on the relevant day, having regard to the recent trading prices of Units, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the valuer believes should be taken into account.

If it is necessary to calculate the Market Price of a Financial Instrument or an Option over a Unit, it is to be determined according to the definition of Market Price of a Unit, with a reference to a Unit in that definition being read as a reference to a Financial Instrument or an Option over a Unit, as the case requires.

**Market Value** of an Asset means:

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, at face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Manager, unless:
  - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of

- transaction costs) in which case the value is that other amount; or
- (ii) the Manager reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by an Approved Valuer;
  - (iii) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the trust on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the trust is operated by the Manager or a related body corporate of the Manager, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the trust;
- (c) in the case of any other Asset, the value of the Asset determined in accordance with accounting standards or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an Approved Valuer.

**Member:** the person Registered as the holder of a Unit (including persons jointly Registered).

**Member Objection Choice:** a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.

**Net Asset Value:** the value of the Assets calculated in accordance with clause 9 less the Liabilities.

**New Small Holder:** a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding:** a holding of Units, or while Stapling applies, Stapled Securities (created by the transfer of a parcel of Units) the aggregate Market Price of which at the time a proper transfer was initiated or a paper based transfer was lodged was less than a marketable parcel of Units as defined in the Listing Rules.

**Offer Document:** a product disclosure statement or other offering document pursuant to which Units are offered for subscription whether alone or as part of Stapled Securities, as amended, supplemented or replaced from time to time.

**Official List:** the official list of ASX as defined in the Listing Rules.

**Officially Quoted:** quoted on the Official List including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension and **Official Quotation** has a corresponding meaning.

**Operating Rules:** the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended from time to time (whether in respect of the Trust or generally).

**Option:** an option to subscribe for a Unit or a Stapled Security.

**Option Holder:** the person Registered in the Register of option holders.

**Ordinary Resolution:** a Resolution of Members where the required majority is a simple majority.

**Over:** has the meaning given to that term in the Tax Act.

**Pricing Period:** the period of 10 consecutive Trading Days ending on the Trading Day determined by the Manager.

**Quarter:** each 3 month period ending on the Quarter End Date or a shorter period which begins on the day after a Quarter End Date and ends on the date of retirement of the Manager or the final distribution on winding up of the Trust.

**Quarter End Date:** each 31 March, 30 June, 30 September and 31 December.

**Ratings Agency** means any recognised ratings agency as determined by the Manager.

**Realisation Transaction:** a transaction which enables all Members to realise all or a substantial portion of their investment in the Trust, including:

- (a) a sell down of a substantial portion of the Units where all Members have the opportunity to participate in the sell down;
- (b) a sale of substantial Assets where all Members have an opportunity to have their Units redeemed or transferred; or
- (c) any other arrangement which has substantially the same economic effect as a transaction referred to in paragraph (a) or (b).

**Record Date:** the date determined by the Manager as the date for lodgement of transfers for the purpose of identifying the Members who are to have relevant entitlements.

**Redemption Price:** the redemption price of a Unit or Option calculated in accordance with clause 7.

**Register:** the register of Members and, if applicable, Option Holders or Holders of Financial Instruments which is kept by or on behalf of the Manager.

**Registered:** recorded in the Register.

**Registered Scheme:** a trust which is registered with ASIC as a managed investment scheme under the Corporations Act.

**Registrar:** the person appointed to maintain the Register.

**Registration:** recording in the Register.

**Relevant Period:** the period specified in a Divestment Notice under clause 30.

**Relevant Units:** the Units specified in a Divestment Notice.

**Reorganisation Proposal:**

- (a) any Realisation Transaction;
- (b) a Consolidation or Division Proposal;
- (c) a Stapling Proposal;
- (d) a Top Hat Proposal;
- (e) an Exchange Proposal; or

any other proposal to reorganise or restructure the capital of the Trust and, if relevant, any Stapled Entity, in any way.

**Representative:** a person appointed to represent a corporate Member at a Members' meeting in accordance with the Corporations Act.

