

Kareelya Investments Ltd

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Westralia Property Trust

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Deed of amendment and consolidation



<b>Date</b>	This Deed is made on the date noted on page 8 of this document.
<b>Parties</b>	<p>Kareelya Investments Limited ACN 072 899 090 of 6 Bowman Street, South Perth, in the State of Western Australia</p> <p style="text-align: right;">(Responsible Entity)</p> <p>And</p> <p>Those persons from time to time who hold a Unit in the Trust</p> <p style="text-align: right;">(Unit Holders(s))</p>
<b>Introduction</b>	<p>A. The Responsible Entity is the responsible entity of the Westralia Property Trust (Trust) which is a managed investment scheme. The Trust has been registered pursuant to the Act and the ARSN is 096 588 046.</p> <p>B. By a constitution dated 7 May 2001 the Responsible Entity established the Trust. That constitution was replaced by a replacement constitution dated 18 December 2002 and has since been varied by supplementary constitutions dated 17 January 2003 and 24 May 2004 and by a document called the third replacement constitution dated 19 July 2004. Collectively the original constitution, together with its replacement and supplementary documents is referred to as the Constitution in this Deed.</p> <p>C. This deed of amendment and consolidation (this Deed) has been prepared to—</p> <p style="padding-left: 20px;">(a) amend the Constitution, and</p> <p style="padding-left: 20px;">(b) provide a consolidated copy of the Constitution (refer Schedule 1 to this Deed) which incorporates the amendments made by this Deed (the Consolidated Constitution).</p> <p>D. This Deed (including the Consolidated Constitution) will be lodged with ASIC and the amendments made by this Deed will take effect from the time of lodgement.</p> <p>E. The changes made by this Deed have been made by the Responsible Entity pursuant to section 601GC(1)(b) of the Act on the basis the Responsible Entity reasonably considers the changes will not adversely affect Unit Holders’</p>

rights.

F. The terms of this Deed follow.

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## CONTENTS

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<b>1.</b>	<b>Definitions and interpretation</b>	<b>1</b>
<hr/>		
<b>2.</b>	<b>Confirmation of the terms of the Constitution</b>	<b>1</b>
<hr/>		
<b>3.</b>	<b>Operative provisions</b>	<b>1</b>
3.1	Amend clause 3.4(c)	1
3.2	Delete and replace clause 4.2(d)(iii)	1
3.3	Delete and replace clause 4.2(e)(iv)	1
3.4	Delete and replace clause 4.2(f)(v)	2
3.5	Insert new clause 4.2(h)	2
3.6	Delete and replace clause 4.6	3
3.7	Delete and replace clause 10.1(b)	4
3.8	Amend clause 11.3	6
3.9	Amend clause 11.7	6
3.10	Amend clause 14.1	6
3.11	Amend clause 14.10	6
3.12	Definitions	7
<hr/>		
	<b>Schedule 1—Consolidated Constitution</b>	<b>9</b>

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## TERMS

### 1. Definitions and interpretation

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

### 2. Confirmation of the terms of the Constitution

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- (a) This Deed amends the Constitution and is binding on—
  - (i) all Unit Holders (as they are constituted from time to time), and
  - (ii) the Responsible Entity.
- (b) The Responsible Entity confirms the terms of the Constitution except to the extent those terms are amended by this Deed.

### 3. Operative provisions

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#### 3.1 Amend clause 3.4(c)

- (a) Amend clause 3.4(c) by deleting the words “SCH Business Rules” and replacing them with “ASTC Settlement Rules”.
- (b) Amend clause 3.4(c) by deleting the words “SCH Business Rule 8.13” and replacing them with “ASTC Settlement Rule 5.12”.

#### 3.2 Delete and replace clause 4.2(d)(iii)

Delete clause 4.2(d)(iii) and replace it with the following:

- “(iii) a discount to the price which would otherwise apply pursuant to clause 4.2(a) does not exceed 50 percent, and”

#### 3.3 Delete and replace clause 4.2(e)(iv)

Delete clause 4.2(e)(iv) and replace it with the following:

- “(iv) the amount by which the exercise price of the Option is less than the price that would otherwise apply pursuant to clause 4.2(a) does not exceed 50 percent on the date of the exercise of the Option.”

### 3.4 Delete and replace clause 4.2(f)(v)

Delete clause 4.2(f)(v) and replace it with the following:

“(v) the amount by which the price is less than the amount that would otherwise apply pursuant to clause 4.2(a) does not exceed 10 percent.”

### 3.5 Insert new clause 4.2(h)

Re-number clause 4.2(h) as clause 4.2(i) and insert the following new provision in clause 4.2:

“(h) Subject to the Law and any conditions imposed by the Law, the Responsible Entity may issue Units at a price other than a price determined under clause 4.2(a), where—

- (i) the Trust has been admitted to the Official List, and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily)
- (ii) the offer for the issue of Units is made to each Unit Holder
- (iii) each offer is made on the same terms and conditions and on a non-renounceable basis
- (iv) the Issue Price is less than the Market Price during a specified period in the 30 days prior to either the date of the offer or the date of the issue
- (v) no Unit Holder may be issued with Units with Application money totalling more than \$5,000 in any consecutive 12 month period, and
- (vi) provided that an offer need not be made to any Unit Holder whose address is in a place where the Responsible Entity reasonably considers that it is not lawful or not practical for the Responsible Entity to offer and issue Units to the person under the arrangement.

For the purposes of this clause 4.2(h):

- (i) if a trustee or nominee is expressly noted on the Register as holding interests on account of another person (Beneficiary), then—
  - A. the Beneficiary is taken to be the Unit Holder in relation to those Units, and

- B. any issue of Units to the trustee or nominee is taken to be an issues to the Beneficiary
- (ii) if the Unit must, under the terms on which it is traded, only be transferred together with one or more other interests or other financial products (together a Stapled Security), then the \$5,000 limit in this clause 4.2(h) applies to the Stapled Security as if its component interests and product constituted a single interest rather than to any of those components separately, and
- (iii) a reference to an offer of the issue of Units includes a reference to inviting an application for the issue of the Unit.”

### **3.6 Delete and replace clause 4.6**

Delete clause 4.6 and replace it with the following:

#### **“4.6 Market Price**

The “Market Price” of a Unit on any Business Day (being the relevant Business Day) means:

- (a) the average traded price (weighted by volume) of a Unit for all sales on the ASX (excluding special crossings) for the period of 10 Business Days (or such longer period as determined by the Responsible Entity after consideration of the volume and number of transactions and any other factors that the Responsible Entity considers relevant and which in the opinion of an Approved Market Analyst is a reasonable period of Business Days to have regard to, to fairly arrive at the current market price of the Unit) immediately preceding (but not including) the relevant Business Day (whether or not a sale was recorded on any particular day); or
- (b) if the Responsible Entity believes that the calculation in clause 4.6(a) does not provide a fair reflection of the current market price of a Unit, an amount as calculated in a manner which complies with the Law, is set out in a Disclosure Document for the issue of Units for which market price is being determined and which in the opinion of an Approved Valuer will approximate the market price of a Unit at or around the relevant Business Day.



### 3.7 Delete and replace clause 10.1(b)

Delete clause 10.1(b) and replace it with the following:

“(b) Annual fees for each year of the Trust (and pro rata for part of a year during which the Responsible Entity will remain as the responsible entity) are made up of four components calculated and paid as follows:

(i) Total asset component – paid monthly in arrears and calculated as follows:

$$\text{Total asset component} = 0.0025/12 \times (\text{TAV} - \text{VDP})$$

Where:

TAV = Total Assets Value at the end of the relevant month

VDP = Market Value of Development Projects at the end of the relevant month.

(ii) Income component – for each of the first three quarters of a Financial Year, the amount calculated as follows:

$$\text{Income component} = 0.035 \times (\text{NI} - \text{A} + \text{B})$$

Where:

NI = Net Income for the relevant quarter

A = Net Income for the relevant quarter which is attributable to Development Projects

B = The total of the following items for the relevant quarter:

- depreciation, building allowances and other non cash expenses
- interest, finance and other borrowing expenses
- leasing, legal and professional fees
- administration expenses, including auditing, accounting, Custodian’s fees, outgoings and expenses and management fees
- costs of issuing any Disclosure Documents, and
- marketing and promotional expenses.

- (iii) Income component – for the final quarter of a Financial Year, the amount calculated as follows:

$$\text{Income component} = 0.035 \times [[(\text{NIY} - \text{AY} + \text{BY}) \times \text{C}] - \text{D}]$$

Where:

The result of the calculation cannot be less than zero

NIY = Net Income for the Financial Year

AY = Net Income for the Financial Year which is attributable to Development Projects

BY = The total of the following items for the Financial Year:

- depreciation, building allowances and other non cash expenses
- interest, finance and other borrowing expenses
- leasing, legal and professional fees
- administration expenses, including auditing, accounting, Custodian's fees, outgoings and expenses and management fees
- costs of issuing any Disclosure Documents, and
- marketing and promotional expenses.

C = The fraction which is the actual Distributable Income payable in the relevant Financial Year divided by the forecast Distributable Income for the relevant Financial Year, but in no case can "C" exceed 1.0. For the purposes of calculating "C", the Responsible Entity must forecast the Distributable Income prior to the commencement of each Financial Year for which the forecast is being made.

D = The total income component paid or payable for the first three quarters of the Financial Year.

The income component in this paragraph 10.1(b)(ii) is calculated and paid quarterly in arrears.

- (iv) Capital growth - calculated and paid annually as follows:

$$\text{Capital growth component} = 0.035 \times [(E) - (F + G)]$$

Where:

E = Market Value of Authorised Investments held at the end of the Financial Year less the Market Value of Development Projects at the end of the Financial Year

F = Market Value at the beginning of the Financial Year of those Authorised Investments (not including Development Projects) held at the beginning and end of the Financial Year

G = The sum of the purchase prices paid for those Authorised Investments (not including Development Projects) acquired during the Financial Year and held at the end of the Financial Year.

- (v) Development Projects – for all Development Projects which distribute a return on assets invested by the Trust of more than 15 percent per annum (“excess return”), 50 percent of the excess return, calculated and paid annually at the end of each Financial Year.”

### **3.8 Amend clause 11.3**

Amend clause 11.3 by deleting the words “SCH Business Rules” and replacing them with “ASTC Settlement Rules”.

### **3.9 Amend clause 11.7**

Amend clause 11.7 by deleting the words “SCH Business Rules” and replacing them with “ASTC Settlement Rules”.

### **3.10 Amend clause 14.1**

Amend clause 14.1(d) by deleting the words “SCH Business Rules” and replacing them with “ASTC Settlement Rules”.

### **3.11 Amend clause 14.10**

- (a) Amend clause 14.10(b) by deleting the words “SCH Business Rules” and replacing them with “ASTC Settlement Rules”.
- (b) Amend clause 14.10(d)(i) by deleting the words “SCH transfer” and replacing them with “ASTC transfer”.

### 3.12 Definitions

- (a) Insert the following definition of “Approved Market Analyst”:

**“Approved Market Analyst** Any person, independent of the Responsible Entity, who is duly qualified to advise on the appropriate trading window for the purposes of ascertaining from time to time “Market Price” under this Constitution.”

- (b) Insert the following definition of “ASTC Settlement Rules”:

**“ASTC Settlement Rules** The settlement rules of ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532”

- (c) Amend the definition of “CHESS Approved Securities” by deleting the words “SCH Business Rules” and replacing them with “ASTC Settlement Rules”.

- (d) Delete the definition of “Disclosure Document” and replace it with the following:

**“Disclosure Document** A document by which Units are offered for subscription, and it includes any supplementary or replacement document issued in respect of the disclosure document”

- (e) Delete the definition of “SCH”.

- (f) Delete the definition of “SEATS”.

**Execution**

This Supplementary Constitution is made this 4th day of February 2005.

**Signed** by Kareelya Investments Limited  
ACN 072 899 060 in accordance with  
section 127 of the Corporations Act by

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Secretary/Director

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Director

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Name (please print)

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Name (please print)

Originals signed by:

David Hinton – Director

Graeme Goff – Secretary/Director

**Schedule 1—Consolidated Constitution**

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**KAREELYA INVESTMENTS LIMITED**

**WESTRALIA PROPERTY TRUST**

**ARSN 096 588 046**

**CONSOLIDATED CONSTITUTION**





**DATE** This Consolidated Constitution is a deed poll dated 4<sup>th</sup> February 2005.

**BY** Kareelya Investments Limited, ACN 072 899 060 of 6 Bowman Street, South Perth, in the State of Western Australia.

**(Responsible Entity)**

**INTRODUCTION**

- A. The Responsible Entity is the responsible entity of the Westralia Property Trust (Trust) which is a managed investment scheme. The Trust has been registered pursuant to the Act and the ARSN is 096 588 046.
- B. By a constitution dated 7 May 2001 the Responsible Entity established the Trust. That constitution was replaced by a replacement constitution dated 18 December 2002 and has since been varied by supplementary constitutions dated 17 January 2003 and 24 May 2004 and by a document called the third replacement constitution dated 19 July 2004. Collectively the original constitution, together with its replacement and supplementary documents is referred to as the Constitution in this Deed.
- C. This Consolidated Constitution has been prepared as a matter of convenience only to incorporate the provisions of the Constitution and the Supplementary Constitutions into a single document.
- D. The terms of this Consolidated Constitution follow.

**SCHEDULES**

The following Schedules form part of this Constitution:

- A. Schedule 1 – Dictionary
- B. Schedule 2 – Rules for interpretation

## CONTENTS

<b>1.</b>	<b>Constitution of the Trust</b>	<b>1</b>
1.1	Constitution binding on the parties	1
1.2	Confirmation of appointment	1
1.3	Benefits and obligations	1
1.4	Establishment of Trust	1
1.5	Purpose of the Trust	1
<b>2.</b>	<b>Trust Property</b>	<b>1</b>
2.1	Responsible Entity to hold the Fund for Unit Holders	1
2.2	Appointment of a Custodian	2
<b>3.</b>	<b>Name and Tern of Trust</b>	<b>2</b>
3.1	Name of the Trust	2
3.2	Term of the Trust	2
3.3	Listing	2
3.4	Additional listing rule requirements	3
<b>4.</b>	<b>Creation and Sale of Units</b>	<b>4</b>
4.1	Units	4
4.2	Issue price	4
4.3	Satisfaction of the Issue Price	9
4.4	Different classes of Units	9
4.5	Options	10
4.6	Market Price	10
<b>5.</b>	<b>Application and Issue of Units</b>	<b>10</b>
5.1	Payment of application money	10
5.2	Refunding application money	11
5.3	Form of application	11
5.4	Responsible Entity may refuse an application	11
5.5	Issue of Units	11
<b>6.</b>	<b>Register of Unit Holder</b>	<b>11</b>
6.1	Responsible Entity must maintain the Register	11
6.2	Information included in the Register	11
6.3	Removing information from the Register	12
6.4	Inspection of the Register	12
6.5	Inspection times	13
6.6	Closure of the Register	14
6.7	Register is evidence of who are Unit Holders	14
6.8	Change of details	14
6.9	Noting an encumbrance	14
<b>7.</b>	<b>Interests of Unit Holders</b>	<b>15</b>

7.1	Joint holders	15
7.2	Restrictions on Unit Holders	15
7.3	Relationship between Responsible Entity and Unit Holders	15
<hr/>		
<b>8.</b>	<b>Responsible Entity's Powers</b>	<b>16</b>
8.1	General powers	16
8.2	Power to borrow	16
8.3	Investment power	16
8.4	Management power	17
<hr/>		
<b>9.</b>	<b>Responsible Entity's Rights And Duties</b>	<b>18</b>
9.1	Power to enter transactions	18
9.2	Interested dealings by Responsible Entity	18
9.3	Insurance	19
9.4	Opening bank accounts	19
9.5	Certificates	19
9.6	Tax returns	20
9.7	Preparation of Financial Statements	20
9.8	Audit of annual financial report	22
9.9	Special rules for listed registered schemes	22
9.10	Annual Financial Report to Unit Holders	22
9.11	Unit Holder's choice for receiving financial reports	22
<hr/>		
<b>10.</b>	<b>Fees And Expenses</b>	<b>23</b>
10.1	Fees payable to the Responsible Entity	23
10.2	Fees payable to associates	26
10.3	GST payable on fees	26
10.4	Payment of fees and costs	26
10.5	Performance of duties	29
<hr/>		
<b>11.</b>	<b>Income Of The Trust</b>	<b>30</b>
11.1	Responsible Entity will collect in all money	30
11.2	Calculation of Distributable Income	30
11.3	Persons who will receive Distributable Income	30
11.4	Reinvestment of Distributable Income	30
11.5	Time for distribution of Distributable Income	31
11.6	Distribution equalisation reserve	31
11.7	Unit Holders presently entitled to Distributable Income	31
11.8	Apportionment and distribution of amount categories	32
11.9	Nature of distribution to Unit Holders	32
11.10	Other distributions	32
<hr/>		
<b>12.</b>	<b>Deductions From Distributions</b>	<b>32</b>
12.1	Deduction of Taxes	32
12.2	Indemnity	32
12.3	Repayment by Unit Holders	32
<hr/>		
<b>13.</b>	<b>Money Owing By Unit Holders</b>	<b>33</b>