**Resolution:**

- (f) Subject to clause 17.32 and rules prescribed by the Manager pursuant to clause 17.30, a resolution passed at a meeting of Members (or if applicable Option Holders or Holders of Financial Instruments):
  - (i) on a show of hands, by the required majority of Members (or if applicable Option Holders or Holders of Financial Instruments) present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll, by the required majority of votes cast by Members (or if applicable Option Holders or Holders of Financial Instruments) present in person or by proxy and voting on the poll; or
- (g) where the law allows, a resolution in writing signed by Members (or if applicable Option Holders or Holders of Financial Instruments) holding the required majority of the Units, Options or Holders of Financial Instruments.



Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority.

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

**Retail Client:** has the same meaning as in the Corporations Act.

**Same Person** means:

- (a) while the Trust is not Listed, either a single person or two (but not more than two) bodies, at least one of which is a trustee of a unit trust, and securities issued by those two bodies are linked or stapled; or
- (b) while the Trust is Listed, a single person.

**Small Holder** is a Member who is a holder or a joint holder of a Small Holding.

**Small Holding:** a holding of Units or, while Stapling applies, Stapled Securities, the aggregate Market Price of which at the relevant date is less than a marketable parcel of Units or, while Stapling applies, Stapled Securities, as provided under the Listing Rules.

**Stapled Entity:** has the same meaning as in Schedule 1.

**Stapled Security:** has the same meaning as in Schedule 1.

**Stapled Trust:** the trust known as Westfield Retail Trust 1.

**Stapling:** has the same meaning as in Schedule 1.

**Stapling Commencement Time:** the most recent time and date on which the Manager determines that the Stapling Provisions commence including in accordance with clause 25.1.

**Stapling Proposal:** a proposal to cause the Stapling of any other securities or financial products to the Units.

**Stapling Provisions:** the provisions relating to Stapling in Schedule 1, including where these are applied under clause 25.

**Tax:** all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST, together with interest and penalties.

**Tax Act:** the Income Tax Assessment Act 1936 (“**1936 Act**”), the Income Tax Assessment Act 1997 (“**1997 Act**”) or both the 1936 Act and the 1997 Act, as appropriate.

**Top Hat Proposal:** a proposal that each Member should exchange their Units for an equivalent value of units in the Top Trust.

**Top Trust:** a trust of which the Manager or a related body corporate of the Manager is also the responsible entity or 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.

**Trading Day:** has the same meaning as in the Listing Rules.

**Transaction Costs:** an amount determined by the Manager as appropriate to factor into the Application Price or the Redemption Price to avoid an adverse impact on other Members holding Units arising from transaction expenses which would be incurred if an acquisition or disposal of Assets was carried out because of the issue or redemption of Units. Unless the Manager otherwise determines, the amount is:

- (a) when calculating the Application Price, the Manager's estimate of the total transaction costs of acquiring all of the Trust's existing assets; and
- (b) when calculating the Redemption Price, the Manager's estimate of the total transaction costs of selling all of the Trust's existing assets,

in each case adjusted if appropriate for any effect of assets being held through subsidiaries of the Trust or other investment vehicles.

**Trust:** the trust constituted under or governed by this constitution.

**Trust Component:** has the meaning given to that phrase in the Tax Act.

**Under:** has the meaning given to that phrase in the Tax Act.

**Uncertificated Securities Holding:** securities that under the Corporations Act, the Listing Rules or any Uncertificated Transfer System may be held in uncertificated form.

**Uncertificated Transfer System:** any system operated under the Corporations Act, the Listing Rules or the Operating Rules that regulates the transfer of registration of, or the settlement transactions affecting, securities in uncertificated form and includes CHESS (as defined in the operating rules of ASX Settlement Pty Ltd) as it applies to securities in certificated and uncertificated form.

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution.