13.1	Interest payable	33
13.2	Non payment of money	33
13.3	Sale of Unit Holder's Units to pay debt owing by Unit Holder	34
13.4	Responsible Entity may require information from Unit Holders	34
<hr/>		
<b>14.</b>	<b>Transfer Of Unit Holder's Units</b>	<b>35</b>
14.1	Right to transfer Units	35
14.2	Responsible Entity must decline to register if criteria not met	35
14.3	Entry of transfer in Register	36
14.4	Instrument of transfer to be retained by Responsible Entity	36
14.5	Transferee to be bound	36
14.6	Notice of refusal	36
14.7	Suspension prior to end of year	36
14.8	No responsibility to buy back or sell	36
14.9	Restrictions on Transfer	37
14.10	Restricted securities	37
14.11	Participation in transfer systems	38
<hr/>		
<b>15.</b>	<b>Transmission Of Unit Holder's Units</b>	<b>38</b>
15.1	Upon death	38
15.2	Survivorship upon bankruptcy or mental incapacity	38
15.3	Application for transmission	38
15.4	Rights and restrictions before registration	39
15.5	Limit to number of registered holders	39
<hr/>		
<b>16.</b>	<b>Withdrawal Rights</b>	<b>39</b>
16.1	Right to withdraw	39
16.2	Liquidity	39
16.3	Withdrawal offer – non Liquid Trust	39
16.4	Withdrawal Notice	40
16.5	Satisfying the withdrawal requests	40
16.6	Withdrawal Price - non Liquid Trust	41
16.7	Withdrawal requests exceed available assets	41
16.8	Closure of offer	41
16.9	Unit Holder may request withdrawal – Liquid Trust	41
16.10	Time for withdrawal	41
16.11	Staggering of withdrawal dates	42
16.12	Compulsory withdrawal of small holdings	42
16.13	Suspension by Responsible Entity	42
16.14	Other suspension of redemption	42
16.15	Funding of withdrawal requests	43
16.16	Resale of Units by Responsible Entity	43
16.17	Cancellation of Units	43
16.18	Transfer of specific assets	43
<hr/>		
<b>17.</b>	<b>Winding Up Of The Trust</b>	<b>43</b>
17.1	Events which cause a winding up	43
17.2	Process of winding up	44
17.3	Responsible Entity may withhold proceeds of realisation	44
17.4	Auditor's certificate	45

<b>18. Indemnity And Liability</b>	<b>45</b>
18.1 Indemnity from the Trust	45
18.2 Forged documents	45
18.3 Payment of taxes	45
18.4 Responsible Entity may act on professional advice	45
18.5 Responsible Entity not liable for good faith error	46
18.6 Limit of indemnity	46
18.7 Limitation of liability of Unit Holders	46
<b>19. Meetings Of Unit Holders</b>	<b>46</b>
19.1 Responsible Entity's power to call Unit Holders' meeting	46
19.2 Unit Holders power to call a meeting	46
19.3 Failure of Responsible Entity to call meeting of the Unit Holders	47
19.4 Calling of meetings of Unit Holders, by Unit Holders	48
19.5 Calling of meeting by the Court	48
<b>20. How To Call Meetings Of Unit Holders</b>	<b>48</b>
20.1 Notice of meetings	48
20.2 Notice of meetings of Unit Holders to Unit Holders, directors and auditors	49
20.3 Auditors entitled to other communications	49
20.4 Contents of notice of meetings of a Unit Holder	50
20.5 Notice of adjourned meetings	50
<b>21. Unit Holders' Rights To Put Resolutions At Meetings Of Unit Holders</b>	<b>50</b>
21.1 Unit Holders' resolutions	50
21.2 Responsible Entity giving notice of Unit Holders' resolutions	51
21.3 Unit Holders' statements to be distributed	52
<b>22. Holding Meetings Of Unit Holders</b>	<b>53</b>
22.1 Time and place for meeting of Unit Holders	53
22.2 Technology	53
22.3 Quorum	53
22.4 Chairing meetings of Unit Holders	55
22.5 Auditors' right to be heard at meetings of Unit Holders	55
22.6 Adjourned meetings	55
<b>23. Proxies And Body Corporate Representatives</b>	<b>56</b>
23.1 Who can appoint a proxy	56
23.2 Rights of proxies	56
23.3 Sending appointment forms or lists of proxies to all Unit Holders	56
23.4 Appointing a proxy	57
23.5 Proxy documents	58
23.6 Validity of proxy vote	59
<b>24. Body Corporate Representative</b>	<b>59</b>
<b>25. Voting At Meetings Of Unit Holders</b>	<b>59</b>

25.1	How many votes for a Unit Holder	60
25.2	Jointly held interests	60
25.3	Responsible Entity and associates cannot vote if interested in resolution	60
25.4	Objections to a right to vote	60
25.5	Votes need not all be cast in the same way	60
25.6	How voting is carried out	60
25.7	Matters on which a poll may be demanded	61
25.8	When a poll is effectively demanded	61
<hr/>		
<b>26.</b>	<b>Minutes And Unit Holders' Access To Minutes</b>	<b>61</b>
26.1	Minutes	61
26.2	Unit Holders' access to minutes	62
<hr/>		
<b>27.</b>	<b>Complaints Handling</b>	<b>62</b>
27.1	Complaints handling officer	63
27.2	A Unit Holder may make a complaint	63
27.3	Acknowledgment of a complaint	64
27.4	Consideration of complaints	64
27.5	Resolving a complaint	64
27.6	Further avenues open to Unit Holders	65
27.7	Recording complaints	65
27.8	Disclosure of existence of complaints handling procedure	66
<hr/>		
<b>28.</b>	<b>Changing The Constitution</b>	<b>66</b>
28.1	Power to amend	66
28.2	Lodgement of amendment	66
<hr/>		
<b>29.</b>	<b>Limitation Of Unit Holding By Each Unit Holder</b>	<b>66</b>
29.1	Interpretation	66
29.2	Limitation	66
29.3	Responsible Entity's consent	67
29.4	Relevant interest	67
29.5	Person concerned	67
29.6	Associate	67
29.7	Control	68
29.8	Power of Responsible Entity	69
29.9	Disposal	70
<hr/>		
<b>30.</b>	<b>Compliance Plan</b>	<b>72</b>
<hr/>		
<b>31.</b>	<b>Miscellaneous Provisions</b>	<b>73</b>
31.1	Service of notice	73
31.2	Payments	74
31.3	Rounding	74
31.4	Discharge of Responsible Entity	74
31.5	Retention of documents	74
31.6	Changes to the Law	75
31.7	Uncontrolled events	75

31.8	Applicable law	75
------	----------------	----

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<b>SCHEDULE 1 – Dictionary</b>		<b>77</b>
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<b>SCHEDULE 2 – Rules for Interpretation</b>		<b>87</b>
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## TERMS

### 1. Constitution of the Trust

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#### 1.1 Constitution binding on the parties

This Constitution operates as a deed and is binding on-

- (a) all Unit Holders (as they are constituted from time to time), and
- (b) the Responsible Entity.

[Section 601GB]

#### 1.2 Confirmation of appointment

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

#### 1.3 Benefits and obligations

This Constitution is made with the intention that the benefits and obligations may enure not only to the Responsible Entity but also to the extent provided to every Unit Holder. The Units will be held upon and subject to the provisions contained in this Constitution

#### 1.4 Establishment of Trust

Immediately after this Constitution is signed the Responsible Entity will lodge the sum of ten dollars (\$10.00) to establish and constitute the Trust. The Responsible Entity will hold this amount together with all other money and property paid to, transferred to or vested in and accepted by the Responsible Entity, as additions to the Fund.

#### 1.5 Purpose of the Trust

The purpose of the Trust is to invest in Authorised Investments.

### 2. Trust Property

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#### 2.1 Responsible Entity to hold the Fund for Unit Holders

- (a) This clause 2.1 is to be read subject to clause 2.2.



- (b) The Responsible Entity declares it will hold the Fund on trust for the Unit Holders on the terms contained in this Constitution.

[Section 601FC(2)]

## **2.2 Appointment of a Custodian**

The Responsible Entity may enter into an agreement (on terms and conditions as it considers appropriate) with a company or firm to carry out the duties of the Custodian of the Fund on behalf of the Responsible Entity as required by the terms of this Constitution. The Responsible Entity is required to remunerate the Custodian and pay all its expenses out of the Fund. Further, the Responsible Entity, on behalf of the Unit Holders is entitled to indemnify the Custodian from and against all losses, claims and damages arising out of the proper performance of its duties.

[Section 601FB(2)]

## **3. Name and Tern of Trust**

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### **3.1 Name of the Trust**

The Trust will be known as the Westralia Property Trust ARSN 096 588 046. However, the Responsible Entity may designate another name at any time in its complete discretion.

### **3.2 Term of the Trust**

The Trust is established immediately ASIC registers the Trust pursuant to Part 5C.1 of the Law and subject to terminating earlier in accordance with this Constitution, will continue in operation until the expiration of 80 years less one day from the date of registration of the Trust.

### **3.3 Listing**

- (a) The Responsible Entity is authorised to list the Trust and quote the Units on an appropriate securities exchange such as the ASX or the APX.
- (b) If the Trust is admitted to the Official List of the ASX, the following clauses apply:
- (i) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done.
  - (ii) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.

- (iii) 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).
- (iv) 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.
- (v) 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.
- (vi) 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.

### **3.4 Additional listing rule requirements**

At all times that the Trust is admitted to the Official List:

- (a) The Responsible Entity must not remove or change a Unit Holder's right to vote or receive distributions in respect of a Unit except in any of the following cases:
  - (i) Any instalment which is due and payable on that Unit has not been paid.
  - (ii) In the case of the voting right, the instrument appointing a proxy in respect of that Unit has not been deposited in accordance with this Constitution.
  - (iii) In the case of the voting right, the Unit Holder became the holder of that Unit after the time determined under the Law as the "specified time" before deciding who held the Unit for the purposes of the meeting.
  - (iv) The right is removed or changed under Australian legislation, or under a provision of this Constitution that must be included to comply with Australian legislation.
  - (v) The right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules, or that ASX has approved as appropriate and equitable.
  - (vi) The right is removed or changed under a court order.

- (b) A Unit Holder must not be divested of that Unit except in any of the following cases:
- (i) The divestment is under Australian legislation, and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation, or is approved by ASX as appropriate and equitable.
  - (ii) The divestment is under a provision in this Constitution that must be included to comply with Australian legislation.
  - (iii) The divestment is under a provision in this Constitution that is permitted by the Listing Rules, or that ASX has approved as appropriate and equitable.
  - (iv) The divestment is under a court order.
  - (v) The divestment is under a lien permitted by the Listing Rules.
- (c) The Responsible Entity must not divest a Unit Holder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the ATSC Settlement Rules. Without limitation to clause 3.3, at all times that the Trust is admitted to the Official List the Responsible Entity must comply with ATSC Settlement Rule 5.12.

## **4. Creation and Sale of Units**

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### **4.1 Units**

The beneficial interest in the Fund is and will be divided into Units. Subject to the terms of issue, every Unit confers an equal interest in the Fund, but not an interest in any particular part of the Fund.

### **4.2 Issue price**

- (a) In addition to any other power the Responsible Entity has to issue Units under this Constitution, the Responsible Entity may issue Units at any time to any person at an Issue Price –
- (i) where the Trust has been admitted to the Official List and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), determined by the Responsible Entity provided that the Issue Price of that Unit is equal to the Market Price for Units on the Business Day prior to the day on which the offer or issue is made, and

- (ii) while the Units are not Officially Quoted, where Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust has been removed from the Official List, at the Current Unit Value on the Business Day prior to the day the offer or issue is made.
- (b) The Responsible Entity may issue Units at an Issue Price determined by the Responsible Entity being a price other than the Issue Price calculated in accordance with clause 4.2(a) where –
  - (i) the Trust has been admitted to the Official List and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily)
  - (ii) the issue is not to the Responsible Entity or any person associated with the Responsible Entity
  - (iii) the amount by which the Issue Price of those Units is less than the Market Price for Units does not exceed 10 percent, and
  - (iv) the issue is of Units that would not immediately after the issue (when aggregated with any other issue of Units pursuant to this clause 4.2(b) up to one year previously) comprise more than 10 percent (or such greater percentage as may be permitted from time to time by both the Law and the Listing Rules) of either all of the Units in the Trust or the Units on issue in the Trust in the same class as the Units comprised in the issue.
- (c) The Responsible Entity may issue Units at an Issue Price determined by the Responsible Entity, being a price other than the Issue Price calculated in accordance with clause 4.2(a), where –
  - (i) the Trust has been admitted to the Official List and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily)
  - (ii) the issue is not to the Responsible Entity or any person associated with the Responsible Entity
  - (iii) the Unit Holders approve the issue
  - (iv) any notice convening a meeting of Unit Holders to vote on the issue contains particulars of the use to be made of the money raised by the issue

- (v) an approval for the purposes of clause 4.2(c)(iii) is given by special resolution of the Unit Holders where Unit Holders with at least 25 percent of the total value of all the Units of Unit Holders entitled to vote on the question vote on the question at the meeting, and
  - (vi) if, in making the calculations referred to in clause 4.2(c)(v), any vote of a person to whom the Units are to be issued or any vote of any associate of that person were not counted, the resolutions would be passed.
- (d) Subject to the Law and any conditions imposed by the Law, the Responsible Entity may issue Units at a price other than a price determined under clause 4.2(a) pursuant to offers made at substantially the same time to only and all of the then Unit Holders if—
- (i) all the Units offered are in the same class
  - (ii) the price of all the Units offered is the same
  - (iii) a discount to the price which would otherwise apply pursuant to clause 4.2(a) does not exceed 50 percent, and
  - (iv) the amount of Units offered to each Unit Holder is proportionate to the value of that Unit Holder's Unit holding.

However, if the Responsible Entity reasonably considers that it would be in the best interests of Unit Holders to exclude Unit Holders that are connected to a place outside this jurisdiction (foreign Unit Holders) and not unfair to those Unit Holders, the Responsible Entity need not offer or issue the Units to the foreign Unit Holders if the Units are sold taking reasonable steps to maximise the sale price net of expenses of the sale and the foreign Unit Holders are properly paid the net sale price.

- (e) Subject to the Law and any conditions imposed by the Law, the Responsible Entity may issue an Option and a Unit may be issued on exercise of the Option at a price determined by the Responsible Entity if the Options are issued pursuant to offers made at substantially the same time to only and all the then Unit Holders in proportion to the value of their Unit holding if—
- (i) all the Options offered are in the same class
  - (ii) the issue and exercise price of all the Options offered is the same

- (iii) the means of calculating the exercise price is set out in the terms of issue of the Option, and
- (iv) the amount by which the exercise price of the Option is less than the price that would otherwise apply pursuant to clause 4.2(a) does not exceed 50 percent on the date of the exercise of the Option.

However, if the Responsible Entity reasonably considers that it would be in the best interests of Unit Holders to exclude Unit Holders that are connected to a place outside this jurisdiction (foreign Unit Holders) and not unfair to those Unit Holders, then the Responsible Entity need not offer or issue the Options to the foreign Unit Holders if the Options are sold, taking reasonable steps to maximise the sale price net of expenses of the sale and the foreign Unit Holders are properly paid the net sale price.

- (f) Subject to the Law and any conditions imposed by the Law, the Responsible Entity may issue Units at a price other than a price determined under clause 4.2(a) under an arrangement where—
  - (i) the whole or part of any money payable to a Unit Holder under the Constitution by way of a distribution of capital or Income is applied in payment of the Application Price for Units
  - (ii) each Unit Holder may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the distributions which are, or should otherwise be, payable to that Unit Holder
  - (iii) all the Units issued under the arrangement are of the same class
  - (iv) the price of each Unit issued pursuant to that arrangement at substantially the same time is the same, and
  - (v) the amount by which the price is less than the amount that would otherwise apply pursuant to clause 4.2(a) does not exceed 10 percent.

However, if the Responsible Entity reasonably considers that it would be in the best interests of Unit Holders to exclude certain members that are connected to a place outside this jurisdiction (foreign Unit Holders) and not unfair to those Unit Holders, the Responsible Entity need not offer or issue the Units to the foreign Unit Holders if the Units are sold taking reasonable steps to

maximise the sale price net of expenses of the sale and the foreign Unit Holders are properly paid the net sale price.

- (g) Subject to the Law and any conditions imposed by the Law, the Responsible Entity may issue Units at a price individually negotiated and agreed between the Responsible Entity and a person who is wholesale client within the meaning of the Law being a price which differs from the price which would otherwise apply pursuant to clause 4.2(a). However, the price of the Units issued to that person must be lower only to the extent of lower fees that are payable to the Responsible Entity in relation to the acquisition (fee arrangement) of the Units and the following conditions are satisfied:
- (i) The Responsible Entity ensures that if fees may be individually negotiated with wholesale clients, then a statement of that fact is disclosed to all Unit Holders by no later than the date of the first communication the Responsible Entity makes to all Unit Holders which is made after the date the fee arrangement is first offered.
  - (ii) The Responsible Entity ensures that if fees may be individually negotiated with certain wholesale investors, then a statement of that fact is disclosed in any Disclosure Document used for an offer of Units.
  - (iii) The fee arrangement does not adversely affect the fees that are paid or to be paid by any other Unit Holder who is not a party to a fee arrangement.
- (h) Subject to the Law and any conditions imposed by the Law, the Responsible Entity may issue Units at a price other than a price determined under clause 4.2(a), where:
- (i) the Trust has been admitted to the Official List, and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
  - (ii) the offer for the issue of Units is made to each Unit Holder;
  - (iii) each offer is made on the same terms and conditions and on a non-renounceable basis;
  - (iv) the Issue Price is less than the Market Price during a specified period in the 30 days prior to either the date of the offer or the date of the issue;

- (v) no Unit Holder may be issued with Units with Application money totalling more than \$5,000 in any consecutive 12 month period,

provided that an offer need not be made to any Unit Holder whose address is in a place where the Responsible Entity reasonably considers that it is not lawful or not practical for the Responsible Entity to offer and issue Units to the person under the arrangement.

For the purposes of this clause 4.2(h):

- (vi) if a trustee or nominee is expressly noted on the Register as holding interests on account of another person (Beneficiary), then:
- A. the Beneficiary is taken to be the Unit Holder in relation to those Units; and
  - B. any issue of Units to the trustee or nominee is taken to be an issues to the Beneficiary;
- (vii) if the Unit must, under the terms on which it is traded, only be transferred together with one or more other interests or other financial products (together a Stapled Security), then the \$5,000 limit in this clause 4.2(h) applies to the Stapled Security as if its component interests and product constituted a single interest rather than to any of those components separately; and
- (viii) a reference to an offer of the issue of Units includes a reference to inviting an application for the issue of the Unit.
- (i) The Issue Price per Unit for the first fundraising for the Trust by the Responsible Entity must be \$1.00.

[Section 601GA(1)(a)]

### **4.3 Satisfaction of the Issue Price**

The Issue Price may be satisfied in such manner as the Responsible Entity determines, including by payment of cash or by transfer to the Responsible Entity at their Market Value of investments acceptable to the Responsible Entity, or by a combination of these methods.

### **4.4 Different classes of Units**

The Responsible Entity may issue Units in two or more classes with special rights or restrictions and those rights and restrictions, subject to the Listing Rules, will prevail over any inconsistent provisions of this Constitution.



## 4.5 Options

The Responsible Entity may issue Options to subscribe for Units on terms and conditions it determines. On the exercise of an Option, the Option Holder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.

## 4.6 Market Price

The “Market Price” of a Unit on any Business Day (being the relevant Business Day) means:

- (a) the average traded price (weighted by volume) of a Unit for all sales on ASX (excluding special crossings) for the period of 10 Business Days (or such longer period as determined by the Responsible Entity after consideration of the volume and number of transactions and any other factors that the Responsible Entity considers relevant and which in the opinion of an Approved Market Analyst is a reasonable period of Business Days to have regard to, to fairly arrive at the current market price of the Unit) immediately preceding (but not including) the relevant Business Day (whether or not a sale was recorded on any particular day); or
- (b) if the Responsible Entity believes that the calculation in clause 4.6(a) does not provide a fair reflection of the current market price of a Unit, an amount calculated in a manner which complies with the Law, is set out in the Disclosure Document for the issue of Units for which market price is being determined and which in the opinion of an Approved Valuer will approximate the market price of a Unit at or around the relevant Business Day.

## 5. Application and Issue of Units

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### 5.1 Payment of application money

- (a) Each applicant must, at the time of lodging an application for Units, pay to the Responsible Entity (or its agent) their application money.
- (b) All cheques, payment orders, (or other negotiable instruments accepted by the Responsible Entity), in relation to an application for Units must be drawn in favour of the Responsible Entity (or if the Responsible Entity has appointed an agent for the purpose, then in favour of the agent) on account of the Trust and the applicant.

## **5.2 Refunding application money**

If application money is paid and Units are not issued to the applicant who paid the application money within 4 months after the payment was received by the Responsible Entity, then the application money must be refunded to the applicant unless the applicant expressly permits the Responsible Entity to hold the application money for a longer time.

## **5.3 Form of application**

An application for Units must be in such form as the Responsible Entity determines. Subject to any Relief, the Responsible Entity may determine that such application not be in writing.

## **5.4 Responsible Entity may refuse an application**

- (a) The Responsible Entity may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.
- (b) If any application is refused, then the Responsible Entity must refund any money paid by that applicant to the applicant within five Business Days after the refusal.

## **5.5 Issue of Units**

The Responsible Entity is taken to have issued units to a Unit Holder on a date determined by the Responsible Entity.

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## **6. Register of Unit Holder**

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### **6.1 Responsible Entity must maintain the Register**

The Responsible Entity must keep and maintain or cause to be kept and maintained an up to date Register of Unit Holders. The Register will be in a form and contain particulars as are required by the Law or any declaration, exemption or ruling granted under the Law. The Register may also include other particulars, as the Responsible Entity may from time to time consider appropriate.

### **6.2 Information included in the Register**

Subject to clause 6.1, there will be entered into the Register the following details:

- (a) The names, addresses and descriptions of the Unit Holders from time to time.

- (b) The Units from time to time held by each Unit Holder.
- (c) The date at which the name of each Unit Holder was entered in the Register in respect of the Unit Holder's Units.
- (d) Date at which any person ceased to be the holder of Units.

### **6.3 Removing information from the Register**

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

### **6.4 Inspection of the Register**

The Responsible Entity will permit any Unit Holder and any other person nominated by the Unit Holder to do either or both of the following:

- (a) Inspect the Register on the following conditions:
  - (i) The inspection may be carried out free of charge by a Unit Holder by providing five Business Days notice to the Responsible Entity. For any other person nominated by the Unit Holder, by providing five Business Days notice to the Responsible Entity, at a charge prescribed by the Responsible Entity from time to time, however the charge will not exceed the maximum amount, if any, prescribed from time to time by the Law.
  - (ii) The request for an inspection must be for a proper purpose. In determining what a proper purpose is, the Responsible Entity must refer to Section 177(1) of the Law.
  - (iii) The Unit Holder, or other person nominated by the Unit Holder, must confirm in writing prior to the inspection stating that-
    - A. the person must not use information about a person obtained from the Register to contact or send material to the person, and
    - B. the person must not disclose information of that kind knowing that the information is likely to be used to contact or send material to the person unless that use or disclosure of the information is –

- relevant to the holding of the Units recorded in the Register or the exercise of the rights attaching to them, or
- approved by the Responsible Entity.

[Section 177]

(b) Obtain a copy of the Register:

(i) The Responsible Entity must give any person (including Unit Holders) a copy of the Register (in part or in whole), provided the following conditions are satisfied:

- A. The person requests a copy of the Register in writing.
- B. The person signs a statutory declaration that complies with section 6.4(a)(iii) of this Constitution.
- C. The person pays any fee required by the Responsible Entity provided the charge will not exceed (for each copy) the maximum amount, if any, prescribed from time to time by the Law.

(ii) If the person complies with the requirements of clause 6.4(b)(i), then the Responsible Entity must provide a copy of the Register to that person within seven days of the date of the written request.

(iii) [Section 173(3)]

(c) If the person contravenes Section 177(1) of the Law, then they are liable to compensate anyone else who suffers loss or damage because of the contravention.

(d) If the person makes a profit from a contravention of Section 177(1) of the Law, then that person owes a debt to the Trust.

(e) If the person owes a debt to the Trust as detailed in section 6.4(d), then the debt may be recovered by the Responsible Entity as a debt due to it. Any amount paid or recovered in respect of the debt forms part of the Fund.

## 6.5 Inspection times

Any inspection under clause 6.4 may only be done during normal business hours of the Responsible Entity on any Business Day.

## **6.6 Closure of the Register**

If it is not contrary to the Listing Rules, the Responsible Entity may close the Register or part of the Register for any time or times. However, the Register may not be closed for more than 30 days in aggregate in each Financial Year.

## **6.7 Register is evidence of who are Unit Holders**

The Responsible Entity is entitled to regard the Register as conclusive proof as to who is a Unit Holder at any given time.

## **6.8 Change of details**

A Unit Holder must notify the Responsible Entity of any change of name or address as soon as reasonably possible after the change occurs. The Responsible Entity must update the Register accordingly.

## **6.9 Noting an encumbrance**

- (a) The Responsible Entity may note an encumbrance on any Unit Holder's Units at the request of –
  - (i) the Unit Holder, or
  - (ii) the person who claims to have the benefit of the encumbrance if that person can produce evidence satisfactory to the Responsible Entity that the Unit Holder has granted the encumbrance over the Unit Holder's Units to that person.
- (b) If the Responsible Entity makes note of an encumbrance on the Register, then the Responsible Entity must record sufficient details so that any person inspecting the Register will be put on notice as to–
  - (i) the existence of an encumbrance
  - (ii) the name of the person who holds the encumbrance
  - (iii) the date on which the encumbrance was created, and
  - (iv) the date on which the encumbrance was recorded in the Register.

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## **7. Interests of Unit Holders**

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### **7.1 Joint holders**

If the same Units are held by more than one Unit Holder, then these Unit Holders hold them as joint tenants. The Responsible Entity is not bound to register more than three persons as joint holders of a Unit.

### **7.2 Restrictions on Unit Holders**

A Unit Holder has no right or entitlement to, and must not-

- (a) interfere with any rights, powers, authorities or discretions of the Responsible Entity under this Constitution
- (b) exercise a right, power or privilege in respect of the Fund or lodge a caveat or other notice affecting the Fund or otherwise claim any interest in the Fund
- (c) require the Fund or any part of it to be transferred to that Unit Holder, or
- (d) give any directions to the Responsible Entity if it would require the Responsible Entity to do or omit to do anything which may result in—
  - (i) the Trust ceasing to comply with the Listing Rules, or
  - (ii) the exercise of any discretion expressly conferred on the Responsible Entity by this Constitution or the determination of any matter which requires the approval of the Responsible Entity under this Constitution.

### **7.3 Relationship between Responsible Entity and Unit Holders**

Each and every Unit Holder and the Responsible Entity agree—

- (a) Except to the extent provided in a separate agreement between a Unit Holder and the Responsible Entity no Unit Holder is personally liable to the Responsible Entity or any creditor of the Trust.
- (b) their rights, duties and obligations and liabilities in relation to both the Trust and the Constitution are in every case several and not joint or joint and several
- (c) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other

- (d) each Unit Holder does not have authority to act for, or to create or assume any responsibility or obligation on behalf of another Unit Holder
- (e) except as otherwise specifically provided in this Constitution, no Unit Holder may act as agent or have authority to act on behalf of another Unit Holder, and
- (f) each Unit Holder may transfer, sell, assign or dispose of their Units in the Trust in accordance with the provisions of this Constitution, and, subject to clauses 14 and 15 may do so without the approval or consent of the Responsible Entity or other Unit Holders.

## **8. Responsible Entity's Powers**

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### **8.1 General powers**

Subject to this Constitution, the Responsible Entity has-

- (a) all the powers in respect of the Fund that it is possible under the law to confer on a trustee
- (b) all the powers it would have if it were the absolute owner of the Fund and were acting in its personal capacity, and
- (c) all the powers necessary or desirable for the performance of its functions, duties and powers in respect of the Trust (including its obligations under this Constitution).

Where a power conferred by this Constitution is similar to, but larger than, a power conferred by a statute, it operates and is exercisable without any limitation or restriction imposed by the statute on that statutory power.

### **8.2 Power to borrow**

The Responsible Entity may-

- (a) borrow, raise money or otherwise obtain financial accommodation for the purposes of the Trust, on terms it thinks fit to benefit the Trust, and
- (b) use the Fund as security, but only in relation to borrowing, raising money or obtaining financial accommodation for the purposes of the Trust.

### **8.3 Investment power**

- (a) The Responsible Entity has all the powers of a natural person to invest and deal with the Fund and any investments. The Responsible Entity has

absolute and uncontrolled discretion as to these powers and investment and dealing provided always that investments will only be made in Authorised Investments.

- (b) Without limiting the above, the Responsible Entity has the power to use the Fund to repay any borrowing or other financial accommodation established pursuant to its power in clause 8.2.

#### **8.4 Management power**

The Responsible Entity may do whatever it thinks proper in the management and operation of the Trust, and without limiting anything in this clause 8, those powers may include the following:

- (a) Do all work required to facilitate the acquisition of assets of the Trust.
- (b) Carry out refurbishment of assets in the Fund where the Responsible Entity reasonably believes the refurbishment will either maintain or enhance the value of the Fund.
- (c) Collect all income from the Fund and distribute the income due to Unit Holders under this Constitution.
- (d) Repair and maintain the assets in the Fund.
- (e) Attend to communications with tenants of real property in the Fund.
- (f) Organise fire services and security of real property in the Fund.
- (g) Pay any costs associated with the ownership and management of the assets in the Fund.
- (h) Enter into any service contracts or agency agreements the Responsible Entity believes necessary.
- (i) Pay any other costs in relation to the Fund (whether they are of a capital or revenue nature).
- (j) Negotiate leases, options to renew, rent reviews, renewals, options, surrenders of leases or any other kind of dealing with a tenant of real property in the Fund.
- (k) Acquire or dispose of any fixtures, fittings or chattels.
- (l) Negotiate the entry into deeds and arrangements for the acquisition of assets for the Trust.



- (m) Sell or dispose of any part or all of the Fund.
- (n) Take or defend any court or arbitration proceedings to protect the Fund or the Trust.
- (o) Deal with any authorities (public or otherwise).
- (p) Keep records relating to all financial transactions and prepare any necessary income tax and other returns and report on such matters to Unit Holders.
- (q) Appoint an auditor to audit the accounts of the Trust.
- (r) Operate any Bank accounts as are deemed necessary by the Responsible Entity.
- (s) Delegate the Responsible Entity's authority to such persons or corporations as the Responsible Entity thinks fit in accordance with the Law.
- (t) Appoint any consultant or professional to advise the Responsible Entity in relation to the exercise of the Responsible Entity's duties.
- (u) Make all necessary payments required for the proper management of the Trust.
- (v) Plan and build any extensions to real property in the Fund that are necessary or desirable in the opinion of the Responsible Entity.
- (w) Employ any necessary personnel or engage contractors and subcontractors, as the Responsible Entity thinks necessary.
- (x) Generally do all things necessary to give effect to the terms of this Constitution.

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## **9. Responsible Entity's Rights And Duties**

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### **9.1 Power to enter transactions**

The Responsible Entity may at any time, contract, or enter into any transaction with a person dealing with the Trust.

### **9.2 Interested dealings by Responsible Entity**

- (a) Subject to the Act and the Listing Rules, the Responsible Entity may–

- (i) be interested in any contract or transaction with itself (as trustee of the Trust on in another capacity) or a Unit Holder, including any contract or transaction involving the sale of property to the Trust or the purchase of property by the Trust
  - (ii) act in the same or similar capacity in relation to any other Managed Investment Scheme (whether or not these schemes are registered)
  - (iii) hold and deal with Units in the Trust in any capacity and as such have all the rights of a Unit Holder in relation to the Units it holds
  - (iv) hold or deal in or have any other interest in an Authorised Investment, or
  - (v) act in any capacity as a representative, delegate or agent of a Unit Holder.
- (b) For the purposes of this clause, the Responsible Entity includes an officer, employee, shareholder or Associate of the Responsible Entity.
- (c) Where the Responsible Entity acts in accordance with clause 9.2(a)–
- (i) it may retain and need not account for any benefit derived by it, and
  - (ii) it will not be in breach of any fiduciary obligations owed to the Unit Holders provided it has acted in good faith.

### **9.3 Insurance**

The Responsible Entity must insure and keep insured in the name of the Trust and any other party the Responsible Entity believes necessary any insurable assets in the Fund.

### **9.4 Opening bank accounts**

The Responsible Entity (or the Custodian as directed by the Responsible Entity) may open and maintain Bank accounts on behalf of the Trust.

### **9.5 Certificates**

- (a) If it is not contrary to the Listing Rules, the Responsible Entity may issue certificates for Units to Unit Holders.
- (b) If the Responsible Entity decides to issue certificate, then the certificates will set out the Units owned by the respective Unit Holders, and these will

be sent to Unit Holders no later than two months after the allotment of the Units.

## **9.6 Tax returns**

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

## **9.7 Preparation of Financial Statements**

- (a) A financial report and directors' report for the Trust must be prepared for each Financial Year in accordance with the requirements of the Law. [Section 292]
- (b) The financial report for the Financial Year must comply with the Accounting Standards. [Section 296(1)]
- (c) Financial reports must comply with any further requirements in the Law. [Section 296(2)]
- (d) The Financial Statements and notes for the Financial Year must give a true and fair view of –
  - (i) the financial position and performance of the Trust, and
  - (ii) if consolidated Financial Statements are required, then the financial position and performance of the consolidated entity.

[Section 297]

- (e) The financial report for the Financial Year must consist of the –
  - (i) Financial Statements for the Financial Year
  - (ii) notes to the Financial Statements, and
  - (iii) directors' declaration about the Statements and notes.

[Section 295(1)]

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- (f) The Financial Statements for the Financial year are –
- (i) a profit and loss statement for the Financial Year
  - (ii) a balance sheet as at the end of the end of the Financial Year
  - (iii) a statement of cash flows for the Financial Year, and
  - (iv) if required by the Accounting Standard, a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (g) The notes to the Financial Statements are –
- (i) disclosures required by the Law
  - (ii) notes required by the Accounting Standards, and
  - (iii) any other information necessary to give a true and fair view in accordance with clause 9.7(d).
- (h) The directors' declaration is a declaration by the directors –
- (i) the Financial Statements, and the notes referred to in clause 9.7(g) comply with the Accounting Standards
  - (ii) the Financial Statements and notes give a true and fair view (see clause 9.7(d)).
  - (iii) whether, in the directors' opinion, there are reasonable grounds to believe the Trust will be able to pay its debts as and when they become due and payable, and
  - (iv) whether, in the directors' opinion, the Financial Statements and notes are in accordance with the Law, including –
    - A. Section 296 (compliance with Accounting Standards), and
    - B. Section 297 (true and fair view).
- (i) The declaration in clause 9.7(h) must –
- (i) be made in accordance with a resolution of the directors
  - (ii) specify the date on which the declaration is made, and
  - (iii) be signed by a director.