**Valuation Time:** a time at which the Manager calculates Net Asset Value.

**Weighted Average Market Price** for a Pricing Period means:

- (a) the aggregate of the prices at which each relevant Unit, Stapled Security or Option was sold during the Pricing Period divided by the number of Units, Stapled Securities or Options sold during that period, in the case of both the sales prices and numbers, as reported by ASX, but excluding sales that occur otherwise than in the ordinary course of trading on ASX (such

as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, overseas sales, sales pursuant to the exercise of options over Units and overnight crossings) and any other sales which the Manager reasonably considers may not be fairly reflective of natural supply and demand; or

- (b) if no sale was made in the Pricing Period, the average of the price offered by a willing purchaser for such Units, Stapled Securities or Options (“bid price”) and the price offered by a willing vendor for such Units, Stapled Securities or Options (“ask price”) as quoted on the ASX during the Pricing Period; or
- (c) if either no bid or ask prices were quoted during the Pricing Period, the last sale price as quoted on the ASX prior to the Pricing Period.

## Interpretation

31.2 Unless the contrary intention appears, in this constitution:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes an individual, firm, a body corporate, an unincorporated association, an authority or any other entity or organisation;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(general words)** the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) **(documents)** a reference to a document (including this constitution) includes any variation or replacement of it;
- (f) **(laws)** a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (g) **(regulations)** a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (h) **(amendments to statutes)** a reference to a law or a provision of a law or legislation includes consolidations, amendments, re-enactments or replacements of any of them, whether by the State or the Commonwealth of Australia or otherwise;
- (i) **(cash)** a reference to a payment “in cash” includes payments by cash, or by electronic funds transfer;
- (j) **(currency)** a reference to a monetary amount is a reference to the currency of Australia unless otherwise specified;

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- (k) **(from time to time)** a power, an authority or a discretion reposed in the Manager in Members' meeting or a Member may be exercised at any time and from time to time;
- (l) **(amount paid)** a reference to an amount paid on a security includes an amount credited as paid on that security;
- (m) **(signed)** where, by a provision of this constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Manager;
- (n) **(writing)** "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (o) **(groups of persons)** a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (p) **(Corporations Act)** an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (q) **(Listing Rules)** In this constitution, a word or expression defined or used in the Listing Rules has the same meaning when used in this Constitution in a similar context;
- (r) **(amendments)** a reference to amend includes to delete or replace;
- (s) **(headings and labels)** headings and labels are inserted for convenience only and do not affect interpretation of this constitution;
- (t) **(calendar periods)** a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively;
- (u) **(present)** the word "present" in the context of a person being present at a meeting includes participating using technology approved by the Manager for the purposes of the meeting, and at a meeting of Members also includes:
- (i) a Member being present in person;
  - (ii) a Member being present by proxy, attorney, or Representative; and

- (iii) except in any clause which specifies a quorum, a Member who has duly lodged a direct vote in relation to the meeting.

- 31.3 Any cover page, table of contents, footnotes, marginal notes and finding lists are for convenience only and do not form part of this constitution.

#### **Other documents**

- 31.4 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

#### **Constitution legally binding**

- 31.5 This constitution binds the Manager, each present and future Member, each present and future Option Holder and each present and future Holder of Financial Instruments and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

#### **Corporations Act prevails**

- 31.6 Despite anything in this constitution, while the Trust is a Registered Scheme, to the extent that a clause of this constitution is inconsistent with the provisions of the Corporations Act applicable to registered managed investment schemes, that provision is of no effect to the extent of the inconsistency, but not otherwise.<sup>17</sup>

#### **Severance**

- 31.7 If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid in a jurisdiction for any reason, then it is severed for that jurisdiction without affecting the validity or operation of any other provision of this constitution or of that provision in any other jurisdiction.

#### **Governing law**

- 31.8 This constitution is governed by the law of New South Wales.

#### **Other obligations excluded**

- 31.9 To the maximum extent permitted by law, all restrictions on the exercise of the Manager's powers, or obligations which might otherwise be implied or imposed by law or equity, are expressly excluded, including any obligation of the Manager in its capacity as trustee of the Trust arising under any statute other than the Corporations Act.

#### **Schedules**

- 31.10 Schedules to this constitution are an operative part of it.

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<sup>17</sup> ASIC RG 134.213.

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## Schedule 1 - Stapling Provisions

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On and from any Stapling Commencement Time determined by the Issuer, these Stapling Provisions:

- (a) apply to each Issuer in respect of its respective Stapled Entity and its Attached Securities;
- (b) apply to each Constituent Document and prevail over all other provisions of the Constituent Document, except to the extent provided in the Constituent Document or where this would result in a breach of the Corporations Act, the Listing Rules or other law; and
- (c) apply until they cease to apply in accordance with the Constituent Documents.

Unless the contrary intention appears, in this schedule a reference to a “**paragraph**” is a reference to a numbered provision of this schedule.

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## Definitions and interpretation

### 1.1 Definitions

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

**Accession Deed** means the deed of that name between each Issuer and:

- (a) any new Manager; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Scentre Group Stapling Deed.

**Amounts** has the meaning given in paragraph 8(c)(i).

**Application Price** means:

- (a) in respect of a Unit, the application price for the Unit calculated in accordance with clause 5.1 of the Trust Constitution or paragraph 4 of this schedule;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security;
- (c) in respect of a Stapled Security, the application price for a Stapled Security calculated in accordance with this schedule;
- (d) in respect of the issue of an Option, the amount (if any) determined by the Manager under clause 5.9 of the Trust Constitution or paragraph 4.4 of this schedule; and
- (e) in respect of the issue of a Financial Instrument, the amount determined under clause 3.19 of the Trust Constitution.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

**Constituent Documents** means the constituent documents of a Stapled Entity and includes the Trust Constitution.

**Controlled Entity** means any subsidiary or any trust or other entity, whether or not a legal entity, which is owned or controlled by an entity for accounting purposes.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of a Stapled Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with paragraph 8(b).

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**Foreign Investor** means an Investor whose address on the Register is in a jurisdiction other than Australia.

**Group** means the Stapled Entities and any Controlled Entity of a Stapled Entity.

**Intra-Group Loan** means a loan or financial assistance provided by a Stapled Entity to any entity in the Group including but not limited to guaranteeing or indemnifying or granting security in favour of that entity.

**Investor** means, in this Schedule 1, a person entered in the Register as a holder of a Stapled Security (which includes a Unit), but does not include a person in their capacity as holder of an Option or Financial Instrument unless the Option or Financial Instrument is an Attached Security.

**Issuer:**

- (a) in the context of the Trust Constitution, means the Manager; and
- (b) in the context of the Constituent Document of any other Attached Security, means the issuer of the Attached Security.

**Market Price of a Stapled Security** on a particular day is:

- (a) the Weighted Average Market Price per Stapled Security for sales on ASX for the Pricing Period which ends 2 Trading Days before the relevant day, provided that if the Weighted Average Market Price is calculated in respect of Stapled Securities which have an entitlement to distributions which is different to the entitlement of new Stapled Securities the Manager must make an appropriate adjustment to the Weighted Average Market Price to reflect the difference; or

- (b) if:
- (i) Stapled Securities have not been Officially Quoted for at least 15 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion, a determination under paragraph (a) of this definition would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security that an Approved Valuer determines to be the market price of the Stapled Security on the relevant day, having regard to the market price of Stapled Securities, the Net Asset Value (to the extent the Approved Valuer considers each of these factors to be relevant and appropriate), and any other matters which the valuer believes should be taken into account.

If it is necessary to calculate the Market Price of an Option over a Stapled Security, it would be determined according to the definition of Market Price of a Stapled Security, with a reference to a Stapled Security in that definition being read as a reference to an Option over a Stapled Security.

**New Attached Security** has the meaning given in paragraph 6(a).

**Other Attached Security** means:

- (a) in respect of a Unit, an identical number of each Attached Security other than a Unit; and
- (b) in respect of any New Attached Security, an identical number of each Attached Security other than a New Attached Security.