## **9.8 Audit of annual financial report**

The Trust must have the financial report for the Financial Year audited in accordance with Division 3 of Part 2M.3 of Chapter 2M of the Law and obtain an Auditor's report. [Section 301]

## **9.9 Special rules for listed registered schemes**

The annual directors' report required under Section 300 of the Law, must also include the information specified in Section 300(12) of the Law.

## **9.10 Annual Financial Report to Unit Holders**

- (a) The Responsible Entity must report to Unit Holders for a Financial Year by either –
- (i) sending Unit Holders copies of –
    - A. the financial report for the Financial Year
    - B. the directors' report for the Financial Year (refer Sections 298–300 of the Law), and
    - C. the Auditor's report on the financial report, or
  - (ii) sending Unit Holders a concise financial report for the Financial Year which complies with the Law.

[Section 314]

- (b) The Responsible Entity must report to the Unit Holders within three months after the end of the Financial Year.

[Section 315]

## **9.11 Unit Holder's choice for receiving financial reports**

- (a) A Unit Holder may ask the Responsible Entity –
- (i) not to send the Unit Holder the annual financial reports, or
  - (ii) to send them the full financial report, the directors' report and the Auditor's report.
- (b) The request may be a standing request for a particular Financial Year. The Unit Holder is not entitled to a report for a Financial Year earlier than the one for the Financial Year in which the request is made.

- (c) The time for complying with the request under clause 9.11(a) is the later of –
- (i) seven days after the request is received, or
  - (ii) three months after the end of the Financial Year.
- (d) A full financial report, directors' report and an Auditor's report are to be sent free of charge unless the Unit Holder has already received a copy of them free of charge.

[Section 316]

## 10. Fees And Expenses

### 10.1 Fees payable to the Responsible Entity

The Responsible Entity is entitled to receive the following fees to be paid out of the Income or capital of Trust:

- (a) A fee of up to 5 percent of the amount invested (excluding the amount applied to acquisition costs) in any Authorised Investment acquired for the Trust. This fee is payable on the day the investment is made or completed (whichever is the later). The fee is in respect of the co-ordination of the investment, including undertaking and managing due diligence enquiries.
- (b) Annual fees for each year of the Trust (and pro rata for part of a year during which the Responsible Entity will remain as the responsible entity) are made up of four components calculated and paid as follows:
  - (i) Total asset component – paid monthly in arrears and calculated as follows:

$$\text{Total asset component} = 0.0025/12 \times (\text{TAV} - \text{VDP})$$

Where:

TAV = Total Asset Value at the end of the relevant month

VDP = Market Value of Development Projects at the end of the relevant month.

- (ii) Income component – for each of the first three quarters of a Financial Year, the amount calculated as follows:

$$\text{Income component} = 0.035 \times (\text{NI} - \text{A} + \text{B})$$

Where:

NI = Net Income for the relevant quarter

A = Net Income for the relevant quarter which is attributable to Development Projects

B = The total of the following items for the relevant quarter:

- depreciation, building allowances and other non cash expenses
- interest, finance and other borrowing expenses
- leasing, legal and professional fees
- administration expenses, including auditing, accounting, Custodian's fees, outgoing and expenses and management fees
- costs of issuing any Disclosure Documents, and
- marketing and promotional expenses.

(iii) Income component – for the final quarter of a Financial Year, the amount calculated as follows:

$$\text{Income component} = 0.035 \times [(\text{NIY} - \text{AY} + \text{BY}) \times \text{C}] - \text{D}$$

Where:

The result of the calculation cannot be less than zero.

NIY = Net Income for the fourth quarter

AY = Net Income for the fourth quarter which is attributable to Development Projects

BY = The total of the following items for the fourth quarter:

- depreciation, building allowances and other non cash expenses
- interest, finance and other borrowing expenses
- leasing, legal and professional fees

- administration expenses, including auditing, accounting, Custodian's fees, outgoings and expenses and management fees
- costs of issuing any Disclosure Documents, and
- marketing and promotional expenses.

C = The fraction which is the actual Distributable Income payable in the relevant Financial Year divided by the forecast Distributable Income for the relevant Financial Year, but in no case can "C" exceed 1.0. For the purposes of calculating "C", the Responsible Entity must forecast the Distributable Income prior to the commencement of each Financial Year for which the forecast is being made.

D = The total income component paid or payable for the first three quarters of the Financial Year.

The income component in this paragraph 10.1(b)(ii) is calculated and paid quarterly in arrears.

(iv) Capital growth - calculated and paid annually as follows:

$$\text{Capital growth component} = 0.035 \times [(E) - (F + G)]$$

Where:

E = Market Value of Authorised Investments held at the end of the Financial Year less the Market Value of Development Projects at the end of the Financial Year

F = Market Value at the beginning of the Financial Year of those Authorised Investments (not including Development Projects) held at the beginning and end of the Financial Year

G = The sum of the purchase prices paid for those Authorised Investments (not including Development Projects) acquired during the Financial Year and held at the end of the Financial Year.

(v) Development Projects – for all Development Projects which distribute a return on assets invested by the Trust of more than 15 percent per annum ("excess return"), 50 percent of the



excess return, calculated and paid annually at the end of each Financial Year.”

- (c) A fee of up to five percent of the Application money raised under a Disclosure Document where the purpose for raising the Application money is not to acquire an Authorised Investment. This fee is payable within seven Business Days of the issue of the Units for which the Application money is received. This fee is for the coordination of the relevant capital raising.

## **10.2 Fees payable to associates**

The Responsible Entity (or an associate or a related party of the Responsible Entity) is entitled to be paid for services and goods supplied to the Trust, including any items listed in clause 10.4(b).

## **10.3 GST payable on fees**

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

- (a) In addition to any amount or consideration expressed as payable to the Responsible Entity elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Responsible Entity will be entitled to recover from the Unit Holders an additional amount on account of GST. This additional amount must be equal to the amount of the Responsible Entity’s GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.
- (b) The Responsible Entity and the Unit Holders acknowledge and agree each supply made by the Responsible Entity under this Constitution is made –
  - (i) on a progressive or periodic basis
  - (ii) such that the consideration is to be provided on a progressive or periodic basis, and
  - (iii) such that each progressive or periodic component of the supply is to be treated as a separate supply.

## **10.4 Payment of fees and costs**

- (a) All costs, charges and expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by

the Responsible Entity or Custodian, or the performance of their duties under this Constitution or any custodian agreement will be paid out of the Fund. If the Responsible Entity or Custodian pays such costs, charges and expenses, then the Responsible Entity and the Custodian will, in addition to the remuneration payable to each of them, be indemnified and will be entitled to be reimbursed out of the Fund in respect of such costs, charges and expenses, together with any GST payable by the Responsible Entity in respect of those costs, charges and expenses.

- (b) Without limiting the generality of clause 10.4(a), such costs, charges and expenses will include the following:
- (i) All costs, charges and expenses incurred in connection with the acquisition, custody, management, transfer, financing or disposal of any assets of the Trust (for example commissions, brokerage, legal fees, accounting fees, bank charges and stamp duty).
  - (ii) Fees and expenses of any agent or delegate appointed by the Responsible Entity, including the Custodian.
  - (iii) Fees and expenses of the auditors retained in respect of the Trust.
  - (iv) Bank charges on the operation of Bank accounts.
  - (v) Costs, charges and expenses incurred in connection with obtaining any financial accommodation.
  - (vi) Tax payable by the Unit Holders or the Trust, but not Tax of the Responsible Entity which is payable by the Responsible Entity on its own account.
  - (vii) Fees and charges of any regulatory or statutory authority.
  - (viii) Fees and expenses of advisers or any other consultants employed by the Responsible Entity.
  - (ix) Real estate agent's fees up to the maximum laid down by the relevant authority governing agent's fees in the relevant State in Australia (if any such maximum exists).
  - (x) Costs of convening and holding meetings of Unit Holders.
  - (xi) Costs of printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unit Holders in accordance with

the provisions of this Constitution, including all stationery related to these matters.

- (xii) All costs, charges and expenses incurred in relation to preparation and distribution of any report or document required by Law to be prepared in respect of the Trust, or prepared by the Responsible Entity in good faith in respect of the Trust.
- (xiii) Expenses incurred in connection with the keeping and maintaining of the accounting records and registers.
- (xiv) Costs and disbursements incurred by or on behalf of the Responsible Entity in connection with its retirement and the appointment of a substitute.
- (xv) Costs and disbursements incurred by the Responsible Entity in the initiation, conduct and settlement of any court proceedings –
  - A. to enforce any provisions of this Constitution, or
  - B. in relation to the Trust or Fund.
- (xvi) Insurance premiums involved in insuring assets in the Fund.
- (xvii) Costs and disbursements incurred in the preparation and lodgement of returns under the Law, Tax Act or any other laws for the Trust.
- (xviii) Costs of acquiring, establishing and developing computer software systems required for the administration of the Trust.
- (xix) Reasonable travelling and accommodation expenses of the Responsible Entity for visits to assets of the Trust.
- (xx) Costs, charges and expenses of and incidental to the preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (xxi) Project management fees, construction management and development management fees.
- (xxii) Any money advanced by the Responsible Entity (or any other person) to secure assets for the Trust including option fees and deposits.

- (xxiii) Costs and expenses incurred in conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
  - (xxiv) All costs and disbursements in connection with the establishment, management and maintenance of any listing on any exchange or secondary market of the Trust and the performance of the functions and duties of the Responsible Entity under the Constitution.
  - (xxv) Costs, charges and expenses related to any Compliance Committee to the extent it reasonably relates to the Trust, Constitution or the Compliance Plan for the Trust relating to or including the appropriate portion of Compliance Committee's remuneration and independent legal, accounting or other professional advice required by that committee.
  - (xxvi) All costs, charges and expenses (including legal, accounting, tax, financial and other services) of establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of a Disclosure Document and the preparation, registration, distribution, due diligence and promotion of the Trust or Fund.
- (c) The Responsible Entity may pay its reimbursement out of the Fund in priority to any claim by Unit Holders.
  - (d) The Responsible Entity will be entitled to pay commission or brokerage to any agent or broker who has introduced a Unit Holder to the Responsible Entity.
  - (e) All Tax incurred in connection with the Trust by the Responsible Entity will be paid out of the Fund, and where the Responsible Entity pays such Tax, the Responsible Entity will, in addition to the remuneration payable to it under this clause be indemnified and will be entitled to be reimbursed out of the Fund in respect of such Tax.

## 10.5 Performance of duties

- (a) Despite anything else in this Constitution, the Responsible Entity is not entitled to any fees, recovery of costs or indemnity from the Fund in circumstances where the Responsible Entity has not properly performed its role under the Constitution or the Law.

- (b) The lack of entitlement to these payments pursuant to clause 10.5(a) is only in respect of that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 10.5 means the Responsible Entity is not entitled to be paid fees and costs for work performed properly.

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## **11. Income Of The Trust**

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### **11.1 Responsible Entity will collect in all money**

- (a) The Responsible Entity must collect or cause to be collected all income generated from the Fund and pay this into an account in the name of the Responsible Entity (or if a Custodian is appointed into an account in the name of the Custodian) on behalf of the Trust. The Responsible Entity will make all payments relating to the Trust from this account.
- (b) If a Custodian has been appointed, then the Custodian will attend to all payments relating to the Trust as authorised by the Responsible Entity from this account and will provide regular reconciliation and account to the Responsible Entity in accordance with the custodian agreement.

### **11.2 Calculation of Distributable Income**

The Distributable Income of the Trust for a Distribution Period or a Financial Year will be such amount as the Responsible Entity determines. If for a period ending on the last day of a Distribution Period or a Financial Year the Responsible Entity has not made a determination for the purpose of this clause 11.2, then the Distributable Income of the Trust for the relevant period will be the Net Income of the Trust for that period.

### **11.3 Persons who will receive Distributable Income**

The Distributable Income of the Trust may be transferred to a separate account, and after payment of all Tax, will, subject to clause 11.4, be distributed to Unit Holders registered at the close of business on the last day of the period to which the distribution relates (or, while the Trust is admitted to the Official List, those Unit Holders registered on the record date for that Distribution Period determined in accordance with the Listing Rules and the ASTC Settlement Rules), in proportion to their Units.

### **11.4 Reinvestment of Distributable Income**

- (a) A Unit Holder may elect to reinvest in the Trust the Distributable Income payable to that Unit Holder in a Distribution Period, by either-

- (i) completing the relevant section in the Application Form included in, or accompanied by a current Disclosure Document, or
  - (ii) subsequently notifying the Responsible Entity in writing.
- (b) If a Unit Holder elects to reinvest in the manner stipulated in clause 11.4(a), then the Responsible Entity must provide to that Unit Holder an election form in accordance with the Law, as modified by ASIC from time to time. The Unit Holder must then complete the election form and return it to the Responsible Entity.
- (c) Upon receipt of the election form by the Responsible Entity, the reinvestment procedure will take effect from the first day of the following Distribution Period.
- (d) The reinvestment procedure will continue for each Distribution Period during the term of the Trust, until such time as the Responsible Entity is notified by the Unit Holder that the reinvestment procedure is to cease, in which case the provisions of clause 11.3 will apply.
- (e) The notification referred to in clause 11.4(d) is to include details of the nominated account held with a Bank or other financial institution for payment of the Distributable Income in accordance with clause 11.3.

### **11.5 Time for distribution of Distributable Income**

The Distributable Income for a Distribution Period must be distributed by the Responsible Entity to Unit Holders no later than the Distribution Date for the relevant Distribution Period.

### **11.6 Distribution equalisation reserve**

The Responsible Entity may withhold from distributions to Unit Holders during any period an amount which the Responsible Entity considers is necessary to minimise fluctuations in distributions over the relevant period.

### **11.7 Unit Holders presently entitled to Distributable Income**

At the end (or, while the Trust is admitted to the Official List, the record date as determined in accordance with the Listing Rules or the ASTC Settlement Rules) of each Distribution Period or Financial Year the Unit Holders will be presently entitled (within the meaning of the Tax Act) to all Distributable Income derived during the relevant Distribution Period or Financial Year in proportion to the Units of which they are registered as the holders at such time.

### **11.8 Apportionment and distribution of amount categories**

The Responsible Entity may keep separate accounts of different categories and sources of Income and allocate the Income from any category or source to Unit Holders in proportion to the Units of which they are registered as the holders at the time.

### **11.9 Nature of distribution to Unit Holders**

If any question arises as to whether distributions to Unit Holders are of a capital or income nature or whether a particular expense is chargeable against capital or Income, then the question will be resolved by the Responsible Entity having regard to the following points in this order of priority:

- (a) The terms of this Constitution.
- (b) The provisions of the Tax Act.
- (c) Generally accepted accounting principles.

### **11.10 Other distributions**

The Responsible Entity may at any time determine that capital or Income be distributed to Unit Holders, however any distribution must be made to Unit Holders in proportion to the Units of which they are registered as the holders at the time.

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## **12. Deductions From Distributions**

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### **12.1 Deduction of Taxes**

The Responsible Entity may, at its discretion, deduct or require to be deducted from any amounts payable to any Unit Holder, the amount of any Tax which is paid or payable by the Responsible Entity in respect of the Unit Holder.

### **12.2 Indemnity**

The Responsible Entity is indemnified from the Fund in respect of any Tax paid by the Responsible Entity from its own funds in order to pay Tax on behalf of any Unit Holders. This indemnity applies even though the Tax may not have been paid in respect of each Unit Holder, but only one or more Unit Holders.

### **12.3 Repayment by Unit Holders**

If any payment is made from the Fund as a result of the indemnity in clause 12.2 being used, then the Responsible Entity must make all reasonable attempts to –

- (a) recover the amount from the Unit Holder who owes the money
- (b) deduct the payments owing from future distributions to that Unit Holder, or
- (c) use a combination of methods contained in clauses 12.3(a) and 12.3(b) above.

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## **13. Money Owing By Unit Holders**

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### **13.1 Interest payable**

- (a) Any amount of money due to the Responsible Entity on account of the Trust or to the Responsible Entity on its own account by any Unit Holder will attract interest on the amount outstanding from the date on which the payment was due to be made to the date it is actually paid to the Responsible Entity. The rate of interest will be the rate charged by the National Australia Bank on overdrafts in excess of \$100,000.00. Nothing in this clause obliges the Responsible Entity to seek payment of interest from any Unit Holder.
- (b) Any interest received must be paid into the Fund, except where the money is owed to the Responsible Entity on its own account, in which case the interest may be paid to the Responsible Entity.

### **13.2 Non payment of money**

If the Responsible Entity is required by law to pay (and has paid) an amount in respect of the Units of a Unit Holder, that Unit Holder is liable to reimburse the Responsible Entity for the payment which has been made. If a Unit Holder does not pay the amount of money owing to the Responsible Entity or the Trust, then the Responsible Entity is entitled to be indemnified out of the Fund. In addition, the Responsible Entity may do either of the following:

- (a) The Responsible Entity may deduct money from distributions which would otherwise be paid to the Unit Holder who owes the Responsible Entity money until such time as the Responsible Entity receives any interest and the amount which the Responsible Entity is entitled to be paid.
- (b) Send a notice to the relevant Unit Holder demanding the amount for which the Responsible Entity is entitled to be indemnified (plus interest if applicable) to be paid on or before a specified date (not earlier than 14 days after the date of service of the notice). The notice must specify that in the event of the payment not being made, the Unit Holder's Units will be liable to be sold to recover the unpaid amount.



### 13.3 Sale of Unit Holder's Units to pay debt owing by Unit Holder

- (a) For notices sent under clause 13.2(b), if the money is not paid within the specified time, then the Responsible Entity may –
  - (i) sell the Units held by the relevant Unit Holder at the market price of the Units or another price reasonably determined by the Responsible Entity and the Responsible Entity is authorised by the relevant Unit Holder to take steps and sign documents in the name of that Unit Holder as may be necessary for the sale and transfer of the Units belonging to the relevant Unit Holder, and to account to the Unit Holder for proceeds after deducting all reasonable expenses in relation to the sale
  - (ii) appoint a person to sign on behalf of the relevant Unit Holder a transfer of the Units, and
  - (iii) in priority to any transfer by the relevant Unit Holder, complete the sale.
- (b) The proceeds of the sale of the Units will be applied first on account of the amounts in respect of which the notice was sent under clause 14.2(b) and secondly in payment of the balance, (if any) remaining to the relevant Unit Holder.

### 13.4 Responsible Entity may require information from Unit Holders

- (a) Any Unit Holder who is asked by the Responsible Entity to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Responsible Entity. *For example, the information may be requested in relation to determining whether or not there exists a Tax liability in relation to the relevant Unit Holder.*
- (b) If any particular information given to the Responsible Entity under clause 13.4(a) ceases to be correct for any reason, then it is the duty of the Unit Holder who gave that information to give notice to the Responsible Entity of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unit Holder fails to provide information required by clauses 13.4(a) or 13.4(b), then the Responsible Entity will be entitled to make such assumptions as it thinks fit as to the information sought and the relevant Unit Holder will have no claim against the Responsible Entity or the Trust for any loss suffered as a result of the assumption being incorrect.

- (d) Any Unit Holder who supplies incorrect information under clauses 13.4(a) or 13.4(b) indemnifies the Responsible Entity for any expense, liability, loss or damage incurred due to the incorrect information.

## **14. Transfer Of Unit Holder's Units**

### **14.1 Right to transfer Units**

A Unit Holder is only entitled to transfer its Units in the Trust in accordance with the following provisions:

- (a) The transferee must agree to be bound by the provisions of this Constitution in a form acceptable to the Responsible Entity.
- (b) The transferee must confirm to the Responsible Entity in a form acceptable to the Responsible Entity that clause 29 does not affect the transfer.
- (c) A stamped transfer of the Units must be delivered to the Responsible Entity.
- (d) While the Trust is admitted to the Official List all transfers of Units must be effected in accordance with the Listing Rules and the ASTC Settlement Rules.

### **14.2 Responsible Entity must decline to register if criteria not met**

- (a) The Responsible Entity may decline to register any instrument of transfer unless –
  - (i) the instrument complies with the requirements in clause 14.1
  - (ii) the instrument is duly stamped (if applicable) and is accompanied by evidence the Responsible Entity may reasonably require to show the right of the transferor to make the assignment
  - (iii) all fees which are due and payable in respect of the Unit Holder's Units and the transfer (including Tax, transfer fees, registration fees, stamp duty and any other costs or fees in relation to the transfer) have been paid to the persons who are owed the fees (creditors) except if the creditors agree to waive this requirement and evidence of such waiver is produced to the Responsible Entity, and
  - (iv) the Responsible Entity approves of the transferee having regard to the capacity of the transferee to meet the obligations of Unit

Holders in the Trust (although such approval must not be unreasonably withheld).

- (b) The Responsible Entity may pay the costs and fees in respect of the transfer or dealing, and then deduct these from money to which the Unit Holder (whether as transferee or transferor) may become entitled.

#### **14.3 Entry of transfer in Register**

- (a) Upon being satisfied the provisions of this clause 14 have been complied with, the Responsible Entity will make the appropriate entry of the transfer in the Register.
- (b) The transferor Unit Holder remains the owner of the Unit Holder's Units until the name of the transferee is entered in the Register.

#### **14.4 Instrument of transfer to be retained by Responsible Entity**

Every instrument of transfer will be retained by the Responsible Entity until the end of the Trust.

#### **14.5 Transferee to be bound**

Any transferee of a Unit Holder's Units is deemed to have agreed to be bound by the provisions of this Constitution from the date of the entry of the transfer and the name of the transferee in the Register.

#### **14.6 Notice of refusal**

If the Responsible Entity declines to register any transfer, then it must send the transferee a notice of the refusal. This notice must be sent within two months (or five Business Days while the Trust is admitted to the Official List) after the instrument of transfer is lodged.

#### **14.7 Suspension prior to end of year**

Subject to the Listing Rules, the Responsible Entity may decline to register any transfer of a Unit Holder's Units during the 14 Business Days immediately preceding 1 July in any Financial Year.

#### **14.8 No responsibility to buy back or sell**

- (a) Subject to clause 16, the Responsible Entity is not required to buy back Unit Holder's Units.

- (b) The Responsible Entity is not required to provide any assistance to Unit Holders who wish to sell their Units, except where the Constitution expressly provides for the Responsible Entity to do otherwise.

#### **14.9 Restrictions on Transfer**

- (a) Subject to clause 14.10 the Responsible Entity may not do anything which may prevent, delay or in any way interfere with the registration of a transfer of Units effected under clause 14.1(d).
- (b) Except as otherwise set out in this Constitution, there is no restriction on any other transfer of Units.

#### **14.10 Restricted securities**

Notwithstanding any other provision of this Constitution -

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX
- (b) subject to the ASTC Settlement Rules in respect of CHESSE Approved Securities, the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer), or restricted securities during the escrow period except as permitted by the Listing Rules or ASX, and
- (c) during a breach of the Listing Rules relating to restricted securities, or a breach of a restriction agreement, the Unit Holder of the restricted securities is not entitled to any distributions, or voting rights in respect of the restricted securities.
- (d) In relation to Units which are CHESSE Approved Securities –
  - (i) subject to clauses 14.10(d)(ii) and 14.10(d)(iii), the Responsible Entity must not prevent, delay or in any way interfere with the registration of a proper SCH transfer
  - (ii) the Responsible Entity may apply a holding lock to specified CHESSE Approved Securities where permitted to do so by the Listing Rules, and
  - (iii) the Responsible Entity may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

### **14.11 Participation in transfer systems**

The Responsible Entity may determine that Units which are Officially Quoted will participate in the “Clearing House Electronic Sub-register System” or any other computerised or electronic system of transfer or registration. The Responsible Entity may with the approval of ASX, create rules to facilitate such participation which may be additional to or may override this clause 14.

## **15. Transmission Of Unit Holder’s Units**

### **15.1 Upon death**

- (a) Upon the death of a sole Unit Holder, the Legal Personal Trustee will be the only person recognised by the Responsible Entity as having any title to or interest in the deceased Unit Holder’s Units.
- (b) Upon the death of any one of joint holders of Units, the survivor or survivors will be the only persons recognised by the Responsible Entity as having any title to or interest in the deceased Unit Holder’s Units.

### **15.2 Survivorship upon bankruptcy or mental incapacity**

In the event of a Unit Holder becoming bankrupt or mentally incapacitated, then the Legal Personal Trustee will be the only person recognised by the Responsible Entity as having any title to or interest in that Unit Holder’s Units.

### **15.3 Application for transmission**

- (a) Any person becoming entitled to a Unit Holder’s Units in consequence of the death, bankruptcy or mental incapacity of a Unit Holder has the right to –
  - (i) be registered as the holder of such Unit Holder’s Units, or
  - (ii) transfer such Unit Holder’s Units in the same way as the Unit Holder would have been able to do before death, bankruptcy or mental incapacity, as the case may be.
- (b) The person wanting to be registered as holder of a Unit Holder’s Units under this clause 15.3(a) must deliver to the Responsible Entity –
  - (i) a certificate for the Unit Holder’s Units (if one has been issued)
  - (ii) declarations as the Responsible Entity may require

- (iii) evidence of the event which occurred giving rise to the person applying to become a registered holder, and
- (iv) any other information which the Responsible Entity considers relevant.

#### **15.4 Rights and restrictions before registration**

A person becoming entitled to a Unit Holder's Units in consequence of the death, bankruptcy or mental incapacity of a Unit Holder is entitled to receive or may give a discharge for all money payable in respect of the Unit Holder's Units. That person is not entitled to receive notices of or attend or vote at any meetings held pursuant to this Constitution until the person has become registered as holder of the Unit Holder's Units.

#### **15.5 Limit to number of registered holders**

In no case will the Responsible Entity be required to register more than two persons as holders of any one Unit Holder's Units.

### **16. Withdrawal Rights**

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For as long as the Trust is admitted to the Official List the provisions of this clause 16 will have no effect.

#### **16.1 Right to withdraw**

A Unit Holder is only entitled to withdraw from the Trust as provided for in this clause 16 and the provisions of the Law.

[Section 601GA(4)]

#### **16.2 Liquidity**

- (a) At any time while the Trust is not Liquid, then clauses 16.3 to 16.8 will apply.
- (b) At any time while the Trust is Liquid, then clauses 16.9 to 16.14 will apply.
- (c) Clauses 16.15 to 16.18 apply to withdrawal by Unit Holders whether or not the Trust is Liquid.

#### **16.3 Withdrawal offer – non Liquid Trust**

- (a) The Responsible Entity may make an offer to Unit Holders to withdraw from the Trust at any time during a Distribution Period of the Trust.

- (b) The offer must be in writing and must specify –
- (i) the period during which the offer will remain open in a Distribution Period (and this period must not be less than 21 days)
  - (ii) the assets that will be used to satisfy withdrawal requests
  - (iii) the amount of money that is expected to be available when those assets are converted to money, and
  - (iv) the method for dealing with withdrawal requests if the money available is insufficient to satisfy all requests. This must be in accordance with clause 16.7 of this Constitution.
- (c) For joint Unit Holders, a copy of the withdrawal offer need only be given to the joint Unit Holder named first in the Register.

[Section 601KB(4)]

- (d) Only one withdrawal offer may be open at any time in relation to a particular Unit in the Trust.

[Section 601KC]

- (e) Whether an offer is made by the Responsible Entity in any Distribution Period, will be at the complete discretion of the Responsible Entity and this clause 16 in no way obliges the Responsible Entity to make such an offer at any time during the term of the Trust.

#### **16.4 Withdrawal Notice**

If an offer to withdraw from the Trust is made pursuant to clause 16.3, then a Unit Holder who desires to withdraw from the Trust must provide the Responsible Entity with a Withdrawal Notice and certificates (if any).

#### **16.5 Satisfying the withdrawal requests**

- (a) Within 21 days after the day the withdrawal offer closes, the Responsible Entity must satisfy the withdrawal requests made by Unit Holders.
- (b) No withdrawal request can be satisfied while the offer remains open.

[Section 601KD]

**16.6 Withdrawal Price - non Liquid Trust**

For a Unit Holder to withdraw from the Trust in response to a withdrawal offer under clause 16.3, his or her Units must be redeemed or re-purchased by the Responsible Entity at the Withdrawal Price (non Liquid Trust).

**16.7 Withdrawal requests exceed available assets**

In any Distribution Period, if there is insufficient money available from the assets specified in the offer to satisfy all withdrawal requests, then the requests will be satisfied proportionately in accordance with the following formula:

$$\text{Amount of money available} \times \frac{\text{Amount Unit Holder requests to withdraw}}{\text{Total of all amounts Unit Holders request to withdraw}}$$
**16.8 Closure of offer**

The Responsible Entity must cancel a withdrawal offer before it closes if it is in the best interests of Unit Holders to do so. The cancellation must be by notice in writing to the Unit Holders to whom the withdrawal offer was made.

[Section 601KE]

**16.9 Unit Holder may request withdrawal – Liquid Trust**

A Unit Holder may give the Responsible Entity a Withdrawal Notice specifying the number of Units to be redeemed or the amount of the proceeds which the Unit Holder wishes to receive from the withdrawal. Such notice must be accompanied by the relevant certificate (if any).

**16.10 Time for withdrawal**

- (a) The Responsible Entity must with effect from a date determined by the Responsible Entity (being no later than 30 days following receipt of the relevant Withdrawal Notice and certificates (if any)), redeem the required Units out of the Fund at the Withdrawal Price (Liquid Trust).
- (b) The Withdrawal Price (Liquid Trust) must be paid within 30 days of receipt of the Withdrawal Notice and certificates (if any).
- (c) In lieu of the redemption of any Units, the Responsible Entity may re-purchase those Units out of its own funds at the Withdrawal Price (Liquid Trust).



**16.11 Staggering of withdrawal dates**

The Responsible Entity may determine more than one Withdrawal Date for Units to be redeemed pursuant to a Withdrawal Notice and such Units will be redeemed over those days in such proportions as the Responsible Entity determines. However, all such Units must be redeemed within the period specified in clause 16.10.

**16.12 Compulsory withdrawal of small holdings**

If the Current Unit Value of all Units held by a Unit Holder is less than the Minimum Withdrawal Amount, then the Responsible Entity may redeem those Units at the Withdrawal Price (Liquid Trust) on such Withdrawal Date as determined by it, with provisions of this clause 16 to the withdrawal to the extent possible.

**16.13 Suspension by Responsible Entity**

The Responsible Entity may suspend the redemption of Units for such period as it determines where it is impractical to calculate the Withdrawal Price (Liquid Trust) due to -

- (a) the closure of a securities exchange or trading restrictions on a securities exchange
- (b) an emergency or other state of affairs (including power failure and computer malfunction)
- (c) the declaration of a moratorium in a country where the Trust has investments, or
- (d) the realisation of investments not being able to be effected at prices which would be realised if investments were realised in an orderly fashion over a reasonable period in a stable market.

All outstanding Withdrawal Notices, which originally fell within the period of suspension, will be deemed to be received, on the first Business Day after the suspension ceases.

**16.14 Other suspension of redemption**

The Responsible Entity is not obliged to redeem Units in either of the following circumstances:

- (a) The person making the request holds more than the Minimum Withdrawal Amount and the request relates to less than the Minimum Withdrawal

Amount, or carrying out the Withdrawal will result in the person making the request holding less than the Minimum Withdrawal Amount.

- (b) The request is made while the Trust is being wound up.

### **16.15 Funding of withdrawal requests**

To fund a redemption of Units that may be offered to Unit Holders the Responsible Entity may do any one of more of the following:

- (a) Invest part of the Fund in such Liquid Assets that comprise cash, commercial bills or money market securities.
- (b) Apply or realise part of the Fund.
- (c) Obtain financial accommodation.

### **16.16 Resale of Units by Responsible Entity**

Any Units repurchased out of the Responsible Entity's own funds will remain in existence and may be sold by the Responsible Entity or alternatively held by the Responsible Entity for its own benefit.

### **16.17 Cancellation of Units**

Units which have been redeemed will be cancelled and the Responsible Entity will record the cancellation in the Register.

### **16.18 Transfer of specific assets**

The Responsible Entity may determine that a Withdrawal Notice will be satisfied, in whole or in part, by the transfer of investments of the Trust at their Market Value. The Unit Holder must pay any transaction costs as determined by the Responsible Entity.

## **17. Winding Up Of The Trust**

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[SECTION 601GA(1)(d)]

### **17.1 Events which cause a winding up**

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

- (a) The Trust comes to the end of its term as set out in clause 3.2 of this Constitution.

- (b) The Trust is without a responsible entity.
- (c) If the Trust's purpose has been accomplished or cannot be accomplished and the Responsible Entity uses the mechanism provided for in the Law.
- (d) A court orders the Trust be wound up pursuant to the Law.
- (e) Any of the circumstances set out in the Law apply such that the Responsible Entity is required to wind up the Trust.
- (f) Upon giving Unit Holders at least two months' notice.

## **17.2 Process of winding up**

- (a) Unless otherwise required by Law, the Responsible Entity is responsible for the winding up of the Trust.
- (b) Subject to clause 17.2(d), and to the rights of holders of different classes of Units, the Responsible Entity must convert to money the Fund, deduct all proper costs and then divide the balance amongst the Unit Holders according to the beneficial interest of each Unit Holder in the Trust on the date the Trust is required to be wound up. The Responsible Entity may make interim distributions (i.e. Income or capital) during the winding up process as it sees fit.
- (c) The Responsible Entity must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unit Holders to do so, then the Responsible Entity may postpone any part of the winding up for such time as it thinks desirable.
- (d) The Responsible Entity may agree with a Unit Holder that the Unit Holder's entitlement, in whole or in part, on the winding up of the Trust, be satisfied by transferring assets of the Trust to that Unit Holder at the Market Value.

## **17.3 Responsible Entity may withhold proceeds of realisation**

The Responsible Entity may retain from the proceeds of realisation of the Fund money—

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

#### **17.4 Auditor's certificate**

Once the Responsible Entity believes the winding up is complete, the Responsible Entity must engage a registered company Auditor to audit the final accounts of the Trust. The Responsible Entity must send a copy of any report made by the Auditor to the Unit Holders within 30 days after the Responsible Entity receives the report from the Auditor.

### **18. Indemnity And Liability**

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#### **18.1 Indemnity from the Trust**

- (a) The Responsible Entity has a right of indemnity out of the Fund in respect of –
- (i) any liability incurred by the Responsible Entity in the performance of its duties in respect of the Trust, and
  - (ii) all fees payable to and costs recoverable by the Responsible Entity under this Constitution.
- (b) However, this indemnity does not apply where there has been any negligence, deceit, breach of duty, fraud or breach of trust on the part of the Responsible Entity.

#### **18.2 Forged documents**

Subject to the extent permitted under Law, the Responsible Entity will not incur any liability in respect of any action taken or any omission by the Responsible Entity in reliance upon any document for so long as the Responsible Entity has reason to believe the document is genuine or has been passed or signed by the proper parties.