**Other Issuer** means:

- (a) in respect of the Manager, each Issuer other than the Manager; and
- (b) in respect of the issuer of any New Attached Security, each Issuer other than the issuer of the New Attached Security.

**Ratings Agency** means any recognised ratings agency as determined by the Manager.

**Register** means the register of Investors kept or caused to be kept by the Stapled Entities under paragraph 5 and the Corporations Act.

**Registered** means recorded in the Register.

**Registrar** means the person appointed to maintain the Register.

**Restapling** means a determination by the Issuer of an Unstapled Security that Stapling should recommence in respect of that Unstapled Security, as referred to in paragraph 7.3.

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.



**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee:

- (a) is entered in the Register in respect of those Stapled Securities;
- (b) will receive the New Attached Securities pursuant to the Stapling; and
- (c) will sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in paragraphs 8(c) and (d).

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Scentre Group Stapling Deed** means the deed entered into between the Issuer and Other Issuers setting out how they will co-operate in the conduct of the Stapled Entities as if they were one economic entity and the Stapled Securities were one security.

**Security** means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture, and includes a Unit, Option or Financial Instrument.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Scentre Group Stapling Deed or an Accession Deed.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapling** means the linking together of Securities so that one Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities. “**Stapled**” has a corresponding meaning.

**Stapling Commencement Time** means the most recent time and date on which the Issuer determines that the Stapling of Attached Securities is to commence.

**Stapling Matter** means a matter specified in paragraph 2.3(b).

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and to achieve the investment objectives of the Group, and any amending, supplemental and other document that the Issuer and the Other Issuers consider necessary or desirable in connection with those objectives.

**Transfer** has the meaning given in paragraph 6(d).

**Trust** means the trust the subject of the Trust Constitution.

**Trust Constitution** means the constitution establishing the Trust of which this schedule forms an operative part.

**Unit** means a unit in the Trust.

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**Unstapled Security** means a Security which was an Attached Security and ceases to be Stapled to the Unit.

**Unstapling** means the process that results in one or more of the Attached Securities ceasing to be Stapled to the Unit. “**Unstapled**” has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

## 1.2 Interpretation

Unless the contrary intention appears, the interpretation provisions in clauses 31.2 and 26 of the Trust Constitution apply to this schedule.

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## 2 Stapling - general intention

### 2.1 Stapled Securities - general intention

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Time. Subject to paragraph 7 it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Stapled Securities will be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the Same Person.

### 2.2 Transaction Documents

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

### 2.3 Stapling Matters

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor, by acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including the following Stapling Matters:

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- (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation Proposal regarding the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Small Holding of Stapled Securities;
  - (iv) the restrictions on Stapled Securities that are Restricted Securities;
  - (v) the Stapling of New Attached Securities to the Stapled Securities;
  - (vi) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (vii) the Unstapling of one or more Attached Securities;
  - (viii) the Restapling of an Unstapled Security;
  - (ix) the Unstapling of the Stapled Securities; and
  - (x) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with paragraph 8.
- (c) To effect a Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor's:
- (i) agent and attorney in the Investor's name and on the Investor's behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and
  - (ii) [deleted].
- (d) Without limiting paragraph 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under paragraph 6, each Investor irrevocably appoints the Issuer as the Investor's agent and attorney in the Investor's name and on the Investor's behalf to:
- (i) agree to obtain any New Attached Security;
  - (ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;
  - (iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and
  - (iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under paragraph 6.
- (e) Without limiting paragraph 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under paragraph 8, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor's agent and attorney in the Investor's name and on the Investor's behalf to:

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- (i) receive and apply the Amounts referred to in paragraph 8(c)(i) in the manner contemplated in paragraph 8;
  - (ii) execute applications or transfers in relation to the Transfer of any New Attached Security;
  - (iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and
  - (iv) do all acts and things and execute any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the disposal of the Stapled Securities of the Designated Foreign Investor under paragraph 8.
- (f) The Issuer may:
- (i) appoint (and revoke the appointment of) substitute attorneys to exercise the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this paragraph 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome.
- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under paragraphs 2.3(e) and 8 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of paragraph 8 (Designated Foreign Investors) to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

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## **3 Dealing in Stapled Securities**

### **3.1 Stapling**

Subject to paragraph 7, on and from the Stapling Commencement Time, each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security and the Issuer must not:

- (a) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the Same Person for each Other Attached Security for issue or sale;
- (b) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
- (c) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
- (d) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the Same Person at the same time;

- (e) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the Same Person;
- (f) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
- (g) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.