#### **18.3 Payment of taxes**

Subject to the extent permitted under Law, the Responsible Entity is not liable to account to any Unit Holder for any payments made by the Responsible Entity (or at its direction) in good faith to any duly authorised fiscal authority of the Commonwealth or any State or Territory for Tax or other charges.

#### **18.4 Responsible Entity may act on professional advice**

The Responsible Entity may act on the opinion or advice of or information in relation to the Trust obtained from any professional adviser who the Responsible Entity reasonably believes is an expert in relation to the matters upon which they are consulted. Subject to the extent permitted under Law, the Responsible Entity

is entitled to be indemnified out of the Fund in respect of anything done or suffered by it in good faith in reliance upon such opinion, advice or information in relation to the Trust.

### **18.5 Responsible Entity not liable for good faith error**

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

### **18.6 Limit of indemnity**

Nothing in this Constitution limits the liability of the Responsible Entity for negligence, deceit, breach of duty or breach of trust.

### **18.7 Limitation of liability of Unit Holders**

The liability of Unit Holders is limited to their Units and the assets of the Fund. The Responsible Entity, or any creditor or agent of the Responsible Entity do not have any claim of any nature against any Unit Holder for any liabilities incurred by those parties in the management of the Trust.

## **19. Meetings Of Unit Holders**

### **19.1 Responsible Entity's power to call Unit Holders' meeting**

The Responsible Entity may call a meeting of the Unit Holders at any time.

[Section 252A]

### **19.2 Unit Holders power to call a meeting**

- (a) The Responsible Entity must call and arrange to hold a meeting of the Unit Holders to consider and vote on a proposed Special Resolution or Extraordinary Resolution on the request of –
  - (i) Unit Holders with at least 5 percent of the votes that may be cast on the resolution, or
  - (ii) at least 100 Unit Holders who are entitled to vote on the resolution.
- (b) The request by the Unit Holders must –
  - (i) be in writing
  - (ii) state any resolution to be proposed at the meeting, and

- (iii) be signed by the Unit Holders proposing to move the resolution.
- (c) The request may be accompanied by a statement about the proposed resolution provided by the Unit Holders making the request.
- (d) Separate copies of a document setting out the request and statement (if any) may be used for signing by Unit Holders if the wording of the request and statement (if any) is identical in each copy.
- (e) The percentage of the votes that Unit Holders have is to be worked out as at the midnight before the request is given to the Responsible Entity.
- (f) The Responsible Entity must call the meeting within 21 days after the request is given to it. The meeting must be held not later than two months after the request is given to the Responsible Entity.
- (g) The Responsible Entity must give to each of the Unit Holders a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The Responsible Entity must distribute the copies in the same way in which it gives notice of the meeting.
- (h) The Responsible Entity does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.
- (i) The Responsible Entity is responsible for the expenses of calling and holding the meeting and making the distribution. The Responsible Entity may meet those expenses from the Fund.

[Section 252B]

### **19.3 Failure of Responsible Entity to call meeting of the Unit Holders**

- (a) Unit Holders with more than 50 percent of the votes carried by Units held by the Unit Holders who make a request under Section 252B of the Law may call and arrange to hold a meeting of the Unit Holders and distribute the statement (if any) if the Responsible Entity does not do so within 21 days after the request is given to the Responsible Entity.
- (b) The meeting must be called and the statement is to be distributed in the same way, so far as is possible, in which meetings of the Unit Holders may be called by the Responsible Entity and information is distributed to Unit Holders by the Responsible Entity. The meeting must be held not later than three months after the request is given to the Responsible Entity.

- (c) To call the meeting the Unit Holders requesting the meeting may ask the Responsible Entity for a copy of the Register. The Responsible Entity must give the Unit Holders requesting the meeting the copy of the Register without charge.

[Section 252C]

#### **19.4 Calling of meetings of Unit Holders, by Unit Holders**

- (a) Unit Holders who hold Units carrying at least 5 percent of the votes that may be cast at a meeting of Unit Holders may call and arrange to hold a meeting of the Unit Holders to consider and vote on a proposed Special Resolution or a proposed Extraordinary Resolution. The Unit Holders calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which meetings of the Unit Holders may be called by the Responsible Entity.
- (c) The percentage of the votes carried by Units that Unit Holders hold is to be worked out as at the midnight before the meeting is called.

[Section 252D]

#### **19.5 Calling of meeting by the Court**

The Court may order a meeting of Unit Holders to be called to consider and vote on a proposed Special Resolution or Extraordinary Resolution if it is impracticable to call the meeting in any other way. The Court may make the order on application by –

- (a) the Responsible Entity, or
- (b) any Unit Holder who would be entitled to vote at the meeting.

[Section 252E]

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## **20. How To Call Meetings Of Unit Holders**

### **20.1 Notice of meetings**

At least 21 day's notice must be given of a meeting of Unit Holders.

## **20.2 Notice of meetings of Unit Holders to Unit Holders, directors and auditors**

- (a) Written notice of a meeting of Unit Holders must be given to –
  - (i) each Unit Holder entitled to vote at the meeting
  - (ii) each director of the Responsible Entity
  - (iii) the Auditor, and
  - (iv) the auditor of the Compliance Plan.
- (b) If Units are held jointly, then notice need only be given to one of the Unit Holders.
- (c) Notice to joint Unit Holders must be given to the joint Unit Holder named first in the Register.
- (d) The Responsible Entity may give notice of the meeting to a Unit Holder –
  - (i) personally
  - (ii) by sending it by post to the address for the Unit Holder in the Register or an alternative address (if any) nominated by the Unit Holder, or
  - (iii) by sending it to the fax number or electronic address (if any) nominated by the Unit Holder.
- (e) A defect in the notice given or failure to receive the notice does not invalidate a meeting.
- (f) A notice of meeting sent by post is taken to be given three days after it is posted. A notice of meetings sent by fax, or other electronic means is taken to be given on the Business Day after it is sent.

[Section 252G]

## **20.3 Auditors entitled to other communications**

The Responsible Entity must give the Auditor and the auditor of the Compliance Plan all communications relating to the meeting that a Unit Holder is entitled to receive.

[Section 252H]



## 20.4 Contents of notice of meetings of a Unit Holder

A notice of a meeting of Unit Holders must –

- (a) set out the place, date and time for the meeting (and if the meeting is to be held in two or more places, then the technology that will be used to facilitate this)
- (b) state the general nature of the meeting's business
- (c) if a Special Resolution or an Extraordinary Resolution is to be proposed at the meeting, then set out an intention to propose the Special Resolution or an Extraordinary Resolution and state the resolution, and
- (d) contain a statement setting out the following information –
  - (i) that the Unit Holder has a right to appoint a proxy
  - (ii) that the proxy does not need to be a Unit Holder, and
  - (iii) that if the Unit Holder appoints two proxies the Unit Holder may specify the proportion or number of votes the proxy is appointed to exercise.

[Section 252J]

## 20.5 Notice of adjourned meetings

When a meeting is adjourned, new notices of the adjourned meeting must be given if the meeting is adjourned for one month or more.

[Section 252K]

## 21. Unit Holders' Rights To Put Resolutions At Meetings Of Unit Holders

### 21.1 Unit Holders' resolutions

- (a) The following Unit Holders may give the Responsible Entity notice of a Special Resolution or an Extraordinary Resolution that they propose to move at a meeting of Unit Holders:
  - (i) Unit Holders with at least 5 percent of the votes that may be cast on the resolution.
  - (ii) At least 100 Unit Holders who are entitled to vote at a meeting of Unit Holders.

- (b) The notice must –
  - (i) be in writing
  - (ii) set out the wording of the proposed resolution, and
  - (iii) be signed by the Unit Holders giving the notice.
- (c) Separate copies of a document setting out the notice may be used for signing by Unit Holders if the wording of the notice is identical in each copy.
- (d) The percentage of the votes that Unit Holders have is to be worked out as at the midnight before the Unit Holders give the notice.

[Section 252L]

## **21.2 Responsible Entity giving notice of Unit Holders' resolutions**

- (a) If a Responsible Entity has been given notice of a Special Resolution or an Extraordinary Resolution under Section 252L of the Law, then the resolution is to be considered at the next meeting of Unit Holders that occurs more than two months after the notice is given.
- (b) The Responsible Entity must give all the Unit Holders notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Responsible Entity is responsible for the cost of giving Unit Holders notice of the resolution if the Responsible Entity receives the notice in time to send it out to Unit Holders with the notice of meeting.
- (d) The Unit Holders requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Responsible Entity in giving Unit Holders notice of the resolution if the Responsible Entity does not receive the Unit Holders' notice in time to send it out with the notice of meeting.
- (e) The Responsible Entity need not give notice of the resolution –
  - (i) if it is more than 1,000 words long or defamatory, or
  - (ii) if the Unit Holders making the request are to bear the expenses of sending the notice out, unless the Unit Holders give the

Responsible Entity a sum reasonably sufficient to meet the expense that it will reasonably incur in giving the notice.

[Section 252M]

### **21.3 Unit Holders' statements to be distributed**

- (a) Unit Holders may request a Responsible Entity to give to all its Unit Holders a statement provided by the Unit Holders making the request about –
  - (i) a resolution that is proposed to be moved at a meeting of Unit Holders, or
  - (ii) any other matter that may be properly considered at a meeting of Unit Holders.
- (b) The request must be made by –
  - (i) Unit Holders with at least 5 percent of the votes that may be cast on the resolution, or
  - (ii) at least 100 Unit Holders who are entitled to vote at the meeting.
- (c) The request must be –
  - (i) in writing
  - (ii) signed by the Unit Holders making the request, and
  - (iii) given to the Responsible Entity.
- (d) Separate copies of a document setting out the request may be used for signing by Unit Holders if the wording of the request is identical in each copy.
- (e) The percentage of the votes that Unit Holders have is to be worked out as at the midnight before the request is given to the Responsible Entity.
- (f) After receiving the request, the Responsible Entity must distribute to all the Unit Holders a copy of the statement at the same time or as soon as practicable afterwards, and in the same way, as it gives a notice of a meeting.

- (g) The Responsible Entity is responsible for the cost of making the distribution if the Responsible Entity receives the statement in time to send it out to Unit Holders with the notice of meeting.
- (h) The Unit Holders making the request are jointly and individually liable for the expenses reasonably incurred by the Responsible Entity in making the distribution if the Responsible Entity does not receive the statement in time to send it out with the notice of meeting.
- (i) The Responsible Entity need not comply with the request –
- (i) if the statement is more than 1,000 words long or defamatory, or
  - (ii) if the Unit Holders making the request are responsible for the expenses of the distribution, unless the Unit Holders give the Responsible Entity a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

[Section 252N]

## 22. Holding Meetings Of Unit Holders

### 22.1 Time and place for meeting of Unit Holders

A meeting of Unit Holders must be held at a reasonable time and place.

[Section 252P]

### 22.2 Technology

A Responsible Entity may hold a meeting of the Unit Holders at two or more venues using any technology that gives the Unit Holders as a whole a reasonable opportunity to participate.

[Section 252Q]

### 22.3 Quorum

- (a) The quorum for an Extraordinary Resolution, a Special Resolution and an Ordinary Resolution is set out in the table below:

	Percentage of Units by value	No. of Persons
Extraordinary Resolution	At least 75 percent of the Units by value	Four persons holding or representing by proxy or attorney the percentage

	<b>Percentage of Units by value</b>	<b>No. of Persons</b>
		attorney the percentage of Units by value shown
Special Resolution	At least 20 percent of Units by value	Four persons holding or representing by proxy or attorney the percentage of Units by value shown
Ordinary Resolution	At least 10 percent of the Units by value	Two persons holding or representing by proxy or attorney the percentage of Units by value shown

Both the number of persons and percentage of Units those persons hold must be met for the quorum to be established.

- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unit Holder has appointed more than one proxy or representative, then these proxies or representatives only count as one person. If an individual is attending both as a Unit Holder and as a proxy or body corporate representative they will only be counted as one individual.
- (c) A meeting of Unit Holders which does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and place the Responsible Entity specifies. If the Responsible Entity does not specify one or more of those things unless clause 22.3(d) applies, then the meeting is adjourned to –
- (i) if the date is not specified – the same day in the next week
  - (ii) if the time is not specified – the same time, and
  - (iii) if the place is not specified – the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, then the persons present at the resumed meeting are deemed to constitute a quorum and the meeting may proceed.

[Section 252R]

## 22.4 Chairing meetings of Unit Holders

- (a) The Responsible Entity may, in writing, appoint an individual to chair a meeting called under Sections 252A or 252B of the Law.
- (b) The Unit Holders present at a meeting called under Sections 252A or 252B of the Law must elect a Unit Holder present to chair the meeting (or part of it) if –
  - (i) a chair has not previously been appointed to chair the meeting, or
  - (ii) a previously appointed chair is not available, or declines to act, for the meeting (or part of the meeting).
- (c) The Unit Holders present at a meeting called under Sections 252C, 252D or 252E of the Law must elect a Unit Holder present to chair the meeting. This is not so if the meeting is called under Section 252E of the Law and the Court has directed otherwise under Section 1319.

[Section 252S]

## 22.5 Auditors' right to be heard at meetings of Unit Holders

- (a) The Auditor and the auditor of the Compliance Plan are entitled to attend any meeting of the Unit Holders.
- (b) An auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) An auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the Unit Holders.

[Section 252T]

## 22.6 Adjourned meetings

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

[Section 252U]

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## 23. Proxies And Body Corporate Representatives

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### 23.1 Who can appoint a proxy

- (a) A Unit Holder who is entitled to attend and cast a vote at a meeting of Unit Holders may appoint a person as the Unit Holder's proxy to attend and vote for the Unit Holder at the meeting.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) A Unit Holder may appoint one or two proxies. If the Unit Holder appoints two proxies and the appointment does not specify the proportion or number of the Unit Holder's votes, then each proxy may exercise half of the votes.
- (d) Any fractions of votes resulting from the application of clauses 23.1(b) or 23.1(c) must be disregarded.

[Section 252V]

### 23.2 Rights of proxies

- (a) A proxy appointed to attend and vote for a Unit Holder has the same rights as the Unit Holder—
  - (i) to speak at the meeting, and
  - (ii) to vote (but only to the extent allowed by the appointment).
- (b) A proxy is entitled to vote on show of hands.
- (c) A proxy's authority to speak and vote for a Unit Holder at a meeting is suspended while the Unit Holder is present at the meeting.

[Section 252W]

### 23.3 Sending appointment forms or lists of proxies to all Unit Holders

If the Responsible Entity sends a Unit Holder a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting –

- (a) if the Unit Holder requested the form or list, then the Responsible Entity must send the form or list to all Unit Holders who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting, or

- (b) otherwise, the Responsible Entity must send the form or list to all its Unit Holders entitled to appoint a proxy to attend and vote at the meeting.

#### **23.4 Appointing a proxy**

- (a) An appointment of a proxy is valid if it is signed by the Unit Holder making the appointment and contains the following information –
  - (i) the Unit Holder's name and address
  - (ii) the Trust's name
  - (iii) the proxy's name or the name of the office held by the proxy, and
  - (iv) the meetings at which the appointment may be used.
- (b) An appointment of a proxy remains valid even if paragraph 23.4(a) is not strictly complied with, provided in the reasonable opinion of the Responsible Entity the intentions of the Unit Holder are clear.
- (c) An undated appointment is taken to have been dated on the day it is given to the Responsible Entity.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does –
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, then the proxy must vote that way
  - (ii) if the proxy has two or more appointments that specify different ways to vote on the resolution – then the proxy must not vote on show of hands
  - (iii) if the proxy is the chairperson – then the proxy must vote on a poll, and must vote that way, and
  - (iv) if the proxy is not the chairperson – then the proxy need not vote on a poll, but if the proxy does so, then the proxy must vote that way.
- (e) If a proxy is also a Unit Holder, then this clause does not affect the way the person can cast any votes they hold as a Unit Holder.
- (f) The appointment of a proxy does not have to be witnessed.



- (g) The later appointment of a proxy revokes an earlier appointment, if both appointments could not be validly exercised at the meeting.

[Section 252Y]

### **23.5 Proxy documents**

- (a) For an appointment of a proxy for a meeting of Unit Holders to be effective, the following documents must be received by the Responsible Entity at least 48 hours (or such shorter time agreed to by the Responsible Entity) before the meeting:
- (i) The proxy's appointment.
  - (ii) If the appointment is signed by the appointor's attorney, then the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Unit Holders has been adjourned, an appointment and any authority received by the Responsible Entity at least 48 hours (or such shorter time agreed to by the Responsible Entity) before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) A Responsible Entity receives an appointment authority when it is received at any of the following:
- (i) The Responsible Entity's registered office.
  - (ii) A fax number at the Responsible Entity's registered office.
  - (iii) A place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) An appointment of a proxy is ineffective if the Responsible Entity receives either or both the appointment or authority at a fax number or electronic address, and there is a requirement (if any) in notice of meeting that –
- (i) the transmission be verified in a way specified in the notice, or
  - (ii) the proxy produce the appointment and authority (if any) at the meeting.

[Section 252Z]

### **23.6 Validity of proxy vote**

- (a) Unless the Responsible Entity has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes –
  - (i) the appointing Unit Holder dies
  - (ii) the Unit Holder is mentally incapacitated
  - (iii) the Unit Holder revokes the proxy's appointment
  - (iv) the Unit Holder revokes the authority under which the proxy was appointed by a third party, or
  - (v) the Unit Holder transfers the Units in respect of which the proxy was given.
- (b) A proxy who is not entitled to vote on a resolution as a Unit Holder may vote as a proxy for another Unit Holder who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

### **24. Body Corporate Representative**

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- (a) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of Unit Holders. The appointment may be a standing one.
- (b) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, then the appointment must identify the position.
- (c) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
- (d) Unless otherwise specified in the appointment, the representative may exercise, on behalf of the body corporate, all of the powers that the body could exercise at a meeting or in voting on a resolution.

[Section 253B]

### **25. Voting At Meetings Of Unit Holders**

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[Section 253C]

**25.1 How many votes for a Unit Holder**

- (a) On a show of hands, each Unit Holder has one vote.
- (b) On a poll, each Unit Holder has one vote for each Unit the Unit Holder holds.

**25.2 Jointly held interests**

If Units are held jointly and more than one Unit Holder votes in respect of these Units, only the vote of the Unit Holder whose name appears first in the Register counts.

**25.3 Responsible Entity and associates cannot vote if interested in resolution**

The Responsible Entity and its Associates are not entitled to vote their Units on a resolution at a meeting of Unit Holders if they have an interest in the resolution or matter other than as a Unit Holder.

**25.4 Objections to a right to vote**

A challenge to a right to vote at a meeting of Unit Holders –

- (a) may only be made at the meeting, and
- (b) must be determined by the chairperson, whose decision is final.

**25.5 Votes need not all be cast in the same way**

On a poll a person voting who is entitled to two or more votes –

- (a) need not cast all their votes, and
- (b) may cast their votes in different ways.

**25.6 How voting is carried out**

- (a) A Special Resolution or an Extraordinary Resolution put to the vote at a meeting of Unit Holders must be decided on a poll.
- (b) Any other resolution put to the vote at a meeting of Unit Holders must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50 percent of the votes cast by Unit Holders entitled to vote on the resolution.

- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

### **25.7 Matters on which a poll may be demanded**

- (a) Subject to clause 25.7(b), a poll may be demanded on any resolution.
- (b) A poll cannot be demanded on any resolution concerning –
  - (i) the election of the chairperson of a meeting, or
  - (ii) the adjournment of a meeting.
- (c) A demand for a poll may be withdrawn.

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

- (a) At a meeting of Unit Holders, a poll may be demanded by –
  - (i) at least five Unit Holders present and entitled to vote on the resolution
  - (ii) Unit Holders present with at least 5 percent of the votes that may be cast on the resolution on a poll, or
  - (iii) 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.
- (c) The percentage of votes that Unit Holders have is to be worked out as at close of business on the day before the poll is demanded.

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## **26. Minutes And Unit Holders' Access To Minutes**

### **26.1 Minutes**

- (a) A Responsible Entity must keep minute books in which it records within one month–

- (i) proceedings of meetings of Unit Holders, and
  - (ii) resolutions of meetings of Unit Holders.
- (b) The Responsible Entity must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chairperson of the meeting or the chairperson of the next meeting.
- (c) The Responsible Entity must keep the minute books at –
- (i) its registered office
  - (ii) its principal place of business in Australia, or
  - (iii) another place approved by ASIC.
- (d) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

[Section 253M]

## **26.2 Unit Holders' access to minutes**

- (a) The Responsible Entity must ensure the minute books for the meetings of Unit Holders are open for inspection by Unit Holders free of charge.
- (b) A Unit Holder may ask the Responsible Entity in writing for a copy of any minutes of a meeting of the Unit Holders or an extract of the minutes.
- (c) The Responsible Entity is entitled to charge a Unit Holder a copying fee of not more than the amount prescribed by the Law.
- (d) If the Responsible Entity requires payment for the copy, then the Responsible Entity must send the copy –
- (i) within 14 days after the Responsible Entity receives the payment, or
  - (ii) within any longer period that ASIC approves.

## **27. Complaints Handling**

[Section 601GA(1)(c)]

### **27.1 Complaints handling officer**

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

### **27.2 A Unit Holder may make a complaint**

- (a) Any Unit Holder may make a complaint about any aspect of the Trust by writing to the Responsible Entity at any place where the Responsible Entity has an office from time to time.
- (b) The complaint must specify –
  - (i) the name and contact details of the Complainant making the complaint, and
  - (ii) the details of the complaint in as much detail as is reasonably required to allow the Responsible Entity to deal with the complaint in accordance with this clause 27.
- (c) If the complaint does not meet the requirement in clause 27.2, then the Responsible Entity must make reasonable inquiries to try and ascertain the required detail.
- (d) The Responsible Entity must provide reasonable assistance to any Unit Holder –
  - (i) who has either attempted to make a complaint but has not done so in a manner which allows the Responsible Entity to handle the complaint, or
  - (ii) who the Responsible Entity reasonably believes wants to make a complaint, but for some reason is unable to do so (*e.g. because of a physical disability*).

### **27.3 Acknowledgment of a complaint**

- (a) If any Unit Holder makes a complaint, then the Responsible Entity must, within five Business Days after receiving the complaint, write to the Complainant either to –
  - (i) acknowledge the complaint, or
  - (ii) respond fully to the Complainant in respect of the complaint made.
- (b) The Responsible Entity must include in its written response to the Complainant –
  - (i) the procedure used by the Responsible Entity upon receiving a complaint
  - (ii) the name, title and contact details of the present complaints handling officer, and
  - (iii) if the complaint is not fully dealt with in the letter, then an estimate of the time the Responsible Entity believes it will take for the Responsible Entity to respond to the complaint.

### **27.4 Consideration of complaints**

- (a) The Responsible Entity must treat all complaints seriously and deal with them in a timely manner, having regard to the nature of the complaint.
- (b) The Responsible Entity must attempt to respond fully to the Complainant within 14 days after the acknowledgment of the complaint is made by the Responsible Entity.
- (c) In any event, the Responsible Entity (through the complaints handling officer) must contact the Complainant at least once in every calendar month for complaints which cannot be resolved within 14 days after the acknowledgment of the complaint is made by the Responsible Entity. When making contact the Responsible Entity must inform the Complainant of the progress of the complaint and provide a further estimate as to when the complaint may be resolved.

### **27.5 Resolving a complaint**

- (a) The Responsible Entity must act reasonably in attempting to resolve a complaint, however nothing in this clause 27 compels the Responsible Entity to resolve a complaint in favour of the Complainant.

- (b) If the Responsible Entity believes it has either resolved the complaint, or it has not resolved the complaint but can do nothing more to satisfy the Complainant, then the Responsible Entity must –
  - (i) inform the Complainant of the view the Responsible Entity has reached, setting out clear and concise reasons, and
  - (ii) inform the Complainant of the avenues open to the Complainant if the Complainant is not satisfied with the response of the Responsible Entity.

## **27.6 Further avenues open to Unit Holders**

If a complaint cannot be resolved to the satisfaction of a Complainant, then the Complainant may –

- (a) if the Responsible Entity is a Unit Holder, then lodge a complaint with an external complaints resolution body, or
- (b) take what ever other action is open to the Complainant under the general law.

## **27.7 Recording complaints**

- (a) The Responsible Entity must make a record of complaints. The record must include –
  - (i) the identity of the Complainant
  - (ii) the nature of the complaint
  - (iii) the service or practice in respect of which the complaint was made
  - (iv) the response time
  - (v) the identity of the person or persons who handled the complaint
  - (vi) details of any resolution to the complaint, and
  - (vii) any other information the Responsible Entity believes relevant from time to time.
- (b) The Responsible Entity must review the record of complaints at least annually to determine whether or not any corrective steps need to be taken in respect of how it manages the Trust.



## **27.8 Disclosure of existence of complaints handling procedure**

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

## **28. Changing The Constitution**

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[Section 601GC]

### **28.1 Power to amend**

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

- (a) by Special Resolution of the Unit Holders, or
- (b) by the Responsible Entity if the Responsible Entity reasonably considers the change will not adversely affect Unit Holders' rights.

### **28.2 Lodgement of amendment**

- (a) Responsible Entity must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

## **29. Limitation Of Unit Holding By Each Unit Holder**

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For as long as this Trust is admitted to the Official List the provisions of this clause 29 will have no effect.

### **29.1 Interpretation**

In this clause –

- (a) the term 'securities' where used has the meaning given to that term by the Law
- (b) the term 'the prescribed value' means 15 percent of the total number of Units in the Trust.

### **29.2 Limitation**

A person may not, either alone or together with any other person, acquire Units or any additional Units if in doing so the person would be entitled to more than the prescribed value immediately after the acquisition.

### **29.3 Responsible Entity's consent**

The restriction contained in clause 29.2 does not apply to or in relation to an acquisition or holding of a Unit or Units to which the Responsible Entity has given its prior written consent. The Responsible Entity may grant or withhold its consent in its absolute discretion and subject to any conditions which the Responsible Entity in its absolute discretion may impose.

### **29.4 Relevant interest**

For the purpose of this clause 29 a person is taken to acquire Units (in this clause 29.4 referred to as 'the Units concerned') if –

- (a) the person acquires a relevant interest in the Units concerned as a direct or indirect result of a transaction entered into by the person or on the person's behalf in relation to the Units concerned or in relation to any other securities, or
- (b) the person acquires any legal or equitable interest in the Units concerned or in any other securities and, as a direct or indirect result of the acquisition, another person acquires a relevant interest in the Units concerned.

### **29.5 Person concerned**

For the purpose of this clause the Unit or Units to which a person (in this clause 29.5 and clause 29.6 referred to as the 'person concerned') is entitled includes –

- (a) Units in which the person concerned has a relevant interest, and
- (b) Units in which a person who is an associate of the person concerned has a relevant interest.

### **29.6 Associate**

A reference in clause 29.5(b) to a person who is an associate of the person concerned is construed as a reference to –

- (a) if the person is a corporation –
  - (i) a director or secretary of the corporation
  - (ii) a corporation which is related to the person concerned, or
  - (iii) a director or secretary of such a related corporation.

- (b) a person with whom the person concerned has, or proposes to enter into, an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied –
  - (i) by reason of which the first-mentioned person, or the person concerned, may exercise, directly or indirectly control the exercise of, or may substantially influence the exercise of, any voting power attached to the Units
  - (ii) under which the first-mentioned person may acquire from the person concerned, or the person concerned may acquire from the first-mentioned person, Units, or
  - (iii) under which the first-mentioned person, or the person concerned, may be required to dispose of Units in accordance with the directions of the person concerned, or of the first-mentioned person, as the case may be
- (c) a person in concert with whom the person concerned is acting, or proposes to act, in relation to the acquisition or proposed acquisition of Units
- (d) a person with whom the person concerned is, or proposes to become, associated, whether formally or informally, in any other way in relation to the Units, or
- (e) to enter into a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with another person as mentioned in clauses 29.6(b), 29.6(c) and 29.6(d) above, that other person.

## 29.7 Control

- (a) Subject to this clause 29.7, a person has a relevant interest in a Unit for the purposes of this clause if that person has power –
  - (i) to exercise, or control the exercise of, the right to vote attached to that Unit, or
  - (ii) to dispose of, or to exercise control over the disposal of, that Unit.
- (b) A relevant interest in a Unit must be disregarded –
  - (i) if the Unit is subject to a trust, the relevant interest is that of a trustee, and
  - (ii) the trustee is a bare trustee.

- (c) For the purpose of clause 29.7(b) above, a trustee may still be taken to be a bare trustee if the trustee is entitled in its capacity as a trustee to be remunerated out of the income or property of the trust.

## **29.8 Power of Responsible Entity**

- (a) The Responsible Entity may, in its absolute discretion, decline to allot or to register any transfer or transmission of a Unit if in the Responsible Entity's opinion, the allotment or registration thereof would or might result in or have the effect of causing an infringement or contravention of clause 29.2.
- (b) If the Responsible Entity is satisfied a person has acquired Units in such circumstances as might or would in the opinion of the Responsible Entity result in or have the effect of causing an infringement or infringement or contravention of clause 29.2, then the Responsible Entity may do either or both of the following:
- (i) Give notice in writing to such person requiring the person to dispose of the Units (or any part of them) so acquired (in this clause 29.8 referred to as the 'specified Units') within such time as is specified in the notice. However, the person concerned is not entitled in any way to set aside or cancel the transaction whereby the person acquired the specified Units, nor to claim any refund or to otherwise recover any money paid in respect of the transaction.
- (ii) Prohibit the exercise of any voting or other rights attached to such Units and in the event of an exercise or purported exercise of such rights, disregard them for all purposes.
- (c) If the requirements of any such notice are not complied with by the person to whom the notice is addressed within the time specified in the notice, then the Responsible Entity may cause the specified Units to be sold on any securities exchange on which they are quoted or, if they are not so quoted, in such other manner as the Responsible Entity may determine.
- (d) The Responsible Entity may –
- (i) appoint a person to execute as transferor a transfer in respect of any Units sold in accordance with the provisions of clause 29.8(c) and to receive and give good discharge of the purchase money, and
- (ii) register the transfer notwithstanding the certificate for such Units (if any) may not have been delivered to the Responsible Entity and

issue a new certificate to the transferee, in which event the previous certificate is deemed to have been cancelled.

- (e) Nothing in this clause 29.8 renders the Responsible Entity liable or responsible by reason of any person acquiring Units in contravention of clause 29.2 or failing to comply with the obligation imposed by clause 29.8(b).
- (f) The Responsible Entity, before or at any time after allotting any Units or approving or rejecting any transfer or transmission of Units or at any other time and from time to time, may, by notice in writing to the applicant, allottee, transferee, transmittee or Unit Holder, require such information or evidence (on oath or otherwise verified if the Responsible Entity should so require) as the Responsible Entity may consider to be of assistance in determining whether or not such person is eligible to become or remain a Unit Holder.

## 29.9 Disposal

The Responsible Entity may at any time by notice in writing require a Unit Holder within two Business Days after service of the notice, to furnish to the Responsible Entity the following:

- (a) A statement in writing setting out –
  - (i) full particulars of the Unit Holder’s relevant interests in the Units (“the Units”) and of the circumstances by reason of which the Unit Holder has the interest
  - (ii) so far as it lies within the Unit Holder’s knowledge –
    - A. full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units
    - B. full particulars of each such interest and of the circumstances by reason of which the other person has that interest, and
    - C. full particulars of the name and address of each person (if any) who has given to the Unit Holder instructions in relation to any matter concerning the Units and of those instructions, and the date or dates on which those instructions were given, and

- 
- (iii) a true copy of every letter, agreement, declaration of trust, deed and without limitation document in his/her possession or within his/her control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units held by the Unit Holder
- (b) If the Responsible Entity received, pursuant to a notice under clause 29.9(a) given to a Unit Holder or pursuant to a notice under this clause 29.9(b) information that another person has a relevant interest in any of the Units, or another person has given instructions in relation to any matter concerning the Units, then the Responsible Entity may by notice in writing require the other persons within two Business Days after service of the notice, to furnish to the Responsible Entity –
- (i) a statement in writing setting out –
- A. full particulars of any relevant interest the person has in any of the Units and of the circumstances by reason of which the person has that interest, and
- B. so far as it lies within the person’s knowledge –
- full particulars of the name and address of every other person (if any) who has a relevant interest in any of the Units
  - full particulars of each such interest and of the circumstances by reason of which the other person has that interest, and
  - full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed instructions in relation to any matter concerning the Units and of those instructions, and the date or dates on which those instructions were given, and
- (ii) a true copy of every letter, agreement, declaration of trust, deed and without limitation document in his/her possession or within his/hers control creating, evidencing or referring to the interest of every other person (if any) who has a relevant interest in any of the Units.

- (c) If the requirements of any notice referred to in clauses 29.9(a) or 29.9(b) above are not complied with within the time so specified, then the Responsible Entity may –
  - (i) refuse to register a transfer of the Units
  - (ii) prohibit the exercise of any voting or other rights attached to the Units and in the event of any exercise or purported exercise of such rights, disregard them for all purposes
  - (iii) suspend the payment of any distributions or other money payable on or in respect of the Units
  - (iv) cause the Units to be sold upon any securities exchange or at such place as the Responsible Entity determines and at a price which the Responsible Entity, acting in good faith, determines or accepts.
- (d) If any Units are to be sold pursuant to clause 29.9(c), then the Responsible Entity may –
  - (i) appoint a person to execute on behalf of a Unit Holder the transfer of the Units and to receive and to give a good discharge for the purchase money, and
  - (ii) register the transfer notwithstanding the certificates for the Units may not have been delivered to the Responsible Entity, and issue a new certificate to the transferee, in which event the previous certificate is deemed to have been cancelled.
- (e) The purchase money in respect of the Units so sold less the expenses of sale must be paid to the person in whose name the Units were registered immediately prior to the sale of those Units. After the purchaser's name has been entered into the Register in respect of the Units, the title of the purchaser to the Units must not be called into question on any legal ground in relation to the terms of this clause 29.

### **30. Compliance Plan**

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- (a) A Compliance Plan for the Trust has been prepared by the Responsible Entity and will be lodged with ASIC at the same time as this Constitution.
- (b) The Compliance Plan will deal with the measures the Responsible Entity will adopt to comply with the Law and the Constitution.

- (c) Subject to the Law and the approval of ASIC (if required), the Compliance Plan may be amended by the Responsible Entity from time to time as it sees fit.

## 31. Miscellaneous Provisions

### 31.1 Service of notice

- (a) Any notice required to be given to the Responsible Entity or Unit Holders is deemed to have been duly given if given in writing by letter, fax or electronic mail addressed to them.
- (b) The address for the Responsible Entity will be the address set out below or the address most recently given to the Unit Holders. The addresses for Unit Holders will be as they appear in the Register.