Each Security issued by a Stapled Entity after the Stapling Commencement Time must be Stapled to each Other Attached Security immediately on the date of issue of the new Security.

### 3.2 Dealing in Attached Securities

- (a) **(No Unstapling)** On and from the Stapling Commencement Time, the Issuer must not:
  - (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing, if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with paragraph 7.
- (b) **(Attached Securities)** Subject to paragraph 7, on and from the Stapling Commencement Time, the Issuer must not:
  - (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each Other Attached Security;
  - (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.
- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub

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register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.

- (e) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to the Same Person. A Small Holding must be disposed of in accordance with the Listing Rules and the Constituent Documents.
- (f) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each Other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the Same Person.
- (g) **(Compliance with law)** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer, issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### **3.3 Consistency with the Constituent Documents**

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### **3.4 Joint quotation as Stapled Securities**

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### **3.5 Joint certificates or joint holding statements**

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### **3.6 Stapling and separate entities**

Despite any other provision of this schedule, each Stapled Entity remains a separate legal entity, separately admitted to the Official List (if applicable), although the Attached Securities may be jointly Officially Quoted as Stapled Securities.

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## **4 Allocation of Application Price**

### **4.1 Application Price**

- (a) Subject to paragraph 4.1(c), while Units are Officially Quoted as part of a Stapled Security, the application price payable for any Unit is the Market Price of a Stapled Security minus the Application Price of the Other Attached Securities, or the amount determined by the Manager in accordance with paragraph 4.2.
- (b) Subject to paragraph 4.1(c), while the Units are not Officially Quoted but are Stapled, the application price payable for a Unit is the price calculated under clause

5.1(f) of the Trust Constitution, and the application price of Stapled Securities is the sum of that amount and the Application Price of the Other Attached Securities.

- (c) The Manager may determine a different application price for any Units (subject to the Corporations Act as modified by any applicable ASIC Relief and the Listing Rules) in the case of:
- (i) offers made at substantially the same time to persons who were Investors on a date determined by the Manager:
    - (A) provided that all Investors are offered Stapled Securities in proportion to the value of the Investor's Stapled Securities at the relevant date on a pro rata basis, whether or not the right to acquire those Stapled Securities is renounceable; but
    - (B) an Investor may be excluded from the pro rata offer if to do so would not cause the Manager to be in contravention of paragraph 601FC(1)(d) of the Corporations Act (as modified by ASIC Relief) whether or not the right of entitlement is renounceable.

If the Trust is a Registered Scheme and the Manager is making an offer of Stapled Securities to Investors which otherwise complies with this paragraph 4.1(c)(i), the Manager is not required to offer Stapled Securities to persons in the circumstances permitted under the applicable ASIC Relief and the Listing Rules.

Any offer made under this paragraph 4.1(c) must specify the period during which it may be accepted. The Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units and Stapled Securities. Any Investor may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

Any Stapled Securities offered for subscription under this 4.1(c) which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The application price payable in relation to such further offer must not be less than that at which the Units and Stapled Securities were originally offered to Investors.

- (ii) If an underwriter has underwritten any offer for subscription of Stapled Securities under this paragraph 4.1(c), the underwriter may take up any Stapled Securities not subscribed for by Investors;
- (iii) a distribution reinvestment, where the application price is determined in accordance with paragraph 4.3;
- (iv) a placement of Stapled Securities that complies with the Listing Rules and any applicable ASIC Relief;
- (v) a security purchase plan that complies with the Listing Rules and any applicable ASIC Relief; and
- (vi) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Relief.

## 4.2 Apportionment of Application Price

- (a) Subject to paragraph 4.1(b) if a Unit is to be issued as part of a Stapled Security and the Trust Constitution contains a provision for the calculation or determination of the Application Price for a Stapled Security but not for the Unit, the Manager must determine what part of the Application Price of a Stapled Security is to represent the Application Price of a Unit for the purposes of the Trust Constitution.
- (b) Unless otherwise agreed between the Manager and the Other Issuers, the Application Price for a Stapled Security will be allocated among the Application Price of the Unit and the Application Price of the Other Attached Securities in the ratio that the net assets of each relevant Stapled Entity (adjusted for the net market value of its investments) at the end of the relevant period immediately before the issue of the Stapled Security, bears to the amount of the aggregate net assets of those Stapled Entities (adjusted for the net market value of their investments) at the end of the relevant period immediately before the issue of the Stapled Security.
- (c) Where an Option to acquire a Stapled Security is issued after the Stapling Commencement Time, the allocation of the issue price of the option must be determined in the same manner as under paragraph 4.2(b).
- (d) The allocation of the Application Price for a Stapled Security under this paragraph 4.2 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

## 4.3 Application Price if reinvestment applies

- (a) If a reinvestment of capital or income payable to an Investor under clause 11 of the Trust Constitution applies while Units are Officially Quoted and Stapled, subject to the Listing Rules the aggregate of the Application Price for each additional Unit issued and the Application Price for the Other Attached Securities upon reinvestment is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued upon reinvestment, the price will be the Market Price for Stapled Securities for the Pricing Period.
- (b) While Units are not Officially Quoted but are Stapled, the application price payable for each additional Unit on a reinvestment of capital or income payable to the Investor under clause 11 of the Trust Constitution is the price determined by the Manager. If the Manager has not determined the application price by the date at which Units are to be issued or transferred upon reinvestment, the price for a Unit will be the Application Price calculated under clause 5.1(f) of the Trust Constitution on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (c) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the number of Stapled Securities issued will be rounded down to the nearest whole Stapled Security and any remaining amount becomes an asset of the Trust or Stapled Entity to which the distribution relates.



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#### **4.4 Application Price of Options over Stapled Securities**

Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Trust is a Registered Scheme, the Manager and the Stapled Entities may issue Options over Stapled Securities:

- (a) at an application price (which may be nil) determined by the Manager and the Stapled Entities if permissible under the Corporations Act as modified by ASIC Relief or, if such determination may not be made, at a nil Application Price; and
- (b) on the basis that the Application Price for a Unit as a component of a Stapled Security to be issued on exercise of the Option is a price determined:
  - (i) while the Units are Officially Quoted, in accordance with paragraphs 4.1 and 4.2 of this schedule;
  - (ii) while the Stapled Securities are not Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 5.1(f) of the Trust Constitution.

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### **5 Single Register**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the Other Attached Securities are recorded.

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### **6 Power to add New Attached Securities**

- (a) Subject to paragraph 6(b), the Corporations Act and the Listing Rules, the Issuer may at any time determine that a Security is a New Attached Security and cause it to be Stapled to the Stapled Securities. A determination under this paragraph may be made on such terms as the Issuer considers appropriate.
- (b) Subject to paragraph (c), a determination that a Security is a New Attached Security may only be made if:
  - (i) while the Units are Officially Quoted, the New Attached Security is also Officially Quoted, or ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
  - (ii) while the Units are Officially Quoted, ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;
  - (iii) each Other Issuer (including the issuer of the New Attached Security) has agreed:
    - (A) to the Stapling of the New Attached Security to the Stapled Security; and
    - (B) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and

- (iv) the Constituent Documents in relation to the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);
  - (v) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (vi) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, any required approval of the members of each Stapled Entity has been obtained; and
  - (vii) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this paragraph 6.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (“**Transfer**”).
  - (e) A transfer of a New Attached Security made under this paragraph 6 will be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate for a New Attached Security in order for that Issuer to Register the transfer of the New Attached Security. The transfer will be evidenced by, and have full effect from, its Registration by the relevant Issuer in the Register.