**Responsible Entity:** Kareelya Investments Limited

ACN 072 899 060

Address: 6 Bowman Street, South Perth, WA, 6151

Fax: (08) 9368 8280

- (c) Any notice given by post is deemed to have been served on the second Business Day after the day when it was posted. In cases where notices are sent by the Responsible Entity, the sender may prove such notice was properly addressed and posted by preparing a statement signed by the sender that the notice was posted and when it was posted. This statement is conclusive evidence of that fact.
- (d) Any notice sent by fax is deemed to have been received at the time printed on the confirmation slip of the fax machine of the sender which indicates an accurate transmission without error.
- (e) A fax is deemed to be received at 8.30am Western Standard Time “WST” on the next Business Day if it is sent –
- (i) after 5.00pm WST on any Business Day, or
  - (ii) on any day that is not a Business Day.
- (f) If a fax is sent before 8.30am WST on a Business Day, then the fax is deemed to be received at 8.30am WST on that Business Day.



### **31.2 Payments**

Any money payable by the Responsible Entity to an applicant or Unit Holder under the provisions of this Constitution may be paid by –

- (a) cheque and sent by mail to the address shown in the Register, or
- (b) electronic funds transfer facility provided by a financial institution nominated by the applicant or Unit Holder in writing to the Responsible Entity.

### **31.3 Rounding**

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

### **31.4 Discharge of Responsible Entity**

The Responsible Entity will receive a good discharge on –

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

### **31.5 Retention of documents**

Application Forms, cancelled certificates and instruments of transfer and transmission must be retained by the Responsible Entity either in their original form, electronically or like process and be available for inspection by or on behalf of the Auditor or the auditor of the Compliance Plan at any time during normal business hours. However, on the expiration of seven years from the date of each document in question, or the date upon which the Unit Holder's Unit terminates, whichever is the later, the document may, in the absolute discretion of the Responsible Entity, be destroyed.

**31.6 Changes to the Law**

If there is any change to the Law or ASIC policy whereby the Responsible Entity is required to alter the structure of the Trust or amend this Constitution, then the costs of the Responsible Entity in complying with these changes will be recoverable out of the Fund.

**31.7 Uncontrolled events**

To the extent permitted by Law, if the Responsible Entity is prevented from performing its duties under this Constitution or the Law due to the occurrence of an Uncontrolled Event then the Responsible Entity is not liable to the Unit Holders and nor is the Responsible Entity liable for any loss or decrease in value of the Fund.

**31.8 Applicable law**

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

Signed as a Deed poll:

**THE COMMON SEAL** of Kareelya )  
Investments Limited ACN 072 899 060 was )  
affixed in accordance with its Constitution )  
in the presence of: )

NOT SIGNED

.....Director

.....

Print Full Name

*[Place seal here]*

.....

Director/Secretary

*[Cross out one]*

.....

Print Full Name

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**SCHEDULE 1 – Dictionary**


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<b>Accounting Standards</b>	Has the meaning given to that term in Section 9 of the Law.
<b>Applicant</b>	A person who has applied to become a Unit Holder in the Trust by completing an Application Form but who is not yet a Unit Holder.
<b>Application Form</b>	An application form included in or accompanied by a Disclosure Document.
<b>Application money</b>	Application money paid by Applicants with the Application Form to acquire Units in the Trust.
<b>Approved Market Analyst</b>	Any person, independent of the Responsible Entity, who is duly qualified to advise on the appropriate trading window for the purposes of ascertaining from time to time “ <b>Market Price</b> ” under this Constitution
<b>Approved Valuer</b>	Any person, independent of the Responsible Entity, who is duly qualified to value any part of the Fund or Units.
<b>APX</b>	Australian Property Exchange Ltd.
<b>ASIC</b>	The Australian Securities and Investments Commission.
<b>ASTC Settlement Rules</b>	The settlement rules of ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532
<b>ASX</b>	Australian Stock Exchange Limited.
<b>Associate</b>	Other than in clause 29, means an associate as defined in Division 2 of Part 1.2 of the Law.
<b>Auditor</b>	An auditor appointed by the Responsible Entity as auditor of the Trust, however the appointment must be – <ul style="list-style-type: none"> <li>(a) a person who is a chartered accountant and a registered company auditor under the Law, or</li> <li>(b) a firm of chartered accountants, at least one member of which is a registered company auditor under the Law.</li> </ul>

- Authorised Investment** Means any investment in any asset of any kind and without limiting the generality, it includes the following:
- (a) The ownership of any real property.
  - (b) An option to acquire the ownership of any real property.
  - (c) Money deposited with any Financial Institution.
  - (d) Bills of exchange, promissory notes and other forms of negotiable instruments whether purchased or discounted and which have been either drawn, issued, endorsed or accepted by a Bank or any public statutory body constituted under a law of Australia or any State or Territory.
  - (e) Negotiable certificates of deposit issued by any Bank.
  - (f) Loans, stocks, bonds, mortgages, notes, securities and deposits.
  - (g) Cash Management Trust Investments.
  - (h) Interests in any Managed Investment Schemes or securities, whether or not listed on the ASX.
  - (i) Interests or derivatives of those interests in any incorporated or unincorporated body (subject to the Law).
- Authorised Dealer** Means a corporation declared pursuant to Section 65(1)(a) of the Law to be an authorised dealer in the short term money market.
- Bank** Has the meaning given to that term in Section 9 of the Law.
- Business Day** Any day other than a Saturday, Sunday or public holiday in Perth.
- Cash Management Trust Investments** Means investments which meet the following requirements:
- (a) All investments or loans to have a term not greater than 12 months or capable of being withdrawn within 12 months.
  - (b) Investments are restricted to the following:

- 
- (i) Deposits with and securities accepted, drawn, issued, endorsed, secured or guaranteed by-
    - (A) a federal, state or territorial government of Australia or any statutory authority, instrumentality or corporation thereof
    - (B) any bank authorised to carry on banking business in Australia under any state or federal government act
    - (C) any foreign bank with shareholders' funds in excess of \$500,000,000 on a consolidated basis
    - (D) any corporation all of the shares of which are owned by a bank (or banks) or foreign bank (or foreign banks) as defined in paragraph (B) and (C) above
    - (E) any Authorised Dealers, or
    - (F) any corporation or government entity rated AA to AAA by Standard & Poor's (Australia) Pty Ltd.
  - (ii) Loans to or deposited with any party secured by any security issued by the above entities or by letter of credit or guarantee from any of the entities listed in (i)(A), (B), (C), (D) or (F) above.
  - (iii) Futures or options contracts where such contracts are used as a hedge for the securities listed in (i)(A) and (B) above

only.

<b>CHESS Approved Securities</b>	Securities in respect of which approval has been given by SCH in accordance with the ASTC Settlement Rules.
<b>Complainant</b>	A Unit Holder who has sent a written complaint to the Responsible Entity pursuant to clause 27.
<b>Compliance Committee</b>	The Compliance Committee appointed by the Responsible Entity for the Trust from time to time.
<b>Compliance Plan</b>	The Compliance Plan prepared by the Responsible Entity and registered by ASIC for the Trust, as amended from time to time.
<b>Constitution</b>	This Constitution (including its schedules) as it may from time to time be amended and in force.
<b>Current Unit Value</b>	An amount equal to the Net Asset Value of the Trust divided by the number of Units on issue.
<b>Custodian</b>	A person who is appointed by the Responsible Entity as its agent to hold the Fund pursuant to clause 2.2.
<b>Development Project</b>	A managed investment scheme or company established to own real property which is the subject of development which is yet to reach practical completion.
<b>Disclosure Document</b>	A document by which Units are offered for subscription, and includes any supplementary or replacement document issued in respect of the disclosure document.
<b>Distributable Income</b>	Any amount determined by the Responsible Entity from time to time to be distributed to Unit Holders, including – <ul style="list-style-type: none"> <li>(a) the Net Income of the Trust</li> <li>(b) other capital Income of the Trust, and</li> <li>(c) any amount of capital of the Trust.</li> </ul>
<b>Distribution Date</b>	No later than 28 days after the end of a Distribution Period.
<b>Distribution Period</b>	Each three month period in a Financial Year ending on the last day of each of March, June, September and December (quarter). If the Trust commences during a Distribution Period, then the first Distribution Period will be from the

commencement of the Trust to the end of the next full quarter. If the Trust is wound up during a Distribution Period, then the last Distribution Period will end on the date of winding up. The Responsible Entity may change the duration or dates for the commencement or end of the Distribution Period. The Responsible Entity must notify the Unit Holders of the new dates.

- Extraordinary Resolution** A resolution of which notice has been given in accordance with this Constitution and the Law and that has been passed by at least 50 percent of the total votes that may be cast by Unit Holders entitled to vote on the resolution (including Unit Holders who are not present in person or by proxy).
- Financial Institution** A Bank, building society, Authorised Dealer or any other merchant or investment banking corporation nominated by the Responsible Entity.
- Financial Statements** Has the meaning given to that term in Section 9 of the Law.
- Financial Year** The period of twelve months ending on 30 June in each year during the continuance of the Trust. The term also includes the period commencing on the date the Trust is established and expiring on the next 30 June and any period between 1 July last occurring before the Trust is wound up and the date the Trust is wound up.
- Fund** This includes all scheme property held by the Responsible Entity pursuant to the Trust from time to time, including-
- (a) All property which is paid to, received or held from time to time by the Responsible Entity (or its agent) or held on their behalf for the benefit of Unit Holders under the provisions of this Constitution whether pending investment or not.
  - (b) Any Income derived from the property referred to in paragraph (a) and accruals and capital accretions to that property.
  - (c) Application money (see clause 5.1).

However, the Fund does not include fees and expenses due to the Responsible Entity which have accrued and to which the



Responsible Entity is entitled, but have not yet been paid.

In addition, the Fund does not include Distributable Income that has been calculated and is awaiting distribution to Unit Holders.

<b>GST</b>	A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
<b>GST Act</b>	A New Tax System (Goods & Services Tax) Act 1999.
<b>Income</b>	All amounts which are, or would be recognised as, income by the application of generally accepted accounting principles.
<b>Issue Price</b>	The price at which Units are issued and sold pursuant to clause 4.2.
<b>Law</b>	The Corporations Act 2001 for the time being in force together with the Corporations Regulations.
<b>Legal Personal Trustee</b>	An executor or administrator of the estate of a deceased applicant or Unit Holder or, the trustee of the estate of an applicant or Unit Holder under a legal disability or a person who holds a power of attorney granted by an applicant or Unit Holder.
<b>Liquid</b>	When used in reference to the Trust means the Fund is comprised of Liquid Assets to the extent of at least 80 percent of the Market Value of the Fund.
<b>Liquid Assets</b>	Subject to the Law, the following are liquid assets unless it is proved the Responsible Entity cannot reasonably expect to realise these assets within 30 days after receiving a Withdrawal Notice while the scheme is Liquid: <ul style="list-style-type: none"> <li>(a) Money in an account or on deposit with a Bank.</li> <li>(b) Bank accepted bills.</li> <li>(c) Marketable securities (as defined in the Law).</li> <li>(d) Property of a kind prescribed by the Law from time to</li> </ul>

time.

- (e) Any asset which the Responsible Entity reasonably expects can be realised for its Market Value within 30 days after receiving a Withdrawal Notice while the scheme is Liquid.

<b>Listing Rules</b>	Listing rules of ASX and any other rules of ASX which are applicable while the Trust 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.
<b>Managed Investment Scheme</b>	A managed investment scheme as defined in Section 9 of the Law.
<b>Market Price</b>	Has the meaning given in clause 4.6.
<b>Market Value</b>	When used in relation Units or assets of the Trust, the term means the market value in a manner determined by the Responsible Entity in consultation with the Auditor, Approved Valuer or such other person independent of the Responsible Entity approved by the Compliance Committee.
<b>Minimum Withdrawal Amount</b>	The amount as determined by the Responsible Entity as the minimum amount for which Units will be redeemed.
<b>Net Asset Value</b>	The Total Asset Value of the Fund, less liabilities and provisions which the Responsible Entity considers appropriate (including provisions for the costs of acquiring or realising investments).
<b>Net Income</b>	In relation to the Trust, “net income” as that term is defined in Section 95 of the Tax Act as calculated each quarter or each Financial Year.
<b>Official List</b>	The official list of ASX.
<b>Official Quotation or Officially Quoted</b>	Official quotation by ASX of the Units.
<b>Option</b>	An option to subscribe for a Unit.
<b>Option Holder</b>	A person registered as the holder of an Option (including persons jointly registered).
<b>Ordinary Resolution</b>	A resolution passed at a meeting of Unit Holders duly convened and held in accordance with the provisions of

this Constitution and the Law by majority of the persons voting at the meeting (whether present in person, or by attorney, proxy or representative) upon a show of hands, and if a poll is validly demanded, then by a majority of the votes passed on such a poll.

<b>Register</b>	The register of Unit Holders required to be kept according to clause 6.
<b>Relief</b>	A class order, an exemption, declaration, modification or other instrument granted or issued by ASIC in connection with the Responsible Entity or the Trust. It includes any amended or substituted class order, exemption, declaration, modification or other instrument.
<b>Responsible Entity</b>	Includes the Responsible Entity for the time being and any other responsible entity appointed on the retirement or removal of the Responsible Entity.
<b>Special Resolution</b>	A resolution of which notice has been given in accordance with this Constitution and the Law and that has been passed by at least 75 percent of the votes cast by Unit Holders entitled to vote on the resolution.
<b>Tax</b>	<p>This term includes, but is not limited to –</p> <ul style="list-style-type: none"> <li>(a) stamp duty, excise and penalties relating to these amounts which are imposed on the Responsible Entity in respect of any assets in the Trust itself</li> <li>(b) taxes and duties and penalties relating to these items imposed as a result of any payment made to or by the Responsible Entity under this Constitution</li> <li>(c) taxes imposed or assessed upon – <ul style="list-style-type: none"> <li>(i) any application money</li> <li>(ii) the distributions of Income to Unit Holders, capital gains, profits or any other amounts in respect of the Trust, or</li> <li>(iii) the Responsible Entity in respect of its capacity as responsible entity of the Trust</li> </ul> </li> <li>(d) imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes</li> </ul>

charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust, and

- (e) every kind of tax, duty, rate, levy, deduction and charge including any GST.

<b>Tax Act</b>	The Income Tax Assessment Act 1936, Income Tax Assessment Act 1997, the GST Act, other current taxation legislation, taxation rulings and other relevant taxation determination.
<b>Total Asset Value</b>	<p>The aggregate of-</p> <ul style="list-style-type: none"> <li>(a) the Market Value of all of the assets in the Fund, including cash and amounts owing to the Trust</li> <li>(b) any pre-payments of expenditure</li> <li>(c) any unpaid amounts</li> <li>(d) such other increments or decrements as an Auditor approves to be included, and</li> <li>(e) any capital expenditure not included in the Market Value of the assets of the Trust.</li> </ul>
<b>Trust</b>	The Managed Investment Scheme established by this Constitution.
<b>Uncontrolled Event</b>	An act of God, strike, lock out or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition intervention, direction, or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, or any other cause whether of the kind specifically set out above or otherwise which is not reasonably within the control of the party relying on the Uncontrolled Event.
<b>Unit Holder</b>	A person for the time being registered under the provisions of this Constitution as a holder of Units and who holds a beneficial interest in the Fund.

<b>Units</b>	In respect of a Unit Holder, an equal undivided interest in the Fund calculated in accordance with the terms of this Constitution.
<b>Withdrawal Date</b>	The date and time determined by the Responsible Entity in accordance with clause 16 with effect from which a Unit is to be redeemed or re-purchased and for the avoidance of doubt, there may be more than one “Withdrawal Date” on any day.
<b>Withdrawal Notice</b>	A notice in such form (which need not be in writing) as the Responsible Entity may specify given by a Unit Holder to the Responsible Entity for the purposes of clause 16.
<b>Withdrawal Price (Liquid Trust)</b>	The Current Unit Value on the Withdrawal Date, less such transaction costs (if any) as the Responsible Entity determines.
<b>Withdrawal Price (non Liquid Trust)</b>	The price for which Units are to be redeemed as determined by a valuation of the Fund as at the end of the last Distribution Period, divided by the number of Units on issue in the Trust as at the end of the last Distribution Period, less any money owed to the Responsible Entity by the Unit Holder and transaction costs (if any).

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## SCHEDULE 2 – Rules for Interpretation

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In this Constitution unless the context indicates a contrary intention –

- a) words denoting any gender include all genders
- b) the singular number includes the plural and vice versa
- c) references to any legislation includes any legislation which amends or replaces that legislation
- d) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns
- e) a person includes companies and corporations trust (including a person or a body of persons acting on behalf of a trust), firm or body of persons
- f) except in the dictionary, headings or references to sections in square brackets do not affect the interpretation of this Constitution
- g) the construction least favourable to the Responsible Entity will not be adopted against the Responsible Entity merely because the Responsible Entity drafted this Constitution
- h) depending upon the context in which they are used, words in italics –
  - provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause, or
  - a reference to Acts, Legislation, Regulations or case names.
- i) amounts of money are expressed in Australian dollars unless otherwise expressly stated
- j) a reference to a document includes any variation or replacement of it
- k) a reference to a section of the law is a reference to a section of the Corporations Law unless otherwise specified
- l) a reference to any thing includes the whole or each part of it
- m) the defined terms in Schedule 1 have the meaning given them in that schedule except where the context otherwise requires, and

- n) references to “Constitution” throughout this Third Replacement Constitution are references to this Third Replacement Constitution where the context requires.