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## **7 Unstapling**

### **7.1 Procedure for Unstapling**

Subject to this paragraph 7, from the Stapling Commencement Time each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### **7.2 Unstapling an Attached Security**

- (a) Subject to this paragraph 7, the Corporations Act, the Listing Rules and the relevant Constituent Documents, the Manager may, without the need for approval by Members, determine or consent to a determination by the Issuer of any Attached Securities that one or more Attached Securities are to be Unstapled from the Stapled Security at a time and date set or approved by the Manager.
- (b) A determination under paragraph 7.2(a) may only be made:
  - (i) while the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Attached Securities from the Unit and the Unit and any remaining Attached Securities will remain Officially Quoted as a Unit or a Stapled Security; and

- (ii) if each Other Issuer has agreed:
  - (A) to the Unstapling; and
  - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole; and
- (iii) if the Stapling Provisions will cease to apply in respect of each Attached Security which is to be Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### 7.3 Restapling

If an Issuer determines that its Attached Securities are to be Unstapled under paragraph 7.2(a) or 7.4, this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

### 7.4 Unstapling the Stapled Securities

- (a) Subject to paragraph 7.4(b), the Corporations Act, the Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security or the Attached Securities (as applicable) will be Unstapled on the occurrence of an Unstapling Event.
- (b) A determination under paragraph 7.4(a) may only be made if:
  - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Other Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under paragraph 7.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

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## 8 Designated Foreign Investors

- (a) Without limiting paragraph 6(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under paragraph 6, the provisions of this paragraph 8 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:
  - (i) the number of Foreign Investors in the foreign place;

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- (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
- (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (“**Amounts**”) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to paragraph 8(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
- (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date; and
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
  - (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and
  - (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.

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- (f) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Unit upon sale of a Stapled Security under paragraph 8(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Manager.

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## **9 Duties and obligations of Issuer**

### **9.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief) while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **9.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

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## **10 Meetings of Investors**

### **10.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **10.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

### **10.3 Other attendees**

The auditor of each Stapled Entity and the representatives of each Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

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## **11 General**

### **11.1 Other capacities**

Subject to the Corporations Act, the Manager (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Trust or in another capacity) and any Stapled Entity (or their associates); and

- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or any Stapled Entity (or their associates) and retain for its own benefit any profits or benefits derived from any such contract or transaction.

## **11.2 Expenses in relation to the Trust**

- (a) A reference to “Unit” in clause 21.4 of the Trust Constitution is a reference to it as part of a Stapled Security, and a reference to “Trust” is a reference to the Trust as part of the Group.
- (b) Clause 21.4 of the Trust Constitution is taken to also include expenses in connection with:
  - (i) establishing, administering and managing the Stapling, including the costs incurred in enforcing Stapling, the Stapling of New Attached Securities, the Unstapling of an Attached Security, the Restapling of Unstapled Attached Securities and the Unstapling of the Stapled Securities; and
  - (ii) organising, convening and holding meetings of Investors, implementing any Resolutions and communicating with Investors.

## **11.3 Transfers, transmissions and joint holdings**

A reference to a Unit in the provisions of clause 4 of the Trust Constitution is taken to include a reference to a Stapled Security.

## **11.4 Small Holdings**

A reference to a “Small Holding” in each Constituent Document is taken to be a reference a small holding of Stapled Securities.

## **11.5 Intra-Group Loans**

Subject to the Corporations Act, without limiting the Constituent Documents or the Scentre Group Stapling Deed, the Manager may, in its capacity as trustee of the Trust and each Other Issuer may, enter into Intra-Group Loans.

## **11.6 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.

## **11.7 Other Attached Security**

If a New Attached Security, which is an interest in a trust, is to be Stapled to the Stapled Securities, then paragraphs 4.1(a), 4.1(c), 4.2(a), 4.3, 11.1 and 11.2 apply in relation to that New Attached Security with the necessary changes.